



REQUEST FOR PROPOSALS FOR LEGAL SERVICES

RFP #2024.003

Release Date: February 23, 2024

Proposals Due: March 18, 2024

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The purpose of this Request for Proposals (RFP) is to solicit sealed proposals to establish a contract through competitive negotiations for professional legal services. The selected vendor (“Contractor”) will be responsible for the interpretation of federal and state statutes applicable to the New Mexico Health Insurance Exchange, including (but not limited to) the New Mexico Health Insurance Exchange Act, the New Mexico Insurance Code, and the Patient Protection and Affordable Care Act (“the Affordable Care Act”). Legal services will also include advice and counsel to NMHIX and its Board of Directors regarding contract negotiations, programs and policies, and state laws applicable to public and quasi-governmental entities (e.g., the Open Meetings Act, the Inspection of Public Records Act, the Governmental Conduct Act, the Whistleblower Protection Act, and the Procurement Code).

B. BACKGROUND INFORMATION

NMHIX is New Mexico’s health insurance marketplace. It was created in 2013 with the enactment of the New Mexico Health Insurance Exchange Act, NMSA 1978, § 59A-23F-1 et seq. NMHIX’s mission is to promote efforts to educate and enroll New Mexicans in affordable health insurance coverage that promotes better access to timely, high quality health care. Its vision is to achieve a healthier New Mexico through access to affordable health insurance. NMHIX is governed by a 13-member board of directors. NMHIX recently completed its eleventh Open Enrollment Period, which began on November 1, 2023 and ended on January 16, 2024. More information about NMHIX is available online at <http://www.beWellnm.com>.

C. SCOPE OF PROCUREMENT

This is an RFP for professional legal services, as further defined in the Scope of Work (Section IV.A), at a fixed hourly rate. The initial contract term will begin on May 1, 2024, and will last for one year, with an option to extend for additional terms, not to exceed four years, at the mutual agreement of the parties.

D. PROCUREMENT MANAGER

The Procurement Manager for this RFP is:

Name: Aryn M. Fitzwater
Address: New Mexico Health Insurance Exchange
7601 Jefferson St. NE, Ste. 120, Albuquerque, NM 87109
Telephone: (505) 314-5215
Email: Proposals@nmhix.com
**Please include “RFP 2024.003 Legal Services” in the subject line.*

1. Any inquiries or requests regarding this procurement should be submitted, in writing, to the Procurement Manager. Offerors may contact ONLY the Procurement

Manager regarding this procurement. Other employees or Evaluation Committee members do not have the authority to respond on behalf of the New Mexico Health Insurance Exchange.

2. Protests of the solicitation or award must be submitted in writing to the Protest Manager identified in Section II.B.12. As a Protest Manager has been named in this RFP, pursuant to §13-1-172, NMSA 1978 and 1.4.1.82 NMAC, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this RFP. Protests submitted or delivered to the Procurement Manager will NOT be considered properly submitted.

E. PROPOSAL SUBMISSION

All proposals should be submitted via email to Proposals@nmhix.com

F. DEFINITIONS

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

1. “**Affordable Care Act**” (**ACA**) is the name for the comprehensive health care reform law and its amendments. The law addresses health insurance coverage, health care costs, and preventive care. The law was enacted in two parts: The Patient Protection and Affordable Care Act was signed into law on March 23, 2010 and was amended by the Health Care and Education Reconciliation Act on March 30, 2010. The Affordable Care Act created the Individual Market and SHOP insurance programs.
2. “**Agency**” is the New Mexico Health Insurance Exchange
3. “**Award**” means the final execution of the contract document.
4. “**beWellnm**” is the brand name that the New Mexico Health Insurance Exchange uses.
5. “**Confidential**” means confidential financial information concerning Offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act §§57-3-A-1 through 57-3A-7, NMSA 1978. See also NMAC 1.4.1.45. The following items may **not** be labelled as confidential: Offeror’s submitted Cost response, Staff/Personnel Resumes/Bios (excluding personal information such as personal telephone numbers and/or home addresses), and other submitted data that is **not** confidential financial information or that qualifies under the Uniform Trade Secrets Act.

6. “**Contract**” means any agreement for the procurement of items of tangible personal property, services or construction.
7. “**Contractor**” means any business having a contract with NMHIX.
8. “**Determination**” means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.
9. “**Evaluation Committee**” means a body appointed to perform the evaluation of Offerors’ proposals.
10. “**Evaluation Committee Report**” means a report prepared by the Procurement Manager and the Evaluation Committee to support the Committee’s recommendation for contract award. It will contain scores and written evaluations of all responsive Offeror proposals.
11. “**Final Award**” means, in the context of this Request for Proposals and all its attendant documents, that point at which the final required signature on the contract(s) resulting from the procurement has been affixed to the contract(s) thus making it fully executed.
12. “**Finalist**” means an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.
13. “**Individual Market**” means the market for health insurance coverage offered to individuals and families other than in connection with a group health plan, or other than coverage offered pursuant to a contract between the health insurance issuer with the Medicaid, Children’s Health Insurance Program, or Basic Health programs.
14. “**Mandatory**” – the terms “must, “shall,” “will,,” “is required,” or” are required,” identify a mandatory item or factor. Failure to meet a mandatory item or factor may result in the rejection of the Offeror’s proposal.
15. “**Minor Irregularities**” means anything in the proposal that does not affect the price, quality and/or quantity, or any other mandatory requirement.
16. “**New Mexico Health Insurance Exchange**” is the entity that administers the New Mexico State-based Exchange.
17. “**NMHIX**” is the New Mexico Health Insurance Exchange.

18. **“Offeror”** is any person, corporation, or partnership who chooses to submit a proposal.
19. **“Procurement Manager”** means any person or designee authorized by a state agency or local public body to enter into or administer contracts and make written determinations with respect thereto.
20. **“Procuring Agency,”** for purposes of this procurement, means the New Mexico Health Insurance Exchange.
21. **“Project”** means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project acceptance is given by the project executive sponsor.
22. **“Redacted”** means a version/copy of the Offeror’s proposal with the information considered proprietary or confidential (as defined by §§57-3A-1 to 57-3A-7, NMSA 1978 and NMAC 1.4.1.45 and summarized herein and outlined in Section II.C.8 of this RFP) blacked-out BUT NOT omitted or removed.
23. **“Request for Proposals (RFP)”** means all documents, including those attached or incorporated by reference, used for soliciting proposals.
24. **“Responsible Offeror”** means the contractor/Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services described in the proposal.
25. **“Responsive Offer”** or means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to price, quality, quantity or delivery requirements.
26. **“Staff”** means any individual who is a full-time, part-time, or an independently contracted employee with the Offeror’s company.
27. **“State (the State)”** means the State of New Mexico.
28. **“State-based Exchange”** is a health insurance exchange model whereby a state runs the State-based Marketplace and is responsible for performing all marketplace functions for the individual market. Consumers in these states apply for and enroll in coverage through marketplace websites established and maintained by the states.

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

G. PROCUREMENT LIBRARY

A Procurement Library has been established. Offerors are encouraged to review the material contained in the Procurement Library. The Procurement Library contains the following information: Electronic copy of the RFP, questions and answers, RFP amendments, etc. The Procurement Library can be located at <https://www.bewellnm.com/vendor-employment/>

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule of events, the descriptions of each event, and the conditions governing this procurement.

A. SEQUENCE OF EVENTS

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

TABLE 1 - Sequence of Events

	Action	Responsible Party	Due Dates*
1.	Issue RFP	NMHIX	February 23, 2024
2.	Acknowledgement of Receipt Form Due	Potential Offerors	March 4, 2024
3.	Deadline to Submit Written Questions	Potential Offerors	March 4, 2024
4.	Response to Written Questions	NMHIX	March 6, 2024
5.	Submission of Proposal	Offerors	March 18, 2024
6.	Proposal Evaluation	Evaluation Committee	March 18 - March 22, 2024
7.	Selection of Finalists	Evaluation Committee	March 22, 2024
8.	Oral Presentation (if requested)	Finalists	March 25 - 27, 2024
9.	Finalist Chosen	NMHIX	March 27, 2024
10.	Finalize Contract	NMHIX/ Finalist	March 27 – April 12, 2024
11.	Contract Award	NMHIX	April 12, 2024
12.	Protest Deadline	Offerors	15 Days After Contract Award

* Dates may be subject to change without necessitating an amendment to the RFP. Additionally, the contract award is contingent upon the approval of the NMHIX Board of Directors.

B. EXPLANATION OF EVENTS

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

1. Issuance of RFP

This RFP is being issued on February 23, 2024.

2. Acknowledgment of Receipt Form

Potential Offerors must email the Acknowledgement of Receipt Form (APPENDIX A), to the Procurement Manager at Proposals@nmhix.com to have their organization placed on the procurement distribution list. The form must be returned to the Procurement Manager by 5:00 pm MST/MDT on the date indicated in Section II.A, Sequence of Events.

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

3. Deadline to Submit Written Questions

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP until 5:00 PM MST/MDT as indicated in Section II.A, Sequence of Events. All written questions must be addressed to the Procurement Manager identified in Section I.D. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question. Questions should be emailed to Proposals@nmhix.com.

4. Response to Written Questions

Responses to the written questions will be provided via email, on or before the date indicated in Section II.A, Sequence of Events, to all potential Offerors who timely submitted an Acknowledgment of Receipt Form (Section II.B.2 and APPENDIX A). An electronic version of the questions and answers will be posted to: <https://www.bewellnm.com/vendor-employment/>

5. Submission of Proposals

Proposals must be submitted via email to the Procurement Manager at Proposals@nmhix.com with the subject line "RFP #2024.003 Legal Services." Proposals submitted by facsimile will not be accepted.

ALL OFFEROR PROPOSALS MUST BE RECEIVED BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 5:00 PM MST/MDT ON THE DATE INDICATED IN SECTION II.A, SEQUENCE OF EVENTS. LATE PROPOSALS CANNOT BE ACCEPTED.

A log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to §13-1-116, NMSA 1978, the contents of proposals shall not be disclosed to other potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract(s) are awarded pursuant to this RFP. "Awarded" in this

context means the final required agency signature on the contract(s) resulting from the procurement has been obtained.

6. Proposal Evaluation

An Evaluation Committee will perform the evaluation of proposals. This process will take place as indicated in Section II.A, Sequence of Events, depending upon the number of proposals received. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without such discussion. Discussions during this time SHALL NOT be initiated by the Offerors.

7. Selection of Finalists

If applicable, the Evaluation Committee will select, and the Procurement Manager will notify, the finalist Offerors as per schedule Section II.A, Sequence of Events, or as soon as possible thereafter. A schedule for Oral Presentations, if any, will be determined at this time. NMHIX will select the finalists based upon the technical proposal scoring. The top scores may be asked to participate in a Best and Final Offer and/or Oral Presentations.

8. Oral Presentations (if requested)

Finalist Offerors, as selected per Section II.B.7 above, may be required to conduct an oral presentation at a location to be determined as per schedule Section II.A., Sequence of Events, or as soon as possible thereafter. If Oral Presentations are held, Finalist Offerors may be required to make their presentations through electronic means (Microsoft Teams, Zoom, etc.). NMHIX will provide Finalist Offerors with an agenda and applicable details; including an invitation to the event. Whether Oral Presentations will be held is at the sole discretion of the Evaluation Committee.

9. Best and Final Offers

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

10. Finalize Contractual Agreement

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

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

11. Contract Award

Upon receipt of the signed contractual agreement(s), NMHIX will award as per Section II.A., Sequence of Events, or as soon as possible thereafter. Contract awards are subject to approval by the appropriate State authority and the NMHIX Board of Directors.

12. Protest Deadline

Any protest by an Offeror must be timely submitted and in conformance with §13-1-172, NMSA 1978 and applicable procurement regulations. As a Protest Manager has been named in this Request for Proposals, pursuant to §13-1-172, NMSA 1978 and 1.4.1.82 NMAC, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. The 15-calendar day protest period shall begin on the day following the notice of award of contract(s) and will end at 5:00 pm MST/MDT on the 15th day. Protests must be written and must include the name and address of the protestor and the RFP number. They must also contain a statement of the grounds for protest including appropriate supporting exhibits and must specify the ruling requested from the party listed below. Protests must be directed to: Protest Manager; Protests@nmhix.com

Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of these Conditions Governing the Procurement and Evaluation, Section V, by completing and signing the Letter of Transmittal form, pursuant to the requirements in Section II.C.29, located in APPENDIX E.

2. Incurring Cost

Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror. Any cost incurred by the Offeror for a vendor interview or oral presentation shall be borne solely by the Offeror.

3. Prime Contractor Responsibility

The contractor is solely responsible for fulfillment of all requirements of the contract resulting from this RFP. NMHIX will make payments to only the prime contractor.

4. Subcontractors/Consent

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

5. Amended Proposals

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

6. Offeror's Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request addressed to the Procurement Manager and signed by the Offeror's duly authorized representative. The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations, 1.4.1.21 and 1.4.1.36 NMAC.

7. Proposal Offer Firm

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

8. Disclosure of Proposal Contents

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

a. *Proprietary and Confidential information is restricted to:*

- i. confidential financial information concerning the Offeror's organization; and
- ii. information that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, §§57-3A-1 through 57-3A-7, NMSA 1978.

b. IMPORTANT: An additional but separate redacted version of Offeror's proposal,

as outlined and identified in Section III, shall be submitted containing the blacked out proprietary or confidential information, in order to facilitate eventual public inspection of the non-confidential version of Offeror's proposal.

IMPORTANT: The price of products offered, or the cost of services proposed **SHALL NOT** be designated as proprietary or confidential information.

If a request is received for disclosure of proprietary or confidential materials, NMHIX shall examine the request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of proprietary or confidential information.

9. No Obligation

This RFP in no manner obligates NMHIX to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate authorities.

10. Termination

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when NMHIX determines such action to be in the best interest of NMHIX.

11. Sufficient Funding

Any contract awarded as a result of this RFP process may be terminated if sufficient funding or authorizations do not exist. Such terminations will be effected by sending written notice to the contractor. NMHIX's decision as to whether sufficient funding and authorizations are available will be accepted by the contractor as final.

12. Legal Review

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

13. Governing Law

This RFP and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico.

14. Basis for Proposal

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

15. Contract Terms and Conditions

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

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

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

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

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

16. Offeror's Additional Terms and Conditions

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

17. Contract Deviations

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

18. Offeror Qualifications

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

19. Right to Waive Minor Irregularities

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

20. Change in Contractor Representatives

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

21. Notice of Penalties

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

22. NMHIX Rights

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

23. Right to Publish

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

24. Ownership of Proposals

All documents submitted in response to the RFP shall become property of NMHIX. If the

RFP is cancelled, NMHIX reserves the right to destroy all responses.

25. Confidentiality

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

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

26. Electronic Mail Address Required

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

27. Use of Electronic Versions of this RFP

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

28. Campaign Contribution Disclosure Form

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

29. Letter of Transmittal

Offeror's proposal must be accompanied by a Letter of Transmittal Form (APPENDIX E), which must be **signed** by the individual authorized to contractually obligate the Offeror, identified in #2 below.

Provide the following information:

1. Identify the submitting business entity; Name, Mailing Address, Phone Number, Federal Tax ID Number (TIN), and New Mexico Business Tax ID Number (BTIN, formerly CRS);
2. Identify the Name, Title, Telephone, and Email address of the person authorized by the

Offeror's organization to (A) contractually obligate the business entity providing the Offer, (B) negotiate a contract on behalf of the organization; and/or (C) provide clarifications or answer questions regarding the Offeror's proposal content (*A response to B and/or C is only required if the responses differs from the individual identified in A*)

3. Identify subcontractors, if any, anticipated to be utilized in the performance of any resultant contract award;

4. Identify any other entity/-ies (such as State Agency, reseller, etc.) that may be used in the performance of this awarded contract; and

5. The individual identified in #2 above must sign and date the form, attesting to the veracity of the information provided, and acknowledging (a) the organization's acceptance of the Conditions Governing the Procurement stated in Section II.C.1; (b) the organizations acceptance of the Section V, Evaluation Factors; and (c) receipt of any and all amendments to the RFP.

Failure to submit a signed Letter of Transmittal Form (APPENDIX E) will result in Offeror's disqualification.

30. Disclosure Regarding Responsibility

A. Any prospective Contractor and any of its principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:

1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
 - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
 - b. violation of Federal or state antitrust statutes related to the submission of offers; or
 - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;

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

resolved to the satisfaction of NMHIX.

31. New Mexico/Native American Resident Preferences

To ensure adequate consideration and application of §13-1-21 NMSA 1978 (as amended), Offeror must submit a copy of its valid New Mexico/Native American Resident Preference Certificate or its valid New Mexico/Native American Resident Veteran Preference with its proposal. Certificates for preferences must be obtained through the New Mexico Department of Taxation & Revenue <http://www.tax.newmexico.gov/Businesses/in-stateveteran-preference-certification.aspx>. In accordance with §13-1-21(H) NMSA 1978, an agency shall not award any combination of New Mexico/Native American Resident Preferences.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Each Offeror shall submit only one proposal in response to this RFP. **Technical and Cost portions of the Offeror’s proposal must be submitted in separate files as indicated below in this section and must be prominently identified on the front page as “Technical Proposal” or “Cost Proposal.”**

1. **Technical Proposals** – One (1) copy of the proposal containing **ONLY** the Technical Proposal must be submitted via email and must be organized in accordance with **Section III.B Proposal Content and Organization**. All information for the Technical Proposal must be combined into a single file/document. The Technical Proposals **SHALL NOT** contain any cost information.
 - i. **Confidential Information**: If an Offeror’s proposal contains confidential information, as defined in Section I.F.5 and detailed in Section II.C.8, Offeror **must** submit **two (2) separate copies of its Technical Proposal via email**:
 - One (1) version of the requisite proposal identified in this section as an **unredacted** (def. Section I.F.29) version for evaluation purposes; and
 - One (1) **redacted** (def. Section I.F.22) version for the public file, in order to facilitate eventual public inspection of the non-confidential version of Offeror’s proposal. **Redacted versions must be clearly marked as “REDACTED” or “CONFIDENTIAL” on the first page.**
2. **Cost Proposals** – One (1) copy of the proposal containing **ONLY** the Cost Proposal must be submitted via email. All information for the cost proposal **must be combined into a single file**.

The email submission must be received no later than the time and date indicated in Section II.A, Sequence of Events.

Any proposal that does not adhere to the requirements of this section and **Section III.B Proposal Content and Organization** may be deemed non-responsive and rejected on that basis.

B. PROPOSAL CONTENT AND ORGANIZATION

All proposals must be organized as indicated below in this section. Direct reference to pre-prepared or promotional material may be used if referenced and clearly marked. Promotional material must be minimal. Within each section of the proposal, Offerors must organize and address the RFP requirements in the order indicated below. All forms provided in this RFP must be

thoroughly completed and included in the appropriate section of Offeror's proposal. **Any and all discussion of proposed costs, rates or expenses must occur ONLY in the Cost Proposal.**

Technical Proposal – DO NOT INCLUDE ANY COST INFORMATION IN THE TECHNICAL PROPOSAL:

- a) Signed Letter of Transmittal
- b) Signed Campaign Contribution Form
- c) Table of Contents
- d) Proposal Summary (Optional)
- e) Response to Contract Terms and Conditions (from Section II.C.15)
- f) Offeror's Additional Terms and Conditions (from Section II.C.16)
- g) Response to Specifications (from Sections IV.B and IV.C) (**except Cost information which shall be included ONLY in Cost Proposal**)
 - i. Organizational Experience
 - ii. Organizational References
 - iii. Mandatory Specifications – Scope of Work
 - iv. Financial Stability
 - v. New Mexico/Native American Resident Preferences (if applicable)
- h) Other Supporting Material (if applicable)

Cost Proposal:

- a) Completed Cost Response (APPENDIX D)

A Proposal Summary may be included in Offeror's Technical Proposal, to provide the Evaluation Committee with an overview of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal. **DO NOT INCLUDE COST INFORMATION IN THE PROPOSAL SUMMARY.**

IV. SPECIFICATIONS

A. DETAILED SCOPE OF WORK

Contractor will be responsible for the following scope of work:

General legal services at a fixed hourly rate at the request and direction of the Exchange Chief Executive Officer and Chairman of the Board of Directors (“Board”), including (but not limited to):

1. Provide advice and counsel to the Exchange and the Board on legal issues that affect the overall programs, policies, and operations of the Exchange, including, but not limited to, the development, implementation, and management of applicable programs and policies.
2. Provide advice and counsel to the Exchange and the Board regarding statutory and regulatory requirements applicable to Board actions, proceedings, deliberations and decisions, including, but not limited to, conflicts of interest, financial disclosures, public records, and open meetings laws.
3. Provide advice and counsel to the Exchange and the Board regarding federal and state laws and regulations as they pertain to the Exchange and/or the Board, including, but not limited to, the New Mexico Health Insurance Exchange Act; the Patient Protection and Affordable Care Act; the New Mexico Health Insurance Code; the New Mexico Administrative Code; and applicable state ethics laws; such as the Procurement Code; the Open Meetings Act; the Whistleblower Protection Act; and the Governmental Conduct Act.
4. Provide legal advice and support to the Exchange in contract negotiations and in the development of complex federal, state, and private program contracts, agreements and related amendments.
5. Provide legal advice and support regarding compliance audits required by federal or state legislation applicable to the Exchange.
6. Provide legal advice on issues raised by outside constituencies, including state agencies; analyze and respond to legal correspondence directed to the Exchange and/or the Board.
7. Prepare formal and informal legal opinions, as requested.
8. Attendance at Board meetings and certain committee meetings.
9. Litigation support, as needed.

Assumptions:

Offerors should also demonstrate:

- An ability to conduct legal analysis (e.g., issue-spotting, rule analysis, applying law to facts) to ensure relevant issues and information are identified and correlated with applicable law, and to aid in predicting the legal outcome.
- An understanding of principles associated with the attorney-client relationship, especially as they apply to organizations and public entities.
- An understanding of professional ethical rules as they relate to the practice of law and particularly the role of public and/or government attorneys.
- Available research sources, both printed and electronic, to complete legal research, including what types of material they contain, where they are located, and their breadth, depth; and relative strengths and weaknesses (e.g., primary legal texts, secondary legal texts and electronic databases).
- A license to practice law in the State of New Mexico.
- Legal malpractice insurance.
- Proper spelling, grammar, punctuation, and sentence structure, to ensure that written materials prepared and reviewed are complete and free of errors.

B. TECHNICAL SPECIFICATIONS

1. Organizational Experience

Offeror must:

a) provide a brief description of relevant experience with government and/or private sector. The experience of all proposed subcontractors must be described. The narrative **must** thoroughly describe how the Offeror has supplied expertise for similar contracts and must include the extent of their experience, expertise, and knowledge as a legal services firm qualified for this project.

b) provide a brief resume of all key personnel Offeror proposes to use in performance of the resulting contract, should Offeror be awarded the contract. Key personnel are identified as executive, account management team, and staff primarily responsible for the satisfactory completion of the work. Offeror should include key personnel education, work experience, and relevant certifications/licenses. Offerors should demonstrate a dedicated team for the NMHIX contract that represents a wide diversity pool, backgrounds, skillsets, and experiences.

c) Describe at least two project successes and two failures of relevant legal services engagements. Include how each experience improved the Offeror's services.

2. Organizational References

Offeror must provide a list of a minimum of three (3) references from similar entities that are familiar with the organization's work.

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

- a) Client name and contact information;
- b) Type and description of work performed;
- c) Engagement dates (starting and ending);
- d) Staff assigned to reference engagement that will be designated for work per this RFP; and
- e) Client executive or manager name, telephone number, and e-mail address.

Offeror is required to submit APPENDIX F, Organizational Reference Questionnaire ("Questionnaire"), to the business references it lists. **The business references must submit the Questionnaire directly to the designee identified in APPENDIX F. The business references must not return the completed Questionnaire to the Offeror.** It is the Offeror's responsibility to ensure the completed forms are submitted on or before the date indicated in Section II.A, Sequence of Events, for inclusion in the evaluation process.

Organizational References that are not received or are not complete will not disqualify a proposal, but will adversely affect the Offeror's score in the evaluation process. Offerors are encouraged to specifically request that their Organizational References provide detailed comments.

3. Mandatory Specifications

Offerors must demonstrate their ability to perform each of the services itemized in Section IV.A, Detailed Scope of Work.

C. BUSINESS SPECIFICATIONS

1. Financial Stability

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

2. Letter of Transmittal Form

The Offeror's proposal **must** be accompanied by the Letter of Transmittal Form located in APPENDIX E. The form **must** be completed and must be signed by the person authorized to obligate the company. **Failure to submit a signed form will result in Offeror's**

disqualification.

3. Campaign Contribution Disclosure Form

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

4. Oral Presentation

If oral presentations are held, finalist Offeror(s) may be required to explain, demonstrate, detail, and/or clarify any aspect of its submitted proposal, to which the Evaluation Committee may ask questions and/or seek clarifications. Pursuant to Section II.B.8, Oral Presentations may be held at the sole discretion of the Evaluation Committee.

5. Cost

Offerors must complete the Cost Response Form in APPENDIX D. Cost will be measured by the formula in Section V.B.8 below.

6. Resident Business or Resident Veterans Preference

To ensure application of § 13-1-21 NMSA 1978 (as amended), an Offeror **MUST** submit a copy, in this section, of its valid New Mexico/Native Resident Preference Certificate or its valid New Mexico/Native American Resident Veteran Preference Certificate, as issued by the New Mexico Taxation and Revenue Department.

V. EVALUATION

A. EVALUATION POINT SUMMARY

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

Evaluation Factors <i>(Correspond to section IV.A, IV.B)</i>	Points Available
B. Technical Specifications (Total Points: 600)	
B.1 Organizational Experience	150
B.2 Organizational References	50
B.3 Mandatory Specifications – Scope of Work	400
C. Business Specifications (Total Points: 400)	
C.1 Financial Stability	Pass/Fail
C.2 Letter of Transmittal	Pass/Fail
C.3 Campaign Contribution Disclosure Form	Pass/Fail
C.4 Oral Presentations	100
C.5 Cost	300
TOTAL POINTS AVAILABLE	1,000
C.6 New Mexico / Native American Resident Preference	80
C.6 New Mexico / Native American Resident Veteran Preference Points per Section IV C.6	100

Table 1: Evaluation Point Summary

B. EVALUATION FACTORS

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

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

2. B.2 Organizational References

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

The Evaluation Committee may contact any or all business references for validation of information submitted. If this step is taken, the Procurement Manager and the Evaluation Committee must all be together on a conference call with the submitted reference so that the Procurement Manager and all members of the Evaluation Committee receive the same information. Additionally, NMHIX reserves the right to consider any and all information available to it (outside of the Organizational Reference information required herein), in its evaluation of Offeror responsibility per Section II.C.18.

3. B.3 Mandatory Specifications

NMHIX will award points for each item in Section IV.B.3 – Scope of Work based upon the following scale.

Point Scale	Response Criteria
0	Doesn't address the requirement at all
1	Partially addresses the requirement
2	Fully meets the requirement
3	Exceeds the requirement and demonstrates innovation or differentiators

4. C.1 Financial Stability (See Table 1)

Pass/Fail only. No points assigned.

5. C.2 Letter of Transmittal (See Table 1)

Pass/Fail only. No points assigned.

6. C.3 Campaign Contribution Disclosure Form (see Table 1)

Pass/Fail only. No points assigned.

7. C.4 Oral Presentations (See Table 1)

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

8. C.5 Cost (See Table 1)

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

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

9. C.6 New Mexico Preferences

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

A. New Mexico Resident Business Preference / Native American Resident Preference

If an Offeror has provided a copy of its New Mexico Resident Preference Certificate or Native American Resident Preference Certificate, the points awarded will be calculated as 8% of the total points available in this RFP.

B. New Mexico/Native American Resident Veteran Preference

If an Offeror has provided a copy of its New Mexico Resident Veteran Preference Certificate or Native American Resident Veteran Preference Certificate the points awarded will be calculated as 10% of the total points available in this RFP.

In accordance with §13-1-21(H) NMSA 1978, an agency shall not award any combination of New Mexico/Native American Resident Preferences.

C. EVALUATION PROCESS

1. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.

2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II.B.6.

3. Responsive proposals will be evaluated on the factors in Section IV, which have been

assigned a point value in Section V. The responsible Offerors with the highest scores will be selected as finalist Offerors, based upon the proposals submitted. In accordance with 13-1-117 NMSA 1978, the responsible Offeror whose proposal is most advantageous to NMHIX taking into consideration the Evaluation Factors in Section V.B. will be recommended for award. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDIX A

**REQUEST FOR PROPOSAL
ACKNOWLEDGEMENT OF RECEIPT FORM
Request for Proposals for Professional Legal Services
RFP No. 2024-003**

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

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than March 4, 2024. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the written responses to those questions as well as RFP amendments, if any are issued.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

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

Submit Acknowledgement of Receipt Form to:

Aryn Fitzwater, Procurement Manager

Email: Proposals@nmhix.com

Subject line: RFP No. 2024.003 for Legal Services

APPENDIX B

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

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

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

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

The following definitions apply:

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

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

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

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

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

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

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

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

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

—OR—

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

Signature

Date

Title (Position)

APPENDIX C
DRAFT CONTRACT

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

STATE OF NEW MEXICO
NEW MEXICO HEALTH INSURANCE EXCHANGE
PROFESSIONAL SERVICES CONTRACT # _____

THIS AGREEMENT is made and entered into by and between the New Mexico Health Insurance Exchange, hereinafter referred to as the “Agency,” and **NAME OF CONTRACTOR**, hereinafter referred to as the “Contractor,” and is effective as of the date set forth below upon which it is executed by the General Services Department/State Purchasing Division (GSD/SPD Contracts Review Bureau).

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

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

2. Compensation.

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

B. Payment is 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, and to approval by the GSD/SPD. Payment shall be made upon acceptance of services or deliverables and upon the receipt and acceptance of a detailed invoice. Payment will be

made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days. All invoices, including a detailed statement accounting for completion of the deliverables outlined in Exhibit A, Scope of Work, shall be sent to NMHIX at accountspayable@nmhix.com and received by NMHIX no later than fifteen (15) business days after each calendar month in which services were performed, as outlined in Exhibit A, Scope of Work. Failure to timely submit an invoice shall be a material breach of this Agreement.

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

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE GSD/SPD Contracts Review Bureau. This Agreement shall terminate on **(DATE)** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Funding). In accordance with NMSA 1978, § 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, § 13-1-150.

4. Termination.

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

B. Notice; Agency Opportunity to Cure.

1. Except as otherwise provided in Paragraph (4)(B)(3), the Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

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

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, Funding, of this Agreement.

C. **Liability.** Except as otherwise expressly allowed or provided under this Agreement, the Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

D. **Termination Management.** Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

5. Funding.

The terms of this Agreement are contingent upon continued authorization of the NMHIX by the Legislature of New Mexico and the ability of NMHIX to obtain necessary funds by assessments, grants, or other means. In the absence of legislative authorization or funding, this Agreement shall terminate immediately upon written notice by NMHIX to the Contractor. NMHIX's determination regarding legislative authorization and funding shall be accepted by the Contractor and shall be final. If NMHIX proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. Status of Contractor.

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

8. Subcontracting.

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

9. Release.

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

10. Confidentiality.

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

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

Contractor will protect and keep confidential any and all confidential information that NMHIX provides to Contractor as well as any and all confidential information that Contractor develops based upon information provided by NMHIX during Contractor's performance hereunder. Contractor will not make available or provide confidential information to any third party or subcontractor absent NMHIX's prior written approval. Upon termination of this Agreement, Contractor will: (a) deliver all confidential information in its possession to NMHIX within thirty (30) Business Days of the termination, and (b) Contractor will protect and will not make available or provide confidential information to any third party absent NMHIX's prior written approval for a period of five (5) years commencing on the termination or expiration date. Contractor acknowledges that Contractor's failure: (a) to deliver such Confidential Information to NMHIX, or (b) to protect and keep confidential information secret may result in NMHIX's seeking to obtain direct, special, and incidental damages from Contractor.

11. Product of Service -- Copyright.

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

12. Conflict of Interest; Governmental Conduct Act.

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

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

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

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

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

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

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

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

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 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 Contractor's representations and warranties in Paragraphs A and B of this Article 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 the Agency and notwithstanding anything in the Agreement to the contrary, the Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

13. Amendment.

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

B. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

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 Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, 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 federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment

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

17. Applicable Law.

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

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

- (1) Negotiation. The parties are encouraged to resolve disputes through negotiation prior to mediation or arbitration. In the event of any dispute, claim, question, or disagreement arising from or relating to a contract or the breach thereof, the parties shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, NMHIX and Contractor shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of 30 days, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be mediated or finally settled pursuant to the Uniform Arbitration Act, NMSA, § 44-7A-1.
- (2) Mediation. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties may first try in good faith to settle the dispute by mediation. The Parties may agree upon a mediator and the terms of the mediation including scheduling, pre-mediation information exchange and attendance of appropriate parties at the mediation conference. The mediation shall be scheduled within 30 days of notice to the other party that one party seeks to mediate the dispute.
- (3) Arbitration. If negotiation and mediation fail to resolve the dispute, or the time frames established for negotiation or mediation pass, a controversy or claim arising out of this Agreement, or the breach of this Agreement, shall be settled by arbitration pursuant to the Uniform Arbitration Act, NMSA, § 44-7A-1 and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

(4) Time periods. The time periods established in this Paragraph 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 the Agency.

19. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of ten (10) years from the date of completion of this Agreement. The Records shall be subject to inspection by NMHIX and the Department of Finance and Administration, and may be disclosed by NMHIX to third parties as required or allowed by law. The Agency shall have the right to audit billings both before and after payment, including but not limited to a financial statement audit performed in accordance with government accounting standards for financial reporting. The Contractor agrees to be subject to findings and sanctions assessed as a result of any audit and will make repayment of any excessive or illegal payments by NMHIX. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

20. Indemnification.

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or 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, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

22. 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.

23. 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.

24. Notices.

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

To the Agency:

[insert name, address and email].

To the Contractor:

[insert name, address and email].

25. Authority.

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

26. Contractor Personnel.

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

27. Insurance.

A. Professional Liability. For the Contractor and all of the Contractor's employees who are to perform professional services under this Agreement, the Contractor shall keep in full force and effect, Professional Liability insurance for any professional acts, errors or omissions. Such policy shall provide a limit of not less than \$1,000,000 per claim and \$1,000,000 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 professionally reasonable period of time after substantial completion of the project or termination of this Agreement, whichever occurs last. If professional services rendered under this Agreement include work relating to environmental or pollution hazards, the Contractor's policy shall not contain exclusions for those activities.

B. Contractor shall maintain in force during the entire term of this Agreement the following insurance coverages, naming NMHIX as additional insured:

- Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: \$100,000.

- Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:
 - Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
 - Property damage or combined single limit coverage: \$1,000,000.
 - Automobile liability (including non-owned automobile coverage): \$1,000,000.
 - Umbrella: \$1,000,000.

Contractor shall maintain the above insurance for the term of this Agreement and name NMHIX as an additional insured on the general liability policy and provide for reasonable advance cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation on the general liability policy.

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

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

The Contractor shall provide a blanket endorsement on the general liability policy that the insurer waives the right of subrogation against NMHIX and its respective officials, officers, employees, agents, volunteers and representatives.

D. Cancellation. Except as provided for under New Mexico law, all policies of insurance required hereunder, except for the Professional Liability Policy, must provide that the NMHIX is entitled to reasonable written notice period of cancellation or non-renewal of the policy or policies. Cancellation provisions in insurance certificates shall include reasonable cancellation provisions, in line with insurance industry standards.

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

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

G. All policies required herein, except for the Workers Compensation policy and Professional Liability policy, are primary and non-contributory to any insurance that may be carried by the NMHIX and its officials, officers, employees, agents, volunteers and representatives, as reflected in an endorsement which shall be submitted to the NMHIX. The Contractor shall obtain a blanket endorsement from the Workers Compensation insurers that the insurers waive the right of subrogation against NMHIX and its respective officials, officers, employees, agents, volunteers and representatives.

H. The Contractor agrees that for the duration of this Agreement, and for a period of three years after substantial completion of the project or termination of this Agreement, there will be no changes or endorsements to the above policies that increase the NMHIX's exposure to loss.

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

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

28. Communications.

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

29. New Mexico Tort Claims Act.

Any liability incurred by NMHIX in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, *et seq.*, as amended. NMHIX and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense, and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

30. Compliance with Law.

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

31. Headings.

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

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the GSD/SPD Contracts Review Bureau below.

By: _____
Agency

Date: _____

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

Date: _____

By: _____
Agency's Chief Financial Officer

Date: _____

By: _____
Contractor

Date: _____

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

ID Number: **00-000000-00-0**

By: _____
Taxation and Revenue Department

Date: _____

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

By: _____
GSD/SPD Contracts Review Bureau

Date: _____

EXHIBIT A
Scope of Work

EXHIBIT B

Privacy and Security Standards

Definitions. The following definitions are applicable to this Exhibit B, only. Capitalized terms not otherwise specifically defined 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 described in Contractor's agreement with NMHIX (the "Contract") as applicable to Contractor's provision of services.

The required duties may 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:

- Facilitate Consumer Insurance Affordability Program eligibility determination leading in some instances to the selection of a QHP or a referral to HSD for Medicaid or CHIP eligibility determination;
- Collection of data to facilitate eligibility determination from federal (via the Federal Data Service Hub), state, or individual sources;
- Provide information and services in a fair, accurate, and impartial manner. Such information must acknowledge other health programs such as Medicaid and CHIP;
- 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 provide 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.

PII that Contractor receives pursuant to this Contract may not be reused for any other purpose except as required by law, legal proves, or applicable professional standards.

Other Required Duties: Contractor may also maintain expertise in eligibility, enrollment, and program specifications; however, it is not expected or required that Contractor collect, handle, disclose, access, maintain, store and/or use PII of Consumers, Applicants, Qualified

Individuals, Qualified Employers, Qualified Employees, or Enrollees, or from these individuals' legal representatives(s) or Authorized Representatives for this function. To the extent that Contractor does so, it must comply with all of the provisions of this specific term and condition, as well as Sections A and B as applicable to Contractor's provision of services.

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
- SBE Applicant ID
- SBE 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. 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, as applicable to Contractor's provision of services.

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 these Privacy and Security Standards, including Sections A and B, and the Minimum Acceptable Risk Standards for Exchanges (MARS-E), as it may be amended from time to time, which is available at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance#MinimumAcceptableRiskStandards>, as of contract signing date as applicable to Contractor's provision of services.

Consent Form. Contractor is not expected to collect PII under this Agreement; however, in the event Contractor does directly collect PII, 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 is available upon request

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 providing services under this Agreement, including subcontractors, working with the Contractor on this contract program, as applicable to the provision of services.

Survival. Contractor agrees to destroy or securely dispose of 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 Contractor 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 or securely disposed of promptly and without undue delay after the termination or expiration of this Contract. Contractor's agrees to protect and maintain the privacy and security of PII Contractor receives pursuant to this Agreement, in accordance with this specific term and condition, and Sections A and B, s until such PII is destroyed or securely disposed of and shall survive the termination or withdrawal of the

Contractor and/or expiration of this Agreement. Notwithstanding the foregoing, Contractor may retain a copy of information received, developed, or otherwise relating to this contract in order to comply with its contractual obligations and applicable professional standards. Information stored on routine back-up media for the purpose of disaster recovery will be subject to destruction in due course. Latent data such as deleted files and other non-logical data types, such as memory dumps, swap files, temporary files, printer spool files and metadata that can customarily only be retrieved by computer forensics experts and are generally considered inaccessible without the use of specialized tools and techniques will not be within the requirement for the return or destruction of records as contemplated by this paragraph.

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

The New Mexico Health Insurance Exchange (NMHIX) will enter into contracts (hereinafter “Agreement” or “Agreements”) with Non-Exchange Entities that gain access to Personally Identifiable Information (“PII”) exchanged with the FFE and NMHIX, or directly from Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers, or these individuals’ legal representatives or Authorized Representatives. That Agreement, and including this Section A, govern any PII that is created, collected, disclosed, accessed, maintained, stored, or used by Non-Exchange Entities in the context of the SBE or 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, as applicable to the provision of services.

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, as applicable to the provision of services.

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

to them and/or the person they represent in a physical or electronic readable form and format.

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

- i. Implementation Specifications:

1. Access rights must apply to any PII that is created, collected, disclosed, accessed, maintained, stored, and used by the Non-Exchange Entity to perform any of the Authorized Functions outlined in their respective agreements with the NMHIX.
2. The release of electronic documents containing PII through any electronic means of communication (e.g., e-mail, web portal) must meet the verification requirements for the release of “written documents” in Section (5)b below.
3. Persons legally authorized to act on behalf of the Consumers, Applicants, Qualified Individuals, Enrollees, Qualified Employees, and Qualified Employers regarding their PII, including individuals acting under an appropriate power of attorney that complies with applicable state and federal law, must be granted access in accordance with their legal authority. Such access would generally be expected to be coextensive with the degree of access available to the Subject Individual.
4. At the time the request is made, the Consumer, Applicant, Qualified Individual, Enrollee, Qualified Employees, Qualified Employers, or these individuals’ legal representatives or Authorized Representatives should generally be required to specify which PII he or she would like access to. The Non-Exchange Entity may assist them in determining their Information or data needs if such assistance is requested.
5. Subject to paragraphs (1) a.i.6 and 7 below, Non-Exchange Entities generally must provide access to the PII in the form or format requested, if it is readily producible in such form or format.
6. The Non-Exchange Entity may charge a fee only to recoup their costs for labor for copying the PII, supplies for creating a paper copy or a copy on electronic media, postage if the PII is mailed, or any costs for preparing an explanation or summary of the PII if the 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 NMHIX and the Non-Exchange Entity, are publicly available through its Web site.

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

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

- i. Implementation specifications:

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

d. Provide notice of an individual's ability to revoke the consent at any time.

3. Consent documents must be appropriately secured and retained for 10 years.

(4) Creation, collection, disclosure, access, maintenance, storage, and use limitations. *In keeping with the standards and implementation specifications used by the NMHIX and by the FFE, Non-Exchange Entities must ensure that PII is only created, collected, disclosed, accessed, maintained, stored, and used, to the extent necessary to accomplish a specified purpose(s) in the Agreement and any appendices, unless otherwise required by law, legal process, or applicable professional standards. 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, or as otherwise required by law, legal process, or applicable professional standards, 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 or as otherwise necessary to provide the services;
2. In accordance with its published Privacy Notice Statement and any applicable agreements that were in effect at the time the PII was collected, including the consent procedures outlined above in Section (3) above; and/or
3. In accordance with the permissible functions outlined in the regulations and agreements between NMHIX and the Non-Exchange Entity.

b. Standard: Non-discrimination. The Non-Exchange Entity should, to the greatest extent practicable, collect PII directly from the Consumer, Applicant, Qualified Individual, Enrollee, Qualified Employee, or Qualified Employer, when the information may result in adverse determinations about benefits.

c. Standard: Prohibited uses and disclosures of PII

i. Implementation Specifications:

1. The Non-Exchange Entity shall not request Information regarding citizenship, status as a national, or immigration status for an individual who is not seeking coverage for himself or herself on any application.
2. The Non-Exchange Entity shall not require an individual who is not seeking coverage for himself or herself to provide a social security

number (SSN), except if an Applicant's eligibility is reliant on a tax filer's tax return and their SSN is relevant to verification of household income and family size.

3. The Non-Exchange Entity shall not use PII to discriminate, including employing marketing practices or benefit designs that will have the effect of discouraging the enrollment of individuals with significant health needs in QHPs.

(5) Data quality and integrity. *In keeping with the standards and implementation specifications used by NMHIX and by the FFE, Non-Exchange Entities should take commercially reasonable steps to ensure that PII is complete, accurate, and up-to-date to the extent such PII is necessary for the provision of services under this Agreement by the Non-Exchange Entity, and that such data has not been altered or destroyed in an unauthorized manner, thereby implementing commercially reasonable measures to ensure the confidentiality, integrity, and availability of PII.*

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

- i. Implementation Specifications:

1. Such individuals shall be provided with instructions as to how they should address their requests to the Non-Exchange Entity's Responsible Official, in writing or telephonically. They may also be offered an opportunity to meet with such individual or their delegate(s) in person.
 2. Such individuals shall be instructed to specify the following in each request:
 - a. The PII they wish to correct, amend, substitute or delete;
 - b. The reasons for requesting such correction, amendment, substitution, or deletion, along with any supporting justification or evidence.
 3. Such requests must be contracted or denied within no more than 10 working days of receipt.

4. If the Responsible Official (or their delegate) reviews these materials and ultimately agrees that the identified PII is not accurate, timely, complete, relevant or necessary to accomplish the function for which the PII was obtained/provided, the PII should be corrected, amended, substituted, or deleted in accordance with applicable law.
 5. If the Responsible Official (or their delegate) reviews these materials and ultimately does not agree that the PII should be corrected, amended, substituted, or deleted, the requestor shall be informed in writing of the denial, and, if applicable, the availability of any appeal procedures. If available, the notification must identify the appropriate appeal authority including that authority's name, title, and contact information.
- b. Standard: Verification of Identity for Requests to Amend, Correct, Substitute or Delete PII. In keeping with the standards and implementation specifications used by the NMHIX and the FFE, Non-Exchange Entities that maintain and/or store PII must develop and implement policies and procedures to verify the identity of any person who requests access to; notification of; or amendment, correction, substitution, or deletion of PII that is maintained by or for the Non-Exchange Entity. This includes confirmation of an individuals' legal or personal authority to access; receive notification of; or seek amendment, correction, substitution, or deletion of a Consumer's, Applicant's, Qualified Individuals', Enrollee's, Qualified Employee's, or Qualified Employer's PII.
- i. Implementation Specifications:
 1. The requester must submit through mail, via an electronic upload process, or in-person to the Non-Exchange Entity's Responsible Official, a copy of one of the following government-issued identification: a driver's license, school identification card, voter registration card, U.S. military card or draft record, identification card issued by the federal, state or local government, including a U.S. passport, military dependent's identification card, Native American tribal document, or U.S. Coast Guard Merchant Mariner card.
 2. If such requester cannot provide a copy of one of these documents, he or she can submit two of the following documents that corroborate one another: a birth certificate, Social Security card, marriage certificate, divorce decree, employer identification card, high school or college diploma, and/or property deed or title.

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

- 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 and consistent with the Non-Exchange Entity's own written policies and procedures, as applicable to the provision of services. Such policies and procedures may:
 - 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.
 - ii. Provide details regarding the identification, response, recovery, and follow-up of Incidents and Breaches; and
 - iii. Non-Exchange Entity shall report 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, as applicable to the provision of services.

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, who perform services under this Agreement and whose responsibilities entail the creation, collection, maintenance, storage, access, or use of PII under this Agreement, as applicable.
2. The Non-Exchange Entity shall cooperate with CMS in resolving any Incident or Breach, including (if requested by CMS) the return or secure disposal of any PII files it received under the Agreement; provided that, Non-Exchange Entity may retain a copy of information received, developed, or otherwise relating to this contract in order to comply with its contractual obligations and applicable professional standards. Information stored on routine back-up media for the purpose of disaster recovery will be subject to destruction in due course. Latent data such as deleted files and other non-logical data types, such as memory dumps, swap files, temporary files, printer spool files and metadata that can customarily only be retrieved by computer forensics experts and are generally considered inaccessible without the use of specialized tools and techniques will not be within the requirement for the return or destruction of records as contemplated by this paragraph; and including the provision of a formal response to an allegation of unauthorized PII use, reuse or disclosure; and/or the submission of a corrective action plan with steps designed to prevent any future unauthorized uses, reuses or disclosures.
3. The standard operating procedures must be designed and implemented to ensure the Non-Exchange Entity and its Workforce, or sub-contractor, comply with the standards and implementation specifications contained herein, and must be reasonably designed, taking into account the size and the type of activities that relate to PII undertaken by the Non-Exchange Entity as applicable to the provision of services.

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 in the provision of services under this Agreement.

i. Implementation Specifications:

1. The Non-Exchange Entity must require such individuals to successfully complete privacy and security training, as applicable to the provision of services, prior to when they assume responsibility for/have access to PII provided under this Agreement.
2. 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.

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.
- (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, as it may be amended from time to time, 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) **State-based Exchange (SBE)** means a type of Exchange in which a state is *responsible for performing all marketplace functions for the individual market*. NMHIX is an SBE.
- (37) **Subject Individual** means that individual to whom a SORN Record pertains.
- (38) **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.
- (39) **Workforce** means a Non-Exchange Entity's or FFE's employees, agents, principals, partners, contractors, officers, directors, agents, representatives, volunteers and any other individual who may create, collect, disclose, access, maintain, store, or use PII in the performance of his or her duties.

APPENDIX D

COST RESPONSE FORM

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

APPENDIX E

LETTER OF TRANSMITTAL FORM

Please complete this form in its entirety. Failure to **sign and/or submit** this form will result in the disqualification of Offeror's proposal.

RFP#: 2024.003 Legal Services

1. Identify the following information for the submitting organization:

Offeror Name	
Mailing Address	
Telephone	
FED TIN#	
NM BTIN#	

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

	A Contractually Obligate	B Negotiate*	C Clarify/Respond to Queries*
Name			
Title			
Email			
Telephone			

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

3. Will any subcontractor/s be used in the performance of any resultant contract? (Select one):

No.
 Yes. Identify subcontractor/s: _____

4. Will any other entity/-ies (such as a State Agency, reseller, etc., that is not a subcontractor identified in #3 above) be used in the performance of any resultant contract? (Select one)

No.
 Yes. Identify entity/-ies: _____

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

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

Sign: _____ Date: _____
(Must be signed by the individual identified in item #2.A, above.)

APPENDIX F

ORGANIZATIONAL REFERENCE QUESTIONNAIRE

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

Offeror is required to send the following Organizational Reference Questionnaire to each business reference listed in its proposal. The business reference, if it chooses to respond, is required to submit its response to the Organizational Reference Questionnaire directly to the Procurement Manager at Proposals@nmhix.com by March 18, 2024 at 5:00 PM MST/MDT for inclusion in the evaluation process. The Questionnaire and information provided will become a part of the submitted proposal. Businesses/Organizations providing references may be contacted for validation of content provided therein.

RFP #2024.003 Legal Services
ORGANIZATIONAL REFERENCE QUESTIONNAIRE
FOR:

(Name of Offeror)

This form is being submitted to your company for completion as a reference for the organization listed above. Submit this Questionnaire to the New Mexico Health Insurance Exchange via email at:

Name: Aryn Fitzwater, Procurement Manager
Email: Proposals@nmhix.com

Forms must be submitted no later than March 18, 2024, and **must not** be returned to the organization requesting the reference. References are **strongly encouraged** to provide comments in response to organizational ratings. The comments you provide will help the New Mexico Health Insurance Exchange to evaluate the above-referenced Offeror’s service history, successful execution of services and evidence of customer/client satisfaction.

For questions or concerns regarding this form, please contact the New Mexico Health Insurance Exchange **Procurement Manager** at Proposals@nmhix.com. When contacting the Procurement Manager, include the RFP number provided at the top of this page.

Organization providing reference	
Contact name and title/position	
Contact telephone number(s)	
Contact email address	
Project description	
Engagement dates (start and end dates)	

QUESTIONS:

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

COMMENTS:

2. How would you rate this firm's knowledge and expertise?

____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

3. How would you rate the vendor's flexibility relative to changes in the project scope and timelines?

____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

4. What is your level of satisfaction with work products produced by the vendor?

____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable, N/A = Not applicable)

COMMENTS:

5. How would you rate the dynamics/interaction between vendor personnel and your staff?

____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

6. Who are/were the vendor's principal representatives involved in your project and how would you rate them individually? Would you, please, comment on the skills, knowledge, behaviors or other factors on which you based the rating?

____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

Name: _____ Rating:

Name: _____ Rating:

Name: _____ Rating:

Name: _____ Rating:

COMMENTS:

7. How satisfied are/were you with the products developed by the vendor?

_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable, N/A = Not applicable)

COMMENTS:

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

COMMENTS:

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

COMMENTS:

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

COMMENTS: