



Purchasing Department
933 Bradbury Drive SE, Suite 3165
Albuquerque, New Mexico 87106

INVITATION FOR BID

IFB Number: B78-16

Bid Due Date/Time: May 19, 2016 @ 2:00 pm MDT

TITLE: On Site Instrument Maintenance

The University of New Mexico Hospital (“UNMH”) invites you (“Bidder”) to submit an offer for products and/or services set forth in this Invitation for Bid (IFB). Please read carefully the instructions, specifications, and The UNMH standard Terms and Conditions. Failure to comply therewith may result in an offer being classified as unresponsive and disqualified. **Responses must be submitted no later than the bid deadline date of May 19, 2016 @ 2:00 pm.** New Mexico civil and criminal law prohibit bribes, gratuities and kickbacks.

Point of contact for inquiries concerning this IFB:

Name: Anna Roybal
Title: Procurement Specialist
Telephone: (505) 272-9571
E-mail: anroybal@salud.unm.edu

REQUIREMENTS

1. Only hard copies will be accepted and must be submitted manually via hand delivery, carrier, or first class postal mail. The following must be submitted:
 - One (1) Original, marked on the cover as “Original,”
 - One (1) copy, marked on the cover as “copy,” and
 - One (1) CD/DVD disc with soft copy
2. Hard copies must be printed in ink and any manual corrections must be initialed. Bidder’s submitted, sealed IFB envelope, box or package must be clearly marked with the IFB Number and Closing Date (see information above) in the lower left hand corner. Failure to mark your sealed offer may result in your offer being opened early or your offer not being included in the IFB opening.

3. Address, for deliveries by courier, hand delivered or first class mail:

The University of New Mexico Hospitals
Purchasing Department, Suite 3165
933 Bradbury Dr. SE
Albuquerque, NM 87106

FREIGHT AND PAYMENT

Freight Terms: FOB Destination
Payment Terms: NET 30

CANCELLATION

UNMH reserves the right to cancel without penalty, this IFB, the resultant contract/purchase order, or any portion thereof for convenience, unsatisfactory performance, or unavailability of funds.

TABLE OF CONTENTS

Section I.	Scope of Work
Section II.	Additional Instructions to Bidders
Section III.	Standard Terms and Conditions
Section IV	Cost Proposal
Exhibit A:	Authorized Signature Page
Exhibit B:	Small & Small Disadvantaged Business Certification
Exhibit C:	Conflict of Interest Certificate Form
Exhibit D:	Insurance Requirements
Exhibit E:	Resident Veterans Certificate
Exhibit F:	Certification and Disclosure regarding Payments to Influence certain Federal Transactions
Exhibit G:	Sample Agreement
Exhibit I	Business Associate Agreement

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SECTION I SCOPE OF WORK

1.1 Scope. The University of New Mexico Hospitals is seeking bids from qualified bidders to purchase on-site instrument maintenance services and placement of (1) Instrument Repair Tech (40 hours per week) and (1) Instrument Management Facilitator (40 hours per week) as well as all equipment and maintenance of equipment necessary for instrument maintenance services. The equipment and equipment maintenance service shall be provided by the successful vendor. Bidder shall provide an annual cost that is inclusive of all services **except** for offsite repairs and sterilizer cleaning. A list of offsite repairs i.e., light cord and insulation replacement for (Laparoscopic Instrumentation and Bipolars) must be provided along with fixed pricing for each repair service. All offsite repairs are subject to prior approval by an authorized Operating Room representative. Vendor shall also include pricing for Bi-Annual Cleaning of Sterile Processing Equipment. Bi-annual cleaning of Sterile Processing Equipment for all Sterile Processing Areas is optional and may be awarded the successful vendor of instrument maintenance or individually to the lowest bidder of this service. If bi-annual cleaning of Sterile Processing Equipment is awarded, Sterile Processing will make the final determination on approved workmanship. If workmanship has not been previously evaluated, bidder will be required to qualify their workmanship through Sterile Processing. Bids will be deemed non-responsive for Bidders not pre-qualifying their workmanship or for workmanship that is unacceptable. The successful bidder will maintain ownership of equipment that is provided as part of this agreement.

If suitable space is not found in the hospital to house the equipment and employees, the successful bidder will be responsible for providing a portable building. The building will be supplied at the bidder's cost, including transportation and installation and will be placed in the parking area or in a space identified by the hospital.

On Site Instrument Maintenance Description: Sharpening, Buffing, Bending, Resurfacing, Replacement of Inserts, Replacement of Regularly used instrument patterns in tray through consignment. (Excludes light cords after they have been insured to be properly cleaned, Excludes Insulated Instruments after they have been properly checked, Manufacture of screws etc.)

Instrument Repair Tech Job Description: Responsible for proper On-site Instrument Maintenance consistent with the industry Standard.

Instrument Management Facilitator Job Description: Responsible for the planning, organizing, implementing and managing an efficient Instrument Management process.

Principal Duties and Responsibilities:

- Develop and implement a schedule for preventative maintenance of instrument sets prioritize schedule based on instrument set content and usage. This includes all surgery grade instruments regardless of vendor, except as specified by customer (e.g. warranted products), if applicable
- Organize and maintain a system for sending out and receiving repairs
- Support and maintain the instrument management software database. Train designated hospital staff in the systems functionality

- Implement bar or maintain code, images and set tracking system network, if applicable
- Support facility policy regarding written instruction for use availability.
- Ability to prioritize tasks and work on multiple projects simultaneously
- Requires ability to problem solve and communicate findings effectively
- Assist with product evaluations ensuring best pricing for the customer
- Assist with in-service of new products to Sterile Processing Staff
- Must be able to communicate with all levels of management both internally and externally
- Must be able to follow detailed instruction with minimal supervision
- Must be detail-oriented, with ability to identify and correct errors
- Must be team oriented
- Must be capable of working well under pressure and deadlines
- Performs special projects as assigned
- Must comply with applicable ISO and FDA regulations as stated in Quality Manual
- Other duties may be assigned

Secondary or peripheral job functions:

- Assist in identification of standard instrument patterns for the facility or system to minimize variation of instrument patterns or vendors to maximize back up inventory and to maximize cost savings.
- Work with OR Team Leaders to streamline and coordinate the contents of sets to accomplish continuous improvement of the quality of the contents and assembly of all sets
- Performs utilization and benchmarking studies as assigned
- Maintain annual requirements designated by this facility.
- Must possess excellent organization and inter-personal skills
- Must be able to communicate with all levels of management both internally and externally
- Requires command of the English language with excellent verbal/phone and written communication skills
- Demonstrate excellent analytical skills
- Requires ability to learn new tasks and be accountable for projects
- Requires working knowledge of PC, specifically Windows and Microsoft Office products
- Must be able to work weekends
- Other duties may be assigned

Education/Experience:

- Requires 3-5 years previous experience in Preoperative area and/or Sterile Processing
- Experience in materials and case cart management preferred
- AA degree or higher required.

1.2 Forms and Exhibits. The IFB Submission Forms and Exhibits and the other documents requiring execution by the Bidder, shall be completed and signed by a duly authorized signing representative of the Bidder. Bid responses 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.

1.3 Requirements. For the purposes of the requirements stated in this IFB:

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

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

1.4 Notice. The Bidders are put on notice that from the date of issue of the IFB through any award notification of the Agreement:

1.4.1 Only the Bid Administrator is authorized by the UNMH to amend or waive the requirements of the IFB pursuant to the terms of this IFB;

1.4.2 Bidders should not contact any of the staff at UNMH, (except for the Bid Administrator) in regards to this IFB, unless instructed to in writing by the Bid Administrator;

1.4.3 Under no circumstances shall the Bidder rely upon any information or instructions from the Bid Administrator, UNMH employees or their agents unless the information or instructions is provided in writing by the Bid Administrator in the form of an addendum; and

1.4.4 UNMH, their employees, nor their agents shall be responsible for any information or instructions provided to the Bidder, with the exception of information or instructions provided in an addendum by the Bid Administrator.

1.5 Information.

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

1.5.2 Bidder to Notify. If the Bidder discovers any uncertainty, inconsistency, error, omission or ambiguity in this IFB, the Bidder must notify the Bid Administrator in writing prior to submitting the Bidder’s Bid response.

1.5.3 Bidders shall not:

1.5.3.1.1 Claim after submission of a Bid response that there was any misunderstanding or that any of the conditions set out in Section 1.5. Bidder to Review were present with respect to this IFB; or

1.5.3.1.2 Hold any staff of UNMH liable for any uncertainty, inconsistency, error, omission, or ambiguity in any part of this IFB.

1.6 Clarification and Questions.

1.6.1 Submission. Bidders may request clarification of this IFB by:

1.6.1.1 Submitting all requests for clarification by email to the Bid Administrator at annroybal@salud.unm.edu or as otherwise directed by the Bid Administrator;

1.6.1.2 Including the Bidder's address, telephone number, facsimile number and email address; and

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

1.6.1.4 Submitting all requests for clarification no later than **2:00 PM MST**, April 1, 2016.

1.6.2 Questions and Answers. The UNMH will provide Bidders with written responses in the form of addenda to questions that are submitted in accordance with Section 1.6.1. All addenda shall form part of this IFB. Questions and answers will be distributed in numbered addenda. In answering the Bidder's questions, the Bid Administrator will include in all addenda the questions asked but will not attribute the questions to any Bidder. Notwithstanding the foregoing, the Bid Administrator may in its sole discretion answer similar questions from various Bidders only once, edit the questions for clarity, and elect not to respond to questions that are either inappropriate or not comprehensible.

1.7 Issued Addenda. Each Bidder shall be responsible for verifying before submitting its Bid response that it has received all addenda that have been issued. All addenda will be posted on the UNMH bidding website visit <http://hospitals.unm.edu/about/bids.shtml>. Instructions, clarifications or amendments which affect this IFB may only be made by addendum.

1.8 Amendments to the IFB. The UNMH shall have the right to amend or supplement this IFB in writing prior to the Closing Time. No other statement, whether written, oral or inferred, will amend this IFB. The Bidders are responsible to ensure they received all addenda, if any. The addenda shall be binding on each Bidder.

1.9 Clarification of Bidder's Bid response.

1.9.1 The UNMH shall have the right at any time after bid response submission, to seek clarification from any Bidder in respect of such Bidder's bid response submission, without contacting other Bidders. The UNMH is not obliged to seek clarification of any aspect of a bid response.

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

1.10 Verification of Information. The UNMH shall have the right to:

- 1.10.1 Verify any Bidder statement or claim by whatever means the UNMH deems appropriate, including contacting persons in addition to those offered as references, and to reject any Bidder statement or claim, if the statement or claim or its Bid response is patently unwarranted or is questionable; or
- 1.10.2 Access the Bidder's premises where any part of the work is to be carried out to confirm Bid response information, quality of processes, and to obtain assurances of viability; and
- 1.10.3 The Bidder shall co-operate in the verification of information and is deemed to consent to UNMH verifying such information.

1.11 Project Management.

- 1.11.1 If applicable, the Bidder shall designate a Project Manager who will communicate with UNMH to coordinate and schedule the solution configuration, deployment, implementation, and associated deliverables such as training, testing, and any required change during implementation and training.
- 1.11.2 The Bidder shall designate one person after implementation 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, billing, and assure follow-up actions are identified and completed throughout the term of the agreement upon award notification.
- 1.11.3 **Substitution.** With respect to any substitution of this representative, the Contractor must provide detailed justification documenting the necessity for the substitution. Contractor shall forward a request to substitute staff to the Hospital for consideration and approval. No substitute personnel are authorized to begin work until the Contractor has received written approval to proceed from the Hospital. Resume(s) must be submitted evidencing that the individual(s) proposed in substitution have minimum qualifications and experience as required in this IFB.

1.12 Bidder must meet or exceed the requirements listed below.

- 1.12.1 It is the Bidders responsibility to make sure that all products and services offered are adequately described.
- 1.12.2 Bidders must have the ability to work within the security, regulatory and internal policy requirement needs of various UNMH facilities.
- 1.12.3 Bidders must be authorized to sell/resell the products and services being proposed. The products and services must be available for warranty without any required re-certification from another party. Bidders may be asked to provide certificates of authorization or verifications of such facts.
- 1.12.4 Bidder shall guarantee the products and services offered will meet or exceed specifications identified in this IFB. All items shall be newly manufactured, in first class condition, latest model and design, including, where applicable, containers suitable for shipment and storage, unless otherwise indicated in the IFB.
- 1.12.5 Bidder hereby guarantees that everything furnished hereunder will be free from defects in design, workmanship and material, that if sold by drawing, sample or specification, it will conform thereto and will serve the function for which it was

furnished. Bidder further guarantees that if the items furnished hereunder are to be installed by the Bidder, such items will function properly with installation.

1.12.6 Bidders guarantees that all federal, state and local applicable laws have been complied with relation to construction, packaging, labeling and registration.

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

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

1.12.9 Bidder must meet the minimum service requirements and maintain minimum certificates/credentials outlined in the IFB.

1.13 Early Payment Discounts. While the IFB 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?

1.13.1 The early payment discounts shall not be considered in evaluating cost.

1.13.2 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.

1.14 Period of Contract. The term of the resultant Agreement(s) arising from this bid shall effective until completion, acceptance and full payment made by UNMH for the project.

1.15 Residential Preference. A resident business shall be awarded the equivalent of five percent of the total possible points to be awarded based on the resident business possessing a valid resident business certificate in accordance with Section 13-1-21 of the New Mexico Statutes 1978 Annotated, Chapter 13. If applicable, document the residential preference number in the Authorized Signature form and attached your certificate to your response.

1.16 Sample Agreement. The successful respondent may be required to enter into the Regents of the University of New Mexico, for its public operation known as University of New Mexico Hospitals agreement hereto attached as Exhibit H. **THIS CONTRACT IS SUBJECT TO COMPLIANCE WITH UNMH BUSINESS POLICY NO. 4325 AND REQUIRES LEGAL REVIEW.**

1.17 Information Security Plan. If applicable, 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. 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 Information Security Plan is approved by UNMH IT. If applicable, Bidder(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.

1.18 Turnkey Meetings. If applicable, the Bidder/Contractor shall attend scheduled turnkey or other meetings as requested by UNMH. The purpose of the meetings is to provide information to and from the Bidder/Contractor regarding installation requirements and for any costs to be fully understood. Where a turnkey meeting or meetings is scheduled, such meeting is mandatory for the Bidder/Contractor, where it will be proposing the equipment required by UNM for installation. Such meetings will also be opportunities for UNMH to communicate to Bidders/Contractors the rules of the Hospital in respect of carrying on installation activities within the Hospital. It remains the responsibility of the Bidder/Contractor to acquaint itself with such UNMH rules and regulations and with all applicable laws and associated regulations so that any limitations, restrictions or other requirements are fully understood by the Bidder.

1.19 Veterans Preference. In accordance with sections 13-1-21 and 13-1-22 NMSA 1978 resident veterans businesses are to receive the following preferences:

1.19.1 Resident veterans businesses with annual revenues of \$1M or less are to receive a 10% preference discount on their bids and bid responses.

1.19.2 Resident veterans businesses with annual revenues of more than \$1M but less than \$5M are to receive an 8% preference discount on their bids and bid responses.

1.19.3 Resident veterans businesses with annual revenues of more than \$5M are to receive a 7% preference discount on their bids and bid responses.

1.19.4 This preference is separate from the current in-state preference and is not cumulative with that preference. However, veteran businesses will still receive the in-state preference once the veteran's preference cap is exceeded.

1.19.5 Points will be awarded based on Bidders ability to provide a copy of a current Resident Veterans Certificate (Exhibit E)

1.19.6 In addition, the Resident Veterans Preference Certification Form must accompany any IFB and any business wishing to receive a resident veteran's preference must complete and sign the form.

1.19.7 IFB's are to be evaluated on preference as follows:

1.19.7.1 Resident business and resident veterans business shall receive a preference award. A ten percent (10%) must be added for resident preference award and eight percent (8%) for veterans business..

1.19.7.2 The following manuals/materials shall be provided at no charge and shipped with the Equipment, unless otherwise specified in this IFB.

1.19.7.3 Two (2) complete sets of operator/user manuals, including software manuals as applicable and any other printed or electronic media available for user education (e.g. videos, CD-ROMS, etc.)

SECTION II
ADDITIONAL INSTRUCTIONS TO BIDDERS

- 2.1 Award Information.** Award information will be posted electronically on the UNMH web site <http://hospitals.unm.edu/about/bids.shtml>
- 2.2 Cancellation.** The University reserves the right to cancel without penalty, this IFB, any resultant Purchase Order/Agreement, or any portion thereof for convenience, unsatisfactory performance, or unavailability of funds.
- 2.3 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.
- 2.4 Clarifications.** Any clarification of instructions, terms and conditions, insurance, bonds, or offer preparation shall be made only by the Procurement Specialists stated on the cover sheet of this IFB. Technical clarifications should be addressed to the individual identified on the cover sheet. Clarifications must be in writing and submitted as an addendum to be considered and relied upon as a part of this IFB solicitation.
- 2.5 Copies of Offer.** If submitting by hard copy or on CD, please submit the number of hard/CD copies of your bid as stated on the cover sheet along with all supporting documents.
- 2.6 Late Submissions.** Late submissions of bids 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 bid is the only bid received. Late submissions will be returned unopened.
- 2.7 Modifications.** Only modifications received prior to the date and time specified for the closing will be accepted. No modifications will be accepted after the opening. Technical clarifications of the bid may be requested by the Procurement Specialists following the opening.
- 2.8 Bidder Clarification.** The Bidder should include a local or toll-free number and e-mail address for offer clarifications. Failure to do so may result in the bid being deemed non-responsive.
- 2.9 Period for Offer Acceptance.** Bidder agrees that any offer made submitted will be good for a period of ninety (90)-calendar days; an additional time period may be requested in the IFB Scope of Work.
- 2.10 Public Information.** All information, except that classified as confidential, will become public information at the time of the bid opening. 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.)

- 2.11 Rejection of bids.** The University reserves the right to make an award based on the specifications contained herein, to reject any and all bids or any part thereof, and to accept the bid that is in the best interest of the University.
- 2.12 Submissions of Drawings/Literature.** The submission of samples, drawings and literature to be used in the evaluation of the bid, must be submitted by the designated closing date and time in order to be considered. All submissions shall be made at no expense to the University. Returns shall only be made at the bidders request and expense.
- 2.13 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 IFB evaluation. A non-taxable transaction certificate is available on the UNMH Purchasing Department web site: <http://www.UNMH.edu/~purch/>.
- 2.14 Withdrawal of Bids.** Bids may be withdrawn by written notice, electronically or in person by a Bidder or an authorized representative at any time prior to the submittal due date and time. Bidders requiring bid security will result in forfeiture of the bid security if the bid is withdrawn following the opening.
- 2.15 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. *In addition, the attached “Resident Veteran Preference Certification” form (Exhibit E) must filled out, signed and accompany any IFB from any business wishing to receive a resident veteran’s preference.*

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SECTION III.

STANDARD TERMS AND CONDITIONS

The following General Terms and Conditions are an equal and integral part of this Invitation for Bid (IFB). The terms, conditions and specifications contained in this IFB along with any attachments and the Bidders' response may be incorporated into any Purchase Order/ Agreement issued as a result of this IFB, including any addenda. The contents of this IFB, as revised and/or supplemented, and the Bidder's response may be incorporated into the Contract. Should a Bidder object to any of the UNMH Standard Terms and Conditions the Bidder must propose specific alternative language that would be acceptable to UNMH. General references to the Bidders' terms and conditions or attempts at complete substitutions are not acceptable to UNMH and will result in disqualification of the Bidders' proposal. Bidders' 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 IFB must be stated in Bidders' response in a Section marked "TERMS AND CONDITIONS". Bidders are cautioned that any changes to the terms and conditions that are NOT stated in the IFB response will not be entertained by UNMH at a later date. Any provisions in any bid, quotation, acknowledgment or other forms or contract documents applicable to the services that are inconsistent, or in conflict, with any provisions of this IFB or the resultant contract will be ineffective and inapplicable.

UNMH reserves the right to reject a bid 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 Bidder and shall not be deemed an opportunity to amend the Bidder's proposal.

- 3.1 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 Hospitals 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 the University Hospital's option. Contractor shall reimburse the University Hospitals for all incidental and consequential costs 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.
- 3.2 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 Bidder's receipt of written notice of termination from the UNMH.
- 3.3 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 Contractor without written approval from the University.

- 3.4 Changes.** The University may make changes within the general scope of any resultant Purchase Order/Agreement by giving notice to Contractor 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 Contractor shall be recognized without written approval of the University. Any claim of Contractor for an adjustment under this Paragraph must be made in writing within thirty (30) days from the date of receipt by Contractor of notification of such change. Nothing in this Paragraph shall excuse Contractor from proceeding with the performance of the Purchase Order/Agreement as changed hereunder.
- 3.5 Conflict of Interest.** Contractor shall disclose to the UNMH 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 Contractor or in the proposed transaction. A University 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 UNMH Purchasing Department.
- 3.6 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
- 3.7 Delivery Date.** Delivery is an important consideration and may be a factor in determining the award. If a delivery date is specified and you cannot meet the delivery date stated, please state your earliest delivery date in your bid.
- 3.8 Disclosure of IFB Contents.** Each bid, except those portions for which a bidder has made a written request for confidentiality, shall be open to public inspection. Any data, which a bidder believes should be kept confidential shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Prices, makes and models or catalogue numbers of items, deliveries and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary.

Confidential data is normally restricted to confidential financial information concerning the Bidder's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-1 to 57-3A-7 NMSA 1978.

- 3.9 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 UNMH Accounts Payable Department. In the event testing is required prior to acceptance, the discount time shall begin upon completion of the tests and acceptance.
- 3.10 ECCN Reporting Requirement.** Contractor 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"). 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@UNMH.EDU
- 3.11 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 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.
- 3.12 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.
- 3.13 Equipment Required.** The Contractor shall be responsible for supplying and maintaining all equipment and materials necessary to complete the work to be performed under this IFB except as otherwise noted in the Specifications.
- 3.14 Employee Certification.** The Contractor and all Contractor's employees utilized on the work to be performed under this IFB must have the proper certification(s) and license(s) to comply with State and local requirements connected to this IFB. The Contractor shall use

only fully qualified and approved service technicians to perform inspections, service and/or repairs under this request.

3.15 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 agreement forms provided by the Bidder. Bidder must include a detailed description regarding any exceptions to the terms and conditions of this IFB. 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 Invitation for Bid. 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.

3.16 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 designated UNMH address.

3.17 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.

3.18 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.

3.19 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.

3.20 Indemnification and Insurance. Contractor 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 Contractor or the performance of the work by Contractor 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 UNMH. Contractor 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. Contractor will also indemnify, defend and hold harmless the UNMH against any joint and several liabilities

imposed against UNMH with respect to strict products liability claims attributable to the fault of the Contractor.

Contractor 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 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."

- 3.21 Independent Business.** Neither Contractor nor any of its agents shall be treated as an employee of the University 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 any resultant Purchase Order/Agreement. Contractor further declares that it is engaged in the same or similar activities for other clients and that the University is not Contractor's sole or only client or customer.
- 3.22 Inspection.** The University may inspect, at any reasonable time, any part of Contractor'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.
- 3.23 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 IFB
- 3.24 Instrumentalities.** Contractor shall supply all equipment, tools, materials and supplies that may be required for the performance of the designated tasks or requirements set forth in any resultant Purchase Order/Agreement or its attachments.
- 3.25 Insurance Requirements.** If the services contemplated under this Agreement will be performed on or in UNMH facilities or property, Contractor will procure and maintain, at its own expense, (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; vehicle liability insurance coverage in the amount of \$1,000,000 per occurrence, \$2,000,000 in the aggregate and (3) workers' compensation insurance coverage within statutory limits of the state in which Contractor is located.

Contractor shall maintain the above insurance for the term of this Agreement and name The Regents of the University of New Mexico, its agents, servants and employees as an additional insured.

3.26 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.

3.27 New Materials Required. All materials and equipment delivered and/or installed under this IFB 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.

3.28 Notices. Any notice required to be given or which may be given under this IFB 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
MSC01 1240, 1 University of New Mexico Hospitals
Albuquerque, NM 87131-0001

3.29 Option to Renew. UNMH reserves the option to renew the IFB'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 IFB's specifications, or if not stated, in one-year terms.

3.30 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.

3.31 OSHA Regulations. The Contractor 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 IFB. The Contractor shall defend, indemnify, and hold UNMH free and harmless against any and 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.

3.32 Ownership of Documents. All documents which are prepared by the Contractor 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 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.

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 Contractor 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 Contractor or member of the consulting team as part of the performance of Work. The Contractor 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. Contractor 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.

3.33 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 Contractor's expense.

3.34 Patent and Copyright Indemnity. Contractor shall indemnify, defend and hold harmless the UNMH 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.

3.35 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 Central Purchasing Office or the UNMH using agency certifies that the services, construction or items of tangible personal property have been received and meet specifications.

3.36 Payment Terms. Upon written request from Contractor for payment, UNMH 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 ½ of 1% per month.

- 3.37 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.
- 3.38 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.
- 3.39 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 Contractor are deemed rejected unless agreed to in writing by an appropriate University official.
- 3.40 Relationship of Parties.** The parties and their respective employees are at all times acting as independent Contractors. Contractor 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.
- 3.41 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.
- 3.42 Removal of Contractor's Employee(s).** UNMH may request that Contractor's employee(s) be removed from the work under the contract for cause. The UNMH may immediately terminate, with written notice to Contractor, the services of any Contractor employee, if the University of New Mexico's management believes in good faith that Contractor's employee is unable to perform the services with reasonable skill. Contractor's agreement may also be terminated if Contractor's liability insurance coverage is modified or terminated.
- 3.43 Request as Agreement.** This Invitation for Bid governs any offer and the selection process. Submission of an offer in response to this Invitation for Bid 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.

- 3.44 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.
- 3.45 Right to Protest.** The solicitation of the award of an IFB/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>.
- 3.46 Schedule Delays.** If after the award, the Contractor becomes aware of possible problems that could result in delay in completion of the work on an agreed-to schedule; the Contractor must immediately notify the Procurement Specialist 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.
- 3.47 Contractor's Employees and Agents.** Contractor shall have complete charge and responsibility for persons employed by Contractor and engaged in the performance of the specified work. The Contractor, its agents and employees state that they are independent contractors and not employees of the University. Contractor, 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.
- 3.48 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.
- 3.49 Termination and Delays.** UNMH may provide 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 Contractor as full compensation for performance until such termination: (1) the unit or pro rata order price for the delivered and accepted portion. Such amount will be limited to Contractor's actual cost, and may not include anticipated profits. UNMH shall not be liable for consequential damages. UNMH may by written notice terminate any resultant Purchase Order/Agreement in whole or in part for Contractor's default if Contractor 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, UNMH may otherwise secure the materials, supplies or services ordered, and Contractor shall be liable for damages suffered by UNMH thereby, including incidental and consequential damages. If after notice of termination, UNMH determines Contractor was not in default, or if Contractor's default is due to failure of UNMH, termination shall be deemed for the convenience of UNMH. The rights and remedies of UNMH 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 "Contractor" includes Contractor and Contractor's sub-Contractors at any tier.

3.50 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.

3.51 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.

3.52 Warranties. Contractor warrants the goods and/or services furnished to be exactly as specified in any resultant Purchase Order/Agreement, free from defects in Contractor's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by Contractor. All applicable UCC warranties express and implied are incorporated herein.

3.53 Warranty. Please state the warranty for equipment to be supplied under this IFB. A copy of the warranty should be included in your submission.

3.54 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.

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**SECTION IV
COST RESPONSE FORM**

1. Pricing

- 1.1 Pricing will be an all-inclusive cost for performing the services outlined below in compliance with the specifications and terms and conditions of this IFB.
- 1.2 Pricing shall be firm for the initial term of the Agreement. If the agreement is extended, increases will be subject to direct costs in providing such services and subject to approval by UNMH and will not exceed 3%.

2. Term

- 2.1 The initial term of this agreement is for **three (3)** years with an option to renew on an annual basis by written amendment for five (5) additional years as provided for in NMSA 13-1-150 (Multi-Term Contract) and, subject to the early termination rights of the parties set forth in paragraph 7 of the Agreement. Under no circumstances will the term of this agreement exceed eight years.

3. Credentials

- 3.1 Submit resumes related to minimum Education/Experience as outlined in Scope of Work, paragraph 1.1
- 3.2 Submit a list of references of hospitals similar in size to UNMH which you are providing services as defined in this IFB.

4. Minimum Specifications

- 4.1 List any exceptions to the Scope of Work outlined in the IFB.

5. Price Quote

- 5.1 Onsite Repair - Inclusive of all services except offsite repair and bi-annual cleaning of Sterile Processing Equipment. \$ _____/per year
- 5.2 Offsite Repair – Provide a listing of equipment and fixed price for each repair. Any equipment considered for offsite repair will be subject to the approval by UNMH.
- 5.3 OPTION 1
Bi-annual Cleaning of Sterile Processing Equipment \$ _____/per year

EXHIBIT A

AUTHORIZED SIGNATURE PAGE

THE FOLLOWING BIDDER INFORMATION MUST BE COMPLETED AND RETURNED WITH THE RFB:

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 _____ Addenda No. _____ Dated _____

New Mexico State Preference Number (Pursuant to Sections 13-1-1, 13-1-21.2 & 13-4-2 NMSA 1978, Bidders Claiming 5% Preference Must be Certified Prior to IFB Opening):

- Resident Business: Pref. Number _____
- Resident Manufacturer: Pref. Number _____
- Resident Bidder: Pref. Number _____
- New York state business enterprise: Yes _____ No _____

The undersigned, as an authorized representative for the Company named below, acknowledges that the Bidder has examined this IFB with its related documents and is familiar with all of the conditions surrounding the described materials, labor and/or services. Bidder 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 IFP and at the prices stated within the IFP.

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

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 B

SMALL AND SMALL DISADVANTAGED BUSINESS CERTIFICATION

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

4 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 Bidder 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

THANK YOU FOR YOUR COOPERATION

Signature and Title of Individual Completing Form: _____

Date _____

<p>Please return this form to:</p> <p>The University of New Mexico Hospitals Purchasing Department MSC01 1240 Albuquerque, NM 87131 505-277-2036 (voice) 505-277-7774 (fax)</p>	<p>NOTE:</p> <p>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 re-certify with us.</p>
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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 C

THE UNIVERSITY OF NEW MEXICO HOSPITALS CONTRACTOR 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 Bidder or in the proposed transaction. Bidder 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. Bidder did not participate, directly or indirectly, in the preparation of specifications upon which the IFB or offer is made. If the Bidder is a New Mexico State Legislator or if a New Mexico State Legislator holds a controlling interest in Bidder, 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 Bidder; (2) has an ownership interest in the Bidder (other than as an owner of less than 1% of Bidder's stock, if Bidder is a publicly traded corporation); (3) is a partner, officer, director, trustee or consultant to the Bidder; (4) has received grant, travel, honoraria or other similar support from Bidder; or (5) has a right to receive royalties from the Bidder.

DEBARMENT/SUSPENSION STATUS

The Bidder 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 Bidder 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 Bidder 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) The Bidder, by signing its offer, hereby 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 Bidder 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 Bidder named below.

Signature: _____ Title: _____ Date: _____

Name Typed: _____

Company: _____

Address: _____ City/State/zip: _____

EXHIBIT D

INSURANCE REQUIREMENTS

CERTIFICATES OF INSURANCE:

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

BIDDER'S PUBLIC LIABILITY INSURANCE

The Bidder 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.

BIDDER'S VEHICLE LIABILITY INSURANCE:

The Bidder 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

SUBBIDDER'S AND SUB BIDDER'S PUBLIC AND VEHICLE LIABILITY INSURANCE:

The Bidder shall either:

1. Require each subBidder or sub Bidder 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 subBidders of sub subBidders in the Bidder'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 Bidder shall not violate, permit to be violated, any conditions of any said policies, and shall at all times satisfy the requirements for the insurance companies writing said policies.

EXHIBIT E

Resident Veterans Preference Certification

_____ (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 on the basis of having such veterans 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 as the case may be.

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

Date:

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 F

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 Bidder, 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 Bidder 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.

1.1.1 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 Bidder named below.

Signature: _____ Title: _____ Date: _____

Name Typed: _____ Company: _____

Address: _____ City/State/Zip: _____

EXHIBIT G

[NOTE: THIS CONTRACT IS SUBJECT TO COMPLIANCE WITH UNM BUSINESS POLICY NO. 4325 AND MAY REQUIRE LEGAL REVIEW.]

AGREEMENT

**UNMH Contract Number:
IFB Number: B76-16**

Pursuant to UNMH IFB number B76-16, and response to UNMH IFB number B76-16, THIS AGREEMENT, made and entered into this ___ day of ___, 2016, 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 Contractor Name, Address, hereafter called Contractor/Bidder/Contractor, does hereby agree to furnish to UNMH products and services as follows:

RECITALS

- A.** UNMH wishes to obtain Onsite Maintenance Service, as described in this Agreement, and Contractor assures UNMH that it is willing and qualified to provide such products or services as set forth in Scope of Work, Attachment A.
- B.** This Agreement sets forth the terms and conditions under which the Contractor will perform the services described herein, and UNMH will reimburse Contractor for such services.

The parties agree as follows:

1. RESPONSIBILITIES OF CONTRACTOR: The Contractor shall provide the services as set forth in Scope of Work, described Attachment A, attached to an incorporated by reference in this agreement.

2. COMPENSATION:

2.1 UNMH shall pay to the Contractor in full payment for services satisfactorily performed at a rate of _____dollars (\$_____) per year.

3. PROCESS FOR AWARDED INDIVIDUAL PROJECTS

3.1. 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.

4. CONTRACTOR MUST MEET OR EXCEED THE REQUIRMENTS BELOW

- 4.1.** It is the Contractor responsibility to make sure that all products offered are adequately described.
- 4.2.** Contractor must have the ability to work within the security, regulatory and internal policy requirement needs of various UNMH facilities.
- 4.3.** Contractor must be authorized to sell/resell the products and services being proposed. The products and services must be available for warranty without any required re-certification from another party. Contractor may be asked to provide certificates of authorization or verifications of such facts.
- 4.4.** Contractor shall guarantee that the products and services offered will meet or exceed specifications identified in this Agreement.
- 4.5.** All items shall be newly manufactured, in first class condition, latest model and design, including, where applicable, containers suitable for shipment and storage, unless otherwise indicated in writing by UNMH.
- 4.6.** Contractor hereby guarantees that everything furnished hereunder will be free from defects in design, workmanship and material, that if sold by drawing, sample or specification, it will conform thereto and will serve the function for which it was furnished. Contractor further guarantees that if the items furnished hereunder are to be installed by the Contractor, such items will function properly with installation.
- 4.7.** Contractor should have an extensive knowledge of the company's product roadmap, and understanding of industry best products and practices.
- 4.8.** Depending on the nature of the work, Contractor may be required to possess specialty licensure/certification.
- 4.9.** Must perform all work compliant with applicable industry standards and recommended practices.

5. FINANCIAL REQUIREMENTS

- 5.1. Billing.** Contractor will submit monthly invoices to UNMH within 30 days after services are provided. Invoices will be sent as set forth in UNMH's purchase order.
- 5.2. 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.
- 5.3. 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.

- 5.4. 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 Section VI.D of this Agreement.
- 6.3. Insurance.** If the services contemplated under this Agreement will be performed on or in UNMH facilities or property, Contractor will procure and maintain, at its own expense, (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; vehicle liability insurance coverage in the amount of \$1,000,000 per occurrence, \$2,000,000 in the aggregate and (3) workers' compensation insurance coverage within statutory limits of the state in which Contractor is located.

Contractor shall maintain the above insurance for the term of this Agreement and name The Regents of the University of New Mexico, its agents, servants and employees as an additional insured.

7. PRODUCT RECALLS, RETURNS AND REPLACEMENTS

7.1. Defective, Recalled or Outdated Products. The Contractor will provide free replacement of product when product is defective, recalled, or outdated. Contractor is responsible for returning or disposing of any recalled product at Hospital facilities.

7.2. Tracking. Vendor is responsible for tracking recalled products at the item and lot combination level.

7.3. Notification. The vendor shall notify the Hospital immediately of any product recall or product alert, voluntary or otherwise for product purchased by the Hospital. Recalls must be managed and handled by the vendor. So long as the vendor notifies the Hospital of the recall or field notification, the Hospital is willing to notify Hospital facilities of the product recall or field notification and also document such notification to vendor. The vendor is responsible for determining the quantity of any recalled product remaining at Hospital facilities.

7.4. Cost for Return of Recalled Items. The Hospital is not responsible for the return, payment for or cost of return for recalled items for any recalled product that is not replaced, replacements and recalls must be credited to the Hospital on the next invoice. No reimbursements will be accepted.

7.5. Product Alerts. In the case of any product alerts, the Hospital shall be able to follow any recommendations made in the alert. If the alert recommends the stoppage of use of a product, the Hospital may, at its sole discretion, return the product for refund or replacement.

8. 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.

8.1. In the event of termination by convenience, 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.

8.2. In the event of termination for Default. When the Contractor has not performed or has unsatisfactorily performed the Agreement, payment shall be withheld at the discretion of the UNMH. Failure on the part of a Contractor to fulfill contractual obligations shall be considered just cause for termination of the Agreement and the Contractor is not entitled to recover any costs incurred by the Consultant up to the date of termination. The provisions of UNMH Purchasing Policies and Procedures hereunder, including the determination of the rights and obligations of the parties, shall govern termination.

9. MISCELLANEOUS.

9.1. 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.

9.2. 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.

9.3. 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 Contractor by UNMH.

- 9.4. Binding Effect.** This Agreement is binding upon, and inures to the benefit of, the parties to this Agreement and their respective successors and assigns.
- 9.5. Certification.** The University of New Mexico Supplier Conflict of Interest and Debarment/Suspension Certification Form has been signed, as appropriate, and is included as part of this Agreement.
- 9.6. 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 H.
- 9.7. 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.
- 9.8. 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
- 9.9. 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.

9.10. 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.

9.11. Entire Agreement. This Agreement is derived from (1) the invitation for bid, (2) addenda; (3) the Contractor's response to the invitation for bid. In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the invitation for bid, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's response to the invitation for bid. 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.

9.12. 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.

9.13. 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.

- 9.14. 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.
- 9.15. 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.
- 9.16. 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.
- 9.17. 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 IFB B78-16 and addendums thereto and Contractors response.
- 9.18. 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.
- 9.19. Information Security Plan.** If required, 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

Bidders(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 Security Plan is approved by UNMH IT.

- 9.20. 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.
- 9.21. Modifications.** No changes, amendments or alterations to this Agreement will be effective unless in writing and signed by both parties.
- 9.22. 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.
- 9.23. 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.
- 9.24. 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 Section III.B of this Agreement.

- 9.25. 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 to Contractor will be sent to the address set forth in Section II.B of Attachment A. Notices to UNMH will be sent to the following address:

University of New Mexico Hospitals
Purchasing Department, Suite 3165
Attn: Purchasing Director
933 Bradbury Dr. SE
Albuquerque, New Mexico 87131-0001

And

- 10.27 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.

- 10.28 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.

- 10.29 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.
- 10.30 Performance.** In the event 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.
- 10.31 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.
- 10.32 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.
- 10.33 Severability.** 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.
- 10.34 Reparability.** 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.
- 10.35 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. A UNMH Tax Exempt Certificate is available upon request.

10.36 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.

10.37 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.

10.38 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.

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

CONTRACTOR:

By: _____ Date: _____

Printed Name: _____

Title: _____

THE REGENTS OF THE UNM OF NEW MEXICO, FOR UNM HOSPITALS

By: _____ Date: _____

Printed Name: Jeffrey Gilmore

Title: Purchasing Director

and

By: _____

Date: _____

Printed Name: Stephen McKernan

Title: CEO, VP Hospital Operations

EXHIBIT H 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 the UNM Hospitals (referred to in this Addendum as the “Covered Entity”) and Contractor (referred to in this Addendum as the “Business Associate”). The “Effective Date” of this Addendum shall be the Effective Date of the Underlying Agreement, as defined below.

I. RECITALS

- 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 and as further defined below (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:

II. PERMITTED USES AND DISCLOSURES OF PHI

- A. 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 III.A.7, or (ii) as otherwise permitted by or as required by the Privacy or Security Rule.
- B. 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. 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;
 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
 3. Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity.

III. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

- A. Responsibilities of the Business Associate.** With regard to its use and/or disclosure of PHI, the Business Associate hereby agrees to do the following:
1. Not use or further disclose PHI other than as permitted or required by this Addendum, or the Underlying Agreement;
 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 II.B.2 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;

3. Ensure the confidentiality, integrity, and availability of all electronic PHI created, received, maintained, or transmitted;
4. 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;
5. 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;
6. 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;
7. 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;
8. 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;
9. 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;

10. 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;
11. 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;
12. 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;
13. 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;
14. 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);
15. 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
16. Comply with minimum necessary requirements under the HIPAA Rules.

B. 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:

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. 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.
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.

IV. REPRESENTATIONS

- A. Mutual Representations of the Parties. Each party represents to the other party:
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.
 2. That it will reasonably cooperate with the other party in the performance of the mutual obligations under this Addendum.
 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.
 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.

V. TERM AND TERMINATION

- A. 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.
- B. 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.
- C. 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)(J). 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.
- D. Automatic Termination. This Addendum will automatically terminate without any further action of the parties upon the termination or expiration of the Underlying Agreement.

VI. CONFIDENTIALITY

- A. 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.

VII. INSURANCE, LIABILITY, AND INDEMNIFICATION

- A.** 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. 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.
- B.** 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.

VIII. MISCELLANEOUS

- A.** 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.

- B.** Survival. The respective rights and obligations of Business Associate and Covered Entity under this Addendum, shall survive termination of this Addendum indefinitely.
- C.** 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.
- D.** Interpretation. Any ambiguity in this Addendum shall be interpreted to permit compliance with the HIPAA Rules.
- E.** 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.
- F.** 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.

- G.** Contradictory Terms. Any provision of the Underlying Agreement that is directly contradictory to one or more terms of this Addendum (“**Contradictory Term**”) shall be superceded 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.

IX. 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:

- A.** 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.
- B.** 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.
- C.** Disclosure. “Disclosure” shall mean the release, transfer, provision of access to, or divulging in any manner of information outside the entity holding the information.
- D.** 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.
- E.** 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.
- F.** 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.
- G.** 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.

- H.** 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.
- I.** 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.
- J.** 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.
- K.** A reference in this Addendum to a section in the HIPAA Rules means the section as in effect or as amended.
- L.** 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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BY SIGNING BELOW, THE CONTRACTOR CERTIFIES THAT HE/SHE IS AUTHORIZED TO OBLIGATE HER/HIS FIRM TO THE TERMS AND CONDITIONS OF THIS CONTRACT.

CONTRACTOR:

By: _____ Date: _____

Printed Name: _____

Title: _____

THE REGENTS OF THE UNM OF NEW MEXICO, FOR UNM HOSPITALS

By: _____ Date: _____

Printed Name: Jeffrey Gilmore

Title: Purchasing Director

and

By: _____ Date: _____

Printed Name: Stephen McKernan

Title: CEO, UNMH Health Systems

*Approved as to form by
1.1.1.1.1 Ariadna Vazquez
Assistant University Counsel
11/06/13*