



**THE NEW MEXICO HEALTH INSURANCE EXCHANGE**

**REQUEST FOR PROPOSALS FOR**

**Independent Security and Privacy Controls Assessment**

RFP No. 2020-010

Request for Proposals Release Date: October 23, 2020

Proposal Due Date: November 20, 2020, 5:00 PM MST

# **I. INTRODUCTION**

## **A. PURPOSE**

The purpose of this Request for Proposals (RFP) is to solicit sealed proposals and to establish a contract through competitive negotiations for MARS-E v.2.0 Independent Security and Privacy Controls Assessment services. The selected vendor (“Contractor”) will be responsible for (1) completing an Administering Entity Security and Privacy Assessment Plan (SAP) for the New Mexico Health Insurance Exchange; (2) performing a detailed Security and Privacy Controls Assessment (SCA) using the Exchange’s ACA System Security Plan (SSP); and (3) preparing an Administering Entity Security and Privacy Assessment Report (SAR) for the New Mexico Health Insurance Exchange.

Qualified bidders (“Offerors”) will have a working knowledge of the Centers for Medicare & Medicaid Services (CMS) *MARS-E v.2.0, Volume III: Catalog of Minimum Acceptable Risk Security and Privacy Controls for Exchanges*, will have a (ISC)2 CISSP certification, and will have knowledge of Cloud security.

## **B. BACKGROUND INFORMATION**

### **1. History of the New Mexico Health Insurance Exchange**

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 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. 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.

### **2. MARS-E v. 2.0 Security and Privacy Controls Assessment (SCA)**

As an SBM, the Exchange will be the custodian of sensitive information such as Personally Identifiable Information (PII) for thousands of New Mexicans. As such, the Exchange has a unique responsibility for ensuring its ultimate protection. Through continuous monitoring and

regular security and privacy control testing, the Exchange demonstrates that it meets this responsibility.

The MARS-E security control, CA-2(1), requires the employment of assessors or assessment teams with a CMS-defined level of independence to conduct security and privacy control assessments of an organization's information system. The Security and Privacy Control Assessment (SCA) assists CMS information security and privacy staff with understanding the current security and privacy posture of the Affordable Care Act (ACA) information system and its potential impact on the broader ACA program. The SCA also provides the means to identify potential opportunities for supplying targeted technical security and privacy assistance.

The purpose of an SCA is to determine whether the security and privacy controls are implemented correctly, operate as intended, and produce the desired outcomes for meeting the security and privacy requirements of the information systems, and the facilities that house the systems and support Exchange operations.

## **C. SCOPE OF PROCUREMENT**

### **1. Scope of Procurement**

This is an RFP for independent Security and Privacy Control Assessment (SCA) services, as further defined in the Scope of Work, Section IV(A). The selected Contractor will also prepare an Administering Entity Security and Privacy Assessment Plan (SAP) and Administering Entity Security and Privacy Assessment Report (SAR) for the Exchange. The SCA will cover:

- System compliance with all MARS-E SSP controls;
- Underlying infrastructure security posture;
- System and data security and privacy posture;
- Proper security configuration associated with the database or file structure storing the data; and
- Systems technical, managerial and organizational adherence to the organization's security and privacy program, policies, and guidance.

The Exchange and its contractor, Optum, will complete a self-assessment against System Security Plan (SSP) controls, and will provide a completed SSP to Contractor prior to the start of the assessment.

### **2. Project Timeline and Deliverables**

**IMPORTANT:** It is expected that the contract term will begin on January 1, 2021. The **anticipated** timeline of the project workflow is:

1. Complete the Administering Entity Security and Privacy Assessment Plan (SAP) (in cooperation with the Exchange): **January 4, 2021 – January 22, 2021**
2. Complete the Security and Privacy Control Assessment (SCA) and the Administering Entity Security and Privacy Assessment Report (SAR): **March 1, 2021 – May 21, 2021**

The SAP must be reviewed and approved by the Centers for Medicare & Medicaid Service (CMS) before the SCA can begin. Therefore, project dates and the anticipated timeline may be adjusted accordingly. The start of the SCA may be delayed or may be moved up, depending on CMS feedback and the timing of CMS' approval of the SAP. Offerors should ensure that they have sufficient personnel and other resources to complete the project no later than May 21, 2021, taking into account that the start of the SCA is dependent on CMS approval of the SAP.

#### **D. PROCUREMENT MANAGER**

The Exchange has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

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](mailto:RFP@nmhix.com)  
*\*Please include "Independent Security and Privacy Controls Assessment" in the subject of all emails.*

1. **Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Procurement Manager. Offerors may contact **ONLY** the Procurement Manager regarding this procurement. Other Exchange employees or Evaluation Committee members do not have the authority to respond on behalf of the SPD.
2. **Protests of the solicitation or award must be submitted in writing to the Protest Manager identified in Section I.D.** As a Protest Manager has been named in this Request for Proposals, pursuant to §13-1-172, NMSA 1978 and 1.4.1.82 NMAC, **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 Request for Proposals.** Protests submitted or delivered

#### **E. PROPOSAL DELIVERY**

*All deliveries of proposals via express carrier, courier or hand delivery, must be addressed and submitted as follows:*

*Name: Aryn Fitzwater, Procurement Manager*  
*Reference RFP Name: Independent Security and Privacy Controls Assessment, RFP No. 2020-010*  
*Address: The New Mexico Health Insurance Exchange*  
*7601 Jefferson Dr. NE, Ste. 120*  
*Albuquerque, NM 87111*  
*Electronic copies to: RFP@nmhix.com*

## F. DEFINITIONS OF TERMINOLOGY

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, a state agency, or the New Mexico Health Insurance Exchange.

“**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                  | October 23, 2020                       |
| 2. Distribution List                                 | Exchange                  | October 30, 2020                       |
| 3. Deadline to submit Questions                      | Offerors                  | November 2, 2020                       |
| 4. Response to Written Questions                     | Procurement Manager       | November 4, 2020                       |
| <b>5. Proposals Due</b>                              | <b>Offerors</b>           | November 20, 2020                      |
| 6. Proposal Evaluation and Selection of Finalists    | Evaluation Committee      | November 23, 2020 to November 30, 2020 |
| 7. Finalist Interviews/Presentations (if applicable) | Finalist Offerors         | Week of November 30, 2020              |
| 8. Contract Finalized                                | Exchange/Selected Offeror | No later than December 16, 2020        |
| 9. Award Issued                                      | Exchange                  | No later than December 16, 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 October 23, 2020.

#### 2. Acknowledgement of Receipt

Offerors may hand deliver, e-mail ([RFP@nmhix.com](mailto:RFP@nmhix.com)), or send by registered or certified mail the Acknowledgement of Receipt Form (Appendix A), to the Procurement Manager identified in Section I.D above, to have their organization placed on the procurement Distribution List. The form should be signed by an authorized representative of the Offeror organization returned to the Procurement Manager by 5:00 pm MDT on October 30, 2020.

The procurement distribution list will be used for the distribution of written responses to questions, and/or any amendments to the RFP. Failure to return the Acknowledgement of Receipt Form does not prohibit potential Offerors from submitting a response to this RFP. However, by not returning the Acknowledgement of Receipt Form, the potential Offeror's representative shall not be included on the distribution list, and will be solely responsible for obtaining from the Procurement Library responses to written questions and any amendments to the RFP.

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

Offerors may submit written questions, via email, to the Procurement Manager as to the intent or clarity of this RFP until 5:00 p.m. MDT on November 2, 2020. All written questions must be addressed to the Procurement Manager as declared in Section I.D. Questions 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**

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.A above).

### **5. Submission of Proposal**

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 5:00 PM MDT ON FRIDAY, NOVEMBER 20, 2020. **PROPOSALS RECEIVED AFTER THIS DEADLINE WILL NOT BE ACCEPTED.** The date and time of receipt will be recorded on each proposal. If an Offeror decides to use a third-party delivery entity to submit its proposal, it is still the responsibility of the Offeror to ensure that the delivery is made on time. An Offeror should take into account all factors regarding the delivery by the third-party entity and ensure that the delivery is made prior to the stated deadline. Weather delays, traffic jams, deliveries to the incorrect address nor any other reason for a delay will be accepted for failure to make the stated deadline.

***Proposals must be addressed and delivered to the Procurement Manager at the address identified in Section I.D.*** Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the Independent Security and Privacy Controls Assessment, RFP No. 2020-010. Proposals submitted by facsimile, or other electronic means other than through the SPD electronic e-procurement system, will not be accepted.

A log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to §13-1-116, NMSA 1978, 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 Request for Proposals. Awarded in this context means the final required state agency signature on the contract(s) resulting from the procurement has been obtained.

## **6. Proposal Evaluation**

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.

## **7. Selection of Finalists**

The Evaluation Committee will select and the Procurement Manager will notify the finalist Offerors as per schedule Section II.A, Sequence of Events or as soon as possible thereafter. A schedule for Oral Presentation, if any, will be determined at this time.

## **8. Best and Final Offers**

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers by as per schedule Section II.A, Sequence of Events or as soon as possible. Best and final offers may also be clarified and amended at finalist Offeror's oral presentation.

## **9. Finalist Interviews / Oral Presentations**

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.

## **10. Finalize Contractual Agreement**

After approval of the Evaluation Committee Report, any contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s), taking into consideration the evaluation factors set forth in this RFP, as per Section II.A, Sequence of Events, or as soon as possible thereafter. The most advantageous proposal may or may not have received the most points. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the timeframe specified, the Exchange reserves the

right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

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.

## **11. Contract Award**

Upon receipt of the signed contractual agreement, the Exchange Procurement office will award as per Section II.A, Sequence of Events, or as soon as possible thereafter. The award is subject to appropriate Department and State approval.

## **12. Protest Deadline**

Any protest by an Offeror must be timely submitted and in conformance with §13-1-172, NMSA 1978 and applicable procurement regulations. As a Protest Manager has been named in this RFP, pursuant to §13-1-172, NMSA 1978 and 1.4.1.82 NMAC, 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 Request for Proposals. The 15-calendar day protest period shall begin on the day following the notice of award of contract(s) and will end at 5:00 pm MST/MDT on the 15<sup>th</sup> day. Protests must be written and must include the name and address of the protestor and the request for proposal number. They must also contain a statement of the grounds for protest including appropriate supporting exhibits, and must specify the ruling requested. Protests must be delivered to Natasha Romero, Protest Manager, at [protests@nmhix.com](mailto:protests@nmhix.com). Protests received after the deadline will not be accepted.

## **C. GENERAL REQUIREMENTS**

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

Potential Offerors must indicate their acceptance of these Conditions Governing the Procurement, Section II, by completing and signing the Letter of Transmittal form, located in Appendix E.

### **2. Incurring Cost**

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

### **3. Prime Contractor Responsibility**

Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with the Exchange which may derive from this RFP. The Exchange will make payments to only the prime contractor.

#### **4. Subcontractors/Consent**

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

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. Such amended proposals must be complete replacements for 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 will be allowed to 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, 1.4.1.5 & 1.4.1.36 NMAC.

#### **7. Proposal Offer Firm**

Responses to this RFP, including proposal prices for services, will be considered firm for one-hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

## 8. Disclosure of Proposal Contents

The contents of all submitted proposals will be kept confidential until the final award has been completed by the Exchange. At that time, all proposals and documents pertaining to the proposals will be available for public inspection, *except* for proprietary or confidential material as follows:

- a. ***Proprietary and Confidential information is restricted to:***
  1. confidential financial information concerning the Offeror's organization; and
  2. information that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, §§57-3A-1 through 57-3A-7, NMSA 1978.
- b. An additional but separate redacted version of Offeror's proposal, as outlined and identified in Sections **III.B.1.a.i and III.B.2.a.i**, shall be submitted containing the blacked-out proprietary or confidential information, in order to facilitate eventual public inspection of the non-confidential version of Offeror's proposal.

**IMPORTANT:** 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 proprietary or confidential materials, the Exchange shall examine the 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 proprietary or confidential information.

## 9. No Obligation

This RFP in no manner obligates the State of New Mexico or any of its Agencies to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate authorities. 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. 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 at any time and any and all proposals may be rejected in whole or in part when the Exchange determines such action to be in its best interest. Any cancellation or amendment will be sent to the procurement distribution list.

## 11. Sufficient Funding

Any contract awarded as a result of this RFP process 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**

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

## **13. Governing Law**

This RFP and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico. 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 supplied in writing by the Procurement Manager or contained in this RFP shall be used as the basis for the preparation of Offeror proposals.

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

The contract between the Exchange and a contractor will follow the format specified by the Exchange and contain the terms and conditions set forth in the Draft Contract Appendix C. However, the Exchange reserves the right to negotiate provisions in addition to those contained in this RFP (Draft 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.

The Exchange discourages exceptions from the contract terms and conditions as set forth in the RFP Draft Contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Exchange (and its evaluation team), 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 Draft Contract (Appendix C) 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 Draft 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 (the RFP process prior to selection as successful Offeror) 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.16 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 potential Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any potential Offeror who is not a Responsible Offeror or fails to submit a Responsive Offer as defined in §13-1-83 and §13-1-85, NMSA 1978.

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

The Evaluation Committee reserves the right to waive minor irregularities, as defined in Section I.F. 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. If the RFP is cancelled, all responses received shall be destroyed by the Exchange unless the Offeror either picks up, or arranges for pick-up, the materials within three (3) business days of notification of the cancellation. Offeror is responsible for all costs involved in return mailing/shipping of proposals.

## **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.

## **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.

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

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

## **30. Campaign Contribution Disclosure Form**

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

## **31. Letter of Transmittal**

Offeror's proposal must be accompanied by an **unaltered** Letter of Transmittal Form (Appendix E), which must be **completed** and **signed** by the individual authorized to contractually obligate the company, identified in #2 below. **DO NOT LEAVE ANY OF THE ITEMS ON THE FORM BLANK** (N/A, None, Does not apply, etc. are acceptable responses).

The Letter of Transmittal MUST:

1. Identify the submitting business entity (its Name, Mailing Address and Phone Number);
2. Identify the Name, Title, Telephone, and E-mail address of the person authorized by the Offeror's organization to (A) contractually obligate the business entity providing the Offer, (B) negotiate a contract on behalf of the organization; and/or (C) provide clarifications or answer questions regarding the Offeror's proposal content (*A response to B and/or C is only required if the responses differs from the individual identified in A*);
3. Identify sub-contractors, if any, anticipated to be utilized in the performance of any resultant contract award;

4. Describe any relationship with any other entity (such as State Agency, reseller, etc., that is not a sub-contractor identified in #3), if any, which will be used in the performance of this awarded contract; and
5. Be signed and dated by the person identified in #2 above; attesting to the veracity of the information provided, and acknowledging (a) the organization's acceptance of the Conditions Governing the Procurement stated in Section II.C.1, (b) the organizations acceptance of the Section V Evaluation Factors, and (c) receipt of any and all amendments to the RFP.

**Failure to respond to ALL items as indicated above, will result in Offeror's disqualification.**

### **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 §13-1-21, NMSA 1978 (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 Offeror’s proposal.

**B. New Mexico Resident Veterans Business Preference**

A copy of the certification must accompany Offeror's proposal.

**The Exchange shall 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 four (4) hard copies of their proposal, and email a copy of the proposal to: RFP@nmhix.com.

##### **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. The complete proposal 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**

All proposals must be submitted as follows:

Hard copies must be typewritten on standard 8 ½ x 11-inch paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within binders with tabs delineating each section.

Organization of folders/envelopes for hard copy proposals and electronic copy proposals:

##### **1. Proposal Content and Organization**

Direct reference to pre-prepared or promotional material may be used if referenced and clearly marked. Promotional material must be minimal. The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated.

##### **Technical Proposal (Binder 1) – DO NOT INCLUDE ANY COST INFORMATION IN THE TECHNICAL PROPOSAL.**

- A. Signed Letter of Transmittal
- B. Signed Campaign Contribution Form

- C. Table of Contents
- D. Proposal Summary (Optional)
- E. Response to Contract Terms and Conditions (from Section II.C.15)
- F. Offeror’s Additional Terms and Conditions (from Section II.C.16 )
- G. Response to Specifications (**except Cost information which shall be included ONLY in Cost Proposal/Binder 2**)
  - 1. Organizational Experience
  - 2. Organizational References
  - 3. Oral Presentation (if applicable)
  - 4. Mandatory Specifications
  - 5. Financial Stability – (Financial information considered confidential, as defined in Section I.F, and should be placed in the **Confidential Information** binder, as applicable)
  - 6. New Mexico Preferences (if applicable)
- H. Other Supporting Material (if applicable)

**Cost Proposal (Binder 2):**

- 1. Completed Cost Proposal

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. **Any and all discussion of proposed costs, rates or expenses must occur ONLY in Binder 2.**

A Proposal Summary may be included in Offeror’s Technical Proposal (Binder 1), 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. **DO NOT INCLUDE COST INFORMATION IN THE PROPOSAL SUMMARY.**

## **IV. SPECIFICATIONS**

### **A. DETAILED SCOPE OF WORK**

The CMS *Framework for the Independent Assessment of Security and Privacy Controls*, attached hereto as Appendix G, provides an overview of the independent security and privacy assessment requirements and the associated CMS reporting process for Administering Entities, such as the Exchange. Using the guidance in this document, the Contractor will complete the following:

- 1. **Prepare an Administering Entity Security and Privacy Assessment Plan (SAP).**

Contractor will prepare an Administering Entity Security and Privacy Assessment Plan (SAP) using the CMS template, attached to this RFP as Appendix H. The SAP should be prepared using the security and privacy control assessment procedures in the *MARS-E Document Suite, version 2.0 Volume III: Catalog of Minimum Acceptable Risk Security and Privacy Controls for*

*Exchanges.* The SAP will be completed in coordination with the Exchange, and must be approved by CMS prior to the start of the assessment.

## **2. Complete the Security and Privacy Controls Assessment (SCA).**

The Contractor will perform a full controls assessment pursuant to the approved SAP and utilizing the CMS AE Security and Privacy Assessment Worksheet, attached to this RFP as Appendix I. Tests and analyses performed during an assessment should include the following: security control technical testing; adherence to the organization’s security and privacy program, policies, and guidance; network and component scanning; configuration assessment; documentation review; personnel interviews; and observations.

The SBM will utilize a cloud provider technology service similar to Amazon Web Services (AWS). The Contractor must be able to test the privacy and security of various technology “stacks” (software and, where applicable, hardware), including systems and solutions hosted and/or maintained by the Exchange and its contracted vendors, including (but not necessarily limited to) Optum, NFP, and Salesforce. The Contractor must also be able to test physical security controls in multiple locations in Albuquerque, NM, including the Exchange offices, the Exchange’s contracted print vendor site, and possibly the Exchange’s contracted Customer Engagement Center, and at contracted vendor sites in Reston, VA (Optum) and Braintree, MA (NFP), and possibly others.

The Contractor also will review policies and procedures related to the security and privacy of Personally Identifiable Information (PII) and other confidential information maintained and/or hosted by the Exchange system and third-party systems and solutions.

## **3. Prepare a Security and Privacy Assessment Report (SAR).**

Upon completion of the SCA, Contractor will prepare and provide to the Exchange a MARS-E v2.0 (NIST 800-53 Rev 4) Security and Privacy Assessment Report (SAR) using the CMS template, attached to this RFP as Appendix J. The report should include the following information: SCA methodology and testing performed; factual findings in accordance with the SCA tests performed; management information to render informed decisions regarding the application of resources and staffing to correct system weaknesses and vulnerabilities; and remediation or compensating control recommendations. The report should outline the risks identified from the SCA and be consistent with the objectives of the assessment.

The Exchange reserves the right to require additional services to assist in its efforts to meet CMS security and privacy assessment and report requirements, should CMS make changes to the MARS-E v2.0 framework during the project or if follow-up validation is needed from the Contractor to validate remediated findings during or after fieldwork.

# **B. TECHNICAL SPECIFICATIONS**

## **1. Organizational Experience**

Offerors must:

- a) provide a detailed description of relevant corporate experience with state government and private sector. The experience of all proposed subcontractors must be described. The narrative **must** thoroughly describe how the Offeror has supplied expertise for similar contracts and must include the extent of their experience, expertise and knowledge as a provider of independent assessment services. All independent assessment services provided to private sector will also be considered;
- b) provide a brief resume of all key personnel Offeror proposes to use in performance of the resulting contract, should Offeror be awarded. Key personnel are identified as executive, account management team, and staff primarily responsible for the for the satisfactory completion of the work. Offeror must include key personnel education, work experience, and relevant certifications/licenses;
- c) describe at least two project successes and failures of a similar engagement. Include how each experience improved the Offeror's services.

## 2. Organizational References

Offeror must provide a list of a minimum of three (3) references from similar projects/programs performed for private, state or large local government clients within the last seven (7) years. Members of the Exchange and its Board of Directors may not serve as organizational references for any Offeror.

Offeror shall include the following Business Reference information as part of its proposals:

- a) Client name;
- b) Project description;
- c) Project dates (starting and ending);
- d) Technical environment (i.e., Software applications, Internet capabilities, Data communications, Network, Hardware);
- e) Staff assigned to reference engagement that will be designated for work per this RFP; and
- f) Client project manager name, telephone number, fax number and e-mail address.

Offeror is required to submit Appendix F, Organizational Reference Questionnaire ("Questionnaire"), to the business references it lists. **The business references must submit the Questionnaire directly to the designee identified in Appendix F. The business references must not return the completed Questionnaire to the Offeror.** It is the Offeror's responsibility to ensure the completed forms are submitted on or before the date indicated in Section II.A, Sequence of Events, 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. Offerors are encouraged to specifically request that their Organizational References provide detailed comments.

### **3. Mandatory Specifications**

The Offeror must demonstrate its ability to perform the services in Section IV, Scope of Work, and also do the following:

#### **A. Project Schedule and Approach to Assessment**

- Submit with its proposal a detailed project schedule showing all tasks that Contractor will complete and all expectations for tasks that beWellnm and/or its vendors Optum/NFP will be responsible for.
- Provide a narrative to accompany the project schedule that describes how the Contractor will complete the project within the timeframes specified in this RFP.
- Discuss how the Contractor will conduct the assessment, including how Contractor will work with any particular COVID-19 restrictions in place in New Mexico, Massachusetts, Virginia, and other locations as applicable.
- All proposals should include a commitment to support the Exchange at least through July 31, 2021, should the Exchange require a follow-up assessment to remediate findings.

#### **B. Additional Requirements**

- Demonstrate that it has an ISC2 SSCP or CISSP certification.
- Demonstrate an understanding of and/or experience with privacy and security of information maintained by cloud providers, and Amazon Web Services (AWS) Cloud Managed Services in particular;
- Demonstrate an understanding of and/or experience with testing of IT solutions/non-physical security and privacy controls for various technology "stacks" (software and hardware), including any experience with systems and solutions hosted and/or maintained by the Exchange and its contracted vendors, including Optum, NFP, and Salesforce.
- Demonstrate an understanding of and/or experience with:
  - the independent security and privacy assessment requirements and the associated Centers for Medicare & Medicaid Services (CMS) reporting process for Administering Entities;
  - *MARS-E v.2.0, Volume III: Catalog of Minimum Acceptable Risk Security and Privacy Controls for Exchanges* and the *CMS Minimum Acceptable Risk Standards for Exchanges (MARS-E)* Security Assessment Control, CA-2;
  - any additional laws, regulations, or policies and procedures applicable to the Exchange, or to privacy and security of Personally Identifiable Information (PII) or other confidential information, particularly in the context of health insurance marketplaces;

- privacy and security of PII and other confidential information obtained from the Federal Data Services Hub (FDSH) or the Internal Revenue Service (IRS).
- Demonstrate an understanding of and commitment to exercise professional due care, including observance of applicable professional standards (see CMS IS Assessment Procedure, Page 3–4, [https://www.cms.gov/Research-Statistics-Data-and-Systems/CMSInformation-Technology/InformationSecurity/Downloads/Assessment\\_Procedure.pdf](https://www.cms.gov/Research-Statistics-Data-and-Systems/CMSInformation-Technology/InformationSecurity/Downloads/Assessment_Procedure.pdf)).

## C. 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).

### 2. Letter of Transmittal Form

The Offeror's proposal **must** be accompanied by the Letter of Transmittal Form located in Appendix E. The form **must** be completed and must be signed by the person authorized to obligate the company. **Failure to respond to ALL items, as indicated in Section II.C.31 and Appendix E, and to return a signed, unaltered form will result in Offeror's disqualification.**

### 3. Campaign Contribution Disclosure Form

The Offeror must complete an unaltered Campaign Contribution Disclosure Form and submit a signed copy with the Offeror's proposal. This must be accomplished whether or not an applicable contribution has been made. (See Appendix B). **Failure to complete and return the signed, unaltered form will result in Offeror's disqualification.**

### 4. Oral Presentation

If selected as a finalist, Offerors agree to provide the Evaluation Committee the opportunity to interview proposed staff members identified by the Evaluation Committee, at the option of the Exchange. The Evaluation Committee may request a finalist to provide an oral presentation of the proposal as an opportunity for the Evaluation Committee to ask questions and seek clarifications. 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.

### 5. Cost

Offerors must complete the Cost Proposal in Appendix D. Cost will be measured by the formula in V.B.8 below.

**6. 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, in this section, of its NM Resident preference certificate, as issued by the New Mexico Taxation and Revenue Department.

**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.

| <b>Evaluation Factors</b><br><i>(Correspond to section IV.B and IV C)</i> | <b>Points Available</b> |
|---|-------------------------|
| <b>B. Technical Specifications (Total Points: 600)</b>                    |                         |
| B. 1. Organizational Experience   | 25                      |
| B. 2. Organizational References   | 25                      |
|   |                         |
| B. 3. Mandatory Specification (Total Points: 550)                         |                         |
| B. 3. A Project Schedule and Approach to Assessment                       | 250                     |
| B. 3. B Additional Requirements   | 300                     |
| B. 4. Desirable Specification   |                         |
| <b>C. Business Specifications (Total Points: 400)</b>                     |                         |
| C.1. Financial Stability  | Pass/Fail               |
| C.2. Performance Surety Bond  | Pass/Fail               |
| C.3. Letter of Transmittal  | Pass/Fail               |
| C.4. Campaign Contribution Disclosure Form                                | Pass/Fail               |
| C.5 Oral Presentations  | 100                     |
| C.6. Cost   | 300                     |
| <b>TOTAL POINTS AVAILABLE</b>   | <b>1,000</b>            |
| C.7. New Mexico Preference - Resident Vendor Points per Section IV C. 6   | <b>50</b>               |
| C.7. New Mexico Preference - Resident Veterans Points per Section IV C.6  | <b>100</b>              |

Table 1: Evaluation Point Summary

## **B. EVALUATION FACTORS**

### **1. B.1 Organizational Experience (See Table 1)**

Points will be awarded based on the thoroughness and clarity of Offeror’s response in this Section. The Evaluation Committee will also weigh the relevancy and extent of Offeror’s experience, expertise and knowledge; and of personnel education, experience and certifications/licenses. In addition, points will be awarded based on Offeror’s candid and well-thought-out response to successes and failures, as well as the ability of the Offeror to learn from its failures and grow from its successes.

### **B.2 Organizational References (See Table 1)**

Points will be awarded based upon an evaluation of the responses to a series of questions on the Organizational Reference Questionnaire (Appendix F). Offeror will be evaluated on references that show positive service history, successful execution of services and evidence of satisfaction by each reference. References indicating significantly similar services/scopes of work and comments provided by a submitted reference will add weight and value to a recommendation during the evaluation process. Points will be awarded for each individual response up to 1/3 of the total points for this category. Lack of a response will receive zero (0) points.

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 Organizational Reference information required herein), in its evaluation of Offeror responsibility per Section II.C.

### **2. B.4 Mandatory Specifications**

The Exchange will award points based upon a five-point scale. The scoring will be applied to each of the required response elements in Section IV.

| Point Scale | Response Criteria  |
|-------------|--|
| 0           | Doesn’t address the requirement at all   |
| 1           | Minimally addresses the requirement  |
| 2           | Partially addresses the requirement  |
| 3           | Addresses the requirement with few gaps, but lacks innovation or differentiators       |
| 4           | Addresses the requirement with no gaps, and demonstrates innovation or differentiators |

### **3. C.1 Financial Stability (See Table 1)**

Pass/Fail only. No points assigned.

**4. C.3 Letter of Transmittal (See Table 1)**

Pass/Fail only. No points assigned.

**5. C.4 Campaign Contribution Disclosure Form (See Table 1)**

Pass/Fail only. No points assigned.

**6. C.5 Oral Presentation (See Table 1)**

Points will be awarded based on the quality, organization and effectiveness of communication of the information presented, as well as the professionalism of the presenters and technical knowledge of the proposed staff. Prior to Oral Presentation, the Exchange will provide the Offeror a presentation agenda. If no Oral Presentations are held all Offerors will receive the maximum amount of total points for this Evaluation Factor.

**7. C.6 Cost (See Table 1)**

The evaluation of each Offeror’s cost proposal will be conducted using the following formula:

$$\frac{\text{Lowest Responsive Offeror's Cost}}{\text{Each Offeror's Cost}} \times \text{Available Award Points}$$

**8. C.7. 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 Resident Business Preference**

If the Offeror has provided a copy of their Preference Certificate the Preference Points for a New Mexico Resident Business is 5% of the total points available in this RFP.

**B. New Mexico Resident Veterans Business Preference**

C. If the Offeror has provided a copy of their Preference Certificate the Preference Points for a New Mexico Resident Veteran Business is 10% of the total points available in this RFP.

**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. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value in Section V. The responsible Offerors with the highest scores will be selected as finalist Offerors, based upon the proposals submitted. In accordance with 13-1-117 NMSA 1978, the responsible Offerors whose proposals are most advantageous to the State taking into consideration the Evaluation Factors in Section V will be recommended for award. Please note, 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 PROPOSALS  
Independent Security and Privacy Controls Assessment  
RFP No. 2020-010**

**ACKNOWLEDGEMENT OF RECEIPT FORM**

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 J.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than October 30, 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 Independent Security and Privacy Controls Assessment; RFP No. 2020-010

Aryn Fitzwater, Procurement Manager  
The New Mexico Health Insurance Exchange  
7601 Jefferson St. NE, Ste. 120  
Albuquerque, NM 87109  
Email: [RFP@nmhix.com](mailto:RFP@nmhix.com)

## **APPENDIX B**

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

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 131-191.1 (2006), as amended by Laws of 2007, Chapter 234, a prospective contractor subject to this section shall disclose all campaign contributions given by the prospective contractor or a family member or representative of the prospective contractor to an applicable public official of the state or a local public body during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds two hundred fifty dollars (\$250) over the two-year period. A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.

A prospective contractor or a family member or representative of the prospective contractor shall not give 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 during the pendency of negotiations for a sole source or small purchase contract.

Furthermore, a solicitation or proposed award for a proposed contract may be canceled pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 if a prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or a prospective contractor or family member or 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.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

**THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND 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 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 a spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor;

“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.

“Prospective contractor” means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code [Sections 13-1-28 through 13-1-199 NMSA 1978] or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or 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.

**Name(s) of Applicable Public Official(s) if any: \_\_\_\_\_**  
**(Completed by State Agency or Local Public Body)**

**DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:**

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

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

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**  
**DRAFT CONTRACT**

\*The draft contract included in this Appendix C represents the contract that the Exchange intends to use to make an award. The Exchange reserves the right to modify the contract prior to, or during, the award process, as necessary.

**AGREEMENT BETWEEN**  
**THE NEW MEXICO HEALTH INSURANCE EXCHANGE**  
**AND \_\_\_\_\_**

**Agreement No. \_\_\_\_\_**

THIS Agreement (“Agreement”) is made by and between the New Mexico Health Insurance Exchange, hereinafter referred to as the “Procuring Agency” or “NMHIX” and [Insert Contractor Name], hereinafter referred to as the “Contractor” and collectively referred to as the “Parties.”

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 et. seq. and Procurement Code Regulations, NMAC 1.4.1 et. seq. the Contractor has held itself out as an entity with the ability to provide the required services to implement the Scope of Work as contained herein and the Procuring Agency has selected the Contractor as the offeror most advantageous to the State of New Mexico; and

WHEREAS, all terms and conditions of RFP 2020-010 for Independent Security and Privacy Controls Assessment services and the Contractor’s response to such document(s) are incorporated herein by reference.

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

**1. Definitions.**

A. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time

B. "New Mexico State Purchasing Agent" or "NMSPA" means the purchasing agent for the State of New Mexico or a designated representative. May be used interchangeably with "State Purchasing Agent" or "SPA".

C. "Procuring Agency" means any state agency or local public body that enters into an Agreement to procure products or services.

D. “Products and Services schedule” refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended

only through a written amendment signed by all required signatories and with the prior approval of the Agreement Administrator, if any. New products and services beyond those in the original procurement (whether RFP or ITB) shall not be added to the Products and Services Schedule.

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E. "RFP" means Request for Proposals as defined in statute and rule.

F. "We," "us" or "our" refers to the New Mexico Health Insurance Exchange, State of New Mexico, agencies, commissions, institutions, political sub-divisions and local public bodies allowed by law to participate in the Agreement and whose accounts are created under this Agreement.

G. "You" and "your" refers to (Contractor Name).

## 2. Scope of Work.

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

## 3. Compensation.

A. The Procuring Agency shall pay to the Contractor in full payment for services satisfactorily performed as set forth in Exhibit A, 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 Procuring Agency to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT).**

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

Payment shall be made upon acceptance of services or deliverables and upon the receipt and acceptance of a detailed invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days. All invoices, including a detailed statement accounting for all services performed and any expenses, shall be sent to NMHIX at [accountspayable@nmhix.com](mailto:accountspayable@nmhix.com) and received by NMHIX no later than fifteen (15) business days after each calendar month in which services were performed or expenses incurred. Failure to timely submit an invoice shall be a material breach of this Agreement. If the Contractor fails to invoice NMHIX for services

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

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 2, 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.

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.

C. Taxes. The Contractor shall be reimbursed by NMHIX for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

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

4. **Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE FINAL REQUIRED SIGNATORY. This Agreement shall begin on the date approved by the Final Required Signatory and shall end on **(DATE)** unless terminated pursuant to this Agreement's Termination Clause or Funding Clause. The Procuring Agency reserves the right to renew the Agreement through a written amendment signed by all required signatories and in accordance with the term of the request for proposals, if this contract was based on a request for proposals.

5. **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.

6. 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.

7. **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.

8. **Product of Service -- Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

9. **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.

10. **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.

11. **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.

12. **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.

13. **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.

14. **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.

15. **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 pursuant to the Uniform Arbitration Act, NMSA, § 44-7A-1.
- (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. The Parties may agree upon a mediator and the terms of the mediation including 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 pursuant to the Uniform Arbitration Act, NMSA, § 44-7A-1 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 15 may be amended by mutual agreement of the parties.

16. **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.

17. **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.

18. **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.

19. **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.

20. **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:

21. **Succession**

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

22. **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.

23. **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.

24. **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.

25. **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.

26. **Default and Force Majeure.**

The State reserves the right to cancel all or any part of any orders placed under this Agreement without cost to the State, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the State due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

27. **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 the Procuring Agency.

28. **Subcontracting.**

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

29. **Inspection of Plant.**

The State Purchasing Agent or agency or entity that is a party to this Agreement may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this Agreement.

30. **Commercial Warranty.**

The Contractor agrees that the 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 the State and are in addition to and do not limit any rights afforded to the State by any other Clause of this Agreement or order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

31. **Release.**

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

32. **Confidentiality.**

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

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.

33. **Contractor Personnel.**

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

[Insert Contractor Staff Name(s)]

B. **Personnel Changes.** Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Procuring Agency approval. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in

finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency's expectations.

34. **Incorporation by Reference and Precedence.**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Contractor's response to the request for proposals.

35. **Inspection of Services.**

If this Agreement is for the purchase of services, the following terms shall apply.

A. Services, as used in this Clause, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the State Purchasing Agent or other party to this Agreement covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the State Purchasing Agent or other party to this Agreement during the term of performance of this Agreement and for as long thereafter as the Agreement requires.

C. The State Purchasing Agent or other party to this Agreement has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The State Purchasing Agent or other party to this Agreement shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

D. If the State Purchasing Agent or other party to this Agreement performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

E. If any part of the services do not conform with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in

Agreement amount. When the defects in services cannot be corrected by re-performance, the State Purchasing Agent or other party to this Agreement may:

- (1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
- (2) reduce the Agreement price to reflect the reduced value of the services performed.

F. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may:

- (1) by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the State Purchasing Agent or other party to this Agreement that is directly related to the performance of such service; or
- (2) terminate the Agreement for default.

**THE PROVISIONS OF THIS CLAUSE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE STATE PARTIES' TO THIS AGREEMENT OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

### 36. **Insurance**

A. Professional Liability. For the Contractor and all of the Contractor's employees who are to perform professional services under this Agreement, the Contractor shall keep in full force and effect, Professional Liability insurance for any professional acts, errors or omissions. Such policy shall provide a limit of not less than \$1,000,000 per claim and \$2,000,000 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.

B. 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.

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. 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.

G. 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.

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

I. 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.

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

37. **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

38. **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.

39. **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.

40. **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.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement, which will take effect on the last signature date of the required approval authorities below. Each of the signatories, below, may execute this Agreement by hard copy original, facsimile, digital or electronic signature, any of which shall be deemed to be a true and original signature hereunder.

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

**NOTE: Taxation and Revenue is only verifying the registration and will not confirm or deny taxability statements contained in this contract.**

This Agreement has been approved by the State Purchasing Agent:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Purchasing Agent  
State of New Mexico

**EXHIBIT A**

**Scope of Work**

## **Exhibit B**

### **Privacy and Security Standards**

Definitions. Capitalized terms not otherwise specifically defined in this specific term and condition shall have the meaning set forth in Section B.

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

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

- Provide information and services in a fair, accurate, and impartial manner. Such information must acknowledge other health programs such as Medicaid and CHIP;
- Facilitate selection of a QHP;
- Provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under Section 2793 of the PHS Act, or any other appropriate State agency or agencies, for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage; and
- Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange, including individuals with limited English proficiency, and ensure accessibility and usability of Health care guide tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

Such information may not be reused for any other purpose.

Other Required Duties: Contractor may also maintain expertise in eligibility, enrollment, and program specifications; however, it is not expected or required that Contractor collect, handle, disclose, access, maintain, store and/or use PII of Consumers, Applicants, Qualified Individuals, Qualified Employers, Qualified Employees, or Enrollees, or from these individuals' legal representatives(s) or Authorized Representatives for this function. To the extent that Contractor does so, it must comply with all of the provisions of this specific term and condition, as well as Sections A and B that apply to Contractor's activities.

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

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

Subscriber Indicator and relationship to subscriber  
Social Security Number  
Tobacco use indicator and last date of tobacco

Storing PII. Contractor is not expected or required to maintain or store any of the above listed PII as a result of carrying out the Authorized Functions described above or any other required duties, other than in connection with the storage of consent forms required by this specific term and condition. To the extent that Contractor does maintain or store information, it must comply with all of the provisions of this specific term and condition and Sections A and B that address maintenance or storage of PII.

Privacy and Security Obligations of Contractor. As a condition of this contract, Contractor will implement and comply with all Exchange privacy and security standards set forth in this specific term and condition as well as Sections A and B, and the Minimum Acceptable Risk Standards for Exchanges (MARS-E) , which is available at <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Minimum-Acceptable-Risk-Standards-for-Exchanges-ERA-Supp-v-1-0-08012012-a.pdf> .

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

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

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

## Section A: Special Terms and Conditions

### **PRIVACY AND SECURITY STANDARDS** **AND** **IMPLEMENTATION SPECIFICATIONS FOR NON-EXCHANGE ENTITIES**

#### **Statement of Applicability:**

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

The standards and implementation specifications that are set forth in this Section A and Version 1.0 of the MARS-E suite of documents (which can be found at <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/>) are the same as, or more stringent than, the privacy and security standards and implementation specifications that have been established for the Federally-Facilitated Exchanges (“FFE”) under Section 1321(c) of the Affordable Care Act (42 U.S.C. § 18041(c)).

The New Mexico Health Insurance Exchange (NMHIX) will enter into contracts (hereinafter “Agreement” or “Agreements”) with Non-Exchange Entities that gain access to Personally Identifiable Information (“PII”) exchanged with the FFE and NMHIX, or directly from Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers, or these individuals’ legal representatives or Authorized Representatives. That Agreement, and including this Section A, govern any PII that is created, collected, disclosed, accessed, maintained, stored, or used by Non-Exchange Entities in the context of the FFE. In signing that Agreement, in which this Section A has been incorporated, Non-Exchange Entities agree to comply with the standards and implementation specifications laid out in this document and the referenced MARS-E suite of documents while performing the Authorized Functions outlined in their respective Agreements.

#### **NON-EXCHANGE ENTITY PRIVACY AND SECURITY STANDARDS AND IMPLEMENTATION SPECIFICATIONS**

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

(1) *Individual Access to PII: In keeping with the standards and implementation specifications used by the FFE, Non-Exchange Entities that maintain and/or store PII must provide Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers, or these individuals’ legal representatives and Authorized Representatives, with a simple and timely means of appropriately accessing PII pertaining to them and/or the person they represent in a physical or electronic readable form and format.*

a. Standard: Non-Exchange Entities that maintain and/or store PII must implement policies and procedures that provide access to PII upon request.

i. Implementation Specifications:

1. Access rights must apply to any PII that is created, collected, disclosed, accessed, maintained, stored, and used by the Non-

Exchange Entity to perform any of the Authorized Functions outlined in their respective agreements with the NMHIX.

2. The release of electronic documents containing PII through any electronic means of communication (e.g., e-mail, web portal) must meet the verification requirements for the release of “written documents” in Section (5)b below.
3. Persons legally authorized to act on behalf of the Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers regarding their PII, including individuals acting under an appropriate power of attorney that complies with applicable state and federal law, must be granted access in accordance with their legal authority. Such access would generally be expected to be coextensive with the degree of access available to the Subject Individual.
4. At the time the request is made, the Consumer, Applicant, Qualified Individual, Enrollee, Qualified Employees, Qualified Employers, or these individuals’ legal representatives or Authorized Representatives should generally be required to specify which PII he or she would like access to. The Non-Exchange Entity may assist them in determining their Information or data needs if such assistance is requested.
5. Subject to paragraphs (1) a.i.6 and 7 below, Non-Exchange Entities generally must provide access to the PII in the form or format requested, if it is readily producible in such form or format.
6. The Non-Exchange Entity may charge a fee only to recoup their costs for labor for copying the PII, supplies for creating a paper copy or a copy on electronic media, postage if the PII is mailed, or any costs for preparing an explanation or summary of the PII if the contractor has requested and/or agreed to receive such summary. If such fees are paid, the Non-Exchange Entity must provide the requested copies in accordance with any other applicable standards and implementation specifications.
7. A Non-Exchange Entity that receives a request for notification of, or access to PII must verify the requestor’s identity in accordance with Section (5)b.
8. A Non-Exchange Entity must complete its review of a request for access or notification (and grant or deny said notification and/or access) within 30 days of receipt of the notification and/or access request.

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

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

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

annual basis, at a minimum, and before or as soon as possible after any change to its privacy policies and procedures.

4. If the Non-Exchange Entity operates a Web site, it shall ensure that descriptions of its privacy and security practices, and information on how to file complaints with NMHIX and the Non-Exchange Entity, are publicly available through its Web site.

(3) *Individual choice. In keeping with the standards and implementation specifications used by the FFE, Non-Exchange Entities should ensure that Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers, or these individuals' legal representatives or Authorized Representatives, are provided a reasonable opportunity and capability to make informed decisions about the creation, collection, disclosure, access, maintenance, storage, and use of their PII.*

- a. Standard: Informed Consent. The Non-Exchange Entity may create, collect, disclose, access, maintain, store, and use PII from Consumers, Applicants, Qualified Individuals, Enrollees, or these individuals' legal representatives or Authorized Representatives, only for the functions and purposes listed in the Privacy Notice Statement and any relevant agreements in effect as of the time the information is collected, unless the NMHIX, the FFE or Non-Exchange Entity obtains informed consent from such individuals.

- i. Implementation specifications:

1. The Non-Exchange Entity must obtain informed consent from individuals for any use or disclosure of information that is not permissible within the scope of the Privacy Notice Statement and any relevant agreements that were in effect as of the time the PII was collected. Such consent must be subject to a right of revocation.
2. Any such consent that serves as the basis of a use or disclosure must:
  - a. Be provided in specific terms and in plain language;
  - b. Identify the entity collecting or using the PII, and/or making the disclosure;
  - c. Identify the specific collections, use(s), and disclosure(s) of specified PII with respect to a specific contractor(s);
  - d. Provide notice of an individual's ability to revoke the consent at any time.
3. Consent documents must be appropriately secured and retained for 10 years.

(4) *Creation, collection, disclosure, access, maintenance, storage, and use limitations. In keeping with the standards and implementation specifications used by the NMHIX and by the FFE, Non-Exchange Entities must ensure that PII is only created, collected, disclosed,*

*accessed, maintained, stored, and used, to the extent necessary to accomplish a specified purpose(s) in the Agreement and any appendices. Such information shall never be used to discriminate against a Consumer, Applicant, Qualified Individual, Enrollee, Qualified Employee, or Qualified Employer.*

- a. Standard: Other than in accordance with the consent procedures outlined above, the Non-Exchange Entity shall only create, collect, disclose, access, maintain, store, and use PII:
  1. To the extent necessary to ensure the efficient operation of the Exchange;
  2. In accordance with its published Privacy Notice Statement and any applicable agreements that were in effect at the time the PII was collected, including the consent procedures outlined above in Section (3) above; and/or
  3. In accordance with the permissible functions outlined in the regulations and agreements between NMHIX and the Non-Exchange Entity.
  
- b. Standard: Non-discrimination. The Non-Exchange Entity should, to the greatest extent practicable, collect PII directly from the Consumer, Applicant, Qualified Individual, Enrollee, Qualified Employee, or Qualified Employer, when the information may result in adverse determinations about benefits.
  
- c. Standard: Prohibited uses and disclosures of PII
  - i. Implementation Specifications:
    1. The Non-Exchange Entity shall not request Information regarding citizenship, status as a national, or immigration status for an individual who is not seeking coverage for himself or herself on any application.
    2. The Non-Exchange Entity shall not require an individual who is not seeking coverage for himself or herself to provide a social security number (SSN), except if an Applicant's eligibility is reliant on a tax filer's tax return and their SSN is relevant to verification of household income and family size.
    3. The Non-Exchange Entity shall not use PII to discriminate, including employing marketing practices or benefit designs that will have the effect of discouraging the enrollment of individuals with significant health needs in QHPs.

(5) Data quality and integrity. *In keeping with the standards and implementation specifications used by NMHIX and by the FFE, Non-Exchange Entities should take*

*reasonable steps to ensure that PII is complete, accurate, and up-to-date to the extent such data is necessary for the Non-Exchange Entity's intended use of such data, and that such data has not been altered or destroyed in an unauthorized manner, thereby ensuring the confidentiality, integrity, and availability of PII.*

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

- i. Implementation Specifications:

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

appropriate appeal authority including that authority's name, title, and contact information.

- b. Standard: Verification of Identity for Requests to Amend, Correct, Substitute or Delete PII. In keeping with the standards and implementation specifications used by the NMHIX and the FFE, Non-Exchange Entities that maintain and/or store PII must develop and implement policies and procedures to verify the identity of any person who requests access to; notification of; or amendment, correction, substitution, or deletion of PII that is maintained by or for the Non-Exchange Entity. This includes confirmation of an individuals' legal or personal authority to access; receive notification of; or seek amendment, correction, substitution, or deletion of a Consumer's, Applicant's, Qualified Individuals', Enrollee's, Qualified Employee's, or Qualified Employer's PII.

i. Implementation Specifications:

1. The requester must submit through mail, via an electronic upload process, or in-person to the Non-Exchange Entity's Responsible Official, a copy of one of the following government-issued identification: a driver's license, school identification card, voter registration card, U.S. military card or draft record, identification card issued by the federal, state or local government, including a U.S. passport, military dependent's identification card, Native American tribal document, or U.S. Coast Guard Merchant Mariner card.
2. If such requester cannot provide a copy of one of these documents, he or she can submit two of the following documents that corroborate one another: a birth certificate, Social Security card, marriage certificate, divorce decree, employer identification card, high school or college diploma, and/or property deed or title.

- c. Standard: Accounting for Disclosures. Except for those disclosures made to the Non-Exchange Entity's Workforce, or sub-contractor, who have a need for the record in the performance of their duties; and the disclosures that are necessary to carry out the required functions of the Non-Exchange Entity, Non-Exchange Entities that maintain and/or store PII shall maintain an accounting of any and all disclosures.

i. Implementation Specifications:

1. The accounting shall contain the date, nature, and purpose of such disclosures, and the name and address of the person or agency to whom the disclosure is made

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

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

- a. Standard: Reporting. The Non-Exchange Entity must implement Breach and Incident handling procedures that are consistent with CMS' Incident and Breach Notification Procedures<sup>1</sup> and memorialized in the Non-Exchange Entity's own written policies and procedures. Such policies and procedures would:
  - i. Identify the Non-Exchange Entity's Designated Privacy Official, if applicable, and/or identify other personnel authorized to access PII and responsible for reporting and managing Incidents or Breaches to CMS.
  - ii. Provide details regarding the identification, response, recovery, and follow-up of Incidents and Breaches, which should include information regarding the potential need for CMS to immediately suspend or revoke access to the Hub for containment purposes; and
  - iii. Require reporting any Incident or Breach of PII to the CMS IT Service Desk by telephone at (410) 786-2580 or 1-800-562-1963 or via email notification at [cms\\_it\\_service\\_desk@cms.hhs.gov](mailto:cms_it_service_desk@cms.hhs.gov) within required time frames.
- b. Standard: Standard Operating Procedures. The Non-Exchange Entity shall incorporate privacy and security standards and implementation specifications, where appropriate, in its standard operating procedures that are associated with functions involving the creation, collection, disclosure, access, maintenance, storage, or use of PII.
  - i. Implementation Specifications:

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<sup>1</sup> Available at [http://www.cms.gov/Research-Statistics-Data-and-Systems/CMS-Information-Technology/InformationSecurity/Downloads/RMH\\_VIII\\_7-1\\_Incident\\_Handling\\_Standard.pdf](http://www.cms.gov/Research-Statistics-Data-and-Systems/CMS-Information-Technology/InformationSecurity/Downloads/RMH_VIII_7-1_Incident_Handling_Standard.pdf)

1. The privacy and security standards and implementation specifications shall be written in plain language and shall be available to all of the Non-Exchange Entity's Workforce members, or sub-contractors, whose responsibilities entail the creation, collection, maintenance, storage, access, or use of PII.
  2. The procedures shall ensure the Non-Exchange Entity's cooperation with CMS in resolving any Incident or Breach, including (if requested by CMS) the return or destruction of any PII files it received under the Agreement; the provision of a formal response to an allegation of unauthorized PII use, reuse or disclosure; and/or the submission of a corrective action plan with steps designed to prevent any future unauthorized uses, reuses or disclosures.
  3. The standard operating procedures must be designed and implemented to ensure the Non-Exchange Entity and its Workforce, or sub-contractor, comply with the standards and implementation specifications contained herein, and must be reasonably designed, taking into account the size and the type of activities that relate to PII undertaken by the Non-Exchange Entity, to ensure such compliance.
- a. Standard: Training and Awareness. The Non-Exchange Entity shall develop training and awareness programs for members of its Workforce that create, collect, disclose, access, maintain, store, and use PII while carrying out any Authorized Functions.
- i. Implementation Specifications:
    1. The Non-Exchange Entity must require such individuals to successfully complete privacy and security training, as appropriate for their work duties and level of exposure to PII, prior to when they assume responsibility for/have access to PII.
    2. The Non-Exchange Entity must require periodic role-based training on an annual basis, at a minimum.
    3. The successful completion by such individuals of applicable training programs, curricula, and examinations offered through the FFE is sufficient to satisfy the requirements of this paragraph.
- b. Standard: Security Controls. The FFE shall adopt and implement the Security Control standards cited in the MARS-E document suite for protecting the confidentiality, integrity, and availability of PII.
- i. Implementation Specifications:

1. Implementation specifications for each Security Control are provided in the MARS-E document suite.

## **Section B: Special Terms and Conditions**

### **DEFINITIONS**

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

Non-Exchange Entity has in place appropriate safeguards to protect the privacy and security of PII.

- (15) **Enrollee** has the meaning set forth in 45 CFR 155.20.
- (16) **Exchange** has the meaning set forth in 45 CFR 155.20.
- (17) **Federally-facilitated Exchange (FFE)** means an **Exchange** (or **Marketplace**) established by HHS and operated by CMS under Section 1321(c)(1) of the ACA for individual or small group market coverage, including the Federally-facilitated Small Business Health Options Program (**FF-SHOP**). **Federally-facilitated Marketplace (FFM)** has the same meaning as FFE. The FFE is serving as the individual exchange in New Mexico for 2015.
- (18) **Health Insurance Coverage** has the meaning set forth in 45 CFR 155.20.
- (19) **HHS** means the U.S. Department of Health & Human Services.
- (20) **Incident**, or **Security Incident**, means the act of violating an explicit or implied security policy, which includes attempts (either failed or successful) to gain unauthorized access to a system or its data, unwanted disruption or denial of service, the unauthorized use of a system for the processing or storage of data; and changes to system hardware, firmware, or software characteristics without the owner’s knowledge, instruction, or consent.
- (21) **Information** means any communication or representation of knowledge such as facts, data, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual.
- (22) **Issuer** has the meaning set forth in 45 CFR 144.103.
- (23) **Minimum Acceptable Risk Standards—Exchanges (MARS-E)** means a CMS-published suite of documents, version 1.0 (August 1, 2012), that defines the security standards required pursuant to 45 CFR 155.260 and 45 CFR 155.270, for any Exchange, individual, or entity gaining access to information submitted to an Exchange or through an Exchange using a direct, system-to-system connection to the Hub, available on the CCIIO web site.
- (24) **Health care guide** has the meaning set forth under “Navigator” in 45 CFR 155.20.
- (25) **Non-Exchange Entity** has the meaning at 45 CFR 155.260(b), and includes but is not limited to Health care guides.
- (26) **OMB** means the Office of Management and Budget.
- (27) **Personally Identifiable Information (PII)** has the meaning contained in OMB Memoranda M-07-16 (May 22, 2007) and means information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, *etc.*, alone, or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, *etc.*
- (28) **Qualified Employee** has the meaning set forth in 45 CFR 155.20.
- (29) **Qualified Employer** has the meaning set forth in 45 CFR 155.20.
- (30) **Qualified Health Plan (QHP)** has the meaning set forth in 45 CFR 155.20.
- (31) **Qualified Individual** has the meaning set forth in 45 CFR 155.20.
- (32) **Responsible Official** means an individual or officer responsible for managing a Non-Exchange Entity or Exchange’s records or information systems, or another individual designated as an individual to whom requests can be made, or the designee of either such officer or individual who is listed in a Federal System of Records Notice as the system manager, or another individual listed as an individual to whom requests may be made, or the designee of either such officer or individual.

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

**APPENDIX D**  
**COST PROPOSAL**

| <b>Deliverable/Description</b>                             | <b>Quantity<br/>(# of Units)</b> | <b>Cost per “Unit”</b> | <b>Total Cost</b> | <b>Estimated<br/>Effort (in<br/>hours)</b> |
|--|----------------------------------|------------------------|-------------------|--|
| Security and Privacy Assessment Plan (SAP)_                |                                  |                        |                   |  |
| Security and Privacy Controls Assessment (SCA)             |                                  |                        |                   |  |
| Security and Privacy Assessment Report (SAR)               |                                  |                        |                   |  |
| Additional follow-up assessments to remediate any findings |                                  |                        |                   |  |
| Additional costs (provide detailed description)            |                                  |                        |                   |  |
|  |                                  |                        |                   |  |
|  |                                  |                        |                   |  |

The proposal must include all fees and charges for the provision of services, including all labor, materials, equipment, transportation, configuration, travel, training and profit to provide the goods and/or services described in Section IV.A.

## APPENDIX E

### LETTER OF TRANSMITTAL FORM

**ITEMS #1 to #4 EACH MUST BE COMPLETED IN FULL (pursuant to Section II.C.31).  
FAILURE TO RESPOND TO ALL FOUR (4) ITEMS WILL RESULT IN THE  
DISQUALIFICATION OF OFFEROR'S PROPOSAL! DO NOT LEAVE ANY ITEM BLANK!  
(N/A, None, Does not apply, etc. are acceptable responses.)**

**RFP#:2020-010**

**1. Identify the following information for the submitting organization:**

|                        |  |
|------------------------|--|
| <b>Offeror Name</b>    |  |
| <b>Mailing Address</b> |  |
| <b>Telephone</b>       |  |
| <b>FED ID#</b>         |  |
| <b>NM CRS#</b>         |  |

**2. Identify the individual(s) authorized by the organization to (A) contractually obligate, (B) negotiate, and/or (C) clarify/respond to queries on behalf of this Offeror:**

|                  | A<br>Contractually Obligate | B<br>Negotiate* | C<br>Clarify/Respond to Queries* |
|------------------|-----------------------------|-----------------|----------------------------------|
| <b>Name</b>      |                             |                 |                                  |
| <b>Title</b>     |                             |                 |                                  |
| <b>E-mail</b>    |                             |                 |                                  |
| <b>Telephone</b> |                             |                 |                                  |

\* If the individual identified in Column A also performs the functions identified in Columns B & C, then no response is required for those Columns. If separate individuals perform the functions in Columns B and/or C, they must be identified.

**3. Use of subcontractors (Select one):**

- No subcontractors will be used in the performance of any resultant contract, OR  
 The following subcontractors will be used in the performance of any resultant contract:

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

**4. Describe any relationship with any entity (such as a State Agency, reseller, etc. that is not a subcontractor listed in #3 above), if any, which will be used in the performance of any resultant contract. (N/A, None, Does not apply, etc. are acceptable responses to this item.)**

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

**By signing the form below, the Authorized Signatory attests to the accuracy and veracity of the information provided on this form, and explicitly acknowledges the following:**

- On behalf of the submitting-organization identified in item #1, above, I accept the Conditions Governing the Procurement, as required in Section II.C.1. of this RFP;
- I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP; and
- I acknowledge receipt of any and all amendments to this RFP, if any.

\_\_\_\_\_, 20\_\_\_\_  
Authorized Signature and Date (*Must be signed by the individual identified in item #2.A, above.*)

## **APPENDIX F**

### **ORGANIZATIONAL REFERENCE QUESTIONNAIRE**

New Mexico Health Insurance Exchange, as a part of the RFP process, requires Offerors to list a minimum of three (3) organizational references in their proposals. If there are subcontractors, there must be two references for each subcontractor. The purpose of these references is to document Offeror's experience relevant to the Section IV.A, Detailed Scope of Work in an effort to evaluate Offeror's ability to provide goods and/or services, performance under similar contracts, and ability to provide knowledgeable and experienced staffing.

Offeror is required to send the following Organizational Reference Questionnaire to each business reference listed in its proposal. The business reference, if it chooses to respond, is required to submit its response to the Organizational Reference Questionnaire directly to Aryn Fitzwater at RFP@nmhix.com by November 20, 2020 at 5:00 PM MDT for inclusion in the evaluation process. The Questionnaire and information provided will become a part of the submitted proposal. Businesses/Organizations providing references may be contacted for validation of content provided therein.

**RFP No. 2020-010**  
**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 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 November 20, 2020, 5:00 p.m. MDT, and **must not** be returned to the company requesting the reference.

For questions or concerns regarding this form, please contact the **Procurement Manager** at **RFP@nmhix.com**. When contacting the Procurement Manager, please be sure to include the Request for Proposal number listed at the top of this page.

|   |  |
|---|--|
| <b>Organization providing reference</b>   |  |
| <b>Contact name and title/position</b>  |  |
| <b>Contact telephone number(s)</b>  |  |
| <b>Contact e-mail address</b>   |  |
| <b>Project description</b>  |  |
| <b>Project dates (start and end dates)</b>  |  |
| <b>Technical environment for the project</b> (i.e., Software applications, Internet capabilities, Data communications, Network, Hardware) |  |

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:

## **APPENDIX G**

# **CMS FRAMEWORK FOR THE INDEPENDENT ASSESSMENT OF SECURITY AND PRIVACY CONTROLS**

**APPENDIX H**  
**ADMINISTERING ENTITY SECURITY AND PRIVACY**  
**ASSESSMENT PLAN (TEMPLATE)**

**APPENDIX I**  
**ADMINISTERING ENTITY SECURITY AND PRIVACY**  
**ASSESSMENT WORKSHEET**

**APPENDIX I**

**ADMINISTERING ENTITY SECURITY AND PRIVACY  
ASSESSMENT REPORT (TEMPLATE)**