

**AGREEMENT BETWEEN
THE
NEW MEXICO HEALTH INSURANCE EXCHANGE
AND
HEALTH MANAGEMENT ASSOCIATES, INC.**

THIS AGREEMENT, referred to hereinafter as "Agreement," is made and entered into by and between the **New Mexico Health Insurance Exchange**, hereinafter referred to as "NMHIX" or "beWellnm," and **Health Management Associates, Inc.**, hereinafter referred to as the "Contractor," and is effective as of January 1, 2019. This Agreement is the result of NMHIX Procurement RFP #2018-007.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work

A. The Contractor shall perform all services detailed in Exhibit A, Scope of Work, which is drawn from Contractor's Proposal to provide Independent Validation & Verification services.

B. In addition to any other reporting provisions required by this Agreement or by law, Contractor shall report to the NMHIX monthly, or according to a different schedule as mutually established by the NMHIX and Contractor, regarding Contractor's performance and fulfillment of its obligations under this Agreement.

2. Deliverables and Consideration

A. NMHIX shall pay to the Contractor in full payment for services satisfactorily performed, all allowable expenses, and applicable gross receipts tax an amount not to exceed **\$1,750,000**, as further described in Exhibit A. Expenses must be approved by this Agreement or in writing by NMHIX. The New Mexico gross receipts tax, if applicable, levied on the amounts payable under this Agreement may be billed to NMHIX by the Contractor. The Contractor shall be responsible for payment of any tax liability to the appropriate taxing authority. Travel expenses will be reimbursed in accordance with NMHIX's travel reimbursement policy.

B. The amount payable under this Agreement is a maximum and not a guarantee that the work assigned to be performed by the Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to, and Contractor shall not be obligated to, continue to provide services beyond what Contractor has agreed to provide without compensation when the total compensation amount is reached. The Contractor is responsible for notifying NMHIX before the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid in excess of the total compensation amount without this Agreement being amended in writing prior to providing services or incurring expenses in excess of the total compensation amount.

C. All payments are subject to availability of funds pursuant to Paragraph 5, Funding, set forth below, and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work.

D. All invoices, including a detailed statement accounting for all services performed and any expenses, **MUST BE** received by NMHIX no later than forty-five (45) business days after each calendar month in which services were performed or expenses incurred. **Failure to timely submit an invoice shall be a material breach of this Agreement. If the Contractor fails to invoice NMHIX for services**

performed and expenses incurred in one calendar year by January 31 of the following calendar year, the Contractor will have waived all right to payment for the services performed and expenses incurred in the previous calendar year and expressly agrees that NMHIX shall have no obligation to pay for such services and expenses.

3. Term

This Agreement shall terminate on December 31, 2021, unless terminated pursuant to Paragraph 4, Termination, or Paragraph 5, funding. This Agreement may be extended for an additional term or terms by mutual agreement of the parties.

4. Termination

A. This Agreement may be terminated by the NMHIX, at its discretion and at any time for any reason, upon written notice delivered to the Contractor thirty (30) days prior to the intended date of termination. This Agreement may be terminated by the Contractor, at its discretion and at any time for any reason, upon written notice delivered to the NMHIX thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, NMHIX's sole liability upon such termination shall be to pay for acceptable work performed prior to the notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect any party's obligations under this Agreement prior to termination. The Contractor shall submit an invoice for all completed work within thirty (30) days of the effective date of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (1) if the Contractor becomes unable to perform the services contracted for, as reasonably determined by NMHIX, (2) if the Contractor or any of its officers, employees, or agents is indicted for fraud, embezzlement, or other crime due to misuse of public funds, or (3) upon the occurrence of any event that results in a transfer of control, ownership, or the power to direct the management and policies of the Contractor, including by merger, consolidation, sale, or otherwise.

B. In the event of a material default or breach of this Agreement by Contractor, NMHIX shall notify Contractor of such material default or breach and Contractor shall have a period of 30 days, or a longer period if NMHIX and Contractor agree it is necessary, to cure such material breach or default. If Contractor is unable to cure the material default or breach within 30 days or the agreed upon period, NMHIX may notify Contractor of its intent to immediately terminate this Agreement. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE NMHIX'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

C. Immediately upon receipt of notice of termination of this Agreement, the Contractor shall: 1) not perform additional services without written approval of NMHIX; 2) comply with all directives issued by NMHIX in the notice of termination as to the performance of work under this Agreement; and 3) 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 such notice, the parties agree to negotiate in good faith a transition plan for the wind down of the services. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of NMHIX upon termination and shall be submitted to NMHIX as soon as practicable.

5. Funding

The terms of this Agreement are contingent upon (1) continued authorization of the NMHIX by the Legislature of New Mexico and (2) 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 regarding legislative authorization and funding shall be accepted by the Contractor and shall be final.

6. Status of the Contractor

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

7. Assignment

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

8. Subcontracting

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

9. 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.

10. Confidentiality

A. Any confidential information provided by NMHIX to Contractor or developed by Contractor in the performance of this Agreement shall be kept confidential, and shall not be made available to any individual or organization by Contractor without the prior written approval of NMHIX.

B. 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 personally identifiable information, federal tax information, or other private and confidential information. Contractor shall use or disclose such 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 further agrees that it is a condition of this Agreement that with regard to such information Contractor, and any subcontractors engaged by Contractor to perform services under this Agreement, shall comply with and impose privacy and security standards equal to or more stringent than the standards described in 45 C.F.R. 155.260(a), as those standards may be amended from time to time.

11. Product of Service

A. The Contractor hereby perpetually, irrevocably and unconditionally assigns, transfers, and conveys to NMHIX and its successors and assigns all of the Contractor's right, title, and interest in and to all tangible and intangible property created by the Contractor for the benefit of NMHIX pursuant to the terms of this Agreement (hereinafter, Assigned Property), including but not limited to the following: all copyrights in the Contractor's published and unpublished works of authorship, including without limitation audiovisual works, collective works, computer programs, software, hardware, compilations, databases, derivative works, literary works, maskworks, musical works, artistic works, and sound recordings; patents, inventions and discoveries, including without limitation articles of manufacture, formulae, designs, patterns, business methods, compositions of matter, improvements, machines, methods, and processes and new uses for any of the preceding items; words, names, symbols, devices, designs, and other designations, and combinations of the preceding, intended by NMHIX to serve as trademarks of NMHIX; and information that is not generally known or readily ascertainable through proper means, whether tangible or intangible, including without limitation algorithms, customer lists, campaigns, surveys, studies, forecasts, estimates, technical data, ideas, designs, formulas, know-how, methods, processes, programs, prototypes, systems, and techniques.

B. The Contractor shall deliver to NMHIX all Assigned Property in all forms requested by NMHIX.

12. Conflict of Interest; Governmental Conduct Act

A. The Contractor represents that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. NMHIX acknowledges and understands that Contractor often serves multiple clients within a certain industry or market, including those with potentially opposing interests, and Contractor's relationship with NMHIX will not be an exclusive relationship. Accordingly, Contractor may have served, may currently be serving or may in the future serve other companies whose interests may be adverse to NMHIX. In all such situations, Contractor is committed to maintaining the confidentiality of each client's information, and ensuring that NMHIX interests, proprietary and otherwise are protected. To that end, Contractor strictly adheres to its Policy and Guidelines Related to Conflicts of Interest and Proprietary Information, which contains nondisclosure procedures (such as firewall protocols and other safeguards) for the purpose of maintaining each client's confidential information and ensuring that your interests are protected.

B. The Contractor further represents 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, and Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents that:

1) in accordance with Section 10-16-4.3 NMSA 1978, the 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;

2) this Agreement complies with Section 10-16-7(A) NMSA 1978 because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of NMHIX; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of 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;

3) in accordance with Section 10-16-8(A) NMSA 1978, (i) the 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.

4) this Agreement complies with Section 10-16-9(A) NMSA 1978 because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by 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;

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

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

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

D. The Contractor shall provide immediate written notice to NMHIX if, at any time during the term of this Agreement, the Contractor becomes aware of circumstances that suggest a potential conflict of interest or the appearance of impropriety.

13. Amendment

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

14. Merger

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

15. Penalties for Violation of Law

The New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kickbacks.

16. Non-Discrimination and Equal Opportunity Compliance

The 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. Applicable Law; Dispute Resolution

A. **Applicable law.** The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions.

B. **Dispute resolution.** Parties to this Agreement shall utilize methods of alternative dispute resolution to resolve disputes arising under this Agreement. NMHIX and Contractor agree to resolve disputes first through good faith negotiation, and if unsuccessful, through mediation and/or arbitration. No dispute arising under or relating to this Agreement may be brought in a court of law. The process for alternative dispute resolution is as follows:

1) **Negotiation.** The parties are encouraged to resolve disputes through negotiation prior to mediation or arbitration. In the event of any dispute, claim, question, or disagreement arising from or relating to a contract or the breach thereof, the parties shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, NMHIX and Contractor shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of 30 days, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be mediated or finally settled by arbitration administered by the American Arbitration Association (AAA) in accordance with the provisions of its Commercial Arbitration Rules.

2) **Mediation.** If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties may first try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures. Parties may agree upon a mediator and the terms of the mediation, or may use an AAA administrator to assist the parties regarding selection of the mediator, scheduling, pre-mediation information exchange and attendance of appropriate parties at the mediation conference. The mediation shall be scheduled within 30 days of notice to the other party that one party seeks to mediate the dispute.

3) **Arbitration.** If negotiation and mediation fail to resolve the dispute, or the time frames establish for negotiation or mediation pass, a controversy or claim arising out of this Agreement, or the breach of this Agreement, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

4) Time periods. The time periods established in this Paragraph 17 may be amended by mutual agreement of the parties.

18. Workers Compensation

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

19. Records and Financial Audit

A. The Contractor shall maintain detailed time and expenditure records, if any, 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 completion of this Agreement. The records, if any, shall be subject to inspection by the NMHIX, and may be disclosed by the NMHIX to third parties as required or allowed by law.

B. 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.

20. Indemnification

A. General Indemnification. The Contractor shall defend, indemnify and hold harmless NMHIX, its Board, employees, officers and agents from all third party actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which are caused by the negligent act or negligent failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, to the extent resulting in injury or damage to persons or personal property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor for which Contractor is obligated to indemnify NHMIX, the 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.

B. Indemnification for Professional Acts, Errors, or Omissions. Except for professional acts, errors or omissions that are the result of established gross negligence or willful or wanton conduct on the part of the Contractor or its employees, agents, representatives or subcontractors, the General Indemnification shall not apply to professional acts, errors or omission unless covered by Contractor's Professional Liability insurance.

21. Invalid Term or Condition

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

22. Enforcement of Agreement

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

23. Notices

Any notice required to be given to any party by this Agreement shall be in writing and shall be delivered in person, by courier service, nationally recognized overnight express common carrier or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To NMHIX:
Cheryl Gardner
CEO, NMHIX
New Mexico Health Insurance Exchange
7601 Jefferson St. NE Suite 160
Albuquerque, NM 87109

To Contractor:
Health Management Associates, Inc.
Jeffrey M. DeVries
Contracts Director
120 N. Washington Square, Suite 705
Lansing, MI 48933

24. Authority

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

25. Debarment and Suspension

A. Consistent with either 7 C.F.R. Part 3017 or 45 C.F.R. Part 76, as applicable, and as a separate and independent requirement of this Agreement the Contractor certifies by signing this Agreement, that it and its principals, to the best of its knowledge and belief: (1) are not debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency; (2) have not, within a three-year period preceding the effective date of this Agreement, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; (3) have not been indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with, commission of any of the offenses enumerated above in this Paragraph 25(A); (4) have not, within a three-year period preceding the effective date of this Agreement, had one or more public agreements or transactions (Federal, State or local) terminated for cause or default; and (5) have not been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a-7.

B. The Contractor's certification in Paragraph 25(A), above, is a material representation of fact upon which NMHIX relied when this Agreement was entered into by the parties. The Contractor's certification in Paragraph 25(A), above, shall be a continuing term or condition of this Agreement. As such at all times during the performance of this Agreement, the Contractor must be capable of making the certification required in Paragraph 25(A), above, as if on the date of making such new certification the Contractor was then executing this Agreement for the first time. Accordingly, the following requirements shall be read so as to apply to the original certification of the Contractor in Paragraph 25(A), above, or to any new certification the Contractor is required to be capable of making as stated in the preceding sentence:

(1) The Contractor shall provide immediate written notice to NMHIX if, at any time during the term of this Agreement, the Contractor learns that its certification in Paragraph 25(A), above, was erroneous on the effective date of this Agreement or has become erroneous by reason of new or changed circumstances.

(2) If it is later determined that the Contractor's certification in Paragraph 25(A), above, was erroneous on the effective date of this Agreement or has become erroneous by reason of new or changed circumstances, in addition to other remedies available to NMHIX, NMHIX may terminate the Agreement.

C. The Contractor shall require each proposed first-tier subcontractor whose subcontract will equal or exceed \$25,000 to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by any Federal department or agency. The Contractor shall make such disclosures available to 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.

26. Federal Tax Information

A. Performance. In performance of this Agreement, and to the extent required by law, Contractor agrees to comply with and assume responsibility for compliance by Contractor's employees with the following requirements:

- i. All work will be performed under the supervision of the Contractor or the Contractor's responsible employees.
- ii. Any Federal tax returns or return information (hereafter referred to as returns or return information) made available 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 or as otherwise required by law. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.
- iii. 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.
- iv. No work involving returns and return information furnished under this Agreement will be subcontracted without ensuring compliance with appropriate safeguards.

- v. The Contractor will maintain a list of employees authorized access. Such list will be provided to NMHIX and, upon request, to the IRS reviewing office.
- vi. NMHIX will have the right to void the Agreement if the Contractor fails to provide the safeguards described above.

B. Criminal/Civil Sanctions for Disclosure of Protected Information. In performance of this Agreement, and to the extent required by law, Contractor agrees to the following requirements:

- i. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person 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. Such person 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.
- ii. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person 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. Such person 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.
- iii. Additionally, it is incumbent upon the 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 5U.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.

- iv. Granting a Contractor 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. The 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. 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, the Contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements

27. Force Majeure

No party shall be deemed in default of, nor shall any party be liable for any damages suffered or costs incurred by another party arising out of any cessation, interruption, delay or failure to perform its obligations under this Agreement if such cessation, interruption, delay or failure results from causes beyond the party's reasonable control, including, without limitation, earthquake, flood, storm or other natural disaster, act of God, acts of war, epidemics, acts of government, power failures, malicious network attacks, nuclear accidents, and acts of terrorism.

28. Insurance

A. The 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, the NMHIX reserves the right to request, and the Contractor shall submit, copies of any policy upon reasonable request by NMHIX; (b) obtained NMHIX approval of each company or companies as required below; and (c) 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, the Contractor shall not modify any policy or endorsement thereto which increases NMHIX's exposure to loss for the duration of this Agreement.

B. Types of Insurance. At all times during the term of this Agreement, the Contractor shall maintain insurance coverage as follows:

(1) 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	\$2,000,000
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(other than Products/Completed Operation)

Products/Completed Operations Aggregate Limit	\$2,000,000
Personal Injury Limit	\$2,000,000
Each Occurrence	\$1,000,000

(2) Automobile Liability. For all of the Contractor's automobiles including owned, hired and non-owned automobiles, the 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 \$1 million per accident. An insurance certificate shall be submitted to NMHIX that reflects coverage for any automobile.

(3) Professional Liability. For the Contractor and all of the Contractor's employees who are to perform professional services under this Agreement, the 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 \$1,000,000 per claim and \$1,000,000 annual aggregate. The 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, the Contractors policy shall not contain exclusions for those activities.

(4) Workers' Compensation. For all of the Contractor's employees who are subject to this Agreement and to the extent required by any applicable state or federal law, the Contractor shall keep in full force and effect, a Workers' Compensation policy & Employers Liability policy. That policy shall provide

Employers Liability Limits as follows:

Bodily Injury by Accident	\$500,000	Each Accident
Bodily Injury by Disease	\$500,000	Each Employee
Bodily Injury by Disease	\$500,000	Policy Limit

The 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.

C. Cancellation. Except as provided for under New Mexico law, all policies of insurance required hereunder must provide that the 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 the Contractors' insurance carriers will not agree to this notice requirement, the 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.

D. Insurer Requirements. All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have rated "A-" and "V" or better by the A.M. Best Key Rating Guide, that are authorized to do business in the State of New Mexico, and that have been approved by the NMHIX. The 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.

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

F. 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.

G. 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.

H. The 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.

I. Before performing any Professional Services, the Contractor shall provide the NMHIX with all Certificates of Insurance accompanied with all endorsements.

J. The NMHIX reserves the right, from time to time, to review the Contractor's insurance coverage, limits, and deductible and self-insured retentions to determine if they are acceptable to the NMHIX. The NMHIX will reimburse the 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.

K. The Contractor may obtain additional insurance not required by this Agreement.

29. New Mexico Tort Claims Act

Any liability incurred by NMHIX in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, *et seq.*, as amended. NMHIX and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense, and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

30. Communications

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.

31. Compliance with Law

The Contractor agrees to comply with all laws and regulations that are applicable to this Agreement and the Contractor's Scope of Work now enacted or that become effective during the term of this Agreement, including but not limited to, laws and regulations enacted pursuant to the Affordable Health Care Act.

32. Counterparts

This Agreement may be executed in counterparts, each of which shall constitute an original.

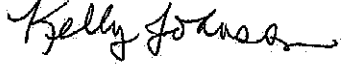
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the signatures below.



Cheryl Gardner, NMHIX CEO

12/14/2018

Date



Contractor

12/14/2018

Date

EXHIBIT A
SCOPE OF WORK

Overview

On September 21, 2018 the beWellnm Board of Directors voted to transition to a fully State-Based Exchange (SBM) model. It is anticipated that the new individual exchange technology will be ready for launch in late 2020 for plans effective in January of 2021. Implementation of this new system will require use of a professional Independent Verification & Validation and Program Oversight (IV&V) vendor.

The Offeror will provide overall IV&V and Program Oversight services to NMHIX and affiliated partners for the implementation of a new individual technology solution. Offeror will also assist in the development of test cases and monitoring of User Acceptance Testing (UAT). The Offeror will have excellent writing skills in the performance of this task

Scope of Work

1.1 Work plan

The work plan provided below was developed in response to the RFP assumes the following scope of our engagement as IV&V/program oversight contractor:

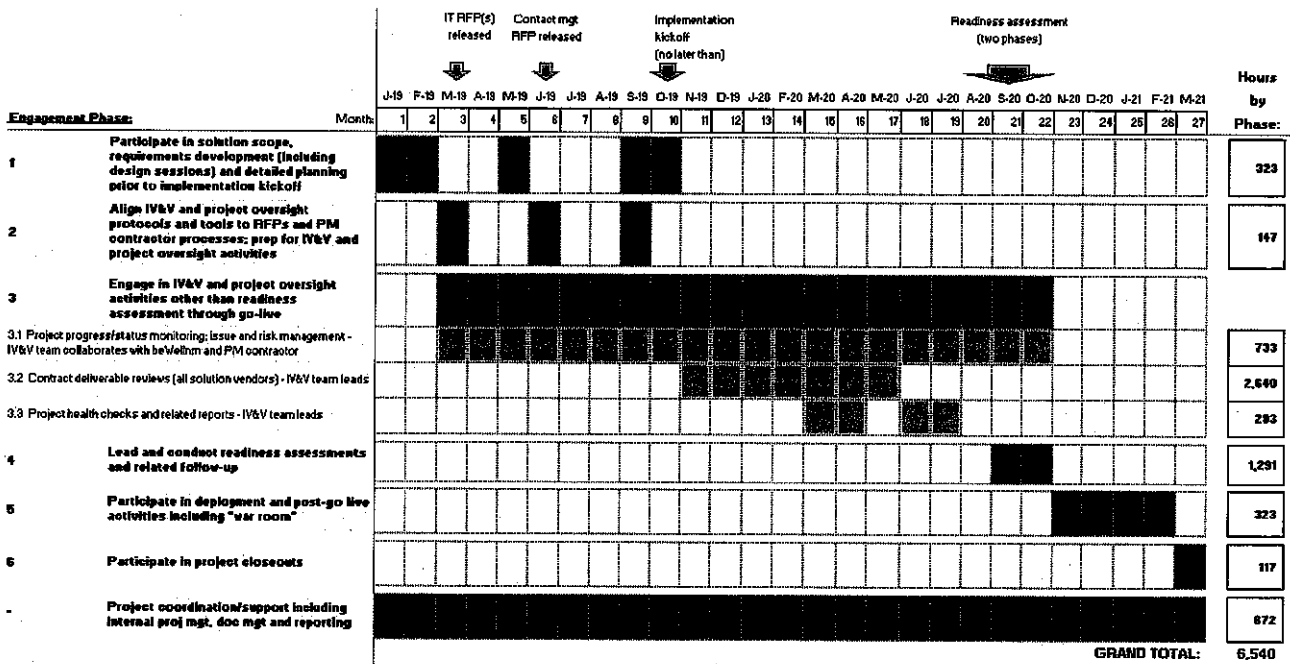
- IV&V team participation in developing RFP scopes of work in partnership with beWellnm and the selected project management (PMO) and procurement contractors. These activities will be critical to defining the sequencing and interdependencies of activities in which the IV&V team will be engaged; it will also inform the configuration of deliverable review and readiness assessment tools.
- IV&V team participation in project kickoff activities based on an integrated project schedule which will be maintained by the selected project management contractor and reviewed by the IV&V team for completeness and reasonableness.
- The following activities which map to the RFP's "pre-operational IV&V review" tasks:
 - IV&V team participation in project status and progress meetings and related issue identification, triaging, and resolution discussions.
 - IV&V team review of contract deliverables following the methodology outlined later in this section.
 - IV&V team participation in the development of test cases consistent with RFP requirements (the IV&V team has testing subject matter experts with SBM IT implementation experience), the monitoring of testing activities, the interpretation of results and identification and prioritization of corrective actions designed to address said results. Specifically, regarding test cases, the IV&V team will ensure the right mix of positive (designed to confirm that certain functionality works as intended) and negative (designed to generate error messages or trigger specific edits or exceptions) test cases and scenarios are built into test plans. Additionally, the IV&V team will contribute to the development of exit criteria that tests will need to meet.
- IV&V team completion of a two-phase readiness assessment of all project stakeholders – IT solution vendors, the contact management vendor, and beWellnm – in addition to two formal

project progress health checks which will be conducted prior to the readiness assessments. The two-phase readiness assessment maps to the RFP's "readiness review" task.

The IV&V team will participate in go-live activities, which we assume will include establishment of a "war room"/rapid response operation for timely identification and rapid resolution of any issues encountered during the ramp up to go-live and, subsequently, the transition to steady-state operations. After go-live, the IV&V team will participate in formal project closeout activities.

The work plan incorporates both the individual exchange technology platform and the contact center.

1.1.1 Work Plan, IV&V, and Program Oversight Activities



1.2 Approach

The HMA team will work closely with beWellnm and the selected PMO contractor to ensure project management processes and the requisite infrastructure are established prior to formally kicking off the implementation of the individual marketplace IT and BPO solutions. In this way, the solution vendors can be onboarded quickly and the parameters within which those contractors must operate will be established clearly upfront. The HMA team will work side-by-side with the beWellnm team to provide proactive advice on any aspect of the solution implementations which may be deviating from expectations and/or may create risk for beWellnm. In that capacity, following solution vendor selection, the IV&V team will participate in requirements elaboration and specifications development sessions and in project status and issue management meetings, as it has during the SHOP IT platform implementation.

Additionally, the HMA team will provide biweekly IV&V reports that indicate potential areas of concern as well as areas where we believe the solution vendors are performing as needed for the implementation to be successful (e.g., the implementation is completed on time, on or under budget, and with all desired functionality available and performing optimally at go-live). These reports will be integrated into the master project progress/status reports that will be produced by the PMO. This will facilitate assimilation of information and promote consistency in how project information is presented.

- **Phase I: Pre-Operational IV&V Review, including review of select deliverables** generated by the solution vendors in accordance with RFP and contract provisions.
- **Phase II: Operational Readiness IV&V Review, a structured, multi-phase readiness assessment** of solution vendors and beWellnm. Since this assessment is to encompass all impacted information systems and related business functions, it must include the individual marketplace IT and BPO solution vendors, HSD/Deloitte (in order to confirm required changes in the ASPEN system and ASPEN-beWellnm interfaces are verified), and beWellnm systems and processes. In our estimation, confirming beWellnm readiness is as important as confirming vendor readiness to ensure beWellnm is positioned to take on what will be a radical change in its business model.

Work Plan Description	Narrative Section
Align IV&V and project oversight protocols and tools to RFPs and PM contractor processes; prep for IV&V and project oversight activities	Phase 1B, Step 1
Lead and conduct readiness assessments and related follow-up	Phase 2, Step 1 through Phase 2, Step 3
Participate in project closeouts	Phase 2, Step 4

1.2.1 Phase IA: Vendor Procurement Development

HMA will participate in solicitation design sessions to develop the scopes of work for at least the individual exchange technology platform and the contact center.

1.2.2 Phase IB: Pre-Operational IV&V Review

STEP 1: PROJECT INITIATION

During project initiation, the IV&V team will work with beWellnm, the selected PMO, and the selected individual marketplace IT solution and contact center vendors to finalize a comprehensive plan for successfully implementing the individual exchange technology platform and the contact center. The IV&V team has several project plan development and optimization experts, all of whom contributed to the optimization of the implementation plans of beWellnm's Contact Center IT solution and our current SHOP platform IV&V project.

During the project initiation, HMA, in collaboration with the PMO, the technology vendor, and beWellnm, will establish a meeting cadence to review interim and final findings and provide updates to beWellnm staff. These meetings will occur both telephonically and in person. HMA will also create a deliverables schedule. HMA will work with the PMO to include the IV&V work plan in the overall implementation timeline. Based on these meetings, HMA will review current tools and align them to the specific implementation.

STEP 2: INTERVIEWS

In collaboration with beWellnm, HMA will identify key stakeholders to interview regarding the individual exchange platform readiness. We anticipate stakeholders will include beWellnm staff, HSD, CCIIO, the technology vendors, and the PMO. Interviews will inform how HSD and CCIIO will like to coordinate activities including how the system integrator will participate.

STEP 3: REVIEW AND ASSESSMENT OF DELIVERABLES (CONCURRENT WITH STEP 2)

After project initiation, the IV&V team will conduct the targeted assessment of contract deliverables from the individual exchange technology and other vendors as needed. Consistent with the SHOP technology platform implementation, these deliverables will include but not be limited to:

- functional, technical and interface specifications documents
- requirements traceability matrices
- plans for data migration and conversion
- plans for testing, training and solution maintenance and support post go-live
- if applicable, plans for the staggered deployment of select functionality

The review of vendor deliverables is a critical process in identifying issues and risks as early as possible for better resolution to meet regulatory and reporting requirements, ensure contractor compliance with beWellnm requirements and expectations, and meet all beWellnm's project objectives.

Preparation for deliverable review includes working with beWellnm staff to:

- **Catalog and prioritize** all project deliverables
- **Define and document** acceptance criteria for each deliverable focusing on deliverable completeness; internal consistency; and compliance with solution requirements, contract terms and conditions, beWellnm standards, and – as deemed applicable – federal requirements
- **Identify the appropriate internal stakeholders** who should review each deliverable to ensure beWellnm expectations are met and the proposed solutions or plans are aligned with the project goals and are based on reasonable and realistic assumptions.
- **Identify the individual** or individuals who are ultimately responsible for user acceptance specific to each deliverable

Review Process Overview

HMA will:

- create an entry in a deliverable review log which will be maintained by HMA
- complete a deliverable checklist for the artifact type

- complete a deliverable review worksheet which will outline specific findings, including recommended changes to address quality issues with the deliverable

Designated HMA team members will conduct the review of the deliverable applying appropriate standards and HMA's experience and expertise. The completed deliverable checklist and findings will be delivered to beWellnm, with a recommended disposition for the artifact:

- **Approve.** The deliverable is satisfactory as is and needs no updates.
- **Approve with Conditions/Comments.** The deliverable is acceptable in its current state, and work may continue for downstream deliverables that are dependent upon it; however, some quality updates are recommended and should be performed as soon as possible.
- **Reject.** The deliverable contains major flaws that require extensive correction before acceptance by beWellnm.

BeWellnm will review HMA recommendations, work with HMA to come to consensus on findings, respond to the vendor with the recommended action (the deliverable is approved, approved with conditions/comment, or rejected), and attach the findings to assist the vendor to improve deliverables where applicable.

Deliverable Review Log

HMA will maintain a Deliverable Review Log. This log records the time the deliverable was received by the HMA IV&V team, which starts the clock on the team's review period. Review duration targets will be identified during the project startup phase, and HMA will measure our team's performance in meeting these targets. The log also records the time the completed review artifacts are delivered to the state. The IV&V team will also record the number of high, medium, and low impact findings during the review. The deliverable review log will be available to beWellnm personnel at any time.

Deliverable Checklist

HMA's process includes core checklists based on templates used effectively on other projects. These checklists are informed by contract requirements, federal regulations and sub-regulatory guidance, and what are generally recognized as best practices from authoritative bodies such as the American National Standards Institute (ANSI), the Project Management Institute (PMI), and the CMMI Institute.

Deliverable Findings

HMA will create a worksheet for each reviewed deliverable. The worksheet will document in detail all quality findings identified by the reviewer. The columns in the worksheet include:

- comment number – tracks the comment in communications and vendor responses
- artifact area – ties to the artifact's document section, or for deliverables with multiple documents, the document name and section
- finding – a detailed description of the quality defect
- recommendation – actionable advice to address the quality defect
- severity – high, medium, or low. This classifies the defect and will drive the HMA recommendation for the state's deliverable approval
- contractor Action – fixed or disputed. The vendor reviews the findings and marks it "fixed" when they have fully addressed the defect. If the vendor disagrees with the finding, they may mark it "disputed." In this case, an explanation should be provided in the Vendor Response section
- contractor Response – a detailed description of how the defect was resolved. If the finding is disputed, this column contains information about why the finding is disputed, along with any evidence the vendor might supply support their position

Severities in deliverables will be rated high, medium, or low based on the following taxonomy:

- A **high impact** finding is a show-stopping defect in the deliverable. High impact findings will be accompanied by a recommendation to reject the deliverable until the defect can be resolved.

- A **medium impact** finding is a serious defect which should be resolved, with the analyst believing this can be done while work continues. Medium impact defects should be reviewed with the vendor, so they are not repeated, and they should be confirmed resolved as soon as possible, although the deliverable may still be approved.
- A **low impact** finding is a quality problem that should be corrected but would not impact the outcome of the project if the defect remained. Low impact findings might include formatting adjustments or missing document version information.

Deliverable Repository

To facilitate deliverable review and provide transparency into the process, HMA proposes the establishment of a deliverable repository embedded within the repository used to manage project documents; ShareFile has been employed in this manner for the SHOP IT platform implementation.

The following metadata will be applied to each deliverable:

- deliverable reference ID
- deliverable title
- submitting vendor
- vendor point person (for the particular deliverable)
- due date
- version number (if multiple versions of the deliverable are submitted)
- date received (this may be multiple dates if multiple versions of the deliverable are submitted)
- date comments/feedback provided (this may be multiple dates if multiple versions of the deliverable are submitted)
- date accepted

The repository will be built following a relational model such that for each deliverable the HMA/beWellnm teams can set and capture the following:

- acceptance criteria
- stakeholders (review team)
- individual(s) for formal deliverable acceptance
- stakeholder comments/feedback
- HMA comments/feedback
- deliverable status

HMA will work with the solution vendors to ensure a deliverable submission and review schedule is understood and agreed to, coordinate review and feedback, and shepherd deliverables through the review process.

STEP 4: PRE-OPERATIONAL REVIEW REPORT

HMA will conduct two formal project progress “health checks” prior to the more comprehensive readiness assessments. These “health checks” are consistent with the “gate review” process that CMS has implemented for large-scale IT projects and is designed to address major project issues and risks as proactively as possible. HMA will produce reports specific to each vendor following these health checks because the purpose of these health checks is not to place any vendor on a corrective action plan, rather to proactively identify and attend to issues and risks. HMA will conduct these health checks in March/April and July/August of 2020, unless otherwise specified.

1.2.3 Phase II: Operational Readiness IV&V Review

STEP 1: DEFINING ASSESSMENT SCOPE

The readiness assessment will be based on the requirements for both IT functionality and business process supports outlined in the vendors' RFP responses and, subsequently, in specifications documents and requirements traceability matrices produced by contracted vendors and reviewed by the IV&V team.

STEP 2: CONDUCTING THE READINESS ASSESSMENT

Readiness Assessment Tool

Prior to conducting the readiness assessment and working off the toolset we employed during the SHOP IT platform implementation, HMA will configure individual assessment tools to capture all functional, technical, usability and reporting requirements, as well as minimum criteria that the various individual marketplace solutions – IT and contact center – must meet to be deemed ready. Each assessment tool is already designed to be used by reviewers to complete assessments in real time. HMA will provide the configured tools to beWellnm and, based on beWellnm feedback, revise them accordingly. Additionally, in the interest of full disclosure, we will share the tools with the solution vendors.

STEP 3: FINAL REPORT

As indicated in the RFP, the IV&V team will put together a final report which will be comprised mainly of a synthesized compilation of the IV&V team's work throughout the course of the projects. The primary purpose of this report is to memorialize the IV&V team's work and to advise beWellnm leadership on any outstanding issues that may impact the performance of the individual marketplace IT solution and contact center.

STEP 4: GO-LIVE AND POST GO-LIVE ACTIVITIES

The IV&V team will participate in go-live activities, which we assume include establishment of a "war room"/rapid response operation for timely identification and rapid resolution of any issues encountered during the ramp up to go-live and, subsequently, the transition to steady-state operations. After go-live, the IV&V team will participate in formal project closeout activities.

Fees

HMA will provide the services described above on a time-and-materials basis. A Not To Exceed amount of \$1,750,000 shall be established as set forth in the Agreement above which includes payment for services, all out-of-pocket expenses, and Gross Receipts Tax over the entire Term of the Agreement. Professional hourly rates and travel time will be billed as indicated in the table below.

Payment shall be made only for services actually performed and approved expenses, after receipt and approval by NMHIX of a detailed invoice, which shall include sufficient information to enable the NMHIX to verify all work performed and expenses incurred.

Professional Hourly Rates

Title	2019		2020		2021	
	Hourly Rate	Travel Rates	Hourly Rate	Travel Rates	Hourly Rate	Travel Rates
Principal	\$328.00	\$164.00	\$337.84	\$168.92	\$347.98	\$173.99
Senior Consultant	\$280.00	\$140.00	\$288.40	\$144.20	\$342.99	\$171.50

Consultant	\$184.00	\$92.00	\$189.52	\$94.76	\$297.05	\$148.53
Subcontractor	\$320.00	\$160.00	\$333.00	\$166.50	\$342.99	\$171.50

