



**NEW MEXICO HEALTH INSURANCE EXCHANGE  
REQUEST FOR QUOTES FOR**

# **Hiring Services**

**for the position of Chief Executive Officer (CEO)**

RFQ No. 2016/007

**RFQ Issued:  
August 24<sup>th</sup>, 2016**

**Quotes Due:  
August 30<sup>th</sup>, 2016  
12:00 Noon MT**

# Key Dates

EVENT	DATE
RFQ Announcement	8/24/16
Submission of Optional Intent to Bid Form (Exhibit A) and questions.	8/29/16 12:00 Noon MT
Quotes Due	8/30/16 12:00 Noon MT
Possible Telephonic Interviews / Questions from Evaluation Committee	9/9/16
Evaluation Committee Selects Preferred Bidder	9/16/16

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## **1. Background Information**

### **1.1. Background on the New Mexico Health Insurance Exchange**

The New Mexico Legislature passed SB 221 and 589 as amended, the “New Mexico Health Insurance Exchange Act,” (the “Act”) during the 2013 Regular Session, and Governor Susana Martinez signed the Act on March 28, 2013. BeWellnm, the New Mexico Health Insurance Exchange was created as a non-profit public corporation. Our mission is to provide qualified individuals and employers with increased access to health insurance in New Mexico. Our vision is to improve the quality of life for New Mexicans, especially when it comes to their health, their access to health care providers, and their financial security. BeWellnm is governed by a 13-member Board of Directors that was appointed in April 2013. BeWellnm is now preparing for its fourth open enrollment period which will begin on November 1, 2016.

### **1.2. Purpose of the RFQ**

The purpose of this Request for Quotes (“RFQ”) is to solicit quotations from a number of qualified contractor offering hiring services that can immediately begin assisting the beWellnm Board of Directors with filling the position of Chief Executive Officer (CEO). BeWellnm is requesting that Bidders are available to provide the following services:

- Sourcing
- Screening
- Interviewing
- Hiring

Bidders must have experience providing these services to organizations of similar size and function as beWellnm.

## **2. Administrative Information**

### **2.1. Procurement Administrator**

The Procurement Administrator for this RFQ shall be:

Natasha Romero  
Administrative Assistant  
beWellnm, New Mexico Health Insurance Exchange  
7601 Jefferson St NE, Suite 160  
Albuquerque, NM 87109  
505-314-5250

[RFP@nmhix.com](mailto:RFP@nmhix.com)

*(Please include “Hiring Services for the position of CEO” in the subject of any emails)*

Bidders may submit questions to the Procurement Administrator at the email listed above.

## **2.2. Optional Intent to Bid**

Bidders who notify the Procurement Administrator of their intent to submit a Quote by the deadline listed in “Key Dates” will be placed on a list of interested Bidders. The intent to bid must be emailed to [RFP@nmhix.com](mailto:RFP@nmhix.com) 12:00 noon on August 29, 2016. The intent to bid must include the name and contact information of the Bidder. A bidder’s intent to bid is non-binding, and interested Bidders may opt not to submit a quote. BeWellnm will send notices of RFQ addenda to the list of interested bidders. Bidders who choose not to notify the Procurement Administrator of their intent to submit a quote by the deadline listed in “Key Dates” may nevertheless submit a Quote, but may not receive addenda or other notices.

## **2.3. Restriction on Communications**

From the issue date of this RFQ until beWellnm announces its preferred Bidder, all communications related to this RFQ must be with the Procurement Administrator, and all such communications must be in written form via email to [RFP@nmhix.com](mailto:RFP@nmhix.com). The Procurement Administrator will respond only to written questions regarding the procurement process and this RFQ. Oral questions will not be accepted. Bidders may be disqualified if they contact any employee or affiliate of beWellnm regarding this RFQ.

## **2.4. Questions, Requests for Clarification, and Suggested Changes**

If needed, Bidders are invited to submit written questions and requests for clarifications regarding this RFQ. BeWellnm is not obligated to provide answers to written questions. If the questions, requests for clarifications, or suggestions pertain to a specific section of this RFQ, Bidder shall reference the page and section number. If beWellnm decides to answer a question or adopt a suggestion that modifies this RFQ, beWellnm will issue an addendum to this RFQ. Questions need to be submitted to [RFP@nmhix.com](mailto:RFP@nmhix.com) no later than 12:00 noon on August 29, 2016

## **2.5. Amendment and Withdrawal of this RFQ**

BeWellnm reserves the right to amend or withdraw the RFQ at any time and for any reason. Amendments and or notices of withdrawal will be sent to the list of interested Bidders.

## **2.6. Amendment and Withdrawal of Quotes**

Bidders may amend or withdraw their Quotes at any time before the Quote deadline listed

under “Key Dates.” The amendment must be in writing, signed by the Bidder, and received by the time set for the receipt of Quotes. Bidders must notify the Procurement Administrator in writing prior to the deadline for Quotes if they wish to withdraw their Quotes.

## **2.7. Submission of Quotes**

The Procurement Administrator must receive all components of the Quote by the deadline listed under “Key Dates.” It is Bidder’s responsibility to ensure that the Quote is received prior to the deadline. Postmarking by the due date will not substitute for actual receipt of the Quote.

## **2.8. Costs of Preparing the Quote**

The costs of preparation and delivery of the Quote are solely the responsibility of the Bidder.

## **2.9. No Commitment to Contract**

BeWellnm reserves the right to reject any or all Quotes received in response to this RFQ at any time prior to the execution of the Contract. Issuance of this RFQ in no way constitutes a commitment by beWellnm to award a contract.

## **2.10. Rejection of Quotes**

BeWellnm may reject outright and not evaluate any Quote that does not comply with the terms of this RFQ.

## **2.11. Subcontractors**

The Contractor is solely responsible for fulfillment of the Contract. BeWellnm will make payments only to the Contractor. The Contractor will not subcontract any portion of the services to be performed under the Contract without the prior expressed written approval of beWellnm. The Contractor will include all proposed subcontractors in its Quote. In the event beWellnm 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 beWellnm as a party to the subcontract, nor create any right, claim, or interest for the subcontractor against beWellnm, its agents, employees, representatives, or successors. The parties agree that there are no third party beneficiaries, intended or otherwise, to the Contract.

## **2.12. Reference Checks**

BeWellnm reserves the right to contact any reference to assist in the evaluation of the Quote, to verify information contained in the Quote, and to discuss the Bidder's qualifications and the qualifications of any subcontractor identified in the Quote.

### **2.13. Information from Other Sources**

BeWellnm reserves the right to obtain and consider information from other sources concerning a Bidder, such as the Bidder's capability and performance under other contracts, the qualifications of any subcontractor identified in the Quote, Bidder's financial stability, past or pending litigation, and other publicly available information.

### **2.14. Quote Clarification Process**

BeWellnm reserves the right to contact a Bidder after the submission of Quotes for the purpose of clarifying a Quote. This contact may include written questions, interviews, site visits, or requests for corrective pages in Bidder's Quote. BeWellnm will not consider information received from or through the Bidder if the information materially alters the content of the Quote or the type of services the Bidder is offering to beWellnm. An individual authorized to legally bind the Bidder shall sign responses to any request for clarification. Failure to comply with requests for additional information may result in rejection of the Quote.

### **2.15. Disposition of Quotes**

All Quotes become the property of beWellnm and shall not be returned to Bidder.

### **2.16. Confidentiality**

BeWellnm shall not disclose the content of any Quote to another Bidder during the evaluation and negotiation process.

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

As between beWellnm and the Bidder, beWellnm will own all right, title and interest in and to and all ideas presented in any Quote, and shall therefore have the right to use any such ideas.

## **2.17. Release of Claims**

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

## **2.18. Bidder Interviews**

At the sole discretion of beWellnm and/or its Evaluation Committee, some Bidders may be asked to participate in oral interviews, presentations, and/or demonstrations prior to the selection of a Contractor. This process is intended to allow Bidders to demonstrate their proposed services and clarify any elements of their Quote. Any cost associated with interviews, presentations, and/or demonstrations will be borne solely and entirely by the Bidder. The presentation may occur at beWellnm's offices, via the Internet, or at another location as specified by beWellnm.

## **2.19. Award Notice and Acceptance Period**

A "Notice of Intent to Award" will be sent to the successful Bidder. Negotiation and execution of the Contract shall be completed promptly and by such time as designated by beWellnm. If the successful Bidder fails to negotiate and execute in good faith a final agreement by that date, the beWellnm, in its sole discretion, may cancel the award and award the Contract to another Bidder beWellnm believes meets this RFQ's requirements and will provide the best value to beWellnm. A "Notice of Intent to Award" will be sent to the unsuccessful Bidders once a contract is executed or at such other time as designated by beWellnm.

## **2.20. No Contract Rights until Execution**

No Bidder shall acquire any legal or equitable rights through this RFQ or any action or inaction by beWellnm unless and until the Contract has been fully executed by the successful Bidder and beWellnm.

## **2.21. Choice of Law and Forum**

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

## **2.22. Protests**

Any actual or prospective Bidder who believes it is aggrieved in connection with the

solicitation or award of a Contract hereunder may protest to the Procurement Administrator of beWellnm. Such a protest shall be submitted in writing within five working days after the aggrieved Bidder knows or should have known of the facts giving rise thereto; provided that a protest of an award or proposed award shall in any event be submitted in writing within five working days after the award of the Contract; provided further that no protest based upon the content of the RFQ or other solicitation documents shall be considered unless it is submitted in writing prior to the date set for the receipt of offers.

The RFQ Procurement Administrator or a beWellnm designee may settle and resolve a protest concerning the solicitation or award of a contract hereunder. If the protest is not resolved by mutual agreement, the CEO or a designee shall promptly issue a decision in writing to uphold or deny the protest.

### **2.23. Conflict of Interest**

By submitting a quotation pursuant to this RFQ, a Bidder warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Bidder certifies requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee, have been followed. The Bidder also certifies compliance with all federal provisions related to conflicts of interest, including but not limited to those contained in 45 C.F.R. 92.36, the Affordable Care Act, and the HHS Grants Policy Statement, published January 1, 2007.

## **3. Scope of Work**

### **3.1 Overview**

The contractor will be asked to provide support to the beWellnm Board of Directors in all activities necessary to locating and hiring a Chief Executive Officer, including:

#### **Position Sourcing:**

1. Interview identified company personnel to define position requirements, desired candidate attributes, and candidate minimum qualifications and experience. Determine desired salary range and potential for relocation for out-of-state candidates. Develop job posting.
2. Determine job posting and recruitment strategy and scope (networking, pursuit of known candidates, advertising, internet posting, recruiters, etc.). If advertising, develop and place job posting.

### **Position Screening:**

3. Receive, review and categorize applicants. Determine candidates for telephone screening.
4. Conduct telephone screening interviews with identified candidates and review results with the Search Committee of the Board of Directors.

### **Interviewing:**

5. Schedule interviews for company staff and/or Board members who will participate on the interview panel. Prepare interviewers for interviewing, and manage interview process.
6. Participate on the interview panel and facilitate interview debriefing sessions.

### **Reference Checks and Hiring:**

7. Conduct reference and background checks on final candidate(s).
8. Assist as intermediary between candidate(s) and the company in negotiating salary offer parameters and extending offer on behalf of the company.

## **3.2 Qualifications**

Qualified contractors must have experience providing Human Resources services for similarly sized organizations. Contractors must have experience in all activities outlined in the Section 3.1 Scope of Work Topics. Contractors must have experienced and dedicated resources available immediately to provide support.

## **3.3 Contract Terms and Conditions**

### **3.3.1 Initial Term**

The initial term of this Contract shall begin as soon as possible and will conclude no later than January 31, 2017.

### **3.3.2 Additional Terms**

The resulting contract may be extended for additional terms by mutual agreement of the parties. The compensation paid under the resulting contract and any amendments thereto shall in no event exceed \$50,000.

### **3.3.3 Contract**

Bidders shall be expected to enter into an agreement with the NMHIX largely conforming to the Sample Contract attached to this RFQ as Exhibit B.

BeWellnm reserves the right to negotiate with any Bidder provisions in addition to those contained in the sample contract. The contents of this RFQ, as revised and/or supplemented, and the successful Bidder's proposal will be incorporated into and become part of any resultant contract.

BeWellnm discourages exceptions to contract terms and conditions. Exceptions may cause a Quote to be rejected as nonresponsive when, in the sole judgment of beWellnm (and the evaluation committee), the Quote appears to be conditioned on the exception, or correction of what is deemed to be a deficiency, or an unacceptable exception which would require a substantial proposal rewrite to correct is proposed.

Should a Bidder object to any of the terms and conditions in the sample contract strongly enough to propose alternate terms and conditions in spite of the above, the Bidder must propose specific alternative language. BeWellnm may or may not accept the alternative language. General references to the Bidder's terms and conditions or attempts at complete substitutions are not acceptable to the beWellnm and will result in disqualification of the Bidder's proposal.

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

#### **4. Form and Content of Quotes**

##### **4.1. RFQ Deliverables**

Submit two hard copies of the Quote. Each copy of the Quote must be signed in ink by an authorized member of the Bidder. In addition, each Bidder must provide an electronic copy of the Quote (including all attachments, exhibits, etc.) in Portable Document Format ("PDF").

##### **4.2. Format and Length**

Quotes should be submitted with single spaced text in 12-point font with one-inch margins. Quotes should be spiral bound and keep the Services Overview and Description Section (4.4.3) response limited to three (3) pages. The complete quote should be less than five (5) pages.

##### **4.3. Cover Letter**

Provide a one-page cover letter identifying the main contact person for the Quote, any subcontractors, and confirming your eligibility as a Bidder to this RFQ, including a

certification in accordance with Section 2.23 above. In the Cover Letter, the Bidder shall also guarantee in writing that the services offered in the Quote are currently available and that all Quote terms, including price, will remain firm for a minimum of 90 days following the deadline for submitting Quotes.

#### **4.4. Content of Quote**

##### **1. Qualifications and Experience**

Provide a brief, descriptive statement describing the Bidder's qualifications and experience relevant to the services sought under this RFQ.

Provide a list of personnel, including subcontractors, who will work on the project, detailing their education, training, years with the Contractor, work experience and the anticipated amount and/or portion of time each will devote to this project. Resumes should be submitted for Key Personnel and any other personnel the Bidder deems relevant, including subcontractors. Resumes may be attached as an appendix.

##### **2. References**

Provide at least two references to previous similar positions. Preference will be given to references that are related to work employers in New Mexico or quasi-governmental agencies. The reference must include the customer contact name, company, physical address, telephone number, email address, length of contract, and length of time that the account has been a reference.

##### **3. Services Overview and Description**

Address the Scope of Work and describe how you propose to address each element detailed in Section 3.1 Scope of Work Topics. This section of your Quote should follow the organizational structure and order of the Scope of Work. Bidders must include all items specifically identified in the Scope of Work.

##### **4. Detailed Price Quote**

Provide a detailed and complete price quote for all tasks included in the Scope of Work. The quote must include all fees and charges for the provision of services. Respondents should provide a detailed breakdown of all fees and costs. At a minimum, respondents should include hourly rates and anticipated hours necessary for performance of the tasks included in the Scope of Work. If applicable, please identify any costs or expenses, such as travel, for which you would expect reimbursement.

The price quote must be inclusive of all taxes. To the extent the goods and services to be provided under the Contract are subject to any excise tax, public service tax, use tax, or any other federal or state tax, the Contractor, and not beWellnm, shall be responsible for and shall pay such tax. No additional payments shall be made to Contractor, or shall be made on Contractor's behalf, related to any tax.

## **5. Quote Evaluation**

The following will be used to score Quotes:

Qualifications and Experience	30 points
References	20 points
Services Overview and Description	30 points
<u>Detailed Price Quote</u>	<u>20 points</u>
<b>TOTAL</b>	<b>100 points</b>

All Quotes received by the deadline will be evaluated by representatives of beWellnm and potentially outside experts (the "Evaluation Committee"). Quote materials may become public information following Bidder selection and contract execution.

**Appendix A**  
**Intent to Bid Form (non-binding)**

Organization: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Please email this form to [RFP@nmhix.com](mailto:RFP@nmhix.com) no later than 12:00 noon MT on Monday, August 29, 2016.

## Appendix B

### SAMPLE AGREEMENT

#### AGREEMENT BETWEEN THE NEW MEXICO HEALTH INSURANCE EXCHANGE AND \_\_\_\_\_.

THIS AGREEMENT, referred to hereinafter as “Agreement,” is made and entered into by and between the **New Mexico Health Insurance Exchange**, hereinafter referred to as “NMHIX,” and \_\_\_\_\_, hereinafter referred to as the “Contractor,” and is effective as of the date when it is executed by NMHIX. This Agreement is the result of NMHIX Procurement # \_\_\_\_\_.

IT IS AGREED BETWEEN THE PARTIES:

#### 1. Scope of Work

A. The Contractor shall perform all services detailed in Exhibit A, Scope of Work, and shall comply with the terms and conditions detailed in Exhibit B, Privacy and Security Standards, both of which are attached to this Agreement and incorporated herein by reference.

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

#### 2. Deliverables and Consideration

A. NMHIX shall pay to the Contractor in full payment for services satisfactorily performed and for allowable expenses, costs, and other fees an amount not to exceed \$\_\_\_\_\_. Expenses, costs, and other fees must be approved by NMHIX and shall be in compliance with federal regulations regarding expenditure of federal grant funds. This amount is a maximum and not a guarantee that the work assigned to be performed by the Contractor under this Agreement shall equal the amount stated herein. The New Mexico gross receipts tax, if applicable, levied on the amounts payable under this Agreement shall be paid by the Contractor. The parties do not intend for the Contractor to, and Contractor shall not be obligated to, continue to provide services beyond what Contractor has agreed to provide without compensation when the total compensation amount is reached. The Contractor is responsible for notifying NMHIX before the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

B. All payments are subject to availability of funds pursuant to Paragraph 5, Funding, set forth below, and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work. All invoices **MUST BE** received by NMHIX no later than fifteen (15) business days after each calendar month in which the services were delivered. The Contractor must submit a detailed statement accounting for all services performed.

#### 3. Term

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

#### **4. Termination**

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

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

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

#### **5. Funding**

The terms of this Agreement are contingent upon (1) continued authorization of the NMHIX by the Legislature of New Mexico, (2) sufficient legislative appropriations, if any, for the NMHIX operations and activities, and (3) the ability of NMHIX to obtain funds, by federal grants or other means, necessary to carry out NMHIX operations and activities and comply with the terms and conditions of this Agreement. If sufficient appropriations and authorization are not made by the Legislature and funding is not available, this Agreement shall terminate immediately upon written notice being given by NMHIX to the Contractor. NMHIX's decision as to whether sufficient appropriations, authorization, and funding are available shall be accepted by the Contractor and shall be final.

#### **6. Status of the Contractor**

The Contractor and its agents and employees are independent contractors performing professional services for NMHIX and are not employees of NMHIX. The Contractor and its agents and employees shall

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

**7. Assignment**

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

**8. Subcontracting**

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

**9. Release**

Final payment of the amounts due under this Agreement, or acceptance of the services to be performed under this Agreement, shall operate as a release of NMHIX, its officers, and employees from all liabilities, claims, and obligations whatsoever arising from or under this Agreement. The contractor agrees not to purport to bind NMHIX to any obligation not assumed herein by NMHIX unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**10. Confidentiality**

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

B. Contractor agrees and acknowledges that during the course of performing services under this Agreement Contractor may create, collect, receive, use or otherwise gain access to personally identifiable information, federal tax information, or other private and confidential information. Contractor shall use or disclose such information only to the extent required for the performance of the services under this Agreement and then only to the extent allowed by law. Contractor further agrees that it is a condition of this Agreement that with regard to such information Contractor, and any subcontractors engaged by Contractor to perform services under this Agreement, shall comply with and impose privacy and security standards 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.

**11. Product of Service -- Copyright**

A. All materials developed or acquired by the Contractor specifically and solely for the benefit of NMHIX pursuant to the terms of this Agreement shall become the property of NMHIX and shall be delivered to NMHIX no later than the termination date of this Agreement.

B. This contract is in support of New Mexico's implementation of the Patient Protection and Affordable Care Act of 2010, and is subject to the certain property rights provisions of the Code of Federal Regulations and a Grant from the Department of Health and Human Services, Centers for Medicare &

Medicaid Services. This Contract is subject to, and incorporates by reference, 45 CFR 74.36 and 45 CFR 92.34 governing rights to intangible property. Intangible property includes but is not limited to: computer software; patents, inventions, formulae, processes, designs, patterns, trade secrets, or know-how; copyrights and literary, musical, or artistic compositions; trademarks, trade names, or brand names; franchises, licenses, or contracts; methods, programs, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data; and other similar items. The Contractor may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under this Contract. The Contractor must deliver all intangible property, including but not limited to, intellectual property, to NMHIX in a manner that ensures the Centers for Medicare & Medicaid Services, an agency of the Department of Health and Human Services, obtains a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. Federal purposes include the purpose of administering New Mexico exchanges under the Affordable Care Act of 2010. The Contractor is further subject to applicable regulations governing patents and inventions, including those issued by the Department of Commerce at 37 CFR Part 401.

## **12. Conflict of Interest; Governmental Conduct Act**

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

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

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

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

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

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

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

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

C. The Contractor further represents that it has complied with, and, during the term of this Agreement, will continue to comply with all applicable federal provisions related to conflicts of interest, including but not limited to those contained in 45 C.F.R. 92.36, the Affordable Care Act, and the HHS Grants Policy Statement, published January 1, 2007.

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

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

### **13. Amendment**

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

### **14. Merger**

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

### **15. Penalties for Violation of Law**

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

### **16. Equal Opportunity Compliance**

The Contractor agrees to abide by all applicable 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 and the United States, the Contractor assures that no person shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be

denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If the Contractor is found not to be in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

Contractor shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

## **17. Applicable Law; Dispute Resolution**

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

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

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

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

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

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

## **18. Workers Compensation**

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

## **19. Records and Financial Audit**

A. The Contractor shall maintain detailed time and expenditure records, if any, that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of ten (10) years from the date of completion of this Agreement. The records, if any, shall be subject to inspection by the NMHIX, the State Auditor, HHS, the OIG, the Comptroller General of the United States, and any of their duly authorized representatives. NMHIX shall have the right to audit billings both before and after payment. Payment under this Agreement, if any, shall not foreclose the right of NMHIX to recover excessive or illegal payments.

B. Contractor shall contract for any required independent audits, including but not limited to audits pursuant to OMB Circulars A-21, A-87, A-110, A-122, and A-133, if applicable. The Contractor shall ensure that the auditor is licensed to perform audits in the State of New Mexico and shall be selected by a competitive bid process. The Contractor shall enter into a written contract with the auditor specifying the scope of the audit, the auditor's responsibility, the date by which the audit is to be completed and the fee to be paid to the auditor for this service. The audit of the contract shall cover compliance with Federal Regulations and all financial transactions hereunder for the entire term of the Agreement in accordance with procedures promulgated by OMB Circulars or by Federal program officials for the conduct and report of such audits. An official copy of the independent auditor's report shall be made available to the State Auditor and upon request.

## **20. Indemnification**

- A. General Indemnification. The Contractor shall defend, indemnify and hold harmless NMHIX, its Board, employees, officers and agents from all third party actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which are caused by the negligent act or negligent failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, to the extent resulting in injury or damage to persons or personal property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor for which Contractor is obligated to indemnify NHMIX, the Contractor shall, as soon as practicable but no later than two (2) business days after it receives notice thereof, notify the legal counsel of NMHIX and the Risk Management Division of the New Mexico General Services Department by certified mail.
- B. Indemnification for Professional Acts, Errors, or Omissions. Except for professional acts, errors or omissions that are the result of established gross negligence or willful or wanton conduct on the part of the Contractor or its employees, agents, representatives or subcontractors, the General Indemnification shall not apply to professional acts, errors or omission unless covered by Contractor's Professional Liability insurance.

## **21. Invalid Term or Condition**

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

## **22. Enforcement of Agreement**

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

## **23. Notices**

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

To NMHIX:  
Amy Dowd  
CEO, NMHIX  
New Mexico Health Insurance Exchange  
6301 Indian School Road NE, Suite 100  
Albuquerque, NM 87110

To Contractor:  
[name, address, and email]

## **24. Authority**

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

## **25. Debarment and Suspension**

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

B. The Contractor's certification in Paragraph 25(A), above, is a material representation of fact upon which NMHIX relied when this Agreement was entered into by the parties. The Contractor's certification in Paragraph 25(A), above, shall be a continuing term or condition of this Agreement. As such at all times during the performance of this Agreement, the Contractor must be capable of making the certification

required in Paragraph 25(A), above, as if on the date of making such new certification the Contractor was then executing this Agreement for the first time. Accordingly, the following requirements shall be read so as to apply to the original certification of the Contractor in Paragraph 25(A), above, or to any new certification the Contractor is required to be capable of making as stated in the preceding sentence:

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

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

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

## **26. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions**

A. The applicable definitions and exceptions to prohibited conduct and disclosures contained in 31 U.S.C. § 1352 and 45 C.F.R. Part 93 or Subparts B and C of 7 C.F.R. Part 3018, as applicable, are hereby incorporated by reference in subparagraph (B) of this certification.

B. The Contractor, by executing this Agreement, certifies to the best of its knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement; and

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the Contractor shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer.

C. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards allowed under this Agreement at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

D. This certification is a material representation of fact upon which reliance is placed when this Agreement is made and entered into. Submission of this certification is a prerequisite for making and entering into this Agreement imposed under 31 U.S.C. § 1352. It shall be a material obligation of the Contractor to keep this certification current as to any and all individuals or activities of the Contractor providing services under this Agreement during the pendency of this Agreement. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to: (1) a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure; and/or (2) at the discretion of NMHIX, termination of the Agreement.

## **27. Non-Discrimination**

A. The Contractor agrees to comply fully with Title VI of the Civil Rights Act of 1964, as amended; the Rehabilitation Act of 1973, Public Law 93-112, as amended; and the Americans With Disabilities Act of 1990, Public Law 101-336; in that there shall be no discrimination against any employee who is employed in the performance of this Agreement, or against any applicant for such employment, because of age, color, national origin, ancestry, race, religion, creed, disability, sex, or marital status.

B. This provision shall include, but not be limited to, the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

C. The Contractor agrees that no qualified handicapped person shall, on the basis of handicap, be excluded from participation or be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the Contractor. The Contractor further agrees to insert similar provisions in all subcontracts for services allowed under this Agreement under any program or activity.

D. The Contractor agrees to provide meaningful access to services for individuals with Limited English Proficiency (LEP) in accordance with Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency."

## **28. Findings and Sanctions**

A. The Contractor agrees to be subject to the findings and sanctions assessed as a result of NMHIX audits, federal audits, and disallowances of the services provided pursuant to this Agreement and the administration thereof.

B. The Contractor will make repayment of any funds expended by NMHIX, subject to which an auditor with the jurisdiction and authority finds were expended, or to which appropriate federal funding agencies take exception and so request reimbursement through a disallowance or deferral based upon the acts or omissions of the Contractor that violate applicable federal statutes and/or regulations.

C. If NMHIX becomes aware of circumstances that might jeopardize continued federal funding, the situation shall be reviewed and reconciled by a mutually agreed upon panel of Contractor and NMHIX officials.

## 29. Federal Tax Information

- A. Performance. In performance of this Agreement, and to the extent required by law, Contractor agrees to comply with and assume responsibility for compliance by Contractor's employees with the following requirements:
- i. All work will be performed under the supervision of the Contractor or the Contractor's responsible employees.
  - ii. Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Agreement or as otherwise required by law. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.
  - iii. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
  - iv. No work involving returns and return information furnished under this Agreement will be subcontracted without ensuring compliance with appropriate safeguards.
  - v. The Contractor will maintain a list of employees authorized access. Such list will be provided to NMHIX and, upon request, to the IRS reviewing office.
  - vi. NMHIX will have the right to void the Agreement if the Contractor fails to provide the safeguards described above.
- B. Criminal/Civil Sanctions for Disclosure of Protected Information. In performance of this Agreement, and to the extent required by law, Contractor agrees to the following requirements:
- i. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five (5) years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by Internal Revenue Code (IRC) Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
  - ii. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any returns or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any

person except as may be necessary in the performance of this Agreement. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as one (1) year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC Sections 7213A and 7431.

- iii. Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5U.S.C. 552a(m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to NMHIX records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- iv. Granting a Contractor access to Federal Tax Information (FTI) must be preceded by certifying that each individual understands NMHIX's security policy and procedures for safeguarding IRS information. The Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in NMHIX's files for review. As part of the certification and at least annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213, and 7213A. The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches (See IRS Publication 1075, Tax Information Security Guidelines). For both the initial certification and the annual certification, the Contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements

### **30. Clean Air Act, Federal Water Pollution Control Act**

Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq..

### **31. Force Majeure**

No party shall be deemed in default of, nor shall any party be liable for any damages suffered or costs incurred by another party arising out of any cessation, interruption, delay or failure to perform its obligations under this Agreement if such cessation, interruption, delay or failure results from causes beyond the party's reasonable control, including, without limitation, earthquake, flood, storm or other natural disaster, act of God,

acts of war, epidemics, acts of government, power failures, malicious network attacks, nuclear accidents, and acts of terrorism.

**32. Insurance**

A. The Contractor shall not begin the services required under this Agreement until it has: (a) obtained, and upon NMHIX’s request provided to NMHIX, insurance certificates reflecting evidence of all insurance required herein; however, the NMHIX reserves the right to request, and the Contractor shall submit, copies of any policy upon reasonable request by NMHIX; (b) obtained NMHIX approval of each company or companies as required below; and (c) confirmed that all policies contain the specific provisions required. Contractor’s liabilities, including but not limited to Contractor’s indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Contractor’s failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of Agreement by NMHIX.

Further, the Contractor shall not modify any policy or endorsement thereto which increases NMHIX’s exposure to loss for the duration of this Agreement.

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

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

General Annual Aggregate (other than Products/Completed Operation)	\$5,000,000
Products/Completed Operations Aggregate Limit	\$5,000,000
Personal Injury Limit	\$5,000,000
Each Occurrence	\$5,000.000

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

(3) Professional Liability. For the Contractor and all of the Contractor's employees who are to perform professional services under this Agreement, the Contractor shall keep in full force and effect, Professional Liability insurance for any professional acts, errors or omissions. Such policy shall provide a limit of not less than \$5,000,000 per claim and \$5,000,000 annual aggregate. The Contractor shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the first work performed under this Agreement; and (2) the policy will be

maintained in force for a period of three years after substantial completion of the project or termination of this Agreement whichever occurs last. If professional services rendered under this Agreement include work relating to environmental or pollution hazards, the Contractors policy shall not contain exclusions for those activities.

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

Employers Liability Limits as follows:

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

The Contractor shall provide an endorsement that the insurer waives the right of subrogation against NMHIX and its respective officials, officers, employees, agents, volunteers and representatives.

C. Cancellation. Except as provided for under New Mexico law, all policies of insurance required hereunder must provide that the NMHIX is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Cancellation provisions in insurance certificates shall not contain the qualifying words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives".

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

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

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

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

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

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

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

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

**33. 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.

**34. Communications**

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

**35. Compliance with Law**

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

**36. Counterparts**

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

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

\_\_\_\_\_  
Amy Dowd, NMHIX CEO

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

**EXHIBIT A**  
**Scope of Work**

## Section A: 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.