



THE NEW MEXICO HEALTH INSURANCE EXCHANGE

REQUEST FOR PROPOSALS FOR

Professional Legal Services

RFP No. 2020-006

Request for Proposals Release Date: February 21, 2020

Proposal Due Date: March 13, 2020, 4:00 PM MST

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The purpose of this Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiations for professional legal services. The selected vendor (“Contractor”) will be responsible for the interpretation of federal and state statutes relevant to the New Mexico Health Insurance Exchange (the “Exchange”), including the New Mexico Insurance Code and the Patient Protection and Affordable Care Act (“the Affordable Care Act”). Legal services will also include advice and counsel to the Exchange and its Board of Directors regarding contract negotiations, programs and policies, and state laws applicable to public and quasi-governmental entities.

Qualified bidders (“Offerors”) should be familiar with the Affordable Care Act, the New Mexico Insurance Code, and other federal and state laws and regulations applicable to the Exchange. Offerors should have extensive experience with New Mexico statutes and regulations applicable to the Exchange and the Board of Directors, including (but not limited to) the Governmental Conduct Act, the Whistleblower Protection Act and the Procurement Code. A license to practice law in the State of New Mexico is required. Legal malpractice insurance is required and must be demonstrated through evidence of coverage.

B. BACKGROUND INFORMATION

The New Mexico Health Insurance Exchange (the “Exchange”), also known as beWellnm or NMHIX, is New Mexico’s health insurance marketplace. The Exchange was created in 2013 with the enactment of SB 221, the “New Mexico Health Insurance Exchange Act” (the “Act”, NMSA 1978, § 59A-23F). The Act established the Exchange as a non-profit public corporation. However, the Exchange is a governmental entity for purposes of the Governmental Conduct Act, the Gift Act, the Sunshine Portal Transparency Act, the Whistleblower Protection Act, the Procurement Code and the Tort Claims Act. The Exchange is governed by a 13-member Board of Directors (“Board”).

The mission of the Exchange is to promote efforts to educate and enroll New Mexicans in affordable health insurance coverage that promotes better access to timely, high quality health care. Its vision is to achieve a healthier New Mexico through access to affordable health insurance.

The Exchange currently operates as a State-Based Marketplace utilizing the Federal Platform (SBM-FP). As an SBM-FP, the Exchange conducts outreach and education, operates a call center, and runs the Small Business Health Options (SHOP) program, which opened in 2014. The New Mexico Office of Superintendent handles all plan management functions for the Exchange. In September 2018, due primarily to an inflexible system, rising costs with forecasted increases for leasing healthcare.gov, and limited access to state-level data, the Board elected to transition to a fully State-Based Marketplace (SBM), to be operational during the open enrollment period in 2021 for plan year 2022.

C. SCOPE OF PROCUREMENT

This is an RFP for professional legal services, as further defined in the Scope of Work (Section IV(A)), at a fixed hourly rate. The initial contract term will begin on May 1, 2020, and will last for one (1) year, with an option to extend for additional terms, not to exceed four (4) years, at the mutual agreement of the parties.

D. PROCUREMENT MANAGER

1. Procurement Manager

The Procurement Manager for this RFP is:

Name: Aryn M. Fitzwater
Address: New Mexico Health Insurance Exchange
7601 Jefferson St. NE, Ste. 120, Albuquerque, NM 87109
Telephone: (505) 314-5215
Email: RFP@nmhix.com
**Please include "Legal Services RFP" in the subject of any emails.*

2. Communications

From the issue date of this RFP until the Evaluation Committee announces the contract award, all communications related to this RFP should be submitted, in writing, to the Procurement Manager. Offerors may contact ONLY the Procurement Manager regarding this procurement. Board members and other Evaluation Committee members do not have the authority to respond on behalf of the Exchange.

Protests of the solicitation or award must be delivered by mail to the Protest Manager. As a Protest Manager has been named in this RFP, pursuant to NMSA 1978, §13-1-172, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this RFP. Emailed protests will not be considered as properly submitted nor will protests delivered to the Procurement Manager be considered properly submitted.

E. DEFINITIONS

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

“**Agency**” means the State Purchasing Division of the General Services Department or that State Agency sponsoring the Procurement action.

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

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

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

“Confidential” means confidential financial information concerning offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act NMSA 1978 57-3-A-1 to 57-3A-7. See NMAC 1.4.1.45. As one example, no information that could be obtained from a source outside this request for proposals can be considered confidential information.

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

“Contractor” means any business having a contract with the Exchange.

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

“Electronic Version/Copy” means a digital form consisting of text, images or both readable on computers or other electronic devices that includes all content that the Original and Hard Copy proposals contain. The digital form may be submitted using a compact disc (cd) or USB flash drive. The electronic version/copy can NOT be emailed.

“Evaluation Committee” means a body appointed to perform the evaluation of Offerors’ proposals.

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

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

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

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

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

“Price Agreement” means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

“Procurement Manager” means the person or designee authorized by the Exchange to manage the procurement, and to enter into or administer contracts and make written determinations with respect thereto.

“Redacted” means a version/copy of the proposal with the information considered confidential as defined by NMAC 1.4.1.45 and defined herein and outlined in Section II(C)(8) of this RFP blacked out BUT NOT omitted or removed.

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

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

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

“Sealed” means, in terms of a non-electronic submission, that the proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The State reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the Procurement Manager. By submitting a proposal, the Offeror agrees to and concurs with this process and accepts the determination of the Procurement Manager in such cases.

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

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

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

“State Agency” means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. “State agency” includes the

purchasing division of the general services department and the state purchasing agent but does not include local public bodies.

“Unredacted” means a version/copy of the proposal containing all complete information including any that the Offeror would otherwise consider confidential, such copy for use only for the purposes of evaluation.

II. CONDITIONS GOVERNING THE PROCUREMENT

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

A. SEQUENCE OF EVENTS

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

Action	Responsible Party	Due Dates
1. Issue RFP	Exchange	Friday, February 21, 2020
2. Distribution List	Exchange	Monday, March 2, 2020
3. Deadline to submit Questions	Offerors	Monday, March 2, 2020
4. Response to Written Questions	Procurement Manager	Thursday, March 5, 2020
5. Proposals Due	Offerors	Friday, March 13, 2020, 4 PM
6. Proposal Evaluation and Selection of Finalists	Evaluation Committee	Monday, March 16, 2020 to Friday, March 20, 2020
7. Finalist Interviews (if applicable)	Finalist Offerors	Week of March 23, 2020
8. Contract Finalized	Exchange/Selected Offeror	No later than Friday, April 10, 2020
9. Award Issued	Exchange	No later than Friday, April 10, 2020
10. Protest Deadline	Exchange	15 days after award is issued

B. EXPLANATION OF EVENTS

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

1. Issuance of RFP

This RFP is being issued by the New Mexico Health Insurance Exchange on February 21, 2020.

2. Acknowledgement of Receipt

Offerors should hand deliver or return by registered or certified mail the "Request for Proposals Acknowledgement of Receipt Form," Appendix A, to have their organization placed on the procurement distribution list. The form should be signed by an authorized

representative of the Offeror organization, dated and returned to the Procurement Manager by 5:00 PM MST on March 2, 2020.

The procurement distribution list will be used for the distribution of written responses to questions and for additional communications related to the RFP. Failure to return the Acknowledgement of Receipt form shall constitute a presumption of receipt and rejection of the RFP, and the potential Offeror's organization name shall not appear on the distribution list.

3. Deadline to Submit Written Questions

Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP until 5:00 PM MST on March 2, 2020. Questions shall be addressed to the Procurement Manager, shall be clearly labeled and shall cite the section(s) in the RFP or other document which form the basis of the question.

4. Response to Written Questions

Written responses to written questions will be distributed as indicated in the Sequence of Events to all Offerors listed on the procurement distribution list. A copy will be sent via email to all Offerors that provide Acknowledgement of Receipt forms before the applicable deadline (see Section II(B)(2)) above).

5. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 4:00 PM MST ON FRIDAY, MARCH 13, 2020. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal. It is Offeror's responsibility to ensure that its proposal is received prior to the deadline. Postmarking by the due date will not substitute for actual receipt of the proposal.

Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I(D)(1). Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the Professional Legal Services RFP No. 2020-006. Proposals submitted solely by electronic means will not be accepted.

Pursuant to NMSA 1978, § 13-1-116, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this RFP. "Awarded" in this context means the final required state agency signature on the contract resulting from the procurement has been obtained.

6. Proposal Evaluation and Selection of Finalists

An Evaluation Committee will evaluate the proposals. This process will take place as indicated in the Sequence of Events, depending upon the number of proposals received. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without discussion. Discussions shall not be initiated by the Offerors. The Evaluation Committee will select the Finalist Offeror(s).

7. Finalist Interviews

Finalist Offerors may be required to participate in interviews or presentations, either telephonically or at a location to be determined, as per schedule Section II(A), Sequence of Events or as soon as possible after the Evaluation Committee has selected finalists. Whether or not interviews or presentations will be held is at the discretion of the Evaluation Committee. If the Evaluation Committee decides to hold interviews or presentations, the Procurement Manager will notify the finalist Offerors of this decision as soon as possible. Failure to comply with requests for discussions, additional information, interviews or presentations may result in rejection of the proposal.

8. Finalize Contractual Agreement

A Notice of Intent to Award will be sent to the Offeror whose proposal is the most advantageous to the Exchange. The Offeror shall promptly participate in negotiation and execution of the contractual agreement resulting from this RFP. The contract will be finalized with the most advantageous Offeror as per schedule Section II(A), Sequence of Events, or as soon thereafter as possible. This date is subject to change at the discretion of the Exchange. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, the Exchange reserves the right to finalize a contractual agreement with the next most advantageous Offeror without undertaking a new procurement process.

9. Contract Award

After review of the Evaluation Committee Report and after the contractual agreement has been signed, the Exchange Procurement office will award as per the schedule in Section II(A), Sequence of Events, or as soon as possible thereafter. This date is subject to change at the discretion of the Exchange.

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

10. Protest Deadline

Any protest must be timely and in conformance with NMSA 1978, § 13-1-172 and applicable procurement regulations. The fifteen (15) calendar day protest period shall begin on the day following the award of the contract and will end at 5:00 PM MST on the 15th day. Protests must be written and must include the name and address of the protestor and the RFP number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. The protest must be delivered by certified or registered mail to:

Protest Manager, RFP 2020-006
The New Mexico Health Insurance Exchange
7601 Jefferson St. NE, Ste. 120
Albuquerque, NM 87109

Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

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

2. Incurring Cost

Any cost incurred by the Offeror in preparation or transmittal of any proposal or material submitted in response to this RFP, and any costs related to finalist discussions or interviews, shall be borne solely by the Offeror.

3. Prime Contractor Responsibility

Any contract resulting from this RFP shall specify that the prime Contractor is solely responsible for fulfillment of all contractual requirements. The Exchange will make payments only to the prime Contractor.

4. Subcontractors/Consent

The Contractor will not subcontract any portion of the services to be performed under the contract without the prior express written approval of the Exchange. The Contractor will include all proposed subcontractors in its proposal. In the event the Exchange approves any subcontractor, the Contractor will remain fully responsible for complying with the duties and obligations under the contract.

Any use of subcontractors by the Contractor will not obligate the Exchange as a party to the subcontract, nor create any right, claim, or interest for the subcontractor against the Exchange, its agents, employees, representatives, or successors. The parties agree that there are no third-party beneficiaries, intended or otherwise, to the contract.

5. Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Amended proposals must be complete replacements of a previously submitted proposal and must be clearly identified as such in the transmittal letter. The Exchange will not merge, collate, or assemble proposal materials.

6. Offeror's Rights to Withdraw Proposal

Offerors may withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request addressed to the Procurement Manager and signed by the Offeror's duly authorized representative. The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

7. Proposal Offer Firm

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

8. Disclosure of Proposal Contents

- A. Proposals will be kept confidential until negotiations and the contract award are completed by the Exchange. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:
- B. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.
- C. Confidential data is restricted to:
 - 1. confidential financial information concerning the Offeror's organization; and
 - 2. data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978, § 57-3A-1 to 57-3A-7.

PLEASE NOTE: The price of products offered or the cost of services proposed **shall not be designated** as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the Exchange shall examine the Offeror's request and make a written determination that specifies which portions of the proposal should be disclosed.

Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

9. No Obligation

The Exchange reserves the right to reject any or all proposals received in response to this RFP at any time prior to the execution of the contract. Issuance of this RFP in no way constitutes a commitment by the Exchange to award a contract. No Offeror shall acquire any legal or equitable rights through this RFP or any action or inaction by the Exchange unless and until a contract has been fully executed by the successful Offeror and the Exchange.

10. Termination, Amendment or Withdrawal of RFP

This RFP may be canceled, amended or withdrawn at any time and for any reason. Any and all proposals may be rejected in whole or in part if the Exchange determines such action to be in its best interest. Amendments and withdrawals will be sent to the procurement distribution list.

11. Sufficient Funding

Any contract awarded as a result of this RFP is contingent upon approval by the Exchange's Board of Directors, the continued authorization of the Exchange by the Legislature of New Mexico and the ability of the Exchange to obtain necessary funds by assessments, grants, or other means. Such contract may be terminated by written notice to the Contractor if sufficient funding does not exist. The Exchange's decision as to whether sufficient funding and authorizations are available will be accepted by the Contractor as final.

12. Legal Review

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

13. Governing Law

This RFP and any contract resulting from this RFP shall be governed by the laws of the State of New Mexico, without regard to principles of conflicts of law. Any and all litigation or actions commenced in connection with this RFP or the resulting contract shall only be brought in a federal or state court of competent jurisdiction in the State of New Mexico.

14. Basis for Proposal

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

15. Contract Terms and Conditions

The contract between the Exchange and the Contractor will follow the format specified by the Exchange and contain the terms and conditions set forth in the Sample Contract, Appendix C. However, the Exchange reserves the right to negotiate provisions in addition to those contained in this RFP (and Sample Contract) with any Offeror. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal, will be incorporated into and become part of any resultant contract.

Offerors should note that the Sample Contract included in this RFP does not include Exhibit A (Scope of Work) or Exhibit B (Privacy and Security Standards). The Scope of Work in the contract resulting from this RFP will reflect the Scope of Work set forth in Section IV(A) of this RFP. Upon request, Exhibit B to the Sample Contract (Privacy and Security Standards) will be provided.

The Exchange discourages exceptions from the contract terms and conditions as set forth in the RFP Sample Contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Exchange (and its Evaluation Committee), the proposal appears to be conditioned on the exception, or correction of what is deemed to be a deficiency, or an unacceptable exception is proposed which would require a substantial proposal rewrite to correct.

Should an Offeror object to any of the terms and conditions as set forth in the RFP Sample Contract strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose **specific** alternative language. The Exchange may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of the RFP Sample Contract are not acceptable to the Exchange and will result in disqualification of the Offeror's proposal.

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

If an Offeror fails to propose any alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror), no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions during the procurement process is an **explicit agreement** by the Offeror that the contractual terms and conditions contained herein are **accepted** by the Offeror.

16. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the Exchange. See Section II(C)(15) for requirements.

17. Contract Deviations

Any additional terms and conditions which may be the subject of negotiation (such terms and conditions having been proposed during the RFP process prior to selection as successful Offeror) will be discussed only between the Exchange and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's proposal.

18. Offeror Qualifications

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

19. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

20. Change in Contractor Representatives

The Exchange reserves the right to require a change in Contractor representatives if the assigned representative(s) is (are) not, in the opinion of the Exchange, adequately meeting the needs of the Exchange.

21. Notice of Penalties

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

22. Exchange Rights

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

23. Right to Publish

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

24. Ownership of Proposals

All documents submitted in response to the RFP shall become property of the Exchange and shall not be returned to the Offeror.

25. Release of Claims

By submitting a proposal, the Offeror agrees that it waives and releases all claims or causes of action against the Exchange based on any misunderstanding concerning the information provided in this RFP or concerning the Exchange's failure, negligent or otherwise, to provide the Offeror with pertinent information in this RFP.

26. Confidentiality

Any confidential information provided to, or developed by, the Contractor in the performance of the contract resulting from this RFP shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Exchange.

The Contractor agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the Exchange's written permission.

The Exchange shall not disclose the content of any proposal to another Offeror during the evaluation and negotiation process.

Any proposal which contains information that the Offeror believes should remain confidential after the execution of a contract with the successful Offeror must be conspicuously marked by the Offeror on the outside as containing confidential information, and each page upon which confidential information appears must be conspicuously marked as containing confidential information. The Exchange will endeavor to respect the confidentiality of documents so designated by an Offeror, but may only do so within the scope of public records laws, including but not limited to the New Mexico Inspection of Public Records Act. The Exchange makes no promise to the Offeror with respect to the Exchange's ability to protect the confidentiality of the proposal.

27. Conflict of Interest

By submitting a proposal to this RFP, Offeror warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any matter or degree with the performance or services required under a contract resulting from this RFP. Offeror certifies that it is in compliance with the requirements of the Governmental Conduct Act, NMSA 1978, §§ 10-16-1 through 10-16-18, regarding contracting with a public officer or state employee or former state employee.

28. Electronic mail address required

Some of the communication regarding this procurement may be conducted by electronic mail (email). Offeror must have a valid email address to receive such correspondence (see also Section II(B)(4), Response to Written Questions).

29. Campaign Contribution Disclosure Form

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

30. Letter of Transmittal

Offeror's proposal must be accompanied by the Letter of Transmittal Form, Appendix D, which must be completed and signed by an individual authorized to obligate the Offeror. The letter of transmittal must:

1. Identify the submitting business entity.
2. Identify the name, title, telephone, and email address of the person authorized by the Offeror organization to contractually obligate the business entity providing the Offer.
3. Identify the name, title, telephone, and email address of the person authorized to negotiate the contract on behalf of the organization (if different than (2) above).
4. Identify the names, titles, telephone, and e-mail addresses of persons to be contacted for clarification/questions regarding proposal content.
5. Identify subcontractors (if any) anticipated to be utilized in the performance of any resultant contract award.
6. Describe the relationship with any other entity which will be used in the performance of this awarded contract.
7. Identify the following with a check mark and signature where required:
 - a. **Explicitly** indicate acceptance of the Conditions Governing the Procurement stated in Section II(C)(1);
 - b. **Explicitly** indicate acceptance of Section V of this RFP; and
 - c. Acknowledge receipt of any and all amendments to this RFP.
8. Be signed by the person identified in para 2 above.

31. Pay Equity Reporting Requirements

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

32. Disclosure Regarding Responsibility

- A. Any prospective Contractor and any of its principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:
 - 1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
 - 2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
 - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
 - b. violation of Federal or state antitrust statutes related to the submission of offers;
 - or

- c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
 3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
 4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
 - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
 - c. Have within a three-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)
- B. "Principal," for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- C. The Contractor shall provide immediate written notice to the Exchange or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
- D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.
- E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.
- F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any

government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the Exchange. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the Exchange may terminate the involved contract for cause. Still further the Exchange may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the Exchange.

33. New Mexico Preferences

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors must include a copy of their preference certificate with their proposal. Certificates for preferences must be obtained through the New Mexico Department of Taxation & Revenue <http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>.

A. New Mexico Business Preference

A copy of the certification must accompany your proposal.

B. New Mexico Resident Veterans Business Preference

A copy of the certification must accompany your proposal.

The Exchange may not award a business both a resident business preference and a resident veteran business preference.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit only one proposal in response to this RFP.

B. NUMBER OF COPIES

1. Number of Copies

Offerors shall submit five (5) hard copies of their proposal. Each copy of the proposal must be signed in ink by an authorized representative of the Offeror.

2. Format and Length

Proposals should be submitted with a single-spaced text in 12-point font with one-inch margins. Proposals should be spiral bound and should be less than fifteen (15) pages.

Offeror's proposal must be clearly labeled and numbered and indexed as outlined in Section III(C). Envelopes, packages or boxes containing the proposal must be clearly labeled and submitted in a sealed envelope, package or box. Any proposal that does not adhere to the requirements of this Section and Section III(C), Proposal Format and Organization, may be deemed non-responsive and rejected on that basis.

C. PROPOSAL FORMAT AND ORGANIZATION

Proposals must be organized and indexed in the following format and must contain, at a minimum, the following items, in the sequence indicated:

- A. Signed Letter of Transmittal
- B. Table of Contents
- C. Proposal Summary (Optional)
- D. Response to Contract Terms and Conditions
- E. Offeror's Additional Terms and Conditions
- F. Scope of Work
- G. Detailed Price Proposal
- H. Response to Technical Specifications
 1. Organizational Experience
 2. Organizational References
- I. Response to Business Specifications
 1. Financial Stability (financial information considered confidential should be placed in a separate binder marked "Confidential")
 2. Signed Campaign Contribution Form
 3. New Mexico Preferences (if applicable)
- J. Other Supporting Material (if applicable)

Within each section of the proposal, Offerors should address the items in the order indicated above. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of the proposal.

The proposal summary may be included by Offerors to provide the Evaluation Committee with an overview of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal.

IV. SPECIFICATIONS

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

A. DETAILED SCOPE OF WORK

Contractor shall perform general legal services at a fixed hourly rate at the request and direction of the Exchange Chief Executive Officer and Chairman of the Board of Directors. Anticipated services include advice and counsel on the New Mexico Health Insurance Code, the Affordable Care Act, and other federal and state laws as they pertain to the Exchange and Board; support in contract negotiations; attendance at Board meetings and certain committee meetings; and litigation support as needed.

Specific Duties:

1. Consult and advise the Exchange and Board on legal issues that affect the overall programs and policies of the Exchange and/or the Board; prepare formal and informal legal opinions; advise Exchange leadership and staff in the development, implementation and management of applicable programs and policies; provide legal advice on issues raised by outside constituencies, including state agencies; contract negotiations; analyze and respond to legal correspondence directed to the Exchange and/or the Board; litigation support as needed.
2. Consult with, advise, and provide legal guidance to Board management and Exchange management and staff related to statutory and regulatory requirements applicable to Board proceedings, deliberations and decisions, including (but not limited to) conflict of interest, public records, and open meetings laws.
3. Provide legal advice and support in contract negotiation and development for complex federal, state, and private program contracts, agreements or state plans and related amendments, or compliance audits, required by the federal or state legislation creating the New Mexico Health Insurance Exchange.

Knowledge of:

1. Relevant substantive and procedural areas of law that apply to the Exchange, the Board and other public entities (e.g., the New Mexico Insurance Code and related regulations, the Affordable Care Act, and due process, privacy, record retention and disclosure, procurement and open meeting laws).
2. Applicable rules of civil procedure, administrative process and procedure.
3. How to conduct legal analysis (e.g., issue-spotting, rule analysis, applying law to facts) to ensure relevant issues and information are identified and correlated with applicable law, and to aid in predicting the legal outcome.

4. Principles associated with the attorney-client relationship, especially as they apply to organizations and public entities.
5. Professional ethical rules as they relate to the practice of law and particularly the role of public and/or government attorneys.
6. Available research sources, both printed and electronic, to complete legal research, including what types of material they contain, where they are located, and their breadth, depth; and relative strengths and weaknesses (e.g., primary legal texts, secondary legal texts and electronic databases).
7. Proper spelling, grammar, punctuation, and sentence structure, to ensure that written materials prepared and reviewed are complete and free of errors.

B. PRICE PROPOSAL

Offerors must provide a detailed and complete price proposal setting for the hourly rate for each partner, associate and support staff that may be anticipated to perform work under the contract. Offeror must include an estimated percentage of the amount of work/services that will be performed by each position. The proposal must include all fees and charges for the provision of services. If applicable, please identify any costs or expenses, such as travel, for which you would expect reimbursement.

C. TECHNICAL SPECIFICATIONS

1. Organizational Experience

Offerors must:

- a) Provide a description of relevant experience with state or quasi-governmental entities, and experience related to state and federal law and regulations, including the Affordable Care Act. The experience of all proposed subcontractors must be described. The narrative **must** thoroughly describe how the Offeror has supplied expertise for similar services or contracts and must include the extent of Offeror's experience, expertise and knowledge as a provider of legal services. Relevant legal services provided to the private sector will also be considered.
- b) Offeror should provide a summary of its firm, including the location of the firm's offices, the year formed, the number of employees, and the ownership structure.
- c) Offeror should provide a list of personnel who will work on the Exchange account, detailing their education, training, years with the firm, work experience and the anticipated amount and/or portion of time each will devote to the Exchange account. Resumes should be submitted for key personnel and any other personnel the Offeror deems relevant, including subcontractors. Resumes may be attached as Appendix F.

2. Organizational References

Offerors should provide a minimum of three (3) references from similar services or contracts performed for private, state or large local government clients within the last three years. Members of the Exchange and its Board of Directors may not serve as organizational references for any Offeror. Offerors are required to submit the Organization Reference Questionnaire, Appendix F, to the business references they list. The business references must submit the Organization Reference Questionnaire directly to the Procurement Manager. It is the Offeror's responsibility to ensure the completed forms are received on or before March 13, 2020 for inclusion in the evaluation process.

Organizational References that are not received or are not complete may adversely affect the Offeror's score in the evaluation process. The Evaluation Committee may contact any or all business references for validation of information submitted. If this step is taken, the Procurement Manager and the Evaluation Committee must all be together on a conference call with the submitted reference so that the Procurement Manager and all members of the Evaluation Committee receive the same information. Additionally, the Exchange reserves the right to consider any and all information available to it (outside of the business reference information required herein), in its evaluation of Offeror responsibility per Section II(C)(18).

Offerors shall submit the following business reference information as part of the Offer:

- a) Client name;
- b) Project description;
- c) Project dates (starting and ending);
- d) Staff assigned to reference engagement that will be designated for work per this RFP; and
- e) Client project manager name, telephone number, fax number and e-mail address.

D. BUSINESS SPECIFICATIONS

1. Financial Stability

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

2. Letter of Transmittal Form

The Offeror's proposal **must** be accompanied by the Letter of Transmittal Form located in Appendix D. The form **must** be completed and must be signed by the person authorized to obligate the Offeror.

3. Campaign Contribution Disclosure Form

The Offeror must complete an unaltered Campaign Contribution Disclosure Form, Appendix B, and submit a signed copy with the Offeror's proposal. This must be accomplished whether or not an applicable contribution has been made.

4. Resident Business or Resident Veterans Preference

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors must include a copy of their preference certificate in this section.

E. DISCUSSIONS, INTERVIEWS OR ORAL PRESENTATIONS

If selected as a finalist, and at the option of the Exchange, Offerors agree to provide the Evaluation Committee the opportunity to interview proposed staff members identified by the Evaluation Committee. At the sole discretion of the Exchange and/or its Evaluation Committee, the Evaluation Committee may request a finalist to participate in oral interviews, discussions, or presentations prior to the selection of a Contractor as an opportunity for the Evaluation Committee to ask questions and seek clarifications, and at the sole cost of the Offeror. The Exchange may also accept proposals without such interviews, discussions, or presentations. The interview, discussion or presentation may occur telephonically, at the Exchange offices, via the Internet, or at another location as specified by the Exchange.

V. EVALUATION

A. EVALUATION POINT SUMMARY

The following is a summary of evaluation factors with point values assigned to each. These weighted factors will be used in the evaluation of Offeror proposals by sub-category.

Factors	Points Available
A. Scope of Work	30 points
B. Price Proposal	15 points
C. Technical Specifications	
1. Organizational Experience	40 points
2. Organizational References	15 points
D. Business Specifications	
1. Financial Stability	Pass/Fail
2. Letter of Transmittal	Pass/Fail
3. Signed Campaign Contribution Disclosure Form	Pass/Fail
TOTAL	100 points
E. Interviews or Oral Presentations (if applicable)	10 points
F. New Mexico Preference - Resident Vendor Points	5 points
New Mexico Preference - Resident Veterans Points	10 points

B. EVALUATION FACTORS

1. (A) Scope of Work

Points will be awarded based upon the Offeror's explanation and/or description of how the Offeror organization will meet the specific duties and knowledge requirements set forth in the Scope of Work. Offerors must address all items specifically identified in the Scope of Work (Section IV(A)).

2. (B) Price Proposal

Offerors must provide a detailed and complete price proposal setting for the hourly rate for each partner, associate and support staff that may be anticipated to perform work under the contract.

3. (C)(1) Organizational Qualifications and Experience

Points will be awarded based on the thoroughness and clarity of the response of the engagements cited and the perceived validity of the response.

4. (C)(2) Organizational References

Points will be awarded based upon an evaluation of the responses to a series of questions as per Appendix E. Points will be awarded for each individual response up to 1/3 of the total points for this category. Lack of a response will be awarded zero (0) points.

5. (D)(1) Financial Stability

Pass/Fail only. No points assigned.

6. (D)(2) Letter of Transmittal

Pass/Fail only. No points assigned.

7. (D)(3) Campaign Contribution Disclosure Form

Pass/Fail only. No points assigned.

8. (E) Interviews or Oral Presentations

If the Exchange requires Offerors to participate in interviews or oral presentations, Offerors may receive a maximum of 10 extra points based on the interview or oral presentation.

9. (F) New Mexico Preferences

Percentages will be determined based upon the point-based system outlined in NMSA 1978, § 13-1-21 (as amended).

A. New Mexico Business Preference

If the Offeror has provided a copy of their Preference Certificate, the Preference Points for a New Mexico Business is 5%.

B. New Mexico Resident Veterans Business Preference

If the Offeror has provided a copy of their Preference Certificate, the Preference Point is 10%.

C. EVALUATION PROCESS

1. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II(B)(6).

3. The Evaluation Committee may use other sources to perform the evaluation as specified in Section II(C)(18).
4. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value. The responsible Offeror whose proposal is most advantageous to the Exchange taking into consideration the evaluation factors in Section IV will be recommended for award (as specified in Section II(B)(6)). However, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDIX A

**REQUEST FOR PROPOSAL
ACKNOWLEDGEMENT OF RECEIPT FORM
Request for Proposals for Professional Legal Services
RFP No. 2020-006**

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

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than March 2, 2020. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the written responses to those questions as well as RFP amendments, if any are issued.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

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

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

Request for Proposals for Professional Legal Services; RFP No. 2020-006
Aryn Fitzwater, Procurement Manager
The New Mexico Health Insurance Exchange
7601 Jefferson St. NE, Ste. 120
Albuquerque, NM 87109
Email: RFP@nmhix.com

APPENDIX B

CAMPAIGN CONTRIBUTION DISCLOSURE FORM **Campaign Contribution Disclosure Form**

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

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

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

The following definitions apply:

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

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election

campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

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

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

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

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

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

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

—OR—

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

Signature

Date

Title (Position)

APPENDIX C
SAMPLE CONTRACT

AGREEMENT BETWEEN
THE NEW MEXICO HEALTH INSURANCE EXCHANGE
AND _____

THIS Agreement (“Agreement”) is made by and between the New Mexico Health Insurance Exchange (hereinafter referred to as “NMHIX”) and _____ (hereinafter referred to as the “Contractor”) and is effective as of the date set forth below upon which it is executed by the General Services Department/State Purchasing Division (GSD/SPD Contracts Review Bureau).

NOW, THEREFORE, THE FOLLOWING TERMS AND CONDITIONS ARE MUTUALLY AGREED BETWEEN THE PARTIES:

1. **Scope of Work**

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

2. **Compensation**

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

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

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Exchange finds that the services are not acceptable, within thirty (30) days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the Exchange that the services have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the Exchange shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. **Term**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE GSD/SPD Contracts Review Bureau. This Agreement shall terminate on April 30, 2021 unless terminated pursuant to this Agreement's Termination clause or Funding clause. NMHIX reserves the right to renew the Agreement through a written amendment signed by all required signatories. In any case, in accordance with NMSA 1978, § 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, § 13-1-150.

4. **Termination**

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

B. **Notice; NMHIX Opportunity to Cure.**

1. Except as otherwise provided in sub-paragraph A of this paragraph and the Funding clause of this Agreement, NMHIX shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

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

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by NMHIX; (ii) if, during the term of this Agreement, the Contractor

is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to the Funding clause of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, NMHIX's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. This provision is not exclusive and does not waive NMHIX's other legal rights and remedies caused by the Contractor's default or breach of this Agreement.

D. Termination Management. Immediately upon receipt by either NMHIX or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency 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. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to NMHIX as soon as practicable.

A.

5. Funding

The terms of this Agreement are contingent upon continued authorization of the NMHIX by the Legislature of New Mexico and 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. If NMHIX proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. Status of Contractor

The Contractor and its agents and employees are independent contractors performing professional or general services for NMHIX and are not employees of the NMHIX or the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of NMHIX or the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment, business income tax, and gross receipts tax. 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.

7. 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.

8. Conflict of Interest; Governmental Conduct Act

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

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

1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any 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 NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

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

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

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

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

C. Contractor's representations and warranties in paragraphs A and B of this Clause 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 paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in paragraphs A and B of this Clause 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. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

9. **Amendment**

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

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

10. **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.

11. **Penalties for Violation of Law**

The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for violation of the statute. In addition, the New Mexico criminal statutes impose felony penalties for illegal acts, including bribes, gratuities and kickbacks.

12. **Equal Opportunity Compliance**

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

13. **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.

14. **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 established 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 14 may be amended by mutual agreement of the parties.

15. **Records and Financial Audit**

A. The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of ten (10) years from the date of completion of this Agreement. The records shall be subject to inspection by NMHIX and the Department of Finance and Administration, and may be disclosed by 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 shall not foreclose the right of NMHIX to recover excessive or illegal payments.

16. **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.

17. **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.

18. **Non-Collusion**

In signing this Agreement, Contractor certifies Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to NMHIX.

19. **Notices**

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

To NMHIX:

To the Contractor:

20. **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.

21. **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 21(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 21(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 21(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 21(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 21(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 21(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 21(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.

22. **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:

- (1) All work will be performed under the supervision of the Contractor or the Contractor's responsible employees.
- (2) 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.
- (3) 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.
- (4) No work involving returns and return information furnished under this Agreement will be subcontracted without ensuring compliance with appropriate safeguards.
- (5) 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.
- (6) 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:

- (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 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.

- (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 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.
- (3) 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.

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

23. **Succession**

This Agreement shall extend to and be binding upon the successors and assigns of the Parties.

24. **Headings**

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

25. **Default/Breach**

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

26. **Equitable Remedies**

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

27. **Indemnification**

A. **General Indemnification.** Contractor shall defend, indemnify and hold harmless NMHIX, its Board of Directors, employees, officers and agents, and the State of New Mexico, from all third party actions, proceedings, 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 Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor for which Contractor is obligated to indemnify NMHIX, the Contractor shall, as soon as practicable but no later than two (2) 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.

28. **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.

29. **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 (other than Products/Completed Operation) Products/Completed Operations Aggregate Limit	\$2,000,000 \$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 \$2,000,000 per claim and \$4,000,000 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 Contractor's 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."

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.

30. **Assignment**

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

31. **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.

32. **Commercial Warranty**

The Contractor agrees that any tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to NMHIX and are in addition to and do not limit any rights afforded to NMHIX by any other clause of this Agreement. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

33. **Release**

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

34. **Confidentiality**

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 subcontracts engaged by Contractor to perform services under this Agreement, shall comply with and impose privacy and security standards as outlined in Exhibit B and 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.

35. **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.

36. **Communications**

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 the 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.

37. **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 Care Act.

38. **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 signature by the GSD/SPD Contracts Review Bureau below, or a specified date, whichever is later.

By: _____ Date: _____
Agency: New Mexico Health Insurance Exchange

By: _____ Date: _____
Agency's Legal Counsel – Certifying legal sufficiency

By: _____ Date: _____
Agency's Chief Financial Officer

By: _____ Date: _____
Contractor

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

ID Number: _____

By: _____ Date: _____
Taxation and Revenue Department

This Agreement has been approved by the GSD/SPD Contracts Review Bureau:

By: _____ Date: _____
GSD/SPD Contracts Review Bureau

APPENDIX D

LETTER OF TRANSMITTAL FORM

RFP#: _____

Offeror Name: _____ **FED ID#** _____

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

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

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

Name _____

Title _____

E-Mail Address _____

Telephone Number _____

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

Name _____

Title _____

E-Mail Address _____

Telephone Number _____

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

Name _____

Title _____

E-Mail Address _____

Telephone Number _____

5. Use of Sub-Contractors (Select one)

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

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

(Attach extra sheets, as needed)

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

(Attach extra sheets, as needed)

7. ___ On behalf of the submitting organization named in item #1, above, I accept the Conditions Governing the Procurement as required in Section II. C.1.

___ I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

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

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

APPENDIX E

ORGANIZATIONAL REFERENCE QUESTIONNAIRE

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

Offeror is required to send the following reference form to each business reference listed. The business reference, in turn, is requested to submit the Reference Form directly to: Aryn Fitzwater, Procurement Manager, the New Mexico Health Insurance Exchange, 7601 Jefferson St. NE, Ste. 120, Albuquerque, NM 87109 by March 13, 2020 for inclusion in the evaluation process. The form and information provided will become a part of the submitted proposal. Business references provided may be contacted for validation of content provided therein.

RFP No. 2020-006
ORGANIZATIONAL REFERENCE QUESTIONNAIRE
FOR:

(Name of Offeror)

This form is being submitted to your company for completion as a business reference for the company listed above. This form is to be returned to the New Mexico Health Insurance Exchange via regular mail or email at:

Name: Aryn Fitzwater, Procurement Manager
Address: 7601 Jefferson St. NE, Ste. 120, Albuquerque, NM 87109
Telephone: 505.314.5215
Email: RFP@nmhix.com

no later than March 13, 2020, 4:00 PM MST, and **must not** be returned to the company requesting the reference.

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

Company providing reference:	
Contact name and title/position	
Contact telephone number	
Contact e-mail address	
Project description	
Project dates (starting and ending)	

QUESTIONS:

1. In what capacity have you worked with this vendor in the past?

COMMENTS:

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

COMMENTS:

3. How would you rate the vendor's flexibility relative to changes in the project scope and timelines?
_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

4. What is your level of satisfaction with hard-copy materials produced by the vendor?
_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

5. How would you rate the dynamics/interaction between the vendor and your staff?
_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

6. Who were the vendor's principal representatives involved in your project and how would you rate them individually? Would you comment on the skills, knowledge, behaviors or other factors on which you based the rating?
(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

Name: _____ Rating:

Name: _____ Rating:

Name: _____ Rating:

Name: _____ Rating:

COMMENTS:

7. How satisfied are you with the products developed by the vendor?
_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

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

COMMENTS:

9. With which aspect(s) of this vendor's services are you least satisfied?

COMMENTS:

10. Would you recommend this vendor's services to your organization again?

COMMENTS: