



THE PLACE TO SHOP, COMPARE AND BUY HEALTH INSURANCE. *Affordably.*

**REQUEST FOR QUOTE**

# **Health Insurance Exchange Outreach and Education**

**No. 2016-009**

**RFQ Issued: October 25, 2016**

**Quotes Due By: October 31, 2016**

# **Section 1: Background Information**

## **1.1 Background on beWellnm**

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. The New Mexico Health Insurance Exchange (BEWELLNM) is created as a non-profit public corporation.

BEWELLNM’s 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.

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

The purpose of this RFQ is to solicit quotes to assist in additional outreach and education activities to maximize enrollment, awareness, and education to consumers eligible for ACA enrolling in health insurance through beWellnm. We encourage creative approaches that will maximize enrollments. Note that this RFQ applies to outreach to all demographic populations throughout the State of NM with the exception of Native American activities.

BEWELLNM intends to make multiple awards through this RFQ process to result in geographic coverage for the entire state. Awards may range from under \$20,000 up to a maximum of \$45,000, depending on the proposed capacity and approaches that are likely to result in significant enrollment.

# **Section 2: Administrative Information**

## **2.1 Procurement Administrator**

The Procurement Administrator for this project shall be:

Debra Gassoway. Outreach Projects Manager

BeWellnm

7601 Jefferson NE, Suite 160

Albuquerque, NM 87110

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

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

## 2.2 Key Dates

RFQActivity	Key Dates (suggested)
RFQ Released	Oct 25, 2016
quote DUE	Oct 31, 2016
Estimated Award Date	Nov 1, 2016
Estimated Contract Execution Date	Nov 2, 2016

## 2.3 Contract Period and Terms and Conditions

The anticipated Contract Period will be from the date the contract is executed by BEWELLM through December 31, 2017. The successful Offeror will be expected to execute a contract for the solicited services in the form of the sample contract attached to this RFQ as Attachment 2. NOTE: the options to bid include Nov 2, 2016 through December 31, 2017 or Jan 1, 2017 – through Dec 31, 2017. PLEASE indicate bid period of time on cost proposal sheet in section 5.3. 6.

## 2.4 Restrictions on Communications

From the issue date of this RFQ until the Evaluation Committee announces the successful Offerors, all communications related to this RFQ must be with the Procurement Administrator, and all such communications must be in writing. The Procurement Administrator will respond only to written questions regarding the procurement process and this RFQ. Oral questions will not be accepted. Offerors may be disqualified if they contact any employee or affiliate of beWellnm regarding this RFQ. The Procurement Administrator may, at his or her discretion, initiate discussions with Offerors who submit responsive or potentially responsive quotes for the purpose of clarifying aspects of the quotes, but quotes may be accepted and evaluated without such discussion.

## 2.5 Questions

Offerors may submit written questions to the Procurement Administrator through the email noted in Section 2.1. Questions will be accepted until 5 p.m. on October 26, 2016. BeWellnm may provide written responses to those questions, but is not obligated to do so.

## **2.6 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 Offerors.

## **2.7 Amendment and Withdrawal of quotes**

Offerors may amend or withdraw their quotes at any time before the submission deadline, 3:00 PM mountain standard time October 31, 2016. The amendment must be in writing and must be signed by the Offeror. Offerors must notify the Procurement Administrator in writing prior to the submission deadline if they wish to completely withdraw their quotes.

## **2.8 Submission of quotes**

The Procurement Administrator must receive all components of the quote by the deadline. It is Offeror'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.

## **2.9 Costs of Preparing the quote**

The costs of preparation and delivery of the quote are solely the responsibility of Offeror.

## **2.10 No Commitment to Contract**

The 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. This RFQ may be cancelled at any time and any and all quotes may be rejected in whole or in part if the BEWELLNM determines, in its sole discretion, that doing so is in the best interests of the BEWELLNM. Issuance of this RFQ in no way constitutes a commitment by the BEWELLNM to award a contract.

## **2.11 Rejection of quotes**

The BEWELLNM may reject outright and not evaluate any quote that does not comply with the terms of this RFQ or that does not meet the mandatory specifications of this RFQ.

## **2.12 Nonmaterial Variances**

The BEWELLNM reserves the right to waive or permit cure of nonmaterial variances in a quote if, in the judgment of the BEWELLNM, it is in the Exchange's best interest to do so. The determination of materiality is in the sole discretion of BEWELLNM.

## **2.13 Subcontractors**

Contractor is solely responsible for fulfillment of the Contract. The 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 the BEWELLNM. Contractor will include all proposed subcontractors in its quote. In the event the BEWELLNM approves any subcontractor, Contractor will remain fully responsible for complying with the duties and obligations under the Contract. Any use of subcontractors by Contractor will not obligate the BEWELLNM as a party to the subcontract, nor create any right, claim, or interest for the subcontractor against the BEWELLNM, its agents, employees, representatives, or successors. The parties agree that there are no third party beneficiaries, intended or otherwise, to the Contract.

## **2.14 Reference Checks**

The 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 Offeror's qualifications and the qualifications of any subcontractor identified in the quote.

## **2.15 Information from Other Sources**

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

## **2.16 Quote Clarification Process**

The BEWELLNM reserves the right to contact an Offeror 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 Offeror's quote. The BEWELLNM will not consider information received from or through Offeror if the information materially alters the content of the quote or the type of services Offeror is offering to the BEWELLNM. An individual authorized to legally bind Offeror shall sign responses to any request for clarification. Failure to comply with requests for additional information may result in rejection of the quote.

## **2.17 Disposition of Quotes**

All quotes become the property of BEWELLNM and shall not be returned to Offeror.

## **2.18 Disclosure of Quote Contents**

The BEWELLNM shall keep submitted quotes confidential until negotiation and award of a Contract is completed; provided that the BEWELLNM reserves the right to discuss the content of the quotes publicly as necessary to secure approval and award of a contract. After negotiation and award of the contract is complete, all quotes and documents pertaining to the quotes will be open to the public in accordance with state and federal laws relating to public records.

If an Offeror submits material the Offeror believes is confidential under state and federal law, the Offeror shall request confidential treatment and shall conspicuously mark the outside of the quote as containing confidential information and shall mark each page upon which

confidential information appears as containing confidential information.

If a request is received for disclosure of material for which an Offeror has made a written request for confidentiality, the BEWELLNM shall examine the Offeror's request and make a written determination that specifies which portions of the quote should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the quote will be so disclosed. The quote shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential material.

As between the BEWELLNM and the Offeror, the 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.

## **2.19 Release of Claims**

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

## **2.20 Offeror Presentations**

At the sole discretion of the BEWELLNM, Offerors 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 Offerors to demonstrate their proposed solutions and clarify any elements of their quote. Any cost associated with interviews, presentations, and/or demonstrations will be borne solely and entirely by Offeror(s). The presentation may occur at the BEWELLNM's offices, via the Internet, or at another location as specified by the BEWELLNM.

## **2.21 Award Notice and Acceptance Period**

A "Notice of Intent to Award" will be sent to the successful Offeror. Negotiation and execution of the Contract shall be completed no later than 7 days from the date of the Notice of Intent to Award or such other time as designated by BEWELLNM. If the successful Offeror fails to deliver an executed Contract by that date, BEWELLNM, in its sole discretion, may cancel the award and award the Contract to another responsible Offeror if doing so is in the best interests of the BEWELLNM. Notice will be sent to the unsuccessful Offerors once a contract is executed or at such other time as designated by BEWELLNM.

## **2.22 No Contract Rights until Execution**

No Offeror shall acquire any legal or equitable rights regarding the Contract unless and until the Contract has been fully executed by the successful Offeror(s) and BEWELLNM.

## **2.23 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 be brought to the appropriate federal or state courts in the State of New Mexico.

## **2.24 Protests**

Any actual or prospective Offeror who believes it is aggrieved in connection with the solicitation or award of a Contract hereunder may protest to the Chief Executive Officer of the BEWELLNM. Such a protest shall be submitted in writing within five business days after the aggrieved Offeror 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 business 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 submission deadline.

The Chief Executive Officer of the BEWELLNM or a 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 Chief Executive Officer of the BEWELLNM or a designee shall promptly issue a decision in writing to uphold or deny the protest.

## **2.25 Eligible Applicants**

- Applications must be from an organization legally authorized to conduct business in the state of New Mexico.
- Applications from individuals will not be accepted.
- Health insurance issuers and producers are not eligible to submit a quote. NMSA 1978, § 59A-23F-4(F).

## **2.26 Contract Terms and Conditions**

The contract between BEWELLNM and a contractor will follow the format specified by the BEWELLNM and contain the terms and conditions set forth in the Attachment 2. The BEWELLNM reserves the right to negotiate with any Offeror provisions in addition to those contained in the sample contract. The contents of this RFQ, as revised and/or supplemented, and the successful Offeror's quote 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 the 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 quote rewrite to correct is proposed.

Should an Offeror 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 Offeror must propose specific alternative language. The BEWELLM may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the BEWELLM and will result in disqualification of the Offeror's quote.

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

## **2.27 Disclosure Regarding Responsibility**

Prospective Offerors agree to disclose whether they, or any principal of their company:

1. Are presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.
2. Have within a three-year period preceding this offer, been convicted of or had 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 related to the submission of offers; or 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. Are presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with, commission of any of the offenses enumerated in paragraph 2 of this disclosure.
4. Have preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds three thousand dollars (\$3,000.00) of which the liability remains unsatisfied.
  - a. Taxes are considered delinquent if both of the following criteria apply:
    - i. 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.
    - ii. 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.
5. 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.
6. 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.
7. The Offeror shall provide immediate written notice to the BEWELLNM if, at any time prior to contract award, the Offeror learns that its disclosure was erroneous when submitting or became erroneous by reason of changed circumstances.
  8. A disclosure that any of the items in this requirement exist will not necessarily result in withholding an award under this solicitation. However, the disclosure will be considered in the determination of the Offeror's responsibility. Failure of the Offeror to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.
  9. 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 an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
  10. 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. 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 Procurement Manager or Buyer. If it is later determined that the Offeror knowingly rendered an erroneous disclosure, in addition to other remedies available to the BEWELLNM, the BEWELLNM may terminate the involved contract for cause. Still further the BEWELLNM may suspend or debar the contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the BEWELLNM.

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

The Offeror 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 Offeror 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.

## **Section 3: Scope of Services**

### **3.1 Objective of the Outreach and Education Activities**

The objective of the outreach and education activities is to maximize enrollment in the BEWELLNM. Priority will be given to projects that:

- Have the greatest probability of directly resulting in BEWELLNM enrollments.
- Provide for the most cost-effective activities in terms of cost per enrollment.
- Propose innovative methods of engaging consumers that will result in enrollments.

### **3.2 Specific Services to Be Performed**

The purpose of this RFQ is to solicit quotes to assist the BEWELLNM in outreach and education activities, including the following:

- A. Identifying BEWELLNM eligible consumers and conducting high impact outreach and education to connect those consumers with enrollment appointments.
- B. Informing BEWELLNM eligible consumers about any planned BEWELLNM events through creative outreach and education strategies.
- C. Pre-registering consumers for enrollment assistance at enrollment sites through the use of postcard and dashboard systems.
- D. Completing required BEWELLNM outreach training to be hosted by BEWELLNM and participating in meetings of outreach contractors.
- E. Participating in regional planning and coordination activities.
- F. Providing monthly reports to the BEWELLNM on specified metrics.

### 3.3 Reports to Be Provided

The selected Offeror(s) shall provide reports to BEWELLNM on a monthly basis which delineate metrics such as:

- Number of events, dates, locations, counties, and times
- Number of consumers reached, with names and emails.
- Materials disseminated and amounts
- Number of enrollment counselor or broker appointments made
- Overview and sample of event program and materials (**Note that all materials, banners, etc. must use BEWELLNM approved logos, branding, etc. and /or be approved by BEWELLNM prior to use.**)
- Other information as will be specified by the BEWELLNM.

## Section 4: General Contractual Information

### 4.1 BEWELLNM's Responsibilities

The BEWELLNM will provide for the following:

- A. Outreach and education materials which can be downloaded from the beWellnm website
- B. Provision of training curricula for outreach and education contractors.
- C. Access to a dashboard to record events, activities, and make referrals to appointments.
- D. Reporting templates for monthly detailed reporting by contractors.

### 4.2 Contractor Responsibilities

All contractors will provide the following:

- A. Performance of outreach and education activities to connect BEWELLNM eligible consumers with enrollment appointments.
- B. Dissemination of information to BEWELLNM eligible consumers about BEWELLNM events through creative outreach and education strategies.
- C. Completion all required BEWELLNM outreach & enrollment training for outreach contractors.

- D. Participation in regional planning and coordination activities.
- E. Timely submission of monthly reports to the BEWELLM on specified metrics. Failure to submit timely reports and invoicing may result in non-payment by BEWELLM per contract.

## **Section 5: Technical quote**

### **5.1 Preparation Standards**

Quotes must be no more than 10 pages in length in total. Quotes should be submitted by electronic version to [rfp@nmhix.com](mailto:rfp@nmhix.com).

### **5.2 Binding**

NA

### **5.3 Format of the quote**

The quote shall respond completely to the requirements stated in this section. In order to permit effective comparisons of competing quotes, the following format shall be adhered to:

**1 Title Page** – Include name of the firm, local address, telephone number, fax number, email address, name of contact person, and date.

**2 Table of Contents** – Clearly identify the material by section and page number.

**3 Transmittal Letter**—In the form of a standard business letter and shall be signed by an individual authorized to legally bind the firm. It shall include the following:

- a) A statement indicating the firm is a corporation or other legal entity.
- b) The name, title, telephone number, and email address of the person to be contacted for clarifications or questions regarding the quote, the person authorized to negotiate a contract on behalf of the Offeror, and the person authorized to contractually bind the Offeror;
- c) A statement that no attempt has been made or shall be made by the firm to induce any other person or a firm to submit or not to submit a quote.
- d) A statement of affirmative action that the firm does not discriminate in its employment practices because of race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin, or persons with disabilities. In addition, the firm shall provide a statement of compliance with the requirements of Title VI of the Civil Rights Act of 1964.
- e) A statement acknowledging receipt of and identifying all addenda to this RFQ

- issued by BEWELLNM.
- f) A statement that the firm certifies the following in connection with this procurement:
    - (1) The quote has been arrived at independently, without consultation, communication, or agreement with any other firm or with any competitor, for the purpose of restricting competition as to any matter relating to such preliminary cost quote.
    - (2) Unless otherwise required by law, the quote has not knowingly been disclosed by the firm prior to award, directly or indirectly, to any other firm or to any competitor.
  - g) A statement that the person signing this quote certifies that he or she is the person in the firm's organization responsible for, or authorized to make, decisions as to the prices quoted and that he or she has not participated, and shall not participate, in any action contrary to f.(1) or f.(2) in the above paragraph.

#### **4. Offeror Qualifications**

- a) Provide the following details of the Offeror background and experience:
  - (1) Date the organization was established.
  - (2) Location of the organization's service area (county, regional, statewide).
  - (3) Total number of professional staff.
  - (4) Organizational Budget.
  - (5) Briefly describe the organization's history and mission.
  - (6) Briefly describe the type of work your organization performs, the services provided, the number of individuals served, and the geographic areas served including a listing of counties served.
  - (7) Briefly describe any experience the organization has had with outreach and education activities. Provide examples of collaborative efforts with other community organizations. Provide a description on how you will focus on the hard to reach population that your organization serves. If your organization has previously done outreach activities for the BEWELLNM document your effectiveness.
  - (8) Briefly describe your understanding of the uninsured population in NM, and how you will be successful in reaching and motivating them to take action to purchase insurance through BEWELLNM.
  - (9) Describe how the organization will be able to issue timely, detailed and accurate activity reporting and invoicing to BEWELLNM on a monthly basis.
  - (10) Provide a minimum of three references. The reference should include the Individual's name, title, organization, email address, and telephone number.

#### **5. Work Plan and Approach:**

- (a) List the populations, specific number of individuals, and geographic areas you propose to serve with BEWELLNM outreach and education services and explain how your organization is qualified to serve those populations and areas. Project the number of BEWELLNM enrollments you expect your activities to result in and the rationale.

- (b) Describe in detail how the organization would conduct outreach and education to raise awareness of the BEWELLNM and opportunities for coverage. Include activities such as presentations, local events, or making print materials and available, or any other strategies you propose to implement. Explain dissemination strategies for BEWELLNM- produced materials.
- (c) Provide a description of how you would coordinate with all enrollment partners.
- (d) Provide any additional information you would like to submit for consideration.
- (e) If your organization has previously been a BEWELLNM outreach and education contractor please document your success in activities that resulted in enrollments in the BEWELLNM.

**6. Cost**

The cost shall be for the services requested in this RFQ and shall provide information in the following schedule format:

<b>Budget &amp; Expense</b>	<b>Amount</b>
<i>Scope of Work – List each activity and cost</i>	
1	
2	
3	
4	
etc	
Subtotal activity costs	
Pre-approved expenses with explanation (including mileage logs)	
<b>Total budget ( including NMGRT)</b>	

**PLEASE BREAK DOWN THE COST FOR THE PERIOD OF NOV 1 - DEC 31, 2016 AND JAN 1- DEC 31, 2017 SEPARATELY. YOU MAY ISSUE A QUOTE FOR ONE OR BOTH YEARS.**

For each category of expense provide a detailed narrative explanation of the cost and the rationale for the expense. If you are proposing a fixed hourly rate – state the rate and how many hours you will incur. Provide a narrative explanation of the rationale behind the BEWELLNM enrollment projections.

**5.4 Deviation from Specifications**

If the quote deviates from the detailed specifications and requirements of this RFQ, the transmittal letter shall identify and explain these deviations. BEWELLNM reserves the right to reject any quote containing such deviations or to require modifications before acceptance.

**5.5 Quote Submission Deadline**

An electronic version of the quote must be delivered to and received by the BEWELLNM at [rfp@nmhix.com](mailto:rfp@nmhix.com) by 3p.m. MST on October 31, 2016. Quotes shall be addressed to the Procurement Administrator. Bidders shall not submit a hard copy of the quote.

## Section 6: Evaluation

### 6.1 Overall Evaluation Criteria

The quotes shall be evaluated by an evaluation committee, appointed by the BEWELLM

### 6.2 Evaluation of the quote

Each quote will be evaluated in the following categories. The maximum number of points available in each category is shown beside that category below:

Offeror Background and Experience	25 points
Work Plan and Approach	35 points
Cost	40 points
<b>TOTAL</b>	<b>100 points</b>

Members of the RFQ evaluation committee will individually evaluate the quote and award points accordingly. The committee will then meet as a group to discuss the quotes and the individual evaluations. The scores established by each committee member will then be combined, and the average score (total score divided by number of committee members) will become the final score for each Offeror.

**Attachment 2**  
**Sample Agreement**

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

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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 “BEWELLNM,” and \_\_\_\_\_, hereinafter referred to as the “Contractor,” and is effective as of the date when it is executed by BEWELLNM. This Agreement is the result of BEWELLNM 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 BEWELLNM monthly, or according to a different schedule as established by the BEWELLNM, regarding Contractor’s performance and fulfillment of its obligations under this Agreement.

**2. Deliverables and Consideration**

A. BEWELLNM 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 BEWELLNM 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 BEWELLNM 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 BEWELLNM 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 \_\_\_\_\_ 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 BEWELLNM, 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, BEWELLNM'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 BEWELLNM, 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, BEWELLNM shall notify Contractor of such material default or breach and Contractor shall have a period of 30 days, or a longer period if BEWELLNM 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, BEWELLNM may notify Contractor of its intent to immediately terminate this Agreement. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE BEWELLNM'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 BEWELLNM; 2) comply with all directives issued by BEWELLNM in the notice of termination as to the performance of work under this Agreement; and 3) take such action as BEWELLNM shall direct for the protection, preservation, retention or transfer of all property titled to BEWELLNM 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 BEWELLNM upon termination and shall be submitted to BEWELLNM as soon as practicable.

#### **5. Funding**

The terms of this Agreement are contingent upon (1) continued authorization of the BEWELLNM by the Legislature of New Mexico, (2) sufficient legislative appropriations, if any, for the BEWELLNM operations and activities, and (3) the ability of BEWELLNM to obtain funds, by federal grants or other means, necessary to carry out BEWELLNM 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 BEWELLNM to the Contractor. BEWELLNM'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 BEWELLNM and are not employees of BEWELLNM. 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 BEWELLNM 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 BEWELLNM 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 BEWELLNM.

## **8. Subcontracting**

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

## **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 BEWELLNM, 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 BEWELLNM to any obligation not assumed herein by BEWELLNM 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 BEWELLNM 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 BEWELLNM.

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 BEWELLNM pursuant to the terms of this Agreement shall become the property of BEWELLNM and shall be delivered to BEWELLNM 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 BEWELLNM 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 BEWELLNM employee while such employee was or is employed by BEWELLNM and participating directly or indirectly in BEWELLNM'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 BEWELLNM; (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 BEWELLNM, or a business in which an employee of BEWELLNM 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 BEWELLNM 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 BEWELLNM.

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 BEWELLNM relied when this Agreement was entered into by the parties. The Contractor shall provide immediate written notice to BEWELLNM 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 BEWELLNM and notwithstanding anything in the Agreement to the contrary, BEWELLNM may immediately terminate the Agreement.

E. The Contractor shall provide immediate written notice to BEWELLNM 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. BEWELLNM 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, BEWELLNM 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 BEWELLNM.

## **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 BEWELLNM, the State Auditor, HHS, the OIG, the Comptroller General of the United States, and any of their duly authorized representatives. BEWELLNM shall have the right to audit billings both before and after payment. Payment under this Agreement, if any, shall not foreclose the right of BEWELLNM 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 BEWELLNM, 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 BEWELLNM 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 BEWELLNM:  
Amy Dowd  
CEO,  
BEWELLNM  
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 BEWELLNM 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 BEWELLNM'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 BEWELLNM, BEWELLNM 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 BEWELLNM when it requests subcontractor approval from BEWELLNM. If the subcontractor, or its principals, is debarred, suspended, or proposed for debarment by any Federal, state or local department or agency, BEWELLNM 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 BEWELLM, 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 BEWELLNM 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 BEWELLNM, 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 BEWELLNM 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 BEWELLNM 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 BEWELLNM and, upon request, to the IRS reviewing office.
- vi. BEWELLNM 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 5 U.S.C. 552a(m)(1), provides that any officer or employee of a Contractor, who by virtue of his/her employment or official position, has possession of or access to BEWELLM 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 BEWELLM'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 BEWELLM'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 BEWELLNM's request provided to BEWELLNM, insurance certificates reflecting evidence of all insurance required herein; however, the BEWELLNM reserves the right to request, and the Contractor shall submit, copies of any policy upon reasonable request by BEWELLNM; (b) obtained BEWELLNM 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 BEWELLNM. Further, the Contractor shall not modify any policy or endorsement thereto which increases BEWELLNM'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)	\$1,000,000
Products/Completed Operations Aggregate Limit	\$1,000,000
Personal Injury Limit	\$1,000,000

Each Occurrence

\$1,000.000

(2) Automobile Liability. For all of the Contractor's automobiles including owned, hired and non-owned automobiles, the Contractor shall keep in full force and effect, automobile liability insurance providing coverage at least as broad for bodily injury and property damage with a combined single limit of not less than \$5 million per accident. An insurance certificate shall be submitted to BEWELLNM 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	\$1,000,000	Each Accident
Bodily Injury by Disease	\$1,000,000	Each Employee
Bodily Injury by Disease	\$1,000,000	Policy Limit

The Contractor shall provide an endorsement that the insurer waives the right of subrogation against BEWELLNM 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 BEWELLNM is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Cancellation provisions in insurance certificates shall not contain the qualifying words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives". In the event the Contractors' insurance carriers will not agree to this notice requirement, the Contractor will provide written notice to the BEWELLNM within four working days of Contractors receipt of notice from its insurance carrier(s) of any cancellation, nonrenewal or material reduction of the required insurance.

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

that have been approved by the BEWELLNM. The BEWELLNM 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 BEWELLNM, that the policy or policies providing coverage for Commercial General Liability must be endorsed to include as an Additional Insured, the BEWELLNM 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 BEWELLNM and its officials, officers, employees, agents, volunteers and representatives, as reflected in an endorsement which shall be submitted to the BEWELLNM.

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

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

J. The BEWELLNM 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 BEWELLNM. The BEWELLNM will reimburse the Contractor for the cost of the additional premium for any coverage requested by the BEWELLNM 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 BEWELLNM 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. BEWELLNM 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 BEWELLNM desires to maintain a consistent and coherent public message regarding the work of the BEWELLNM, its contracting partners, and the contractual relationship between the BEWELLNM and its contracting partners. Contractor expressly acknowledges the BEWELLNM'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 BEWELLNM to engage in the communications. Contractor also agrees to comply with the BEWELLNM 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.**

\_\_\_\_\_  
Linda Wedeen, Interim CEO

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

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

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

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

Storing PII. Contractor 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's") under Section 1321(c) of the Affordable Care Act (42 U.S.C. § 18041(c)).

The New Mexico Health Insurance Exchange (BEWELLNM) 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 BEWELLNM, or directly from Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers, or these individuals' legal representatives or Authorized Representatives. That Agreement including this 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 BEWELLNM.
2. The release of electronic documents containing PII through any electronic means of communication (e.g., e-mail, web portal) must meet the verification requirements for the release of "written documents" in Section (5)b below.
3. Persons legally authorized to act on behalf of the Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers regarding their PII, including individuals acting under an appropriate power of attorney that complies with applicable state and federal law, must be granted access in accordance with their legal authority. Such access would generally be expected to be coextensive with the degree of access available to the Subject Individual.
4. At the time the request is made, the Consumer, Applicant, Qualified Individual, Enrollee, Qualified Employees, Qualified Employers, or these individuals' legal representatives or Authorized Representatives should generally be required to specify which PII he or she would like access to. The Non-Exchange Entity may assist them in determining their Information or data needs if such assistance is requested.
5. Subject to paragraphs (1) a.i.6 and 7 below, Non-Exchange Entities generally must provide access to the PII in the form or format requested, if it is readily producible in such form or format.

6. The Non-Exchange Entity may charge a fee only to recoup their costs for labor for copying the PII, supplies for creating a paper copy or a copy on electronic media, postage if the PII is mailed, or any costs for preparing an explanation or summary of the PII if the contractors has requested and/or agreed to receive such summary. If such fees are paid, the Non-Exchange Entity must provide the requested copies in accordance with any other applicable standards and implementation specifications.
7. A Non-Exchange Entity that receives a request for notification of, or access to PII must verify the requestor's identity in accordance with Section (5)b.
8. A Non-Exchange Entity must complete its review of a request for access or notification (and grant or deny said notification and/or access) within 30 days of receipt of the notification and/or access request.
9. Except as otherwise provided in (1)a.i.10, if the requested PII cannot be produced, the Non-Exchange Entity must provide an explanation for its denial of the notification or access request, and, if applicable, information regarding the availability of any appeal procedures, including the appropriate appeal authority's name, title, and contact information.
10. Unreviewable grounds for denial. Non-Exchange Entities may deny access to PII that they maintain or store without providing an opportunity for review, in the following circumstances:
  - a. If the PII was obtained or created solely for use in legal proceedings;
  - b. If the PII is contained in records that are subject to a law that either permits withholding the PII or bars the release of such PII.

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

- a. **Standard: Privacy Notice Statement.** Prior to collecting PII, the Non-Exchange Entity must provide a notice that is prominently and conspicuously displayed on a public facing Web site, if applicable, or on the electronic and/or paper form the Non-Exchange Entity will use to gather and/or request PII.
  - i. **Implementation Specifications.**
    1. The statement must be written in plain language and provided in a manner that is accessible and timely to people living with disabilities and with limited English proficiency.
    2. The statement must contain at a minimum the following information:

- a. Legal authority to collect PII;
  - b. Purpose of the information collection;
  - c. To whom PII might be disclosed, and for what purposes;
  - d. Authorized uses and disclosures of any collected information;
  - e. Whether the request to collect PII is voluntary or mandatory under the applicable law;
  - f. Effects of non-disclosure if an individual chooses not to provide the requested information.
3. The Non-Exchange Entity shall maintain its Privacy Notice Statement content by reviewing and revising as necessary on an annual basis, at a minimum, and before or as soon as possible after any change to its privacy policies and procedures.
  4. If the Non-Exchange Entity operates a Web site, it shall ensure that descriptions of its privacy and security practices, and information on how to file complaints with BEWELLNM 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 BEWELLNM, 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 BEWELLNM 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 BEWELLNM 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 BEWELLM 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 BEWELLM 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 BEWELLM 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 within required time frames.
- b. Standard: Standard Operating Procedures. The Non-Exchange Entity shall incorporate privacy and security standards and implementation specifications, where appropriate, in its standard operating procedures that are associated with functions involving the creation, collection, disclosure, access, maintenance, storage, or use of PII.
  - i. Implementation Specifications:
    1. The privacy and security standards and implementation specifications shall be written in plain language and shall be available to all of the Non-Exchange Entity's Workforce members, or sub-contractors, whose responsibilities entail the creation, collection, maintenance, storage, access, or use of PII.
    2. The procedures shall ensure the Non-Exchange Entity's cooperation with CMS in resolving any Incident or Breach, including (if requested by CMS) the return or destruction of any PII files it received under the Agreement; the provision of a formal response to an allegation of unauthorized PII use, reuse or disclosure; and/or the submission of a corrective action plan with steps designed to prevent any future unauthorized uses, reuses or disclosures.
    3. The standard operating procedures must be designed and implemented to ensure the Non-Exchange Entity and its Workforce, or sub-contractor, comply with the standards and implementation

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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)

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.