

**THE UNIVERSITY OF NEW MEXICO HOSPITALS
PURCHASING DEPARTMENT
933 BRADBURY DR. SE, SUITE 3165
ALBUQUERQUE, NM 87106**

INVITATION FOR BID (IFB) COVER SHEET

IFB Number: I44-14

Offer Due Date/Time: June 20, 2014 @ 3:00 pm MDT

TITLE: Electromagnetic Navigational Bronchoscopy System

The University of New Mexico Hospital (Owner) invites you ("Contractor") to submit an offer for material(s) and/or services set forth in this Invitation for Bid (IFB). Please read carefully the instructions, specifications, and The University of New Mexico Hospital (UNMH) Standard Terms and Conditions, because failure to comply therewith may result in an offer being classified as unresponsive and disqualified. **Responses must be submitted no later than the proposal deadline date of June 20, 2014 @ 3:00 pm MDT.** New Mexico civil and criminal law prohibit bribes, gratuities and kickbacks.

UNMH Contact Information:

Name: Matthew Edwards
Title: Procurement Specialist
Telephone: 505-272-9571
E-mail: maedwards@salud.unm.edu

Electronic Format and Hard Copies:

1. **Only hard copies will be accepted and must be submitted manually via hand delivery, carrier or first class mail and must submit:**

One (1) Original, marked on the cover as "Original,"
One (1) copies, marked on the cover of each as "copy," and
One (1) CD/DVD disc

2. Hard copies must be printed in ink and corrections must be initialed. Any Contractor's submitted sealed Proposal envelope, box or package must be clearly marked with the IFB Number and Opening Date (see Offer Due By date 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 Request for Proposal opening.
3. Address if IFB delivered by courier, hand delivered or first class mail

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

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OTHER INFORMATION:

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.

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SECTION I. SCOPE OF WORK

1.1. Scope of Work

The University of New Mexico Hospital is seeking bids from qualified bidders to purchase the list of equipment in the response form (Exhibit H). The Contractor must complete and submit Exhibit H. Bids not containing Exhibit H will be considered non-responsive.

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

1.2. Forms and Exhibits. The IFB Submission Forms and Exhibits and the other documents requiring execution by the Contractor, shall be completed and signed by a duly authorized signing representative of the Contractor. 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 Contractors 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. Contractors 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 Contractor 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. Neither the UNMH, their employees nor their agents shall be responsible for any information or instructions provided to the Contractor, with the exception of information or instructions provided in an addendum by the Bid Administrator.

1.5. Information

1.5.1. Contractor to Review. The Contractor must carefully review this IFB and ensure that the Contractor has no reason to believe that there are any uncertainties, inconsistencies, errors, omissions, or ambiguities in any part of this IFB. Each

Contractor is responsible for conducting its own investigations and due diligence necessary for the preparation of its Bid response.

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

1.5.3. Contractors shall not:

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

1.5.3.2. 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. Contractors may request clarification of this IFB by:

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

1.6.1.2. Including the Contractor'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 **3:00 PM MST June 13, 2014.**

1.6.2. Questions and Answers. The UNMH will provide Contractors 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 Contractor's questions, the Bid Administrator will include in all addenda the questions asked but will not attribute the questions to any Contractor. Notwithstanding the foregoing, the Bid Administrator may in its sole discretion answer similar questions from various Contractors 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 Contractor 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 Contractors are responsible to ensure they received all addenda, if any. The addenda shall be binding on each Contractor.

1.9. Clarification of Contractor's Bid response

- 1.9.1.** The UNMH shall have the right at any time after bid response submission, to seek clarification from any Contractor in respect of such Contractor's bid response submission, without contacting other Contractors. 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 Contractor'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 Contractor in response to a request for clarification from UNMH shall be considered part of the Contractor's Bid response.

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

- 1.10.1.** Verify any Contractor statement or claim by whatever means the UNMH deems appropriate, including contacting persons in addition to those offered as references, and to reject any Contractor statement or claim, if the statement or claim or its Bid response is patently unwarranted or is questionable; or
- 1.10.2.** Access the Contractor'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 Contractor shall co-operate in the verification of information and is deemed to consent to UNMH verifying such information.

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

1.12. Project Management

- 1.12.1.** The Contractor 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.
- 1.12.2.** The Contractor 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.
- 1.12.3. 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 qualifications and experience equal to or better than the individual(s) originally proposed or currently assigned.

1.13. Contractor must meet or exceed the requirements listed below

- 1.13.1.** It is the Contractors responsibility to make sure that all products and services offered are adequately described.
- 1.13.2.** Contractors must have the ability to work within the security, regulatory and internal policy requirement needs of various UNMH facilities.
- 1.13.3.** Contractors 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. Contractors may be asked to provide certificates of authorization or verifications of such facts.
- 1.13.4.** Contractor 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.
- 1.13.5.** 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.
- 1.13.6.** Contractors guarantees that all federal, state and local applicable laws have been complied with relation to construction, packaging, labeling and registration.
- 1.13.7.** Contractor should have an extensive knowledge of the company's product roadmap, and understanding of industry best products and practices.
- 1.13.8.** Must perform all work compliant with applicable industry standards and recommended practices.

1.14. 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?

- 1.14.1.** The early payment discounts shall not be considered in evaluating cost.
- 1.14.2.** 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.

1.15. 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.

- 1.16. Quantities:** UNMH may purchase all, some or none of the elements described in this bid or Contractors responses. In addition, actual quantities may fluctuate up or down based on UNMH needs. The successful bidder will be required to fill all orders placed regardless of quantities ordered.
- 1.17. 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.
- 1.18. 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 F. THIS CONTRACT IS SUBJECT TO COMPLIANCE WITH UNMH BUSINESS POLICY NO. 4325 AND REQUIRES LEGAL REVIEW.
- 1.19. Information Security Plan.** Contractor(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.
- 1.20. Turnkey Meetings.** The 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 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 Contractor, where it will be proposing the equipment required by UNM for installation. Such meetings will also be opportunities for UNMH to communicate to Contractors the rules of the Hospital in respect of carrying on installation activities within the Hospital. It remains the responsibility of the 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 Contractor.
- 1.21. Veterans Preference:** In accordance with sections 13-1-21 and 13-1-22 NMSA 1978 resident veterans businesses are to receive the following preferences:
- 1.21.1.** Resident veterans businesses with annual revenues of \$1M or less are to receive a 10% preference discount on their bids and bid responses.
 - 1.21.2.** 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.
 - 1.21.3.** Resident veterans businesses with annual revenues of more than \$5M are to receive a 7% preference discount on their bids and bid responses.
 - 1.21.4.** 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.
 - 1.21.5.** Points will be awarded based on Contractors ability to provide a copy of a current Resident Veterans Certificate (Exhibit E)

1.21.6. 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.

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

1.21.7.1. In addition to the total points on an IFB, 10% must be added for preference award. For example, an IFB has a total value of 1000 points. Five bid responses are received; one from a resident business, one from a resident veterans business with an 8% preference and three non-resident businesses. The two preference businesses would receive 50 points and 80 points to their already evaluated score, making it possible for the highest score total of 1080.

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

1.22.1. 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 CONTRACTORS

- 4.1. **ALTERNATE OFFERS.** Alternate offers will be accepted and considered provided they are “equal to” and meet all specifications of this IFB which may include all specifications of the Brand used to identify the quality of the goods and/or services requested. The University reserves the right to make the final determination as to whether or not an alternate offer is equal. It is the Contractor’s responsibility to provide, as part of the offer, descriptive literature, specifications and information on all alternate products and services offered. References of current users should be included. If the item(s) or service(s) offered are not clearly identified as alternate item(s) or services, it is understood that the offer is for item(s) and service exactly as specified in this IFB.
- 4.2. **AWARD INFORMATION.** Award information will be posted electronically on the UNMH web site <http://hospitals.unm.edu/about/bids.shtml>
- 4.3. **AWARDS – MULTIPLE.** The University reserves the right to make multiple awards to primary and secondary source or to otherwise split the award of the items, projects and/or sections of this proposal.
- 4.4. **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.
- 4.5. **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.
- 4.6. **CLARIFICATIONS.** Any clarification of instructions, terms and conditions, insurance, bonds, or offer preparation shall be made only by the Contract 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.
- 4.7. **COPIES OF OFFER.** If submitting by hard copy or on CD, please submit the number of hard/CD copies of your offer as stated on the cover sheet along with all supporting documents.
- 4.8. **LATE SUBMISSIONS.** Late submissions of offers will not be accepted or considered unless it is determined by the University that the late receipt was due solely to mishandling by the University or the offer is the only offer received. Late submissions will be returned unopened.
- 4.9. **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 offer may be requested by the Contract Specialists following the opening.

- 4.10. **CONTRACTOR CLARIFICATION.** The Contractor should include a local or toll-free number and e-mail address for offer clarifications. Failure to do so may result in the Offer being deemed non-responsive.
- 4.11. **PERIOD FOR OFFER ACCEPTANCE.** Contractor 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.
- 4.12. **PUBLIC INFORMATION.** All information, except that classified as confidential, will become public information at the time that the IFB is awarded. Confidential information must be marked "CONFIDENTIAL" in red letters in the upper right hand corner of the pages containing the confidential information. Price and information concerning the specifications cannot be considered confidential. (UNMH Purchasing Regulations 11.6.3.)
- 4.13. **REJECTION OF OFFERS.** The University reserves the right to make an award based on the evaluation criteria contained herein, to reject any and all offers or any part thereof, and to accept the offer that is in the best interest of the University.
- 4.14. **RIGHT TO WAIVE MINOR IRREGULARITIES.** The selection committee reserves the right to waive minor irregularities. The selection committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the selection committee.
- 4.15. **SUBMISSIONS OF DRAWINGS/LITERATURE.** The submission of samples, drawings and literature to be used in the evaluation of the offer, 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 Offers request and expense.
- 4.16. **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/>.
- 4.17. **WITHDRAWAL OF OFFERS.** Offers may be withdrawn by written notice, electronically or in person by an Contractor or an authorized representative at any time prior to the submittal due date and time. Contractors requiring bid security will result in forfeiture of the bid security if the offer is withdrawn following the opening.
- 4.18. **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.*

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 Contractors' response may be incorporated into any Purchase Order/ Agreement issued as a result of this IFB, including any addenda. UNMH reserves the right to negotiate with a successful Contractor (Contractor) provisions in addition to those stipulated in this IFB. The contents of this IFB, as revised and/or supplemented, and the successful Contractors' proposal may be incorporated into the Contract. Should a Contractor object to any of the UNMH Standard Terms and Conditions the Contractor must propose specific alternative language that would be acceptable to UNMH. General references to the Contractors' terms and conditions or attempts at complete substitutions are not acceptable to UNMH and will result in disqualification of the Contractors' proposal. Contractors' 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 Contractors' proposal in a Section marked "TERMS AND CONDITIONS". Contractors 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 proposal, 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 proposal on the basis the compromising language cannot be accepted by UNMH. Any additional terms and conditions which may be the subject of negotiation will be discussed only between UNMH and the successful Contractor and shall not be deemed an opportunity to amend the Contractor's proposal.

5.1 ** ACCEPTANCE AND REJECTION. If prior to final acceptance, any goods or services are found to be defective or not as specified, or if the University is entitled to revoke acceptance of them the University may reject or revoke acceptance, require Contractor to correct without charge within a reasonable time, or require delivery at an equitable reduction in price, at the University's option. Contractor shall reimburse the University 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.

5.2 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 Contractor's receipt of written notice of termination from the UNMH.

5.3 **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.

- 5.4 **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.
- 5.5 CLEAN UP.** It is the Contractor's responsibility that the job site be kept clean and free of rubble while work is performed under this contract. Upon completion of work, all areas shall be cleared of all contractors' equipment excess materials and rubble.
- 5.6 **CONFLICT OF INTEREST.** Contractor shall disclose to the University Purchasing Department the name(s) of any University employee or member of the Board of Regents who has a direct or indirect financial interest in the 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 University Purchasing Department.
- 5.7 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
- 5.8 DAMAGE AND SECURITY OF UNMH PROPERTY.** The proposer shall be responsible for all damage to persons or property that occurs as a result of proposer's fault or negligence, or that of any of his employees, agents and/or subcontractors. The proposer shall save and keep harmless UNMH against any and all loss, cost, damage, claims, expense or liability in connection with the performance of this contract. Any equipment or facilities damaged by the proposer's operations shall be repaired and/or restored to their original condition at the proposer's expense, including but not limited to cleaning and painting.
- 5.9 DELIVERY DATE.** Delivery is an important consideration and is a factor in determining the award. If you cannot meet the delivery date stated, please state your earliest delivery date in your offer.
- 5.10 DISCLOSURE OF IFB CONTENTS.** The responses will be kept confidential until UNMH awards an agreement. At that time, all responses and documents pertaining to this IFB will be open to the public, except for material that is proprietary or confidential. The Procurement Managers will not disclose or make public any pages of a proposal on which

the Contractor has stamped or imprinted “proprietary” or “confidential” subject to the following requirements:

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the Contractor’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. The price of service offered or the cost of services proposed shall not be designated a proprietary or confidential information.

If a request is received for disclosure of data for which an Contractor has made a written request for confidentiality, UNMH shall examine the Contractor’s request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Contractor takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

- 5.11 DISRUPTION OF NORMAL ACTIVITY.** All work shall be performed so as not to interfere with normal College activities. When it is necessary to disrupt normal activities, the schedule of work, and the areas to be affected must be approved by UNMH’s authorized representative prior to commencement of the work.
- 5.12 **DISCOUNTS.** If prompt payment discounts apply to any resultant Purchase Order/Agreement, any discount time will not begin until the materials, supplies, or services have been received and accepted and a correct invoice has been received by the University’s Accounts Payable Department. In the event testing is required prior to acceptance, the discount time shall begin upon completion of the tests and acceptance.
- 5.13 **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
- 5.14 **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.

- 5.15 **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.
- 5.16 EQUIPMENT REQUIRED.** The proposer shall be responsible for supplying and maintaining all equipment and materials necessary to complete the work to be performed under this IFB except as otherwise noted in the Specifications.
- 5.17 EMPLOYEE CERTIFICATION.** The Contractor and all Contractors' 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.
- 5.18 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 Contractor's agreement forms. Contractor 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.
- 5.19 **F.O.B.** Unless stated otherwise, the price for goods is F.O.B. the place of destination, and the place of destination is the University's designated campus address.
- 5.20 **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.
- 5.21 **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.
- 5.22 **GRAMM-LEACH-BLILEY ACT.** Pursuant to the Gramm-Leach-Bliley Act and the regulations set forth at 16 CFR Part 314, the University of New Mexico Hospitals

("University") requires its Service Providers to implement and maintain appropriate safeguards for the protection of Customer Information. Accordingly, the Service Provider shall implement and maintain a comprehensive information security program that contains administrative, technical and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of confidential Customer Information that it creates, receives, maintains, or transmits on behalf of the University. In addition, the Service Provider will require and ensure that any of its agents, sub-contractors, or sub-consultants, to which it provides confidential Customer Information of the University, implements appropriate security measures to protect confidential Customer Information of the University.

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

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

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

Customer Information means any record containing nonpublic information as defined in 16 CFR 313.3(n), about a customer of a Financial Institution, whether in paper, electronic or other form that the University has obtained from a customer in the process of offering a financial product or service including offering student aid and loans to students as defined in 12 CFR 225.28. Any and all Customer Information provided by the University to the Service Provider or which the Service Provider acquires through its own efforts in rendering or providing any goods or services under this Purchase Order/Agreement, shall be considered confidential and held in strict confidence and shall only be released to the Service Provider's own personnel, agents, sub-contractors and sub-consultants only to the

extent necessary to provide or perform the goods and/or services required by this Purchase Order/Agreement. Such information shall not be released by the Service Provider to any other person or organization without the prior written consent and approval of the University."

5.23 **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.

5.24 **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 the University. 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 University against any joint and several liabilities imposed against the University 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 the University. The liability of the University will be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1 et seq. NMSA 1978, as amended."

5.25 **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.

5.26 **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.

- 5.27 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
- 5.28 **INSTRUMENTALITIES:** Contractor shall supply all equipment, tools, materials and supplies required for the performance of the designated tasks or requirements set forth in any resultant Purchase Order/Agreement or its attachments.
- 5.29 INSURANCE REQUIREMENTS:** The Contractor is required to carry insurance, meeting the requirements in the Section labeled "Insurance Requirements" or as noted in the specifications. Contractor must submit proof of insurance in the form of a "Certificate of Insurance" to the appropriate Buyer prior to commencing work under this contract. Contractor's insurance shall remain in effect for the entire term of the contract and must be extended to coincide with any future contract extensions. This Invitation for Bid Number must appear on the Certificate of Insurance.
- 5.30 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.
- 5.31 **MINIMUM WAGE RATES AND PAYROLL SUBMITTALS.** Jobs with an estimate cost >\$60,000 done under this IFB will be subject to the Public Works Minimum Wage Act (13-4-11 through 13-4-17, NMSA, 1978 as amended) and per exhibit labeled "Wage Act." Minimum wages will be supplied at time of award or may be obtained from the State of New Mexico Labor & Industrial Commission, 1596 Pacheco Street, Santa FE, NM 87501.

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

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

- 5.32 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.
- 5.33 NON-PERFORMANCE PENALTIES.** The Contractor agrees to pay UNMH an amount equal to \$500.00 per day for each calendar day past the completion date specified in this contract that completion or delivery is delayed. UNMH may subtract this amount from any monies due to the Contractor.
- 5.34 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

University of New Mexico Hospitals Purchasing Department
Attn: Purchasing Director
933 Bradbury Dr. Se Suite 3165
Albuquerque, New Mexico 871106

- 5.35 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.
- 5.36 **OTHER APPLICABLE LAWS.** Any provision required to be included in a resultant Purchase Order/Agreement by any applicable and valid executive order, federal, state or local law, ordinance, rule or regulation shall be deemed to be incorporated herein.
- 5.37 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.
- 5.38 **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.

- 5.39 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.
- 5.40 **PATENT AND COPYRIGHT INDEMNITY.** Contractor shall indemnify, defend and hold harmless the University against all losses, liabilities, lawsuits, claims, expenses (including attorneys' fees), costs, and judgments incurred through third party claims of infringement of any copyright, patent, trademark or other intellectual property rights.
- 5.41 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.
- 5.42 **PAYMENT TERMS.** Upon written request from Contractor for payment, the University shall, within 30 days, issue a written certification of complete or partial acceptance or rejection, with payment to follow within 30 days after certificate of acceptance. Late payment charges shall be ½ of 1% per month.
- 5.43 **PAYROLL OR EMPLOYMENT TAXES.** No federal, state, or local income, payroll or employment taxes of any kind shall be withheld or paid by the University with respect to payments to 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.

5.44 **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.

5.45 **PROTECTION OF CONFIDENTIAL DATA. Service Provider agrees to abide by the limitations on re-disclosure of personally identifiable information from education records set forth in The Family Educational Rights and Privacy Act (34 CFR § 99.33 (a)(2) and with the terms set forth below. 34 CFR 99.33 (a)(2) states that the officers, employees and agents of a party that receives education record information from the Institution may use the information, but only for the purposes for which the disclosure was made.

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

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

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

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

Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information: Service Provider shall, within one day of discovery, report to Institution any use or

disclosure of CDI no authorized by this Purchase Order/Agreement or in writing by Institution. Service Provider's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the CDI used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Service Provider has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Service Provider has taken or shall take to prevent future similar unauthorized use or disclosure. Service Provider shall provide such other information, including a written report, as reasonably requested by Institution.

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

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

- 5.46 **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.
- 5.47 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.
- 5.48 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.
- 5.49 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.

- 5.50 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.
- 5.51 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.
- 5.52 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>.
- 5.53 RIGHT TO WAIVE MINOR IRREGULARITIES.** The UNMH Evaluation Committee reserves the right to waive minor irregularities. The UNMH Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the UNMH Evaluation Committee.
- 5.54 SCHEDULE DELAYS.** If after the award, the Contractor becomes aware of possible problems that could result in delay in completion of the work on the agreed-to schedule; the Contractor must immediately notify the Buyer or the designated representative. The initial notification of the delay may be verbal with a written confirmation, giving the probable cause and effect, with recommendations for alternate action. Nothing in this paragraph will be interpreted as relieving the Contractor of its contractual obligations; however, failure to notify UNMH promptly will be basis for determining the Contractor responsibility in an otherwise excusable delay.
- 5.55 **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.
- 5.56 SITE FAMILIARITY.** The Contractor shall be responsible for thoroughly inspecting the site and work to be done prior to submission of an offer. The Contractor warrants by this submission that the site has been thoroughly inspected and the work to be done and that the offer includes all costs required to complete the work. The failure of the Contractor to be

fully informed regarding the requirements of this Request will not constitute grounds or any claim, demand for adjustment or the withdrawal of an offer after the opening.

- 5.57 SITE INSPECTION.** The site(s) referenced in this IFB are available for inspection. Arrangements may be made by contacting the individual listed on the cover sheet.
- 5.58 STATE AND LOCAL ORDINANCES.** The Contractor shall perform work under the resultant contract in strict accordance with the latest adopted version of all State and local codes, ordinances, and regulations governing the work involved. All materials and labor necessary to comply with the rules, regulations and ordinances shall be provided by the Contractor. Where the drawings and/or specifications indicate materials or construction in excess of the code requirements, the drawings and/or specifications shall govern. The Contractor shall be responsible for the final execution of the work to meet these requirements. In the event of a conflict between various codes and standards, the more stringent shall apply.
- 5.59 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.
- 5.60 **TAX SEGREGATION (CONSTRUCTION RELATED PROJECTS).** In the performance of construction related services under this solicitation, the Contractor agrees to work with and cooperate with the University's Tax Cost Segregation Consultant. The University's tax cost segregation consultant will be responsible for coordination, oversight and analysis of the effective application of New Mexico Gross Receipts Tax for each general Contractor involved with the construction projects at UNMH. Such services of the segregation consultant will be performed in accordance with New Mexico Statutes and relative regulations governing the application of New Mexico gross receipts tax to tangible personal property acquisition made by UNMH for various construction projects.
- 5.61 **TERMINATION AND DELAYS.** The University may by written notice stating the extent and effective date, terminate any resultant Purchase Order/Agreement for convenience in whole or in part, at any time. The University shall pay 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 the University, with respect to the undelivered or unaccepted portion of any resultant Purchase Order/Agreement provided compensation hereunder shall in no event exceed the total contracted price. Such amount will be limited to Contractor's actual cost, and may not include anticipated profits. The University shall not be liable for consequential damages. The University may by written notice terminate any resultant Purchase Order/Agreement in whole or in part for 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, the University 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. If after notice of termination, the University determines Contractor was not in default, or if Contractor's default is due to failure of the University, termination shall be deemed for the convenience of the University. The rights

and remedies of the University provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under a resultant Purchase Order/Agreement as used in this paragraph, the word "Contractor" includes Contractor and Contractor's sub-Contractors at any tier.

- 5.62 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.
- 5.63 TITLE AND DELIVERY.** Title to the materials and supplies passed hereunder shall pass to the University upon acceptance at the FOB point specified, subject to the right of the University to reject. For any exception to the delivery date specified, Contractor shall give prior notification and obtain approval thereto from the University's Purchasing Department. Time is of the essence and the Purchase Order/Agreement is subject to termination for failure to deliver on time.
- 5.64 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.
- 5.65 **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.
- 5.66 WARRANTY:** Please state the warranty for equipment to be supplied under this IFB. A copy of the warranty should be included in your submission.
- 5.67 **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.
- 5.68 **WORKMANSHIP/COOPERATION.** All work shall be done in a neat, workman-like manner using acceptable equipment and methods consistent with that level of care and skill ordinarily exercised by members of the profession/trade and in accordance with sound professional/trade standards and ethical practice. The Contractor will cooperate with the University and other contractors and coordinate their work involving other contractors through the University's authorized representative.

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EXHIBIT A

AUTHORIZED SIGNATURE PAGE

SMALL & SMALL DISADVANTAGED BUSINESS CERTIFICATION FORM

THE FOLLOWING CONTRACTOR 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, Contractors Claiming 5% Preference Must be Certified Prior to IFB Opening):

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

The undersigned, as an authorized representative for the Company named below, acknowledges that the Contractor has examined this IFB with its related documents and is familiar with all of the conditions surrounding the described materials, labor and/or services. Contractor 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 IFP 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 Contractors as to their business status. Please furnish the information requested below.

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

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

- (1) Which is at least 51% owned by one or more socially and economically disadvantaged individuals; or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals and
- (2) Whose management of daily operations is controlled by one or more such individuals. The Contractor 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

1 **THANK YOU FOR YOUR COOPERATION**

Signature and Title of Individual Completing Form: _____

Date _____

Please return this form to:

The University of New Mexico
Hospitals
Purchasing Department
MSC01 1240
Albuquerque, NM 87131
505-277-2036 (voice)
505-277-7774 (fax)

NOTE:

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

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

DEBARMENT/SUSPENSION STATUS

The Contractor 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 Contractor 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 Contractor 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 Contractor, 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 Contractor 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 Contractor named below.

Signature: _____ Title: _____ Date: _____

Name Typed: _____

Company: _____

Address: _____ City/State/zip: _____

EXHIBIT D

INSURANCE REQUIREMENTS

CERTIFICATES OF INSURANCE:

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

CONTRACTOR'S PUBLIC LIABILITY INSURANCE

The Contractor 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.

CONTRACTOR'S VEHICLE LIABILITY INSURANCE:

The Contractor 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

SUBCONTRACTOR'S AND SUB CONTRACTOR'S PUBLIC AND VEHICLE LIABILITY INSURANCE:

The Contractor shall either:

1. Require each subContractor or sub Contractor 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 subContractors of sub subContractors in the Contractor'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 Contractor 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 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)*

Date:

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

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

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

Exhibit F

AGREEMENT

UNMH Contract Number: XXX
IFB Number: IXX-13

Pursuant to UNMH IFB number IXX-13, and response to UNMH IFB number IXX-13, THIS AGREEMENT, made and entered into this ___ day of Month, 2013, 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/Contractor/Contractor, does hereby agree to furnish to UNMH products and services as follows:

RECITALS

- A.** UNMH wishes to obtain Transcutaneous Monitors, Parts and Consumables, as described in this Agreement, and Contractor assures UNMH that it is willing and qualified to provide the products such services.
- B.** This Agreement set 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 perform the services described in Attachment A, attached to an incorporated by reference in this agreement.

2. PROCESS FOR AWARDED INDIVIDUAL PROJECTS

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

- 2.2. Substitution.** With respect to any substitution of representative, the Contractor must provide detailed justification documenting the necessity for the substitution. 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 UNMH. Resume(s) must be submitted evidencing that the individual(s) proposed in substitution have qualifications and experience equal to or better than the individual(s) originally proposed or currently assigned.

3. NEW PRODUCTS, SERVICES, TECHNOLOGIES AND PRICE ADJUSTMENTS

- 3.1.** Any and all Contractor's new product and service additions, technological advancements or new technology within the scope of work and support to be provided, may be added under the terms and conditions of this agreement provided they meet the clinical acceptability and financial objectives of UNMH. Contractor must first inform UNMH of such additions, changes for obsolete items at least 60 days prior or at the earliest time possible to any changes taking effect.
- 3.2.** Contractor will be expected to maintain product, service and technological parity with its competitors to ensure UNMH is offered state of the art products, services and technology. Failure to maintain such parity may be considered cause for removal of the specific named products or services or termination of contract.
- 3.3.** New technologies are to be defined as a significant material or function change of an existing product and/or line of products. Product redesign or refinement does not constitute a new technology. All new innovative and revolutionary technologies need to be approved by UNMH prior to any use. Products brought into UNMH without prior approval will not be reimbursed and the Contractor representative's privileges and credentialing at UNMH may be suspended. Continued violation of this process can result in credentialing revocation. The new products, services, or new technology prices will not be enforceable without an addendum to this agreement.
- 3.4.** Pricing shall be fixed for the term of the agreement.

4. FINANCIAL REQUIREMENTS

- 4.1. Compensation.** UNMH will pay Contractor for services rendered at the rates set forth in Attachment A.
- 4.2. 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.

- 4.3. Payment.** UNMH will pay Contractor at the address set forth in Attachment A within a reasonable time after receipt of invoices from Contractor. Disputed invoices will be resolved in good faith by Contractor and UNMH in a timely manner.
- 4.4. Accounting.** Contractor will keep an accurate record of all work performed regarding this Agreement, and will make such records available to UNMH at all reasonable times.
- 4.5. Discounts:** For the early payment discount, the discount time will not begin until the materials, supplies, or services have been received and accepted and a correct invoice received by the UNMH Accounts Payable Department. If testing is required prior to acceptance, the discount time shall begin upon completion of the tests and acceptance.

5. LIABILITY, INDEMNIFICATION, AND INSURANCE

- 5.1. 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.
- 5.2. 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.
- 5.3. Insurance.** Contractor will procure and maintain, at its own expense, professional liability insurance with limits of \$1,000,000 per occurrence and \$3,000,000 in the aggregate covering the acts or omissions of any individuals who may be performing services under this Agreement.

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

7. MISCELLANEOUS.

- 7.1. 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.
- 7.2. 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.
- 7.3. Binding Effect.** This Agreement is binding upon, and inures to the benefit of, the parties to this Agreement and their respective successors and assigns.
- 7.4. 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 Attachment B.
- 7.5. 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.
- 7.6. 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.

- 7.7. Entire Agreement.** This Agreement and the terms and conditions included in the purchase order incorporates all UNMH's IFB IXX-13 and addendums thereto, (Attachment C) and Contractors response to IFB IXX-13 (Attachment D) and are made part of this agreement. This represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. All of the conditions, agreements, and understandings between the parties concerning the subject matter of this Agreement, and all such conditions, understandings, and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents, shall be valid or enforceable unless embodied in this written Agreement.
- 7.8. 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.
- 7.9. 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.
- 7.10. 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 IXX-13 and addendums thereto and Contractors response.
- 7.11. Modifications.** No changes, amendments or alterations to this Agreement will be effective unless in writing and signed by both parties.
- 7.12. 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.
- 7.13. 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.

7.14. 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.

7.15. 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
Attn: Purchasing Director
933 Bradbury Dr. Se Suite 3165
Albuquerque, New Mexico 871106

7.16. 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.

7.17. 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.

7.18. Separability. If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.

7.19. 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.

7.20. 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: _____ Florencio Gallegos
Title: _____ Purchasing Director

and

By: _____ Date: _____
Printed Name: _____ Stephen McKernan
Title: _____ CEO, VP Hospital Operations

Attachment B
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 Health Sciences Center (referred to in this Addendum as the “Covered Entity”) and Desert Mountain Medical, having an address at 4625 East Cotton Center Blvd, Suite 199, Phoenix, AZ 85249 (referred to in this Addendum as the “Business Associate”).

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

The Parties agree as follows:

1. PERMITTED USES AND DISCLOSURES OF PHI

- 1.1. **Services.** Pursuant to the Underlying Agreement, Business Associate provides services (“**Services**”) for Covered Entity that involve the receipt, use and disclosure of PHI. Except as otherwise specified herein, the Business Associate may make any and all uses of PHI necessary to perform its obligations under the Underlying Agreement. All other uses not authorized by this Addendum are prohibited. Moreover, Business Associate may disclose PHI for the purposes authorized by this Addendum only: (i) to its

employees, subcontractors and agents, in accordance with Section 2.1(h), or (ii) as otherwise permitted by or as required by the Privacy or Security Rule.

1.2. Business Activities of the Business Associate. Unless otherwise limited herein and if such use or disclosure of PHI would not violate the Privacy or Security Rules if done by the Covered Entity, the Business Associate may:

1.2.1. Use the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate provided that such uses are permitted under state and federal confidentiality laws;

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

1.2.3. Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity.

2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

2.1. Responsibilities of the Business Associate. With regard to its use and/or disclosure of PHI, the Business Associate hereby agrees to do the following:

2.1.1. Not use or further disclose PHI other than as permitted or required by this Addendum, or the Underlying Agreement;

2.1.2. Not, without the prior written consent of Covered Entity, disclose any PHI on the basis that such disclosure is required by law without notifying Covered Entity so that Covered Entity shall have an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, Business Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all alternatives for relief. Business Associate shall require reasonable assurances from persons receiving PHI in accordance with Section 1.2(b) hereof that such persons will provide Covered Entity with similar notice and opportunity to object before disclosing PHI on the basis that such disclosure is required by law;

2.1.3. Not use or further disclose PHI except as permitted or required by this Addendum;

- 2.1.4.** Ensure the confidentiality, integrity, and availability of all electronic PHI created, received, maintained, or transmitted;
- 2.1.5.** Use reasonable and appropriate safeguards to prevent the unauthorized use or disclosure of PHI other than pursuant to the terms and conditions of this Addendum, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Addendum;
- 2.1.6.** Use appropriate administrative, physical and technical safeguards consistent with the HIPAA Security Rule that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic PHI in accordance with the HIPAA Security Rule and the HITECH Standards;
- 2.1.7.** Report promptly, in writing, to Covered Entity, but in no event later than within two (2) days of which it becomes aware any use or disclosure of PHI not provided for by the Agreement, including breaches of unsecured PHI as required at 45 C.F.R. §164.410, and any Security Incident of which it becomes aware, and cooperate with the Covered Entity in any mitigation or breach reporting efforts;
- 2.1.8.** In accordance with 45 C.F.R. §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, to ensure that any agents, including subcontractors, that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information; provided, however, that Business Associate shall not disclose or provide access to PHI to any subcontractor or agent without the prior written consent of Covered Entity;
- 2.1.9.** Ensure that any agent or subcontractor to whom the Business Associate provides PHI, as well as Business Associate, not export PHI beyond the borders of the United States of America;
- 2.1.10.** Have procedures in place to mitigate, to the maximum extent practicable, any deleterious effect from any use or disclosure of PHI in violation of this Addendum or applicable law;
- 2.1.11.** Have and apply appropriate sanctions against any workforce member, subcontractor or agent who uses or discloses PHI in violation of this Addendum or applicable law;
- 2.1.12.** Within five (5) business days' request of Covered Entity, make available PHI in a designated record set, if applicable, to Covered Entity, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.524;

- 2.1.13. Within five (5) business days, make any amendment(s) to PHI, if applicable, in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. §164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.526;
- 2.1.14. As applicable, maintain and make available the information required to provide an accounting of disclosures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.528;
- 2.1.15. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);
- 2.1.16. Upon request, make its internal practices, books, and records available to the Secretary and to the Covered Entity for purposes of determining compliance with the HIPAA Rules; and
- 2.1.17. Comply with minimum necessary requirements under the HIPAA Rules.
- 2.2. Responsibilities of Covered Entity. With regard to the use and/or disclosure of PHI by the Business Associate, Covered Entity hereby agrees to do the following:
 - 2.2.1. Inform the Business Associate of any limitations in the form of notice of privacy practices that Covered Entity provides to individuals pursuant to 45 C.F.R. §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
 - 2.2.2. Inform the Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose PHI, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
 - 2.2.3. Notify the Business Associate, in writing and in a timely manner, of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. §164.522, to the extent that such restriction may impact in any manner the use and/or disclosure of PHI by the Business Associate under this Addendum, except if the Business Associate will use or disclose PHI for (and the Underlying Agreement includes provisions for) data aggregation or management and administration and legal responsibilities of the Business Associate, Covered Entity will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy and Security Rule if done by the Covered Entity.

3. REPRESENTATIONS

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

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

4. TERM AND TERMINATION

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

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

5. CONFIDENTIALITY

- 5.1. Confidentiality Obligations. In the course of performing under this Addendum, each party may receive, be exposed to or acquire the Confidential Information including but not limited to, all information, data, reports, records, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in any computer data base or computer readable form, as well as any information identified as confidential ("Confidential Information") of the other party. For purposes of this Addendum, "Confidential Information" shall not include PHI, the security of which is the subject of this Addendum and is provided for elsewhere. The parties including their employees, agents or representatives (i) shall not disclose to any third party the Confidential Information of the other party except as otherwise permitted by this Addendum or as required by law including, without limitation, the New Mexico Inspection of Public Records Act, Section 14-2-1 et seq. NMSA 1978, as amended, (ii) only permit use of such Confidential Information by employees, agents and representatives having a need to know in connection with performance under this Addendum, and (iii) advise each of their employees, agents, and representatives of their obligations to keep such Confidential Information confidential. Notwithstanding

anything to the contrary herein, each party shall be free to use, for its own business purposes, any ideas, suggestions, concepts, know-how or techniques contained in information received from each other that directly relates to the performance under this Addendum. This provision shall not apply to Confidential Information: (a) after it becomes publicly available through no fault of either party; (b) which is later publicly released by either party in writing; (c) which is lawfully obtained from third parties without restriction; or (d) which can be shown to be previously known or developed by either party independently of the other party.

6. INSURANCE, LIABILITY, AND INDEMNIFICATION

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

7. MISCELLANEOUS

- 7.1. Business Associate. For purposes of this Addendum, Business Associate shall include the named Business Associate herein. However, in the event that the Business Associate is otherwise a Covered Entity under the Privacy or Security Rule, that entity may appropriately designate a health care component of the entity, pursuant to 45 C.F.R. §164.504(a), as the Business Associate for purposes of this Addendum.
- 7.2. Survival. The respective rights and obligations of Business Associate and Covered Entity under this Addendum, shall survive termination of this Addendum indefinitely.
- 7.3. Amendments; Waiver. This Addendum may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events. The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- 7.4. Interpretation. Any ambiguity in this Addendum shall be interpreted to permit compliance with the HIPAA Rules.
- 7.5. Changes in Law. The parties recognize that this Addendum is at all times subject to applicable state, local, and federal laws. The parties further recognize that this Addendum may become subject to amendments in such laws and regulations and to new legislation. Any provisions of law that invalidate, or are otherwise inconsistent with, the material terms and conditions of this Addendum, or that would cause one or both of the parties hereto to be in violation of law(s), shall be deemed to have superseded the terms of this Addendum and, in such event, the parties agree to utilize their best efforts to modify the terms and conditions of this Addendum to be consistent with the requirements of such law(s). In order to effectuate the purposes and intent of this Addendum the parties will set forth an executed written agreement within thirty (30) days of receipt of notice from one party to the other party setting forth the proposed changes, then either party may, by giving the other an additional sixty (60) days written notice, terminate this Addendum, unless this Addendum would terminate earlier by its terms. In the event amendments or changes in existing law(s), general instructions, or new legislation, rules, regulations, or decisional law preclude or substantially preclude a contractual relationship between the parties similar to that expressed in this Addendum, then, under such circumstances, where renegotiation of the applicable terms of this Addendum would be futile, either party may provide the other at least sixty (60) days advance written notice of termination of this Addendum, unless this Addendum would terminate earlier by its terms. Upon termination of this Addendum as hereinabove provided, neither party shall have any further obligation hereunder except for (i) obligations occurring prior to the date of termination, and (ii) obligations, promises or covenants contained herein which are expressly made and intended to extend beyond the term of this Addendum.
- 7.6. Construction of Terms. The terms of this Addendum shall be construed in light of any applicable interpretation or guidance on HIPAA and/or the Privacy Rule issued by the

U.S. Department of Health and Human Services of the Office for Civil Rights from time to time.

- 7.7. Contradictory Terms. Any provision of the Underlying Agreement that is directly contradictory to one or more terms of this Addendum (“**Contradictory Term**”) shall be superseded by the terms of this Addendum as of the Effective Date of this Addendum to the extent and only to the extent of the contradiction, only for the purpose of the Covered Entity’s compliance with the Privacy Rule and only to the extent that it is reasonably impossible to comply with both the Contradictory Term and the terms of this Addendum.
8. **DEFINITIONS**. The following terms used in this Addendum shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information (“**PHI**”), Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use. Specific definitions include:
- 8.1. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. §160.103, and in reference to the party to this Addendum.
- 8.2. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “Covered Entity” at 45 C.F.R. §160.103, and in reference to the party to this Addendum.
- 8.3. Disclosure. “Disclosure” shall mean the release, transfer, provision of access to, or divulging in any manner of information outside the entity holding the information.
- 8.4. Electronic Protected Health Information. “Electronic Protected Health Information” means Protected Health Information that is created, received, maintained, or transmitted by Electronic Media as defined at 45 C.F.R. §160.103.
- 8.5. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160, 162 and 164, and as amended.
- 8.6. HITECH Standards. “HITECH Standards” shall mean the privacy, security, and Breach notification provisions applicable to a Business Associate under Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH”) Act, which is Title XIII of the American Recover and Reinvestment Act of 2009 (Public Law 111-5), and any regulations promulgated.
- 8.7. Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subpart A and Subpart E, as amended.
- 8.8. Protected Health Information or “PHI”. “Protected Health Information or PHI” shall mean any information, transmitted or recorded in any form or medium; (i) that relates

to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe that information can be used to identify the individual, and shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations and agency guidance. Protected health information excludes individually identifiable health information: (i) in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; (ii) in records described at 20 U.S.C. 1232g(a)(4)(B)(iv); (iii) in employment records held by a covered entity in its role as employer; and (iv) regarding a person who has been deceased for more than 50 years.

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

Exhibit G

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 Contractor, 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 Contractor 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 Contractor named below.

Signature: _____ Title: _____ Date: _____

Name Typed: _____ Company: _____

Address: _____ City/State/Zip: _____

Exhibit H – Cost Response Form

Reference Attached Titled “Exhibit H” under IFB I44-14

<http://hospitals.unm.edu/about/bids.shtml>