

**REQUEST FOR PROPOSALS**  
**TOBACCO USE PREVENTION AND CONTROL PROGRAM**  
*Reducing Adult and Youth Tobacco Use through Health Communications and Youth Engagement*

**RFP# RFPTUPAC2001**

Date of Issuance: **January 27, 2020**

Deadline for Submission: **February 28, 2020**

**NEW MEXICO**  
**DEPARTMENT OF**  
**HEALTH**

**PUBLIC HEALTH DIVISION**  
**POPULATION AND COMMUNITY HEALTH BUREAU**  
**TOBACCO USE PREVENTION AND CONTROL PROGRAM**

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STATE OF NEW MEXICO

DEPARTMENT OF HEALTH

PUBLIC HEALTH DIVISION

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# **I. INTRODUCTION**

## **A. PURPOSE OF THIS REQUEST FOR PROPOSALS**

The purpose of this Request for Proposals (RFP) is to secure multiple contracts for tobacco use prevention and control initiatives in New Mexico. Offerors will propose objectives and activities that are aligned with the goals and objectives of the New Mexico (NM), Department of Health (DOH), Public Health Division (PHD), Tobacco Use Prevention and Control Program (TUPAC), the [\*TUPAC Strategic Direction Summary\*](#) and the [\*TUPAC Five-Year Action Plan: 2020-2025\*](#).

One or more contracts will be awarded to develop, implement and participate in the evaluation of an annual, strategic health communications plan to help achieve the following TUPAC goals for New Mexico as follows:

1. Prevent Tobacco Use Initiation Among Young People
2. Promote Quitting Among Adults and Youth
3. Eliminate Exposure to Secondhand Smoke
4. Identify and Eliminate Tobacco-Related Disparities

An individual contract will be awarded to address each of the two categories for funding presented in Section I, Paragraph C, Scope of Procurement, for a total of two (2) contracts.

## **B. BACKGROUND INFORMATION**

This section provides background on the Department of Health (DOH or Department), Public Health Division (PHD or Division), and the operating environment of TUPAC which may be helpful to the offeror in preparing the proposal. The information is provided as an overview and is not intended to be a complete and exhaustive description.

The Department is one of the executive branch agencies of the State of New Mexico. The Department's mission is to promote health and wellness, improve health outcomes, and assure safety net services for all people in New Mexico.

The Division provides public health leadership by assessing health status of the population; developing health policy; sharing expertise with the community; assuring access to coordinated systems of care; and delivering services to promote health and to prevent disease, injury, disability and premature death.

TUPAC is one of several programs within the Population and Community Health Bureau. The Bureau is part of PHD. The PHD is a division within the Department.

The mission of TUPAC is to improve lives by eliminating the harm from tobacco abuse through the implementation of effective strategies that incorporate an anti-oppression framework. See [\*TUPAC Anti-Oppression Framework\*](#).

TUPAC is the lead entity for statewide tobacco use prevention and nicotine addiction treatment activities. The overarching goal of TUPAC is to reduce disease, disability and death related to tobacco use by:

1. Preventing initiation among youth and young adults
2. Promoting quitting among youth and adults
3. Eliminating exposure to secondhand smoke
4. Identifying and eliminating tobacco-related disparities

TUPAC will achieve its goal by implementing the Centers for Disease Control and Prevention (CDC) [\*Best Practices for Comprehensive Tobacco Control Programs\*](#). The five essential components identified in this document include: 1.) state and community interventions; 2.) health communication interventions; 3.) cessation interventions; 4.) surveillance and evaluation; and 5.) infrastructure, administration and management. This RFP is part of a program design grounded in proven Best Practices, specifically surveillance and evaluation, to maximize impact at this funding level, as outlined in the [\*TUPAC Five-Year Action Plan: 2020-2025\*](#).

TUPAC acknowledges the beneficial use of cultural tobacco within many of the Native American communities of New Mexico and recognizes its place of honor and respect within those communities. The intent of this RFP is to address the harmful and addictive use of tobacco, outside of its traditional, sacred or ceremonial purposes. As such, activities described in the response to this RFP shall strive to reduce and prevent the harmful and addictive use of tobacco products outside of its ceremonial use.

TUPAC has identified priority populations that have been shown to experience tobacco-related health disparities. TUPAC-identified priority populations include African Americans; Hispanics; people living with chronic conditions, including disabilities; Lesbian, Gay, Bisexual, Transgender, Queer, Questioning, and Intersex (LGBTQI) individuals; Native Americans/American Indians; Asian Americans and Pacific Islanders; people experiencing poverty; people with behavioral health issues, including substance abuse, and young adults (18-29 years old). New Mexico tobacco data reports can be found at [nmtupac.com/data/](http://nmtupac.com/data/).

## C. SCOPE OF PROCUREMENT

An Offeror will respond to one of the two (2) following Categories for Funding in a proposal:

- **Category 1:** Strategic Health Communications, Campaigns, and Promotions
- **Category 2:** Youth Engagement

Offerors may elect to respond to more than one funding category and must submit a separate proposal for each category elected.

Funding will not be awarded for research projects. Lobbying activities are not allowable under this procurement (See Section I, Paragraph E).

## **Category 1: Strategic Health Communications, Campaigns, and Promotions**

The awardee of a **Category 1** contract will develop, manage and participate in the evaluation of an annual strategic health communications plan to help achieve the following goals:

- Prevent Tobacco Use Initiation Among Youth and Young Adults
- Promote Quitting Among Adults and Youth Who Use Tobacco
- Eliminate Exposure to Secondhand Smoke
- Identify and Eliminate Tobacco-Related Disparities Among Population Groups

Offerors responding to **Category 1** must propose approaches that address all of the following:

- Enhanced web-based promotion of public and password-protected tobacco control resources currently available at [www.nmtupac.com](http://www.nmtupac.com).
- Approaches that develop or build upon existing campaigns that support tobacco control efforts in New Mexico, including existing English and Spanish television, radio, print, online and outdoor advertisements.
- Statewide promotion of nicotine addiction treatment services to youth and adults who are ready to quit within 30 days, including 1-800-QUIT NOW, New Mexico's free tobacco help line and QUITNOWNM.com, New Mexico's free web-based nicotine addiction treatment service.
- Statewide promotion of nicotine addiction treatment services to youth and adults who are ready to quit within 30 days, including 1-855-DEJELO YA, New Mexico's free Spanish tobacco help line and DEJELOYANM.com, New Mexico's free Spanish web-based nicotine addiction treatment service.
- Use of social marketing practices.
- Statewide efforts to communicate the health benefits of tobacco-free environments including homes and cars, smoke-free multi-unit housing, or other environmental strategies and related policy development efforts, as determined by TUPAC.
- Niche marketing strategies to reach TUPAC-identified priority populations impacted by tobacco-related health disparities.
- Incorporation of conventional, web-based, and emerging technologies in the development and implementation of health communications.
- Media resources that are both accessible to people with disabilities and are representative and reflective of people with disabilities.
- Development and management of subcontracts, as appropriate, to deliver the best value and maximize available resources.

## **Category 2: Youth Engagement**

The awardee of a **Category 2** contract will develop, manage and participate in the evaluation of an annual youth engagement plan to help achieve the following goals:

- Prevent Tobacco Use Initiation Among Youth and Young Adults

- Promote Quitting Among Adults and Youth Who Use Tobacco
- Eliminate Exposure to Secondhand Smoke
- Identify and Eliminate Tobacco-Related Disparities Among Population Groups

Offerors responding to **Category 2** must propose approaches that address all of the following:

- Engagement of high-school aged youth in tobacco use prevention activities and policy development for effective tobacco control.
- Development of partnerships with school or community clubs and groups to recruit and train youth advocates statewide.
- Development and management of youth-led health communications and campaigns aimed at reducing youth tobacco use and creating tobacco free social norms.
- Communication with youth who sign up and lead projects in their communities to reach campaign objectives.
- Youth-led health communications and campaigns that align with and support tobacco policy development initiatives, as prioritized by TUPAC and its tobacco control partners.
- Training youth to educate policy-makers and stakeholders.
- Formation and maintenance of a statewide youth leadership team to provide direction and feedback to TUPAC.
- Use of social marketing practices.
- Membership and active participation with the New Mexico Allied Council on Tobacco (NM ACT).
- Communication with state and community leaders.

The contract shall become effective upon approval of the Department of Finance and Administration (on or about July 1, 2020) and shall continue for four fiscal years at the discretion of the Department of Health (Agency or Department) contingent upon sufficient funding and satisfactory Scope of Work performance.

PLEASE NOTE:

- If this is a procurement that will result in a statewide price agreement, that agreement is available to all executive agencies and other political subdivisions of the State of New Mexico. If this is not **EXPLICITLY** stated, the procurement will result in a contractual agreement only (see next).
- If this is a procurement that will result in a contractual agreement between two parties, the procurement may **ONLY** be used by those two parties exclusively.

## **D. PROCUREMENT MANAGER**

1. The Department of Health has designated a Procurement Manager who is responsible for the conduct of this procurement whose name, address and telephone numbers are listed below:

Benjamin Jacquez  
Department of Health  
Tobacco Use Prevention and Control Program  
5301 Central Ave. NE, Suite 800  
Albuquerque, NM 87108  
Phone: 505-222-8618  
E-mail: [benjamin.jacquez@state.nm.us](mailto:benjamin.jacquez@state.nm.us)

Any inquiries or requests regarding this procurement should be submitted to the Procurement Manager in writing. Offerors may contact ONLY the Procurement Manager regarding the procurement. Other state employees do not have the authority to respond on behalf of the Agency.

2. All deliveries of responses via express carrier must be addressed as follows:

Kitty Caddy  
Department of Health  
Tobacco Use Prevention and Control Program  
5301 Central Ave. NE, Suite 800  
Albuquerque, NM 87108

3. 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 state employees or Evaluation Committee members do not have the authority to respond on behalf of the DOH. Protests of the solicitation or award must be delivered by mail to the DOH's Administrative Services Division (ASD). ONLY protests delivered directly to the DOH ASD 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. Emailed protests will not be considered as properly submitted nor will protests delivered to the Procurement Manager be considered properly submitted.

New Mexico Department of Health  
Administrative Services Division  
1190 St. Francis Dr., Suite N3350  
Santa Fe, New Mexico 87505

## **E. DEFINITION OF TERMINOLOGY**

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

“**Activities**” means specific and focused steps, events or interactions that collectively accomplish an initiative set forth in a Scope of Work.

**“Agency”** means the State Purchasing Division of the General Services Department or that State Agency sponsoring the Procurement action.

**“Award”** means the final execution of the contract document.

**“Business Hours”** means 8:00 AM thru 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

**“Campaign”** refers to the department statewide tobacco youth tobacco use prevention and adult cessation media campaigns including, but not limited to, the following components: graphic design and printing, media production, media buying, public relations and web/interactive.

**“Cessation”** or **“Cessation Services”** means interventions intended to treat nicotine addiction.

**“Close of Business”** means 4:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.

**“Confidential”** means confidential financial information concerning offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act NMSA 1978 57-3-A-1 to 57-3A-7. See NMAC 1.4.1.45. As one example, no information that could be obtained from a source outside this request for proposals can be considered confidential information.

**“Contract”** means any agreement for the procurement of items of tangible personal property, services or construction.

**“Contract Monitor”** means the individual designated by the Department to be responsible for the monitoring and management of the contract.

**“Contractor”** means any business having a contract with a state agency or local public body.

**“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.

**“Deliverable”** is a term used to describe a tangible or intangible object produced as a result of the activity that is intended to be delivered by the Contractor. An activity deliverable could be a report, a document, a meeting, a presentation or any other building block of an overall initiative.

**“Desirable”** and the terms "may", "can", "should", "preferably", or "prefers", identify a desirable or discretionary item or factor.

**“Division”** means Public Health Division (PHD).

“**DOH**” means the Department of Health for the State of New Mexico.

“**Electronic Version/Copy**” means a digital form consisting of text, images or both readable on computers or other electronic devices that includes all content that the Original and Hard Copy proposals contain. The digital form will be submitted as a portable document format (PDF) using a USB flash drive. The electronic version/copy can NOT be emailed.

“**Evaluation Committee**” means a body appointed to perform the evaluation of Offerors’ proposals.

“**Evaluation Committee Report**” means a report prepared by the Procurement Manager and the Evaluation Committee for contract award. It will contain written determinations resulting from the procurement.

“**Finalist**” means an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

“**Fiscal Year (FY)**” means the Agency’s fiscal year, which begins on July 1, and ends on June 30.

“**IT**” means Information Technology.

“**Lobbying Activities**” includes direct lobbying and grassroots or indirect lobbying. Direct Lobbying is a communication with a legislator (federal, state, local or foreign) or legislative staff member which: (1) refers to specific legislation; and (2) reflects a view on that legislation. Grassroots or indirect lobbying is defined as a communication with the public that: (1) refers to specific legislation; (2) reflects a view on that legislation; and (3) includes a "call to action."

“**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 will result in the rejection of the Offeror’s proposal.

“**Media Buy Plan**” means a part of the communications plan that details how various media will be employed. Identifies the specific schedule of paid placements that have been negotiated for an ad or collection of ads, including the times and programs during which television and radio ads will run, the locations and sizes of billboards that will be placed, the publications and placement within those publications in which print ads will run, etc. The media plan also contains a summary of expected target audience reach and frequency.

“**Minor Technical Irregularities**” means anything in the proposal that does not affect the price, quality, and quantity or any other mandatory requirement.

“**Multiple Source Award**” means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one Offeror.

“**Niche Marketing**” means marketing specifically developed to influence an identified priority population.

“**Nicotine Addiction Treatment Services**” means interventions intended to help people quit tobacco, including e-cigarettes.

“**Participant**” means a person who is currently enrolled or has been enrolled in a telephone or web-based nicotine addiction treatment program.

“**Priority Populations**” means any TUPAC-identified priority populations that have been shown to experience tobacco-related health disparities. TUPAC-identified priority populations currently include the following communities: African Americans; Spanish-speaking people; People living with Disabilities; Lesbian, Gay, Bisexual, Transgender, Queer, Questioning, and Intersex (LGBTQI) individuals; Native Americans/American Indians; Asian Americans and Pacific Islanders; People experiencing poverty; and Young Adults (18-29 years old).

“**Offeror**” is any person, corporation, or partnership who chooses to submit a proposal.

“**Priority Population**” means any TUPAC-identified group or population that has been shown to experience tobacco-related health disparities.

“**Priority Population Network**” means any one of the statewide coalitions that represent TUPAC-identified priority populations: Priority Population Networks are autonomous coalitions based on the national model developed by the CDC.

“**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.

“**Procuring Agency**” means all State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to entertain procurements.

“**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.

“**Redacted**” means a version/copy of the proposal with the information considered confidential as defined by NMAC 1.4.1.45 and defined herein and outlined in Section II.C.8 of this RFP blacked out BUT NOT omitted or removed.

“**Request for Proposals (RFP)**” means all documents, including those attached or incorporated by reference, used for soliciting proposals.

“**Responsible Offeror**” means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production

or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the proposal.

**“Responsive Offer”** or means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to price, quality, quantity or delivery requirements.

**“Sealed”** means, in terms of a non-electronic submission, that the proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The State reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the Procurement Manager. By submitting a proposal, the Offeror agrees to and concurs with this process and accepts the determination of the Procurement Manager in such cases.

**“Social Marketing”** means marketing designed to integrate marketing concepts with other approaches to influence behaviors that benefit individuals and communities for the greater social good.

**“Spanish-Speaker(s)”** means a person (or population) whose first or main language is Spanish.

**“SPD”** means State Purchasing Division of the New Mexico State General Services Department.

**“Staff”** means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.

**“State (the State)”** means the State of New Mexico.

**“State Agency”** means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. “State agency” includes the purchasing division of the general services department and the state purchasing agent but does not include local public bodies.

**“State Purchasing Agent”** means the director of the purchasing division of the general services department.

**“Statement of Concurrence”** means an affirmative statement from the Offeror to the required specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offerors proposal. (E.g. “We concur”, “Understands and Complies”, “Comply”, “Will Comply if Applicable” etc.)

**“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.

**“Written”** means typewritten on standard 8 ½ x 11 inch paper. Larger paper is permissible for charts, spreadsheets, etc.

**“Tobacco”** means any product made of or derived from tobacco or nicotine, including e-cigarettes.

**“Young Adults”** means persons who are 18 - 29 years old.

**“Youth”** means persons who are 11 - 17 years old

## **F. PROCUREMENT LIBRARY**

A procurement library has been established. Offerors are encouraged to review the material contained in the Procurement Library by selecting the link provided in the electronic version of this document through your own internet connection or by contacting the Procurement Manager and scheduling an appointment. The library contains information listed below:

[TUPAC Strategic Direction Summary](#)

[TUPAC Five-Year Action Plan: 2020-2025](#)

[TUPAC Anti-Oppression Framework](#)

[Best Practices for Comprehensive Tobacco Control Programs](#)

## II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule, description and conditions governing the procurement.

### A. SEQUENCE OF EVENTS

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

<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
1. Issue of RFP	Agency	January 27, 2020
2. Acknowledgement of Receipt	Potential Offeror	February 5, 2020
3. Deadline to Submit Written Questions	Potential Offeror	February 5, 2020
4. Response to Written Questions/RFP Amendments	Agency	February 7, 2020
5. Submission of Proposal	Offeror	February 28, 2020 4:00 pm MST
6. Proposal Evaluation	Evaluation Committee	March 13, 2020
7. Selection of Finalist	Evaluation Committee	March 20, 2020
8. Best and Final Offer	Finalist Offeror	April 17, 2020
9. Finalize Contractual Agreements	Agency, Finalist Offeror	Upon approval of DFA
10. Contract Award	Agency	Upon approval of DFA
11. Protest Deadline	Offeror	15 days following Contract Award

### 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

The New Mexico Department of Health, Tobacco Use Prevention and Control Program is issuing the RFP on January 27, 2020.

## **2. Acknowledgement of Receipt**

Potential Offerors should hand deliver, return by facsimile or registered or certified mail the “Acknowledgement of Receipt of Request for Proposals Form” (APPENDIX A) to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned to the Procurement Manager by 4:00 p.m. on February 5, 2020.

The procurement distribution list will be used for the distribution of written responses to questions. Failure to return the Acknowledgement of Receipt form shall constitute a presumption of receipt and rejection of the RFP, and the potential Offeror’s organization name shall not appear on the distribution list.

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

Potential Offerors may submit written questions as to the intent or clarity of this RFP until close of business on February 5, 2020, as per schedule Section II. A., Sequence of Events. Written questions may be submitted by email to the Procurement Manager at [benjamin.jacquez@state.nm.us](mailto:benjamin.jacquez@state.nm.us) with the words “RFP Question” in the subject line.

## **4. Response to Written Questions**

Written responses to written questions will be distributed, as per schedule Section II. A., Sequence of Events, to all potential Offerors whose organization name appears on the procurement distribution list. An e-mail copy will be sent by February 7, 2020 to all Offeror’s that submitted the Acknowledgement of Receipt Form described in II.B.2 before the deadline. Additional copies will be posted to: [nmhealth.org/publication/rfp/](http://nmhealth.org/publication/rfp/).

## **5. Submission of Proposal**

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 4:00 P.M. ON FEBRUARY 28, 2020. Proposals received after this deadline will not be accepted. The date and time will be recorded on each proposal. Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph D. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the Request for Proposals. Proposals submitted by facsimile will not be accepted.

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to NMSA 1978, § 13-1-116, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Proposals. Awarded in this context means the final required state agency signature on the contract(s) resulting from the procurement has been obtained.

## **6. Proposal Evaluation**

An Evaluation Committee will perform the evaluation of proposals. This process will take place as per schedule Section II. A., Sequence of Events or as soon as possible, 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 SHALL NOT be initiated by the Offerors.

## **7. Selection of Finalist**

The Evaluation Committee will select, and the Procurement Manager will notify, the Finalist Offeror as per schedule Section II. A., Sequence of Events or as soon as possible. Only finalists will be invited to participate in the subsequent steps of the procurement.

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

The Finalist Offeror may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers by as per schedule Section II. A., Sequence of Events or as soon as possible.

## **9. Finalize Contractual Agreements**

Any Contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s) as per schedule Section II. A., Sequence of Events or as soon thereafter as possible. This date is subject to change at the discretion of the State Purchasing Division or relevant Agency Procurement office. In the event that mutually-agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, the State reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

## **10. Contract Award**

After review of the Evaluation Committee Report and the signed contractual agreement, the Agency Procurement office will award as per the schedule in Section II. A., Sequence of Events or as soon as possible thereafter. This date is subject to change at the discretion of the State Purchasing Division or relevant Agency Procurement office. Unsuccessful Offerors will also be notified at this time.

The contract shall be awarded to the Offeror (or Offerors) whose proposals are most advantageous to the State of New Mexico Department of Health taking into consideration the evaluation factors set forth in this RFP. The most advantageous proposal may or may not have received the most points. The award is subject to appropriate Department and State approval.

## **11. Protest Deadline**

Any protest by an Offeror must be timely and in conformance with NMSA 1978, § 13-1-172 and applicable procurement regulations. ONLY protests delivered directly to the Administrative Services Division 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 award of contracts and will end at 5:00 p.m. on the 15<sup>th</sup> day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. The protest must be delivered to:

Chief Procurement Officer  
Administrative Services Division

New Mexico Department of Health  
1190 S. St. Francis Drive, Suite N3350  
Santa Fe, NM 87505

Protests received after the deadline will not be accepted.

## **C. GENERAL REQUIREMENTS**

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

Potential Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the Letter of Transmittal (APPENDIX B). Submission of a proposal constitutes acceptance of the Evaluation Process described in Section V of this RFP.

### **2. Incurring Cost**

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

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

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

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

Subcontracting of work is acceptable with prior written approval from the issuing Agency. The Offeror may enter into written subcontracts for performance of specific services under the contract resulting from this procurement, referred to as Outsourcing. No subcontract that the Offeror enters into with respect to performance under the contract shall in any way relieve the Offeror of any responsibility for performance of its contract responsibilities with the Agency. The Agency reserves the right to request, and review information in conjunction with its determination regarding a subcontract.

#### **5. Amended Proposals**

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. The Agency personnel 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.

#### **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**

Proposals will be kept confidential until negotiations and the award are completed by the Agency. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:

- A. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.
- B. Confidential data is restricted to:
  1. confidential financial information concerning the Offeror's organization; and

2. data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978 § 57-3A-1 to 57-3A-7.

PLEASE NOTE: The cost of services proposed **shall not be designated** as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the State Purchasing Division or the Agency shall examine the Offeror's 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 confidential data.

## **9. No Obligation**

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

## **10. Termination**

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

## **11. Sufficient Appropriation**

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

## **12. Legal Review**

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

## 15. Contract Terms and Conditions

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

The Agency discourages exceptions from the contract terms and conditions as set forth in the RFP Sample Contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Agency (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 Sample Contract (APPENDIX C) strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose **specific** alternative language. The Agency may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of the Sample Contract are not acceptable to the Agency and will result in disqualification of the Offeror's proposal.

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

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

## 16. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the Agency. Please see Section II.C.15 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 procurement process, that is, the RFP process prior to selection as successful Offeror), will be discussed only between the Agency and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's proposal.

## 18. Offeror Qualifications

Private for profit, not for profit and government agencies are eligible. Applicant qualifications and experience must include:

- If a not-for-profit organization, having a volunteer governing board comprised of at least seven members, of which one or more members must be a consumer of the applicant's services.

*The Division has established the following guidelines to be used by all non-profit organizations, with which the Division contracts. Governing and/or Advisory Board members shall be residents of the area served by the organization and representative of the social, economic, linguistic, and racial target populations. Division-funded non-profit corporations shall not employ persons related to board members by consanguinity or affinity within the third degree. This includes spouse, mother, father, brother, sister, grandparent, aunt, uncle, niece, nephew, mother-in-law, father-in-law, and sister-in-law.*

- Minimum of four (4) years of experience and success in the promotion of health-related topics or other health communications.
- Minimum of three (3) years of experience and success utilizing social marketing practices to promote health-related topics or other health communications.
- Willingness to adjust to changing program priorities when impacted by available funding levels, direction from CDC, and TUPAC decisions.
- Having no financial, contractual, or other ties to the tobacco industry or affiliated organizations currently or in the three years preceding the application date.

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

## 19. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements, provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and

the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

## **20. Change in Contractor Representatives**

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

## **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. Agency Rights**

The Agency in agreement with the Evaluation Committee reserves the right to accept all or a portion of a potential Offeror's proposal.

## **23. Right to Publish**

Throughout the duration of this procurement process and contract term, Offerors and contractors must secure from the agency written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or agency 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 the State of New Mexico.

## **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 the Agency.

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 the procuring Agency's written permission.

## **26. Electronic mail address required**

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail 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 the agency, the Offeror acknowledges that the version maintained by the agency shall govern. Please refer to: [nmhealth.org/publication/rfp/](http://nmhealth.org/publication/rfp/).

## **28. New Mexico Employees Health Coverage**

- A. If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- B. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- C. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: [www.insurenemexico.state.nm.us/](http://www.insurenemexico.state.nm.us/).
- D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

## **29. Campaign Contribution Disclosure Form**

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

### 30. Letter of Transmittal

Offeror's proposal must be accompanied by the Letter of Transmittal Form (APPENDIX B) which must be completed and signed by an individual person authorized to obligate the company. The letter of transmittal MUST:

- A. Identify the submitting business entity.
- B. Identify the name, title, telephone, and e-mail address of the person authorized by the Offeror organization to contractually obligate the business entity providing the Offer.
- C. Identify the name, title, telephone, and e-mail address of the person authorized to negotiate the contract on behalf of the organization (if different than (2) above).
- D. Identify the names, titles, telephone, and e-mail addresses of persons to be contacted for clarification/questions regarding proposal content.
- E. Identify sub-contractors (if any) anticipated to be utilized in the performance of any resultant contract award.
- F. Describe the relationship with any other entity which will be used in the performance of this awarded contract.
- G. Identify the following with a check mark and signature where required:
  - 1. **Explicitly** indicate acceptance of the Conditions Governing the Procurement stated in Section II. C.1;
  - 2. **Explicitly** indicate acceptance of Section V of this RFP; and
  - 3. Acknowledge receipt of any, and all, amendments to this RFP.
- H. Be signed by the person identified in paragraph 2, above.

### 31. Pay Equity Reporting Requirements

- A. If the Offeror has ten (10) or more employees OR eight (8) or more employees in the same job classification, Offeror must complete and submit the required reporting form (PE10-249) if they are awarded a contract. Out-of-state Contractors that have no facilities and no employees working in New Mexico are exempt if the contract is directly with the out-of-state contractor and fulfilled directly by the out-of-state contractor, and not passed through a local vendor.
- B. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Offeror must also agree to complete and submit the required form annually within thirty (30) calendar days of the annual bid or proposal submittal anniversary date and, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract.

- C. Should Offeror not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Offeror must agree to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement.
- D. Offeror must also agree to levy these reporting requirements on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Offeror must further agree that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, offer will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement.

### **32. Disclosure Regarding Responsibility**

- A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:
  - 1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
  - 2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
    - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
    - b. violation of Federal or state antitrust statutes related to the submission of offers; or
    - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
  - 3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in Paragraph A of this disclosure;
  - 4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply:
    - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the

liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

- b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
  - c. Have within a three-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- C. The Contractor shall provide immediate written notice to the State Purchasing Agent 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 State Purchasing Agent or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations, until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

### **33. New Mexico Preferences**

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors must include a copy of their preference certificate with their proposal. Certificates for preferences must be obtained through the New Mexico Department of Taxation & Revenue <http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>.

#### **A. New Mexico Business Preference**

A copy of the certification must accompany your proposal.

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

A copy of the certification must accompany your proposal.

**An agency shall not award a business both a resident business preference and a resident veteran business preference.**

### **III. RESPONSE FORMAT AND ORGANIZATION**

#### **A. NUMBER OF RESPONSES**

Offerors may submit separate proposals for any of the two (2) categories for funding, as described in Section 1, Paragraph C, Scope of Procurement. **Offerors proposing work under multiple Categories for Funding must submit separate proposals for each funding category.**

#### **B. NUMBER OF COPIES**

Offerors shall deliver one (1) original and three (3) identical copies of their proposal to the location specified in Section I, Paragraph D on or before the closing date and time for receipt of proposals. In addition, Offerors shall also deliver an electronic version/copy of their proposal as a portable document format (PDF) using a USB flash drive. The electronic version/copy can NOT be emailed.

Offeror's proposal must be clearly labeled and numbered and indexed as outlined in **Section III.C. Proposal Format**. Proposals must be submitted as outlined below. The original copy shall be clearly marked as such on the front of the binder. Each portion of the proposal (technical/cost) must be submitted in separate binders and must be prominently displayed on the front cover. Envelopes, packages or boxes containing the original and the copies must be clearly labeled and submitted in a sealed envelope, package, or box.

Offerors should deliver:

1. **Technical Proposals** – One (1) ORIGINAL, three (3) HARD COPIES, and one (1) PDF copy of the proposal containing ONLY the Technical Proposal. ORIGINAL and COPIES of the Technical Proposal shall be in separate labeled binders from the Cost Proposal.
2. **Cost Proposals** – One (1) ORIGINAL, three (3) HARD COPIES, and one (1) PDF copy of the proposal containing ONLY the Budget and Cost Explanation (Section IV, Paragraph A.6) and the Cost Response Form (APPENDIX E). ORIGINAL and COPIES of the Cost Proposal shall be in separate labeled binders from the Technical Proposal.

The original, hard copy, and electronic version/copy information **must** be identical. In the event of a conflict between versions of the submitted proposal, the Original hard copy shall govern.

Any proposal that does not adhere to the requirements of this Section and Section III.C. Proposal Format, may be deemed non-responsive and rejected on that basis.

## C. PROPOSAL FORMAT

All proposals must be typewritten in single spaced, size 12 Arial or Times New Roman font on standard 8 ½” x 11” paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section. Margins shall be set at 1” on all sides of the pages. Pages must be numbered to match the Table of Contents.

### 1. Proposal Content and Organization

The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated.

#### **Technical Proposal (Binder #1):**

1. Signed Letter of Transmittal (APPENDIX B)
2. Table of Contents
3. Response to Contract Terms and Conditions (See Section II, Paragraph A.15)
4. Offeror’s Terms and Conditions (See Section II, Paragraph A.16)
5. Response to Specifications (**except cost information, which shall be included in Cost Proposal/Binder #2 only**)
  - A. Mandatory Specifications
  - B. Business Specifications
6. Attachments and Other Supporting Material (if applicable)

#### **Cost Proposal (Binder #2):**

1. Budget and Cost Explanation
2. Completed Cost Response Form (APPENDIX E)

Within each section of the proposal, Offerors should address the items in the order indicated above. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of the proposal. All discussion of proposed costs, rates or expenses must occur only in Binder #2 and on the Cost Response Form.

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

Offerors may attach other materials that they feel may improve the quality of their responses. However, these materials should be included as items in a separate appendix.

## IV. SPECIFICATIONS

Offerors should respond to each mandatory specification in the format indicated (narrative, chart, sample materials). The response to each section along with required supporting materials will be evaluated and awarded points accordingly, as described in Section V, Paragraph A of this document.

Award of the contract may be based on criteria other than capacity and price. Performance under prior contracts, including State agency-generated evaluations of prior performance may be considered.

Proposals submitted to the Division must provide information sufficient to describe the activities and expenditures to be supported by this proposal, and for the Division to make a complete evaluation of the proposal. Therefore, the Division, in its evaluation of proposals from eligible offerors, will assign weights to each of the factors below.

### A. Mandatory Specifications

1. Summary of Proposal (Pass/Fail)
2. Offeror Qualifications (Pass/Fail)
3. Statement of Need (5 points)
4. Offeror Capability (35 points)
5. Scope of Work (45 points)
6. Budget and Cost Explanation (15 points)

### B. Business Specifications

1. Financial Stability (Pass/Fail)
2. Campaign Contribution Disclosure Form (Pass/Fail)
3. Resident Business or Resident Veterans Preference (5 or 10 points)

## A. MANDATORY SPECIFICATIONS

### 1. **Summary of Proposal (One-page maximum); Pass/Fail**

A one-page summary of the proposal must be included. Offerors must indicate the Category for Funding for which they are applying, as presented in Section I, Paragraph C, Scope of Procurement. **Offerors may elect to respond to more than one funding category, but must submit a separate proposal for each category elected.**

### 2. **Offeror Qualifications (One-page maximum); Pass/Fail**

Provide a narrative that verifies that the Offeror meets or exceeds all of the qualifications listed in Section II, Paragraph C.18. Proposals from Offerors that fail to meet the qualifications will be deemed non-responsive and will not be considered under this RFP.

**3. Statement of Need (Two-page maximum); 5 points**

The proposal must contain a problem statement that consists of a clear, concise, specific description of the area(s) to be addressed under this proposal. The Offeror should be able to link priorities identified to the components of the [\*TUPAC Five-Year Action Plan: 2020-2025\*](#) and the approaches described within the Category of Funding, as presented in Section I, Paragraph C, Scope of Procurement.

**4. Offeror Capability (8 pages, maximum, excluding attachments); 35 points**

Offerors must provide information that clearly demonstrates the organization's capability to successfully complete the proposed activities. **Ensure that each item below is addressed.**

- **Past Accomplishments:** Describe your organization's recent history of accomplishments relevant to the proposed project or activities. Include detailed process and outcome evaluation information, when available. Performance under prior contracts, including state agency-generated evaluations of prior performance, may be considered in verifying the correctness and credibility of the Offeror's response.
- **In-house Capability:** Describe the organization's capabilities, as they relate to the services proposed by the Offeror. Describe how the organization will utilize qualified staff to provide required services. Provide staff resumes as attachments or required qualifications of positions that are vacant. These attachments do not count toward the page limit in the Offeror Capability section.
- **Outsource Capability:** If a portion of the scope of work will be outsourced to another individual or organization; provide information on the capability of the subcontractors including résumés of subcontract staff as attachments or required qualifications if subcontractors have not been identified. These attachments do not count toward the page limit of the Offeror Capability section.
- **Marketing Research:** Provide a brief description of how the Offeror uses research in developing, implementing and evaluating campaigns.
- **Spanish Language Marketing:** Provide the Offerors capacity to market using Spanish language to reach New Mexico's unique "Spanish-speaker" population.
- **Media Placement:** Describe the organization's experience in media planning and buying.
- **Creative Capabilities:** Offerors will demonstrate their creative capabilities by presenting two (2) examples of their creative work in each of the following areas:
  - Video spots
  - Graphic design and print materials
  - Web-based and interactive approaches
  - Social media approaches
  - Public relations

Samples may be included as attachments or as active hyperlinks. Attachments do not count toward the page limit of the Offeror Capability section. Only the first two samples from each of the listed areas will be reviewed for the purpose of the proposal evaluation:

- **Social Marketing:** Describe the organization's experience in applying the principles of social marketing, including work examples, where applicable.
- **Project Management:** Describe your organization's background and principles for the process of managing, allocating, and timing available resources to achieve the desired goal of a project in an efficient and expedient manner.
- **Special Events:** Describe your organization's capacity and experience to organize events, such as conferences, summit, presentation, seminars, etc. Provide a description of a successful event coordinated by your organization.
- **Evaluation:** Describe the organization's capacity to determine the effectiveness of the work plan. Include information on the organization's approaches to tracking, monitoring, measuring and evaluating progress, successes, and outcomes.
- **Collaboration:** Describe the organization's experience collaborating with community organizations and specific population groups in the planning and implementation of activities that are relevant to the proposed project.
- **Cultural Competency and Organizational Diversity:** Describe your organization's approach to addressing the cultural characteristics of the populations you serve. Include descriptions of past successes in serving diverse populations, as well as how organizational staff or contractors represent and respond to the communities they will serve.
- **Accessibility for People with Disabilities:** Describe your organization's ability to assure that appropriate media products and materials are both accessible to people with disabilities and are representative and reflective of people with disabilities (i.e. closed captioning, ADA website compliance, Braille, large print, talent).
- **Financial Capability:** Describe the organization's financial capability to complete the activities proposed, including information about the organization's ability to function within a deliverables-based budget and to allow for timely reimbursement of expenditures from the Department of Health.
- **References:** Proposals shall include three (3) business references that can best demonstrate the Offeror's prior experience, as directly related to the proposed scope of work and activities. Each reference shall be limited to one-page and include the name, address, phone number, and email of the organization, and the individual most familiar with the Offeror's performance. The three letters of reference do not count toward the page limit of the Offeror Capability section.

##### 5. **Scope of Work (10 pages, maximum); 45 points**

The proposal must contain a clear and detailed description of the activities and/or services to be funded. Scores will be assigned on the following items:

- Detailed work plan, with timeline, for the proposed project(s) for the first year of the contract term. The proposed work plan will include, but is not limited to, all of the approaches identified within the Category of Funding, as described in Section I, Paragraph C, Scope of Procurement.
- Description, in general terms, of the work plan for the second through fourth year of the contract term.
- Description of how proposed activities support key statewide priorities identified in the [\*TUPAC Five-Year Action Plan: 2020-2025\*](#).
- Description of appropriate training objectives or activities to increase the Offeror's capacity to implement the activities of the proposed work plan, that must include the attendance of at least one (1) appropriate contract representative at an annual one-day meeting of TUPAC contractors, a two-day NMACTION Conference for New Mexico comprehensive tobacco control partners, and an Anti-Oppression training held in Albuquerque.
- Description of how the proposed activities demonstrate an understanding of and relevance to public health and culturally diverse communities in New Mexico.

**6. Budget and Cost Explanation (5 pages, maximum) 15 Points**

Provide a detailed budget indicating specific expenditures that link with the described activities and/or services related to the elected Category for Funding, as brought forth in response to Section IV, Paragraph A.4. This budget must be fully justified in terms of described area needs and the proposed project. Scores will be assigned on the persuasiveness that this is the best way to spend the money to achieve the desired result.

Offerors must complete the Cost Response Form (APPENDIX E). All charges listed on Cost Response Form must be justified and evidence of need documented in the Budget and Cost Explanation of the proposal. **The Budget and Cost Explanation and the Cost Response Form must be included in the Cost Proposal, only** (See Section III, Paragraph B.2).

Pre-selected subcontractors and other business associations to be used by the offeror in performance of the Scope of Work hereinafter described shall be identified. The prime contractor shall be liable for the contractual performance of any sub-contractor. Proposals need not have pre-selected subcontractors. If the offeror plans to subcontract any, or all, of the Scope of Work, services to be provided and procedures for selecting subcontractors should be concisely and clearly described. Prior written approval by the Agency must be received for any subcontract over \$1,000.00.

## **B. BUSINESS SPECIFICATIONS**

### **1. Financial Stability; Pass/Fail**

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

### **2. Campaign Contribution Disclosure Form; Pass/Fail**

The Offeror must complete an unaltered Campaign Contribution Disclosure Form (APPENDIX D) and submit a signed copy with the Offeror's proposal. This must be accomplished whether, or not, an applicable contribution has been made.

### **3. Resident Business or Resident Veterans Preference; 5 or 10 points**

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors must include a copy of their preference certificate in this section.

## V. EVALUATION

### A. EVALUATION POINT SUMMARY

The following is a summary of evaluation factors with point value assigned to each. These, along with the general requirements, will be used in the evaluation of Offeror proposals.

<b>FACTOR</b>	<b>POINTS AVAILABLE</b>
1. Letter of Transmittal	Pass/Fail
2. Table of Contents	Pass/Fail
3. Summary of Proposal	Pass/Fail
4. Offeror Qualifications	Pass/Fail
5. Statement of Need	5 points
6. Offeror Capability	35 points
7. Scope of Work	45 points
8. Budget and Cost Explanation	15 points
<b>TOTAL</b>	<b>100 POINTS</b>

### BUSINESS SPECIFICATIONS

Financial Stability.....	Pass/Fail
Campaign Contribution Disclosure Form.....	Pass/Fail
New Mexico Preference - Resident Vendor Points per Section IV C. 6.....	5
New Mexico Preference - Resident Veterans Points per Section IV C.6.....	10

### **TOTAL**

### B. 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. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section II. C.18.
4. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors, based upon the proposals submitted. The responsible Offerors whose proposals are most advantageous to the State taking into consideration the

evaluation factors in Section IV will be recommended for award (as specified in Section II. B.7). 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**

### **Acknowledgement of Receipt of Request for Proposals Form**

# Acknowledgement of Receipt of Request for Proposals Form

REQUESTS FOR PROPOSALS  
TOBACCO USE PREVENTION AND CONTROL PROGRAM  
*Reducing Adult and Youth Tobacco Use through Health Communications and Youth Engagement*

Offerors are required to complete and sign this *Acknowledgement of Receipt of Request for Proposals Form* and return the completed form to the Procurement Manager no later than 4:00 MST on February 5, 2020. **OFFERORS THAT DO NOT RETURN THE FORM BY THIS DEADLINE WILL NOT BE ELIGIBLE TO SUBMIT A RESPONSE TO THIS RFP.**

The form shall be signed and dated by the Offeror's representative. The form may be hand-delivered or sent by registered or certified mail and **must be received by 4:00 p.m. on February 5, 2020.**

Please review the Offeror Qualifications (Section II, Paragraph C.18). Qualified Offerors shall submit the following information.

OFFEROR IS APPLYING FOR:  CATEGORY 1  CATEGORY 2 (Check one box, only)

NAME ORGANIZATION \_\_\_\_\_

NAME OF CONTACT \_\_\_\_\_

PHONE \_\_\_\_\_ FAX \_\_\_\_\_

E-MAIL \_\_\_\_\_

MAILING ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

The above contact name and address will be used for all correspondence related to the Request for Proposal.

Please return this form to:

Kitty Caddy  
Department of Health  
Tobacco Use Prevention and Control Program  
5301 Central Ave. NE, Suite 800  
Albuquerque, NM 87108

## **APPENDIX B**

### **Letter of Transmittal Form**

# Letter of Transmittal Form

**RFP#:** \_\_\_\_\_  
**Offeror Name:** \_\_\_\_\_ **FED ID#** \_\_\_\_\_

Items #1 to #7 EACH MUST BE COMPLETED IN FULL Failure to respond to all seven items WILL RESULT IN THE DISQUALIFICATION OF THE PROPOSAL!

1. **Identity (Name) and Mailing Address** of the submitting organization:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. For the person authorized by the organization to contractually obligate on behalf of this Offer:

Name \_\_\_\_\_

Title \_\_\_\_\_

E-Mail Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

3. For the person authorized by the organization to negotiate on behalf of this Offer:

Name \_\_\_\_\_

Title \_\_\_\_\_

E-Mail Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

4. For the person authorized by the organization to clarify/respond to queries regarding this Offer:

Name \_\_\_\_\_

Title \_\_\_\_\_

E-Mail Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

5. Use of Sub-Contractors (Select one)

\_\_\_\_ No sub-contractors will be used in the performance of any resultant contract OR

\_\_\_\_ The following sub-contractors will be used in the performance of any resultant contract:

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

6. Please describe any relationship with any entity (other than Subcontractors listed in (5) above) which will be used in the performance of any resultant contract.

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

7. \_\_\_\_ On behalf of the submitting organization named in item #1, above, I accept the Conditions Governing the Procurement as required in Section II. C.1.

\_\_\_\_ I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

\_\_\_\_ I acknowledge receipt of any, and all, amendments to this RFP.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

(Must be signed by the person identified in item #2, above.)

**APPENDIX C**  
**Sample Contract**

\* The exact terms and conditions of this Professional Services Contract is subject to revision and approval by the New Mexico Department of Finance and Administration for FY20-FY23 \*

**STATE OF NEW MEXICO  
DEPARTMENT OF HEALTH  
PROFESSIONAL SERVICES CONTRACT SAMPLE**

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **DEPARTMENT OF HEALTH**, 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 Department of Finance and Administration (DFA).

IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work**

A. The CONTRACTOR shall provide the following services:

**Strategic Health Communications (Category 1, only)**

1. Manage strategic health communications initiatives that will provide statewide reach to support tobacco control efforts in New Mexico.
  - a. Develop an annual Strategic Health Communications Plan designed to support tobacco control efforts in New Mexico, incorporating technical assistance from the Tobacco Use Prevention and Control Program (TUPAC). Submit the plan to the TUPAC Contract Monitor for written approval at least two weeks prior to the tentative date of implementation.
  - b. Implement the Strategic Health Communications Plan, as approved by the TUPAC Contract Monitor.
  - c. Review the implementation of the Strategic Health Communications Plan with the TUPAC Contract Monitor, as needed. Assess the effectiveness of the plan and identify recommendations for the purpose of continuous quality improvement.
  - d. Update the Strategic Health Communications Plan, as needed, with technical assistance provided by the TUPAC Contract Monitor, and submit proposed plan updates to the TUPAC Contract Monitor for written approval prior to implementation.

**-- OR --**

**Youth Engagement (Category 2, only)**

1. Manage youth engagement initiatives that will provide health communications with statewide reach to support tobacco control efforts in New Mexico.

- a. Develop an annual Youth Engagement Plan designed to support tobacco control efforts in New Mexico, incorporating technical assistance from the Tobacco Use Prevention and Control Program (TUPAC). Submit the plan to the TUPAC Contract Monitor for written approval at least two weeks prior to the tentative date of implementation.
- b. Implement the Youth Engagement Plan, as approved by the TUPAC Contract Monitor.
- c. Review the implementation of the Youth Engagement Plan with the TUPAC Contract Monitor, as needed. Assess the effectiveness of the plan and identify recommendations for the purpose of continuous quality improvement.
- d. Update the Youth Engagement Plan, as needed, with technical assistance provided by the TUPAC Contract Monitor, and submit proposed plan updates to the TUPAC Contract Monitor for written approval prior to implementation.

### **Training**

2. Engage relevant contract representatives and partners in the development and implementation of a TUPAC-approved Training Plan, designed to increase contractor capacity to provide tobacco control activities.
  - a. Ensure that an appropriate contract representative attend one (1) annual meeting with the TUPAC Contract Monitor to review and discuss training direction and opportunities that would be appropriate for the needs of the contract over the entire contract term. This meeting shall take place within the 30 days of each fiscal year throughout the term of this contract.
  - b. Develop an appropriate Training Plan to increase contractor capacity to implement tobacco control activities and submit to the TUPAC Contract Monitor for written approval. The Training Plan will include attendance of at least one (1) appropriate contract representative at an annual one-day meeting of TUPAC contractors, a two-day NMACTION Conference for New Mexico comprehensive tobacco control partners, and an Anti-Oppression training held in Albuquerque.
  - c. Implement the Training Plan, as approved by TUPAC Contract Monitor. Contractor will submit a Training Implementation Component Approval Form, provided by TUPAC Contract Monitor, to identify the completion date, justification of relevance to contract activities, number of participants to be trained and cost justifications of each training component. Training Component Implementation Approval Forms must be submitted to the TUPAC Contract Monitor for written approval prior to the implementation of the training component.
  - d. Review the Training Plan with the TUPAC Contract Monitor, as needed. Assess the effectiveness of the plan and identify recommendations for continuous quality improvement.
  - e. Update the Training Plan, as needed, with technical assistance provided by TUPAC, and submit proposed plan updates to the TUPAC Contract Monitor for written approval prior to implementation.

### **Reporting and Evaluation**

3. Demonstrate accountability to TUPAC and perform comprehensive program evaluation and reporting in coordination with the TUPAC Evaluation Team.
  - a. Meet monthly, by phone or in person, with the TUPAC Contract Monitor to review reports, maintain communication and provide opportunities for technical assistance from TUPAC.
  - b. Submit an electronic invoice, completed narrative and performance measures components within the Tobacco Reporting System (TRS), and supporting documentation for review by the TUPAC Contract Monitor by the 5<sup>th</sup> of each month to ensure final approval by the 10<sup>th</sup> of each month. The June electronic invoice and TRS are due June 30.
  - c. Submit a signed invoice to the TUPAC Contract Monitor by the 10<sup>th</sup> of each month. The June invoice is due within the first week of July.
  - d. Meet regularly with the TUPAC Evaluation Team to develop or update logic models, evaluation plan, and any necessary data collection tools to track project activities and outcomes.
  - e. Participate in any in-person or web-based trainings conducted by the TUPAC Evaluation Team to build evaluation capacity among contractors.
  - f. Seek and obtain evaluation technical assistance to build evaluation capacity from the TUPAC Evaluation Team via email, phone, teleconferencing webinars, or through specific trainings.
  - g. Provide any requested data or narrative information to the TUPAC Evaluation Team for your mutual completion of an annual summary report on your contract activities.
  - h. Participate in Continuous Quality Improvement Activities, with guidance from the TUPAC Evaluation Team, which include the TUPAC Equity Lens Review and data from evaluation activities, to guide program improvement which ensures that programs have equitable reach, applicability, and impact for TUPAC-identified priority populations.

### **Performance Measures**

CONTRACTOR shall substantially perform the following Performance Measures:

Result 1: Improved health status for New Mexicans

Priority 1.1: Improve health status for all New Mexicans, including special populations and subpopulations having the greatest opportunity for improved health status.

Indicator 3: Percent of adults who smoke

Indicator 4: Percent of adolescents who smoke

### **General Provisions**

Performance will be monitored and evaluated by periodic on-site work reviews, review of quarterly data reports, and scheduled consultations with the DEPARTMENT.

## Budget

<b>Deliverable</b>	<b>FY21</b>	<b>FY22</b>	<b>FY23</b>	<b>FY24</b>	<b>Total</b>
<b>Strategic Health Communications (Category 1, only)</b>	<b>\$ 0.00</b>				
Strategic Health Communications Plan Development	0.00	0.00	0.00	0.00	0.00
Strategic Health Communications Plan Implementation	0.00	0.00	0.00	0.00	0.00
Strategic Health Communications Plan Review	0.00	0.00	0.00	0.00	0.00
Strategic Health Communications Plan Update	0.00	0.00	0.00	0.00	0.00
<b>Youth Engagement (Category 2, only)</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
Youth Engagement Plan Development	0.00	0.00	0.00	0.00	0.00
Youth Engagement Plan Implementation	0.00	0.00	0.00	0.00	0.00
Youth Engagement Plan Review	0.00	0.00	0.00	0.00	0.00
Youth Engagement Plan Update	0.00	0.00	0.00	0.00	0.00
<b>Training</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
Training Plan Meeting	0.00	0.00	0.00	0.00	0.00
Training Plan Development	0.00	0.00	0.00	0.00	0.00
Training Plan Implementation	0.00	0.00	0.00	0.00	0.00
Training Plan Review	0.00	0.00	0.00	0.00	0.00
Training Plan Update	0.00	0.00	0.00	0.00	0.00
<b>Evaluation Activities</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>TOTAL</b>	<b>\$ 0.00</b>				

FUNDING SOURCE: Tobacco Master Settlement Agreement Funds.

The Agency will pay the CONTRACTOR based upon deliverables completed after receipt and approval of deliverables and monthly invoices. The Agency reserves the right to conduct program audits to verify program compliance, quality and completeness and to request periodic progress reports.

The CONTRACTOR will be responsible for paying employer and employee portions of FICA, as well as other applicable federal, state and local taxes.

The CONTRACTOR agrees to submit invoices for services provided within 30 (thirty) days of the month in which services were delivered. In addition, notwithstanding the provisions of Article 3, Section B, the CONTRACTOR agrees to submit the final invoice for services provided in June within the first week of the following July, unless otherwise approved by the Agency.

**2. Compensation.**

A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work in FY21, such compensation not to exceed (AMOUNT), including gross receipts tax if applicable. **The total amount payable to the Contractor under this agreement shall not exceed (AMOUNT).**

The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work in FY22, such compensation not to exceed (AMOUNT), including gross receipts tax if applicable. **The total amount payable to the Contractor under this agreement shall not exceed (AMOUNT).**

The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work in FY23, such compensation not to exceed (AMOUNT), including gross receipts tax if applicable. **The total amount payable to the Contractor under this agreement shall not exceed (AMOUNT).**

The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work in FY24, such compensation not to exceed (AMOUNT), including gross receipts tax if applicable. **The total amount payable to the Contractor under this agreement shall not exceed (AMOUNT).**

These amounts are 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 in FY21, FY22, FY23 and FY24 is subject to availability of funds pursuant to the Appropriations Paragraph 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 DFA. All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered or within fifteen (15) days after the last day of the month in which services were performed; or, for deliverable based agreements, unless submitted within fifteen (15) days after the last day of the month during with a deliverable was completed. Invoices received after such date WILL NOT BE PAID. Invoices shall be submitted monthly. For deliverable based agreements, payment shall be made upon acceptance of each completed deliverable and upon the receipt and acceptance of a detailed, certified payment

Invoice. The Contractor shall submit to the Agency at the close of each month a signed invoice reflecting the total allowable costs incurred during the preceding month; or for deliverable based agreements, at the close of each month during which a deliverable was completed a signed invoice reflecting the total allowable costs incurred during completion of the deliverable.

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 DFA. This agreement shall terminate on **June 30, 2024**, unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with NMSA 1978, § 13-1-150, no agreement term for a professional services agreement, 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, "Appropriations", 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. If this agreement is terminated pursuant to its provisions, or if the parties mutually agree to discontinue their contractual relationship, or upon expiration of the term of the AGREEMENT, immediately upon expiration or 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, except as provided in part (4) of this paragraph, below; 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, and 4) if providing health services or client support as part of the scope of work of this agreement, continue to provide essential services and supports to ensure the health and safety of individual clients as directed by the Agency during the period of termination management. This requirement is not avoided by an inadvertent expiration of term for the agreement. In this event the Agency may temporarily extend the term, enter into a new short-term agreement or otherwise enter into an agreement, consistent with the New Mexico Procurement Code until all transition of services are completed. As of the date of termination of this agreement, the Contractor shall furnish to the Agency: (a) a complete detailed inventory of nonexpendable Agency property or equipment provided to or purchased by the Contractor with agreement funds as defined in Article 31 (Property) of this agreement, and (b) a final closing of the financial records and books of accounts which were required to be kept by the Contractor under the provisions of this agreement regarding financial records. Any non-expendable personal property or equipment provided to or purchased by the Contractor with agreement funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

## 5. Appropriations.

The terms of this agreement are contingent upon sufficient funds appropriated, allocated, and authorized by the Legislature of the State of New Mexico and/or by the federal government for the performance of this agreement. If sufficient appropriations, allocations and authorizations are not made by the Legislature of the State of New Mexico and/or if the federal government makes insufficient allocations, necessitating a decrease in the amount of agreement funds available for expenditure by the Agency, this agreement may be terminated or amended to a lower amount of funds upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and binding on the Contractor. If the Agency 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 the Agency. The Contractor and its agents and employees shall not be deemed employees for any purpose within the meaning or application of any federal or state unemployment or insurance laws or workers compensation laws or otherwise. Contractor, its agents and employees shall not be entitled to any of the benefits afforded employees of the Agency including but not limited to accruing leave, retirement, insurance, bonding, use of state property or state vehicles, or any other consideration not specified in this agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by the Contractor for income tax purposes as self-employment or business income and are reportable for self-employment tax. The Contractor agrees not to purport to bind 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 and records 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, or the express written authorization of the client when the record is a client record.

The Contractor shall maintain complete confidential records for the benefit of clients, sufficient to fulfill the provisions of the Scope of Work, and to document the services rendered under the Scope of Work. All records maintained pursuant to this provision shall be available for inspection by the Agency. The Contractor shall comply with the Federal Health Insurance Portability and Accountability Act (HIPAA) of 1996, the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act) and applicable regulations and all other state and federal rules, regulations and laws protecting the confidentiality of information (See APPENDIX F). If the Contractor may reasonably be expected to have access to Agency's Protected Health Information (PHI) and will perform business associate functions as defined by

HIPAA, Contractor shall execute the HIPAA/HITECH Business Associate Agreement as a separately executed mandatory agreement which is hereby incorporated by reference into and made part of this agreement. Failure to execute the HIPAA/HITECH Business Associate Agreement when required by the Agency shall constitute grounds for termination of this agreement in accordance with Article 4 (Termination) of this agreement.

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

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

B. Client information developed under this agreement may not be used by the Contractor or be transferred to a third party in any form, including aggregate data, without the express written permission of the Agency, except to fulfill the provisions of the Scope of Work under this agreement.

**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 agreement, 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. From time to time and in accordance with changes in state and Agency policy, this agreement shall be amended to comport with current policy, rules, regulations, and law.

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.**

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

**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.**

A. The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this agreement. The records shall be subject to inspection by the Agency, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

B. The Contractor receiving state or federal funds from the Agency shall comply, if applicable, with auditing requirements under the Single Audit Act (31 U.S.C. §7501, et seq.) and the New Mexico State Auditor's rules and regulations. If the Contractor is determined to be a sub

recipient and not a vendor under the federal Single Audit Act, the Contractor shall comply with the audit requirements of the Single Audit Act. This includes the Contractor retaining its financial records for period five years after the time the audit was released.

C. If the Contractor receives more than \$750,000 in federal funding, or more than \$750,000 from the Agency, in any single fiscal year, the Contractor shall prepare annual financial statements and obtain an audit of, or an opinion on, the financial statements from an external Certified Public Accountant.

D. The Contractor shall maintain the financial statements for a period of no less than six years and shall make the financial statements and the CPA's audit or opinion available to the Agency upon request.

E. Applicable annual financial reports shall be submitted to the Agency no later than six months following the close of the Contractor's fiscal year.

F. To ensure proper delivery and receipt, the Contractor shall submit their annual audit report or financial reports (if no audit was required to):

Department of Health  
Financial Accounting Bureau Chief Suite N-3150  
P.O. Box 26110  
Santa Fe, New Mexico 87502-6110

G. The Agency may take corrective action as deemed necessary for Contractor's failure to comply with 19-A through 19-F above. Corrective action may include, but is not limited to, termination of agreement and preclusion from engaging Contractor in the future.

## **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.

**21. New Mexico Employees Health Coverage.**

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the agreement, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all agreements between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenwnewmexico.state.nm.us/>.

**22. Employee Pay Equity Reporting**

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this agreement, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for agreements up to one (1) year in duration. If contractor has two hundred fifty (250) or more employees contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for agreements up to one (1) year in duration. For agreements that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual agreement anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the agreement, whichever comes first. Should contractor not meet the size requirement for reporting at agreement award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90) days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this agreement if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the agreement. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at agreement award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90) days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.

Notwithstanding the foregoing, if this agreement was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this agreement.

**23. 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.

**24. 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.

**25. 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:

New Mexico Department of Health  
P.O. Box 26110  
1190 St. Francis Drive,  
Santa Fe, NM 87502-6110

To the Contractor:

[insert name, address and email].

**26. 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 agreement.

**27. Licensure.**

The Contractor agrees to retain professional licensure, accreditation, credentialing or continuing education required to perform the scope of professional services provided for the Agency. The Contractor agrees to make evidence of licensure or other regulatory requirements for the scope of professional services available to the Agency if requested in writing.

**28. Liability Insurance.**

The Contractor shall maintain professional or general liability insurance, as applicable, for all services provided under this agreement and Contractor shall supply evidence of such coverage upon the Agency's request.

**29. Federal Grant or Other Federally Funded Agreements.**

A. Lobbying. The Contractor shall not use any funds provided under this agreement, either directly or indirectly, for the purpose of conducting lobbying activities or hiring a lobbyist or lobbyists on its behalf at the federal, state, or local government level, as defined in the Lobbyist Regulation Act, NMSA 1978, Sections 2-11-1, *et. seq.*, and applicable federal law. No federal appropriated funds can be paid or will be paid, by or on behalf of the Contractor, or any person for influencing or attempting to influence an officer or employee of any Department, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal agreement, or the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or modification of any federal agreement, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any Department, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection of any applicable federal agreement, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. Suspension and Debarment. For agreements that involve the expenditure of federal funds, each party represents that neither it, nor any of its management or any other employees or independent contractors who will have any involvement in the services or products supplied under this agreement, have been excluded from participation in any government healthcare program, debarred from or under any other federal program (including but not limited to debarment under the Generic Drug Enforcement Act), or convicted of any offense defined in 42 U.S.C. Section 1320a-7, and that it, its employees, and independent contractors are not otherwise ineligible for participation in federal healthcare or education programs. Further, each party represents that it is not aware of any such pending action(s) (including criminal actions) against it or its employees or independent contractors. Each party shall notify the other party immediately upon becoming aware of any pending or final action in any of these areas.

C. Political Activity. No funds hereunder shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

D. Grantor and Contractor Information.

1. If applicable, funding under this agreement is from the Catalog of Federal Domestic Assistance (CFDA) Program:
  - i. CFDA Number – N/A
  - ii. Program Title – N/A
  - iii. AGENCY/OFFICE – N/A
  - iv. GRANT NUMBER – N/A
2. CONTRACTOR'S Dun and Bradstreet Data Universal Numbering System Number (DUNS Number) is N/A

E. Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (Sept. 2013) [Federal Grant funded projects only].

1. This agreement and employees working on this agreement will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.

2. The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.

3. The Contractor shall insert the substance of this clause, including this paragraph (3), in all subcontracts over the simplified acquisition threshold.

F. For agreements and subgrants that involve the expenditure of federal funds for amounts in excess of \$150,000, requires the Contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

G. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) — For agreements that involve the expenditure of federal funds, Contractors that apply or bid for an agreement exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal agreement, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier, up to the non-federal award.

H. For agreements that involve the expenditure of federal funds, Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### **30. Governing Bodies.**

The parties agree that if the Contractor has one or more Governing Bodies, the Governing Bodies of the Contractor shall have the right and responsibility to establish policy for the Contractor and shall be elected to ensure that such policy is established by the Governing Bodies in an impartial and independent manner. Nothing herein shall in any way restrict the authority of the Governing Bodies from appropriately delegating day-to-day management responsibilities to its

employees, agent, or agents. By such delegation, employees and/or agents of the Contractor must conduct the operation of the Contractor consistent with the policies and procedures approved by the Governing Bodies.

**31. Property.**

A. Title to all property furnished by the Agency shall remain in the Agency. Title to all property acquired by the Contractor, including acquisition through lease-purchase agreement, for the cost of which the Contractor is to be reimbursed as a direct item of cost under this agreement shall immediately vest in the Agency upon delivery of such property to the Contractor. Title to other property, the costs of which is to be reimbursed to the Contractor under this agreement, shall immediately vest in the Agency upon 1) issuance for use of such property in the performance of this agreement or 2) use of such property in the performance of this agreement or 3) reimbursement of the cost thereof by the Agency, whichever first occurs.

B. Title to the Agency property shall not be affected or lose its identity by reason of affixation to any realty or attachment at law.

C. The Contractor shall maintain a property inventory and administer a program of maintenance, repair, and protection of Agency property so as to assure its full availability and usefulness for performance under this agreement. In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of, or damage to Agency property during the period of this agreement, it shall use the proceeds to repair or replace the Agency property.

**IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the DFA 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 DFA Contracts Review Bureau and is effective on the date shown:

By: \_\_\_\_\_  
DFA Contracts Review Bureau

Date: \_\_\_\_\_

**APPENDIX D**

**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 E**

## **Cost Response Form**

## Cost Response Form

### Category 1, only

DESCRIPTION	FY21	FY22	FY23	FY24
Strategic Health Communications Plan Development				
Strategic Health Communications Plan Implementation				
Strategic Health Communications Plan Review				
Strategic Health Communications Plan Update				

### Category 2, only

DESCRIPTION	FY21	FY22	FY23	FY24
Youth Engagement Plan Development				
Youth Engagement Plan Implementation				
Youth Engagement Plan Review				
Youth Engagement Plan Update				

Option Year 1: (7/1/2020 thru 6/30/2021) Price:\$\_\_\_\_\_

(includes all labor, materials, equipment, transportation, configuration, installation, training, taxes and profit to provide the Services described in Section IV, (as amended by any current RFP amendments for the period specified above)

Option Year 2: (7/1/2021 thru 6/30/2022) Price:\$\_\_\_\_\_

(includes all labor, materials, equipment, transportation, configuration, installation, training, taxes and profit to provide the Services described in Section IV, (as amended by any current RFP amendments for the period specified above)

Option Year 3: (7/1/2022 thru 6/30/2023) Price:\$\_\_\_\_\_

(includes all labor, materials, equipment, transportation, configuration, installation, training, taxes and profit to provide the Services described in Section IV, (as amended by any current RFP amendments for the period specified above)

Option Year 4: (7/1/2023 thru 6/30/2024) Price:\$\_\_\_\_\_

(includes all labor, materials, equipment, transportation, fees and taxes to provide the Services described in Section IV, (as amended by any current RFP amendments for the period specified above)

## **APPENDIX F**

### **HIPAA Business Associate Agreement**

## **HIPAA BUSINESS ASSOCIATE AGREEMENT**

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This Business Associate Agreement (“Agreement”) is entered into between the New Mexico Department of Health (“Department”) and [Insert Name] , hereinafter referred to as “Business Associate.” , in order to comply the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) as amended by Health Information Technology for Economic and Clinical Health Act of 2009 (the “HITECH Act”), including the Standards of the Privacy of Individually Identifiable Health Information and the Security Standards at 45 CFR Parts 160 and 164.

**BUSINESS ASSOCIATE**, by a related agreement identified by number as [Insert Number] (the “Related Agreement”), has agreed to provide services to, or on behalf of, Department (referred to in such Related Agreement as Department or the “Procuring Agency”) which may involve the disclosure by Department to Business Associate (referred to in such Related Agreement as “Contractor”) of Protected Health Information. This Business Associate Agreement is intended to supplement the obligations of the Department and the Contractor as set forth in the Related Agreement, and is hereby incorporated therein.

**THE PARTIES** acknowledge HIPAA, as amended by the HITECH Act, requires that Department and Business Associate enter into a written agreement that provides for the safeguarding and protection of all Protected Health Information which Department may disclose to the Business Associate, or which may be created or received by the Business Associate on behalf of the Department.

### **1. Definition of Terms**

- a. **Breach.** “Breach” has the meaning assigned to the term breach under 42 U.S.C. § 17921(1) [HITECH Act § 13400 (1)] and 45 CFR § 164.402.
- b. **Business Associate.** "Business Associate", herein being the same entity as the Contractor in the Related Agreement, shall have the same meaning as defined under the HIPAA standards as defined below, including without limitation Contractor acting in the capacity of a Business Associate as defined in 45 CFR § 160.103.
- c. **Department.** "Department" shall mean in this agreement the State of New Mexico Department of Health.
- d. **Individual.** "Individual" shall have the same meaning as in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502 (g).
- e. **HIPAA Standards.** “HIPAA Standards” shall mean the legal requirements as set forth in the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act of 2009, and the regulations and policy guidance, as each may be amended over time, including without limitation:

- i. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information in 45 CFR Part 160 and Part 164, Subparts A and E.
- ii. Breach Notification Rule. "Breach Notification" shall mean the Notification in the case of Breach of Unsecured Protected Health Information, 45 CFR Part 164, Subparts A and D
- iii. Security Rule. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, Subparts A and C, including the following:
  - A. Security Standards. "Security Standards" hereinafter shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.306.
  - B. Administrative Safeguards. "Administrative Safeguards" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.308.
  - C. Physical Safeguards. "Physical Safeguards" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.310.
  - D. Technical Safeguards. "Technical Safeguards" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.312.
  - E. Policies and Procedures and Documentation Requirements. "Policies and Procedures and Documentation Requirements" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.316.
- f. Protected Health Information. "Protected Health Information" or "PHI" shall have the same meaning as in 45 CFR §160.103, limited to the information created, maintained, transmitted or received by Business Associate, its agents or subcontractors from or on behalf of Department.
- g. Required By Law. "Required By Law" shall have the same meaning as in 45 CFR §164.103.
- h. Secretary. "Secretary" shall mean the Secretary of the U. S. Department of Health and Human Services, or his or her designee.
- i. Covered Entity. "Covered Entity " shall have the meaning as the term "covered entity" defined at 45 CFR §160.103, and in reference to the party to this agreement, shall mean the State of New Mexico Department of Health.
- j. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Standards. All terms used and all statutory and regulatory references shall be as currently in effect or as subsequently amended.

## 2. **Obligations and Activities of Business Associate**

- a. General Rule of PHI Use and Disclosure. The Business Associate may use or disclose PHI it creates for, receives from or on behalf of, the Department to perform functions, activities or services for, or on behalf of, the Department in accordance with the specifications set forth in this Agreement, or the Related Agreement; provided that such use or disclosure

would not violate the HIPAA Standards if done by the Department; or as Required By Law.

- i. Any disclosures made by the Business Associate of PHI must be made in accordance with HIPAA Standards and other applicable laws.
  - ii. Notwithstanding any other provision herein to the contrary, the Business Associate shall limit uses and disclosures of PHI to the “minimum necessary,” as set forth in the HIPAA Standards.
  - iii. The Business Associate agrees to use or disclose only a “limited data set” of PHI as defined in the HIPAA Standards while conducting the authorized activities herein and as delineated in the Related Agreement(s), except where a “limited data set” is not practicable in order to accomplish those activities.
  - iv. Except as otherwise limited by this Agreement or the Related Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
  - v. Except as otherwise limited by this Agreement or the Related Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate provided that the disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
  - vi. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR § 164.502(j).
  - vii. Business Associate may use PHI to provide Data Aggregation services to the Department as permitted by the HIPAA Standards.
- b. Safeguards. The Business Associate agrees to implement and use appropriate Security, Administrative, Physical and Technical Safeguards, and comply where applicable with subpart C of 45 C.F.R. Part 164, to prevent use or disclosure of PHI other than as required by law or as provided for by this Agreement or the Related Agreement. Business Associate shall identify in writing upon request from the Department all of those Safeguards that it uses to prevent impermissible uses or disclosures of PHI.
  - c. Restricted Uses and Disclosures. The Business Associate shall not use or further disclose PHI other than as permitted or required by this Agreement, the Related Agreement, the HIPAA Standards, or otherwise as permitted or required by law. The Business Associate shall not disclose PHI in a manner that would violate any restriction which has been communicated to the Business Associate.
- i) The Business Associate shall not directly or indirectly receive remuneration in exchange for any of the PHI unless a valid authorization has been provided to the Business Associate that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving the PHI of that individual, except as provided for under the exceptions listed in 45 C.F.R. §164.502 (a)(5)(ii)(B)(2).

- ii) Unless approved by the Department, Business Associate shall not directly or indirectly perform marketing to individuals using PHI.
- d. Agents. The Business Associate shall ensure that any agents that create, receive, maintain or transmit PHI on behalf of Business Associate, agree in writing to the same restrictions and conditions that apply to the Business Associate with respect to PHI, in accordance with 45 C.F.R. § 164.502(e)(1)(ii), and shall make that agreement available to the Department upon request. Upon the Business Associate's contracting with an agent for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement.
- e. Availability of Information to Individuals and the Department. Business Associate shall provide, at the Department's request, and in a reasonable time and manner, access to PHI in a Designated Record Set (including an electronic version if required) to the Department or, as directed by the Department, to an Individual in order to meet the requirements under 45 CFR § 164.524. Within three (3) business days, Business Associate shall forward to the Department for handling any request for access to PHI that Business Associate receives directly from an Individual. If requested by the Department, the Business Associate shall make such information available in electronic format as required by the HIPAA Standards to a requestor of such information and shall confirm to the Department in writing that the request has been fulfilled.
- f. Amendment of PHI. In accordance with 45 CFR § 164.526, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Department directs or agrees to, at the request of the Department or an Individual, to fulfill the Department's obligations to amend PHI pursuant to the HIPAA Standards. Within three (3) business days, Business Associate shall forward to the Department for handling any request for amendment to PHI that Business Associate receives directly from an Individual.
- g. Internal Practices. Business Associate agrees to make internal practices, books and records, including policies, procedures and PHI, relating to the use and disclosure of PHI, available to the Department or to the Secretary within seven (7) days of receiving a request from the Department or receiving notice of a request from the Secretary, for purposes of the Secretary's determining the Department's compliance with the Privacy Rule.
- h. PHI Disclosures Recordkeeping. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for the Department to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with the HIPAA Standards and 45 CFR § 164.528. Business Associate shall provide such information to the Department or as directed by the Department to an Individual, to permit the Department to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by the Department. Within three (3) business days, Business Associate shall forward to the Department for handling any accounting request that Business Associate directly receives from an individual.
- i. PHI Disclosures Accounting. Business Associate agrees to provide to the Department or an Individual, within seven (7) days of receipt of a request, information collected in accordance with Section 2 (h) of this Agreement, to permit the Department to respond to a request for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

- j. Security Rule Provisions. As required by 42 U.S.C. § 17931 (a) [HITECH Act Section 13401(a)] , the following sections as they are made applicable to business associates under the HIPAA Standards, shall also apply to the Business Associate: 1) Administrative Safeguards; 2) Physical Safeguards; 3) Technical Safeguards; 4) Policies and Procedures and Documentation Requirements; and 5) Security Standards. Additionally, the Business Associate shall either implement or properly document the reasons for non-implementation of all safeguards in the above cited sections that are designated as “addressable” as such are made applicable to Business Associates pursuant to the HIPAA Standards.
- k. Civil and Criminal Penalties. Business Associate agrees that it will comply with the HIPAA Standards as applicable to Business Associates, and acknowledges that it may be subject to civil and criminal penalties for its failure to do so.
- l. Performance of Covered Entity's Obligations. To the extent the Business Associate is to carry out the Department 's obligations under the HIPAA Standards, Business Associate shall comply with the requirements of the HIPAA Standards that apply to the Department in the performance of such obligations.
- m. Subcontractors. The Business Associate shall ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate, agree in writing to the same restrictions and conditions that apply to the Business Associate with respect to PHI, with 45 C.F.R. § 164.502(e)(1)(ii), and shall make such information available to the Department upon request. Upon the Business Associate’s contracting with an agent for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement. Upon the Business Associate’s contracting with a subcontractor for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement.

**3. Business Associate Obligations for Notification, Risk Assessment, and Mitigation**

During the term of this Agreement and Related Agreement, the Business Associate shall be required to perform the following pursuant to the Breach Notification Rule regarding Breach Notification, Risk Assessment and Mitigation:

Notification

- a. Business Associate agrees to report to the Department Contract Manager or HIPAA Privacy and Security Officer any use or disclosure of PHI not provided for by this Agreement, the Related Agreement and HIPAA Standards, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, as soon as it (or any employee or agent) becomes aware of the Breach, and in no case later than three (3) business days after it (or any employee or agent) becomes aware of the Breach, except when a government official determines that a notification would impede a criminal investigation or cause damage to national security.
- b. Business Associate shall provide the Department with the names of the individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of the Breach and any other available information that is required to be given to the affected individuals, as set forth in 45 CFR §164.404(c), and, if requested by the Department, provide information necessary for the Department to investigate promptly the impermissible use or disclosure. Business Associate shall continue to provide to the Department information

concerning the Breach as it becomes available to it, and shall also provide such assistance and further information as is reasonably requested by the Department.

#### Risk Assessment

- c. When Business Associate determines whether an impermissible acquisition, use or disclosure of PHI by an employee or agent poses a low probability of the PHI being compromised, it shall document its assessment of risk in accordance with 45 C.F.R. § 164.402 (in definition of “Breach”, ¶ 2) based on at least the following factors: (i) the nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used the protected health information or to whom the disclosure was made; (iii) whether the protected health information was actually acquired or viewed; and (iv) the extent to which the risk to the protected health information has been mitigated. Such assessment shall include: 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons documenting the determination of risk of the PHI being compromised. When requested by the Department, Business Associate shall make its risk assessments available to the Department.
- d. If the Department determines that an impermissible acquisition, access, use or disclosure of PHI, for which one of Business Associate’s employees or agents was responsible, constitutes a Breach, and if requested by the Department, Business Associate shall provide notice to the individuals whose PHI was the subject of the Breach. When requested to provide notice, Business Associate shall consult with the Department about the timeliness, content and method of notice, and shall receive the Department’s approval concerning these elements. The cost of notice and related remedies shall be borne by Business Associate. The notice to affected individuals shall be provided as soon as reasonably possible and in no case later than 60 calendar days after Business Associate reported the Breach to the Department.

#### Mitigation

- e. In addition to the above duties in this section, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI, by Business Associate in violation of the requirements of this Agreement, the Related Agreement or the HIPAA Standards. Business Associate shall draft and carry out a plan of corrective action to address any incident of impermissible use or disclosure of PHI. If requested by the Department, Business Associate shall make its mitigation and corrective action plans available to the Department.
- f. The notice to affected individuals shall be written in plain language and shall include, to the extent possible, 1) a brief description of the Breach, 2) a description of the types of Unsecured PHI that were involved in the Breach, 3) any steps individuals can take to protect themselves from potential harm resulting from the Breach, 4) a brief description of what the Business Associate and the Department are doing to investigate the Breach, to mitigate harm to individuals and to protect against further Breaches, and 5) contact procedures for individuals to ask questions or obtain additional information, as set forth in 45 CFR §164.404(c).

#### Notification to Clients

- g. Business Associates shall notify individuals of Breaches as specified in 45 CFR §164.404(d) (methods of individual notice). In addition, when a Breach involves more than 500 residents of a State or jurisdiction, Business Associate shall, if requested by the Department, notify prominent media outlets serving such location(s), following the requirements set forth in 45 CFR §164.406.

**4. Obligations of the Department to Inform Business Associate of Privacy Practices and Restrictions**

- a. The Department shall notify Business Associate of any limitation(s) in the Department's Notice of Privacy Practices, implemented in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b. The Department shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- c. The Department shall notify Business Associate of any restriction in the use or disclosure of PHI that the Department has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- d. The Department shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Department.

**5. Term and Termination**

- a. Term. This Agreement shall be effective concurrently with the effective date of Contract No. [Insert Number] between Business Associate and the Department (the Related Agreement). This Agreement shall also terminate concurrently with the Related Agreement, except that obligations of Business Associate under this Agreement related to final disposition of PHI in this Section 5 shall survive until resolved as set forth immediately below.
- b. Disposition of PHI upon Termination. Upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI in its possession, and shall retain no copies of the PHI. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to the Department notification of the conditions that make return or destruction of PHI not feasible. Upon mutual agreement of the Parties that return or destruction of the PHI is infeasible, Business Associate shall agree, and require that its agents, affiliates, subsidiaries and subcontractors agree, to the extension of all protections, limitations and restrictions required of Business Associate hereunder, for so long as the Business Associate maintains the PHI.
- c. If Business Associate breaches any material term of this Agreement, the Department may either:
  - i. provide an opportunity for Business Associate to cure the Breach and the Department may terminate this Contract without liability or penalty in accordance with Termination Article of the Related Agreement if Business Associate does not cure the breach within the time specified by the Department; or,

- ii. immediately terminate this Contract without liability or penalty if the Department determines that cure is not reasonably possible; or,
- iii. if neither termination nor cure are feasible, the Department shall report the breach to the Secretary.

The Department has the right to seek to cure any breach by Business Associate and this right, regardless of whether the Department cures such breach, does not lessen any right or remedy available to the Department at law, in equity, or under this Contract, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

- 6. Penalties and Training.** Business Associate understands and acknowledges that violations of this Agreement may result in notification by the Department to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by the Department, Business Associate shall participate in training regarding use, confidentiality, and security of PHI.

**7. Miscellaneous**

- a. Interpretation. Any ambiguity in this Agreement, or any inconsistency between the provisions of this Agreement and the Related Agreement, shall be resolved to permit the Department to comply with the HIPAA Standards.
- b. Business Associate's Compliance with HIPAA. The Department makes no warranty or representation that compliance by Business Associate with this Agreement or the HIPAA Standards will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- c. Change in Law. In the event there are subsequent changes or clarifications of statutes, regulations or rules relating to this Agreement, the Department shall notify Business Associate of any actions it reasonably deems necessary to comply with such changes, and Business Associate shall promptly take such actions. In the event there is a change in federal or state laws, rules or regulations, or in the interpretation of any such laws, rules, regulations or general instructions, which may render any of the material terms of this Agreement unlawful or unenforceable, or which materially affects any financial arrangement contained in this Agreement, the parties shall attempt amendment of this Agreement to accommodate such changes or interpretations. If the parties are unable to agree, or if amendment is not possible, the parties may terminate the Agreement pursuant to its termination provisions.
- d. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Department, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

- e. Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any agents, affiliates, subsidiaries, subcontractors or workforce members assisting Business Associate in the fulfillment of its obligations under this Agreement and the Related Agreement available to the Department, at no cost to the Department, to testify as witnesses or otherwise in the event that litigation or an administrative proceeding is commenced against the Department or its employees based upon claimed violation of the HIPAA standards or other laws relating to security and privacy, where such claimed violation is alleged to arise from Business Associate's performance under this Agreement or the Related Agreement, except where Business Associate or its agents, affiliates, subsidiaries, subcontractors or employees are named adverse parties.
  
- f. Additional Obligations. Department and Business Associate agree that to the extent not incorporated or referenced in any Business Associate Agreement between them, other requirements applicable to either or both that are required by the HIPAA Standards, those requirements are incorporated herein by reference.

IN WITNESS THEREOF, the parties hereto separately acknowledge this Business Associate Agreement in addition to their execution of the Related Agreement.

NEW MEXICO DEPARTMENT OF HEALTH

BUSINESS ASSOCIATE

By: \_\_\_\_\_  
 Authorized Signature Designee

By: \_\_\_\_\_

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form and legal sufficiency:

By: \_\_\_\_\_  
 Office of General Counsel

Date: \_\_\_\_\_