

The Regents of the University of New Mexico
for its public operation known as UNM Health
Sciences Center, specifically, UNM Hospital (UNMH)

PURCHASING DEPARTMENT
933 Bradbury Dr. SE, Suite 3165
ALBUQUERQUE, NM 87106

ISSUANCE DATE: April 3, 2024

DUE DATE: May 1, 2024

RFP P493-24 Vision Employee Plan

1. Offer Due Date/Time: ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT SPECIALIST OR DESIGNEE REFERENCED ON THIS COVER PAGE NO LATER **THAN 2:00 PM MOUNTAIN STANDARD TIME/DAYLIGHT TIME ON May 1, 2024.** Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded for each proposal.

2. UNMH invites you ("Offeror") to submit an offer for materials and/or services set forth in this RFP. Please carefully read the instructions, specifications, and Standard Terms and Conditions, because failure to comply therewith may result in an offer being classified as unresponsive and disqualified. New Mexico civil and criminal law prohibits bribes, gratuities, and kickbacks. (13-1-191 NMSA 1978)

3. Procurement Specialist Contact Information: UNMH has assigned a Procurement Specialist who is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

Name: Chris Lechalk
Title: Procurement Specialist
Telephone: 505-410-6542
E-mail: cwardlechalk@salud.unm.edu
Address: 933 Bradbury Drive, SE, Suite 3165
Albuquerque, NM 87106

4. Public Disclosure: Responses to become Public Records. All materials submitted in response to this RFP become a matter of public record and shall be regarded as public record.

New Mexico Inspection of Public Records Act, Section 14-1-1 et seq., NMSA 1978 as Amended ("IPRA") limits UNMH's ability to withhold prequalification and bid data to trade secrets or records, the disclosure of which is exempt or prohibit pursuant to federal or state law.

5. Confidentiality: As a state institution, UNMH is subject to the IPRA, so unless there is an exception under the law, documents in the University's possession are subject to review by any member of the public. One exception to this general rule is for trade secrets. Trade secrets are not subject to disclosure under an IPRA request. New Mexico law defines a "trade secret" at NMSA Sec. 57-3A-2. Please review the definition (or have your company attorney do so) and explain how the pages that you have marked as "Confidential" fall within New Mexico's definition of a trade secret.

6. UNMH will recognize as confidential only those elements in each response, which are readily separable from the proposal into its own section, and which are clearly marked as “CONFIDENTIAL” or “PROPRIETARY” in order to facilitate eventual public inspection of the non-

confidential portion of the proposal. PLEASE NOTE: The price of products offered or the cost of services proposed **shall not be designated** as proprietary or confidential information.

UNMH will ignore markings of “CONFIDENTIAL” on proposal cover sheets or on every page. Vague designations and blanket statements regarding entire pages or documents are insufficient and shall not bind UNMH to protect the designated matter from disclosure. Do not mark your cover page confidential. Do not put the word “confidential” on every page. Do not identify pricing as confidential.

If you identify any portions of our proposal as confidential or as a trade secret, you agree, by submitting your proposal, that UNMH’s sole obligation in connection with an IPRA request relating to your proposal is to provide you with notice of the IPRA request so that you may seek relief as you may deem appropriate. UNMH reserves the right to reject any proposal not in compliance with this paragraph.

UNMH shall not in any way be liable or responsible for the disclosure of any records if they are not plainly marked “CONFIDENTIAL” or “PROPRIETARY” or if disclosure is required by law, regulation, subpoena, order of the court or other legal requirements that purports to compel disclosure, including without limitation, the IPRA.

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SECTION I. INTRODUCTION AND GENERAL INFORMATION

The purpose of this Request of Proposals (RFP) is to solicit sealed proposals to establish contract(s) through competitive negotiations for the procurement of goods and/or services as set forth in **Exhibit A, Scope of Work**.

It is intended that this RFP will result in UNMH entering into a contractual agreement with one or more successful Offeror(s), for an **Initial Contract Term of up to three (3) year(s)** with an option to renew for additional terms, as provided for in NMSA 13-1-150 (Multi-Term Contract). Continuation of the contract(s) is contingent upon satisfactory contract compliance by the Contractor, as determined by UNMH. UNMH must approve all contract renewals, amendments and adjustments.

1.1 Forms and Exhibits. The RFP Submission Forms and Exhibits and the other documents requiring execution by the Offeror shall be completed and signed by a duly authorized representative of the Offeror. Proposals should be completed without delineations, alterations, or erasures. Should there be any discrepancy between the original and any of the copies, the original shall prevail.

1.2 Requirements. For purposes of this RFP:

1.2.1 “must” and “shall” indicate that the requirement is mandatory, subject to provisions of this RFP; and

1.2.2 “should”, “could” and “may” indicate that the requirement is discretionary.

1.3 Notice. The Offerors are put on notice that from the date of issue of the RFP through any award notification of the Agreement:

1.3.1 Only the Procurement Specialist is authorized by UNMH to amend or waive the requirements of the RFP pursuant to the terms of this RFP;

1.3.2 Offerors should not contact any of the staff at UNMH, (except for the Procurement Specialist) in regards to this RFP, unless instructed to in writing by the Procurement Specialist;

1.3.3 Under no circumstances shall the Offeror rely upon any information or instructions from the Procurement Specialist, UNMH employees or their agents unless the information or instructions is provided in writing by the Procurement Specialist in the form of an addendum; and

1.3.4 UNMH, their employees, nor their agents shall be responsible for any information or instructions provided to the Offeror, with the exception of information or instructions provided in an addendum by the Procurement Specialist.

1.4 Information

1.4.1 Offeror to Review. The Offeror must carefully review this RFP and ensure that the Offeror has no reason to believe that there are any uncertainties, inconsistencies, errors, omissions, or ambiguities in any part of this RFP. Each Offeror is responsible for conducting its own investigations and due diligence necessary for the preparation of its Proposal.

1.4.2 Offeror to Notify. If the Offeror discovers any uncertainty, inconsistency, error, omission or ambiguity in this RFP, the Offeror must notify the Procurement Specialist in writing prior to submitting the Offeror’s Proposal.

1.4.3 Offerors shall not: Claim after submission of a Proposal that there was any misunderstanding or that any of the conditions set out in Section 1.4.1 Offeror to Review were present with respect to this RFP; or hold any staff of UNMH liable for any uncertainty, inconsistency, error, omission, or ambiguity in any part of this RFP.

1.5 Clarification, Questions and Submission

1.5.1. Submitting all requests for clarification by email to the Procurement Specialists at cwardlechalk@salud.unm.edu with a cc to Lynn Brownlee at Lynn.Brownlee@ajg.com, Gallagher Benefits Services (acting as consultant for UNMH), or as otherwise directed by the Bid Administrator;

1.5.2. Including the Offeror's address, telephone number, facsimile number and email address;

1.5.3 If the question pertains to a specific section of this RFP, reference should be made to the specific section number and page; and

1.5.4 Submitting all requests for clarification no later than **2:00 PM MDT April 12, 2024**.

1.6 Issued Addenda. Each Offeror shall be responsible for verifying before submitting its Proposal that it has received all addenda that have been issued. All addenda will be posted on the UNMH proposal website visit <http://hsc.unm.edu/health/about/bids-proposals/proposals.html>. Instructions, clarifications, or amendments which affect this RFP may only be made by addendum.

1.7 Amendments to the RFP. UNMH shall have the right to amend or supplement this RFP in writing prior to the Closing Time. No other statement, whether written, oral or inferred, will amend this RFP. The addenda shall be binding on each Offeror.

1.8 Clarification of Offeror's Proposal

1.8.1 UNMH shall have the right at any time after Proposal submission, to seek clarification from any Offeror in respect of such Offeror's Proposal, without contacting other Offerors. UNMH is not obliged to seek clarification of any aspect of a Proposal.

1.8.2 Any clarifications sought shall not be an opportunity to either correct errors or to change the Offeror's Proposal in any substantive manner. In the clarification process, no change in the substance of the Proposal shall be offered or permitted. Subject to the qualification in this Section, any written information received by UNMH from an Offeror in response to a request for clarification from UNMH shall be considered part of the Offeror's Proposal.

1.9 Verification of Information. UNMH shall have the right to:

1.9.1 Verify any Offeror statement or claim by whatever means UNMH deems appropriate, including contacting persons in addition to those offered as references, and to reject any

Offeror statement or claim, if the statement or claim or its Proposal is patently unwarranted or is questionable; or

1.9.2 Access the Offeror's premises where any part of the work is to be carried out to confirm Proposal information, quality of processes, and to obtain assurances of viability; and

1.9.3 The Offeror shall cooperate in the verification of information and is deemed to consent to UNMH verifying such information.

SECTION II. PROPOSAL COPIES AND FORMAT

2.1 Number of Responses and Copies

Offeror's proposal shall be clearly labeled and numbered and indexed as outlined in **Section 2.2. Proposal Format**. Proposals SHOULD be submitted as outlined below. The original copy shall be clearly marked as such on the front of the binder.

2.1.1 Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the **RFP P493-24 Vision Employee Plan**

2.1.2 **Proposal - One (1) ORIGINAL, One (1) HARD COPY, and one (1) ELECTRONIC COPY of the proposal; ORIGINAL and COPY shall be in separate labeled binders. The proposal can NOT be emailed.**

2.1.3 **Electronic Copies - The electronic version/copy of the proposal must mirror the physical binders submitted (i.e. One (1) cd/usb,). The electronic version can NOT be emailed. The original, one hard copy and electronic copy information must be identical. In the event of a conflict between versions of the submitted proposal, the Original hard copy shall govern. Please ensure password is submitted with electronic version.**

Any proposal that does not adhere to the requirements of this Section and **Section 2.2 Response Format and Organization**, may be deemed non-responsive and rejected on that basis.

2.2 Proposal Format

2.2.1 All proposals SHOULD be submitted as follows:

- a. Hard copies SHOULD be typewritten on standard 8 1/2 x 11 inch paper (larger paper is permissible for charts, spreadsheets, etc.)
- b. Pages SHOULD be one-sided, one and one-half spaced and numbered.
- c. Typeface SHOULD be easily readable such as Time Roman, type size 12-point.
- d. Each Proposal SHOULD be placed within a **binder with tabs delineating** each section as outlined under Section 2.2.2 Proposal Content and Organization.

2.2.2 Proposal Content and Organization

Direct reference to pre-prepared or promotional material may be used if referenced and clearly marked. Promotional material should be minimal. The proposal should be **organized and indexed** in the following format and SHOULD contain, at a minimum, all listed items in the sequence indicated.

- A. Table of Contents
- B. Signed Authorized Signature Page (Exhibit E)
- C. Proposal Summary to include:
 1. Corporate Profile
 2. The quality, including performance guarantees and reputation of the Offeror and of the Offeror's services
 3. IT Security Requirements
 4. Approach and Methodology
 5. Cost
 6. References (Section 3.1.9)

D. Exhibits

1. Resident Veterans Certificate (Exhibit D) (If Applicable)
2. Small & Small Disadvantaged Business Certification (Exhibit F) (If applicable).
3. Conflict of Interest and Debarment/Suspension Certificate Form (Exhibit G)
4. Certification and Disclosure regarding Payments to Influence certain Federal Transactions (April 19910) (Exhibit I)

E. Offeror's Additional Terms and Conditions (if applicable)

F. Other Supporting Material (If applicable)

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.

The proposal summary may be included by potential Offerors to provide the Evaluation Committee with an overview of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal.

SECTION III. ADDITIONAL INSTRUCTIONS TO OFFERORS NM PREFERENCES.

2.1 In accordance with NMSA 1978 § 13-1-21 (as amended), If Offerors are seeking preference, they 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>. In addition, for the resident Veterans preference, the attached Resident Veteran Preference Certification” form (Exhibit D) must be completed and signed.

2.1.1 New Mexico Business Preference. If the Offeror has provided their Preference Certificate, the Preference Points for a New Mexico Business shall be applied in accordance with the New Mexico Procurement Code.

2.1.2 New Mexico Resident Veterans Business Preference If the Offeror has provided their Preference Certificate and the Resident Veterans Certification Form the Preference Point will be granted as listed in New Mexico Procurement Code.

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

2.2 AUTHORIZED SIGNATURE PAGE: Review and submit the Authorized Signature Page attached hereto as **Exhibit E**.

2.3 SMALL AND DISADVANTAGED BUSINESS CERTIFICATION FORM: Review and submit the Small and Small Disadvantaged Business Certification Form attached hereto as **Exhibit F**.

2.4 CONFLICT OF INTEREST CERTIFICATION FORM: Review and submit Conflict of Interest Certification Form attached hereto as **Exhibit G**.

2.5 INSURANCE REQUIRMENTS: The Offeror should provide proof of insurance coverage, meeting the requirements in the Section labeled “Insurance Requirements” or as noted in the specifications (**Exhibit H**). Offeror should submit proof of insurance in the form of a “Certificate of Insurance” with their response and prior to commencing work under the resulting contract. Offeror’s insurance shall remain in effect for the entire term of the contract and must be extended to coincide with any future contract extensions. The Offeror must provide proof of insurance coverage acceptable to UNMH, in its sole discretion, prior to award of an Agreement.

2.6 SAMPLE AGREEMENT and BUSINESS ASSOCIATES ADDENDUM (BAA): The successful respondent will be required to enter into an Agreement with the Regents of the University of New Mexico, for its public operation known as University of New Mexico Hospitals.

2.7 INFORMATION SECURITY PLAN. Offeror(s) shall not install any systems software and hardware, applications, databases, information or etc. on UNMH’s computing devices-assets including export/import files, custom files or etc. without prior approval from UNMH’s IT division. The successful Awardee may be required to complete the UNMHs Information Security Plan Information and submit to UNMH’s IT department for approval. Failure to complete form upon UNMH’s request or failing to receive IT approval may result in Offeror(s) being considered as nonresponsive and/or termination of agreement.

- 2.8 TAXES.** The University is exempt from Federal Excise Taxes and from New Mexico Gross Receipts Taxes on materials. Services are not exempt. Taxes on services should be included as a separate line item and not included in the base price offer. Applicable taxes are excluded from the RFP evaluation. A non-taxable transaction certificate is available upon request by contractor.
- 2.9 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS.** Review and submit the Certification And Disclosure Regarding Payments To Influence Certain Federal Transactions (April 1991) form attached hereto as **Exhibit I.**
- 2.10 RESIDENT BUSINESS, RESIDENT CONTRACTOR AND RESIDENT VETERAN PREFERENCE CERTIFICATION.** To receive a resident business preference pursuant to Section 13-1-21 NMSA 1978 or a resident contractor preference pursuant to 13-4-2 NMSA 1978, a business or contractor is required to submit with its bid or proposal a copy of a valid resident contractor certificate issued by the New Mexico Taxation and Revenue Department.
- 2.11 PERIOD OF CONTRACT.** The term of the resultant Price Agreement(s) arising from this proposal may be for a term of ten years (10) as provided for in NMSA 13-1-150 (Multi-Term Contract).
- 2.12 QUANTITIES.** UNMH may purchase all, some or none of the elements described in this proposal or Offerors responses. In addition, actual quantities may fluctuate up or down based on UNMH needs. The successful bidder will be required to fill all orders placed regardless of quantities ordered.
- 2.13 AGENTS/SUBCONTRACTORS.** The Offeror shall indicate whether the Offeror intends to use agents or subcontractors to perform the services outlined in the Agreement and shall provide details on who they are and the service(s) the agent/subcontractor shall perform. The successful Offeror shall remain primarily responsible for the performance of the Agreement notwithstanding its use of agents or subcontractors as approved by the Hospital. If the Offeror is not using agents or subcontractors on this RFP, the Offeror should respond by stating not applicable.

EXHIBIT A
SCOPE OF WORK

1.5 Scope of Work

The University of New Mexico Hospitals (UNMH) is requesting proposals to identify qualified offeror(s) that can manage their Vision plan. **Rates for this coverage should be quoted with an effective date of January 1, 2025.**

- UNMH is New Mexico’s only academic medical center and the State’s only Level One Trauma Center, subspecialties offering the highest level of intensive care for children and premature infants in the State and treating nearly 102,125 emergency patients during more than 484,000 outpatient visits annually. UNMH is recognized for clinical excellence in many specialties including Trauma and Emergency Medicine, Pediatrics, Orthopedics, Cancer Research and Treatment, Transplantation and many others. The Hospital and its components provide primary, secondary, tertiary and quaternary care and receive referrals from counties throughout New Mexico and the entire Southwest.

The requirements with respect to this scope of work are outlined in this RFP. Please read carefully all information herein because failure to comply with the instructions in the RFP may result in your proposal being classified as non-responsive or being negatively evaluated.

- The successful offeror will partner with UNMH to customize information and documents, including communication materials, letters to participants, etc.
- Offerors are to match the current fully insured vision plan. The Benefit Summary and EOC are included as attachments.
- Rates should be net of commission, contingencies, overrides or service fees. They should be guaranteed for a minimum of 3 years with extended guarantees or rate caps for years 4 and 5.

To the best of the knowledge of UNMH, the information provided in this RFP is accurate. To the best of the knowledge of the entities, nothing in this RFP is intended to relieve Offerors from undertaking their own investigations or inquiries or performing other due diligence or forming their own opinions and conclusions with respect to the matters addressed in this RFP. UNMH does not represent or warrant that the information is comprehensive or exhaustive and assume no responsibility for the completeness or accuracy of the information. In particular, where information includes historical data or information, UNMH makes no representation or warranty that such data or information represents an accurate forecast of volumes and/or needs.

The intent of this RFP is to establish a purchasing mechanism for these products and services. Upon award, an indefinite Master Price Agreement(s) will be established with the Awardee(s) and all subsequent purchase orders will be released on an as needed basis against the resultant price agreement. The Awardees(s) shall have the opportunity to market their resultant Master Price Agreement to other local public bodies and state agencies under the State of New Mexico Public Purchases and Property, NMSA 1978, Article 1, Procurement, Section 13-1-129, “Procurement under existing Offerors.”

1.6 Offeror must meet or exceed the requirements listed below:

- 1.6.1 Offerors must have the ability to work within the security, regulatory and internal policy requirement needs of various UNMH facilities.
- 1.6.3 Offeror should have an extensive knowledge of the company's product roadmap, and understanding of industry best products and practices.
- 1.6.4 Offeror to confirm they are licensed to offer/sell coverage in the State of New Mexico.
- 1.6.5 Must perform all work compliant with applicable industry standards and recommended practices.

1.7 Agents/Subcontractors. The Offeror shall indicate whether the Offeror intends to use agents or subcontractors to perform the services outlined in the Agreement and shall provide details on who they are and the service(s) the agent/subcontractor shall perform. The successful Offeror shall remain primarily responsible for the performance of the Agreement notwithstanding its use of agents or subcontractors as approved by UNMH. If the Offeror is not using agents or subcontractors on this RFP, the Offeror should respond by stating not applicable.

1.8 Demonstrated Capability. In its proposal, the Offeror should demonstrate:

- 1.8.3 An understanding of the requirements for Equipment, services, or products required by this RFP and the approaches that the Offeror will take to meet those requirements.

1.9 Early Payment Discounts: While the RFP payment terms call for NET 30, is your company willing to extend early payment discount terms i.e. .05/15 Net 30, 1/15 Net 30, or 2/10 Net 30. If so, what would be your early payment terms?

- 1.9.3 The early payment discounts shall not be considered in evaluating cost.
- 1.9.4 For the early payment discount, the discount time will not begin until the materials, supplies, or services have been received and accepted and a correct invoice received by the UNMH Accounts Payable Department. If testing is required prior to acceptance, the discount time shall begin upon completion of the tests and acceptance.

EXHIBIT B. ORGANIZATION OF PROPOSAL

Proposals should be organized in a format that promotes the easy and clear evaluation of your offer.

- 2.1. Offerors are to organize Proposals in the order as stated in this section. **Please read carefully all information herein because failure to comply with the instructions in this RFP may result in your proposal being classified as non-responsive or being negatively evaluated.** The organization of your proposal is to follow the RFP's organization so that the RFP and your proposal can be cross-referenced during the evaluation process. Your information in your proposal should be presented in the same order as the pertinent provisions of the RFP, referencing section of the Request on any and all attachment that you included with your proposal.
- 2.2. Submittals should completely address each of the evaluation criteria in the order presented, elaborating on all responses where possible.

The following are the guidelines for response presentation:

1. Size 12 Times New Roman font
2. Single spaced
3. .75 borders all around on all documents
4. 8 ½ x 11 inch white paper, no color paper
5. Each page numbered sequentially in each section, starting with page 1, remembering to start at page 1 in each section
6. Limited to a number of 100 pages per solution
7. Color graphics/charts etc. are accepted; as they relate to the response information
8. Responses will be by section
9. Each section response shall be in tab form
10. Each tab will be labeled with the section number corresponding with the response
11. Responses will be presented in White 3 ring binders appropriate to the size (amount) of the documents being presented. (No 4 inch binder for 2 inches of documents)
12. The cover of the binder will display a cover sheet with the following information, and in this order:

RFP Response P493-24
University of New Mexico Hospital
Company Name
Address
City, State, Zip
Contact Number
Email address
Response prepared by: (use as many names as needed)
Name
Name

13. All the above information shall be centered on sheet with .75 borders all around, the font shall not be greater than 12 or less than 10 Times New Roman, so keep in mind that if you use 12 font you may not be able to fit all information, so 10 font will be the smallest you may use.

EXHIBIT C. EVALUATION CRITERIA

This section describes the criteria to be used for analyzing and evaluating the various proposals. Cost will be a large factor in the proposal evaluation with negotiable expectations however; it is specifically a consideration of secondary importance to the need for competent and high-quality skilled Offeror(s). UNMH reserves the right to make an award based directly on the proposals or to negotiate with one or more Offerors or reject all proposals. The Offeror selected for the award will be chosen on the basis of the greatest benefit to UNMH, not on the basis of lowest price. All responses to this Request for Proposals become the property of UNMH and will become public information upon completion of UNMH contract negotiation process.

An evaluation committee shall evaluate proposals based on the weighted criteria listed below. Submittals should completely address each of the following evaluation criteria in the order presented, elaborating on all responses where possible. UNMH reserves the right to judge the presentation of the firms submitting proposals in the evaluation and selection of the successful proposal. Finalist may be invited for oral presentations and demonstrations at UNMH's sole discretion at a date and time to be determined.

3.1 Corporate Profile (5 Points Possible)

- 3.1.1 Provide your company's full legal name, corporate mailing address and phone number. Indicate whether you are a corporation, sole proprietorship or partnership and if you are a subsidiary of a parent company.
- 3.1.2 Describe your company history, including when it was founded, where it has operated, and any mergers or acquisitions.
- 3.1.3 List the Number of years working with Vision Plans.
- 3.1.4 Provide a description of your firm, its business strategy and primary focus. State whether your primary focus is Vision Plans or if you also manage other industries. Describe specific attributes that distinguish you from your competitors, in particular address ways you manage a high volume of Employee Vision Plan accounts and other services, options, or ideas you have that could meet UNMH needs now or in the future.
- 3.1.5 Provide a link to, or electronic copy of, your company's most recent audited financial statements, or other information sufficient for UNMH to evaluate the financial condition of the Offeror.
- 3.1.6 What is your retention rate for your customers for the last 3 years?
- 3.1.7 How many current Vision clients do you administer/insure that are hospitals.
- 3.1.8 Provide information regarding all previous and pending lawsuits against your organization and the courts in which they were filed.
- 3.1.9 Provide no less than three (3) references of customers you have extended into an agreement within the last three (3) years who can verify the quality of service your company provides. Indicate if the agreement(s) are still active and if not, why not? Company name, address, contact person and title, phone, contract period and scope of work must be included. **One (1) of the three (3) references shall be similar in size to UNMH (7,100 Employees) and scope of work as called for in this RFP. Please indicate which of the references is similar in size.**

3.2 The quality, including performance guarantees and reputation of the Offeror and of the Offeror's services. (25 Points Possible) Your performance requirements for Employee Vision Plan at the minimum must meet the required specifications and objectives outlined below. Clearly and in detail explain on a point by point basis, for each requirement, about how your product meets or exceeds these requirements. Provide the greatest amount of meaningful detail possible to describe the proposed products/services. Indicate if you can meet the specifications, or if the specifications can be met only under certain conditions or circumstances. If you are not able to meet the specification, briefly explain why, noting any concerns or issues UNMH should be aware of.

- 3.2.1 Provide a point by point response to the scope of work and service requirements as identified in Section I, 1.1, and 1.2.
- 3.2.2 Complete **Exhibit M** Proposal Response Form.
- 3.2.3 Complete **Exhibit N** “UNM Hospitals RFP Questionnaire”. File includes 5 tabs.
- 3.2.4 Complete **Exhibit O** “Vision Cost sheet”.
- 3.2.5 Complete **Exhibit P** “Vision Disruption Analysis In vs Out of Network Data Request”.
- 3.2.6 Detail any other innovative products, services or solutions such as quality programs that will enhance the partnership between UNMH and your company.
- 3.2.7 Describe in detail any unique expertise and miscellaneous technology capabilities and/or applications your company can provide.
- 3.2.8 How do you ensure successful partnerships with your clients?
- 3.2.9 What will your expectations be of UNMH staff in order to ensure a harmonious working relationship?
- 3.2.10 Describe how you ensure regulatory compliance within all of your functions?
- 3.2.11 How are compliance issues reconciled, managed, controlled, and reported?
- 3.2.12 Please indicate where the work will be performed (e.g. city, state, and country)
- 3.2.13 Has your company ever failed to meet Federal, State, local or industry requirements for your type of service required? If yes, explain. If not, explain what you are doing to prevent it from occurring?
- 3.2.14 What is the escalation process for issues?
- 3.2.15 What is the process for quality improvement?
- 3.2.16 How do you measure client satisfaction?

3.3 IT Security Requirements (10 Points Possible)

- 3.3.1 Please describe your remote access requirements.
- 3.3.2 Please provide remote support capabilities for UNMH personnel.
- 3.3.3 Please describe the systems processes for Separation of duty, data integrity checks, if this system creates error reports, where and how are they logged?
- 3.3.4 Please describe: business continuity, backup and general DR abilities.
- 3.3.5 Does your system provide controls to limit access to unauthorized users?
- 3.3.6 Provide controls and audits of user access to claimant information based on user ID?
- 3.3.7 Provide automatic logoff after a defined amount of time?
- 3.3.8 Do you capture an electronic audit trail of all users who have accessed or updated a claimants record, including date and time stamps, and location of access?
- 3.3.9 Provide contractual guarantee to provide updates, software releases and upgrades to ensure HIPAA/HITECH compliance and/or other compliance regulations with no cost?
- 3.3.10 Provide incident response processes including breach reporting priorities and, response and reporting times.
- 3.3.11 Does your client-server (data security) AND browser-based access from anywhere?

3.4 Approach and Methodology (40 Points Possible) Clearly and in detail explain on a point by point basis your approach and methodology to each of the following.

- 3.4.1 **Implementation Plan/Work Plan.** If your services/approaches are not the incumbent, propose an approach to the skills, processes and practices “conversion” that will have to take place. Describe the implementation process including needed resources at UNMH, length of implementation and support to the organization after implementation.

3.4.1.1 What is the normal lead-time required to implement a group?

3.4.1.2 Provide a schedule and timeline to implement your approach at UNMH. In preparing the Implementation Plan, Offerors are directed to provide sufficient detail to enable UNMH to fully understand the intentions of the Offeror should some or all of its Proposal be accepted for negotiations by UNMH.

3.4.2 Content of Implementation Plan. The Implementation Plan work plan should identify the Offeror's plan for UNMH, including all tasks, milestones, and time frames involving completion of the scope.

3.4.3 Training Plan. The Offerors shall identify any required training they will provide to UNMH as well as any **required training they will** require from UNMH.

3.4.4 Staff experience

3.4.4.1 Identify the total number of staff, both locally and nationally in your Employee Vision Plan area.

3.4.4.2 Attach and describe your organizational/staffing structure.

3.4.4.3 Provide the current roles of team members that would be assigned to the UNMH account team.

3.4.4.4 Provide tenure of current management.

3.4.4.5 How specifically will your personnel interact with UNMH staff and internal processes?

3.4.4.6 How is workflow prioritized for staff?

3.4.4.7 Do you have formal training and re-training of employees?

3.4.4.8 Do you have an employee incentive plan?

3.4.4.9 What metrics are used to measure performance? How are your staff's work inventories established and monitored?

3.4.4.10 What is the average tenure for employees who perform Employee Vision Plan work?

3.4.5 Account Processes

3.4.5.1 Do you have formal policies and procedure for your staff regarding account documentation standards, follow-up guidelines, etc.? Please list and describe your policies and procedures.

3.4.6 Support and Reporting

3.4.6.1 What methods are employed to track claims issues/problems?

3.4.6.2 State your ability to run ad-hoc or custom reports and describe the types of ad hoc or custom reports. Can these reports be downloaded into an Excel file format?

3.4.6.3 Please describe reports and analysis that your company will provide our organization to help us manage our population.

3.4.6.4 Describe any information that you will need from us to provide reports.

3.4.6.5 Describe training and resources for understanding reports during implementation and after initial implementation.

3.4.6.6 What other types of management and related reports would you make available to UNMH?

- 3.4.6.7 Does UNMH’s consultant have online access to claim experience reports.
- 3.4.6.8 List the name and frequency of the standard reports you will provide to the facility.

3.5 Cost: (20 Points Possible) All prices/discounts shall include all costs, etc., to fulfill the terms, conditions, and scope of work as called for in this RFP.

3.5.1 Total Project Cost – Complete Exhibit R “Vision Cost Exhibits.” Also provide the total project price for all fees schedule for your service to include start-up cost. It should also include the cost of all required training, services and implementation. All related expenses necessary to accomplish the project as listed herein must be included.

3.5.2 Additional Pricing Information: Offeror shall provide detailed prices/discounts for each section in the RFP where prices/discounts may also apply. If so, please itemize them. For example, Year one and subsequent Annual cost or future enhancement cost. Otherwise, it will be UNMH’s understanding and expectation there are no other fees, costs or expenses associated therein the response to the proposal.

Evaluation Criteria Summary: The following is a summary of the evaluation factors and the weighted value assigned to each.			
3.1	Corporate Profile	5	Points Possible
3.2	The quality, including performance guarantees and reputation of the Offeror and of the Offeror's services	25	Points Possible
3.3	IT Security Requirements	10	Points Possible
3.4	Approach and Methodology	40	Points Possible
3.5	Cost	20	Points Possible
	TOTAL POINTS POSSIBLE	100	Points Possible

EXHIBIT D
RESIDENT VETERANS PREFERENCE CERTIFICATION

CHECK IF N/A _____

_____ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement:

Please check one only:

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference discount on this solicitation. I understand that knowing giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this bid or proposal. I understand that knowing giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this bid or proposal. I understand that knowing giving false or misleading information about this fact constitutes a crime.

"I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

"In conjunction with this procurement and the requirements of this business' application for a Resident Veteran Business Preference/resident Veteran Contractor Preference under Section 13-1-21 or 13-1-22 NMSA 1978, when awarded a contract which was based on having such veteran's preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public a body or as a public works contract from a public body.

"I understand that knowingly giving false or misleading information on this report constitutes a crime"

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

(Signature of Business Representative) *

Date:

***Must be an authorized signatory for the Business**

The representations made in checking the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or unaware of the procurement involved if the statements are proving to be incorrect.

**EXHIBIT E
AUTHORIZED SIGNATURE PAGE**

THE FOLLOWING OFFEROR INFORMATION MUST BE COMPLETED AND RETURNED WITH THE RFP:

Please note that the information requested on the certification form is for reporting purposes only and will not be used in evaluating or awarding an agreement.

ACKNOWLEDGMENT OF ADDENDA

The undersigned acknowledges receipt of the following addenda:

Addenda No. _____ Dated _____

Addenda No. _____ Dated _____

Addenda No. _____ Dated _____

New Mexico State Preference Number Pursuant to Sections 13-1-1, 13-1-21.2 & 13-4-2 NMSA 1978 Offerors claiming any preference must deliver with their proposal all certifications dated on or prior to RFP due date.

- Resident Business: Pref. Number _____
- Resident Manufacturer: Pref. Number _____
- Resident Offeror: Pref. Number _____
- Resident Veterans Preference Certification (per EXHIBIT C): Yes ____ No _____

The undersigned, as an authorized representative for the Company named below, acknowledges that the Offeror has examined this RFP with its related documents and is familiar with all of the conditions surrounding the described materials, labor and/or services. Offeror hereby agrees to furnish all labor, materials and supplies necessary to comply with the specifications in accordance with the Terms and Conditions set forth in this RFP and at the prices stated within the RFP

The undersigned further states that the company submitting this RFP is not in violation of any applicable Conflict of Interest laws or regulations or any other related clauses included in this RFP.

COMPANY NAME

ADDRESS _____

CITY/STATE/ZIP _____

TELEPHONE: _____ **FAX:** _____ **EMAIL:** _____

NEW MEXICO GROSS RECEIPTS TAX NO _____

FEDERAL EMPLOYER ID NUMBER (FEIN)

SIGNATURE OF AUTHORIZED REPRESENTATIVE

PRINTED OR TYPED NAME _____

TITLE _____

DATE _____

EXHIBIT F
SMALL AND SMALL DISADVANTAGED BUSINESS CERTIFICATION

CHECK IF N/A _____

University of New Mexico Hospital participates in the Government's Small and Small Disadvantaged Business programs. This requires written certification from our suppliers and Offerors as to their business status. Please furnish the information requested below.

1.0 Small Business – An enterprise independently owned and operated, not dominant in its field and meets employment and/or sales standards developed by the Small Business Administration. See 13 CFR 121.201

1.a Small Disadvantaged Business – a Small Business Concern owned and controlled by socially and economically disadvantaged individuals; and

- (1) Which is at least 51% owned by one or more socially and economically disadvantaged individuals; or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
- (2) Whose management of daily operations is controlled by one or more such individuals. The Offeror shall presume Black Americans, Hispanic Americans, Native Americans (such as American Indians, Eskimos, Aleuts and Native Hawaiians), Asian-Pacific Americans and other minorities or any other individual found to be disadvantaged by the Administration pursuant to Section 8 (a) of the Small Business Act; and
- (3) Is certified by the SBA as a Small Disadvantaged Business.

1.b Women-Owned Business Concern – A business that is at least 51% owned by a woman or women who also control and operate it. Control in this context means exercising the power to make policy decisions. Operate in this context means being actively involved in the day-to-day management.

1.c HUBZone Small Business Concern – A business that is located in historically underutilized business zones, in an effort to increase employment opportunities, investment and economic development in those areas as determined by the Small Business Administration's (SBA) List of Qualified HUBZone Small Business Concerns.

1.d Veteran-Owned Small Business Concern – A business that is at least 51% owned by one or more veterans; or in the case of any publicly owned business, at least 51% of the stock of which is owned and controlled by one or more veterans and the management and daily business operations of which are controlled by one or more veterans.

1.e Service Disabled Veteran-Owned Small Business – A business that is at least 51% owned by one or more service disabled veterans; or in the case of any publicly owned business, at least 51% of the stock of which is owned and controlled by one or more service disabled veterans and the management and daily business operations of which are controlled by one or more service disabled veterans. Service disabled veteran means a veteran as defined in 38 U.S.C. 101(2) with a disability that is service connected as defined in 13 U.S.C. 101(16).

Company Name: _____ Telephone: _____
 Street Address: _____ County: _____
 City: _____ State & Zip: _____

Is this firm a (please check): Division Subsidiary Affiliated? Primary NAICS Code:
 If an item above is checked, please provide the name and address of the Parent Company below:

Check All Categories That Apply:

- 1. Small Business
- 2. Small Disadvantaged Business (**Must be SBA Certified**)
- 3. Woman Owned Small Business
- 4. HUBZone Small Business Concern (**Must be SBA Certified**)
- 5. Veteran Owned Small Business
- 6. Disabled Veteran Owned Small Business
- 7. Historically Black College/University or Minority Institution
- 8. Large Business

Signature and Title of Individual Completing Form:

Date _____

NOTE:

This certification is valid for a one year period. It is your responsibility to notify us if your size or ownership status changes during this period. After one year, you are required to recertify with us.

THANK YOU FOR YOUR COOPERATION

Notice: In accordance with U.S.C. 645(d), any person who misrepresents a firm's proper size classification shall (1) be punished by imposition of a fine, imprisonment, or both; (2) be subject to administrative remedies; and (3) be ineligible for participation in programs conducted under the authority of the Small Business Act.

If you have difficulty determining your size status, you may contact the Small Business Administration at 1-800-U-ASK-SBA or 202-205-6618. You may also access the SBA website at www.sba.gov/size or you may contact the SBA Government Contracting Office at 817-684-5301.
(Rev. 6/2002)

EXHIBIT G
UNIVERSITY OF NEW MEXICO HOSPITAL SUPPLIER CONFLICT OF INTEREST
AND DEBARMENT/SUSPENSION CERTIFICATION FORM

CONFLICT OF INTEREST. The authorized Person, Firm and/or Corporation states that to the best of his/her belief and knowledge: No employee or Regent of The University of New Mexico Hospitals (or close relative), with the exception of the person(s) identified below, has a direct or indirect financial interest in the Offeror or in the proposed transaction. Offeror neither employs, nor is negotiating to employ, any University of New Mexico Hospitals employee, Regent or close relative, with the exception of the person(s) identified below. Offeror did not participate, directly or indirectly, in the preparation of specifications upon which the IFB or offer is made. If the Offeror is a New Mexico State Legislator or if a New Mexico State Legislator holds a controlling interest in Offeror, please identify the legislator: _____ List below the name(s) of any University or New Mexico employee, Regent or close relative who now or within the preceding 12 months (1) works for the Offeror; (2) has an ownership interest in the Offeror (other than as an owner of less than 1% of Offeror's stock, if Offeror is a publicly traded corporation); (3) is a partner, officer, director, trustee or consultant to the Offeror; (4) has received grant, travel, honoraria or other similar support from Offeror; or (5) has a right to receive royalties from the Offeror. _____

DEBARMENT/SUSPENSION STATUS: The Offeror certifies that it is not suspended, debarred or ineligible from entering into contracts with the Executive Branch of the Federal Government, or in receipt of a notice or proposed debarment from any Agency. The Offeror agrees to provide immediate notice to The University of New Mexico Hospitals Purchasing Department Buyer in the event of being suspended, debarred or declared ineligible by any department or federal agency, or upon receipt of a notice of proposed debarment that is received after the submission of the IFB or offer but prior to the award of the purchase order or contract.

CERTIFICATION: The undersigned hereby certifies that he/she has read the above CONFLICT OF INTEREST and DEBARMENT/SUSPENSION Status requirements and that he/she understands and will comply with these requirements. The undersigned further certifies that they have the authority to certify compliance for the Offeror named **and that the information contained in this document is true and accurate to the best of their knowledge.**

Signature: _____ Title: _____ Date: _____
Name Typed _____ Company Name: _____
Address _____ City/State/zip: _____

THE FOLLOWING MUST BE CERTIFIED IF THIS PURCHASE ORDER IS \$100,000 OR GREATER:
CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (September, 2005)

(a) In accordance with FAR 52.203-11, the definitions and prohibitions contained in the clause at FAR 52.203-12, Limitation on Payments to influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) Offeror, by signing its offer, certifies to the best of his or her knowledge and belief that on or after December 23, 1989:

1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to Influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract.

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

3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT: The undersigned company agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).

CERTIFICATION: The undersigned hereby certifies that he/she has read the above CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTION (APR 1991) and CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT requirements and that he/she understands and will comply with these requirements. The undersigned further certifies that they have the authority to certify compliance for the Offeror named below.

Signature: _____ Title: _____ Date: _____
Name Typed: _____ Company: _____
Address: _____ City/State/zip: _____

EXHIBIT H
INSURANCE REQUIREMENTS

CERTIFICATES OF INSURANCE: The Offeror shall furnish the Owner one copy each of Certificates of insurance herein required for each copy of the Agreement showing coverage, limits of liability, covered operations, effective dates of expiration of policies of insurance carried by the Offeror. The Offeror shall furnish to the Owner copies of limits. The Certificate of Insurance shall be in the form of AIA Document G-705 or similar format acceptable to the Owner. Such certificates shall be filed with the Owner and shall also contain the following statements:

1. "The Regents of the University Of New Mexico Hospitals, the University Of New Mexico Hospitals, its agents, servants and employee are held as additional insured."
2. "The insurance coverage certified herein shall not be canceled or materially changed except after forty five (45) days written notice has been provided to the owner."

COMPENSATION INSURANCE:

The Offeror shall procure and shall maintain during the life of this contract Worker's Compensation as required by applicable State law for all Offeror's employees to be engaged at the site of the project under this project and in case of any such work sublet the Offeror shall require the sub-Offeree or sub sub-Offeree similarly to provide Worker's Compensation Insurance for all the sub-Offeree's or sub sub-Offeree's Workers which are covered under the Offeror's Worker's Compensation Insurance. In case any class of employee engaged in work on the project under this contract is not protected under a Worker's Compensation Status, the Offeror shall provide and shall cause each sub-Offeree or sub sub-Offeree to provide Employer's insurance in any amount of not less than \$500,000.

OFFEROR'S PUBLIC LIABILITY INSURANCE

The Offeror shall maintain liability insurance coverage "equal to the maximum liability amounts set forth in the New Mexico Tort Claims Act Section 41-4-1 Et.Seq. NMSA 1978." The insurance must remain in force for the life of the contract including all contract extensions or renewals. The limits effective July 1, 1992 are:

\$400,000 per person/\$750,000 per occurrence plus \$300,000 for medical and \$200,000 for property damage for a total maximum of \$1,250,000 per occurrence.

OFFEROR'S VEHICLE LIABILITY INSURANCE:

The Offeror shall procure and shall maintain during the life of this contract Vehicle Liability Insurance coverage "equal to the maximum liability amounts set forth in the New Mexico Tort Claims Act Section 41-4-1 Et.Seq. NMSA 1978." The insurance must remain in force for the life of the contract including all contract extensions or renewals. The limits effective July 1, 1992 are:

Bodily Injury \$750,000 Each Occurrence
Property Damage \$200,000 Each Occurrence

SUBOFFEROR'S AND SUB OFFEROR'S PUBLIC AND VEHICLE LIABILITY INSURANCE:

The Offeror shall either:

1. Require each sub-Offeree or sub-Offeree to procure and maintain during the life of the subcontract or sub subcontract public Liability Insurance of the types and amounts specified above or,
2. Insure the activities of the sub-Offerees of sub sub-Offerees in the Offeror's Policy as required under this Article.

GENERAL: All Insurance policies are to be issued by companies authorized to do business under the laws of the state in which work is to be done and acceptable to owner. The Offeror shall not violate, permit to be violated, any conditions of any said policies, and shall always satisfy the requirements for the insurance companies writing said policies.

EXHIBIT I

CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APRIL 1991)

1. The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to influence Certain Federal Transactions, I included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

2. The Offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after; December 23, 1989.
 - a. Federal appropriated funds have not been paid and will not be paid to any person for influencing or attempting to Influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

 - b. If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal Transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the Offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

 - c. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

CERTIFICATION

The undersigned hereby certifies that he/she has read the above CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTION (APR 1991) requirements and that he/she understands and will comply with these requirements. The undersigned further certifies that they have the authority to certify compliance for the Offeror named below.

Signature: _____ Title: _____ Date: _____

Name Typed: _____ Company: _____

Address: _____ City/State/zip: _____

EXHIBIT J STANDARD TERMS AND CONDITIONS

The following General Terms and Conditions are an equal and integral part of this Request For Proposal (RFP). The terms, conditions and specifications contained in this RFP along with any attachments and the Offerors' response may be incorporated into any Purchase Order/ Agreement issued as a result of this RFP, including any addenda. UNMH reserves the right to negotiate with a successful Offeror (Contractor) provisions in addition to those stipulated in this RFP. The contents of this RFP, as revised and/or supplemented, and the successful Offerors' proposal may be incorporated into the Contract. Should an Offeror object to any of the UNMH Standard Terms and Conditions the Offeror must propose specific alternative language that would be acceptable to UNMH. General references to the Offerors' terms and conditions or attempts at complete substitutions are not acceptable to UNMH and will result in disqualification of the Offerors' proposal. Offerors' must provide a brief statement of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

Any proposed changes to the terms and conditions attached to this RFP must be stated in Offerors' proposal in a Section marked "TERMS AND CONDITIONS". Offerors are cautioned that any changes to the terms and conditions that are NOT stated in the RFP response will not be entertained by UNMH at a later date. Any provisions in any proposal, quotation, acknowledgment or other forms or contract documents applicable to the services that are inconsistent, or in conflict, with any provisions of this RFP or the resultant contract will be ineffective and inapplicable.

UNMH reserves the right to reject a proposal on the basis the compromising language cannot be accepted by UNMH. Any additional terms and conditions which may be the subject of negotiation will be discussed only between UNMH and the successful Offeror and shall not be deemed an opportunity to amend the Offeror's proposal.

1. **ACCEPTANCE AND REJECTION.** If prior to final acceptance, any goods or services are found to be defective or not as specified, or if the University is entitled to revoke acceptance of them the University may reject or revoke acceptance, require Seller to correct without charge within a reasonable time, or require delivery at an equitable reduction in price, at the University's option. Seller shall reimburse the University for all incidental and consequential costs related to unaccepted goods or services. Notwithstanding final acceptance and payment, Seller shall be liable for latent defects, fraud, or such gross mistakes as amount to fraud. Acceptance of goods or services shall not waive the right to claim damages for breach of contract.
2. **ALTERNATE OFFERS.** Alternate offers will be accepted and considered provided they are "equal to" and meet all specifications of this RFP which may include all specifications of the Brand used to identify the quality of the goods and/or services requested. The University reserves the right to make the final determination as to whether or not an alternate offer is equal. It is the Offeror's responsibility to provide, as part of the offer, descriptive literature, specifications and information on all alternate products and services offered. References of current users should be included. If the item(s) or service(s) offered are not clearly identified as alternate item(s) or services, it is understood that the offer is for item(s) and service exactly as specified in this RFP.
3. **APPROPRIATION.** The terms of the contract are contingent upon sufficient appropriations and authorization being made by the Regents of the University of New Mexico. If sufficient appropriations and authorization are not made by the Regents of the University of New Mexico, the contract shall, notwithstanding any other provisions of the contract, terminate immediately upon the Offeror's receipt of written notice of termination from the UNMH.
4. **ASSIGNMENT.** Any resultant Purchase Order/Agreement may be assignable by the University. Except as to any payment due hereunder, any resultant Purchase Order/Agreement shall not be assignable by Seller without written approval from the University.
5. **AWARDS – MULTIPLE.** The University reserves the right to make multiple awards to primary and secondary source or to otherwise split the award of the items, projects and/or sections of this proposal.
6. **BRAND NAME OR EQUAL.** The brand name(s), part and/or catalog number(s) are used to establish a level of quality and to describe the item(s) required. If offering a brand, part or catalog number other than that listed, please indicate items offered and include literature and/or technical specifications. Failure to do so may cause offer to be declared non-responsive.
7. **CANCELLATION.** The University reserves the right to cancel without penalty, this RFP, any resultant Purchase Order/Agreement, or any portion thereof for convenience, unsatisfactory performance, or unavailability of funds.

8. **CHANGES.** The University may make changes within the general scope of any resultant Purchase Order/Agreement by giving notice to Seller and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of a resultant Purchase Order/Agreement, an appropriate equitable adjustment shall be made. No change by Seller shall be recognized without written approval of the University. Any claim of Seller for an adjustment under this Paragraph must be made in writing within thirty (30) days from the date of receipt by Seller of notification of such change. Nothing in this Paragraph shall excuse Seller from proceeding with the performance of the Purchase Order/Agreement as changed hereunder.
9. **CASH DISCOUNTS.** The University will take advantage of cash discounts offered whenever possible; however, cash discounts will not be used as a means to determine the lowest cost.
10. **CLEAN UP.** It is the Seller's responsibility that the job site be kept clean and free of rubble while work is performed under this contract. Upon completion of work, all areas shall be cleared of all contractors' equipment excess materials and rubble.
11. **CONFLICT OF INTEREST.** Seller shall disclose to the University Purchasing Department the name(s) of any University employee or member of the Board of Regents who has a direct or indirect financial interest in the Seller or in the proposed transaction. A University employee (or Regent) has a direct or indirect financial interest in the Seller or in the proposed transaction if presently or in the preceding twelve (12) months the employee/Regent or a close relative has an ownership interest in the Seller (other than as owner of less than 1% of the stock of a publicly traded corporation); works for the Seller, is a partner, officer, director, trustee or consultant to the Seller, has received grant, travel, honoraria or other similar support from the Seller, or has a right to receive royalties from the Seller. Seller shall file a Conflict-of-interest Disclosure form with the University Purchasing Department.
12. **COOPERATION AND DISPUTE RESOLUTION.** The parties agree that, to the extent compatible with the separate and independent management of each, they will maintain effective liaison and close cooperation. If a dispute arises related to the obligations or performance of either party under this Agreement, representatives of the parties will meet in good faith to resolve the dispute
13. **DAMAGE AND SECURITY OF UNMH PROPERTY.** The proposer shall be responsible for all damage to persons or property that occurs as a result of proposer's fault or negligence, or that of any of his employees, agents and/or subcontractors. The proposer shall save and keep harmless UNMH against any and all loss, cost, damage, claims, expense or liability in connection with the performance of this contract. Any equipment or facilities damaged by the proposer's operations shall be repaired and/or restored to their original condition at the proposer's expense, including but not limited to cleaning and painting.
14. **DELIVERY DATE.** Delivery is an important consideration and is a factor in determining the award. If you cannot meet the delivery date stated, please state your earliest delivery date in your offer.
15. **DISCLOSURE OF PROPOSAL CONTENTS.** The proposals will be kept confidential until UNMH awards a price agreement. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is proprietary or confidential. The Procurement Managers will not disclose or make public any pages of a proposal on which the Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:

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. Confidential data is normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret in accordance with the Trade Secrets Act, 57-3A-1 to 57-3A-7 NMSA 1978. The price of service offered or the cost of services proposed shall not be designated a proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, UNMH 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.

16. **DISRUPTION OF NORMAL ACTIVITY.** All work shall be performed so as not to interfere with normal College activities. When it is necessary to disrupt normal activities, the schedule of work, and the areas to be affected must be approved by UNMH's authorized representative prior to commencement of the work.
17. **DISCOUNTS.** If prompt payment discounts apply to any resultant Purchase Order/Agreement, any discount time will not begin until the materials, supplies, or services have been received and accepted and a correct invoice has been received by the University's Accounts Payable Department. In the event testing is required prior to acceptance, the discount time shall begin upon completion of the tests and acceptance.

18. ****ECCN REPORTING REQUIREMENT.** Seller acknowledges that providing goods and services under any resultant Purchase Order/Agreement is subject to compliance with all applicable United States laws, regulations, or orders, including those that may relate to the export of technical data or equipment, such as International Traffic in Arms Regulations ("ITAR") and/or Export Administration Act/Regulations ("EAR"). Seller agrees to comply with all such laws, regulations, and orders as currently in effect or hereafter amended. Seller shall not disclose any export-controlled information or provide any export-controlled equipment or materials to UNMH without prior written notice. If UNMH agrees to receive such export-controlled information, equipment or materials, Seller shall: (i) include the Export Control Classification Number (ECCN) on the packing documentation, and (ii) send an electronic copy of the ECCN number and packing documentation to: ECCN@UNM.EDU
19. **ELIGIBILITY FOR PARTICIPATION IN GOVERNMENT PROGRAMS.** 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 a resultant Purchase Order/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 each party, its employees and independent contractors are not otherwise ineligible for participation in federal healthcare programs. Further, each party represents that it is not aware of any such pending action(s) (including criminal actions) against each party or its employees or independent contractors. Each party shall notify the other immediately upon becoming aware of any pending or final action in any of these areas.
20. **EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION.** In performing or providing the services and goods required under a resultant Purchase Order/Agreement, each party shall be an equal opportunity employer and shall conform to all affirmative action and other applicable requirements; accordingly, each party shall neither discriminate nor permit discrimination in its operations or employment practices against any person or group of persons on the basis of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or medical condition, sexual preference, prior military involvement or any other manner prohibited by law.
21. **EQUIPMENT REQUIRED.** The proposer shall be responsible for supplying and maintaining all equipment and materials necessary to complete the work to be performed under this RFP except as otherwise noted in the Specifications.
22. **EMPLOYEE CERTIFICATION.** The Offeror and all Offerors' employees utilized on the work to be performed under this RFP must have the proper certification(s) and license(s) to comply with State and local requirements connected to this RFP. The Offeror shall use only fully qualified and approved service technicians to perform inspections, service and/or repairs under this request.
23. **GENERAL TERMS AND CONDITIONS:** UNMH's General Terms and Conditions are an equal and integral part of this request. All terms and conditions of this request will remain unchanged for the duration of the contract and will supersede and take precedence over any Offeror's agreement forms. Offeror must include a detailed description regarding any exceptions to the terms and conditions of this RFP. If exceptions or deviations are not clearly stated, it is understood that the terms and conditions of this proposal shall govern.

UNMH reserves the right to reject any proposal that does not meet the terms and conditions of the request for proposal. It further reserves the right to accept or reject any modifications to the terms and conditions if it is in the best interest of the UNMH to do so.

24. **F.O.B.** Unless stated otherwise, the price for goods is F.O.B. the place of destination, and the place of destination is the University's designated campus address.
25. **FOREIGN PAYMENTS.** Payment for services performed by a foreign individual or a foreign corporation while in the US may be subject to 30% tax withholding per IRS Publication 515.
26. **GOVERNING LAW.** All resultant Purchase Order/Agreements shall be construed in accordance with the laws of the State of New Mexico as they pertain to Purchase Order/Agreements executed and fully to be performed within New Mexico, or federal law where applicable, but in either case excluding that body of law relating to choice of law.
27. **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).** The parties agree to enter into a mutually acceptable amendment to a resultant Purchase Order/Agreement as necessary to comply with applicable federal laws and regulations governing the use and/or disclosure of individually identifiable health information. Such amendment shall be entered into on or before the date by which hospitals are required to be in compliance with the privacy regulations promulgated under the Health Insurance Portability and Accountability Act of 1996.
28. **INDEMNIFICATION AND INSURANCE.** Seller assumes the entire responsibility and liability for losses, expenses, damages, demands and claims in connection with or arising out of any actual or alleged personal

injury (including death) and/or damage or destruction to property sustained or alleged to have been sustained in connection with or arising out of the goods delivered by Seller or the performance of the work by Seller its agents, employees, sub-contractors or consultants, except to the extent of liability arising out of the negligent performance of the work by or willful misconduct of the University. Seller shall indemnify, defend, and hold harmless the University, its officers, agents, and employees from any and all liability for such losses, expenses, damages, demands, and claims and shall defend any suit or action brought against any or all of them based on any actual or alleged personal injury or damages and shall pay any damage costs and expenses including attorneys' fees, in connection with or resulting from such suit or action. Seller will also indemnify, defend, and hold harmless the University against any joint and several liabilities imposed against the University with respect to strict products liability claims attributable to the fault of the Seller.

Seller agrees that it and its sub-contractors will maintain general liability, product liability and property damage insurance in reasonable amounts (at least equal to the New Mexico Tort Claims Act limits) covering the above obligation and will maintain workers' compensation coverage covering all employees performing under a resultant Purchase Order/Agreement on premises occupied by or under the control of the University. The liability of the University will be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1 et seq. NMSA 1978, as amended."

29. **INDEPENDENT BUSINESS.** Neither Seller nor any of its agents shall be treated as an employee of the University for any purpose whatsoever. Seller declares that Seller is engaged in an independent business and has complied with all federal, state and local laws regarding business permits and licenses of any kind that may be required to carry out the said business and the tasks to be performed under any resultant Purchase Order/Agreement. Seller further declares that it is engaged in the same or similar activities for other clients and that the University is not Seller's sole or only client or customer.
30. **INSPECTION.** The University may inspect, at any reasonable time, any part of Seller's plant or place of business, which is related to performance of any resultant Purchase Order/Agreement. Final Inspection will be made at the destination upon completion of delivery of goods and services. Acceptance of delivery shall not be considered acceptance of the goods and/or services furnished. Final inspection shall include any testing or Inspection procedures required by the Specifications.
31. **INSPECTIONS, SELLER.** The Seller shall be responsible for securing at Seller's expense, all required inspections to comply with Federal, State and/or Local regulations governing the work performed under this RFP.
32. **INSTRUMENTALITIES:** Seller shall supply all equipment, tools, materials and supplies required for the performance of the designated tasks or requirements set forth in any resultant Purchase Order/Agreement or its attachments.
33. **INSURANCE REQUIREMENTS:** The Offeror is required to carry insurance, meeting the requirements in the Section labeled "Insurance Requirements" or as noted in the specifications. Offeror must submit proof of insurance in the form of a "Certificate of Insurance" to the appropriate Buyer prior to commencing work under this contract. Offeror's insurance shall remain in effect for the entire term of the contract and must be extended to coincide with any future contract extensions. This Request for Proposal Number must appear on the Certificate of Insurance.
34. **LATE SUBMISSIONS.** Late submissions of offers will not be accepted or considered unless it is determined by the University that the late receipt was due solely to mishandling by the University or the offer is the only offer received. Late submissions will be returned unopened.
35. **MERGER.** The contract shall incorporate all the agreements, covenants, and understandings between the parties thereto concerning the subject matter thereof. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the contract.
36. **MINIMUM WAGE RATES AND PAYROLL SUBMITTALS.** Jobs with an estimate cost >\$60,000 done under this IFB will be subject to the Public Works Minimum Wage Act (13-4-11 through 13-4-17, NMSA, 1978 as amended) and per exhibit labeled "Wage Act." Minimum wages will be supplied at time of award or may be obtained from the State of New Mexico Labor & Industrial Commission, 1596 Pacheco Street, Santa FE, NM 87501.

For all federally funded construction projects greater than \$2,000 the contractor and all subcontractors and their tiers shall deliver or mail legible copies of the certified weekly payrolls for all costs/services invoiced for the project awarded resulting from this IFB to the appropriate oversight agency and UNMH's Office of Capital Projects in accordance with 29 CFR 3.4. The Contractor shall certify that all payrolls submitted meet or exceed the applicable wage determination as shown in this IFB.

Contractor shall be responsible for the collection and submittal of all certified payrolls and shall retain a copy of all payrolls for a period of 3 years from the completion of the project. A copy of all certified payrolls shall be sent weekly to UNMH Office of Capital Projects. The Contractor shall be responsible for labeling each submittal with the project name; payroll period; and contractor and/or subcontractor name; each employee's full name and social security number, address and zip code, birth date, sex and occupation, time and day of when employees work week begins, hours worked each day, total hours worked each workweek, basis on which employees' wages are paid, regular hourly pay rate, total daily or weekly straight-time earnings, total overtime earnings for the workweek, all additions to or deductions from the employee's wages, date

37. NEW MATERIALS REQUIRED. All materials and equipment delivered and/or installed under this RFP shall be new and be the standard products of a manufacturer regularly engaged in the production of the materials and equipment. Where two or more units of the same class of materials and/or equipment are required, the units shall be the products of the same manufacturer. Any manufacturer's data supplied with the item(s) shall be submitted to UNMH's authorized representative.
38. NON-PERFORMANCE PENALTIES. The Offeror agrees to pay UNMH an amount equal to \$500.00 per day for each calendar day past the completion date specified in this contract that completion or delivery is delayed. UNMH may subtract this amount from any monies due to the Offeror.
39. NOTICES: Any notice required to be given or which may be given under this RFP or a resultant contract shall be in writing and delivered in person or via first class mail.

UNMH Address:
The University of New Mexico Hospitals
Purchasing Department
933 Bradbury Dr. Se Suite 3165
Albuquerque, NM 87106

40. OPTION TO RENEW. UNMH reserves the option to renew the RFP's resultant contract if such renewal is mutually agreed to and found to be in the best interests of UNMH. These renewal options will be exercised in increments as indicated in the RFP's specifications, or if not stated, in one-year terms.
41. OTHER APPLICABLE LAWS. Any provision required to be included in a resultant Purchase Order/Agreement by any applicable and valid executive order, federal, state or local law, ordinance, rule or regulation shall be deemed to be incorporated herein.
42. OSHA REGULATIONS. The Seller shall abide by Federal Occupational Safety and Health Administration (OSHA) regulations, the State of New Mexico Environmental Improvement Board's Occupational Health and Safety Regulations that apply to the work performed under this RFP. The Seller shall defend, indemnify, and hold UNMH free and harmless against all claims, loss, liability and expense resulting from any alleged violation(s) of said regulation(s) including but not limited to, fines or penalties, judgments, court costs and attorney's fees.
43. OWNERSHIP OF DOCUMENTS. All documents which are prepared by the Seller or any member of the consulting team that form a part of its services under a resultant Purchase Order//Agreement are the sole property of the University of New Mexico Hospitals and such works may not be reproduced nor distributed without the express written consent of the University of New Mexico Hospitals and shall be delivered to UNMH upon termination and or completion of this Purchase Order/Agreement if UNMH so requests. The Seller shall be responsible for the protection and/or replacement of any original documents in its possession. UNMH shall receive all original drawings and the Seller shall retain a reproducible copy.

Work Made for Hire - For the consideration payable under a resultant Purchase Order/Agreement, the work product required by the Purchase Order/Agreement shall be considered a work made for hire within the meaning of that term under the copyright laws of the United States, applicable common law and corresponding laws of other countries. UNMH shall have the sole right and authority to seek statutory copyright protection and to enjoy the benefits of ownership of the work. The party performing the work hereby assigns all rights, title and interest in and to the work to UNMH and shall require all members of the consulting team to agree in writing that they assign all right, title and interest in work product required by the Purchase Order/Agreement to UNMH.

Inventions. For the consideration payable under a resultant Purchase Order/Agreement, the Seller agrees to report any invention arising out of the Work required by the Purchase Order/Agreement to UNMH. UNMH shall have sole right and authority to seek statutory patent protection under United States and foreign patent

laws and to enjoy the benefits of ownership of the invention, whether or not the invention was required of the Seller or member of the consulting team as part of the performance of Work. The Seller hereby assigns all right, title and interest in and to inventions made in the course of the Work to UNMH and agrees to execute and deliver all documents and do any and all things necessary and proper to effect such assignment. Seller shall require all members of the Consulting Team to agree in writing that they will execute and deliver all documents and do any and all things necessary and proper to effect assignment of inventions arising out of the Work required by the Purchase Order/Agreement to UNMH.

Survival of Provision.

This provision shall survive expiration and termination of the Purchase Order/Agreement.

44. **PACKAGING.** Packaging of materials under this contract shall meet the minimum specifications indicated under Packaging Specifications. If there are no packaging specifications listed, the packaging shall be suitable to insure that the materials are received in an undamaged condition. All material returns will be at the Offeror's expense.
45. ****PATENT AND COPYRIGHT INDEMNITY.** Seller shall indemnify, defend and hold harmless the University against all losses, liabilities, lawsuits, claims, expenses (including attorneys' fees), costs, and judgments incurred through third party claims of infringement of any copyright, patent, trademark or other intellectual property rights.
46. **PAYMENTS FOR PURCHASING.** No warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction, or items of tangible personal property unless the Purchasing Office or the UNMH using agency certifies that the services, construction, or items of tangible personal property have been received and meet specifications.
47. **PAYMENT TERMS.** Upon written request from Seller for payment, the University shall, within 30 days, issue a written certification of complete or partial acceptance or rejection, with payment to follow within 30 days after certificate of acceptance. Late payment charges shall be 1/2 of 1% per month.
48. **PAYROLL OR EMPLOYMENT TAXES.** No federal, state, or local income, payroll or employment taxes of any kind shall be withheld or paid by the University with respect to payments to Seller or on behalf of Seller its agents or employees. Seller shall withhold and pay any such taxes on behalf of its employees as required by law. The payroll or employment taxes that are the subject to this paragraph include but are not limited to FICA, FUTA, federal personal income tax, state personal income tax, state disability insurance tax, and state unemployment insurance tax. If Seller is not a corporation, Seller further understands that Seller may be liable for self-employment (Social Security) tax, to be paid by Seller according to law.
49. **PENALTIES.** The Procurement Code, Section 13-1-28 at seq. NMSA 1978, as amended imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose criminal penalties for bribes, gratuities, and kickbacks.
50. **PERIOD FOR OFFER ACCEPTANCE.** Offeror agrees that any offer made submitted will be good for a period of one hundred and eighty days (180) calendar days; an additional time may be requested by UNMH.
51. **PROTECTION OF CONFIDENTIAL DATA.** Service Provider agrees to abide by the limitations on re-disclosure of personally identifiable information from education records set forth in The Family Educational Rights and Privacy Act (34 CFR § 99.33 (a)(2) and with the terms set forth below. 34 CFR 99.33 (a)(2) states that the officers, employees, and agents of a party that receives education record information from the Institution may use the information, but only for the purposes for which the disclosure was made.

Definition: Covered data and information (CDI) includes paper and electronic student education record information supplied by Institution, as well as any data provided by Institution's students to the Service Provider. Acknowledgment of Access to CDI: Service Provider acknowledges that the Purchase Order/Agreement allows the Service Provider access to CDI.

Prohibition on Unauthorized Use or Disclosure of CDI: Service Provider agrees to hold CDI in strict confidence. Service Provider shall not use or disclose CDI received from or on behalf of Institution (or its students) except as permitted or required by the Purchase Order/Agreement, as required by law, or as otherwise authorized in writing by Institution. Service Provider agrees not to use CDI for any purpose other than the purpose for which the disclosure was made. If the Family Policy Compliance Office of the U.S. Department of Education determines that the Service Provider improperly disclosed personally identifiable information obtained from Institution's education records, Institution may not allow the Service Provider access to education records for at least five years.

Return or Destruction of CDI: upon termination, cancellation, expiration or other conclusion of the Purchase Order/Agreement. Service Provider shall return all CDI to Institution or, if return is not feasible, destroy any and all CDI. If the Service Provider destroys the information, the Service Provider shall provide Institution with a certificate confirming the date of destruction of the data.

Maintenance of the Security of Electronic Information: Service Provider shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted CDI received from, or on behalf of Institution or its students. These measures will be extended by contract to all sub-contractors used by Service Provider.

Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information: Service Provider shall, within one day of discovery, report to Institution any use or disclosure of CDI not authorized by this Purchase Order/Agreement or in writing by Institution. Service Provider's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the CDI used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Service Provider has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Service Provider has taken or shall take to prevent future similar unauthorized use or disclosure. Service Provider shall provide such other information, including a written report, as reasonably requested by Institution.

Indemnity: Service Provider shall defend and hold Institution harmless from all claims, liabilities, damages, or judgments involving a third party, including Institution's costs and attorney fees, which arise as a result of Service Provider's failure to meet any of its obligations under this Purchase Order/Agreement.

Note: Inclusion of data by students into the terms of the contract will depend upon the contract and may not be needed."

52. PUBLIC INFORMATION. All information, except that classified as confidential, will become public information at the time that the RFP is awarded. Confidential information must be marked "CONFIDENTIAL" in red letters in the upper right-hand corner of the pages containing the confidential information. Price and information concerning the specifications cannot be considered confidential. (UNMH Purchasing Regulations 11.6.3.)
53. PURCHASE ORDER/AGREEMENT. Any resultant Purchase Order/Agreement shall be the sole and entire Purchase Order/Agreement between the parties; any documents incorporated into the Purchase Order/Agreement are listed explicitly on the front side of the Purchase Order/Agreement or are incorporated by implication by the terms of any resultant Purchase Order/Agreement. Any terms inconsistent with or in addition to any resultant Purchase Order/Agreement proposed by Seller are deemed rejected unless agreed to in writing by an appropriate University official.
54. RELATIONSHIP OF PARTIES. The parties and their respective employees are always acting as independent Offerors. Offeror will not be considered an employee of UNMH for any purpose, including, but not limited to, workers' compensation, insurance, bonding or any other benefits afforded to employees of UNMH. Neither party has any express or implied authority to assume or create any obligation or responsibility on behalf of or in the name of the other party.
55. RELEASE UNMH REGENTS. The Contractor shall, upon final payment of the amount due under the contract release Regents of the University of New Mexico Hospitals, their officers and employees and the State of New Mexico from liabilities, claims and obligations whatsoever arising from the contract. The Contractor agrees not to purport to bind the University of New Mexico Hospitals or the State of New Mexico to any obligation not assumed in the contract by the Regents of the University of New Mexico Hospitals or the State of New Mexico unless the Contractor has express, written authority to do so, and then only within the strict limits of that authority.
56. REMOVAL OF OFFEROR'S EMPLOYEE(S). UNMH may request that Offeror's employee(s) be removed from the work under the contract for cause. The UNMH may immediately terminate, with written notice to Offeror, the services of any Contractor employee, if the University of New Mexico's management believes in good faith that Offeror's employee is unable to perform the services with reasonable skill. Offeror's agreement may also be terminated if Offeror's liability insurance coverage is modified or terminated.
57. REQUEST AS AGREEMENT: This Request for Proposal governs any offer and the selection process. Submission of an offer in response to this Request for Proposal constitutes acceptance of all this Request's terms and conditions. The terms and conditions of the Request may not be modified, altered, nor amended in any way by any Offer. Any such modification, alteration, or amendment shall be considered to be a request for modification, alteration or amendment, which request shall be deemed denied unless specifically accepted in

writing by UNMH. Upon issuance of a Purchase Order, this Request shall be superseded, unless it is referenced on the front page of the Purchase Order, in which case it shall be deemed to be fully incorporated and integrated into the resultant contract.

58. **RETENTION OF RECORDS.** Contractor will maintain detailed records indicating the date, time and nature of services provided under the Agreement for a period of at least five years after termination of the Agreement and will allow access for inspection by the University of New Mexico Hospitals, the Secretary for Health and Human Services, the Comptroller General and the Inspector General to such records for the purpose of verifying costs associated with provisions of services under the Agreement.
59. **RIGHT TO PROTEST.** The solicitation of the award of an RFP/Invitation for Bid (IFB) may be protested as per the UNMH Purchasing Regulation 11, Protest Procedures, which may be found at the following UNMH web site: <http://www.UNMH.edu/~purch/reg11.pdf>.
60. **RIGHT TO WAIVE MINOR IRREGULARITIES.** The UNMH Evaluation Committee reserves the right to waive minor irregularities. The UNMH Evaluation Committee also reserves the right to waive mandatory requirements if 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 UNMH Evaluation Committee.
61. **SCHEDULE DELAYS.** If after the award, the Seller becomes aware of possible problems that could result in delay in completion of the work on the agreed-to schedule; the Seller must immediately notify the Buyer or the designated representative. The initial notification of the delay may be verbal with a written confirmation, giving the probable cause and effect, with recommendations for alternate action. Nothing in this paragraph will be interpreted as relieving the Seller of its contractual obligations; however, failure to notify UNMH promptly will be basis for determining the Seller responsibility in an otherwise excusable delay.
62. **SELLER'S EMPLOYEES AND AGENTS.** Seller shall have complete charge and responsibility for persons employed by Seller and engaged in the performance of the specified work. The Seller, its agents, and employees state that they are independent contractors and not employees of the University. Seller, its agents, and employees shall not accrue leave, retirement, insurance, bonding or any other benefit afforded to employees of the University as a result of any resultant Purchase Order/Agreement.
63. **SITE FAMILIARITY.** The Seller shall be responsible for thoroughly inspecting the site and work to be done prior to submission of an offer. The Seller warrants by this submission that the site has been thoroughly inspected and the work to be done and that the offer includes all costs required to complete the work. The failure of the Seller to be fully informed regarding the requirements of this Request will not constitute grounds or any claim, demand for adjustment or the withdrawal of an offer after the opening.
64. **SITE INSPECTION.** The site(s) referenced in this RFP are available for inspection. Arrangements may be made by contacting the individual listed on the cover sheet.
65. **STATE AND LOCAL ORDINANCES.** The Seller shall perform work under the resultant contract in strict accordance with the latest adopted version of all State and local codes, ordinances, and regulations governing the work involved. All materials and labor necessary to comply with the rules, regulations and ordinances shall be provided by the Seller. Where the drawings and/or specifications indicate materials or construction more than the code requirements, the drawings and/or specifications shall govern. The Seller shall be responsible for the final execution of the work to meet these requirements. In the event of a conflict between various codes and standards, the more stringent shall apply.
66. **STATE AND LOCAL ORDINANCES.** The Offeror shall perform work under this contract in strict accordance with the latest adopted version of all State and local codes, ordinances, and regulations governing the work involved.
67. **TAX SEGREGATION (CONSTRUCTION RELATED PROJECTS).** In the performance of construction related services under this solicitation, the Seller agrees to work with and cooperate with the University's Tax Cost Segregation Consultant. The University's tax cost segregation consultant will be responsible for coordination, oversight and analysis of the effective application of New Mexico Gross Receipts Tax for each general Offeror involved with the construction projects at UNMH. Such services of the segregation consultant will be performed in accordance with New Mexico Statutes and relative regulations governing the application of New Mexico gross receipts tax to tangible personal property acquisition made by UNMH for various construction projects.
68. **TERMINATION AND DELAYS.** The University may by written notice stating the extent and effective date, terminate any resultant Purchase Order/Agreement for convenience in whole or in part, at any time. The University shall pay Seller as full compensation for performance until such termination: (1) the unit or pro rata order price for the delivered and accepted portion; and (2) incidental damages, not otherwise recoverable from other sources by Seller, as approved by the University, with respect to the undelivered or unaccepted portion of any resultant Purchase Order/Agreement provided compensation hereunder shall in no event exceed the total

contracted price. Such amount will be limited to Seller's actual cost and may not include anticipated profits. The University shall not be liable for consequential damages. The University may by written notice terminate any resultant Purchase Order/Agreement in whole or in part for Seller's default if Seller refuses or fails to comply with the provisions of a resultant Purchase Order/Agreement or fails to make progress so as to endanger performance and does not cure such failure within a reasonable period of time. In such event, the University may otherwise secure the materials, supplies or services ordered, and Seller shall be liable for damages suffered by the University thereby, including incidental and consequential damages. If after notice of termination, the University determines Seller was not in default, or if Seller's default is due to failure of the University, termination shall be deemed for the convenience of the University. The rights and remedies of the University provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under a resultant Purchase Order/Agreement as used in this paragraph, the word "Seller" includes Seller and Seller's sub-suppliers at any tier.

69. **THIRD PARTIES.** Nothing in this Agreement, express or implied, is intended to confer any rights, remedies, claims, or interests upon a person not a party to this Agreement.
70. **TITLE AND DELIVERY.** Title to the materials and supplies passed hereunder shall pass to the University upon acceptance at the FOB point specified, subject to the right of the University to reject. For any exception to the delivery date specified, Seller shall give prior notification and obtain approval thereto from the University's Purchasing Department. Time is of the essence and the Purchase Order/Agreement is subject to termination for failure to deliver on time.
71. **WAIVER.** The Contract shall contain a provision that states that no waiver of any breach of the Contract or any terms or conditions thereof shall be held to be a waiver of any other or subsequent breach; nor shall any waiver be valid, alleged or binding unless the same shall be in writing and signed by the party to have granted the waiver.
72. **WARRANTIES.** Seller warrants the goods and/or services furnished to be exactly as specified in any resultant Purchase Order/Agreement, free from defects in Seller's design, labor, materials, and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by Seller. All applicable UCC warranties express and implied are incorporated herein.
73. **WARRANTY:** Please state the warranty for equipment to be supplied under this RFP. A copy of the warranty should be included in your submission.
74. **WORKERS COMPENSATION.** No workers compensation insurance has been or will be obtained by UNMH on account of Seller or its employees or agents. Seller shall comply with the workers compensation laws with respect to Seller and Seller's employees and agents.

WORKMANSHIP/COOPERATION. All work shall be done in a neat, workman-like manner using acceptable equipment and methods consistent with that level of care and skill ordinarily exercised by members of the profession/trade and in accordance with sound professional/trade standards and ethical practice. The Seller will cooperate with the University and other contractors and coordinate their work involving other contractors through

Exhibit K- Sample Agreement and Business Associates Addendum

UNMH Contract Number: XXXX-14

RFP Number: PXXX-14

Pursuant to UNMH RFP number RFP P493-24, and response to UNMH RFP number PXXX-14, THIS AGREEMENT, made and entered into this Xst day of Month, Year, in the State of New Mexico, by and between the Regents of the UNMH of New Mexico, for its public operation known as UNMH of New Mexico Hospitals, hereafter called UNMH and Full Company Name located at Company Address, City, STATE ##ZIP, hereafter called Contractor/Offeror/Seller, does hereby agree to furnish to UNMH with products and services as follows:

RECITALS

- A. UNMH wishes to obtain products and services as described in this Agreement, and Contractor assures UNMH that it is willing and qualified to deliver such products.
- B. This Agreement set forth the terms and conditions under which the contractor will deliver the products described herein, and UNMH will reimburse Contractor for such products.

The parties agree as follows:

1. **RESPONSIBILITIES OF CONTRACTOR** The Contractor shall deliver the Product and Service as described in Attachment A, attached to an incorporated by reference in this agreement.

2. PROCESS FOR AWARDED INDIVIDUAL PROJECTS

2.1. The Awardee(s) shall designate one person to be the point of contact for daily operations that include but are not limited to meeting UNMH order demands, coordinating and responding to issues, and assure follow-up actions are identified and completed throughout the term of the agreement. UNMH may request quotes from all, some, or none of the successful Awardees as needed at its sole discretion. Individual project requests for quotes will be awarded on separate purchase order(s) (release). UNMH shall reserve the right to award individual projects based on this RFP without requesting for quotes and/or may reopen this RFP to recruit additional Offerors if through attrition, Awardees(s) are lost or projected workloads are expected to exceed their capacities or for the convenience of UNMH.

2.2. **Substitution.** With respect to any substitution of representative, the Contractor must provide detailed justification documenting the necessity for the substitution. No substitute personnel are authorized to begin work until the Contractor has received written approval to proceed from the UNMH.

3. CONTRACTOR MUST MEET OR EXCEED THE REQUIRMENTS BELOW

3.1. Contractor must have the ability to work within the security, regulatory and internal policy requirement needs of various UNMH facilities.

3.2. Contractor must be authorized to sell/resell the products and services being proposed.

3.3. Contractor shall guarantee that the products and services offered will meet or exceed specifications identified in this Agreement.

3.4. Contractor should have an extensive knowledge of the company's product roadmap, and understanding of industry best products and practices.

3.5. Depending on the nature of the work, Contractor may be required to possess specialty licensure/certification.

3.6. Must perform all work compliant with applicable industry standards and recommended practices.

4. NEW PRODUCTS, SERVICES, TECHNOLOGIES AND PRICE ADJUSTMENTS

- 4.1.** Any and all Contractor's new product and service additions, technological advancements or new technology within the scope of work and support to be provided, may be added under the terms and conditions of this agreement provided they meet the clinical acceptability and financial objectives of UNMH. Contractor must first inform UNMH of such additions or changes for obsolete items at least 60 days prior or at the earliest time possible to any changes taking effect.
- 4.2.** Contractor will be expected to maintain product, service and technological parity with its competitors to ensure UNMH is offered state of the art products, services and technology. Failure to maintain such parity may be considered cause for removal of the specific named products or services or termination of contract.
- 4.3.** New technologies are to be defined as a significant material or function change of an existing product/service line. All new innovative and revolutionary technologies need to be approved by UNMH prior to any use. Pricing on new services and technology will be commensurate with the level of discount provided on existing services in the same category. The new services and prices will not be enforceable without an addendum to this agreement.
- 4.4.** Pricing shall be fixed for the term of the agreement as outlined in Exhibit A.

5. FINANCIAL REQUIREMENTS

- 5.1. Compensation.** UNMH will pay Contractor for services rendered at the rates set forth in Attachment A.
- 5.2. Billing.** Contractor will submit monthly invoices to UNMH within 30 days after product or services are provided. Invoices will be sent as set forth in UNMH's purchase order.
- 5.3. Payment.** UNMH will pay Contractor at the address set forth in Attachment A within a reasonable time after receipt of invoices from Contractor. Disputed invoices will be resolved in good faith by Contractor and UNMH in a timely manner.
- 5.4. Accounting.** Contractor will keep an accurate record of all work performed regarding this Agreement, and will make such records available to UNMH at all reasonable times.
- 5.5. Discounts.** For the early payment discount, the discount time will not begin until the materials, supplies, or services have been received and accepted and a correct invoice received by the UNMH Accounts Payable Department. If testing is required prior to acceptance, the discount time shall begin upon completion of the tests and acceptance.

6. LIABILITY, INDEMNIFICATION, AND INSURANCE

- 6.1. Liability.** As between the parties, each party acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or property to the extent they result from negligence of that party's employees. Contractor understands that UNMH is not indemnifying Contractor for the acts or omissions of UNMH. The liability of UNMH will be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1 *et seq.* NMSA 1978, as amended.
- 6.2. Indemnification.** Notwithstanding the foregoing, Contractor will indemnify and hold harmless UNMH, its Regents, officers, agents and employees from any claims for losses, costs, damages, expenses or liability by reason of bodily injury (including death) or property damage, to the extent such damages are determined by a court of competent jurisdiction in a proceeding to which Contractor is a party to result from Contractor's negligence, act or omission, except

to the extent of UNMH's negligence. The foregoing indemnification obligation shall specifically include, but not be limited to, any breach of the Contractor's obligations as a Business Associate, as set forth in the Business Associate Addendum, and any breach of Contractor's non-assignment and/or subcontractor obligations set forth in this Agreement.

6.3. Insurance. Contractor will procure and maintain, at its own expense, professional liability insurance with limits of \$1,000,000 per occurrence and \$3,000,000 in the aggregate covering the acts or omissions of any individuals who may be performing services under this Agreement.

7. TERM AND TERMINATION. This Agreement will be effective as set forth in Attachment A. Either party may terminate this Agreement by delivering written notice to the other party at least 30 days in advance of the proposed date of termination.

7.1. In the event of termination, UNMH shall pay Contractor as full compensation for performance until such termination: (1) the unit or pro rata order price for the delivered and accepted portion; and (2) incidental damages, not otherwise recoverable from other sources by Contractor, as approved by UNMH, with respect to the undelivered or unaccepted portion of this Agreement provided compensation hereunder shall in no event exceed the total contracted price. Such amount will be limited to Contractor's actual cost, and may not include anticipated profits. UNMH shall not be liable for consequential damages.

7.2. The contractor shall confirm its willingness to provide the Hospital with any and all information required to allow the Hospital to have a third party service provider perform such services.

8. MISCELLANEOUS

8.1. Acceptance and Rejection. If prior to final acceptance, any goods or services are found to be defective or not as specified, or if the UNMH is entitled to revoke acceptance of them UNMH may reject or revoke acceptance, require Contractor to correct without charge within a reasonable time, or require delivery at an equitable reduction in price, at UNMH's option. Contractor shall reimburse UNMH for all incidental and consequential cost related to unaccepted goods or services. Notwithstanding final acceptance and payment, Contractor shall be liable for latent defects, fraud, or such gross mistakes as amount to fraud. Acceptance of goods or services shall not waive the right to claim damages for breach of contract.

8.2. Appropriations. The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Regents of the UNMH of New Mexico, or other sponsoring agency for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Regents or other sponsoring agency, this Agreement will terminate upon delivery of written notice by UNMH to Contractor. The decision of UNMH as to whether sufficient appropriations are available will be accepted by Contractor and will be final.

8.3. Antifraud Compliance. Both parties to this Agreement expressly acknowledge that the Medicare/Medicaid antifraud statute, 42 U.S.C. Section 1320a-7b, prohibits "illegal remuneration" as defined therein, in connection with the provision of goods or services for which payment is made in whole or in part under Medicare. The parties are entering into this Agreement with the intent of complying fully with the Medicare/Medicaid antifraud statute. To this end, the parties expressly agree that nothing contained in this Agreement is intended to, or shall in the context of the administration of this Agreement, require either party to refer any patients to the other, or to any affiliate or subsidiary of the other; rather, the purpose of this Agreement is to clarify the parties' understanding with regard to services to be provided to UNMH by Contractor.

8.4. Binding Effect. This Agreement is binding upon, and inures to the benefit of, the parties to

this Agreement and their respective successors and assigns.

- 8.5. Confidentiality.** The confidentiality of client records will be maintained by the parties in accordance with applicable federal and state laws and regulations. The parties hereby agree to the terms and conditions of the Business Associate Addendum attached to and incorporated in this Agreement as Exhibit K..
- 8.6. Conflict of Interest.** Contractor shall disclose to the UNMH Purchasing Department the name(s) of any UNMH employee or member of the Board of Regents who has a direct or indirect financial interest in the Contractor or any proposed transaction. A UNMH employee (or Regent) has a direct or indirect financial interest in the Contractor or in the proposed transaction if presently or in the preceding twelve (12) months the employee/Regent or a close relative has an ownership interest in the Contractor (other than as owner of less than 1% of the stock of a publicly traded corporation); works for the Contractor, is a partner, officer, director, trustee or consultant to the Contractor, has received grant, travel, honoraria or other similar support from the Contractor, or has a right to receive royalties from the Contractor. Contractor shall file a Conflict of interest Disclosure form with the University Purchasing Department.
- 8.7. Damage and Security of UNMH Property.** The Contractor shall be responsible for all damage to persons or property that occurs as a result of proposer's fault or negligence, or that of any of his employees, agents and/or subcontractors. Any equipment, software or facilities damaged by the proposer's operations shall be repaired and/or restored to their original condition at the contractor's expense.
- 8.8. Dispute Resolution and Cooperation.** The parties agree that, to the extent compatible with the separate and independent management of each, they will maintain effective liaison and close cooperation. If a dispute arises related to the obligations or performance of either party under this Agreement, representatives of the parties will meet in good faith and work within reasonable efforts to resolve the dispute.
- 8.9. Disruption of Normal Activity.** All work shall be performed so as not to interfere with normal College activities. When it is necessary to disrupt normal activities, the schedule of work, and the areas to be affected must be approved by UNMH's authorized representative prior to commencement of the work.
- 8.10. ECCN Reporting Requirement.** Contractor acknowledges that providing goods and services under this Agreement is subject to compliance with all applicable United States laws, regulations, or orders, including those that may relate to the export of technical data or equipment, such as International Traffic in Arms Regulations ("ITAR") and/or Export Administration Act/Regulations ("EAR"). Contractor agrees to comply with all such laws, regulations and orders as currently in effect or hereafter amended. Contractor shall not disclose any export-controlled information, or provide any export-controlled equipment or materials to UNMH without prior written notice. In the event that UNMH agrees to receive such export-controlled information, equipment or materials, Contractor shall: (i) include the Export Control Classification Number (ECCN) on the packing documentation and, (ii) send an electronic copy of the ECCN number and packing documentation to: ECCN@UNM.EDU
- 8.11. Eligibility for Participation in Government Programs.** 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 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.

- 8.12. Employee Certification.** The Contractor and all Contractors' employees utilized on the work to be performed under this agreement must have the proper certification(s) and license(s) to comply with State and Local requirements connected to this agreement. The Contractor shall use only fully qualified and approved service technicians to perform inspections, installations, support, maintenance service, repairs and upgrades under this request.
- 8.13. Entire Agreement.** This Agreement and the terms and conditions included in the purchase order incorporates all UNMH's RFP P493-24 and addendums thereto, (Attachment C) and Contractors response to RFP P493-24 (Attachment D) and are made part of this agreement. This represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. All of the conditions, agreements, and understandings between the parties concerning the subject matter of this Agreement, and all such conditions, understandings, and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents, shall be valid or enforceable unless embodied in this written Agreement.
- 8.14. Equal Opportunity and Affirmative Action.** In performing or providing the services and goods required under this agreement, each party shall be an equal opportunity employer and shall conform to all affirmative action and other applicable requirements; accordingly, each party shall neither discriminate nor permit discrimination in its operations or employment practices against any person or group of persons on the basis of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or medical condition, sexual preference, prior military involvement or any other manner prohibited by law.
- 8.15. Force Majeure.** Neither party shall be in default or otherwise liable for any delay in or failure of its performance under this Agreement if such delay or failure arises by any reason beyond its reasonable control, including any act of God, any acts of the common enemy, the elements, earthquakes, floods, fires, epidemics, riots, failures or delay in transportation or communications, or any act or failure to act by the other party or such other party's employees, agents or contractors; provided however, that lack of funds shall not be deemed to be a reason beyond a party's reasonable control. The parties will promptly inform and consult with each other as to any of the above causes, which in their judgment may or could be the cause of delay in the performance of this Agreement.
- 8.16. Foreign Payments.** Payment for services performed by a foreign individual or a foreign corporation while in the US may be subject to 30% tax withholding per IRS Publication 515.
- 8.17. Governing Law.** This Agreement will be construed, interpreted, governed and enforced in accordance with the statutes, judicial decisions, and other laws of the State of New Mexico.
- 8.18. Gramm-Leach-Bliley Act.** Pursuant to the Gramm-Leach-Bliley Act and the regulations set forth at 16 CFR Part 314, UNMH requires its Contractors to implement and maintain appropriate safeguards for the protection of Customer Information. Accordingly, the Contractor shall implement and maintain a comprehensive information security program that contains administrative, technical and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of confidential Customer Information that it creates, receives, maintains, or transmits on behalf of UNMH. In addition, the Contractor will require and ensure that any of its agents, sub-contractors, or sub-consultants, to which it provides confidential Customer Information of UNMH, implements appropriate security measures to protect confidential Customer Information of UNMH.

Contractor shall not use or disclose covered data and information received from or created on behalf of UNMH except as permitted or required by this Agreement, as required by law, or as otherwise authorized in writing by UNMH. Upon becoming aware of a security breach in which UNMH Customer Information is used or disclosed in a manner not authorized or covered by this Agreement, including any reasonable belief that an unauthorized individual has accessed a database containing covered data and information, or in violation of any applicable state or federal laws, Contractor will report to UNMH any security incident immediately upon being aware of such a breach and take such corrective steps/action to remedy the breach as requested by UNMH and required by law.

Upon termination, cancellation, expiration or other conclusion of this Agreement, Service Provider shall return to UNMH covered Customer Information and data unless UNMH requests in writing that such Customer Information and data be destroyed. Service Provider shall complete such return or destruction not less than 30 days after the conclusion of this Agreement. Within such 30 day period, Contractor shall certify in writing to UNMH that such return or destruction has been completed. To the extent return or destruction is not feasible; this Agreement shall remain in full force and effect.

Contractor, means any person or entity that receives, maintains, processes, or otherwise is permitted access to Customer Information through its direct provision of services to a financial institution. The Gramm-Leach-Bliley Act broadly defines “financial institution” as any institution engaging in the financial activities enumerated under the Bank Holding Company Act of 1956, including “making, acquiring, brokering, or servicing loans” and “collection agency services”. Because higher education institutions participate in financial activities, such as processing student financial aid and student loans, FTC regulations consider them financial institutions for purposes of the Gramm-Leach-Bliley Act.

Customer Information means any record containing nonpublic information as defined in 16 CFR 313.3(n), about a customer of a Financial Institution, whether in paper, electronic or other form that the UNMH has obtained from a customer in the process of offering a financial product or service including offering student aid and loans to students as defined in 12 CFR 225.28. Any and all Customer Information provided by the UNMH to the Contractor which the Contractor acquires through its own efforts in rendering or providing any goods or services under this Agreement, shall be considered confidential and held in strict confidence and shall only be released to the Contractor’s own personnel, agents, sub-contractor and sub-consultants only to the extent necessary to provide or perform the goods and/or services required by this Agreement. Such information shall not be released by the Contractor to any other person or organization without the prior written consent and approval of UNMH.

- 8.19. Headings.** Headings and captions used in this Agreement are for convenience and ease of reference only and will not be used to construe, interpret, expand or limit the terms, conditions, or other provisions of this Agreement.
- 8.20. Inconsistencies.** In the event there are any inconsistencies or incompatibilities in provisions, the agreement shall take precedence by terms herein this agreement, the terms and conditions included in the purchase order, UNMH’s RFP P291-14 and addendums thereto and Contractor’s response.
- 8.21. Independent Business.** Neither Contractor nor any of its agents shall be treated as an employee of UNMH for any purpose whatsoever. Contractor declares that Contractor is engaged in an independent business and has complied with all federal, state and local laws regarding business permits and licenses of any kind that may be required to carry out the said business and the tasks to be performed under this Agreement. Contractor further declares that it is engaged in the same or similar activities for other clients and that UNMH is not Contractor's sole or only client or customer.
- 8.22. Information Security Plan.** Contractor shall not install any systems software and hardware,

applications, databases, information or etc. on UNMH's computing devices-assets including export/import files, custom files or etc. without prior approval from UNMH's IT division. If applicable, the Contractor **WILL** complete UNMH's Information Security Plan and submit it to UNMH's IT department for approval within 30 days from date of execution of this agreement. Failure to complete form upon UNMH's request or failing to receive IT approval may result in Offeror(s) being considered as non-responsive and/or termination of agreement. UNMH reserves the right to review and verify the Information Security Plan. If UNMH identifies any deficiencies with the Information Security Plan it will notify Contractor within 30 days of such deficiencies. Thee parties shall thereafter negotiate in good faith to resolve any such deficiencies related to the foregoing. The agreement or addendums shall not be effective until the Exhibit G is approved by UNMH IT.

- 8.23. Inspection.** UNMH may inspect, at any reasonable time, any part of Contractor's plant or place of business, which is related to performance of this Agreement. Final Inspection may be made at the destination upon completion of delivery of goods and services. Acceptance of delivery shall not be considered acceptance of the goods and/or services furnished. Final inspection shall include any testing or inspection procedures required by the specifications.
- 8.24. Inspections, Contractor.** The Contractor shall be responsible for securing at Contractor's expense, all required inspections to comply with Federal, State and/or Local regulations governing the work performed under this Agreement.
- 8.25. Modifications.** No changes, amendments or alterations to this Agreement will be effective unless in writing and signed by both parties.
- 8.26. Multi-Term Determination.** Pursuant to Sections 13-1-150 and 13-1-151 NMSA 1978, it has been determined that the estimated requirements covered in this Agreement are reasonably firm and continuing and a multi-term contract will serve the best interests of UNMH.
- 8.27. No Inducement to Refer.** Nothing contained in this Agreement will require UNMH or any UNMH physician to refer any patients to Contractor or require Contractor to refer patients to UNMH or any UNMH physician. The parties enter into this Agreement with the intent of conducting their relationship in full compliance with applicable Federal, State and Local law, including the Medicare/Medicaid Anti-Fraud and Abuse Amendments and the Physician Ownership and Referral Act (commonly known as the Stark Law). Notwithstanding any unanticipated effect of any of the provisions herein, neither party will intentionally conduct itself under the terms of this Agreement in a manner to constitute a violation of these provisions.
- 8.28. Non-Assignability.** This Agreement will not be assigned by either party, nor will the duties imposed upon either party by this Agreement be delegated, subcontracted, or transferred by either party, in whole or in part, without the prior written consent of the other party; provided, however, that UNMH may assign this Agreement to a wholly-owned subsidiary or affiliate of UNMH or any component part thereof without the consent of Contractor. Contractor shall require any subcontractors to demonstrate that they have in place administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic Protected Health Information, in accordance with the Business Associate Addendum to this Agreement, and shall, upon request, provide evidence of such to UNMH. Contractor shall not, in any event, assign, delegate, transfer, or subcontract this Agreement, in whole or in part and/or directly or indirectly, to any off-shore entity. Furthermore, Contractor will not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without prior written approval of UNMH. Violation of this provision shall give UNMH the right to immediately terminate this Agreement and subject Contractor to the indemnification provision set forth in this Agreement.
- 8.29. Notices.** Any notice required to be given pursuant to the terms and provisions of this

Agreement will be in writing and will be sent by certified mail, return receipt requested, postage prepaid.

Notices will be sent to the following addresses:

Company Name	University of New Mexico Hospitals
Company Street Address	Purchasing Department Ste. 3165
City, STATE ##ZIP	Attn: Purchasing Director 933 Bradbury Dr. SE Albuquerque, NM 87106

- 8.30. Novation Membership.** The University of New Mexico Hospital is an owner member of the Novation Group Purchasing Organization. In the event an award is made to a Offeror who currently, or in the future, has a contract with Novation, Inc., and the products/services proposed are on the contract with Novation, Inc., the awarded Offeror will be required to report all sales to Novation, Inc.
- 8.31. Other Applicable Laws.** Any provision required being included in a resultant Purchase Order/Agreement by any applicable and valid executive order, Federal, State or Local law, ordinance, rule or regulation shall be deemed to be incorporated herein.
- 8.32. Ownership of Documents.** All documents which are prepared by the Contractor or any member of the Contractor's team that form a part of its services under this Agreement are the sole property of UNMH and such work may not be reproduced nor distributed without the express written consent of UNMH and shall be delivered to UNMH upon termination and or completion of this Agreement if UNMH so requests. The Contractor shall be responsible for the protection and/or replacement of any original documents in its possession. UNMH shall receive all original drawings and the Contractor shall retain a reproducible copy.
- 8.33. Patent and Copyright Indemnity.** Contractor shall indemnify, defend and hold harmless UNMH against all losses, liabilities, lawsuits, claims, expenses (including attorneys' fees), costs, and judgments incurred through third party claims of infringement by the Services provided hereunder of any copyright, patent, trademark or other intellectual property rights.
- 8.34. Payroll or Employment Taxes.** No Federal, State, or Local income, payroll or employment taxes of any kind shall be withheld or paid by UNMH with respect to payments to Contractor or on behalf of Contractor its agents or employees. Contractor shall withhold and pay any such taxes on behalf of its employees as required by law. The payroll or employment taxes that are the subject to this paragraph include but are not limited to FICA, FUTA, federal personal income tax, state personal income tax, state disability insurance tax, and state unemployment insurance tax. If Contractor is not a corporation, Contractor further understands that Contractor may be liable for self-employment (Social Security) tax, to be paid by Contractor according to law.
- 8.35. Penalties.** The Procurement Code, Section 13-1-28 at seq. NMSA 1978, as amended imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose criminal penalties for bribes, gratuities and kickbacks.
- 8.36. Performance.** In the even that Contractor refuses or fails to comply with the provisions of this Agreement or fails to make progress so as to endanger performance and does not cure such failure within a reasonable period of time, UNMH may otherwise secure the materials, supplies or services ordered, and Contractor shall be liable for damages suffered by the University thereby, including incidental and consequential damages.
- 8.37. Quantities.** UNMH may purchase all, some or none of the elements described in this proposal or Offerors responses. In addition, actual quantities may fluctuate up or down based on UNMH

needs. The successful bidder will be required to fill all orders placed regardless of quantities ordered.

- 8.38. Relationship to Parties.** The parties and their respective employees are at all times acting as independent contractors. Contractor and its employees will not be considered employees of UNMH for any purpose, including, but not limited to, workers' compensation, insurance, bonding or any other benefits afforded to employees of UNMH. Neither party has any express or implied authority to assume or create any obligation or responsibility on behalf of or in the name of the other party.
- 8.39. Release.** Contractor, upon final payment of the amount due under this Agreement, will release UNMH, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations not assumed in this Agreement by UNMH or the State of New Mexico.
- 8.40. Removal of Contractor's Employee(s).** UNMH may remove Contractor's employee(s) from the work under the contract for cause or convenience. UNMH may immediately terminate, with written notice to Contractor, the services of any of the Contractor's employee(s), if the UNMH's management believes in good faith that Contractor's employee is unable to perform the services with reasonable skill.
- 8.41. Scheduled Delays.** If the Contractor becomes aware of possible problems that could result in delay in completion of the work on the agreed-to schedule; the Contractor must immediately notify UNMH or the designated representative. The initial notification of the delay may be verbal with a written confirmation, giving the probable cause and effect, with recommendations for alternate action. Nothing in this paragraph will be interpreted as relieving the Contractor of its contractual obligations; however, failure to notify UNMH promptly will be basis for determining the Contractor responsibility in an otherwise excusable delay.
- 8.42. Separability.** If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.
- 8.43. Site Familiarity.** The Contractor shall be responsible for thoroughly inspecting the site and work to be done prior to commencement of work. The Contractor warrants by this submission of an offer that the site has been thoroughly inspected and the work to be done and that the offer includes all costs required to complete the work. The failure of the Contractor to be fully informed regarding the requirements of a request under this agreement will not constitute grounds or any claim or demand for adjustments to the associated costs.
- 8.44. State and Local Ordinances.** The Contractor shall perform work under this contract in strict accordance with the latest adopted version of all State and Local codes, ordinances, and regulations governing the work involved.
- 8.45. Submission of Drawings / Literature.** If applicable, the submission of samples, drawings and literature to be used must be submitted by the date designated by UNMH in order to be considered. All submissions shall be made at no expense to the UNMH. Returns shall only be made at the Offers request and expense.
- 8.46. Taxes.** UNMH is exempt from Federal Excise Taxes and from New Mexico Gross Receipts Taxes on materials. Services are not exempt. Taxes on services should be included as a separate line item and not included in the base price offer. Applicable taxes are excluded from the RFP evaluation. Reference Attachment F, UNMH Tax Exempt Certificate, attached to and incorporated by reference in this agreement.
- 8.47. Third Parties.** Nothing in this Agreement, express or implied, is intended to confer any rights,

remedies, claims, or interests upon a person not a party to this Agreement.

8.48. U.S. Government Restricted Rights. This provision applies to any hospital operating on behalf of any part of the United States Government. The System, including the related documentation, is provided with restricted rights. The System is deemed to be “commercial software” and “commercial software documentation,” respectively, pursuant to DFAR Section 227.7202 and FAR 122.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the System, including related documentation by the U.S. Government or any of its agencies shall be governed solely by the terms of the license granted by this Agreement and shall be prohibited except to the extent expressly permitted by the terms of the license granted by this Agreement.

Business Associate

8.49. Waiver. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of either party to insist upon the performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party or a breach by the other party, of any term, covenant, or condition hereof, shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

8.50. Workers Compensation. No workers compensation insurance has been or will be obtained by UNMH on account of Contractor or its employees or agents. Contractor shall comply with the workers compensation laws with respect to Contractor and Contractor's employees and agents.

8.51. Workmanship. All work shall be done in a neat, workman-like manner using acceptable equipment and methods consistent with that level of care and skill ordinarily exercised by members of the profession/trade and in accordance with sound professional/trade standards and ethical practice.

9. WORKPLAN REQUIRED: Contractor shall include a proposed schedule for all SOWs. The SOW shall provide at the minimum sufficient detail to enable UNMH to fully understand the intentions of Contractor. It should include a detailed workplan for the fulfillment of its proposed scope of work and services. The work plan should identify Contractor plan(s) for UNMH, including all tasks, fees, exclusions, and milestones, type of license including subcontractors, third parties and time frames involving completion of the scope. Contractor may employ Gant charts, graphics or other scheduling tools, preferably in electronic media. It should clearly outline UNMH's and Contractor's required resources, responsibilities, staffing and training. It shall include all expenses which Contractor is incurring in rendering the services to which it expects UNMH to reimburse Contractor.

BY SIGNING BELOW, THE CONTRACTOR CERTIFIES THAT HE/SHE IS AUTHORIZED TO OBLIGATE HER/HIS FIRM TO THE TERMS AND CONDITIONS OF THIS CONTRACT.

75. the University's authorized representative.

BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (this “**Addendum**”) is entered into between the Regents of the University of New Mexico, for its public operation known as UNMH (referred to in this Addendum as the “Covered Entity”) and _____ (referred to in this Addendum as the “Business Associate”).

- A. Under the agreement between the Parties to which this Addendum is attached (the “**Underlying Agreement**”), Business Associate is receiving from, or creating or receiving, or maintaining or transmitting on behalf of, Covered Entity, certain data that would constitute “protected health information” within the meaning of the Standards for Privacy of Individually Identifiable Health Information (the “**Privacy Rule**”).
- B. The Parties are committed to complying with the Privacy Rule and the Standards for Security of Electronic Protected Health Information (the “**Security Rule**”) in accordance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“**HIPAA**”), the Health Information Technology for Economic and Clinical Health (“**HITECH**”) Act, Title XIII of Division A and Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Public Law 111-5 (Feb. 17, 2009) and related regulations, the HIPAA Privacy Rule, 45 C.F.R. Parts 160 and 164, as amended, the HIPAA Security Rule, 45 C.F.R. Parts 160, 162 and 164, as amended, and other relevant laws, including subsequently adopted provisions applicable to use and disclosure of confidential information, and applicable agency guidance.
- C. This Addendum, in conjunction with the Privacy and Security Rules and the U.S. Department of Health and Human Services' final rule, effective March 26, 2013, modifying HIPAA and the Privacy and Security Rules, sets forth the terms and conditions pursuant to which PHI (electronic and non-electronic) that is created, received, maintained, or transmitted by, the Business Associate from or on behalf of Covered Entity, will be handled between the Business Associate and Covered Entity and with third parties during the term of their Underlying Agreement and after its termination.
- D. Business Associate hereby acknowledges and agrees that Covered Entity is a Covered Entity and that Business Associate is a Business Associate of Covered Entity.

The Parties agree as follows:

1. PERMITTED USES AND DISCLOSURES OF PHI

- 1.1. **Services.** Pursuant to the Underlying Agreement, Business Associate provides services (“**Services**”) for Covered Entity that involve the receipt, use and disclosure of PHI. Except as otherwise specified herein, the Business Associate may make any and all uses of PHI necessary to perform its obligations under the Underlying Agreement. All other uses not authorized by this Addendum are prohibited. Moreover, Business Associate may disclose PHI for the purposes authorized by this Addendum only: (i) to its employees, subcontractors and agents, in accordance with Section 2.1(h), or (ii) as otherwise permitted by or as required by the Privacy or Security Rule.
- 1.2. **Business Activities of the Business Associate.** Unless otherwise limited herein and if such use or disclosure of PHI would not violate the Privacy or Security Rules if done by the Covered Entity, the Business Associate may:
 - 1.2.1. Use the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate provided that such uses are permitted under state and federal confidentiality laws;

- 1.2.2. Disclose the PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of the Business Associate, provided that the Business Associate represents to Covered Entity, in writing, that (i) the disclosures are required by law, as defined within 45 C.F.R. §164.501; or (ii) the Business Associate has received from the third party written assurances regarding its confidential handling of such PHI as required under 45 C.F.R. §164.504(e)(4) and §164.314, and the third party notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; and
- 1.2.3. Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity.

2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

- 2.1. Responsibilities of the Business Associate. With regard to its use and/or disclosure of PHI, the Business Associate hereby agrees to do the following:
 - 2.1.1. Not use or further disclose PHI other than as permitted or required by this Addendum, or the Underlying Agreement;
 - 2.1.2. Not, without the prior written consent of Covered Entity, disclose any PHI on the basis that such disclosure is required by law without notifying Covered Entity so that Covered Entity shall have an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, Business Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all alternatives for relief. Business Associate shall require reasonable assurances from persons receiving PHI in accordance with Section 1.2(b) hereof that such persons will provide Covered Entity with similar notice and opportunity to object before disclosing PHI on the basis that such disclosure is required by law;
 - 2.1.3. Not use or further disclose PHI except as permitted or required by this Addendum;
 - 2.1.4. Ensure the confidentiality, integrity, and availability of all electronic PHI created, received, maintained, or transmitted;
 - 2.1.5. Use reasonable and appropriate safeguards to prevent the unauthorized use or disclosure of PHI other than pursuant to the terms and conditions of this Addendum, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Addendum;
 - 2.1.6. Use appropriate administrative, physical and technical safeguards consistent with the HIPAA Security Rule that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic PHI in accordance with the HIPAA Security Rule and the HITECH Standards;
 - 2.1.7. Report promptly, in writing, to Covered Entity, but in no event later than within two (2) days of which it becomes aware any use or disclosure of PHI not provided for by the Agreement, including breaches of unsecured PHI as required at 45 C.F.R. §164.410, and any Security Incident of which it becomes aware, and cooperate with the Covered Entity in any mitigation or breach reporting efforts;
 - 2.1.8. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, to ensure that any agents, including subcontractors, that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree in writing to

the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information; provided, however, that Business Associate shall not disclose or provide access to PHI to any subcontractor or agent without the prior written consent of Covered Entity;

- 2.1.9.** Ensure that any agent or subcontractor to whom the Business Associate provides PHI, as well as Business Associate, not export PHI beyond the borders of the United States of America;
 - 2.1.10.** Have procedures in place to mitigate, to the maximum extent practicable, any deleterious effect from any use or disclosure of PHI in violation of this Addendum or applicable law;
 - 2.1.11.** Have and apply appropriate sanctions against any workforce member, subcontractor or agent who uses or discloses PHI in violation of this Addendum or applicable law;
 - 2.1.12.** Within five (5) business days' request of Covered Entity, make available PHI in a designated record set, if applicable, to Covered Entity, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524;
 - 2.1.13.** Within five (5) business days, make any amendment(s) to PHI, if applicable, in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526;
 - 2.1.14.** As applicable, maintain and make available the information required to provide an accounting of disclosures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528;
 - 2.1.15.** To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);
 - 2.1.16.** Upon request, make its internal practices, books, and records available to the Secretary and to the Covered Entity for purposes of determining compliance with the HIPAA Rules; and
 - 2.1.17.** Comply with minimum necessary requirements under the HIPAA Rules.
- 2.2.** Responsibilities of Covered Entity. With regard to the use and/or disclosure of PHI by the Business Associate, Covered Entity hereby agrees to do the following:
- 2.2.1.** Inform the Business Associate of any limitations in the form of notice of privacy practices that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
 - 2.2.2.** Inform the Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose PHI, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
 - 2.2.3.** Notify the Business Associate, in writing and in a timely manner, of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to

abide by under 45 C.F.R. §164.522, to the extent that such restriction may impact in any manner the use and/or disclosure of PHI by the Business Associate under this Addendum, except if the Business Associate will use or disclose PHI for (and the Underlying Agreement includes provisions for) data aggregation or management and administration and legal responsibilities of the Business Associate, Covered Entity will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy and Security Rule if done by the Covered Entity.

3. REPRESENTATIONS

3.1. Mutual Representations of the Parties. Each party represents to the other party:

- 3.1.1.** That all of its employees and members of its workforce, whose services may be used to fulfill obligations under this Addendum or the Underlying Agreement are or shall be appropriately informed of the terms of this Addendum and are under legal obligation to each party, respectively, by contract or otherwise, sufficient to enable each party to fully comply with all provisions of this Addendum including, without limitation, the requirement that modifications or limitations that Business Associate has agreed to adhere to with regard to the use and disclosure of PHI of any individual that materially affects and/or limits the uses and disclosures that are otherwise permitted under the Standard will be communicated to the Business Associate, in writing, and in a timely fashion.
- 3.1.2.** That it will reasonably cooperate with the other party in the performance of the mutual obligations under this Addendum.
- 3.1.3.** That neither the party, nor its directors, regents, officers, agents, employees or members of its workforce have been excluded or served a notice of exclusion or have been served with a notice of proposed exclusion, or have committed any acts which are cause for exclusion, from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or state healthcare program, including but not limited to Medicare or Medicaid, or have been convicted, under federal or state law (including without limitation a plea of nolo contendere or participation in a first offender deterred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to (a) the neglect or abuse of a patient, (b) the delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under a federal or state healthcare program, (c) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by any federal, state or local government agency, (d) the unlawful, manufacture, distribution, prescription or dispensing of a controlled substance, or (e) interference with or obstruction of any investigation into any criminal offense.
- 3.1.4.** That it will notify the other party immediately after it becomes aware that any of the foregoing representations may be inaccurate or may become inaccurate.

4. TERM AND TERMINATION

- 4.1. Term.** The term of this Addendum shall commence on the Effective Date, and shall terminate on the termination date of the relevant Underlying Agreement or on the date Covered Entity terminates this Addendum for cause as authorized in Section 4.2, whichever is sooner.

- 4.2. Termination for Cause. Business Associate authorizes termination of this Addendum by Covered Entity, if Covered Entity determines Business Associate has violated a material term of this Addendum and Business Associate has not cured the breach or ended the violation within the time specified by Covered Entity.
- 4.3. Obligations of Business Associate upon Termination. Business Associate agrees to return or destroy all PHI pursuant to 45 C.F.R. §164.504(e)(2)(I). Prior to doing so, the Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. If it is not feasible for the Business Associate to return or destroy said PHI, the Business Associate will notify Covered Entity in writing and the Covered Entity may disagree with the Business Associate's determination. Said notification shall include: (i) a statement that the Business Associate has determined that it is not feasible to return or destroy the PHI in its possession, and (ii) the specific reasons for such determination. Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Addendum to the Business Associate's use and/or disclosure of any PHI retained after the termination of this Addendum, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible. If it is infeasible for the Business Associate to obtain, from a subcontractor or agent any PHI in the possession of the subcontractor or agent, the Business Associate must provide a written explanation to Covered Entity and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Addendum to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Addendum, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.
- 4.4. Automatic Termination. This Addendum will automatically terminate without any further action of the parties upon the termination or expiration of the Underlying Agreement.

5. CONFIDENTIALITY

- 5.1. Confidentiality Obligations. In the course of performing under this Addendum, each party may receive, be exposed to or acquire the Confidential Information including but not limited to, all information, data, reports, records, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in any computer data base or computer readable form, as well as any information identified as confidential ("Confidential Information") of the other party. For purposes of this Addendum, "Confidential Information" shall not include PHI, the security of which is the subject of this Addendum and is provided for elsewhere. The parties including their employees, agents or representatives (i) shall not disclose to any third party the Confidential Information of the other party except as otherwise permitted by this Addendum or as required by law including, without limitation, the New Mexico Inspection of Public Records Act, Section 14-2-1 et seq. NMSA 1978, as amended, (ii) only permit use of such Confidential Information by employees, agents and representatives having a need to know in connection with performance under this Addendum, and (iii) advise each of their employees, agents, and representatives of their obligations to keep such Confidential Information confidential. Notwithstanding anything to the contrary herein, each party shall be free to use, for its own business purposes, any ideas, suggestions, concepts, know-how or techniques contained in information received from each other that directly relates to the performance under this Addendum. This provision shall not apply to Confidential Information: (a) after it becomes publicly available through no fault of either party; (b) which is later publicly released by either party in writing; (c) which is lawfully obtained from third parties without restriction;

or (d) which can be shown to be previously known or developed by either party independently of the other party.

6. INSURANCE, LIABILITY, AND INDEMNIFICATION

- 6.1. Insurance.** Business Associate will procure and maintain in effect during the term of this Addendum: (1) general liability insurance coverage with minimum limits of \$1 million per occurrence and \$3 million aggregate; and (2) as applicable, professional liability insurance coverage within minimum limits of \$1 million per occurrence and \$3 million in aggregate; and (3) workers' compensation insurance coverage within statutory limits of the state in which Business Associate is located. Upon request, Business Associate shall provide evidence of continuous coverage to Covered Entity.
- 6.2. Liability.** As between the parties, subject to Section 6.3 of this Addendum, each party acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or property to the extent they result from negligence of that party's employees. Business Associate understands that Covered Entity is not indemnifying Business Associate for the acts or omissions to act of Covered Entity or its employees. The liability of Covered Entity will be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1 et seq. NMSA 1978, as amended.
- 6.3. Indemnification.** The Business Associate agrees to indemnify, defend and hold harmless Covered Entity and Covered Entity's employees, directors, officers, subcontractors, agents or other members of its workforce from any costs, damages, expenses, judgments, losses, and attorneys' fees arising from any breach of this Addendum by Business Associate, or arising from any negligent or wrongful acts or omissions of Business Associate, including failure to perform its obligations under the Privacy Rule. The Business Associate's indemnification obligation shall survive the expiration or termination of this Addendum for any reason.
- 6.4. LIMITATION OF LIABILITY.** THE PARTIES UNDERSTAND, ACKNOWLEDGE, AND AGREE THAT NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

7. MISCELLANEOUS

- 7.1. Business Associate.** For purposes of this Addendum, Business Associate shall include the named Business Associate herein. However, in the event that the Business Associate is otherwise a Covered Entity under the Privacy or Security Rule, that entity may appropriately designate a health care component of the entity, pursuant to 45 C.F.R. §164.504(a), as the Business Associate for purposes of this Addendum.
- 7.2. Survival.** The respective rights and obligations of Business Associate and Covered Entity under this Addendum, shall survive termination of this Addendum indefinitely.
- 7.3. Amendments; Waiver.** This Addendum may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events. The parties agree to take such

action as is necessary to amend this Addendum from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

- 7.4. Interpretation. Any ambiguity in this Addendum shall be interpreted to permit compliance with the HIPAA Rules.
- 7.5. Changes in Law. The parties recognize that this Addendum is at all times subject to applicable state, local, and federal laws. The parties further recognize that this Addendum may become subject to amendments in such laws and regulations and to new legislation. Any provisions of law that invalidate, or are otherwise inconsistent with, the material terms and conditions of this Addendum, or that would cause one or both of the parties hereto to be in violation of law(s), shall be deemed to have superseded the terms of this Addendum and, in such event, the parties agree to utilize their best efforts to modify the terms and conditions of this Addendum to be consistent with the requirements of such law(s). In order to effectuate the purposes and intent of this Addendum the parties will set forth an executed written agreement within thirty (30) days of receipt of notice from one party to the other party setting forth the proposed changes, then either party may, by giving the other an additional sixty (60) days written notice, terminate this Addendum, unless this Addendum would terminate earlier by its terms. In the event amendments or changes in existing law(s), general instructions, or new legislation, rules, regulations, or decisional law preclude or substantially preclude a contractual relationship between the parties similar to that expressed in this Addendum, then, under such circumstances, where renegotiation of the applicable terms of this Addendum would be futile, either party may provide the other at least sixty (60) days advance written notice of termination of this Addendum, unless this Addendum would terminate earlier by its terms. Upon termination of this Addendum as hereinabove provided, neither party shall have any further obligation hereunder except for (i) obligations occurring prior to the date of termination, and (ii) obligations, promises or covenants contained herein which are expressly made and intended to extend beyond the term of this Addendum.
- 7.6. Construction of Terms. The terms of this Addendum shall be construed in light of any applicable interpretation or guidance on HIPAA and/or the Privacy Rule issued by the U.S. Department of Health and Human Services of the Office for Civil Rights from time to time.
- 7.7. Contradictory Terms. Any provision of the Underlying Agreement that is directly contradictory to one or more terms of this Addendum ("**Contradictory Term**") shall be superseded by the terms of this Addendum as of the Effective Date of this Addendum to the extent and only to the extent of the contradiction, only for the purpose of the Covered Entity's compliance with the Privacy Rule and only to the extent that it is reasonably impossible to comply with both the Contradictory Term and the terms of this Addendum.
8. **DEFINITIONS.** The following terms used in this Addendum shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health

Information (“**PHI**”), Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use. Specific definitions include:

- 8.1. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. §160.103, and in reference to the party to this Addendum.
- 8.2. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “Covered Entity” at 45 C.F.R. §160.103, and in reference to the party to this Addendum.
- 8.3. Disclosure. “Disclosure” shall mean the release, transfer, provision of access to, or divulging in any manner of information outside the entity holding the information.
- 8.4. Electronic Protected Health Information. “Electronic Protected Health Information” means Protected Health Information that is created, received, maintained, or transmitted by Electronic Media as defined at 45 C.F.R. §160.103.
- 8.5. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160, 162 and 164, and as amended.
- 8.6. HITECH Standards. “HITECH Standards” shall mean the privacy, security, and Breach notification provisions applicable to a Business Associate under Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH”) Act, which is Title XIII of the American Recover and Reinvestment Act of 2009 (Public Law 111-5), and any regulations promulgated.
- 8.7. Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subpart A and Subpart E, as amended.
- 8.8. Protected Health Information or “PHI”. “Protected Health Information or PHI” shall mean any information, transmitted or recorded in any form or medium; (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe that information can be used to identify the individual, and shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations and agency guidance. Protected health information excludes individually identifiable health information: (i) in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; (ii) in records described at 20 U.S.C. 1232g(a)(4)(B)(iv);

(iii) in employment records held by a covered entity in its role as employer; and (iv) regarding a person who has been deceased for more than 50 years.

- 8.9.** Security Incident. “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- 8.10.** Security Rule. “Security Rule” shall mean the Standards for Security of Electronic Protected Health Information at 45 C.F.R. Parts 160, 162, and 164, and as amended.
- 8.11.** A reference in this Addendum to a section in the HIPAA Rules means the section as in effect or as amended.
- 8.12.** Any terms capitalized, but not otherwise defined, in this Addendum shall have the same meaning as those terms have under HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HITECH Standards.

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EXHIBIT L

INFORMATION SYSTEMS SECURITY PLAN INFORMATION

The UNMHSC Information Security Plans are to be developed and documented for IT systems, as per the UNMHSC' Information Technology Security Procedures. This template is to be used as a guide in developing individual security plans for new and changing application and infrastructure systems. **Purchases, Contracts and Implementation of new IT assets will not move forward without the completion of an IT Security Plan.**

- Note to our vendors: your equipment, applications, databases, etc. end up on our environment. All of these must be reviewed for proper resources, security, backup, etc. You must work with the team or project leader to complete the questions below for the most effective and timely implementation.
- The IT Security Plan answers start with the data flow diagram. Without an understanding how the system works and where the application, system or database resides and how the users and support access and support the system is very difficult to answer the following questions.
- **Note:** For confidential or Restricted Data outsourcing the UNMHSC requires all available third-party security certifications/attestations (preferably based on standards such as: (ISO 27002, HITRUST, NIST 800-53, SSAE-16 SOC 2, or equivalent) from the vendor that are applicable to the service / application under consideration. For payment card hosting, PCI DSS attestation and reports will be required.
 - If necessary, the vendor can submit a redacted copy of certifications to safeguard sensitive information.
 - The UNMHSC reserves the right to request and review the vendor's third-party certifications/attestations annually.
 - Any vendor who also partners with third parties that create, use, transmit, receive or store the UNMHSC data are required to provide independent third-party security certifications/attestations.

Important: Start this effort by creating a Visio or other graphical workflow of the system. Include workstation or other device where information is created or accessed mapping through appropriate network areas, include the server/database/application and then diagram return paths if applicable. Finally, map the backup and recovery processes.

A security plan should include at minimum a description of the security processes for the system, access and confidentiality requirements and restrictions, security administration processes, data classification designations, legal requirements for security and privacy, training, security testing, infrastructure security components, roles & responsibilities for security functions, physical security, and back up and disaster recovery requirements. The Security Plan should describe the security needs and processes for the 'Life Cycle Support' of the system.

The Security Plan will be initiated in the early phases (business analysis and requirements) of a project, and completed before the system is migrated to production. This template will be used to document security plans upgrades to current systems as well as for current systems, where such documentation does not exist.

Contact the IT Security Office with questions at 505-272- 3282

Exhibit M Intent to Bid

INTENT TO BID

	Proposal includes quote ...
	UNMH
Fully Insured Voluntary Vision Coverage	

VENDORS MUST COMPLETE THE SECTION BELOW WITH NAME, DATE, TITLE and signature. Please send this to Procurement Specialists at cwardlechalk@salud.unm.edu with a cc to Lynn Brownlee at Lynn_Brownlee@ajg.com, Gallagher Benefits Services to receive attachment 1.

Company

Name / Title/signature

Date

NOTE: Your typed name and date above will be considered a valid signature for this RFP.

Exhibits N, O, P. and Attachments 2,3,4 please go to the site below for those exhibits.

<http://hsc.unm.edu/health/about/bids-proposals/proposals.html>.

To receive Attachment 1, Exhibit M must be completed and returned to Procurement Specialists at cwardlechalk@salud.unm.edu with a cc to Lynn Brownlee at Lynn.Brownlee@ajg.com, Gallagher Benefits Services.