

**MASTER AGREEMENT**

**DATED AS OF \_\_\_, 2019**

**BY AND BETWEEN**

**THE NEW MEXICO HEALTH INSURANCE EXCHANGE**

**AND \_\_\_\_\_**

## MASTER AGREEMENT

THIS MASTER AGREEMENT (referred to hereinafter as “Agreement”), is made and entered into as of \_\_\_\_, 2019 (the “Effective Date”), by and between the **New Mexico Health Insurance Exchange**, a New Mexico nonprofit public corporation, with its principal place of business at 7601 Jefferson St. NE, Albuquerque NM 87109 (hereinafter referred to as “NMHIX” or “beWellnm”) and \_\_\_\_\_, a \_\_\_\_\_ corporation, with its principal place of business at \_\_\_\_\_ (hereinafter referred to as “Contractor”).

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed between the parties as follows:

### 1. Terms and Interpretation

1.1 **Definitions.** In this Agreement, capitalized terms shall have the meaning assigned to them herein. Definitions are also set forth on Exhibit 1 hereto. All defined terms include both the plural and singular, as the context requires. Unless otherwise expressly stated, words such as “hereunder” or “herein” refer to the Agreement as a whole. Words such as “include” and “including” shall not be construed as terms of limitation.

### 2. Provision of Services

2.1 **Provision of Services.** Contractor shall design, develop, implement, operate, host, and maintain a fully functional individual exchange solution (hereinafter, the “System,” as further defined in Exhibit 1). Without limiting the foregoing, Contractor agrees to perform the services, tasks, and work and to deliver the Deliverables described in the following documents, which collectively shall constitute the “Services”: (i) this Agreement and Exhibits \_\_\_\_, \_\_\_\_, \_\_\_\_, \_\_; (ii) the New Mexico Health Insurance Exchange Request for Proposals for Individual Marketplace and Transition to Individual Marketplace, as amended (the “RFP”); (iii) Contractor’s proposal in response to the RFP dated \_\_\_\_, 2019; and (iv) Contractor’s Best and Final Offer dated \_\_\_\_, 2019.

2.1.1 Responsibility for Services. Contractor shall be solely responsible for the provision of the Services. All Services will be performed under the supervision of Contractor, Contractor’s responsible employees, or Contractor’s approved subcontractors.

2.2 **Contractor Account Executive.** Contractor shall designate on Exhibit \_\_\_\_, as of the Effective Date, an individual to whom all communications from NMHIX may be addressed, and who has the authority to act for Contractor in connection with all aspects of this Agreement, including management, supervision, and direction of Contractor’s day-to-day performance (the “Contractor Account Executive”) which role shall also be considered Key Personnel; but any written notice, demand or other communication shall be addressed to the person or persons specified in Section 20.2. Contractor’s Account Executive will designate an alternate contact to act in his or her place in case of illness, vacation, or other absence.

2.3 **Key Personnel.** Contractor’s key personnel involved in the provision of the Services shall be as set forth on the Key Personnel Schedule to this Agreement and updated as appropriate throughout the Term of this Agreement (“Key Personnel”). The parties agree that the Key Personnel are critical to Contractor’s performance of the Services. In no event may Contractor change the responsibilities of Key Personnel without the prior written consent of NMHIX. In the event of an internal reorganization of Contractor that would result in changes to job titles and areas of responsibility of Key

Personnel, the parties shall meet to determine in good faith the appropriate replacements for Key Personnel.

2.3.1 **Removal of Key Personnel.** If NMHIX gives Contractor notice that the continued assignment of any individual to the performance of the Services is not in NMHIX's interests, then after consultation between the parties, if the issue is not resolved to NMHIX's reasonable satisfaction, in NMHIX's sole reasonable discretion Contractor shall remove the individual from NMHIX's account (but no such removal shall be deemed to require Contractor or any of its subcontractors to terminate any individual's employment or take disciplinary action). In the event that an individual is removed pursuant to this Section 2.3.1, Contractor shall replace the individual with a suitable employee in a manner that does not interrupt or adversely affect the provision of Services. All new personnel shall be capable of performing at the same or greater level of proficiency as had been reached by the replaced employee.

2.4 **Level of Effort.** Unless the Agreement specifies some other standard (such as "best efforts"), Contractor shall use reasonable efforts to perform and deliver Services and carry out its other obligations.

2.4.1 **Reasonable Efforts.** For purposes of this Agreement, "Reasonable Efforts," "Commercially Reasonable Efforts," and similar expressions mean diligent performance in a manner consistent with good standards in Contractor's industry and the quality and Key Performance Indicators in this Agreement, but shall not be construed to require unusual or exceptional expenditures or use or engagement of facilities, resources and staff not ordinarily available for performance of Services.

2.4.2 **Best Efforts.** For purposes of this Agreement, "Best Efforts" means use of all of Contractor's available facilities, staff, and other resources and capabilities in order to respond to emergencies and other urgent situations.

2.5 **Current Technology.** In performing the Services, Contractor shall, without additional Charges, and in addition to any specific commitments concerning currency, upgrades, and refreshment of equipment: (i) use current, proven technologies and methodologies, and (ii) implement changes from time-to-time approved by NMHIX to take advantage of improvements in technology (including, without limitation, periodic improvements in Contractor's methods, practices and procedures). The foregoing requirements shall be aimed at continuously improving the functionality and performance of the Services, and associated technology, such that the quality of the Services is always equal to, or better than, comparable services offered by first class service providers operating in the same industry as Contractor. In particular, Contractor shall, without additional Charges, upgrade its tools, methodologies, processes, and other normal procedures for performing similar Services as they may be upgraded from time-to-time for the operation of its business and support of its customers generally and will make available to NMHIX any such relevant improvements, enhancements, or modifications. Software, tools, and utilities used to perform Services will be maintained on current, or near-current, supported releases.

2.6 **Performance Standards and Key Performance Indicators.** Contractor's performance of the Services shall: (i) be provided in a manner consistent with Section 12.2 hereof; (ii) comply with the Service Level Agreements set forth in Exhibit \_\_ ("Service Level Agreements and Associated Liquidated Damages"); and (iii) meet or exceed performance standards, including the Key Performance Indicators, set forth in Exhibit \_\_. Promptly after each failure to meet any of the Key Performance Indicators, Contractor shall investigate the root causes of the failure, report its findings to NMHIX in writing, and take all appropriate action to correct any non-conformities with the Key Performance Indicators. Upon NMHIX's request, or promptly following its own discovery, Contractor shall, without any additional charge to NMHIX, correct any non-conformities with the Key Performance Indicators. Nothing in the

foregoing is intended by the parties to modify in any way the procedures for failure to meet Key Performance Indicators or Acceptance Criteria contained in this Agreement, the Service Level Agreement, or other document that forms a part of this Agreement or any other agreement between the parties.

**2.7 Review and Revision of Service Levels.** The parties will review the performance standards and Key Performance Indicators set forth in the Service Level Agreements and modify them, if appropriate, to reflect continuous improvements in the delivery of Services by Contractor, including improvements contemplated by Section 2.5 above.

**2.8 Liquidated Damages.** In the event that Contractor fails to meet the performance standards and Key Performance Indicators set forth in the Service Level Agreements, NMHIX shall be entitled to liquidated damages as set forth in the Service Level Agreements, provided that such liquidated damages shall not limit any other remedy available to NMHIX.

**2.9 Operational Changes in an Emergency.** In the event of an emergency, as determined by NMHIX in its reasonable discretion, Contractor will use its Best Efforts to assist NMHIX by providing the Services in a manner necessary to meet NMHIX's requirements in light of the emergency notwithstanding anything else in this Agreement to the contrary.

**2.10 Non-Exclusive Contract.** This Agreement is nonexclusive, and unless otherwise agreed, NMHIX may obtain Services and similar or related services from third parties or its own resources. Contractor shall reasonably cooperate with NMHIX and its contractors to facilitate the proper performance of any such services.

**2.11 Services to Third Parties.** NMHIX recognizes that Contractor personnel providing Services to NMHIX under this Agreement may perform similar services from time to time for other customers of Contractor, and this Agreement shall not prevent Contractor from using such personnel (or any equipment or facilities not dedicated to NMHIX's use) for the purpose of performing similar services for other customers. However, providing similar services for others may not adversely affect Contractor's ability to provide Services to NMHIX and meet the Key Performance Indicators.

**2.12 Subcontracts.**

**2.12.1 Approval of Subcontractors.** Except as otherwise provided in this Section 2.12.1, Contractor may not delegate performance of any of its duties, obligations, and responsibilities hereunder to any Affiliate or other subcontractor without NMHIX's prior written approval in each instance (an approved Affiliate or other subcontractor hereunder is an "Approved Subcontractor"). NMHIX hereby approves those subcontractors listed on Exhibit \_\_\_\_. If NMHIX gives Contractor notice that the continued engagement of an Approved Subcontractor is not in NMHIX's interest, then Contractor shall remove the affected Approved Subcontractor and either perform the relevant Services directly or engage another subcontractor approved by NMHIX to do so. Contractor shall implement measures designed to ensure that Approved Subcontractors comply with all applicable provisions of this Agreement in their provision of Services. Contractor shall remain liable for all of its obligations to NMHIX and Services provided to NMHIX pursuant to this Agreement notwithstanding that some obligations or Services may have been subcontracted to a subcontractor. No such subcontract shall relieve, or diminish in any way, the obligations and liabilities of Contractor under this Agreement, nor shall any subcontract obligate direct payment from NMHIX.

**2.12.2 Subcontract Terms.** Contractor shall ensure that all Contractor subcontracts relating to this Agreement entered into prior to or after the Effective Date shall permit assignment to

NMHIX upon any early termination of this Agreement, and contain provisions consistent with, and at least as stringent as, the provisions of this Agreement concerning compliance with laws and policies, audit, confidentiality, intellectual property, use of NMHIX facilities, and replacement of personnel. Contractor shall require its employees and subcontractors (including individuals engaged as subcontractors) to enter into nondisclosure agreements no less stringent than those contained in the terms of this Agreement.

**2.13 NMHIX Dependencies.** If Contractor is unable to meet an obligation fully to NMHIX under this Agreement where Contractor's performance is expressly set forth in this Agreement as dependent, in whole or in part, on the action or inaction of NMHIX ("NMHIX Dependency"), then Contractor shall not be liable for failing to meet such obligation if, and only if:

2.13.1 Contractor notified NMHIX, reasonably in advance, of the NMHIX Dependency, its relevance to Contractor's obligation to NMHIX, and the deadline for NMHIX to address the NMHIX Dependency;

2.13.2 Contractor diligently worked in good faith with NMHIX to address the NMHIX Dependency; and

2.13.3 Contractor used commercially reasonable efforts to work around the NMHIX Dependency to meet its obligations to NMHIX in spite of the NMHIX Dependency.

**2.14 Third Party Dependencies.** If Contractor is unable to meet an obligation fully to NMHIX under this Agreement because Contractor's performance was dependent, in whole or in part, on the action or inaction of a third party (excluding any subcontractors of Contractor) ("Third Party Dependency"), then Contractor shall not be liable for failing to meet such obligation if, and only if:

2.14.1 Contractor notified the third party, reasonably in advance, of any Third Party Dependency, its relevance to Contractor's obligation to NMHIX, and the deadline for the third party to address the Third Party Dependency;

2.14.2 Contractor diligently worked in good faith with the third party to address the Third Party Dependency;

2.14.3 Contractor notified NMHIX that the Third Party Dependency would impede Contractor's ability to meet its obligations to NMHIX if not addressed, such notice to NMHIX provided promptly upon Contractor's becoming aware of the issue; and

2.14.4 Contractor used commercially reasonable efforts to work around the Third Party Dependency to meet its obligations to NMHIX in spite of the Third Party Dependency.

**2.15 Force Majeure.**

2.15.1 Neither party shall be liable for any default or delay in the performance of its obligations if and to the extent such default or delay is caused by any of the following (each, a "Force Majeure Event"):

(a) fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions; strikes, lockouts, or labor difficulties (including in the case of either party's performance, labor difficulties affecting the other party or third parties, but excluding the affected party's own labor difficulties), malicious acts of third parties, interruption of

telecommunications service; or any other similar cause beyond the reasonable control of the affected party; and that the affected party could not have prevented by: (i) execution of a disaster recovery plan, (ii) use of alternate sources, work-around plans or similar means, or (iii) reasonable precautions and safeguards (including, without limitation, standard commercial anti-virus products and procedures, emergency power supplies, required back-up systems, fire-suppression systems, or other measures that are standard in the industry).

2.15.2 The party affected by a Force Majeure Event shall give notice to the other party as promptly as practicable (after the occurrence of a Force Majeure Event taking into account 2.15.1(a)) and shall be excused from such performance to the extent made necessary by such event. The non-affected party shall not be responsible for any Charges that accrue during the period of such non-performance. Any Force Majeure Event that continues for thirty (30) days from the date of notification of its existence shall give the non-affected party the right to terminate this Agreement immediately upon notice.

2.16 **Timing.** Timing is of the essence with respect to the Services offered under this Agreement.

### 3. Charges and Payment

3.1 **Compensation.** The charges for the Services culminating in a Deliverable (“Deliverables Charges”) and for the Services provided during the Maintenance Period (“Maintenance Charges”) shall be as set forth in a schedule for each Service and are summarized on Exhibit. Deliverables Charges and Maintenance Charges, are, collectively, “Charges.” NMHIX’s payment of Charges in full for the Services satisfactorily performed in accordance with this Agreement shall not exceed \$ \_\_\_\_\_ (the “Charges Cap”). The Charges Cap is a maximum and not a guarantee that the Charges for work assigned to be performed by Contractor under this Agreement shall equal the Charges Cap. Contractor is responsible for notifying NMHIX before the Services provided under this Agreement reach the Charges Cap. In no event will NMHIX pay Contractor any amount in excess of the Charges Cap for any Services without a written amendment of this Agreement signed by both parties prior to the date on which such Services (the Charges for which exceed the Charges Cap) are provided. Contractor shall update NMHIX on Contractor’s progress completing Deliverables on a weekly basis or such other basis as agreed to by the project managers of the parties from time to time.

3.2 **Charges All-Inclusive.** Contractor’s Charges are all-inclusive. NMHIX shall pay Contractor for the Services only and shall not pay Contractor for any expenses, costs, taxes, or other fees Contractor incurs in performance of this Agreement. The Charges include the provision of all hardware, software, facilities, personnel, and other resources required to perform the Services. NMHIX shall have no responsibility to pay or reimburse any other charge, expense, or amount.

3.3 **Payment Terms.** Contractor may issue a Deliverables Charges invoice to NMHIX for a particular Deliverable on the later to occur of the Deliverable Delivery Deadline or the Acceptance Date for that Deliverable. Contractor may issue monthly invoices to NMHIX for Maintenance Charges for Services performed during the immediately preceding month. All invoices shall include a detailed statement accounting for all Services performed and shall be sent to NMHIX at [accountspayable@nmhix.com](mailto:accountspayable@nmhix.com) and received by NMHIX no later than fifteen (15) business days after each calendar month in which Services were performed. **Failure to timely submit an invoice shall be a material breach of this Agreement. If the Contractor fails to invoice NMHIX for Services performed in one calendar year by January 31 of the following calendar year, Contractor will have waived all right to payment for the Services performed in the previous calendar year and expressly agrees that NMHIX shall have no obligation to pay for such Services.**

3.4 **Disputed Amounts.** NMHIX may withhold payment of invoiced amounts that NMHIX disputes in good faith, or otherwise withhold or set off such disputed amounts owed to Contractor, pending resolution of the matter. Failures to withhold or set off shall in no event be construed as waivers of NMHIX's rights. The remedies contained in this Section are in addition to any remedy that may be available to NMHIX under the applicable Service Level Agreement.

3.5 **Taxes.** The New Mexico gross receipts tax, if applicable, levied on the amounts payable under this Agreement shall be paid by Contractor. Contractor agrees to pay all other applicable taxes, duties, and tariffs associated with its provision and NMHIX's receipt of the Services.

3.6 **Funding.** The terms of this Agreement are contingent upon (i) continued authorization of the NMHIX by the Legislature of New Mexico and (ii) the ability of NMHIX to obtain necessary funds by assessments, grants, or other means. In the absence of legislative authorization or funding, this Agreement shall terminate immediately upon written notice by NMHIX to the Contractor. NMHIX's determination, in its sole and absolute discretion, regarding legislative authorization and funding shall be accepted by the Contractor and shall be final. Notwithstanding the foregoing, or anything else in this Agreement, Contractor hereby expressly acknowledges and agrees that: (a) all of NMHIX's obligations under this Agreement, including, without limitation, NMHIX's obligation to pay the Charges, are specifically conditioned upon NMHIX having available funds to pay such obligations and (b) NMHIX's liability to Contractor in all respects shall be limited to available funds.

3.7 **Release.** Final payment of the amounts due under this Agreement shall operate as a release of NMHIX, its officers, and employees from all liabilities, claims, and obligations whatsoever arising from or under this Agreement.

#### 4. Audit and Compliance

4.1 **Compliance with Laws and Policies.** Contractor will comply with all federal, state, and local laws, statutes, regulations, rules, executive orders, supervisory requirements, export requirements, directives, circulars, opinions, decrees, treaties, interpretive letters, guidance or other official releases of or by any government, any authority, department, or agency thereof, or any regulatory or self-regulatory organization applicable to its provision of the Services in all relevant jurisdictions ("Applicable Laws"). In particular, but without limitation, Contractor and its subcontractors shall comply with: (i) applicable privacy laws and regulations; and (ii) applicable NMHIX policies in effect from time to time which are disclosed to Contractor in advance and in writing.

4.2 **Changes in Laws and Policies.** If, and to the extent that, a change in Applicable Law that applies to Contractor's business or the methodology by which Contractor provides Services, results in additional costs to Contractor, there shall be no additional Charges. If, and to the extent that a change in Applicable Law affects NMHIX's business, requires Contractor to make NMHIX-specific changes or additional projects related to NMHIX's compliance with such change in Applicable Law, or implementation of such changes require personnel (not otherwise allocated to NMHIX under this Agreement), materials, or other resources, then the parties shall determine any applicable changes to the Charges using the Change Management Procedure set forth on Exhibit hereto.

4.3 **Audit Procedures.** Contractor shall maintain all records required by 45 C.F.R. 155.1210, including detailed, complete, and accurate time and expenditure records that indicate the date, time, nature, and cost of Services rendered during the Agreement's Term and effect and retain them for a period of ten (10) years from the date of final payment under this Agreement. The records shall be subject to inspection by the NMHIX, and may be disclosed by the NMHIX to third parties as required or allowed by law. NMHIX shall have the right to audit billings both before and after payment, including but not limited

to a financial statement audit performed in accordance with government accounting standards for financial reporting. The Contractor agrees to be subject to findings and sanctions assessed as a result of any audit and will make repayment of any excessive or illegal payments by NMHIX. Payment under this Agreement, if any, shall not foreclose the right of NMHIX to recover excessive or illegal payments. The records shall be subject to inspection by NMHIX and the State Auditor. NMHIX shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of NMHIX to recover excessive or illegal payments. Upon request, at reasonable times during and after the Term, NMHIX and its auditors shall have access to such portion of Contractor's facilities, personnel, equipment, and records concerning the Charges, Services, and Contractor's performance in order to audit Contractor's practices and procedures; Charges; general, internal, and other controls; security practices; disaster recovery procedures and tests; service level performance; and any other matters pertinent to NMHIX (including, for example, regulatory requirements and compliance). NMHIX's audit rights shall survive the expiration or termination of this Agreement for a period of ten (10) years. NMHIX or any auditor conducting any such audit shall at all times comply with Contractor's security and confidentiality policies so long as such guidelines and policies are provided prior to or at the time of the audit, or on an exhibit or a schedule of this Agreement and do not adversely affect any of NMHIX's audit rights set forth in this Section 4.3.

**4.4 Certain Certifications.** Upon written request, Contractor will provide such factual certifications as NMHIX or its auditors may reasonably request (e.g. concerning the accuracy of Charges and reports, compliance with NMHIX policies, and reporting of incidents reportable under those policies) in connection with NMHIX's audits or certifications which may be required to be given by NMHIX's auditors or executives.

**4.5 Audit Adjustments.** If an audit of the Charges reveals that Contractor has overcharged NMHIX for Services by at least 5%, Contractor shall reimburse NMHIX for the overpayment and the reasonable cost of the audit. Any audits conducted pursuant to this Section 4 shall otherwise be at NMHIX's expense. Without prejudice to NMHIX's other rights under this Agreement, if NMHIX's exercise of its audit rights under this Section 4 reveals that Contractor has failed to perform any of its obligations under this Agreement, Contractor shall promptly provide to NMHIX for its approval a remediation plan and timetable for achievement of the actions and/or improvements set forth in that plan. Following approval of the plan and timetable by NMHIX, Contractor shall implement that plan in accordance with the agreed timetable and will confirm its completion by written notice to NMHIX. Nothing in this Section is intended by the parties to modify in any way the procedures for failure to meet Key Performance Indicators or other criteria in any Service Level Agreement.

**4.6 Assessment.** Contractor agrees to be subject to the findings and sanctions assessed as a result of NMHIX audits, federal audits, and disallowances of the Services provided pursuant to this Agreement and the administration thereof to the extent the findings and sanctions are a result of Contractor's performance.

**4.7 Contractor's Audits.**

**4.7.1** Contractor shall contract and pay for any required independent audits, including but not limited to a SOC 1 Type 2 audit. 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. 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 NMHIX. The audit of the contract shall cover compliance with federal and state law and regulations and all financial transactions hereunder for the entire term of the Agreement in accordance with procedures promulgated by state or federal officials for



the conduct and report of such audits. An official copy of the independent auditor's report shall be made available to NMHIX and any other authorized entity as required by law within fifteen (15) days of receipt of the final audit report. NMHIX retains the right to contract for an independent financial and functional audit for funds and operations if it determines that such an audit is warranted or desired.

4.7.2 The audit shall contain a schedule of financial expenditures for each program to facilitate ease of reconciliation by NMHIX. The audit shall also include a schedule of depreciation for all property or equipment with a purchase price of \$5,000 or more.

4.7.3 The audit shall include a report on compliance with requirements applicable to each major program and internal control over compliance.

4.7.4 Upon completion of any audit under the applicable federal and state statutes and regulations, Contractor shall notify NMHIX when the audit is available for review and provide online access to NMHIX, or Contractor shall provide NMHIX with four (4) originals of the audit report.

4.7.5 Within thirty (30) days thereafter or as otherwise determined by NMHIX in writing, Contractor shall provide NMHIX 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, NMHIX has the right to reduce funding, terminate this Agreement, and/or recommend decertification in compliance with state and/or federal regulations governing such action.

4.7.6 Contractor shall make available to NMHIX the results of any internal or external review or audit conducted by Contractor relating to Contractor's operating practices and procedures or the Services, including the SOC 1, Type 2 audit report and any other. Contractor will provide to NMHIX its latest, if any, Payment Card Industry Compliance Report. In the event that Contractor conducts a SOC 2, Type 2 audit that addresses Contractor controls applicable to Contractor's provision of the Services to NMHIX, Contractor will provide NMHIX with a copy of the audit report. NMHIX will treat all such audit reports as Contractor's Confidential Information under Section 8. In particular, and without limiting the generality of its obligations, Contractor shall (i) provide NMHIX with the full particulars of any breach or weakness in processes or systems mentioned in its SOC 1 Type 2 or other internal audit reports, and (ii) undertake prompt, diligent corrective action pursuant to a corrective action plan approved by NMHIX.

## 5. NMHIX Responsibilities

5.1 **NMHIX Account Executive.** NMHIX shall designate on Exhibit \_\_\_\_ hereto, as of the Effective Date, an individual to whom all communications from Contractor may be addressed, and who has the authority to act for NMHIX in connection with all aspects of this Agreement (the "NMHIX Account Executive"), which role shall also be considered Key Personnel; but any written notice, demand or other communication shall be addressed to the person or persons specified in Section 20.2. The NMHIX Account Executive may designate an alternate contact to act in his or her place in case of illness, vacation or other absence.

5.2 **Contractor Access to, Use of, NMHIX Facilities.** To enable Contractor to provide the Services, NMHIX may provide use of NMHIX facilities. In that event, Contractor, its employees and subcontractors shall comply with NMHIX's procedures governing access to and use of NMHIX's facilities and as otherwise provided to Contractor from time-to-time.

## 6. Contract Management

6.1 **Governance.** The parties will govern their relationship in accordance with any governance procedure that they may develop.

6.2 **Change Orders.** Change Requests and Change Orders shall be handled in accordance with the Change Management Plan set forth in Exhibit \_\_\_\_. Any new features in the Contractor Software are to be made available to NMHIX at no charge.

6.3 **Acceptance of Deliverables.**

6.3.1 **Acceptance Criteria.** The parties may use commercially reasonable efforts to develop, and agree to, acceptance criteria ("Acceptance Criteria") for Services culminating in a deliverable provided to NMHIX pursuant to this Agreement and set forth on Exhibit \_\_\_\_ ("Deliverables") at least thirty (30) days (or such other time period agreed by both parties) before the date of the relevant testing, delivery, or milestone date. To the extent practicable, Acceptance Criteria will be objective, measurable, and repeatable tests that are based upon NMHIX's anticipated production use of the Deliverables. In the event that no Acceptance Criteria are developed by the parties, the relevant Key Performance Indicators applicable to the Deliverables shall constitute the Acceptance Criteria. In the absence of applicable Key Performance Indicators or Acceptance Criteria, NMHIX shall make a reasonable assessment of whether the Deliverable meets the contract requirements.

6.3.2 **NMHIX Review.** Deadlines for Deliverables are listed in Exhibit \_\_\_\_ ("Deliverables Delivery Deadline"). After completing quality assurance and user acceptance testing, if applicable, Contractor shall submit each Deliverable to NMHIX for review on or before the corresponding Deliverable Delivery Deadline. Contractor must submit a detailed statement accounting for all Services performed or project deliverables completed in connection with a submitted Deliverable. For each Deliverable as described on Exhibit \_\_\_\_, NMHIX shall promptly review the Deliverable and assess compliance with the Acceptance Criteria. NMHIX may notify Contractor that either (i) the Deliverable meets contract requirements and the Acceptance Criteria and is accepted ("Acceptance" or "Accepted"), or (ii) that the Deliverable is not Accepted, provided however, that NMHIX shall have thirty (30) days (or such longer time as the parties may agree) after delivery of the Deliverable to NMHIX to accept or reject the Deliverable, after which the Deliverable shall be deemed Accepted. The date on which a Deliverable is Accepted or deemed Accepted is the Acceptance Date. If NMHIX finds that the Deliverable does not meet the Acceptance Criteria or other relevant standard, NMHIX shall provide Contractor a letter of exception explaining the defect or objection to the Deliverable, and, if and to the extent known by NMHIX, outlining steps Contractor may take to provide remedial action ("Letter of Exception").

6.3.3 **Resubmission of Rejected Deliverables.** In the event NMHIX provides Contractor with a Letter of Exception for a Deliverable, Contractor shall cure any defect or objection to the Deliverable within fifteen (15) days of receipt of the Letter of Exception. If and to the extent that any non-conformity with the Acceptance Criteria remains, these procedures may be repeated as necessary to correct such non-conformities that remain (or others revealed by further testing or review after corrective work). Upon review and approval of the corrected Deliverable by NMHIX, the Deliverable will be considered Accepted; but Acceptance may be revoked at any time prior to completion of the last Deliverable under this Agreement, if testing of a later Deliverable reveals material non-conformities in a previously Accepted Deliverable.

6.3.4 **Failure to Reach Acceptance.** If Contractor cannot correct such non-conformities to the satisfaction of NMHIX within thirty (30) (or such other period as may be agreed by the parties) days after the date of the original Letter of Exception, NMHIX shall have the right, in its sole discretion, to elect to: (1) extend the time for Contractor to remedy the non-conformities; (2) revise the Acceptance Criteria and negotiate an appropriate reduction in Contractor's Charges; or (3) terminate the affected

Service, in which event Contractor and NMHIX will negotiate in good faith a refund to NMHIX of any amounts paid by NMHIX for the Deliverable, less any amount reasonably deemed to have ongoing utility and value to NMHIX (provided, however, that NMHIX shall not be required to pay any amounts in addition to amounts already paid for the Deliverables), and NMHIX shall have no further obligation related to that Deliverable or terminated Service under this Agreement. Such termination will not preclude NMHIX from pursuing any or all remedies it may have under this Agreement, at law or in equity.

6.3.5 Precedence. Nothing in this Section is intended by the parties to modify in any way the procedures for failure to meet Key Performance Indicators or other requirement set forth in any Service Level Agreement.

6.4 **Adjustment to Charges for Services.** If Contractor does not submit a Deliverable to NMHIX by the applicable Deliverable Delivery Deadline, or if a Deliverable is submitted to NMHIX by the Deliverable Delivery Deadline but is not Accepted by NMHIX, the Charges for that Deliverable may be reduced at NMHIX's sole and absolute discretion by up to 5% (of the total Charge for that Deliverable) for every fifteen (15) days (or portion of thereof) that elapse between the Deliverable Delivery Deadline for the Deliverable and the date upon which Contractor completes and delivers a version of the Deliverable that is Accepted by NMHIX (including any whole or partial days during which Contractor is curing any non-conformity but excluding any whole days during which NMHIX is evaluating the submitted Deliverable for Acceptance). This reduction in Charges for a particular Deliverable shall not exceed 30% of the total Deliverable Charges. By way of example and not limitation, if a Deliverable Delivery Deadline is October 1, Contractor actually delivers the Deliverable on October 5, NMHIX provides a Letter of Rejection on October 10, and Contractor submits a corrected Deliverable on October 24 that is Accepted by NMHIX, then NMHIX may reduce the Charges for that Deliverable by up to 10% of the total Charge for that Deliverable (4 days original late delivery + 15 days to deliver corrected version – October 10 is counted as a partial "curing" day and not a whole "Acceptance Evaluation" day). No reduction in Charges shall be levied if the delay in delivering a Deliverable was caused by the failure of NMHIX to respond in a reasonably timely manner to Contractor's inquiries for information reasonably necessary for Contractor to submit an acceptable Deliverable on time, caused by a Force Majeure Event, or if the Deliverable Delivery Deadline is delayed by written mutual agreement of NMHIX and Contractor.

## 7. Term and Termination

7.1 **Term.** This Agreement will commence on the Effective Date and, unless earlier terminated, remain effective through and including December 31, 2023 (the "Term").

7.2 **Termination By NMHIX.** NMHIX may terminate this Agreement or any Services provided hereunder, immediately upon written notice in the event of the following:

7.2.1 **Material Breach.** Any material breach or default of this Agreement by Contractor, which has not been cured within thirty (30) days, or longer period if NMHIX and Contractor agree in a writing signed by both parties that it is necessary, after written notice given to Contractor by NMHIX.

7.2.2 **Cessation of Business.** If Contractor ceases to do business in the ordinary course.

7.2.3 **Bankruptcy.** If Contractor files a petition in bankruptcy or an involuntary petition in bankruptcy is filed against Contractor, makes an assignment for the benefit of creditors or an arrangement pursuant to any bankruptcy law, Contractor is unable to meet its financial obligations when

they become due or otherwise becomes insolvent within the meaning of federal bankruptcy law, or a receiver, keeper or other custodian is appointed for Contractor or for Contractor's business.

7.2.4 Funding. Pursuant to Section 3.6 in the event of insufficient authorization or funding.

7.2.5 Crime. Contractor or any of its executive officers, or any of its employees or agents that are working primarily on a Deliverable under this Agreement, is convicted for fraud, embezzlement, or a crime involving misuse of public funds.

7.2.6 Force Majeure. In the event of a Force Majeure event pursuant to Section 2.15.2 hereof.

7.2.7 Change of Control. In the event of any Change of Control (as that term is defined in Exhibit 1 hereto) of Contractor, at any time within thirty (30) days' written notice of such Change in Control. Contractor shall provide NMHIX with forty-five (45) days advance written notice of any change of Control.

7.2.8 SLA Failures. For chronic failures of the Service Level Agreements.

7.2.9 Data Security Breach. Pursuant to Section 9.12, in the event of a material breach by Contractor of Section 9 hereof.

7.2.10 Other Termination Rights. Pursuant to any other Section of this Agreement granting NMHIX the right to terminate this Agreement or any Service thereunder in accordance with the terms of that provision.

7.2.11 Inability to Perform. If, for a reason other than as set forth in Sections 7.2.1 - 7.2.9, Contractor becomes unable to perform the Services, as reasonably determined by NMHIX, and Contractor is unable to cure such inability to the reasonable satisfaction of NMHIX within thirty (30) days of receipt of written notice from NMHIX.

**7.3 Termination by Contractor.** Contractor may terminate this Agreement with at least sixty (60) days' notice after the occurrence of a Payment Default. Contractor hereby waives any other rights it may have under this Agreement, at law, or in equity to suspend performance or to terminate this Agreement for any reasons or in any circumstances other than those expressly permitted by this Section 7.3 and Section 7.4.

**7.4 Termination for Convenience.** NMHIX may terminate this Agreement or any Services hereunder, for any reason or no reason upon ninety (90) days' notice to Contractor. Contractor may terminate this Agreement or any Services hereunder, for any reason or no reason upon one hundred eighty (180) days' notice to NMHIX. Except as otherwise allowed or provided under this Agreement, NMHIX's sole liability upon such termination shall be to negotiate in good faith any payments for any work completed prior to termination, which Contractor is able to demonstrate with reasonable certainty would have been Accepted under the Acceptance Criteria prior to Contractor's receipt of the notice of termination, if NMHIX is the terminating party, or Contractor's sending of the notice of termination, if Contractor is the terminating party; provided, however, that in either case a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement.

7.5 **Partial Termination.** In the event that NMHIX determines, in its sole and absolute discretion, that a portion of the Services are no longer necessary, NMHIX may exercise partial termination rights as follows:

7.5.1 Services shall be terminated by Service category or logical segment(s) or component(s), as determined by NMHIX.

7.5.2 The scope of particular remaining Services, and any affected Charges or Service Levels shall be adjusted through the Change Management Process to the extent necessary to allow for operational dependencies and phased reductions in Services (or introduction of new or substitute services) all in order to assure orderly, continuous operations with consistent quality of service.

7.6 **Termination Management.** Immediately upon receipt by either NMHIX or Contractor of notice of termination of this Agreement, Contractor shall not perform additional Services without written approval of NMHIX, and, subject to negotiation of the Transition Services contemplated below, shall: (1) comply with all directives issued by NMHIX as to the performance of work under this Agreement; and (2) take such action as NMHIX shall direct for the protection, preservation, retention or transfer of all property titled to NMHIX and records generated under this Agreement. Upon receipt of a termination notice, the parties agree to negotiate in good faith a transition plan for the wind down of the Services.

7.7 **Effect of Termination.** NMHIX'S TERMINATION RIGHTS UNDER THIS AGREEMENT ARE NOT EXCLUSIVE AND DO NOT WAIVE NMHIX'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY CONTRACTOR'S DEFAULT OR BREACH OF THIS AGREEMENT. In the event of a termination of this Agreement, the parties shall negotiate in good faith any payments for any work completed prior to termination, which Contractor is able to demonstrate with reasonable certainty would have been Accepted under the Acceptance Criteria and Contractor shall submit an invoice for all such agreed amounts within forty five (45) days of the effective date of termination and NMHIX shall pay the undisputed amounts such invoice within thirty (30) days of receipt. Upon payment by NMHIX, Contractor shall provide to NMHIX all such work. Upon termination or expiration of this Agreement, each party shall promptly return to the other party all of such party's property, materials, and Confidential Information in its possession or control. Any non-expendable personal property or equipment provided to or purchased by Contractor with funds provided by NMHIX shall become property of NMHIX upon expiration or termination and shall be delivered to NMHIX as soon as practicable. Contractor shall also deliver to NMHIX or its designee all information and materials necessary to operate any Services to be transitioned to NMHIX or its designated third-party service provider. This includes but is not limited to run books, knowledge documentation, and process manuals and documentation.

7.8 **Termination Assistance.**

7.8.1 Termination Services. During (a) the six (6) month period immediately prior to the expiration of the Agreement, or (b) following the receipt of a notice of termination through the later of: (i) the date on which the Services designated for termination (including Services to be transitioned to NMHIX or NMHIX's designated third party service provider – in the case of the termination or expiration of the entire Agreement, all Services) are successfully terminated or transitioned to NMHIX or NMHIX's designated third party service provider or (ii) the effective date of termination or expiration of this Agreement or any Service, (the "Termination Assistance Period"), Contractor will cooperate with NMHIX and provide NMHIX with all reasonable assistance requested by NMHIX to assure the orderly wind down of the Services or transfer of the Services to NMHIX or to a new third party provider of services ("Termination Services"). NMHIX reserves the right to phase out one or more Services, change

the sequence of particular activities and take other reasonable action that it deems advisable to effectuate an orderly transition. In cases of partial termination, all of the foregoing provisions shall apply to the Services designated to be terminated. For avoidance of doubt, during the Termination Assistance Period, any Services that have not been successfully transitioned will continue to be provided by Contractor in accordance with this Agreement.

7.8.2 Assets and Personnel. During the Termination Assistance Period, Contractor shall not dismiss, reassign, or replace personnel, take other material personnel action, or redeploy or dispose of any assets otherwise transferable to NMHIX without NMHIX's prior written consent in each instance.

7.8.3 Charges, Extension. There will be no Charges for Termination Services performed by existing Contractor resources allocated to NMHIX under this Agreement. Charges for Termination Services may only cover newly allocated resources providing Termination Services or the provision of Termination Services after the Termination Assistance Period or any Charges for Termination Assistance after the expiration or termination of this Agreement.

7.8.4 Specific Performance. Contractor acknowledges that, subject to the last sentence of this Section 7.8.4, if it were to breach, or threaten to breach, its obligation to provide Termination Assistance, NMHIX would be irreparably harmed and that money damages would provide no adequate remedy. Accordingly, in any such circumstances, NMHIX shall be entitled to proceed directly to a court of competent jurisdiction and obtain such injunctive, declaratory, or other equitable relief as may be reasonably necessary to prevent such breach, compel performance, and preserve the status quo by assuring continued performance of all Services (including Termination Assistance). Contractor irrevocably waives any requirement that NMHIX post any bond or undertaking, or demonstrate irreparable harm or the inadequacy of money damages.

## 8. Confidential Information

8.1 **Confidential Information.** As used in this Agreement, the term "Confidential Information" means any information received by a party (in such capacity, "Recipient") from the other party (in such capacity, "Discloser"), together with all derivatives thereof, including, but not limited to: (i) information of any businesses or individuals submitted through the health insurance exchange that is the subject of the Services to be provided by Contractor hereunder (collectively, the "Protected Parties") or any information concerning the transactions or relations of any Protected Parties; (ii) any information belonging to Protected Parties; (iii) any financial or health information relating to the Protected Parties; (iv) information relating to the parties' business and business operations, including, without limitation, information relating to cost and pricing, capital structure, operating results, borrowing arrangements, contemplated transactions, merger targets, acquisition targets, strategic plans and business plans, business processes, techniques, data and know-how and systems, and Affiliates and subsidiaries; (v) trade secrets; (vi) all written, graphic and other material (in any medium whether in writing or in electronic or other form) relating to the foregoing; and (vii) all correspondence, memoranda, files, manuals, books, financial lists, operating or marketing records and NMHIX and Contractor records relating to or containing any of the foregoing (in any medium whether in writing or in electronic or other form). Each party acknowledges and understands that information that may not be novel or may not be the subject of a copyright, trademark, or patent, or eligible for such or any other protection under intellectual property laws and/or trade secret laws may nonetheless be Confidential Information. Confidential Information shall not include information which (i) becomes generally available to the public other than as a result of disclosure by Recipient in breach of this Agreement; (ii) is otherwise lawfully obtainable by the general public, including pursuant to the New Mexico Inspection of Public Records Act, NMSA 1978, § 14-2-1 *et seq.*, or other laws or regulations providing for such disclosure; (iii) is received by Recipient on a non-

confidential basis from a source other than Discloser, provided that such source is not bound by a confidentiality agreement with Discloser or otherwise prohibited from transferring the information to Recipient by a contractual, legal, or fiduciary obligation; (iv) is independently developed by Recipient without any use of or benefit from the Confidential Information and such independent development can be documented by Recipient with written records; or (v) is approved for release by Discloser.

**8.2 Protection of Confidential Information.** Recipient represents and warrants that it shall (i) treat all such information and data as confidential property and (ii) not divulge it to others at any time nor use it for any purpose, except on behalf of Discloser, without the prior written consent of Discloser. This obligation to keep such information and data confidential shall continue beyond and after the termination of this Agreement. At the completion or termination of this Agreement or at any time Discloser so requests, Recipient shall deliver to Discloser (or, upon written request from Discloser, certify in writing to Discloser the destruction of all Confidential Information and any notes, memoranda, records, drawings, drafts or other documents (including, without limitation, all copies and reproductions thereof) and other information or material resulting from or in connection with the Services that are confidential in nature and cannot be obtained in the public domain.

**8.3 Certain Disclosures.** Section 8 and 9 shall not be construed to prohibit disclosure of Confidential Information by Recipient to the extent that such disclosure is required by law or valid order of a court or other governmental authority, provided that prior to disclosing Discloser's Confidential Information pursuant to such law or order, Recipient shall: (a) provide reasonable prior notice to Discloser to permit Discloser to seek to quash any such order or seek other available equitable relief or protected treatment of such Confidential Information; (b) to the extent requested by Discloser and at Discloser's expense, provide reasonable assistance in seeking equitable relief or protected treatment of such Confidential Information, and (c) disclose only such Confidential Information as is required.

## 9. Privacy and Security Standards

**9.1 Applicability.** In addition to and in certain circumstances as a subset of Confidential Information, Contractor agrees and acknowledges that during the course of performing Services under this Agreement Contractor may create, collect, receive, use, or otherwise gain access to "Personal Information."

### 9.2 **Standard of Care and Ongoing Compliance.**

9.2.1 Contractor shall ensure that its performance of Services under this Agreement and that its development, maintenance, and operation of the System shall meet all industry, state, and federal security standards concerning the creation, collection, receipt, use, access, and disclosure of Personal Information. Contractor shall meet or exceed State of New Mexico and NMHIX security standards and policies. Once established, no security provisions for firewalls, client and server computers, user profiles and controls shall be modified without written NMHIX approval. At a minimum, Contractor shall ensure the security of the System complies with the following regulations and publications:

#### **Federal:**

- 45 C.F.R. 155.260;
- MARS-E Version 2.0, as amended;
- 45 CFR 95.621(f) ADP System Security Requirements and Review Process;
- Standards defined in Federal Information Processing Standards (FIPS) issued by the National Institute of Standards and Technology (NIST);

- NIST Special Publication 800-111 Storage Encryption Technologies for End User Devices;
- NIST SP 800-52, 800-77 or 800-113 Valid encryption processes for data in motion;
- NIST 800-53 Information Security;
- NIST Cryptographic Module Validation List (<http://csrc.nist.gov/groups/STM/cmvp/validation.html>);
- FIPS PUB 112 Password Usage Procedure;
- FIPS PUB 186-3 Digital Signature Standard June 2009;
- Records Usage, Duplication, Retention, Re-disclosure and Timely Destruction Procedures/Restrictions 5 U.S.C. 552a (o)(1)(F), (H) and (I);
- IRS Pub 1075;
- Federal Records Retention Schedule 44 U.S.C. 3303a;
- Privacy Act of 1974 at 5 U.S.C. 552a;
- Computer Matching and Privacy Protection Act of 1988 (CMPPA);
- Federal Information Security Management (FISMA);
- SSA Information System Security Guidelines for Federal, State, and Local Agencies;
- Child Online Privacy Protection Act;
- Title XIX Confidentiality Rules;
- HIPAA and associated HIPAA Security Rule found at 45 CFR Part 160 and Subparts A and C of Part 164; and
- Title XXI.

**State:**

- NMHIX Privacy and Security Standards (attached hereto as Exhibit \_\_\_\_); and

9.2.2 Contractor shall use or disclose Personal Information only to the extent required for the performance of the Services under this Agreement and then only to the extent allowed by law. Contractor shall comply with the terms and conditions set forth in this Agreement in its collection, receipt, transmission, storage, disposal, use, and disclosure of Personal Information and shall be responsible for the unauthorized collection, receipt, transmission, access, storage, disposal, use, and disclosure of Personal Information under its control or in its possession by all Authorized Persons (as that term is defined in Exhibit 1 hereto). Contractor shall be responsible for, and remain liable to, NMHIX for the actions and omissions of all Authorized Persons (whether or not such persons are employees of Contractor) concerning the treatment of Personal Information.

9.2.3 With regard to Personal Information that is PII, Contractor and any Authorized Persons shall comply with and impose privacy and security standards as outlined in Exhibit \_\_\_\_ and equal to or more stringent than the standards set forth in the Minimum Acceptable Risk Standards for Exchanges, as amended (MARS-E).

9.2.4 Personal Information is deemed Confidential Information of NMHIX under Section 8.1 above, and is not Confidential Information of Contractor. In the event of a conflict or inconsistency between this Section and Section 8 hereof, the terms and conditions set forth in this Section shall govern and control.

9.2.5 In recognition of the foregoing, Contractor agrees and covenants that it shall:

- (a) keep and maintain all Personal Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use, or disclosure;



(b) use and disclose personal information solely and exclusively for the purposes for which the Personal Information, or access to it, is provided pursuant to the terms and conditions of this Agreement, and not use, sell, rent, transfer, distribute, or otherwise disclose or make available Personal Information for Contractor's own purposes or for the benefit of anyone other than NMHIX, in each case, without NMHIX's prior written consent; and

(c) not directly or indirectly disclose Personal Information to any personal other than its Authorized Persons without express written consent from NMHIX;

(d) Permit access to NMHIX upon request to facilities and premises where Personal Information is maintained, created, used, or disclosed for the purpose of inspecting privacy and security arrangements; provided, however, that (i) Contractor and NMHIX mutually agree in advance upon the scope, location, and timing of such an inspection; and (ii) NMHIX shall protect the confidentiality of all Confidential Information to which NMHIX obtains access

9.2.6 If, in the course of its engagement by NMHIX, Contractor or any subcontractor has access to or will collect, access, use, store, possess, dispose of or disclose credit, debit, or other payment cardholder information, Contractor or the subcontractor (as applicable) shall at all times remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS") requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at Contractor's sole expense.

### 9.3 Information Security

9.3.1 Contractor represents and warrants that its collection, access, use, storage, disposal and disclosure of Personal Information does and will comply with all applicable federal, state, and foreign privacy and data protection laws, as well as all other Applicable Laws.

9.3.2 At a minimum, Contractor's safeguards for the protection of Personal Information shall include: (i) limiting access of Personal Information to Authorized Persons; (ii) securing business facilities, data centers, paper files, servers, backup systems and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (iii) implementing network, device application, database and platform security; (iv) securing information transmission, storage and disposal; (v) implementing authentication and access controls within media, applications, operating systems and equipment; (vi) encrypting Highly-Sensitive Personal Information (as that term is defined in Exhibit 1 hereto) stored on any mobile media; (vii) encrypting Highly-Sensitive Personal Information transmitted over public or wireless networks; (viii) strictly segregating Personal Information from information of Contractor or its other customers so that Personal Information is not commingled with any other types of information; (ix) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with Applicable Law; and (x) providing appropriate privacy and information security training to Contractor's employees.

9.3.3 During the term of each Authorized Person's employment or engagement by Contractor, Contractor shall at all times cause such Authorized Persons to abide strictly by Contractor's obligations under this Agreement. Upon NMHIX's written request, Contractor shall promptly identify for NMHIX in writing all Authorized Persons as of the date of such request.

9.4 **Breaches.** In the event that any Personal Information is disclosed by Contractor (or its employees, subcontractors, or agents) contrary to this Agreement, or Contractor (or its employees,

subcontractors or agents) discovers, receives notice of, or suspects that unauthorized access, acquisition, disclosure, or use of Personal Information that is within Contractor's possession or under Contractor's control has occurred or is likely to occur (a "Data Breach"), then Contractor shall give prompt notice to NMHIX, with full particulars, and cooperate in the investigation of any such incident. If Applicable Laws or credit card system rules require notice to authorities or individuals, or other remedial action, then Contractor shall undertake such remedial action as NMHIX may reasonably direct, at Contractor's cost, or, at NMHIX's option, reimburse NMHIX for the expense of remedial action undertaken by NMHIX and as required by Applicable Laws, regulations, or rules, including, without limitation, credit card system rules. (For the purposes of this Section, remedial action may include, without limitation, improvements to security measures; notice to individuals, credit reporting agencies, public authorities and other entities; NMHIX service support; credit monitoring and defense and satisfaction of third-party claims.)

**9.5 Access and Control.** Contractor shall cooperate with NMHIX, and the System shall be designed so that Contractor is able, to meet the requirements of 45 CFR Part 164 and Section 155.260, concerning the use and disclosure, access, accounting, amendment of, and notice regarding uses and disclosures of Personal Information, including PII and PHI.

9.5.1 Contractor (a) shall take such action(s) in sufficient time and manner as may be requested by NMHIX that are necessary to meet the obligations of 45 C.F.R. §§ 164.522, 164.524, 164.526, 164.528, and 155.260; and (b) if an individual contacts Contractor with respect to exercising any rights the individual may have under 45 C.F.R. §§ 164.522, 164.524, 164.526 164.528, and 155.260 with respect to such PII, shall notify NMHIX within two (2) business days of the individual's request and cooperate with NMHIX to meet any of its obligations with respect to such request;

9.5.2 With respect to an individual's right to an accounting under 45 C.F.R. §§ 164.528 or 155.260, Contractor shall document all disclosures of PII or PHI and other data access activities as would be necessary for NMHIX to respond to a request by an individual for an accounting in accord with 45 C.F.R. §§ 164.528 or 155.260.

9.5.3 Upon request, Contractor shall take reasonable steps to cooperate with NMHIX to provide individuals with a final means to dispute the accuracy or integrity of their PII or PHI maintained by Contractor and to have erroneous information corrected or to have a dispute documented if their requests are denied. Such corrections shall be made promptly in a manner specified in, and in accord with any time requirement under, 45 C.F.R. §§ 164.526 or 155.260(a)(iii). In the event Contractor receives a request for amendment directly from the individual, Contractor shall, within two (2) Business Days of receipt of such request, notify NMHIX, and shall only make any amendment in accord with NMHIX's instructions.

9.5.4 Contractor shall document all disclosures of PII or PHI, and required information related to such disclosures, as would be necessary for NMHIX to respond to a request by an individual for an accounting of disclosures of PII or PHI. In the event Contractor receives a request for an accounting directly from an individual, Contractor shall, within three (3) Business Days of receipt of such request, notify NMHIX and proceed in accord with this paragraph. Within ten (10) Business Days of NMHIX's request, Contractor shall make a listing of such disclosures and related information available to NMHIX or, upon NMHIX's direction, to the individual.

9.5.5 Upon Contractor's receipt of a notification of a restriction on the use of disclosure of PII or PHI from NMHIX, Contractor shall promptly (a) cease the use and disclosure of any such individual's PII or PHI as specified in the notice; (b) comply with the limitations specified in the notice; and/or (c) comply with the restrictions specified in the notice, as applicable.

9.5.6 In the event Contractor receives a request from an individual or from a third party to release PII or PHI to a third party pursuant to a consent, authorization, or other written document, Contractor shall, within three (3) Business Days of receipt of such consent, authorization, or other written document, notify NMHIX and shall cooperate with NMHIX in confirming the validity and sufficiency of such document before releasing any PII or PHI to the third party. Contractor shall not make a disclosure pursuant to such a request without the express written consent of NMHIX.

9.5.7 In the event that the consumer notification provisions of 45 C.F.R. §§ 164.400 through 164.410, or similar notification requirements in other state or federal laws are triggered by a Data Breach or other event, Contractor shall promptly comply with its obligations under such laws. If NMHIX determines, in its sole discretion, that it is required to give such notifications, Contractor shall, at NMHIX's request, assist in undertaking all actions reasonably necessary to meet consumer notification requirements and in drafting the consumer notices and any related required notices to state or federal agencies for NMHIX's review and approval, but in no event shall Contractor have the authority to give these notifications on NMHIX's behalf. In addition to Contractor's other indemnification rights under this Agreement, Contractor shall indemnify NMHIX for the costs associated with such notification.

## 9.6 Third Party Agreements

9.6.1 Contractor shall comply with (and shall cause its employees, agents, and subcontractors to comply with) any privacy and security obligation that is required as the result of NMHIX having entered into any other agreement with a third party to obtain or to access any Third-Party Data or to access any Third-Party System. Any such agreement is referred to herein as a "Third Party Agreement." Obligations that may be applicable under a Third-Party Agreement include, by way of illustration and not limitation, signing a written compliance acknowledgment or confidentiality agreement, undergoing a background check, or completing training.

9.6.2 **Third Party Data.** Third Party Data includes, without limitation, all data that NMHIX receives or obtains from the New Mexico Human Services Department, the New Mexico Office of the Superintendent of Insurance, the New Mexico Department of Taxation and Revenue, the Social Security Administration, the Internal Revenue Service, the Department of Homeland Security, or through the Federal Data Services Hub. Notwithstanding anything herein to the contrary, Contractor shall not access any Third-Party Data unless disclosure of Third-Party Data to Contractor is permitted under any applicable Third-Party Agreement, all conditions for disclosure under any such agreement have been satisfied, and the access otherwise complies with the terms and conditions of the respective agreement. Without limiting the generality of the foregoing paragraphs, Contractor acknowledges and agrees that it cannot use or disclose Personal Information except as specifically permitted under this Agreement.

9.6.3 To the extent that any Third Party Data or other data received from a third party under or in connection with a Third Party Agreement is accessible within or through a system, database, or other IT resource owned and/or operated by NMHIX or by HSD or by both, Contractor agrees that it shall ensure that any of its representatives accessing any such system, application or IT resource for any reason, has satisfied all applicable requirements of the applicable Third Party Agreement prior to accessing the system, application or IT resource, and continues to satisfy such requirements for so long as such access is continued. Each time Contractor requests for one of its representatives to access any such system, application or IT resource, Contractor shall be deemed to represent and warrant to NMHIX that the representative has satisfied all requirements of any Third-Party Agreement that may be applicable to such access.

9.6.4 Contractor Third Party Agreements. Contractor shall develop data use, data exchange, and/or interconnection security agreements as necessary with third parties with whom Personal

Information, including PII and PHI, will be shared or disclosed. Contractor shall submit any such agreement to NMHIX, and shall ensure the agreements are updated at least annually and that any update is also submitted to NMHIX.

**9.7 Use of Limited Data Set or the Minimum Necessary.** As described in 45 C.F.R. § 164.502(b)(1), when using or disclosing or requesting PII or PHI from NMHIX, HSD, or another party (except for the uses and disclosures described in 45 C.F.R. § 164.502(b)(2)), Contractor shall make reasonable efforts to limit the PII or PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

**9.8 Access to Systems, Databases, and Resources.**

9.8.1 In connection with Contractor's performance of its obligations under the Agreement, it may be necessary for Contractor and its representatives to access systems, databases, or other IT resources owned or operated by NMHIX or by HSD or other entity.

9.8.2 Contractor shall restrict access to such systems, databases, or other IT resources to only those authorized representatives of Contractor who need such data to perform their official duties in connection with Contractor's performance under this Agreement.

9.8.3 Contractor shall ensure that any Authorized Representative that is granted access to any such system, application, or IT resource: (i) uses such system, application or resource (and any Personal Information accessible within or through it) solely to perform the authorized purpose(s) for which the Authorized Representative was granted such access; and (ii) does not access or use Personal Information available through such system, application, or IT resource except as necessary to perform the authorized purpose(s).

9.8.4 Contractor shall identify methods for ensuring only authorized personnel access data. Contractor shall provide a process for reviewing and updating access rights on a regular basis.

9.8.5 Contractor shall identify methods for ensuring that only Authorized Representatives access Personal Information. Contractor shall provide a process for reviewing and updating access rights on a regular basis. Contractor shall provide audit reports for tracking users, associated security groups, roles, settings, passwords, and duplicate IDs.

**9.9 Return or Destruction of Personal Information.** At any time during the Term, at NMHIX's written request, or upon the termination or expiration of this Agreement for any reason, Contractor shall, and shall instruct all Authorized Persons to, promptly return to NMHIX all copies, whether in written, electronic, or other form or media, of Personal Information in its possession or the possession of such Authorized Persons, or securely dispose of all such copies, provided that no Personal Information shall be destroyed without prior written approval of NMHIX. Contractor shall certify in writing to NMHIX that such Personal Information has been returned to NMHIX or disposed of securely. Contractor shall comply with all reasonable directions provided by NMHIX with respect to the return or disposal of Personal Information.

9.9.1 In the event that Contractor determines that returning or destroying Personal Information is not feasible, Contractor shall provide NMHIX with written notification of the conditions that make return or destruction not feasible. Upon mutual agreement of the Parties that return or destruction of Personal Information is not feasible, Contractor shall extend the protections of this Agreement to such Personal Information and limit further uses and disclosures of the information to those

purposes that make the return or destruction not feasible, for as long as Contractor maintains the Personal Information and other data.

9.9.2 Contractor shall continue to maintain all privacy and security protections pertaining to any Personal Information until such time as it is returned to NMHIX or destroyed.

9.10 **Ongoing Assessment.** Contractor shall conduct ongoing internal monitoring and assessments of the overall solution and operations to ensure compliance with this Section 10. Prior to implementation of any updates to the System, Contractor shall subject the System to a Security Impact and Risk Assessment, and shall provide the results to NMHIX as part of the routine system development life cycle and defect or bug correction process.

9.11 **Equitable Relief.** Contractor acknowledges that any breach of its covenants or obligations set forth in this Section 9 may cause NMHIX irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, NMHIX is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which NMHIX may be entitled at law or in equity.

9.12 **Material Breach.** Contractor's failure to comply with any of the provisions of this Section 9 (other than a breach that does not result in any material adverse effect on NMHIX, its Affiliates, employees, or customers) is a material breach of this Agreement. In such event, NMHIX may terminate this Agreement in accordance with Section 7.2.

## 10. Intellectual Property

10.1 **Intellectual Property and Proprietary Information Ownership.** All Intellectual Property owned by a party as of the Effective Date of this Agreement ("Pre-Existing Intellectual Property"), is solely the property of each party. For purposes of this Agreement, all computer programs, and any modifications thereof and derivative works based therein, and the documentation used to describe, maintain, and use the same, which were developed and owned by Contractor prior to the Effective Date of this Agreement or outside the scope of this Agreement ("Contractor Software"), and the documentation used to describe, maintain, and use Contractor Software are the Pre-Existing Intellectual Property of Contractor. For purpose of clarity, any derivative work based on Contractor Software that is created by Contractor as part of Contractor's Services shall not be deemed Pre-Existing Intellectual Property and instead shall be deemed Developed IP, as the term is defined in Section 10.2 hereunder and shall be subject to Section 10.2. All Intellectual Property developed by NMHIX during the Term of this Agreement shall be owned solely by NMHIX. All data collected through the System ("Data") shall be owned by NMHIX. Contractor agrees to utilized end user agreements and privacy disclosures approved by NMHIX. All Intellectual Property developed by Contractor during the Term of this Agreement, which is not Developed IP, will solely be owned by Contractor. Except as set forth in this Agreement, neither party shall acquire any interest in and to the Intellectual Property of the other party.

10.2 **Developed IP.** Notwithstanding anything to the contrary contained in this Agreement, NMHIX shall own the entire right and title and interest in and to all materials developed or acquired and all works of authorship and Intellectual Property developed by Contractor or its subcontractors, in whole or in part, for the benefit of NMHIX pursuant to the terms of this Agreement (the "Developed IP"). The Developed IP shall be deemed to be "works made for hire" under United States copyright law (17 U.S.C. §§ 101 et seq.) as either compilations, contributions, or both, and made in the course of this Agreement. To the extent the Developed IP may not, by operation of law, vest in NMHIX or if any of the Developed IP is determined not to be a "work made for hire," Contractor hereby assigns to NMHIX in perpetuity all

right, title, and interest in and to the Developed IP, including but not limited to all copyrights in the Developed IP (and all renewals and extensions thereof). Contractor agrees to reasonably assist NMHIX in every legal way to evidence, record and perfect this assignment and to apply for and obtain recordation of and from time to time enforce, maintain, and defend the assigned rights. No Developed IP shall be the subject of an application for copyright or other claim of ownership by or on behalf of Contractor.

**10.3 Contractor License.** To the extent that any of Contractor's Pre-Existing Intellectual Property and Contractor's Intellectual Property developed after the Effective Date is embedded in any or constitute a Deliverable ("Integral Contractor IP"), then Contractor hereby grants to NMHIX, its Affiliates, licensees, successors, assigns, subsidiaries, contractors, and subcontractors, a non-exclusive, royalty-free, perpetual license to use, reproduce, perform, display, modify, configure, create derivative works of and distribute the Integral Contractor IP, and engage a third party to supplement or replace Contractor's Services or exercise these license rights on behalf of NMHIX, in the form intended under this Agreement, solely in connection with NMHIX's use of the Services.

**10.3.1 Source Code Escrow.** On a quarterly basis Contractor will place a copy of the source code for such Integral Contractor IP and updates thereto including all relevant commentary, explanations, and other documentation, as well as instructions to compile the source code (the "Escrow Material") in escrow in accordance with the terms of the [Source Code Escrow Agreement] attached hereto as Exhibit \_\_ (the "Escrow Agreement"), which agreement shall be entered into by Contractor and NMHIX and the escrow agent concurrent with execution of this Agreement. The Escrow Material shall be released to NMHIX upon the occurrence of any of the following: (a) the termination of this Agreement; (b) if Contractor becomes insolvent; files a petition in bankruptcy or an involuntary petition in bankruptcy is filed against Contractor; makes an assignment for the benefit of its creditors; is subject to the appointment of a trustee, receiver or other custodian for Contractor or Contractor' property; or files or is subject to any other proceeding involving insolvency or the protection of or from creditors which has not been discharged or terminated without any prejudice to NMHIX's rights or interests under this Agreement within 30 days; or (c) upon joint written instructions of Contractor and NMHIX to the escrow agent. Upon release of the Escrow Material to NMHIX pursuant to the Escrow Agreement, NMHIX, its Affiliates, licensees, successors, assigns, subsidiaries, contractors, and subcontractors shall have a non-exclusive, royalty-free, perpetual license to use, reproduce, perform, display, modify, configure, create derivative works of and distribute the Integral Contractor IP, and engage a third party to supplement or replace Contractor's Services or exercise these license rights on behalf of NMHIX, in connection with: (i) NMHIX's use of the Services; (ii) specification, design, development, testing, and reproduction of new code for the purpose of causing the System to conform to and operate in accordance with all documentation and all third-party software, for fixing defects or limitations in the System, or for enhancing or improving the System, and (iii) to compile such new code to produce object code and to use the object code on the same terms and conditions as the System under this Agreement.

**10.3.2** Contractor shall provide NMHIX (i) system administrator-level access to any hosted application servers; (ii) copies of all system backup files, and (iii) administrative access to servers at any time at no additional charge.

**10.4 Third Party Software.** Contractor shall adhere to the requirements and restrictions of all third-party software licenses used in connection with the performance of the Services ("Third Party Software").

**10.5 Rights in Residuals.** Nothing contained in this Agreement shall restrict either party from the use of any ideas, concepts, practices, learning, or know-how relating to the Services that are retained in the unaided human memory of such Contractor personnel after performing Contractor's obligations under this Agreement; provided that the foregoing shall not: (i) be deemed to limit either party's

obligations under this Agreement with respect to the disclosure or use of Confidential Information under Section 8 hereof; (ii) be deemed to alter the allocation of Intellectual Property rights under Section 10 hereof; or (iii) operate or be construed as permitting any personnel of a party to disclose, publish, disseminate, or use any Confidential Information of the other party. An individual's memory is unaided if the individual has not intentionally memorized information for the purpose of retaining and/or subsequently using or disclosing it.

11. Performance Bond

Within thirty (30) days of execution of this Agreement, Contractor shall, at its sole cost and expense, obtain and, during the Term, maintain, in full force and effect, a non-cancelable performance bond (the "Bond") in the amount of \$2,000,000. The Bond shall secure all of Contractor's obligations under this Agreement and shall be in a form acceptable to NMHIX. The Bond shall name NMHIX as obligee and loss payee. The Bond shall be placed with a surety company acceptable to NMHIX and which is authorized and admitted to do business in the state of New Mexico and licensed by the state of New Mexico to execute bonds as a surety.

12. Representations and Warranties

**12.1 Mutual Representations and Warranties.** Each party represents and warrants to the other party that: (i) its fulfillment of its obligations and, as applicable, performance of the Services under this Agreement will not violate any Applicable Law or breach any contracts with third parties and (ii) it has the right, power, and authority to fulfill its obligations, and, as applicable perform the Services, and enter into this Agreement.

**12.2 Contractor Representations, Warranties, and Covenants.** In addition to Contractor's other representations, warranties, and covenants in this Agreement, Contractor represents, warrants, and covenants to NMHIX that:

12.2.1 at all times during the Warranty Period (as defined below), following Acceptance of a Deliverable, such Deliverable shall conform to and perform in accordance with the Acceptance Criteria. If, at any time during the Warranty Period after Acceptance, a Service or any Deliverable is found to be malfunctioning, defective, or otherwise not in accordance with the requirements of this Agreement, Contractor shall correct it promptly after receipt of written notice from NMHIX to do so. NMHIX shall give such notice promptly after discovery of the condition. The "Warranty Period" means the time period from the Effective Date of this Agreement through and including December 31, \_\_\_\_.

(a) All software changes and improvements, patches, repairs, or "bug" fixes required to meet any Acceptance Criteria (including, without limitation, functional and technical requirements) of the Deliverables shall be delivered by Contractor at no charge, as part of this warranty for the Warranty Period established above.

(b) Work performed pursuant to this warranty shall be covered by same warranties expressed herein for a period of one year from the date the warranty work is performed.

(c) The warranties set forth in this Section 12.2.1 are in addition to, and not in limitation of, any warranties, rights, and remedies available by law or this Agreement, and shall not limit Contractor's liability or responsibility imposed by this Agreement or law with respect to Contractor's work.

12.2.2 The Services contemplated hereunder will be performed by adequately trained, competent personnel, in a professional manner, with such personnel having the requisite skill and expertise necessary to perform and complete the Services in accordance with industry standards and in accordance with the terms and conditions of this Agreement;

12.2.3 Contractor will use its Best Efforts to employ the continuous use of commercial antivirus software (including, without limitation, active virus and vulnerability scanning, sweep and antispyware software) of a quality and type that is no less than that used in, and consistent with, the best practices of Contractor's industry, and to implement measures so as to ensure that any Services or Deliverables provided under this Agreement will be free of any viruses, worms, Trojan horses, malware, spyware, adware, botnets, loggers, dialers, rootkits or any other malicious code (as applicable);

12.2.4 Contractor and its employees, subcontractors, and agents will comply with all rules for entry on to NMHIX's premises and as otherwise provided to Contractor from time-to-time (including, but not limited to, network access and security policies), and, without NMHIX's permission, shall not interfere or intrude upon the premises or privacy of any NMHIX employee, representative, contractor, agent or NMHIX;

12.2.5 in the performance of the Services, Contractor will also provide all services reasonably inherent in the nature of the Services even though such inherent services are not expressly set forth in this Agreement, if, in the event that Contractor did not provide such inherent services, NMHIX, its Affiliates and/or its customers would suffer a material adverse effect; and

12.2.6 Contractor shall use its best efforts to meet the timing requirements for go-live readiness of the System.

### 13. Remedies

13.1 **Insurance.** Contractor shall not begin the Services required under this Agreement until it has: (a) obtained, and upon NMHIX's request provided to NMHIX, insurance certificates reflecting evidence of all insurance required herein; however, NMHIX reserves the right to request, and Contractor shall submit, copies of any policy; and (b) confirmed that all policies contain the specific provisions required. Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Contractor's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of Agreement by NMHIX. Further, Contractor shall not modify any policy or endorsement thereto which increases NMHIX's exposure to loss for the duration of this Agreement.

13.1.1 Coverage. At all times during the term of this Agreement, Contractor shall maintain insurance coverage as follows:

(a) Commercial General Liability (CGL) Insurance must be written on an ISO Occurrence form or an equivalent form providing coverage at least as broad which shall cover liability arising from bodily injury, personal injury or property damage providing the following minimum limits of liability.

General Annual Aggregate (other than Products/Completed Operation)	\$5,000,000
--	-------------



Products/Completed Aggregate Limit	Operations	\$5,000,000
Personal Injury Limit		\$5,000,000
Each Occurrence		\$5,000,000

(b) Automobile Liability. For all of Contractor's automobiles including owned, hired and non-owned automobiles, Contractor shall keep in full force and effect, automobile liability insurance providing coverage at least as broad for bodily injury and property damage with a combined single limit of not less than \$5 million per accident. An insurance certificate shall be submitted to NMHIX that reflects coverage for any automobile.

(c) Professional Liability. For Contractor and all of Contractor's employees who are to perform professional Services under this Agreement, Contractor shall keep in full force and effect, Professional Liability insurance for any professional acts, errors or omissions. Such policy shall provide a limit of not less than \$5,000,000 per claim and \$5,000,000 annual aggregate. Contractor shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the first work performed under this Agreement; and (2) the policy will be maintained in force for a period of three years after substantial completion of the project or termination of this Agreement whichever occurs last. If professional Services rendered under this Agreement include work relating to environmental or pollution hazards, Contractors policy shall not contain exclusions for those activities.

(d) Workers' Compensation. For all of Contractor's employees who are subject to this Agreement and to the extent required by any applicable state or federal law, Contractor shall keep in full force and effect, a Workers' Compensation policy & Employers Liability policy. Contractor shall provide an endorsement that the insurer waives the right of subrogation against NMHIX and its respective officials, officers, employees, agents, volunteers and representatives. That policy shall provide

Employers Liability Limits as follows:

Bodily Injury by Accident	\$5,000,000	Each Accident
Bodily Injury by Disease	\$5,000,000	Each Employee
Bodily Injury by Disease	\$5,000,000	Policy Limit

(e) Professional Liability/Errors and Omissions and Cyber Liability coverage in the amount of \$10,000,000 per claim and in the aggregate including coverage for Network Security and Privacy cover contained within the policy of Professional Liability;

(f) Automobile Liability insurance on an occurrence basis with minimum limits of \$1,000,000 combined single limit per accident for bodily injury and property damage, extending to all owned, hired, and non-owned vehicles;

(g) Property Insurance in the amount of replacement value.

13.1.2 Cancellation. Except as provided for under New Mexico law, all policies of insurance required hereunder must provide that NMHIX is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Cancellation provisions in insurance certificates shall not contain the qualifying words “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives”. In the event Contractors’ insurance carriers will not agree to this notice requirement, Contractor will provide written notice to the NMHIX within four working days of Contractors receipt of notice from its insurance carrier(s) of any cancellation, nonrenewal or material reduction of the required insurance.

13.1.3 Insurer Requirements. All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have an A.M. Best Financial Performance Rating of A- or better, with an outlook of stable or positive, and a financial size category of “VII” or better and that are authorized to do business in the State of New Mexico. NMHIX will accept insurance provided by non-admitted, “surplus lines” carriers only if the carrier is authorized to do business in the State of New Mexico.

13.1.4 Deductibles. All deductibles or co-payments on any policy shall be the responsibility of Contractor.

13.1.5 Specific Provisions Required. Each policy shall expressly provide, and an endorsement shall be submitted to the NMHIX, that the policy or policies providing coverage for Commercial General Liability must be endorsed to include as an Additional Insured, the NMHIX and its respective officials, officers, employees, agents, volunteers, and representatives.

13.1.6 All policies required herein are primary and non-contributory to any insurance that may be carried by the NMHIX and its officials, officers, employees, agents, volunteers and representatives, as reflected in an endorsement which shall be submitted to the NMHIX.

13.1.7 Contractor agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the NMHIX's exposure to loss.

13.1.8 The NMHIX reserves the right, from time to time, to review Contractor’s insurance coverage, limits, and deductible and self-insured retentions to determine if they are acceptable to the NMHIX. The NMHIX will reimburse Contractor for the cost of the additional premium for any coverage requested by the NMHIX in excess of that required by this Agreement without overhead, profit, or any other markup.

13.1.9 Contractor may obtain additional insurance not required by this Agreement.

**13.2 Limitation of Liability.** EACH PARTY’S LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNT OF CHARGES ANTICIPATED TO BE PAID BY NMHIX TO CONTRACTOR UNDER THIS AGREEMENT, PROVIDED THAT THE LIMITATION CONTAINED IN THIS SECTION 13.2 SHALL NOT APPLY TO ANY LIABILITY, LOSS, DAMAGE, COSTS, OR EXPENSES CAUSED INTENTIONALLY OR RECKLESSLY OR ARISING FROM CONTRACTOR’S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, CONTRACTOR’S BREACH OF ITS DATA SECURITY OBLIGATIONS, OR CONTRACTOR’S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT.

13.3 **Duty to Mitigate.** Each party has a duty to mitigate the damages suffered by it for which the other party is liable by taking actions in accordance with New Mexico law to reduce or limit the amount of such damages.

13.4 **Contractor's Indemnity.** Contractor agrees to indemnify and, at NMHIX's option, defend, NMHIX, its Affiliates, and each of their respective directors, officers, managers, employees, members, shareholders, and agents and all of their respective successors and permitted assigns (collectively, the "NMHIX Parties"), against, and to hold the NMHIX Parties harmless from, any and all Losses, which may be suffered by, imposed on, or incurred by any of the NMHIX Parties as a result of any third party claims arising from:

13.4.1 any breach of this Agreement by Contractor or its agents, subcontractors, or employees in the performance of Sections 8 or 10 of this Agreement;

13.4.2 negligent act, negligent failure to act, or willful misconduct by Contractor or its agents, subcontractors or employees in the performance of this Agreement;

13.4.3 any material breach of this Agreement by Contractor or its agents, subcontractors or employees in the performance of Section 9 of this Agreement;

13.4.4 any material breach of this Agreement by Contractor or its agents, subcontractors or employees;

13.4.5 any claim that the Services or a Work provided by Contractor to NMHIX, when used in accordance with this Agreement, infringes or violates any third party's United States patent, copyright, trade secret or any other intellectual property or proprietary right;

13.4.6 Contractor's violation of any Applicable Laws;

13.4.7 Contractor's failure to pay any applicable federal, state, or local taxes or contributions imposed or required under unemployment insurance, employee benefit, social security, workers compensation, or income tax laws with respect to Contractor's employees or any payments required to be paid to any of Contractor's subcontractors, in connection with the performance of Contractor's obligations pursuant to this Agreement;

13.4.8 a determination by a Governmental Body that a Contractor employee is an employee of NMHIX for any period on or after the Effective Date, provided that any such determination is not the result of NMHIX's gross negligence or willful misconduct. (For the purposes of this subsection 13.4.8, Losses includes, without limitation, any and all reasonable costs NMHIX incurs in the preparation and presentation of its response to such Governmental Body Investigation and any damages, costs, or penalties of any kind, which NMHIX is ordered to pay by the Governmental Body or which result from the Governmental Body's determination.);

13.4.9 death of or bodily injury to any agent, employee, customer, invitee, visitor, or other person to the extent proximately caused by the negligence or willful misconduct of the Indemnifying Party, its Affiliates, or their respective agents, employees or contractors; or

13.4.10 damage to, or loss or destruction of, any real or tangible personal property to the extent proximately caused by the negligence or willful misconduct of the Indemnifying Party, its Affiliates, or their respective agents, employees or contractors.

### 13.5 Indemnification Generally.

13.5.1 Indemnification Procedures. If any third party shall notify NMHIX with respect to any matter (a “Third Party Claim”) which may give rise to a claim for indemnification against Contractor under this Section, NMHIX shall promptly notify Contractor thereof in writing; provided, however, that failure to notify Contractor shall not relieve Contractor from any obligation hereunder unless (and then solely to the extent) Contractor is materially prejudiced by such failure. NMHIX shall reasonably cooperate with Contractor with the defense and/or settlement thereof. Notwithstanding the foregoing, in the event that any action, suit or proceeding related to the Services performed by Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against Contractor for which Contractor is obligated to indemnify NMHIX, Contractor shall, as soon as practicable but no later than two (2) business days after it receives notice thereof, notify the legal counsel of NMHIX and the Risk Management Division of the New Mexico General Services Department by certified mail.

13.5.2 Intellectual Property Claims. In case the Deliverables or Services, or any one or part thereof, are in such action held to constitute an infringement or misappropriation, or the exercise of NMHIX's rights thereto is enjoined or restricted, Contractor shall, at its own expense and in the following order of priorities: (i) procure for NMHIX the right to continue using the Deliverables; (ii) modify the Deliverables (to comply with the Acceptance Criteria) or Services (to comply with the Key Performance Indicators), as applicable, and, in each case, to not violate any intellectual property rights; or (iii) retrieve any or all Deliverables which are enjoined or restricted and other Deliverables designated by NMHIX upon receipt of notice from NMHIX and refund the Charges paid for such Deliverables and adjust the Maintenance Charges to the extent attributable to the affected Deliverable.

13.5.3 Settlement of Indemnified Claims. Settlements or compromises reached by Contractor shall be subject to the prior written consent of NMHIX.

13.6 **Continued Performance.** Except where clearly prevented by the issue in dispute, Contractor agrees to continue performing its duties, obligations, and responsibilities under this Agreement while the dispute is being resolved in accordance with this Section 13, unless and until such obligations are lawfully terminated or expire in accordance with the terms of the Agreement.

### 14. Conflict of Interest; Governmental Conduct Act

14.1 **No Conflict of Interest.** Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any material manner or material degree with the performance of Services required under the Agreement.

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

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

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

14.2.3 in accordance with Section 10-16-8(A) NMSA 1978, (i) Contractor is not, and has not been represented by, a person who has been a public officer or employee of NMHIX within the preceding year and whose official act directly resulted in this Agreement;

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

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

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

**14.3 Erroneous Representations and Warranties.** Contractor's representations and warranties in Sections 14.1 and 14.2 are material representations of fact upon which NMHIX relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to NMHIX if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Sections 14.1 and 14.2 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Sections 14.1 and 14.2 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to NMHIX and notwithstanding anything in the Agreement to the contrary, Contractor shall be deemed in material breach of this Agreement (which breach cannot be cured) and NMHIX may immediately terminate the Agreement.

**14.4 Statutory Definitions.** All terms defined in the Governmental Conduct Act have the same meaning in this Section 14.

15. Penalties for Violation of Law

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.

16. Non-Discrimination and Equal Opportunity Compliance.

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

17. Workers Compensation

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

18. Debarment and Suspension

18.1 **Certification.** Consistent with either 7 C.F.R. Part 3017 or 45 C.F.R. Part 76, as applicable, and as a separate and independent requirement of this Agreement 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 Section 18; (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.

18.2 **Continuing Obligation.** Contractor's certification in Section 18.1, is a material representation of fact upon which NMHIX relied when this Agreement was entered into by the parties. Contractor's certification in Section 18.1, shall be a continuing term or condition of this Agreement. As such at all times during the performance of this Agreement, Contractor must be capable of making the certification required in Section 18.1, as if on the date of making such new certification 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 Contractor in Section 18.1, above, or to any new certification Contractor is required to be capable of making as stated in the preceding sentence:

18.2.1 Contractor shall provide immediate written notice to NMHIX if, at any time during the term of this Agreement, Contractor learns that its certification in Section 18.1, was erroneous on the effective date of this Agreement or has become erroneous by reason of new or changed circumstances.

18.2.2 If it is later determined that Contractor's certification in Section 18.1, was erroneous on the effective date of this Agreement or has become erroneous by reason of new or changed circumstances, in addition to other remedies available to NMHIX, NMHIX may terminate the Agreement.

**18.3 Subcontractors.** As required by statute, regulation, or requirement of this Agreement, and as contained in Section 18.1, Contractor shall require each proposed first-tier subcontractor whose subcontract will equal or exceed \$25,000, to disclose to 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. Contractor shall make such disclosures available to NMHIX when it requests subcontractor approval from NMHIX. If the subcontractor, or its principals, is debarred, suspended, or proposed for debarment by any Federal, state, or local department or agency, NMHIX may refuse to approve the use of the subcontractor.

## 19. Federal Tax Information

**19.1 Compliance.** In performance of this Agreement, Contractor agrees to comply with and assume responsibility for compliance by Contractor's employees with IRS Publication 1075, Tax Information Security Guidelines and the following requirements:

19.1.1 **Supervision.** All work will be performed under the supervision of Contractor or Contractor's responsible employees.

19.1.2 **Return Information.** Any Federal tax returns or return information (hereafter referred to as returns or return information) made available to Contractor shall be used by Contractor only for the purpose of carrying out the provisions of this Agreement. 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 Agreement or as otherwise required by law. Inspection by or disclosure to anyone other than an officer or employee of Contractor is prohibited.

19.1.3 **Protection.** All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.

19.1.4 **No Subcontracting.** No work involving returns and return information furnished under this Agreement will be subcontracted without prior written approval of the Internal Revenue Service (IRS).

19.1.5 **Authorized Access.** Contractor will maintain a list of employees authorized access to all returns and return information. Such list will be provided to NMHIX and, upon request, to the IRS reviewing office.

19.1.6 **Right to Void.** NMHIX will have the right to void the Agreement if Contractor fails to provide the safeguards described above.

## 19.2 **Criminal/Civil Sanctions.**

19.2.1 Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by 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 (5) 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.

19.2.2 Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by Contractor that any returns or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Agreement. 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 Agreement. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as one (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 [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 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.

19.2.3 **Privacy Act.** 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 NMHIX 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 or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

19.2.4 **Certification.** Granting access to Federal Tax Information (FTI) must be preceded by certifying that each individual understands NMHIX's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in NMHIX's files for review. As part of the certification and at least annually afterwards, contractors should 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 (See IRS Publication 1075, *Tax Information Security Guidelines*). For both the initial certification and the annual certification, Contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

19.3 **Inspection.** Notwithstanding anything to the contrary in this Agreement, the IRS and NMHIX shall have the right at mutually agreed to times to send their officers and employees into the offices and premises of Contractor for inspection of the facilities and operations provided for the performance of any work under this Agreement. On the basis of such inspection, specific measures may be required in cases where Contractor is found to be noncompliant with contract safeguards.



20. Miscellaneous

20.1 **Binding Nature and Assignment.** This Agreement binds the parties and their respective successors and permitted assigns. 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 from NMHIX, such consent not to be unreasonably withheld or delayed, and provided that no consent shall be required in the event of a bona fide sale of all or substantially all of Contractor's assets to a third party or the merger of Contractor with and into a third party.

20.2 **Notices.** All notices or other communication required or permitted by this Agreement shall be in writing and may be: (a) delivered personally, (b) sent by reputable commercial overnight carrier, with delivery confirmation, or (c) mailed by first class mail, registered or certified, postage prepaid. While electronic mail is an acceptable form for day to day communications relating to Contractor's provision of the Services, notices under this Agreement may only be made by one of the methods set forth in the preceding sentence. Notices under this Agreement shall be sent to the following addresses of the parties or to such other addresses as the parties may designate from time-to-time in accordance with this Section:

**If to Contractor:**

**If to NMHIX:**

Cheryl Gardner, CEO  
New Mexico Health Insurance Exchange  
7601 Jefferson St. NE  
Albuquerque, NM 87109

All notices required or permitted under this Agreement shall be deemed received (i) when delivered personally; (ii) the next business day after having been deposited with a reputable overnight carrier, with delivery confirmation; or (iii) five (5) business days after depositing with the U.S. Postal Service.

20.3 **Governing Law, Jurisdiction, and Venue.** The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Each of the parties to this Agreement hereby irrevocably and unconditionally submits to the jurisdiction of the United States District Court for the District of New Mexico or any state court of competent jurisdiction (in accordance with Section 38-3-1 (G) NMSA 1978) sitting in Bernalillo County or Santa Fe County, New Mexico for purposes of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby, and agrees not to commence any legal proceedings related thereto except in such court. Each of the parties to this Agreement irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any proceeding brought in any such court or any claim that a legal proceeding commenced in such court has been brought in an inconvenient forum.

20.4 **Entire Agreement, Amendment, Waiver.** This Agreement along with its attachments, exhibits, and schedules constitutes the entire agreement between the parties, and incorporates all of the parties' agreements, covenants and understandings which have been merged into this written Agreement, concerning the subject matter hereof, and supersedes any prior or contemporaneous understandings,

agreements or representations. This Agreement shall not be altered, changed, or amended in any way except by an instrument in writing executed by the parties hereto and all other required signatories. 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.

**20.5 Interpretation of Contract Documents.** All attachments (including, without limitation, schedules and exhibits) to this Agreement are incorporated by reference into and made a part of this Agreement. The main body of the Agreement and the attachments shall be construed consistently, to the extent practicable, to give effect to the entire Agreement. In the case of any ambiguity or contradiction between the terms and conditions of this Agreement and an attachment, the terms and conditions of this Agreement shall control.

**20.6 Further Assurances.** The parties shall with reasonable diligence do all things and provide all reasonable assurances as may be required to complete the transactions contemplated by this Agreement, and each party shall provide such further documents or instruments requested by the other party as may be reasonably necessary or desirable to give effect to this Agreement and to carry out its provisions.

**20.7 Severability.** If any term or condition of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such provision shall be severed from this Agreement and the remainder of this Agreement shall not be affected and shall be valid and enforceable.

**20.8 Headings.** The headings contained in this Agreement have been inserted only as a matter of convenience and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

**20.9 Survival.** The following provisions shall survive expiration or termination of this Agreement:

*[To be completed when agreement is finalized]*

**20.10 Independent Contractors.** The parties are independent contractors (and Contractor, its agents, and employees are not employees of NMHIX) and this Agreement shall not be construed to create any other relationship between the parties, as principal and agent, joint venturers, or otherwise. 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 NMHIX as a result of this Agreement. Contractor acknowledges that all sums received hereunder are reportable by Contractor for tax purposes, including without limitation, self-employment and business income tax. No party is authorized to enter into agreements for or on behalf of the other, collect any obligation due or owed to the other party, or accept service of process for the other party. Contractor agrees not to purport to bind NMHIX unless Contractor has express written authority to do so, and then only within the strict limits of that authority.

**20.11 No Third-Party Beneficiaries.** Nothing in this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities on any person (including, without limitation, any employees or Affiliates of the parties) other than the parties or their respective successors, permitted assigns, and indemnitees.

20.12 **Even-Handed Construction.** The terms and conditions set forth in this Agreement have been arrived at after mutual negotiation, and it is the intention of the parties that its terms and conditions not be construed against any party merely because it was prepared by one of the parties.

20.13 **Communications References.** The NMHIX desires to maintain a consistent and coherent public message regarding the work of the NMHIX, its contracting partners, and the contractual relationship between the NMHIX and its contracting partners. Contractor expressly acknowledges the NMHIX's interest in this regard and agrees that Contractor shall not communicate with the media or the public regarding this Agreement or the work performed pursuant to this Agreement, during the term of the Agreement and for a reasonable period of time following the termination of this Agreement, without requesting and receiving authorization from the NMHIX to engage in the communications. Contractor also agrees to comply with the NMHIX Communications Policy, as it may be amended from time to time.

20.14 **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.

20.15 **Counterparts; Facsimile.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. If this Agreement is executed in counterparts, no signatory hereto shall be bound until both the parties named below have duly executed or caused to be duly executed a counterpart of this Agreement. A signature on a copy of this Agreement received by either party by facsimile or email is binding upon the other party as an original.

20.16 **List of Exhibits to Agreement.** The following are the exhibits to this Agreement:

*[This list of exhibits will be completed based on the contents of the proposal and other negotiations between the parties.]*

Exhibit \_\_\_ Definitions

Exhibit \_\_\_ Services and Deliverables *[to be developed from Contractor's Proposal]*

For DD & I

For M & O

Exhibit \_\_\_ Charges *[to be developed from Contractor's Proposal]*

Exhibit \_\_\_ Approved Subcontractors *[from Contractor's Proposal]*

Exhibit \_\_\_ Account Executive and Key Personnel *[from Contractor's Proposal]*

Exhibit \_\_\_ Change Management Plan *[from Contractor's Proposal]*

Exhibit \_\_\_ Service Level Agreements and Associated Liquidated Damages

Exhibit \_\_\_

Exhibit \_\_\_

Exhibit \_\_\_

Exhibit \_\_\_ Privacy and Security Standards

This Agreement has been executed by the parties' undersigned authorized representatives as of the Effective Date.

**NEW MEXICO HEALTH INSURANCE  
EXCHANGE**

**CONTRACTOR**

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

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

Name: Cheryl Gardner  
Title: CEO

Name:  
Title:

**EXHIBIT \_\_\_\_**

**DEFINITIONS**

"Acceptance" shall have the meaning set forth in Section 6.3.2 of the Agreement.

"Accepted" shall have the meaning set forth in Section 6.3.2 of the Agreement.

"Acceptance Criteria" shall have the meaning set forth in Section 6.3.1 of the Agreement.

"Acceptance Evaluation Days" shall have the meaning set forth in Section 6.4 of the Agreement.

"Account Executives" shall be those persons designated on Exhibit \_\_\_\_ of the Agreement.

"Affiliate" shall mean shall mean a Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by, or is under common Control with, the Person specified.

"Affordable Care Act" shall mean the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152).

"Agreement" shall have the meaning set forth in the opening paragraph of the Agreement.

"Applicable Laws" shall have the meaning set forth in Section 4.1 of the Agreement.

"Approved Subcontractor" shall have the meaning set forth in Section 2.12.1 of the Agreement.

"Authorized Persons" shall mean (i) Contractor's employees who have a need to know or otherwise access to Personal Information to enable Contractor to perform its obligations under the Agreement; and (ii) Contractor's contractors, agents, outsourcers, auditors, and Approved Subcontractors who have a need to know or otherwise access to Personal Information to enable Contractor to perform its obligations under the Agreement and who are bound in writing by confidentiality obligations sufficient to protect Personal Information in accordance with the terms and conditions of the Agreement.

"Best Efforts" shall have the meaning set forth in Section 2.4.2 of the Agreement.

"Bond" shall have the meaning set forth in Section 11 of the Agreement.

"Business Day" means any day of the week excluding Saturday, Sunday, or a legal holiday.

"Change Order" shall mean an approved Change Request as described on Exhibit \_\_\_\_ to this Agreement.

"Change Request" shall mean a request for changes in a project submitted in accordance with Exhibit \_\_\_\_.

"Charges" shall have the meaning set forth in Section 3.1 of the Agreement.

"Charges Cap" shall have the meaning set forth in Section 3.1 of the Agreement.

"Commercially Reasonable Efforts" shall have the meaning set forth in Section 2.4.1 of the Agreement.

"Confidential Information" shall have the meaning set forth in Section 9.1 of the Agreement.

"Contractor" shall have the meaning set forth in the opening paragraph of the Agreement.

"Contractor Account Executive" shall have the meaning set forth in Section 2.1 of the Agreement.

"Contractor Software" shall have the meaning set forth in Section 10.1 of the Agreement.

"Control" including the terms "controlling", "controlled by" and "under common control with" shall mean with regard to any person: (a) the legal or beneficial ownership, directly or indirectly, of more than fifty percent (50%) of the issued share capital or capital stock of that person (or other ownership interest if not a corporation) or (b) the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

"Covered" shall mean enrolled, through the System, in a Qualified Health Plan.

"Covered Lives" shall mean the total individuals who are Covered.

"Data Breach" shall have the meaning set forth in Section 9.4 of the Agreement.

"Deliverables" shall have the meaning set forth in Section 6.3.1 of the Agreement.

"Deliverables Charges" shall have the meaning set forth in Section 3.1 of the Agreement.

"Deliverables Delivery Deadline" shall have the meaning set forth in Section 6.3.2 of the Agreement.

"Developed IP" shall have the meaning set forth in Section 11.2 of the Agreement.

"Developed IP License" shall have the meaning set forth in Section 11.2 of the Agreement.

"Discloser" shall have the meaning set forth in Section 9.1 of the Agreement.

"Effective Date" shall have the meaning set forth in the opening paragraph of the Agreement.

"Escrow Agreement" shall have the meaning set forth in Section 10.3.1 of the Agreement.

"Escrow Material" shall have the meaning set forth in Section 10.3.1 of the Agreement.

"Force Majeure Event" shall have the meaning set forth in Section 2.15.1 of the Agreement.

"FTI" has the meaning set forth in Section 19.2.4 of the Agreement.

"Governmental Body" shall mean any local, state, or federal governmental regulatory entity or Court.

"Governmental Body Investigation" shall mean any inquiry or investigation by a Governmental Body.

"Highly Sensitive Personal Information" shall mean an individual's: (i) government-issued identification number (including, social security number, driver's license number or state-issued identification number); (ii) financial account number, credit card number, debit card number, credit report information, with or

without any required security code, access code, personal identification number or password, that would permit access to an individual's financial account; or (iii) biometric or health data.

"Integral Contractor IP" shall have the meaning set forth in Section 11.3 of the Agreement.

"Intellectual Property" shall mean: (i) works of authorship, discoveries, inventions, improvements, innovations, technical information, procedures, manufacturing or other processes, software, firmware, technology, and other intellectual property, as reflected in any form, including patent applications, patents, copyrights, trade secrets, mask works, trademarks, trade identities, trade dress, know-how, and other proprietary information; and (ii) rights relating to possession, ownership and use of the foregoing, including, without limitation, the right to license, sublicense, franchise, assign, divide, pledge, mortgage, sell, offer to sell, transfer, convey, grant, import, make or have made, enforce and register.

"IRC" has the meaning set forth in Section 19.2.1 of the Agreement.

"IRS" has the meaning set forth in Section 19.1.4 of the Agreement.

"Key Performance Indicators" shall have the meaning set forth in Section 2.7 of the Agreement.

"Key Personnel" shall have the meaning set forth in Section 2.3 of the Agreement.

"Letter of Exception" shall have the meaning set forth in Section 6.3.2 of the Agreement.

"Losses" shall have the meaning set forth in Section 13.4.8 of the Agreement.

"Maintenance Charges" shall have the meaning set forth in Section 3.1 of the Agreement.

"Maintenance Period" shall mean the period commencing on \_\_\_\_\_ and continuing through December 31, 2023.

"NMHIX" shall have the meaning set forth in the opening paragraph of the Agreement.

"NMHIX Account Executive" shall have the meaning set forth in Section 5.1 of the Agreement.

"NMHIX Dependency" shall have the meaning set forth in Section 2.13 of the Agreement.

"NMHIX Parties" shall have the meaning set forth in Section 13.4 of the Agreement.

"Non-Exchange Entity" shall have the meaning set forth in 45 CFR 155.260(b)(1).

"Payment Default" shall mean the failure by NMHIX to timely pay any amount due and payable under the Agreement if such failure is not cured by NMHIX within sixty (60) days after the date of NMHIX's receipt of written notice from Contractor reasonably describing such failure; provided, however, that there shall not be a Payment Default to the extent that the terms and conditions of the Agreement (A) limit NMHIX's obligation to pay such amount; (B) permit NMHIX to dispute the unpaid amount; or (C) permit NMHIX to delay the payment of such amount.

"PCI DSS" shall have the meaning set forth in Section 9.2.6 of the Agreement.

"Person" shall mean an individual, a corporation, a partnership, an association, a trust or other entity or organization.

"Personal Information" shall mean information that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses, and other unique identifiers), including PII; or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, financial account numbers, credit report information, biometric or health data, answers to security questions or other personal identifiers); or (iii) is PHI, and in the case of (i), (ii), and (iii) including, without limitation, all Highly-Sensitive Personal Information.

"Personally Identifiable Information" or "PII" shall have the meaning set forth in 45 CFR 155.260.

"Pre-Existing Intellectual Property" shall have the meaning set forth in Section 11.1 of the Agreement.

"Protected Health Information" or "PHI" shall have the meaning set forth in 45 CFR 160.103.

"Protected Parties" shall have the meaning set forth in Section 8.1 of the Agreement.

"Qualified Health Plan" shall mean a policy that (i) meets the requirements of a "qualified health plan" as such term is defined in Section 1301(a)(1) of the Affordable Care Act, and (ii) has been approved in New Mexico.

"Reasonable Efforts" shall have the meaning set forth in Section 2.4.1 of the Agreement.

"Recipient" shall have the meaning set forth in Section 8.1 of the Agreement.

"Records Act" shall have the meaning set forth in Section 8.1 of the Agreement.

"Services" shall mean the tasks and services to be performed by Contractor in connection with the System as described in the Specifications and the Agreement.

"Service Level Agreement" shall have the meaning set forth in Exhibit \_\_\_\_.

"Specifications" shall mean the technical, functional, and other written specifications that define the requirements for the System as described in this Agreement; the New Mexico Health Insurance Exchange Request for Proposals for Individual Marketplace and Transition to Individual Marketplace, as amended (the "RFP"); Contractor's proposal in response to the RFP dated \_\_\_\_, 2019; Contractor's Best and Final Offer dated \_\_\_\_, 2019; subsequent Deliverables that have received Acceptance; Change Orders; and all Applicable Laws.

"System" shall mean and includes the complete collection of all Contractor Software, including all configurations and enhancements, and the Developed IP, which is integrated and functioning together with the Data and the System Content in accordance with the applicable Specifications and which is necessary to include all of the functions and to enable Contractor to provide all of the Services which together shall provide a fully functional Individual Exchange.

"System Content" shall mean all of the text, narrative, information, documents, graphics, pictures, and other materials visible to as well as products available for purchase by Persons accessing the System.

"Term" shall have the meaning set forth in Section 7.1 of the Agreement.

"Termination Services Period" shall have the meaning set forth in Section 7.8.1 of the Agreement.



"Termination Services" shall have the meaning set forth in Section 7.8.1 of the Agreement.

"Third Party Agreement" shall have the meaning set forth in Section 9.6 of the Agreement.

"Third Party Claim" shall have the meaning set forth in Section 13.5 of the Agreement.

"Third Party Data" shall have the meaning set forth in Section 9.6.2 of the Agreement.

"Third Party Dependency" shall have the meaning set forth in Section 2.14 of the Agreement.

"Third Party Software" shall have the meaning set forth in Section 10.4 of the Agreement.

"Warranty Period" shall have the meaning set forth in Section 12.2.1 of the Agreement.

"Written" shall mean a document in hard copy (including facsimiles, where receipt is acknowledged) or electronic mail (where receipt is acknowledged) unless otherwise limited herein.

## EXHIBIT \_\_\_\_

### I. PRIVACY AND SECURITY STANDARDS

Definitions. Capitalized terms not otherwise specifically defined shall have the meaning set forth in Section B.

Authorized Functions. Contractor may collect, handle, disclose, access, maintain, store, and/or use PII of Consumers, Applicants, Qualified Individuals, Qualified Employers, Qualified Employees, or Enrollees, or from these individuals' legal representative(s) or Authorized Representative(s), only to perform the required duties described in section 1311(i)(3) of the Affordable Care Act, 45 CFR 155.210(e), the Cooperative Agreement to Support Navigators in Federally-Facilitated and State Partnership Exchanges Funding Opportunity Announcement ("Navigator FOA"), and 45 CFR 155.215(a)(1)(iii), as well as in Contractor's approved work and project plans described in Contractor's agreement with NMHIX (the "Contract" or "Agreement").

The required duties that will most likely involve the collection, handling, disclosure, access, maintenance, storage and/or use of PII of Consumers, Applicants, Qualified Individuals, Qualified Employers, Qualified Employees, or Enrollees, or from these individuals' legal representatives(s) or Authorized Representatives, include the following:

- Facilitate Consumer Insurance Affordability Program eligibility determination leading in some instances to the selection of a QHP or a referral to HSD for Medicaid or CHIP eligibility determination;
- Collection of data to facilitate eligibility determination from federal (via the Federal Data Service Hub), state, or individual sources;
- Provide information and services in a fair, accurate, and impartial manner. Such information must acknowledge other health programs such as Medicaid and CHIP;
- Provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under Section 2793 of the PHS Act, or any other appropriate State agency or agencies, for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage; and
- Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange, including individuals with limited English proficiency, and ensure accessibility and usability of Health care guide tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

Such information may not be reused for any other purpose.

Other Required Duties: To the extent required by the Agreement, Contractor must also maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities to raise awareness about the Exchange; however, it is not expected or required that Contractor collect, handle, disclose, access, maintain, store and/or use PII of Consumers, Applicants, Qualified Individuals, Qualified Employers, Qualified Employees, or Enrollees, or from these individuals' legal representatives(s) or Authorized Representatives for this function. To the extent that Contractor does so, it must comply with

all of the provisions of this specific term and condition, as well as Sections A and B that apply to Contractor's activities.

PII Received. Subject to the terms and conditions of this Agreement and applicable laws, in performing the tasks contemplated under this Agreement, Contractor may create, collect, disclose, access, maintain, store, and/or use the following PII from Consumers, Applicants, Qualified Individuals, Qualified Employers, Qualified Employees, or Enrollees, or from these individuals' legal representative(s) or Authorized Representative(s):

APTC percentage and amount applied  
Auto disenrollment information  
Applicant Name  
Applicant Address  
Applicant Birthdate  
Applicant Telephone number  
Applicant Email  
Applicant spoken and written language preference  
Applicant Medicaid Eligibility indicator, start and end dates  
Applicant Children's Health Insurance Program eligibility indicator, start and end dates  
Applicant QHP eligibility indicator, start and end dates  
Applicant APTC percentage and amount applied eligibility indicator, start and end dates  
Applicant household income  
Applicant Maximum APTC amount  
Applicant CSR eligibility indicator, start and end dates  
Applicant CSR level  
Applicant QHP eligibility status change  
Applicant APTC eligibility status change  
Applicant CSR eligibility status change  
Applicant Initial or Annual Open Enrollment Indicator, start and end dates  
Applicant Special Enrollment Period eligibility indicator and reason code  
Contact Name  
Contact Address  
Contact Birthdate  
Contact Telephone number  
Contact Email  
Contact spoken and written language preference  
Enrollment group history (past six months)  
Enrollment type period  
FFE Applicant ID  
FFE Member ID  
Issuer Member ID  
Net premium amount  
Premium Amount, start and end dates  
Pregnancy status indicator  
PII related to any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination as described in 45 CFR §155.210(e)(4)  
Special enrollment period reason  
Subscriber Indicator and relationship to subscriber  
Social Security Number  
Tobacco use indicator and last date of tobacco

Storing PII. Contractor may be expected or required to maintain or store any of the above listed PII as a result of carrying out the Authorized Functions described above or any other required duties, including in connection with the storage of consent forms or otherwise. To the extent that Contractor does maintain or store information, it must comply with all of the provisions of these Privacy and Security Standards, including any specific term or condition and to the extent Sections A and B address maintenance or storage of PII.

Privacy and Security Obligations of Contractor. As a condition of this Contract, Contractor will implement and comply with all Exchange privacy and security standards set forth in these Privacy and Security Standards, including Sections A and B, and the Minimum Acceptable Risk Standards for Exchanges Version 2, as amended from time to time (MARS-E), which is available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2-MARS-E-v2-0-Minimum-Acceptable-Risk-Standards-for-Exchanges-11102015.pdf>.

Consent Form. Prior to collecting any PII, Contractor must obtain the consent of Consumers, Applicants, Qualified Individuals, Qualified Employers, Qualified Employees, Enrollees, or other persons or their legal representative(s) or Authorized Representative(s) to assist them with the Marketplace eligibility and enrollment process or other post-enrollment assistance. A template consent form has been provided separately to all Contractors.

Applicability to Workforce. Contractor must impose the same standards described in this specific term and condition and in Sections A and B on all Workforce members, including subcontractors, working with the Contractor on this contract program.

Survival. Contractor covenants and agrees to destroy all PII in its possession at the end of the record retention period required under this specific term and condition and Sections A and B. If, upon the termination or expiration of this contract, Contractor has in its possession PII for which no retention period is specified in this specific term and condition and/or Sections A and B, such PII shall be destroyed within 30 Days of the termination or expiration of this contract. Contractor's duty to protect and maintain the privacy and security of PII, as provided for in accordance with this specific term and condition, and Sections A and B, shall continue in full force and effect until such PII is destroyed and shall survive the termination of this Agreement.

## **A. SPECIAL TERMS AND CONDITIONS: PRIVACY AND SECURITY STANDARDS AND IMPLEMENTATION SPECIFICATIONS FOR NON-EXCHANGE ENTITIES**

### **Statement of Applicability:**

These standards and implementation specifications are established in accordance with Section 1411(g) of the Affordable Care Act (42 U.S.C. § 18081(g)) and 45 CFR 155.260. All terms used herein carry the meanings assigned in Section B, which is also included in this document.

The standards and implementation specifications that are set forth in these Privacy and Security Standards and the MARS-E suite of documents (which can be found at the link above and at <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/>) are the same as, or more stringent than, the privacy and security standards and implementation specifications that have been established for the Federally-Facilitated Exchanges (“FFE”) under Section 1321(c) of the Affordable Care Act (42 U.S.C. § 18041(c)).

The New Mexico Health Insurance Exchange (NMHIX) will enter into contracts (hereinafter “Agreement” or “Agreements”) with Non-Exchange Entities that gain access to Personally Identifiable Information

(“PII”) exchanged with the FFE and NMHIX, or directly from Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers, or these individuals’ legal representatives or Authorized Representatives. That Agreement, including this document, Privacy and Security Standards, govern any PII that is created, collected, disclosed, accessed, maintained, stored, or used by Non-Exchange Entities in the context of the FFE or other activities of NMHIX. In signing that Agreement, in which these Privacy and Security Standards have been incorporated, Non-Exchange Entities agree to comply with the standards and implementation specifications laid out in this document and the referenced MARS-E suite of documents while performing the Authorized Functions outlined in their respective Agreements.

### **Non-Exchange Entity Privacy and Security Standards and Implementation Specifications**

In addition to the standards and implementation specifications set forth in the MARS-E suite of documents noted above, Non-Exchange Entities must meet the following privacy and security standards and implementation specifications to the extent they are not inconsistent with any applicable MARS-E standards.

- (1) *Individual Access to PII*: *In keeping with the standards and implementation specifications used by the FFE, Non-Exchange Entities that maintain and/or store PII must provide Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers, or these individuals’ legal representatives and Authorized Representatives, with a simple and timely means of appropriately accessing PII pertaining to them and/or the person they represent in a physical or electronic readable form and format.*
  - a. **Standard**: Non-Exchange Entities that maintain and/or store PII must implement policies and procedures that provide access to PII upon request.
    - i. **Implementation Specifications**:
      1. Access rights must apply to any PII that is created, collected, disclosed, accessed, maintained, stored, and used by the Non-Exchange Entity to perform any of the Authorized Functions outlined in their respective agreements with the NMHIX.
      2. The release of electronic documents containing PII through any electronic means of communication (e.g., e-mail, web portal) must meet the verification requirements for the release of “written documents” in Section (5)b below.
      3. Persons legally authorized to act on behalf of the Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers regarding their PII, including individuals acting under an appropriate power of attorney that complies with applicable state and federal law, must be granted access in accordance with their legal authority. Such access would generally be expected to be coextensive with the degree of access available to the Subject Individual.
      4. At the time the request is made, the Consumer, Applicant, Qualified Individual, Enrollee, Qualified Employees, Qualified Employers, or these individuals’ legal representatives or Authorized Representatives should generally be required to specify which PII he or she would like access to. The Non-Exchange Entity may assist them in determining their Information or data needs if such assistance is requested.
      5. Subject to paragraphs (1) a.i.6 and 7 below, Non-Exchange Entities generally must provide access to the PII in the form or format requested, if it is readily producible in such form or format.
      6. The Non-Exchange Entity may charge a fee only to recoup their costs for labor for copying the PII, supplies for creating a paper copy or a copy on electronic media, postage if the PII is mailed, or any costs for

preparing an explanation or summary of the PII if the contractors has requested and/or agreed to receive such summary. If such fees are paid, the Non-Exchange Entity must provide the requested copies in accordance with any other applicable standards and implementation specifications.

7. A Non-Exchange Entity that receives a request for notification of, or access to PII must verify the requestor's identity in accordance with Section (5)b.
8. A Non-Exchange Entity must complete its review of a request for access or notification (and grant or deny said notification and/or access) within 30 days of receipt of the notification and/or access request.
9. Except as otherwise provided in (1)a.i.10, if the requested PII cannot be produced, the Non-Exchange Entity must provide an explanation for its denial of the notification or access request, and, if applicable, information regarding the availability of any appeal procedures, including the appropriate appeal authority's name, title, and contact information.
10. Unreviewable grounds for denial. Non-Exchange Entities may deny access to PII that they maintain or store without providing an opportunity for review, in the following circumstances:
  - a. If the PII was obtained or created solely for use in legal proceedings;
  - b. If the PII is contained in records that are subject to a law that either permits withholding the PII or bars the release of such PII.

(2) *Openness and Transparency. In keeping with the standards and implementation specifications used by the FFE, Non-Exchange Entities must ensure openness and transparency about policies, procedures, and technologies that directly affect Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employers, and Qualified Employees, and their PII.*

- a. Standard: Privacy Notice Statement. Prior to collecting PII, the Non-Exchange Entity must provide a notice that is prominently and conspicuously displayed on a public facing Web site, if applicable, or on the electronic and/or paper form the Non-Exchange Entity will use to gather and/or request PII.
  - i. Implementation Specifications.
    1. The statement must be written in plain language and provided in a manner that is accessible and timely to people living with disabilities and with limited English proficiency.
    2. The statement must contain at a minimum the following information:
      - a. Legal authority to collect PII;
      - b. Purpose of the information collection;
      - c. To whom PII might be disclosed, and for what purposes;
      - d. Authorized uses and disclosures of any collected information;
      - e. Whether the request to collect PII is voluntary or mandatory under the applicable law;
      - f. Effects of non-disclosure if an individual chooses not to provide the requested information.
    3. The Non-Exchange Entity shall maintain its Privacy Notice Statement content by reviewing and revising as necessary on an annual basis, at a minimum, and before or as soon as possible after any change to its privacy policies and procedures.
    4. If the Non-Exchange Entity operates a Web site, it shall ensure that descriptions of its privacy and security practices, and information on how to file complaints with NMHIX and the Non-Exchange Entity, are publicly available through its Web site.

(3) *Individual choice. In keeping with the standards and implementation specifications used by the FFE, Non-Exchange Entities should ensure that Consumers, Applicants, Qualified Individuals, Enrollees, Qualified*

*Employees, and Qualified Employers, or these individuals' legal representatives or Authorized Representatives, are provided a reasonable opportunity and capability to make informed decisions about the creation, collection, disclosure, access, maintenance, storage, and use of their PII.*

- a. Standard: Informed Consent. The Non-Exchange Entity may create, collect, disclose, access, maintain, store, and use PII from Consumers, Applicants, Qualified Individuals, Enrollees, or these individuals' legal representatives or Authorized Representatives, only for the functions and purposes listed in the Privacy Notice Statement and any relevant agreements in effect as of the time the information is collected, unless the NMHIX, the FFE or Non-Exchange Entity obtains informed consent from such individuals.
    - i. Implementation specifications:
      1. The Non-Exchange Entity must obtain informed consent from individuals for any use or disclosure of information that is not permissible within the scope of the Privacy Notice Statement and any relevant agreements that were in effect as of the time the PII was collected. Such consent must be subject to a right of revocation.
      2. Any such consent that serves as the basis of a use or disclosure must:
        - a. Be provided in specific terms and in plain language;
        - b. Identify the entity collecting or using the PII, and/or making the disclosure;
        - c. Identify the specific collections, use(s), and disclosure(s) of specified PII with respect to a specific contractor(s);
        - d. Provide notice of an individual's ability to revoke the consent at any time.
      3. Consent documents must be appropriately secured and retained for 10 years.
- (4) Creation, collection, disclosure, access, maintenance, storage, and use limitations. *In keeping with the standards and implementation specifications used by the NMHIX and by the FFE, Non-Exchange Entities must ensure that PII is only created, collected, disclosed, accessed, maintained, stored, and used, to the extent necessary to accomplish a specified purpose(s) in the Agreement and any appendices. Such information shall never be used to discriminate against a Consumer, Applicant, Qualified Individual, Enrollee, Qualified Employee, or Qualified Employer.*
- a. Standard: Other than in accordance with the consent procedures outlined above, the Non-Exchange Entity shall only create, collect, disclose, access, maintain, store, and use PII:
    1. To the extent necessary to ensure the efficient operation of the Exchange;
    2. In accordance with its published Privacy Notice Statement and any applicable agreements that were in effect at the time the PII was collected, including the consent procedures outlined above in Section (3) above; and/or
    3. In accordance with the permissible functions outlined in the regulations and agreements between NMHIX and the Non-Exchange Entity.
  - b. Standard: Non-discrimination. The Non-Exchange Entity should, to the greatest extent practicable, collect PII directly from the Consumer, Applicant, Qualified Individual, Enrollee, Qualified Employee, or Qualified Employer, when the information may result in adverse determinations about benefits.
  - c. Standard: Prohibited uses and disclosures of PII
    - i. Implementation Specifications:

1. The Non-Exchange Entity shall not request Information regarding citizenship, status as a national, or immigration status for an individual who is not seeking coverage for himself or herself on any application.
2. The Non-Exchange Entity shall not require an individual who is not seeking coverage for himself or herself to provide a social security number (SSN), except if an Applicant's eligibility is reliant on a tax filer's tax return and their SSN is relevant to verification of household income and family size.
3. The Non-Exchange Entity shall not use PII to discriminate, including employing marketing practices or benefit designs that will have the effect of discouraging the enrollment of individuals with significant health needs in QHPs.

(5) *Data quality and integrity. In keeping with the standards and implementation specifications used by NMHIX and by the FFE, Non-Exchange Entities should take reasonable steps to ensure that PII is complete, accurate, and up-to-date to the extent such data is necessary for the Non-Exchange Entity's intended use of such data, and that such data has not been altered or destroyed in an unauthorized manner, thereby ensuring the confidentiality, integrity, and availability of PII.*

a. Standard: Right to Amend, Correct, Substitute, or Delete PII. In keeping with the standards and implementation specifications used by NMHIX and by the FFE, Non-Exchange Entities must offer Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers, or these individuals' legal representatives or Authorized Representatives, an opportunity to request amendment, correction, substitution, or deletion of PII maintained and/or stored by the Non-Exchange Entity if such individual believes that the PII is not accurate, timely, complete, relevant, or necessary to accomplish an Exchange-related function, except where the Information questioned originated from other sources, in which case the individual should contact the originating source.

i. Implementation Specifications:

1. Such individuals shall be provided with instructions as to how they should address their requests to the Non-Exchange Entity's Responsible Official, in writing or telephonically. They may also be offered an opportunity to meet with such individual or their delegate(s) in person.
2. Such individuals shall be instructed to specify the following in each request:
  - a. The PII they wish to correct, amend, substitute or delete;
  - b. The reasons for requesting such correction, amendment, substitution, or deletion, along with any supporting justification or evidence.
3. Such requests must be contracted or denied within no more than 10 working days of receipt.
4. If the Responsible Official (or their delegate) reviews these materials and ultimately agrees that the identified PII is not accurate, timely, complete, relevant or necessary to accomplish the function for which the PII was obtained/provided, the PII should be corrected, amended, substituted, or deleted in accordance with applicable law.
5. If the Responsible Official (or their delegate) reviews these materials and ultimately does not agree that the PII should be corrected, amended, substituted, or deleted, the requestor shall be informed in writing of the denial, and, if applicable, the availability of any appeal procedures. If available, the notification must identify the appropriate appeal authority including that authority's name, title, and contact information.

b. Standard: Verification of Identity for Requests to Amend, Correct, Substitute or Delete PII. In keeping with the standards and implementation specifications used by the NMHIX and the FFE, Non-Exchange Entities that maintain and/or store PII must develop and implement policies and procedures to verify the



identity of any person who requests access to; notification of; or amendment, correction, substitution, or deletion of PII that is maintained by or for the Non-Exchange Entity. This includes confirmation of an individuals' legal or personal authority to access; receive notification of; or seek amendment, correction, substitution, or deletion of a Consumer's, Applicant's, Qualified Individuals', Enrollee's, Qualified Employee's, or Qualified Employer's PII.

i. Implementation Specifications:

1. The requester must submit through mail, via an electronic upload process, or in-person to the Non-Exchange Entity's Responsible Official, a copy of one of the following government-issued identification: a driver's license, school identification card, voter registration card, U.S. military card or draft record, identification card issued by the federal, state or local government, including a U.S. passport, military dependent's identification card, Native American tribal document, or U.S. Coast Guard Merchant Mariner card.
2. If such requester cannot provide a copy of one of these documents, he or she can submit two of the following documents that corroborate one another: a birth certificate, Social Security card, marriage certificate, divorce decree, employer identification card, high school or college diploma, and/or property deed or title.
- c. Standard: Accounting for Disclosures. Except for those disclosures made to the Non-Exchange Entity's Workforce, or sub-contractor, who have a need for the record in the performance of their duties; and the disclosures that are necessary to carry out the required functions of the Non-Exchange Entity, Non-Exchange Entities that maintain and/or store PII shall maintain an accounting of any and all disclosures.

i. Implementation Specifications:

1. The accounting shall contain the date, nature, and purpose of such disclosures, and the name and address of the person or agency to whom the disclosure is made
2. The accounting shall be retained for at least 10 years after the disclosure, or the life of the record, whichever is longer.
3. Notwithstanding exceptions in Section (1)a.10, this accounting shall be available to Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, Qualified Employers, or these individuals' legal representatives or Authorized Representatives, on their request per the procedures outlined under the access standards in Section (1) above.

(6) *Accountability.* In keeping with the standards and implementation specifications used by the FEE, Non-Exchange Entities should adopt and implement the standards and implementation specifications in this document and the cited MARS-E document suite, in a manner that ensures appropriate monitoring and other means and methods to identify and report Incidents and/or Breaches.

- a. Standard: Reporting. The Non-Exchange Entity must implement Breach and Incident handling procedures that are consistent with CMS' Incident and Breach Notification Procedures<sup>1</sup> and memorialized in the Non-Exchange Entity's own written policies and procedures. Such policies and procedures would:
  - i. Identify the Non-Exchange Entity's Designated Privacy Official, if applicable, and/or identify other personnel authorized to access PII and responsible for reporting and managing Incidents or Breaches to CMS.

---

<sup>1</sup> Information concerning CMS incident and breach notification procedures may be found at: [https://www.cms.gov/Research-Statistics-Data-and-Systems/Computer-Data-and-Systems/Privacy/Privacy\\_Data\\_Breach.html](https://www.cms.gov/Research-Statistics-Data-and-Systems/Computer-Data-and-Systems/Privacy/Privacy_Data_Breach.html).

- ii. Provide details regarding the identification, response, recovery, and follow-up of Incidents and Breaches, which should include information regarding the potential need for CMS to immediately suspend or revoke access to the Hub for containment purposes; and
  - iii. Require reporting any Incident or Breach of PII to the CMS IT Service Desk by telephone at (410) 786-2580 or 1-800-562-1963 or via email notification at cms\_it\_service\_desk@cms.hhs.gov within required time frames.
- b. Standard: Standard Operating Procedures. The Non-Exchange Entity shall incorporate privacy and security standards and implementation specifications, where appropriate, in its standard operating procedures that are associated with functions involving the creation, collection, disclosure, access, maintenance, storage, or use of PII.
- i. Implementation Specifications:
    - 1. The privacy and security standards and implementation specifications shall be written in plain language and shall be available to all of the Non-Exchange Entity’s Workforce members, or sub-contractors, whose responsibilities entail the creation, collection, maintenance, storage, access, or use of PII.
    - 2. The procedures shall ensure the Non-Exchange Entity’s cooperation with CMS in resolving any Incident or Breach, including (if requested by CMS) the return or destruction of any PII files it received under the Agreement; the provision of a formal response to an allegation of unauthorized PII use, reuse or disclosure; and/or the submission of a corrective action plan with steps designed to prevent any future unauthorized uses, reuses or disclosures.
    - 3. The standard operating procedures must be designed and implemented to ensure the Non-Exchange Entity and its Workforce, or sub-contractor, comply with the standards and implementation specifications contained herein, and must be reasonably designed, taking into account the size and the type of activities that relate to PII undertaken by the Non-Exchange Entity, to ensure such compliance.
- c. Standard: Training and Awareness. The Non-Exchange Entity shall develop training and awareness programs for members of its Workforce that create, collect, disclose, access, maintain, store, and use PII while carrying out any Authorized Functions.
- i. Implementation Specifications:
    - 1. The Non-Exchange Entity must require such individuals to successfully complete privacy and security training, as appropriate for their work duties and level of exposure to PII, prior to when they assume responsibility for/have access to PII.
    - 2. The Non-Exchange Entity must require periodic role-based training on an annual basis, at a minimum.
    - 3. The successful completion by such individuals of applicable training programs, curricula, and examinations offered through the FFE is sufficient to satisfy the requirements of this paragraph.
- d. Standard: Security Controls. The Non-Exchange Entity shall adopt and implement the Security Control standards cited in the MARS-E document suite for protecting the confidentiality, integrity, and availability of PII.
- i. Implementation Specifications:
    - 1. Implementation specifications for each Security Control are provided in the MARS-E document suite.

**B. SPECIAL TERMS AND CONDITIONS: DEFINITIONS**

1. **Affordable Care Act (ACA)** means the Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), which are referred to collectively as the Affordable Care Act.
2. **Access** means availability of a SORN Record to a subject individual.
3. **Advance Payments of the Premium Tax Credit (APTC)** has the meaning set forth in 45 CFR 155.20.
4. **Applicant** has the meaning set forth in 45 CFR 155.20.
5. **Authorized Function** means a task performed by a Non-Exchange Entity that the Non-Exchange Entity is explicitly authorized or required to perform based on applicable law or regulation and as set forth in this Attachment or the Contract.
6. **Authorized Representative** means a person or organization meeting the requirements set forth in 45 CFR 155.227.
7. **Breach** is defined by OMB Memorandum M-07-16, Safeguarding and Responding to the Breach of Personally Identifiable Information (May 22, 2007), as the compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, loss of control or any similar term or phrase that refers to situations where persons other than authorized users or for an other than authorized purpose have access or potential access to Personally Identifiable Information (PII), whether physical or electronic.
8. **CCIO** means the Center for Consumer Information and Insurance Oversight within the Centers for Medicare & Medicaid Services (CMS).
9. **CMS** means the Centers for Medicare & Medicaid Services.
10. **CMS Data Services Hub (Hub)** is the CMS Federally-managed service to interface data among connecting entities, including HHS, certain other Federal agencies, and State Medicaid agencies.
11. **Consumer** means a person who, for himself or herself, or on behalf of another individual, seeks information related to eligibility or coverage through a Qualified Health Plan (QHP) or other Insurance Affordability Program, or whom an agent or broker (including Web-brokers), Health care guide, Issuer, Certified Application Counselor, or other entity assists in applying for a coverage through QHP, applying for APTCs and CSRs, and/or completing enrollment in a QHP through its web site for individual market coverage.
12. **Cost-sharing Reduction (CSR)** has the meaning set forth in 45 CFR 155.20.
13. **Day or Days** means calendar days unless otherwise expressly indicated in the relevant provision of the Notice of Award terms and conditions that incorporates this [Section B](#).
14. **Designated Privacy Official** means a contact person or office responsible for receiving complaints related to Breaches or Incidents, able to provide further information about matters covered by the notice, responsible for the development and implementation of the privacy and security policies and procedures of the Non-Exchange Entity, and ensuring the Non-Exchange Entity has in place appropriate safeguards to protect the privacy and security of PII.
15. **Enrollee** has the meaning set forth in 45 CFR 155.20.
16. **Exchange** has the meaning set forth in 45 CFR 155.20.

17. **Federally-facilitated Exchange (FFE)** means an **Exchange** (or **Marketplace**) established by HHS and operated by CMS under Section 1321(c)(1) of the ACA for individual or small group market coverage, including the Federally-facilitated Small Business Health Options Program (**FF-SHOP**). **Federally-facilitated Marketplace (FFM)** has the same meaning as FFE. The FFE is serving as the individual exchange in New Mexico for 2014.
18. **Health Insurance Coverage** has the meaning set forth in 45 CFR 155.20.
19. **HHS** means the U.S. Department of Health & Human Services.
20. **Incident**, or **Security Incident**, means the act of violating an explicit or implied security policy, which includes attempts (either failed or successful) to gain unauthorized access to a system or its data, unwanted disruption or denial of service, the unauthorized use of a system for the processing or storage of data; and changes to system hardware, firmware, or software characteristics without the owner's knowledge, instruction, or consent.
21. **Information** means any communication or representation of knowledge such as facts, data, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual.
22. **Issuer** has the meaning set forth in 45 CFR 144.103.
23. **Minimum Acceptable Risk Standards—Exchanges (MARS-E)** means a CMS-published suite of documents, as amended, that defines the security standards required pursuant to 45 CFR 155.260 and 45 CFR 155.270, for any Exchange, individual, or entity gaining access to information submitted to an Exchange or through an Exchange using a direct, system-to-system connection to the Hub, available on the CCIIO web site.
24. **Health care guide** has the meaning set forth under “Navigator” in 45 CFR 155.20.
25. **Non-Exchange Entity** has the meaning at 45 CFR 155.260(b), and includes but is not limited to Health care guides.
26. **OMB** means the Office of Management and Budget.
27. **Personally Identifiable Information (PII)** has the meaning contained in OMB Memoranda M-07-16 (May 22, 2007) and means information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, *etc.*, alone, or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, *etc.*
28. **Qualified Employee** has the meaning set forth in 45 CFR 155.20.
29. **Qualified Employer** has the meaning set forth in 45 CFR 155.20.
30. **Qualified Health Plan (QHP)** has the meaning set forth in 45 CFR 155.20.
31. **Qualified Individual** has the meaning set forth in 45 CFR 155.20.
32. **Responsible Official** means an individual or officer responsible for managing a Non-Exchange Entity or Exchange's records or information systems, or another individual designated as an individual to whom requests can be made, or the designee of either such officer or individual who is listed in a Federal System of Records Notice as the system manager, or another individual listed as an individual to whom requests may be made, or the designee of either such officer or individual.

33. **Security Control** means a safeguard or countermeasure prescribed for an information system or an organization designed to protect the confidentiality, integrity, and availability of its information and to meet a set of defined security requirements.
34. **State** means the State of New Mexico.
35. **State Partnership Exchange** means a type of FFE in which a State assumes responsibility for carrying out certain activities related to plan management, consumer assistance, or both.
36. **Subject Individual** means that individual to whom a SORN Record pertains.
37. **System of Records Notice (SORN)** means a notice published in the Federal Register notifying the public of a System of Records maintained by a Federal agency. The notice describes privacy considerations that have been addressed in implementing the system.
38. **Workforce** means a Non-Exchange Entity's or FFE's employees, agents, contractors, subcontractors, officers, directors, agents, representatives, volunteers and any other individual who may create, collect, disclose, access, maintain, store, or use PII in the performance of his or her duties.

**EXHIBIT \_\_\_\_**

**Service Level Agreements and Associated Liquidated Damages**

<b>Key Performance Indicator</b>	<b>Guarantee Amount</b>
<p><b>1. Service Level Agreement – System Availability</b></p> <p>System availability is to be defined as the percentage uptime in a month that the Individual Exchange environments (including all associated components) are available to users or to perform in a back-up capacity, including all weekends and holidays. Negotiated downtime for system maintenance during off-peak hours is not to be included in the calculation of system availability.</p> <p>The Contractor is to provide a system to monitor and report on responses as defined and approved by beWellnm. All metrics are to be measured and evaluated in hours.</p> <p><b>Downtime.</b> Downtime is to be defined as the term during which any functionality of the Individual Exchange is not functioning/available due to network, hardware, operating system or application program failure. Scheduled maintenance (within the defined maintenance window), approved by beWellnm, does not count towards downtime.</p> <p>System availability is to be based on the following hours of operation:</p> <p><b>Individual Exchange Hours of Operation.</b> Individual Exchange access is to be available at a minimum of 99.9% of the expected operational time, twenty-four (24) hours per day, seven (7) days per week.</p> <p>The Contractor is to ensure system availability meets the following performance standards:</p>	<p>Up to <b>6%</b> of the monthly operating fee, as follows:</p> <p>Any 1 of 4 not met: <b>1%</b></p> <p>Any 2 of 4 not met: <b>3%</b></p> <p>Any 3 of 4 not met: <b>5%</b></p> <p>Any 4+ not met: <b>6%</b></p>
<p><b>1. Production Downtime.</b> Maximum monthly production downtime for all Individual Exchange components is to be no more than four (4) hour per month, excluding downtime events that are external to the Contractor.</p>	
<p><b>2. Network Connectivity Downtime.</b> Contractor network connectivity downtime for all Individual Exchange components, is to be no more than one (1) hour per month. This downtime will be included in the overall production downtime figures and not to be considered additive.</p>	
<p><b>3. Scheduled Maintenance.</b> Scheduled maintenance for all Individual Exchange components, is to be no more than six (6) hours per month (and within the defined maintenance window(s) as approved by beWellnm – a corresponding technical change request needs to be submitted first for beWellnm approval).</p>	

Key Performance Indicator	
1. Service Level Agreement – System Availability	Guarantee Amount
<p><b>4. Failover</b> 99% of all failover events are concluded within ten (10) minutes. 100% of all failover events are concluded in less than twenty (20) minutes.</p> <p>For outages not dependent on the Contractor, downtime is measured from the moment the notification of resolution is received by the Contractor.</p>	
<p><b>5. System and Application Availability</b> – Systems and applications shall be available 99.9% of the time, excluding scheduled maintenance.</p>	

2. Service Level Agreement – System Performance	
Key Performance Indicator	Guarantee Amount
<p>System performance is to be defined as Individual Exchange response time to user portal queries, (the portal is operational twenty-four (24) hours a day, seven (7) days a week).</p> <p>The Contractor is to provide a system to monitor and report on responses as defined and approved by beWellnm. All metrics are to be measured and evaluated in seconds.</p> <p>The Contractor is to ensure system performance meets the following performance standards:</p>	<p>Up to <b>6%</b> of the monthly operating fee, as follows:</p> <p>Any 1 of 4 not met: <b>1%</b></p> <p>Any 2 of 4 not met: <b>3%</b></p> <p>Any 3 of 4 not met: <b>5%</b></p> <p>All 4 not met: <b>6%</b></p>
<p><b>1. Record Search and Retrieval Time.</b> Within four (4) seconds 95% of the time, where record retrieval time is defined as the time elapsed after the retrieve command is entered until the record data loads to completion on the monitor.</p>	
<p><b>2. Screen Edit Time.</b> Within two (2) seconds 95% of the time, where screen edit time is defined as the time elapsed after the last field is filled on the screen with an enter command until all field entries are edited with errors highlighted on the monitor.</p>	
<p><b>3. New Screen/Page Time.</b> Within two (2) seconds 95% of the time, where new screen/page time is defined as the time elapsed from the time a new screen is requested until the data from the screen loads to completion on the monitor.</p>	
<p><b>4. Web Portal Response Time.</b> Within four (4) seconds 99% of the time, where Web Portal response time is defined as the time elapsed from the command to view a response until the response appears or loads to completion on the monitor.</p>	

3. Service Level Agreement – Database Updates	
Key Performance Indicator	Guarantee Amount
<p>Database updates are to be defined as the activities necessary to maintain current and accurate data as required to conduct the functions outlined in this RFP, in compliance with all requirements herein. beWellnm and the contract awardee will develop appropriate data quality metrics to support these KPIs.</p> <p>The Contractor is to ensure database update activities meet the following performance standards:</p>	<p>Up to <b>5%</b> of the monthly operating fee, as follows:</p> <p>Any 1 of 3 not met: <b>1%</b></p> <p>Any 2 of 3 not met <b>3%</b></p> <p>Any 3+ not met: <b>5%</b></p>
<p><b>1. Database Updates and Data Synchronization.</b> All databases, including Disaster Recovery, must be updated and synchronized no less than daily.</p>	
<p><b>2. Data Delivery.</b> 99.9% of data must be delivered accurately and per business logic developed in the application.</p>	
<p><b>3. Transaction Completion.</b> 99.9% of system transactions must be completed accurately and per business rules developed in the application.</p>	
<p><b>4. Batch Jobs</b> - Contractor shall run all assigned batch jobs at the predefined scheduled time frame(s) unless otherwise instructed by beWellnm. Batch jobs should be completed 99.9% during the predefined windows</p>	

4. Service Level Agreement – Operational Problem Management	
Key Performance Indicator	Guarantee Amount
<p>Provide Individual operational problem management for issues as they occur during the Maintenance &amp; Operations phase of the project, including problems associated with all system components outlined in this RFP.</p> <p>Operational issues are to be classified, communicated to beWellnm, documented, addressed and tracked. The Contractor is to provide software tools to enable the tracking of a specific defect from identification through correction, including all testing performed to ensure the correct fix is in place. Issues are to be documented in the Contractor-specified format, if approved by beWellnm. During the Maintenance &amp; Operations phase the Contractor is to categorize and resolve errors in accordance with beWellnm problem management standards provided by beWellnm, as follows:</p>	<p>Up to <b>6%</b> of the monthly operating fee, as follows:</p> <p>Priority 1 Errors standard not met: <b>3%</b></p> <p>Priority 2 Errors standard not met <b>1.25%</b></p> <p>Priority 3 Errors standard not met: <b>1.25%</b></p> <p>Priority 4 Errors standard not met: <b>0.50%</b></p>
<p><b>Priority 1 Errors.</b> Critical business impact. Indicates Individual Exchange is unavailable for use resulting in a critical impact on operations. Requires immediate beWellnm notification, half-hour updates and resolution within two (2) hours.</p>	



4. Service Level Agreement – Operational Problem Management	
Key Performance Indicator	Guarantee Amount
<p><b>Priority 2 Errors.</b> Serious business impact. Indicates serious production issues where the Individual Exchange is available but is severely limited and no workaround exists. Requires immediate beWellnm notification, hourly updates and resolution within four (4) hours.</p>	
<p><b>Priority 3 Errors.</b> Moderate business impact. Indicates moderate production issue where Individual Exchange is usable but a workaround is available (not critical to operations). Requires beWellnm immediate notification, two (2) hour updates, and resolution within twelve (12) hours.</p>	
<p><b>Priority 4 Errors.</b> Minimal business impact. Indicates the problem results in little impact on operations or a reasonable circumvention to the problem has been implemented. Requires immediate beWellnm notification with updates and resolution within an agreed-upon schedule between the Contractor and beWellnm (as defined by beWellnm).</p>	
<p><b>Help Desk call wait time</b> - At least 99% of help desk calls are answered in 2 minutes or less (a call pickup system may be used)</p>	
<p><b>Support calls for Severity Levels 1&amp;2 call back time</b> - Contractor must respond back to beWellnm in 30 minutes or less from the time the support call was made.</p>	

<b>5. Service Level Agreement – Consumer Engagement, Contact Center, Mail Room</b>	
<b>Key Performance Indicator</b>	<b>Guarantee Amount</b>
<p>The Contractor is to provide customer service support. The Contractor is to maintain sufficient staff and systems to manage, track and report on Customer Services via multiple channels, including telephone, web portal, e-mail, and web chat. The Contractor is to provide an integrated contact management system to be used in tracking and managing Customer contacts from all channels, and can report on Customer contact metrics separately. Customer Service support is to be available 100% of the time during Standard working hours, as specified by beWellnm.</p> <p>The Contractor is to ensure customer service support meets the following performance standards:</p>	
1. Achieve a monthly average first Encounter resolution rate of a minimum of 75%. First Encounter resolution is defined as Encounter resolved by a Customer Service Representative rather than those routed to a supervisor or requiring a follow-up Customer contact.	\$5,000 when monthly average first Encounter resolution rate falls below 75%.
2. Maintain a maximum monthly average time-to-answer of 60 seconds.	\$5,000 for monthly average time-to-answer exceeding 60 seconds.
3. Maintain a monthly average percentage of calls answered in 30 seconds or less at seventy percent (70%) or higher.	\$2,500 when monthly percentage of calls answered in 30 seconds or less falls below 65%.
4. Maintain a maximum monthly average abandoned call rate of three (3) percent, excluding calls where a caller left a message and calls that were abandoned before 30 seconds.	\$2,500 for monthly average abandoned call rates exceeding 3% or \$5,000 for monthly average abandoned call rates exceeding 5%.
5. Maintain a maximum time-to-answer of 2 minutes.	\$2500 if 10% or more of calls exceed given threshold. \$5000 if 30% or more of calls exceed given threshold
6. Respond to all chat messages within 30 seconds.	\$2,500 when monthly percentage of chats answered in 30 seconds or less falls below 85%
7. Respond to all emailed inquiries received to within one (1) Business Day.	\$5,000 for monthly average time-to-respond exceeding one (1) Business Day.

<b>5. Service Level Agreement – Consumer Engagement, Contact Center, Mail Room</b>	
<b>Key Performance Indicator</b>	<b>Guarantee Amount</b>
8. Receive a top two rating (assuming a five-point scale) in 85% of total Customer surveys for Customer satisfaction on beWellnm-approved Customer surveys.	\$2,500 when quarterly average overall Customer satisfaction scores are less than 85%. \$5,000 for each instance when quarterly average overall Customer satisfaction scores are less than 75%.
9. Scan and triage paper applications, Attestations and other Eligibility-related documentation within one (1) Business Day as measured by the time of receipt such documentation.	\$5,000 if less than 99% of all paper applications, Attestations and other Eligibility-related documentation are not scanned and triaged within one (1) Business Day.
10. Process at least 80% of all Eligibility documentation, Eligibility verifications for Individuals and Redeterminations within two (2) Business Days as measured from the time of receipt of application containing complete information. 100% of documentation related to Eligibility verifications and Redeterminations shall be processed within three (3) Business Days.	\$5,000 if 100% of Eligibility documentation, Eligibility verifications and Redeterminations are not processed within three (3) Business Days.
11. 80% of all Enrollment forms must be processed within two (2) Business Days as measured from the time of receipt of the Enrollment forms containing complete information. 100% of Enrollment forms shall be processed within three (3) Business Days.	\$5,000 if 100% of Enrollment forms are not processed within three (3) Business Days.
12. Process completed Enrollment forms received with a minimum of 99% accuracy.	\$5,000 when monthly average falls below 99%.
13. Process Enrollment data provided to Exchange systems with a minimum of 98% accuracy.	\$5,000 when monthly average accuracy rate falls below 98%.

<b>6. Service Level Agreement – Noticing, Reportings, Financial Operations</b>	
<b>Key Performance Indicator</b>	<b>Guarantee Amount</b>
The Contractor is to ensure customer service support meets the following performance standards for Noticing, Reporting, and Financial Management Operations:	

6. Service Level Agreement – Noticing, Reportings, Financial Operations	
Key Performance Indicator	Guarantee Amount
1. Send 100% of notifications of successful Enrollment to Qualified Individual or Subscriber, unless otherwise designated by the Qualified Individual	\$2,500 when monthly average of Enrollment notifications sent is below 99%.
1. Send 100% of Renewal, Redetermination and Open Enrollment notices in accordance with the timelines set forth in the beWellnm's policies and procedures.	\$100 per statement up to a maximum per day of \$5,000 per day for each Business Day that Renewal, Redetermination or Open Enrollment notices are sent late.
2. Send Qualified Individual exception requests and supporting documents, Encounter logs and Encounter transcripts to the beWellnm, 70% within three (3) Business Days of receipt of the Qualified Individual written Exception request and 100% within four (4) Business Days of receipt of the Qualified Individual written Exception request.	\$1,000 when monthly average falls below 70% within 3 Business Days or 100% within 4 Business Days.
3. Meet the following service levels for Reports: Daily reports are due to beWellnm by 12pm the following Business Day. Weekly reports are due to the beWellnm by the second (2nd) Business Day following the end of the reporting period. Financial Monthly reports are due to the beWellnm by third (3 <sup>rd</sup> ) Business Day following the end of the reporting period with the exception of the disenrollment for non -payment of premium notice report, which is due on the first (1st) Business Day of the month following the end of the month. Quarterly reports are due by the fifteenth (15th) Business Day following the end of the reporting period. Semi-annual reports are due by the twentieth (20th) Business Day of the end of the reporting period. Annual reports are due by the twenty-fifth (25th) Business Day following the end of the reporting period.	\$200 for each Business Day beyond the due dates for each listed report.
4. Provide accurate reports. If the beWellnm identifies a substantive problem (i.e. such report contains incorrect data or is not presented in a mutually agreeable format) with the content of any report delivered by the Contractor resulting in the report needing to be regenerated, the Contractor must produce a corrected report within one (1) Business Day.	\$100 for each additional Business Day the corrected report is delivered within one Business Day.

<b>6. Service Level Agreement – Noticing, Reportings, Financial Operations</b>	
<b>Key Performance Indicator</b>	<b>Guarantee Amount</b>
5. Meet the following service levels for incident and management reporting: Provide incident and management reports using a beWellnm defined template no later than 5:00 p.m. of the day on which the Contractor discovers any problem, which may jeopardize the success or timely completion of any of its responsibilities under the Agreement, if the incident is identified prior to 4:30 p.m. on any Business Day, and no later than 9:30 a.m. on the next Business Day if the incident is identified after 4:30 p.m. All incidents that are not fully resolved in one (1) Business Day are supplemented with email updates every Business Day by 5:00 p.m. during incident remediation. Provide the final incident report to beWellnm within two (2) Business Days of resolving the issue that caused the incident. Provide written management reports in response to particular issues within two (2) Business Days of beWellnm request.	\$100 for each instance of violating incident report timing parameters. If in the course of investigating the incident, it is determined that the Contractor did not inform the beWellnm in a timely manner, the Contractor shall incur an additional penalty of \$500 per incident
6. Perform monthly reconciliation of the beWellnm Bank Account. The reconciliation and all documentation in support of this reconciliation will be submitted to the beWellnm no later than thirty (30) Calendar Days following month end.	\$1,000 per Business Day for each Business Day beyond the due date
7. Monthly billing must occur on schedule as defined by beWellnm and Contractor.	\$1,000 per day beyond scheduled date, capped at \$5,000 per month.
8. Statements must accurately reflect amount owed per subscriber's plan selection for self and all dependents. The subsidy must also be calculated correctly and deducted from the premium due.	\$50 per inaccurate statement, capped at \$1,000 per month.
9. Monthly Delinquency and Termination notices must occur on schedule for both subsidized and non-subsidized individuals as defined by beWellnm.	\$100 per statement up to a maximum per day of \$2,500 for each Business Day that Notices are sent late.
10. Premium Remittance and Reporting (EDI 820) must occur on schedule as defined by beWellnm and Contractor.	\$1,000 per day beyond scheduled date, capped at \$5,000 per month
11. Carrier 820 discrepancies must be resolved within 3 days of carrier notification of discrepancy	\$100 per discrepancy, capped at \$1,000 per 820 process
12. Refunds for eligible accounts must be defined and processed on a weekly basis as defined by beWellnm and Contractor	\$500 per day beyond scheduled date, capped at \$2,500 per month

6. Service Level Agreement – Noticing, Reportings, Financial Operations	
Key Performance Indicator	Guarantee Amount
<p>13. Month-end financial reports must report accurately on the ending Accounts Receivable due from subscribers, Accounts Payable due to carriers, and Premium Register, which lists all premiums billed in the current month billing cycle. These reports must reconcile to the cash balance in the beWellnm bank account. Financial reports must be available by the third business day following the end of the month.</p> <p>Daily Financial Management reports must include a daily deposit detail breakdown, listing all payments by subscriber.</p> <p>All reports must indicate the carrier that is associated with the subscriber's invoice amount.</p>	<p>\$200 for each Business Day beyond the due dates for each listed reports; \$500 for any identified inaccuracies up to a total of \$2,500 per month.</p>

7. Service Level Agreement – Privacy and Security	
Key Performance Indicator	Guarantee Amount
1. Failure to notify beWellnm in a timely manner (within 24 hours) of privacy or security incident.	\$1,000 per day beyond notification requirements.
2. Failure to complete and submit to beWellnm required federal documents (MARS-E 2.0) in a timely manner to ensure initial ATC.	\$1,000 per day beyond the required due date for the initial filing and any subsequent years filing.
3. Failure to remediate security or privacy risk within agreed upon POAM or Corrective Action Plan.	\$1,000 per day delayed in correcting or remediating systems responsible for incident
4. Privacy or Security breach caused or failed to be prevented by the bidder that impacts beWellnm customers	As necessary, HIPAA privacy or security penalties, as relevant.