

**STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT
MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (“MOU”) is made and entered into by and between the State of New Mexico **Human Services Department**, hereinafter referred to as “HSD,” and **The New Mexico Health Insurance Exchange**, hereinafter referred to as “NMHIX.” The purpose of this MOU is to provide a mechanism to begin to move the federal funds received by HSD for the establishment and implementation of a health insurance exchange to NMHIX.

BACKGROUND

A. The Patient Protection and Affordable Care Act (P.L. 111-148) (the “PPACA”) requires the establishment of a health insurance exchange by each state by 2014;

B. NMHIX is a quasi-governmental nonprofit public corporation that was created in 2013 by the New Mexico Legislature, pursuant to the New Mexico Health Insurance Exchange Act (the “Act”), for the purpose of “provid[ing] qualified individuals and qualified employers with increased access to health insurance in the state;”

C. HSD applied for funding from the Department of Health and Human Services (“HHS”), pursuant to a Level One Establishment federal cooperative agreement, (“Level One Award”), in the amount of \$34,279,483, for the purpose of creating and operating a health insurance exchange in the State of New Mexico. The funding was received on November 29, 2011;

D. On February 26, 2013, HSD submitted a request for a 25% administrative supplement to the Initial Level One Award in the amount of \$8,569,871 (“Administrative Supplement”) and, in response to a request for additional information from the Center for Consumer Information and Insurance Oversight (“CCIIO”), submitted an Addendum to the request on April 10, 2013. Approval by HHS for the Administrative Supplement has not been received by HSD as of the date hereof;

E. On May 15, 2013, HSD submitted an application to HHS for an additional Level One Health Insurance Exchange Establishment Grant and Cooperative Agreement in the amount of \$20,000,000.00 for the planning, implementation, and management of a comprehensive outreach, education, marketing, and stakeholder support plan (“Supplemental Level One Award” and, together with the Initial Level One Award and the Administrative Supplement, the “Level One Awards”);

F. NMHIX is in the process of undergoing a business assessment by HHS as a condition to its receipt of the full remaining amount of the federal funds provided in the Level One Awards;

G. Pursuant to the Act, HSD is obligated to contract with the NMHIX board to transfer its exchange-related federal funding to NMHIX in consideration for its planning, implementation or operation; and

H. As a result of the foregoing, HSD is entering into this MOU with NMHIX to direct the funds set forth below to facilitate NMHIX's creation and implementation of a health insurance exchange.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. Transfer of Funds

A. Except as otherwise provided in Article 2 below, HSD shall transfer to NMHIX all Initial Level One Award funds not previously expended or otherwise encumbered within ten (10) business days of the execution of this MOU by the parties.

B. Subject to Paragraph C below, HSD shall promptly transfer to NMHIX:

1. All federal funds as may be received by HSD pursuant to the Administrative Supplement and the Supplemental Level One Award; and
2. All Initial Level One Award funds recovered from the New Mexico Health Insurance Alliance ("HIA") upon termination of the Memorandum of Understanding, dated December 3, 2012, by and between HSD and HIA ("HIA MOU"), in accordance with Article 3, Paragraph B below.

C. Notwithstanding anything herein to the contrary, HSD may withhold any transfer of funds required under this Article until such time as NMHIX fully complies with any outstanding reporting for which it is obligated pursuant to Article 3, Paragraph A below.

2. Retention of Funds by HSD

A. HSD may retain no more than **Seven Million, Five Hundred Forty-Four Thousand, Five Hundred Eighty Two and 00/xx Dollars (\$7,544,582.00)** (the "HSD Funds") from the Initial Level One Award to be used solely for the purposes set forth in paragraph B below.

B. HSD shall only use the HSD Funds for the following purposes:

1. Payment of salaries, benefits and related expenditures of the HSD's Office of Health Care reform through June 30, 2014, in an amount not to exceed **\$239,232.34**; and
2. Information Technology costs, not to exceed **\$7,305,349.66**, related to the following changes related to the Federally Facilitated Marketplace (FFM) to HSD's ISD2, ASPEN, YES-NM and Omnicaid systems:

- a. Addition of data elements to YES-NM and ASPEN;
- b. Addition of conversion logic to ISD2 system;
- c. Application of MAGI rules prior to January 1, 2014;
- d. Ability to run Medicaid applications through existing rules and new MAGI rules;
- e. New Interfaces (Electronic Account Transfer);
- f. Ability to pend applications; and
- g. Ability to conduct Minimum Essential Coverage (MEC) with Omnicaid

C. On or before June 30, 2014, HSD shall transfer to NMHIX any HSD Funds not previously expended or otherwise encumbered.

3. Responsibilities of the Parties

A. NMHIX shall:

1. Comply with all terms and conditions set forth in the Notice of Award for the Level One Award, a copy of which is attached hereto as **Exhibit A** and incorporated herein by reference.
2. Comply with all terms and conditions set forth in any future notices of award for the Administrative Supplement and/or the Supplemental Level One Award, as applicable.
3. Comply with all terms and conditions set forth in the HHS Grants Policy Statement, which can be found at <http://hhs.gov/asfr/ogapa/grantinformation/hhsgps107.pdf> and is incorporated herein in its entirety by reference.
4. Complete in their entirety and submit to HSD in a timely manner all establishment grant reports and other CCIIO reporting requirements set forth in **Exhibit B** hereto, which is incorporated herein in its entirety by reference. For purposes of this subparagraph, "in a timely manner" shall mean that all such reports are submitted to HSD in a form and manner that are complete and satisfactory to HSD not less than ten (10) business days before any such report is due to HHS.

B. HSD shall:

1. Cooperate with NMHIX to obtain such additional federal funding as is necessary to create, implement and operate the NMHIX.
2. On or before the date hereof, provide written notice of termination to the HIA of the HIA MOU, and promptly recover approximately **\$1.54 Million**

from HIA in unexpended Initial Level One Award funds that were provided to HIA pursuant to the terms of the HIA MOU.

3. Submit to HHS in a prompt manner all reports that are provided to HSD by NMHIX in accordance with the terms of this MOU.

4. Term

This MOU shall become effective upon execution by both parties and shall terminate on **June 30, 2014**; provided that Articles 3, 7, 8, 9 and 11 of this MOU shall survive such termination and the parties shall continue to have the rights and obligations under such Articles.

5. Conflict of Interest; Governmental Conduct Act

NMHIX warrants that neither it nor any of its Directors presently has any 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 MOU. NMHIX certifies that the 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.

6. Amendment

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

7. Applicable Law

The laws of the State of New Mexico shall govern this MOU, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this MOU, NMHIX acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this MOU.

8. Records and Financial Audit

NMHIX and HSD shall maintain all records relating to the expenditure of any Level One Awards funding and retain them for a period of five (5) years from the date of termination of this MOU. The records shall be subject to inspection by HSD, NMHIX, the Department of Finance and Administration, the State Auditor and HHS.

9. Liability

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in conjunction with this MOU. Any liability incurred in connection with this MOU

is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1 *et seq.*, NMSA 1978, as amended.

10. Invalid Term or Condition

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

11. Enforcement of MOU

A party's failure to require strict performance of any provision of this MOU 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 MOU 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.

12. Notices

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

To HSD: Office of Health Care Reform
 c/o Director
 Human Services Department
 2009 S. Pacheco
 P.O. Box 2348
 Santa Fe, NM 87504-2348

To NMHIX: New Mexico Health Insurance Exchange
 c/o Mike Nunez
 506 Agua Fria Road
 Santa Fe, NM 87501

13. Authority

The individual(s) signing this MOU on behalf of NMHIX represents and warrants that he or she has the power and authority to bind NMHIX, and that no further action, resolution, or approval from NMHIX is necessary to enter into this agreement.

14. 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 MOU NMHIX certifies by signing this MOU, that it and its Directors, 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 MOU, 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 A; (4) have not, within a three-year period preceding the effective date of this MOU, 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. NMHIX's certification in Paragraph A, above, is a material representation of fact upon which HSD relied when this MOU was entered into by the parties. NMHIX's certification in Paragraph A, above, shall be a continuing term or condition of this MOU. As such at all times during the performance of this MOU, NMHIX must be capable of making the certification required in Paragraph A, above, as if on the date of making such new certification NMHIX was then executing this MOU for the first time. Accordingly, the following requirements shall be read so as to apply to the original certification of NMHIX in Paragraph A, above, or to any new certification NMHIX is required to be capable of making as stated in the preceding sentence:

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

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

15. 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. NMHIX, by executing this MOU, 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 offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer.


C. NMHIX shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

D. This certification is a material representation of fact upon which reliance is placed when this MOU is made and entered into. Submission of this certification is a prerequisite for making and entering into this MOU imposed under 31 U.S.C. § 1352. It shall be a material obligation of NMHIX to keep this certification current as to any and all individuals or activities of anyone associated with NMHIX during the pendency of this MOU. 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 HSD, termination of the MOU.

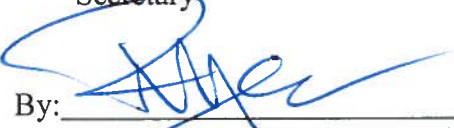
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IN WITNESS WHEREOF, parties have executed this MOU as of the last date of signature by HSD or NMHIX.

**STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT**

By: 
Sidonie Squier
Secretary

Date: 6/25/14

By: 
Raymond W. Mensack (Certifying legal sufficiency)
General Counsel

Date: 6/24/13

NEW MEXICO HEALTH INSURANCE EXCHANGE

By: 

Date: 6/24/13

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

ID Number: _____

By: _____
New Mexico Taxation and Revenue Department

Date: _____