

**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: B73-16**

**Bid Due Date/Time: February 8, 2016 @ 2:00 pm MDT**

**TITLE: Software for Wound Management**

The University of New Mexico Hospital (“UNMH/Hospital”) invites you (“Offeror/Seller/Vendor/Contractor”) to submit an offer for products and/or services set forth in this Invitation for Bid (IFB). Please read carefully the instructions, specifications, and The UNMH standard Terms and Conditions. Failure to comply therewith may result in an offer being classified as unresponsive and disqualified. **Responses must be submitted no later than the proposal deadline date of February 8, 2016 @ 2:00 pm.** New Mexico civil and criminal law prohibit bribes, gratuities and kickbacks.

**Point of contact for inquiries concerning this IFB:**

Name: Tarah Santana/ Jennifer Sanchez  
Title: Procurement Specialist  
Telephone: 505-272-9861  
E-mail: [tasantana@salud.unm.edu](mailto:tasantana@salud.unm.edu)/ [jedsanchez@salud.unm.edu](mailto:jedsanchez@salud.unm.edu)

**REQUIREMENTS**

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

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

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#### **FREIGHT AND PAYMENT**

Freight Terms: FOB Destination

Payment Terms: NET 30

#### **CANCELLATION**

UNMHH 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.

## SECTION I. SCOPE OF WORK

The University of New Mexico Hospital is seeking bidders to supply pricing for a software application for wound care management. Chronic wound care requires sophisticated software to successfully integrate clinical, administrative, financial, and regulatory requirements that are specific to the management of acute and chronic wounds. Further, UNMH seeks bidders who can meet the following requirements:

- Clinical Solution
  - Customizable wound assessment and care planning documentation
  - Risk assessment tools
  - Patient education and goals documentation, with ability for UNMH to configure
  - Medication reconciliation
  - Order sets
  - Ability to view wound progress, procedures, and treatment over a specified date range
  - Medical supply order status
  - Clinical Documentation Interface with Cerner EHR
  - Order/Results Interface with Cerner EHR
  - Wound image capture and storage integrated with clinical documentation
  - Calibrated imaging module to enhance image documentation consistency
  - Therapy documentation
  - Physician documentation, including integrated dictation capability
  - Nursing documentation
  - Care management/social work documentation
- Administrative & Financial Solution
  - ADT Interface with Cerner EHR/PM
  - Scheduling Interface with Cerner EHR/PM
  - Billing Interface with Cerner EHR/PM
  - Operational reporting capability
  - Clinical and operational benchmarking report capability is desired
- Regulatory Solution
  - Process for Physician Plan of Care Certification (CMS patients)
  - Product must be EHR-Certified by ONC-ATCB
  - Product must meet all HIPAA/HITECH requirements for the security of e-PHI

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 contracts."

**1.1. Forms and Exhibits.** The IFB Submission Forms and Exhibits and any other documents requiring execution by the Offeror, shall be completed and signed by a duly authorized signing representative of the Offeror. 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.

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

- 1.2.1. “must” and “shall” indicate that the requirement is mandatory, subject to provisions of this IFB; and
- 1.2.2. “should”, “could” and “may” indicate that the requirement is discretionary.

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

- 1.3.1. Only the Bid Administrator is authorized by UNMH to amend or waive the requirements of the IFB pursuant to the terms of this IFB;
- 1.3.2. Offerors should not contact any of the staff at UNMH, (except for the Bid Administrator) in regard to this IFB, unless instructed to do so in writing by the Bid Administrator;
- 1.3.3. Under no circumstances shall the Offeror 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
- 1.3.4. UNMH, their employees, nor their agents shall be responsible for any information or instructions provided to the Offeror, with the exception of information or instructions provided in an addendum by the Bid Administrator.

**1.4. Information.**

- 1.4.1. **Offeror to Review.** The Offeror must carefully review this IFB and ensure that the Offeror has no reason to believe that there are any uncertainties, inconsistencies, errors, omissions, or ambiguities in any part of this IFB. Each Offeror is responsible for conducting its own investigations and due diligence necessary for the preparation of its Bid response.
- 1.4.2. **Offeror to Notify.** If the Offeror discovers any uncertainty, inconsistency, error, omission or ambiguity in this IFB, the Offeror must notify the Bid Administrator in writing prior to submitting the Offeror’s Bid response.
- 1.4.3. **Offerors shall not:**
  - 1.4.3.1. Claim after submission of a Bid response that there was any misunderstanding or that any of the conditions set out in Section 1.5. Offeror to Review were present with respect to this IFB; or
  - 1.4.3.2. Hold any staff of UNMH liable for any uncertainty, inconsistency, error, omission, or ambiguity in any part of this IFB.

**1.5. Clarification and Questions.**

- 1.5.1. **Submission.** Offerors may request clarification of this IFB by:
  - 1.5.1.1. Submitting all requests for clarification by email to the Bid Administrator at [tasantana@unm.edu](mailto:tasantana@unm.edu) or as otherwise directed by the Bid Administrator;
  - 1.5.1.2. Including the Offeror’s address, telephone number, and email address; and
  - 1.5.1.3. If the question pertains to a specific section of this IFB, reference should be made to the specific section number and page; and

**1.5.1.4.** Submitting all requests for clarification no later than **2:00 PM MDT February 3, 2016.**

**1.5.2. Questions and Answers.** UNMH will provide Offerors 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 Offeror's questions, the Bid Administrator will include in all addenda the questions asked but will not attribute the questions to any Offeror. Notwithstanding the foregoing, the Bid Administrator may in its sole discretion answer similar questions from various Offerors only once, edit the questions for clarity, and elect not to respond to questions that are either inappropriate or not comprehensible.

**1.6. Issued Addenda.** Each Offeror 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.

**1.7. Amendments to the IFB.** UNMH shall have the right to amend or supplement this IFB in writing prior to the IFB closing deadline. No other statement, whether written, oral or inferred, will amend this IFB. The Offerors are responsible to ensure they received all Addenda, if any. The Addenda shall be binding on each Offeror.

**1.8. Clarification of Offeror's Bid response.**

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

**1.8.2.** Any clarifications sought shall not be an opportunity to either correct errors or to change the Offeror'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 Offeror in response to a request for clarification from UNMH shall be considered part of the Offeror's Bid response.

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

**1.9.1.** Verify any Offeror statement or claim by whatever means the UNMH deems appropriate, including contacting persons in addition to those offered as references, and to reject any Offeror statement or claim, if the statement or claim or its Bid response is patently unwarranted or is questionable; or

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

**1.9.3.** Ensure the Offeror shall co-operate in the verification of information and is deemed to consent to UNMH verifying such information.

**1.10. Offeror must meet or exceed the requirements listed below.**

- 1.10.1.** It is the Offerors responsibility to make sure that all products and services offered are adequately described.
- 1.10.2.** Offerors must have the ability to work within the security, regulatory and internal policy requirement needs of various UNMH facilities.
- 1.10.3.** Offerors 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. Offerors may be asked to provide certificates of authorization or verifications of such facts.
- 1.10.4.** Offeror 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.
- 1.10.5.** Offeror 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. Offeror further guarantees that if the items furnished hereunder are to be installed by the Offeror, such items will function properly with installation.
- 1.10.6.** Offerors guarantees that all federal, state and local applicable laws have been complied with relation to construction, packaging, labeling and registration.
- 1.10.7.** Offeror should have an extensive knowledge of the company's product roadmap, and understanding of industry best products and practices.
- 1.10.8.** Must perform all work compliant with applicable industry standards and recommended practices.

**1.11. Manuals and Documentation.** The following manuals/material shall be provided at no charge and shipped with the equipment, unless otherwise specified in this IFB

- 1.11.1.** 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.)

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## **SECTION II. ADDITIONAL INSTRUCTIONS TO OFFERORS**

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

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

**2.1.2** 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 proposals

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

**2.1.4** 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.

**2.1.5** Points will be awarded based on Offerors ability to provide a copy of a current Resident Veterans Certificate (Exhibit A)

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

**2.1.7** RFP's are to be evaluated on preference as follows:

**2.1.7.1** In addition to the total points on an RFP, 10% must be added for preference award. For example, an RFP has a total value of 1000 points. Five proposals 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.

**2.1.8** The attached "Resident Veteran Preference Certification" form (Exhibit A) must filled out, signed and included the offeror's RFP from any business wishing to receive a resident veteran's preference.

**2.2 Authorized Signature Page.** Review and submit the Authorized Signature Page attached hereto as Exhibit B.

**2.3 Small And Disadvantaged Business Certification Form.** Review and submit the Small and Small Disadvantaged Business Certification Form attached hereto as Exhibit C.

**2.4 Conflict Of Interest Certification Form.** Review and submit Conflict of Interest Certification Form attached hereto as Exhibit D.

**2.5 Insurance Requirments.** The Offeror is required to carry insurance, meeting the requirements in the Section labeled "Insurance Requirements" or as noted in the specifications (Exhibit E). Offeror must submit proof of insurance in the form of a "Certificate of Insurance" with their response and prior to commencing work under the resulting contract. Offeror's insurance shall remain in effect for the entire term of the contract and must be extended to coincide with any future contract extensions. This Request for Proposal Number must appear on the Certificate of Insurance.

- 2.6 Sample Agreement:** The successful respondent will 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. **You are not required to edit at this time. The successful Offeror(s) may be given the opportunity to negotiate with UNMH the provisions in this sample agreement.**
- 2.7 Information Security Plan.** Offeror(s) shall not install any systems software and hardware, applications, databases, information or etc. on UNMH's computing devices-assets including export/import files, custom files or etc. without prior approval from UNMH's IT division. If it is determined by UNMH that an Information Security Plan is needed, the successful Awardee will be required to complete the UNMHs Information Security Plan Information hereto attached as Exhibit G and submit to UNMH's IT department for approval. Failure to complete form upon UNMH's request or failing to receive IT approval may result in Offeror(s) being considered as non-responsive. UNMH may not fully execute an agreement without the IT's approval of the security plan, if applicable. **You are not required to complete at this time. The successful Offeror(s) will be required to complete prior to award of contract.**
- 2.8 Taxes.** The University is exempt from Federal Excise Taxes and from New Mexico Gross Receipts Taxes on materials. Services are not exempt. Taxes on services should be included as a separate line item and not included in the base price offer. Applicable taxes are excluded from the RFP evaluation. A non-taxable transaction certificate is available upon request by contractor.
- 2.9 Certification And Disclosure Regarding Payments To Influence Certain Federal Transactions.** Review and submit the Certification And Disclosure Regarding Payments To Influence Certain Federal Transactions (April 1991) form attached hereto as Exhibit H.
- 2.10 Resident Business, Resident Contractor And Resident Veteran Preference Certification.** To receive a resident business preference pursuant to Section 13-1-21 NMSA 1978 or a resident contractor preference pursuant to 13-4-2 NMSA 1978, a business or contractor is required to submit with its bid or proposal a copy of a valid resident contractor certificate issued by the New Mexico Taxation and Revenue Department.
- 2.11 Period Of Contract.** The term of the resultant Price Agreement(s) arising from this proposal may be for an initial term of three (3) years with the option to renew as provided for in NMSA 13-1-150 (Multi-Term Contract).
- 2.12 Quantities.** UNMH may purchase all, some or none of the elements described in this proposal or Offerors responses. In addition, actual quantities may fluctuate up or down based on UNMH needs. The successful bidder will be required to fill all orders placed regardless of quantities ordered.
- 2.13 Agents/Subcontractors.** The Offeror shall indicate whether the Offeror intends to use agents or subcontractors to perform the services outlined in the Agreement and shall provide details on who they are and the service(s) the agent/subcontractor shall perform. The successful Offeror shall remain primarily responsible for the performance of the Agreement notwithstanding its use of agents or subcontractors as approved by the Hospital. If the Offeror is not using agents or subcontractors on this RFP, the Offeror should respond by stating not applicable.



### 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 Offerors' 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 Offeror (Contractor) provisions in addition to those stipulated in this IFB. The contents of this IFB, as revised and/or supplemented, and the successful Offerors' proposal may be incorporated into the Contract. Should an Offeror object to any of the UNMH Standard Terms and Conditions the Offeror must propose specific alternative language that would be acceptable to UNMH. General references to the Offerors' terms and conditions or attempts at complete substitutions are not acceptable to UNMH and will result in disqualification of the Offerors' proposal. Offerors' must provide a brief statement of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

Any proposed changes to the terms and conditions attached to this IFB must be stated in Offerors' proposal in a section marked "TERMS AND CONDITIONS". Offerors are cautioned that any changes to the terms and conditions that are NOT stated in the 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 Offeror and shall not be deemed an opportunity to amend the Offeror's proposal.

- 3.1 Acceptance and Rejection.** If prior to final acceptance, any goods or services are found to be defective or not as specified, or if UNMH is entitled to revoke acceptance of them the Hospital may reject or revoke acceptance, require Seller to correct without charge within a reasonable time, or require delivery at an equitable reduction in price, at the Hospital's option. Seller shall reimburse UNMH for all incidental and consequential costs related to unaccepted goods or services. Notwithstanding final acceptance and payment, Seller shall be liable for latent defects, fraud, or such gross mistakes as amount to fraud. Acceptance of goods or services shall not waive the right to claim damages for breach of contract.
- 3.2 Appropriation.** The terms of the contract are contingent upon sufficient appropriations and authorization being made by the Regents of the University of New Mexico. If sufficient appropriations and authorization are not made by the Regents of the University of New Mexico, the contract shall, notwithstanding any other provisions of the contract, terminate immediately upon the Offeror's receipt of written notice of termination from UNMH.
- 3.3 Assignment.** Any resultant Purchase Order/Agreement may be assignable by UNMH. Except as to any payment due hereunder, any resultant Purchase Order/Agreement shall not be assignable by Seller without written approval from the Hospital.
- 3.4 Changes.** UNMH may make changes within the general scope of any resultant Purchase Order/Agreement by giving notice to Seller and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of a resultant Purchase

Order/Agreement, an appropriate equitable adjustment shall be made. No change by Seller shall be recognized without written approval of UNMH. Any claim of Seller for an adjustment under this paragraph must be made in writing within thirty (30) days from the date of receipt by Seller of notification of such change. Nothing in this paragraph shall excuse Seller from proceeding with the performance of the Purchase Order/Agreement as changed hereunder.

- 3.5 Clean Up.** It is the Seller's responsibility that the job site be kept clean and free of rubble while work is performed under this contract. Upon completion of work, all areas shall be cleared of all contractors' equipment excess materials and rubble.
- 3.6 Conflict of Interest.** Seller shall disclose to the UNMH Purchasing Department the name(s) of any University employee or member of the Board of Regents who has a direct or indirect financial interest in the Seller or in the proposed transaction. A University employee (or Regent) has a direct or indirect financial interest in the Seller or in the proposed transaction if presently or in the preceding twelve (12) months the employee/Regent or a close relative has an ownership interest in the Seller (other than as owner of less than 1% of the stock of a publicly traded corporation); works for the Seller, is a partner, officer, director, trustee or consultant to the Seller, has received grant, travel, honoraria or other similar support from the Seller, or has a right to receive royalties from the Seller. Seller shall file a Conflict of interest Disclosure form with the UNMH Purchasing Department.
- 3.7 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
- 3.8 Damage and Security of UNMH Property.** Offeror shall be responsible for all damage to persons or property that occurs as a result of vendor's fault or negligence, or that of any of his employees, agents and/or subcontractors. The vendor 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 vendor's operations shall be repaired and/or restored to their original condition at the vendor's expense, including but not limited to cleaning and painting.
- 3.9 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.
- 3.10 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. Procurement Specialist will not disclose or make public any pages of a proposal on which the Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:
- Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret in accordance with the 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 Offeror has made a written request for confidentiality, UNMH shall examine the Offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

**3.11 Discounts.** If prompt payment discounts apply to any resultant Purchase Order/Agreement, any discount time will not begin until the materials, supplies, or services have been received and accepted and a correct invoice has been received by the UNMH Accounts Payable Department. In the event testing is required prior to acceptance, the discount time shall begin upon completion of the tests and acceptance.

**3.12 ECCN Reporting Requirement.** Seller acknowledges that providing goods and services under any resultant Purchase Order/Agreement is subject to compliance with all applicable United States laws, regulations, or orders, including those that may relate to the export of technical data or equipment, such as International Traffic in Arms Regulations ("ITAR") and/or Export Administration Act/Regulations ("EAR"). Seller agrees to comply with all such laws, regulations and orders as currently in effect or hereafter amended. Seller shall not disclose any export-controlled information, or provide any export-controlled equipment or materials to UNMH without prior written notice. In the event that UNMH agrees to receive such export-controlled information, equipment or materials, Seller shall: (i) include the Export Control Classification Number (ECCN) on the packing documentation, and, (ii) send an electronic copy of the ECCN number and packing documentation to: [ECCN@UNMH.EDU](mailto:ECCN@UNMH.EDU)

**3.13 Eligibility for Participation in Government Programs.** Each party represents that neither it nor any of its management or any other employees or independent contractors who will have any involvement in the services or products supplied under a resultant Purchase Order/Agreement, have been excluded from participation in any government healthcare program, debarred from or under any other federal program (including but not limited to debarment under the Generic Drug Enforcement Act), or convicted of any offense defined in 42 U.S.C. Section 1320a-7, and that each party, its employees and independent contractors are not otherwise ineligible for participation in federal healthcare programs. Further, each party represents that it is not aware of any such pending action(s) (including criminal actions) against each party or its employees or independent contractors. Each party shall notify the other immediately upon becoming aware of any pending or final action in any of these areas.

**3.14 Equal Opportunity and Affirmative Action.** In performing or providing the services and goods required under a resultant Purchase Order/Agreement, each party shall be an equal opportunity employer and shall conform to all affirmative action and other applicable requirements; accordingly, each party shall neither discriminate nor permit discrimination in its operations or employment practices against any person or group of persons on the basis of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or medical condition, sexual preference, prior military involvement or any other manner prohibited by law.

**3.15 Equipment Required.** The Offeror shall be responsible for supplying and maintaining all equipment and materials necessary to complete the work to be performed under this IFB except as otherwise noted in the specifications.

- 3.16 Employee Certification.** The Offeror and all Offerors' 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 Offeror shall use only fully qualified and approved service technicians to perform inspections, service and/or repairs under this request.
- 3.17 F.O.B.** Unless stated otherwise, the price for goods is F.O.B. the place of destination, and the place of destination is the designated UNMH address.
- 3.18 Foreign Payments.** Payment for services performed by a foreign individual or a foreign corporation while in the US may be subject to 30% tax withholding per IRS Publication 515.
- 3.19 Governing Law.** All resultant Purchase Order/Agreements shall be construed in accordance with the laws of the State of New Mexico as they pertain to Purchase Order/Agreements executed and fully to be performed within New Mexico, or federal law where applicable, but in either case excluding that body of law relating to choice of law.
- 3.20 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 ("UNMH") 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 Hospital, implements appropriate security measures to protect confidential Customer Information of the Hospital.

Service Provider shall not use or disclose covered data and information received from or created on behalf of the UNMH except as permitted or required by this Purchase Order/Agreement, as required by law, or as otherwise authorized in writing by the UNMH. Upon becoming aware of a security breach in which Customer/Patient 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 UNMH any security incident immediately upon being aware of such a breach and take such corrective steps/action to remedy the breach as requested by UNMH and required by law.

Upon termination, cancellation, expiration or other conclusion of this Purchase Order/Agreement, Service Provider shall return to UNMH covered Customer/Patient Information and data unless the UNMH requests in writing that such Customer Information and data be destroyed. Service Provider shall complete such return or destruction not less than 30 days after the conclusion of this Purchase Order/Agreement. Within such 30 day period, Service Provider shall certify in writing to UNMH 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 UNMH has obtained from a customer in the process of offering a financial product or service including offering student aid and loans to students as defined in 12 CFR 225.28. Any and all Customer/Patient Information provided by UNMH 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 “UNMH.”

**3.21 Health Insurance Portability and Accountability Act (HIPAA).** The parties agree to enter into a mutually acceptable amendment to a resultant Purchase Order/Agreement as necessary to comply with applicable federal laws and regulations governing the use and/or disclosure of individually identifiable health information. Such amendment shall be entered into on or before the date by which hospitals are required to be in compliance with the privacy regulations promulgated under the Health Insurance Portability and Accountability Act of 1996.

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

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

- 3.23 Independent Business.** Neither Seller nor any of its agents shall be treated as an employee of UNMH for any purpose whatsoever. Seller declares that Seller is engaged in an independent business and has complied with all federal, state and local laws regarding business permits and licenses of any kind that may be required to carry out the said business and the tasks to be performed under any resultant Purchase Order/Agreement. Seller further declares that it is engaged in the same or similar activities for other clients and that UNMH is not Seller's sole or only client or customer.
- 3.24 Inspection.** UNMH may inspect, at any reasonable time, any part of Seller's plant or place of business, which is related to performance of any resultant Purchase Order/Agreement. Final Inspection will be made at the destination upon completion of delivery of goods and services. Acceptance of delivery shall not be considered acceptance of the goods and/or services furnished. Final inspection shall include any testing or inspection procedures required by the specifications.
- 3.25 Inspections, Seller.** The Seller shall be responsible for securing at Seller's expense, all required inspections to comply with Federal, State and/or Local regulations governing the work performed under this IFB
- 3.26 Instrumentalities.** Seller shall supply all equipment, tools, materials and supplies required for the performance of the designated tasks or requirements set forth in any resultant Purchase Order/Agreement or its attachments.
- 3.27 Insurance Requirements.** The Offeror is required to carry insurance, meeting the requirements in the Section labeled "Insurance Requirements" or as noted in the specifications. Offeror must submit proof of insurance in the form of a "Certificate of Insurance" to the appropriate Buyer prior to commencing work under this contract. Offeror's insurance shall remain in effect for the entire term of the contract and must be extended to coincide with any future contract extensions. This Invitation for Bid Number must appear on the Certificate of Insurance.
- 3.28 Merger.** The contract shall incorporate all the agreements, covenants, and understandings between the parties thereto concerning the subject matter thereof. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the contract.
- 3.29 New Materials Required.** All materials and equipment delivered and/or installed under this IFB shall be new and be the standard products of a manufacturer regularly engaged in the production of the materials and equipment. Where two or more units of the same class of materials and/or equipment are required, the units shall be the products of the same manufacturer. Any manufacturer's data supplied with the item(s) shall be submitted to UNMH's authorized representative.
- 3.30 Non-Performance Penalties.** The Offeror agrees to pay UNMH an amount equal to \$500.00 per day for each calendar day past the completion date specified in this contract that completion or delivery is delayed. UNMH may subtract this amount from any monies due to the Offeror.
- 3.31 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  
933 Bradbury Dr. SE, Suite 3165  
Albuquerque, NM 87106

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

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

*Inventions* - For the consideration payable under a resultant Purchase Order/Agreement, the Seller agrees to report any invention arising out of the work required by the Purchase Order/Agreement to UNMH. UNMH shall have sole right and authority to seek statutory patent protection under United States and foreign patent laws and to enjoy the benefits of ownership of the invention, whether or not the invention was required of the Seller or member of the consulting team as part of the performance of work. The Seller hereby assigns all right, title and interest in and to inventions made in the course of the work to UNMH and agrees to execute and deliver all documents and do any and all things necessary and proper to effect such assignment. Seller shall require all members

of the Consulting Team to agree in writing that they will execute and deliver all documents and do any and all things necessary and proper to effect assignment of inventions arising out of the work required by the Purchase Order/Agreement to UNMH.

*Survival of Provision* - This provision shall survive expiration and termination of the Purchase Order/Agreement.

- 3.36 Packaging.** Packaging of materials under this contract shall meet the minimum specifications indicated under Packaging Specifications. If there are no packaging specifications listed, the packaging shall be suitable to insure that the materials are received in an undamaged condition. All material returns will be at the Offeror's expense.
- 3.37 Patent and Copyright Indemnity.** Seller shall indemnify, defend and hold harmless the UNMH against all losses, liabilities, lawsuits, claims, expenses (including attorneys' fees), costs, and judgments incurred through third party claims of infringement of any copyright, patent, trademark or other intellectual property rights.
- 3.38 Payments for Purchasing.** No warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction, or items of tangible personal property unless the Central Purchasing Office or the UNMH using agency certifies that the services, construction or items of tangible personal property have been received and meet specifications.
- 3.39 Payment Terms.** Upon written request from Seller for payment, UNMH shall, within 30 days, issue a written certification of complete or partial acceptance or rejection, with payment to follow within 30 days after certificate of acceptance. Late payment charges shall be ½ of 1% per month.
- 3.40 Payroll or Employment Taxes.** No federal, state, or local income, payroll or employment taxes of any kind shall be withheld or paid by UNMH with respect to payments to Seller or on behalf of Seller its agents or employees. Seller shall withhold and pay any such taxes on behalf of its employees as required by law. The payroll or employment taxes that are the subject to this paragraph include but are not limited to FICA, FUTA, federal personal income tax, state personal income tax, state disability insurance tax, and state unemployment insurance tax. If Seller is not a corporation, Seller further understands that Seller may be liable for self-employment (Social Security) tax, to be paid by Seller according to law.
- 3.41 Penalties.** The Procurement Code, Section 13-1-28 at seq. NMSA 1978, as amended imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose criminal penalties for bribes, gratuities and kickbacks.
- 3.42 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 except as permitted or required by the Purchase Order/Agreement, as required by law, or as otherwise authorized in writing by Institution. Service Provider agrees not to use CDI for any purpose other than the purpose for which the disclosure was made. If the Family Policy Compliance Office of the U.S. Department of Education determines that the Service Provider improperly disclosed personally identifiable information obtained from Institution's education records, Institution may not allow the Service Provider access to education records for at least five years.

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

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

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

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

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

**3.43 Purchase Order/Agreement.** Any resultant Purchase Order/Agreement shall be the sole and entire Purchase Order/Agreement between the parties; any documents incorporated into the Purchase Order/Agreement are listed explicitly on the front side of the Purchase Order/Agreement, or are incorporated by implication by the terms of any resultant Purchase Order/Agreement. Any terms inconsistent with or in addition to any resultant Purchase Order/Agreement proposed by Seller are deemed rejected unless agreed to in writing by an appropriate UNMH official.

- 3.44 Relationship of Parties.** The parties and their respective employees are at all times acting as independent Offerors. Offeror will not be considered an employee of UNMH for any purpose, including, but not limited to, workers' compensation, insurance, bonding or any other benefits afforded to employees of UNMH. Neither party has any express or implied authority to assume or create any obligation or responsibility on behalf of or in the name of the other party.
- 3.45 Release UNMH Regents.** The Contractor shall, upon final payment of the amount due under the contract release Regents of the University of New Mexico for UNM 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 for UNM Hospitals or the State of New Mexico unless the Contractor has express, written authority to do so, and then only within the strict limits of that authority.
- 3.46 Removal of Offeror's Employee(s).** UNMH may request that Offeror's employee(s) be removed from the work under the contract for cause. UNMH may immediately terminate, with written notice to Offeror, the services of any Contractor employee, if the University of New Mexico's management believes in good faith that Offeror's employee is unable to perform the services with reasonable skill. Offeror's agreement may also be terminated if Offeror's liability insurance coverage is modified or terminated.
- 3.47 Request as Agreement.** This Invitation for Bid governs any offer and the selection process. Submission of an offer in response to this Invitation for Bid constitutes acceptance of all this Request's terms and conditions. The terms and conditions of the Request may not be modified, altered, nor amended in any way by any Offer. Any such modification, alteration, or amendment shall be considered to be a request for modification, alteration or amendment, which request shall be deemed denied unless specifically accepted in writing by UNMH. Upon issuance of a Purchase Order, this Request shall be superseded, unless it is referenced on the front page of the Purchase Order, in which case it shall be deemed to be fully incorporated and integrated into the resultant contract.
- 3.48 Retention of Records.** Contractor will maintain detailed records indicating the date, time and nature of services provided under the Agreement for a period of at least five years after termination of the Agreement, and will allow access for inspection by the University of New Mexico Hospitals, the Secretary for Health and Human Services, the Comptroller General and the Inspector General to such records for the purpose of verifying costs associated with provisions of services under the Agreement.
- 3.49 Right to Protest.** The solicitation of the award of an IFB may be protested as per the UNMH Purchasing Regulation 11, Protest Procedures, which may be found at the following UNMH web site: <http://www.UNMH.edu/~purch/reg11.pdf>.
- 3.50 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.

- 3.51 Schedule Delays.** If after the award, the Seller becomes aware of possible problems that could result in delay in completion of the work on the agreed-to schedule; the Seller must immediately notify the Buyer or the designated representative. The initial notification of the delay may be verbal with a written confirmation, giving the probable cause and effect, with recommendations for alternate action. Nothing in this paragraph will be interpreted as relieving the Seller of its contractual obligations; however, failure to notify UNMH promptly will be basis for determining the Seller responsibility in an otherwise excusable delay.
- 3.52 Seller's Employees and Agents.** Seller shall have complete charge and responsibility for persons employed by Seller and engaged in the performance of the specified work. The Seller, its agents and employees state that they are independent contractors and not employees of the University. Seller, its agents and employees shall not accrue leave, retirement, insurance, bonding or any other benefit afforded to employees of the University as a result of any resultant Purchase Order/Agreement.
- 3.53 Site Familiarity.** The Seller shall be responsible for thoroughly inspecting the site and work to be done prior to submission of an offer. The Seller warrants by this submission that the site has been thoroughly inspected and the work to be done and that the offer includes all costs required to complete the work. The failure of the Seller to be fully informed regarding the requirements of this Request will not constitute grounds or any claim, demand for adjustment or the withdrawal of an offer after the opening.
- 3.54 State and Local Ordinances.** The Offeror shall perform work under this contract in strict accordance with the latest adopted version of all State and local codes, ordinances, and regulations governing the work involved.
- 3.55 Termination and Delays.** UNMH may provide by written notice, stating the extent and effective date terminate any resultant Purchase Order/Agreement for convenience in whole or in part, at any time. UNMH shall pay Seller as full compensation for performance until such termination: (1) the unit or pro rata order price for the delivered and accepted portion: and (2) incidental damages, not otherwise recoverable from other sources by Seller, as approved by UNMH, with respect to the undelivered or unaccepted portion of any resultant Purchase Order/Agreement provided compensation hereunder shall in no event exceed the total contracted price. Such amount will be limited to Seller's actual cost, and may not include anticipated profits. UNMH shall not be liable for consequential damages. UNMH may, by written notice terminate any resultant Purchase Order/Agreement in whole or in part for Seller's default if Seller refuses or fails to comply with the provisions of a resultant Purchase Order/Agreement or fails to make progress so as to endanger performance and does not cure such failure within a reasonable period of time. In such event, UNMH may otherwise secure the materials, supplies or services ordered, and Seller shall be liable for damages suffered by UNMH thereby, including incidental and consequential damages. If after notice of termination, UNMH determines Seller was not in default, or if Seller's default is due to failure of UNMH, termination shall be deemed for the convenience of UNMH. The rights and remedies of UNMH provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under a resultant Purchase Order/Agreement as used in this paragraph, the word "Seller" includes Seller and Seller's sub-Contractors at any tier.

- 3.56 Third Parties.** Nothing in this Agreement, express or implied, is intended to confer any rights, remedies, claims, or interests upon a person not a party to this Agreement.
- 3.57 Title and Delivery.** Title to the materials and supplies passed hereunder shall pass to UNMH upon acceptance at the FOB point specified, subject to the right of UNMH to reject. For any exception to the delivery date specified, Seller shall give prior notification and obtain approval thereto from UNMH Purchasing Department. Time is of the essence and the Purchase Order/Agreement is subject to termination for failure to deliver on time.
- 3.58 Waiver.** The Contract shall contain a provision that states that no waiver of any breach of the Contract or any terms or conditions thereof shall be held to be a waiver of any other or subsequent breach; nor shall any waiver be valid, alleged or binding unless the same shall be in writing and signed by the party to have granted the waiver.
- 3.59 Warranties.** Seller warrants the goods and/or services furnished to be exactly as specified in any resultant Purchase Order/Agreement, free from defects in Seller's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by Seller. All applicable UCC warranties express and implied are incorporated herein.
- 3.60 Workers Compensation.** No workers compensation insurance has been or will be obtained by UNMH on account of Seller or its employees or agents. Seller shall comply with the workers compensation laws with respect to Seller and Seller's employees and agents.
- 3.61 Workmanship/Cooperation.** All work shall be done in a neat, workman-like manner using acceptable equipment and methods consistent with that level of care and skill ordinarily exercised by members of the profession/trade and in accordance with sound professional/trade standards and ethical practice. The Seller will cooperate with UNMH and other contractors and coordinate their work involving other contractors through UNMH authorized representative.

*(Blank to next page)*

**EXHIBIT A**

**RESIDENT VETERANS PREFERENCE CERTIFICATION**

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

Please check one only:

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

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

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

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

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

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

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

\_\_\_\_\_  
(Signature of Business Representative)\*  
**\*Must be an authorized signatory for the Business**

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

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

**EXHIBIT B**

**AUTHORIZED SIGNATURE PAGE**

**THE FOLLOWING OFFEROR INFORMATION MUST BE COMPLETED AND RETURNED WITH THE IFB:**

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, Offerors Claiming 5% Preference Must be Certified Prior to IFB Opening):

- Resident Business: Pref. Number \_\_\_\_\_
- Resident Manufacturer: Pref. Number \_\_\_\_\_
- Resident Offeror: Pref. Number \_\_\_\_\_
- New Mexico state business enterprise: Yes \_\_\_\_\_ No \_\_\_\_\_

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

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

**COMPANY NAME** \_\_\_\_\_

**ADDRESS** \_\_\_\_\_

**CITY/STATE/ZIP** \_\_\_\_\_

**TELEPHONE:** \_\_\_\_\_ **FAX:** \_\_\_\_\_ **EMAIL:** \_\_\_\_\_

**NEW MEXICO GROSS RECEIPTS TAX NO.** \_\_\_\_\_

**FEDERAL EMPLOYER ID NUMBER (FEIN)** \_\_\_\_\_

**SIGNATURE OF AUTHORIZED REPRESENTATIVE** \_\_\_\_\_

**PRINTED OR TYPED NAME** \_\_\_\_\_

**TITLE** \_\_\_\_\_

**DATE** \_\_\_\_\_

# EXHIBIT C

## 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 Offerors as to their business status. Please furnish the information requested below.

- 1.0 Small Business – An enterprise independently owned and operated, not dominant in its field and meets employment and/or sales standards developed by the Small Business Administration. See 13 CFR 121.201
  - 1.a Small Disadvantaged Business – A Small Business Concern owned and controlled by socially and economically disadvantaged individuals; and
    - (1) Which is at least 51% owned by one or more socially and economically disadvantaged individuals; or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals and
    - (2) Whose management of daily operations is controlled by one or more such individuals. The Offeror shall presume Black Americans, Hispanic Americans, Native Americans (such as American Indians, Eskimos, Aleuts and Native Hawaiians), Asian-Pacific Americans and other minorities or any other individual found to be disadvantaged by the Administration pursuant to Section 8 (a) of the Small Business Act and
    - (3) Is certified by the SBA as a Small Disadvantaged Business.
  - 1.b Women-Owned Business Concern – A business that is at least 51% owned by a woman or women who also control and operate it. Control in this context means exercising the power to make policy decisions. Operate in this context means being actively involved in the day-to-day management.
  - 1.c HUBZone Small Business Concern – A business that is located in historically underutilized business zones, in an effort to increase employment opportunities, investment and economic development in those areas as determined by the Small Business Administration's (SBA) List of Qualified HUBZone Small Business Concerns.
  - 1.d Veteran-Owned Small Business Concern – A business that is at least 51% owned by one or more veterans; or in the case of any publicly owned business, at least 51% of the stock of which is owned and controlled by one or more veterans and the management and daily business operations of which are controlled by one or more veterans.
  - 1.e Service Disabled Veteran-Owned Small Business – A business that is at least 51% owned by one or more service disabled veterans; or in the case of any publicly owned business, at least 51% of the stock of which is owned and controlled by one or more service disabled veterans and the management and daily business operations of which are controlled by one or more service disabled veterans. Service disabled veteran means a veteran as defined in 38 U.S.C. 101(2) with a disability that is service connected as defined in 13 U.S.C. 101(16).

Company Name: \_\_\_\_\_ Telephone: \_\_\_\_\_  
 Street Address: \_\_\_\_\_ County: \_\_\_\_\_  
 City: \_\_\_\_\_ State & Zip: \_\_\_\_\_  
 Is this firm a (please check):     Division     Subsidiary     Affiliated?    Primary NAICS Code: \_\_\_\_\_  
 If an item above is checked, please provide the name and address of the Parent Company below:

Check All Categories That Apply:

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

1 THANK YOU FOR YOUR COOPERATION

Signature and Title of Individual Completing Form: \_\_\_\_\_

Date \_\_\_\_\_

|  |  |
|--|--|
| <p><b>Please return this form to:</b></p> <p>University of New Mexico<br/>                 Hospitals<br/>                 Purchasing Department<br/>                 933 Bradbury Dr. SE, Ste. 3165<br/> <br/>                 505-272-9861(voice)</p> | <p><b>NOTE:</b></p> <p>This certification is valid for a one year period. It is your responsibility to notify us if your size or ownership status changes during this period. After one year, you are required to recertify with us.</p> |
|--|--|

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](http://www.sba.gov/size) or you may contact the SBA Government Contracting Office at 817-684-5301. (Rev. 6/2002)

## EXHIBIT D

### 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 Offeror or in the proposed transaction. Offeror neither employs, nor is negotiating to employ, any University of New Mexico Hospitals employee, Regent or close relative, with the exception of the person(s) identified below. Offeror did not participate, directly or indirectly, in the preparation of specifications upon which the IFB or offer is made. If the Offeror is a New Mexico State Legislator or if a New Mexico State Legislator holds a controlling interest in Offeror, please identify the legislator: \_\_\_\_\_ List below the name(s) of any University or New Mexico employee, Regent or close relative who now or within the preceding 12 months (1) works for the Offeror; (2) has an ownership interest in the Offeror (other than as an owner of less than 1% of Offeror's stock, if Offeror is a publicly traded corporation); (3) is a partner, officer, director, trustee or consultant to the Offeror; (4) has received grant, travel, honoraria or other similar support from Offeror; or (5) has a right to receive royalties from the Offeror. \_\_\_\_\_

#### DEBARMENT/SUSPENSION STATUS

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

#### CERTIFICATION

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

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

#### THE FOLLOWING MUST BE CERTIFIED IF THIS PURCHASE ORDER IS \$100,000 OR GREATER:

#### CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (September, 2005)

- (a) In accordance with FAR 52.203-11, the definitions and prohibitions contained in the clause at FAR 52.203-12, Limitation on Payments to influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.
- (b) The Offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after; December 23, 1989:
  - 1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract.
  - 2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal Transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the Offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and
  - 3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

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

#### CERTIFICATION

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

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Name Typed: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_ City/State/zip: \_\_\_\_\_



## **EXHIBIT E**

### **INSURANCE REQUIREMENTS**

#### **CERTIFICATES OF INSURANCE:**

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

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

#### **COMPENSATION INSURANCE:**

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

#### **OFFEROR'S PUBLIC LIABILITY INSURANCE**

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

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

#### **OFFEROR'S VEHICLE LIABILITY INSURANCE:**

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

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

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

The Offeror shall either:

1. Require each subOfferor or sub Offeror 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 subOfferors of sub subOfferors in the Offeror's Policy as required under this Article.

#### **GENERAL:**

All Insurance policies are to be issued by companies authorized to do business under the laws of the state in which work is to be done and acceptable to owner.

The Offeror shall not violate, permit to be violated, any conditions of any said policies, and shall at all times satisfy the requirements for the insurance companies writing said policies.

## EXHIBIT F

# SAMPLE AGREEMENT

UNMH Contract Number: XXXX-14

SS/IFB/RFP Number: PXXX-14

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

### RECITALS

- A. UNMH wishes to obtain Name of Product or Service as titled in SS/IFB/RFP as described in this Agreement, and Contractor assures UNMH that it is willing and qualified to deliver such products.
- B. This Agreement set forth the terms and conditions under which the contractor will deliver the products described herein, and UNMH will reimburse Contractor for such products.

**The parties agree as follows:**

**1. RESPONSIBILITIES OF CONTRACTOR.** Contractor shall deliver the Name of Product or Service as titled in SS/IFB/RFP as described in Attachment A, attached to and incorporated by reference in this Agreement.

### **2. PROCESS FOR AWARDING INDIVIDUAL PROJECTS**

**2.1.** The Contractor 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 Contractors 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 Agreement without requesting for quotes and/or may reopen the RFP (P291-14) to recruit additional Offerors if through attrition, Contractors are lost or projected workloads are expected to exceed their capacities or for the convenience of UNMH.

**2.2. Substitution.** With respect to any substitution of representative, the Contractor must provide detailed justification documenting the necessity for the substitution. No substitute personnel

are authorized to begin work until the Contractor has received written approval to proceed from the UNMH.

### **3. CONTRACTOR MUST MEET OR EXCEED THE REQUIRMENTS BELOW**

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

### **4. NEW PRODUCTS, SERVICES, TECHNOLOGIES AND PRICE ADJUSTMENTS**

- 4.1. Any and all Contractor's new product and service additions, technological advancements or

new technology within the scope of work and support to be provided, may be added under the terms and conditions of this agreement provided they meet the clinical acceptability and financial objectives of UNMH. Contractor must first inform UNMH of such additions or changes for obsolete items at least 60 days prior or at the earliest time possible to any changes taking effect.

- 4.2. Contractor will be expected to maintain product, service and technological parity with its competitors to ensure UNMH is offered state of the art products, services and technology. Failure to maintain such parity may be considered cause for removal of the specific named products or services or termination of contract.
- 4.3. New technologies are to be defined as a significant material or function change of an existing product/service line. All new innovative and revolutionary technologies need to be approved by UNMH prior to any use. Pricing on new services and technology will be commensurate with the level of discount provided on existing services in the same category. The new services and prices will not be enforceable without an addendum to this agreement.
- 4.4. Pricing shall be fixed for the term of the Agreement as outlined in **Exhibit H**.

## 5. FINANCIAL REQUIREMENTS

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

## 6. LIABILITY, INDEMNIFICATION, AND INSURANCE

- 6.1. **Liability.** As between the parties, each party acknowledges that it will be responsible for

claims or damages arising from personal injury or damage to persons or property to the extent they result from negligence of that party's employees. Contractor understands that UNMH is not indemnifying Contractor for the acts or omissions of UNMH. The liability of UNMH will be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1 *et seq.* NMSA 1978, as amended.

**6.2. Indemnification.** Notwithstanding the foregoing, Contractor will indemnify and hold harmless UNMH, its Regents, officers, agents and employees from any claims for losses, costs, damages, expenses or liability by reason of bodily injury (including death) or property damage, to the extent such damages are determined by a court of competent jurisdiction in a proceeding to which Contractor is a party to result from Contractor's negligence, act or omission, except to the extent of UNMH's negligence. The foregoing indemnification obligation shall specifically include, but not be limited to, any breach of the Contractor's obligations as a Business Associate, as set forth in the Business Associate Addendum, and any breach of Contractor's non-assignment and/or subcontractor obligations set forth in this Agreement.

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

## **7. PRODUCT RECALLS, REPLACEMENTS AND RETURNS**

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

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

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

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

**7.5. Tracking.** Contractor is responsible for tracking recalled products at the item and lot combination level.

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

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

## **9. MISCELLANEOUS**

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

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

**9.3. Antifraud Compliance.** Both parties to this Agreement expressly acknowledge that the Medicare/Medicaid antifraud statute, 42 U.S.C. Section 1320a-7b, prohibits "illegal remuneration" as defined therein, in connection with the provision of goods or services for which payment is made in whole or in part under Medicare. The parties are entering into this Agreement with the intent of complying fully with the Medicare/Medicaid antifraud statute. To this end, the parties expressly agree that nothing contained in this Agreement is intended to, or shall in the context of the administration of this Agreement, require either party to refer any

patients to the other, or to any affiliate or subsidiary of the other; rather, the purpose of this Agreement is to clarify the parties' understanding with regard to services to be provided to UNMH by Contractor.

- 9.4. Binding Effect.** This Agreement is binding upon, and inures to the benefit of, the parties to this Agreement and their respective successors and assigns.
- 9.5. 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**.
- 9.6. Damage and Security of UNMH Property.** The Contractor shall be responsible for all damage to persons or property that occurs as a result of proposer's fault or negligence, or that of any of his employees, agents and/or subcontractors. Any equipment, software or facilities damaged by the proposer's operations shall be repaired and/or restored to their original condition at the contractor's expense.
- 9.7. Dispute Resolution and Cooperation.** The parties agree that, to the extent compatible with the separate and independent management of each, they will maintain effective liaison and close cooperation. If a dispute arises related to the obligations or performance of either party under this Agreement, representatives of the parties will meet in good faith and work within reasonable efforts to resolve the dispute.
- 9.8. Disruption of Normal Activity.** All work shall be performed so as not to interfere with normal UNMH 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.
- 9.9. ECCN Reporting Requirement.** Contractor acknowledges that providing goods and services under this Agreement is subject to compliance with all applicable United States laws, regulations, or orders, including those that may relate to the export of technical data or equipment, such as International Traffic in Arms Regulations ("ITAR") and/or Export Administration Act/Regulations ("EAR"). Contractor agrees to comply with all such laws, regulations and orders as currently in effect or hereafter amended. Contractor shall not disclose any export-controlled information, or provide any export-controlled equipment or materials to UNMH without prior written notice. In the event that UNMH agrees to receive such export-controlled information, equipment or materials, Contractor shall: (i) include the Export Control Classification Number (ECCN) on the packing documentation and, (ii) send an electronic copy of the ECCN number and packing documentation to: [ECCN@UNM.EDU](mailto:ECCN@UNM.EDU)
- 9.10. Eligibility for Participation in Government Programs.** Each party represents that neither it,

nor any of its management or any other employees or independent contractors who will have any involvement in the services or products supplied under this Agreement, have been excluded from participation in any government healthcare program, debarred from or under any other federal program (including but not limited to debarment under the Generic Drug Enforcement Act), or convicted of any offense defined in 42 U.S.C. Section 1320a-7, and that it, its employees, and independent contractors are not otherwise ineligible for participation in federal healthcare programs. Further, each party represents that it is not aware of any such pending action(s) (including criminal actions) against it or its employees or independent contractors. Each party shall notify the other party immediately upon becoming aware of any pending or final action in any of these areas.

**9.11. Employee Certification.** The Contractor and all Contractors' employees utilized on the work to be performed under this agreement must have the proper certification(s) and license(s) to comply with State and Local requirements connected to this agreement. The Contractor shall use only fully qualified and approved service technicians to perform inspections, installations, support, maintenance service, repairs and upgrades under this request.

**9.12. Entire Agreement.** This Agreement and the terms and conditions included in the purchase order incorporates all UNMH's **SS/IFB/RFP P291-14** and addendums thereto, (Attachment C) and Contractors response to **RFP P291-14** (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.

**9.13. Equal Opportunity and Affirmative Action.** In performing or providing the services and goods required under this agreement, each party shall be an equal opportunity employer and shall conform to all affirmative action and other applicable requirements; accordingly, each party shall neither discriminate nor permit discrimination in its operations or employment practices against any person or group of persons on the basis of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or medical condition, sexual preference, prior military involvement or any other manner prohibited by law.

**9.14. Force Majeure.** Neither party shall be in default or otherwise liable for any delay in or failure of its performance under this Agreement if such delay or failure arises by any reason beyond its reasonable control, including any act of God, any acts of the common enemy, the elements, earthquakes, floods, fires, epidemics, riots, failures or delay in transportation or communications, or any act or failure to act by the other party or such other party's employees, agents or contractors; provided however, that lack of funds shall not be deemed to be a reason



beyond a party's reasonable control. The parties will promptly inform and consult with each other as to any of the above causes, which in their judgment may or could be the cause of delay in the performance of this Agreement.

**9.15. Foreign Payments.** Payment for services performed by a foreign individual or a foreign corporation while in the US may be subject to 30% tax withholding per IRS Publication 515.

**9.16. Governing Law.** This Agreement will be construed, interpreted, governed and enforced in accordance with the statutes, judicial decisions, and other laws of the State of New Mexico.

**9.17. Gramm-Leach-Bliley Act.** Pursuant to the Gramm-Leach-Bliley Act and the regulations set forth at 16 CFR Part 314, UNMH requires its Contractors to implement and maintain appropriate safeguards for the protection of Customer Information. Accordingly, the Contractor shall implement and maintain a comprehensive information security program that contains administrative, technical and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of confidential Customer Information that it creates, receives, maintains, or transmits on behalf of UNMH. In addition, the Contractor will require and ensure that any of its agents, sub-contractors, or sub-consultants, to which it provides confidential Customer Information of UNMH, implements appropriate security measures to protect confidential Customer Information of UNMH.

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

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

Contractor, means any person or entity that receives, maintains, processes, or otherwise is permitted access to Customer Information through its direct provision of services to a financial institution. The Gramm-Leach-Bliley Act broadly defines "financial institution" as any

institution engaging in the financial activities enumerated under the Bank Holding Company Act of 1956, including “making, acquiring, brokering, or servicing loans” and “collection agency services”. Because higher education institutions participate in financial activities, such as processing student financial aid and student loans, FTC regulations consider them financial institutions for purposes of the Gramm-Leach-Bliley Act.

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

**9.18. Headings.** Headings and captions used in this Agreement are for convenience and ease of reference only and will not be used to construe, interpret, expand or limit the terms, conditions, or other provisions of this Agreement.

**9.19. 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 IXXX-15** and addendums thereto and Contractor’s response.

**9.20. Independent Business.** Neither Contractor nor any of its agents shall be treated as an employee of UNMH for any purpose whatsoever. Contractor declares that Contractor is engaged in an independent business and has complied with all federal, state and local laws regarding business permits and licenses of any kind that may be required to carry out the said business and the tasks to be performed under this Agreement. Contractor further declares that it is engaged in the same or similar activities for other clients and that UNMH is not Contractor’s sole or only client or customer.

**9.21. Information Security Plan.** Contractor shall not install any systems software and hardware, applications, databases, information or etc. on UNMH’s computing devices-assets including export/import files, custom files or etc. without prior approval from UNMH’s IT division. If applicable, the Contractor **WILL** complete the UNMHs Information Security Plan hereto attached as Attachment E and submit to UNMH’s IT department for approval within 30 days from date of execution of this agreement. Failure to complete form upon UNMH’s request or failing to receive IT approval may result in Offeror(s) being considered as non-responsive

and/or termination of agreement. UNMH reserves the right to review and verify the Information Security Plan. If UNMH identifies any deficiencies with the Information Security Plan it will notify Contractor within 30 days of such deficiencies. Thee parties shall thereafter negotiate in good faith to resolve any such deficiencies related to the foregoing. The agreement or addendums shall not be effective until the Exhibit G is approved by UNMH IT.

**9.22. Inspection.** UNMH may inspect, at any reasonable time, any part of Contractor's plant or place of business, which is related to performance of this Agreement. Final Inspection may be made at the destination upon completion of delivery of goods and services. Acceptance of delivery shall not be considered acceptance of the goods and/or services furnished. Final inspection shall include any testing or inspection procedures required by the specifications.

**9.23. Inspections, Contractor.** The Contractor shall be responsible for securing at Contractor's expense, all required inspections to comply with Federal, State and/or Local regulations governing the work performed under this Agreement.

**9.24. Modifications.** No changes, amendments or alterations to this Agreement will be effective unless in writing and signed by both parties.

**9.25. Multi-Term Determination.** Pursuant to Sections 13-1-150 and 13-1-151 NMSA 1978, it has been determined that the estimated requirements covered in this Agreement are reasonably firm and continuing and a multi-term contract will serve the best interests of UNMH.

**9.26. No Inducement to Refer.** Nothing contained in this Agreement will require UNMH or any UNMH physician to refer any patients to Contractor or require Contractor to refer patients to UNMH or any UNMH physician. The parties enter into this Agreement with the intent of conducting their relationship in full compliance with applicable Federal, State and Local law, including the Medicare/Medicaid Anti-Fraud and Abuse Amendments and the Physician Ownership and Referral Act (commonly known as the Stark Law). Notwithstanding any unanticipated effect of any of the provisions herein, neither party will intentionally conduct itself under the terms of this Agreement in a manner to constitute a violation of these provisions.

**9.27. Non-Assignability.** This Agreement will not be assigned by either party, nor will the duties imposed upon either party by this Agreement be delegated, subcontracted, or transferred by either party, in whole or in part, without the prior written consent of the other party; provided, however, that UNMH may assign this Agreement to a wholly-owned subsidiary or affiliate of UNMH or any component part thereof without the consent of Contractor. Contractor shall require any subcontractors to demonstrate that they have in place administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic Protected Health Information, in accordance with the Business Associate Addendum to this Agreement, and shall, upon request, provide evidence of such to

UNMH. Contractor shall not, in any event, assign, delegate, transfer, or subcontract this Agreement, in whole or in part and/or directly or indirectly, to any off-shore entity. Furthermore, Contractor will not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without prior written approval of UNMH. Violation of this provision shall give UNMH the right to immediately terminate this Agreement and subject Contractor to the indemnification provision set forth in this Agreement.

**9.28. Notices.** Any notice required to be given pursuant to the terms and provisions of this Agreement will be in writing and will be sent by certified mail, return receipt requested, postage prepaid.

**Notices will be sent to the following addresses:**

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

**9.29. Novation Membership.** The University of New Mexico Hospital is an owner member of the Novation Group Purchasing Organization. In the event an award is made to a Offeror who currently, or in the future, has a contract with Novation, Inc., and the products/services proposed are on the contract with Novation, Inc., the awarded Offeror will be required to report all sales to Novation, Inc.

**9.30. Other Applicable Laws.** Any provision required being included in a resultant Purchase Order/Agreement by any applicable and valid executive order, Federal, State or Local law, ordinance, rule or regulation shall be deemed to be incorporated herein.

**9.31. Ownership of Documents.** All documents which are prepared by the Contractor or any member of the Contractor's team that form a part of its services under this Agreement are the sole property of UNMH and such work may not be reproduced nor distributed without the express written consent of UNMH and shall be delivered to UNMH upon termination and or completion of this Agreement if UNMH so requests. The Contractor shall be responsible for the protection and/or replacement of any original documents in its possession. UNMH shall receive all original drawings and the Contractor shall retain a reproducible copy.

**9.32. Patent and Copyright Indemnity.** Contractor shall indemnify, defend and hold harmless UNMH against all losses, liabilities, lawsuits, claims, expenses (including attorneys' fees),

costs, and judgments incurred through third party claims of infringement by the Services provided hereunder of any copyright, patent, trademark or other intellectual property rights.

- 9.33. Payroll or Employment Taxes.** No Federal, State, or Local income, payroll or employment taxes of any kind shall be withheld or paid by UNMH with respect to payments to Contractor or on behalf of Contractor its agents or employees. Contractor shall withhold and pay any such taxes on behalf of its employees as required by law. The payroll or employment taxes that are the subject to this paragraph include but are not limited to FICA, FUTA, federal personal income tax, state personal income tax, state disability insurance tax, and state unemployment insurance tax. If Contractor is not a corporation, Contractor further understands that Contractor may be liable for self-employment (Social Security) tax, to be paid by Contractor according to law.
- 9.34. Penalties.** The Procurement Code, Section 13-1-28 et 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.
- 9.35. Performance.** In the event that Contractor refuses or fails to comply with the provisions of this Agreement or fails to make progress so as to endanger performance and does not cure such failure within a reasonable period of time, UNMH may otherwise secure the materials, supplies or services ordered, and Contractor shall be liable for damages suffered by the University thereby, including incidental and consequential damages.
- 9.36. Quantities.** UNMH may purchase all, some or none of the elements described in this proposal or Offerors responses. In addition, actual quantities may fluctuate up or down based on UNMH needs. The successful bidder will be required to fill all orders placed regardless of quantities ordered.
- 9.37. 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.
- 9.38. 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.
- 9.39. Removal of Contractor's Employee(s).** UNMH may remove Contractor's employee(s) from the work under the contract for cause or convenience. UNMH may immediately terminate, with written notice to Contractor, the services of any of the Contractor's employee(s), if the

UNMH's management believes in good faith that Contractor's employee is unable to perform the services with reasonable skill.

- 9.40. Scheduled Delays.** If the Contractor becomes aware of possible problems that could result in delay in completion of the work on the agreed-to schedule; the Contractor must immediately notify UNMH or the designated representative. The initial notification of the delay may be verbal with a written confirmation, giving the probable cause and effect, with recommendations for alternate action. Nothing in this paragraph will be interpreted as relieving the Contractor of its contractual obligations; however, failure to notify UNMH promptly will be basis for determining the Contractor responsibility in an otherwise excusable delay.
- 9.41. Severability.** If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.
- 9.42. Site Familiarity.** The Contractor shall be responsible for thoroughly inspecting the site and work to be done prior to commencement of work. The Contractor warrants by this submission of an offer that the site has been thoroughly inspected and the work to be done and that the offer includes all costs required to complete the work. The failure of the Contractor to be fully informed regarding the requirements of a request under this agreement will not constitute grounds or any claim or demand for adjustments to the associated costs.
- 9.43. 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.
- 9.44. Submission of Drawings / Literature.** If applicable, the submission of samples, drawings and literature to be used must be submitted by the date designated by UNMH in order to be considered. All submissions shall be made at no expense to the UNMH. Returns shall only be made at the Offers request and expense.
- 9.45. Taxes.** UNMH is exempt from Federal Excise Taxes and from New Mexico Gross Receipts Taxes on materials. Services are not exempt. Taxes on services should be included as a separate line item and not included in the base price offer. A UNMH Tax Exempt Certificate is available upon request.
- 9.46. 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.
- 9.47. U.S. Government Restricted Rights.** This provision applies to any hospital operating on behalf of any part of the United States Government. The System, including the related

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

**9.48. 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.

**9.49. 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.

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

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

*Signature page follows*

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 UNIVERSITY OF NEW MEXICO, FOR UNM HOSPITALS:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**and**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: Stephen McKernan  
Title: COO, UNMH Health Systems



## ATTACHMENT A

1. **SCOPE** Contractor will provide the following services for UNMH:

2. **PAYMENT**

2.1. **Compensation.** UNMH will pay Contractor for Hardware, Software, Maintenance and Support Services provided under this Agreement the prices listed in Exhibit H.

2.2. UNMH will pay Contractor at the following address:

Company Name

Company Street Address

City, STATE ##ZIP

3. **TERM** This Agreement will become effective as of **Month Day, Year** and subject to the early termination rights of the parties set forth in item 8 (Term and Termination) of the Agreement, and will remain in effect through **Month Day, Year** with the option to renew as provided for in NMSA 13-1-150 (Multi-Term Contract). Under any circumstances, the term of this agreement shall not go beyond **Month Day, Year**. This agreement may be made available for use by other institutions of Higher Education and Central Purchasing Offices within the State of New Mexico as called for in 13-1-129 NMSA.

*(blank to next page)*

## ATTACHMENT B

### BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (this “**Addendum**”) is entered into between **[or among (as appropriate)] [ENTER APPROPRIATE UNM PARTIES]** (referred to in this Addendum as the “Covered Entity”) and **[ENTER APPROPRIATE BUSINESS ASSOCIATE NAME]** (referred to in this Addendum as the “Business Associate”). The “Effective Date” of this Addendum shall be the Effective Date of the Underlying Agreement, as defined below.

#### I. RECITALS

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

The Parties agree as follows:

#### II. PERMITTED USES AND DISCLOSURES OF PHI

- A. Services. Pursuant to the Underlying Agreement, Business Associate provides services (“**Services**”) for Covered Entity that involve the receipt, use and disclosure of PHI. Except as otherwise specified herein, the Business Associate may make any and all uses of PHI

necessary to perform its obligations under the Underlying Agreement. All other uses not authorized by this Addendum are prohibited. Moreover, Business Associate may disclose PHI for the purposes authorized by this Addendum only: (i) to its employees, subcontractors and agents, in accordance with Section III.A.7, or (ii) as otherwise permitted by or as required by the Privacy or Security Rule.

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

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

### **III. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI**

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

1. Not use or further disclose PHI other than as permitted or required by this Addendum, or the Underlying Agreement;
2. Not, without the prior written consent of Covered Entity, disclose any PHI on the basis that such disclosure is required by law without notifying Covered Entity so that Covered Entity shall have an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, Business Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all alternatives for relief. Business Associate shall require reasonable assurances from persons receiving PHI in accordance with Section II.B.2 hereof that such persons will provide Covered Entity with similar notice and opportunity to object before disclosing PHI on the basis that such disclosure is required by law;
3. Ensure the confidentiality, integrity, and availability of all electronic PHI created, received, maintained, or transmitted;

4. Use reasonable and appropriate safeguards to prevent the unauthorized use or disclosure of PHI other than pursuant to the terms and conditions of this Addendum, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Addendum;
5. Use appropriate administrative, physical and technical safeguards consistent with the HIPAA Security Rule that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic PHI in accordance with the HIPAA Security Rule and the HITECH Standards;
6. Report promptly, in writing, to Covered Entity, but in no event later than within two (2) days of which it becomes aware any use or disclosure of PHI not provided for by the Agreement, including breaches of unsecured PHI as required at 45 C.F.R. §164.410, and any Security Incident of which it becomes aware, and cooperate with the Covered Entity in any mitigation or breach reporting efforts;
7. In accordance with 45 C.F.R. §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, to ensure that any agents, including subcontractors, that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information; provided, however, that Business Associate shall not disclose or provide access to PHI to any subcontractor or agent without the prior written consent of Covered Entity;
8. Ensure that any agent or subcontractor to whom the Business Associate provides PHI, as well as Business Associate, not export PHI beyond the borders of the United States of America;
9. Have procedures in place to mitigate, to the maximum extent practicable, any deleterious effect from any use or disclosure of PHI in violation of this Addendum or applicable law;
10. Have and apply appropriate sanctions against any workforce member, subcontractor or agent who uses or discloses PHI in violation of this Addendum or applicable law;
11. Within five (5) business days' request of Covered Entity, make available PHI in a designated record set, if applicable, to Covered Entity, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524;
12. Within five (5) business days, make any amendment(s) to PHI, if applicable, in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. §164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526;
13. As applicable, maintain and make available the information required to provide an accounting of disclosures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528;

14. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);
15. Upon request, make its internal practices, books, and records available to the Secretary and to the Covered Entity for purposes of determining compliance with the HIPAA Rules; and
16. Comply with minimum necessary requirements under the HIPAA Rules.

**B.** Responsibilities of Covered Entity. With regard to the use and/or disclosure of PHI by the Business Associate, Covered Entity hereby agrees to do the following:

1. Inform the Business Associate of any limitations in the form of notice of privacy practices that Covered Entity provides to individuals pursuant to 45 C.F.R. §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
2. Inform the Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose PHI, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
3. Notify the Business Associate, in writing and in a timely manner, of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. §164.522, to the extent that such restriction may impact in any manner the use and/or disclosure of PHI by the Business Associate under this Addendum, except if the Business Associate will use or disclose PHI for (and the Underlying Agreement includes provisions for) data aggregation or management and administration and legal responsibilities of the Business Associate, Covered Entity will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy and Security Rule if done by the Covered Entity.

**IV. REPRESENTATIONS**

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

1. That all of its employees and members of its workforce, whose services may be used to fulfill obligations under this Addendum or the Underlying Agreement are or shall be appropriately informed of the terms of this Addendum and are under legal obligation to each party, respectively, by contract or otherwise, sufficient to enable each party to fully comply with all provisions of this Addendum including, without limitation, the requirement that modifications or limitations that Business Associate has agreed to adhere to with regard to the use and disclosure of PHI of any individual that materially affects and/or limits the uses and disclosures that are otherwise permitted under the Standard will be communicated to the Business Associate, in writing, and in a timely fashion.

2. That it will reasonably cooperate with the other party in the performance of the mutual obligations under this Addendum.
3. That neither the party, nor its directors, regents, officers, agents, employees or members of its workforce have been excluded or served a notice of exclusion or have been served with a notice of proposed exclusion, or have committed any acts which are cause for exclusion, from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or state healthcare program, including but not limited to Medicare or Medicaid, or have been convicted, under federal or state law (including without limitation a plea of nolo contendere or participation in a first offender deterred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to (a) the neglect or abuse of a patient, (b) the delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under a federal or state healthcare program, (c) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by any federal, state or local government agency, (d) the unlawful, manufacture, distribution, prescription or dispensing of a controlled substance, or (e) interference with or obstruction of any investigation into any criminal offense.
4. That it will notify the other party immediately after it becomes aware that any of the foregoing representations may be inaccurate or may become inaccurate.

## **V. TERM AND TERMINATION**

- A. Term. The term of this Addendum shall commence on the Effective Date, and shall terminate on the termination date of the relevant Underlying Agreement or on the date Covered Entity terminates this Addendum for cause as authorized in Section 4.2, whichever is sooner.
- B. Termination for Cause. Business Associate authorizes termination of this Addendum by Covered Entity, if Covered Entity determines Business Associate has violated a material term of this Addendum and Business Associate has not cured the breach or ended the violation within the time specified by Covered Entity.
- C. Obligations of Business Associate upon Termination. Business Associate agrees to return or destroy all PHI pursuant to 45 C.F.R. §164.504(e)(2)(J). Prior to doing so, the Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. If it is not feasible for the Business Associate to return or destroy said PHI, the Business Associate will notify Covered Entity in writing and the Covered Entity may disagree with the Business Associate's determination. Said notification shall include: (i) a statement that the Business Associate has determined that it is not feasible to return or destroy the PHI in its possession, and (ii) the specific reasons for such determination. Business Associate further agrees to extend any and all

protections, limitations and restrictions contained in this Addendum to the Business Associate's use and/or disclosure of any PHI retained after the termination of this Addendum, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible. If it is infeasible for the Business Associate to obtain, from a subcontractor or agent any PHI in the possession of the subcontractor or agent, the Business Associate must provide a written explanation to Covered Entity and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Addendum to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Addendum, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

- D. Automatic Termination. This Addendum will automatically terminate without any further action of the parties upon the termination or expiration of the Underlying Agreement.

## **VI. CONFIDENTIALITY**

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

## **VII. INSURANCE, LIABILITY, AND INDEMNIFICATION**

- A. 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.

- B.** Liability. As between the parties, subject to Section VII.C 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.
- C.** 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, attorneys' fees, and all liability to third parties arising from or in connection with any breach of this Agreement or of any warranty hereunder 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 Regulations, the Security Regulations, the HITECH Act. Accordingly, on demand, Business Associate shall reimburse Covered Entity for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon Covered Entity by reason of any suit, claim, action, proceeding or demand by any third party which results from Business Associate's breach hereunder. The Business Associate's indemnification obligation shall survive the expiration or termination of this Agreement for any reason.
- D.** LIMITATION OF LIABILITY. THE PARTIES UNDERSTAND, ACKNOWLEDGE, AND AGREE THAT NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

## **VIII. MISCELLANEOUS**

- A.** Business Associate. For purposes of this Addendum, Business Associate shall include the named Business Associate herein. However, in the event that the Business Associate is otherwise a Covered Entity under the Privacy or Security Rule, that entity may appropriately designate a health care component of the entity, pursuant to 45 C.F.R. §164.504(a), as the Business Associate for purposes of this Addendum.
- B.** Survival. The respective rights and obligations of Business Associate and Covered Entity under this Addendum, shall survive termination of this Addendum indefinitely.



- C. Amendments; Waiver. This Addendum may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events. The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- D. Interpretation. Any ambiguity in this Addendum shall be interpreted to permit compliance with the HIPAA Rules.
- E. Changes in Law. The parties recognize that this Addendum is at all times subject to applicable state, local, and federal laws. The parties further recognize that this Addendum may become subject to amendments in such laws and regulations and to new legislation. Any provisions of law that invalidate, or are otherwise inconsistent with, the material terms and conditions of this Addendum, or that would cause one or both of the parties hereto to be in violation of law(s), shall be deemed to have superseded the terms of this Addendum and, in such event, the parties agree to utilize their best efforts to modify the terms and conditions of this Addendum to be consistent with the requirements of such law(s). In order to effectuate the purposes and intent of this Addendum the parties will set forth an executed written agreement within thirty (30) days of receipt of notice from one party to the other party setting forth the proposed changes, then either party may, by giving the other an additional sixty (60) days written notice, terminate this Addendum, unless this Addendum would terminate earlier by its terms. In the event amendments or changes in existing law(s), general instructions, or new legislation, rules, regulations, or decisional law preclude or substantially preclude a contractual relationship between the parties similar to that expressed in this Addendum, then, under such circumstances, where renegotiation of the applicable terms of this Addendum would be futile, either party may provide the other at least sixty (60) days advance written notice of termination of this Addendum, unless this Addendum would terminate earlier by its terms. Upon termination of this Addendum as hereinabove provided, neither party shall have any further obligation hereunder except for (i) obligations occurring prior to the date of termination, and (ii) obligations, promises or covenants contained herein which are expressly made and intended to extend beyond the term of this Addendum.
- F. Construction of Terms. The terms of this Addendum shall be construed in light of any applicable interpretation or guidance on HIPAA and/or the Privacy Rule issued by the U.S. Department of Health and Human Services of the Office for Civil Rights from time to time.
- G. Contradictory Terms. Any provision of the Underlying Agreement that is directly contradictory to one or more terms of this Addendum (“**Contradictory Term**”) shall be superceded by the terms of this Addendum as of the Effective Date of this Addendum to the extent and only to the extent of the contradiction, only for the purpose of the Covered Entity’s compliance with the Privacy Rule and only to the extent that it is reasonably impossible to comply with both the Contradictory Term and the terms of this Addendum.

## **IX. DEFINITIONS.**

The following terms used in this Addendum shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information (“**PHI**”), Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use. Specific definitions include:

- A.** Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. §160.103, and in reference to the party to this Addendum.
- B.** Covered Entity. “Covered Entity” shall generally have the same meaning as the term “Covered Entity” at 45 C.F.R. §160.103, and in reference to the party to this Addendum.
- C.** Disclosure. “Disclosure” shall mean the release, transfer, provision of access to, or divulging in any manner of information outside the entity holding the information.
- D.** Electronic Protected Health Information. “Electronic Protected Health Information” means Protected Health Information that is created, received, maintained, or transmitted by Electronic Media as defined at 45 C.F.R. §160.103.
- E.** HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160, 162 and 164, and as amended.
- F.** HITECH Standards. “HITECH Standards” shall mean the privacy, security, and Breach notification provisions applicable to a Business Associate under Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH”) Act, which is Title XIII of the American Recover and Reinvestment Act of 2009 (Public Law 111-5), and any regulations promulgated.
- G.** Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subpart A and Subpart E, as amended.
- H.** Protected Health Information or “PHI”. “Protected Health Information or PHI” shall mean any information, transmitted or recorded in any form or medium; (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe that information can be used to identify the individual, and shall have the meaning given to such term under HIPAA, the HITECH Act and related regulations and agency guidance. Protected health information excludes individually identifiable health information: (i) in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; (ii) in records described at 20 U.S.C. 1232g(a)(4)(B)(iv); (iii) in employment records held by a covered entity in its role as employer; and (iv) regarding a person who has been deceased for more than 50 years.

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

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**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 Offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after; December 23, 1989;
  - a. Federal appropriated funds have not been paid and will not be paid to any person for influencing or attempting to Influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;
  - b. If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal Transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the Offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
  - c. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**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 Offeror named below.

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Name Typed: \_\_\_\_\_ Company: \_\_\_\_\_

Address: \_\_\_\_\_ City/State/Zip: \_\_\_\_\_

**EXHIBIT I**  
**INSTALLATION**

**1. Installation**

1.1. The Vendor shall install the software (modules), cables, and required hardware at the Hospital on the date or dates specified in the Implementation Plan.

**2. Vendor Obligations**

2.1. The Vendor shall supply all labor, materials, tools, equipment, permits, fees, inspection and testing costs, and supervision for the complete and satisfactory installation of the software (modules), cables, and required hardware at the Hospital.

**3. Damage to Hospital Property**

3.1. When installing the software (modules), cables, and required hardware, the Vendor and Vendor's Personnel shall not damage any of the Hospital's property, and shall not disrupt or interfere with the Hospital's systems or procedures, except as specified in the Implementation Plan. In the event of any such damage, disruption or interference, the Hospital and its agents, contractors and employees may take all such steps as it considers reasonably appropriate to repair or restore such damage, disruption or interference and render an account therefore to the Vendor or deduct the amount from any monies owing by the Hospital to the Vendor.

**4. Installation Site**

4.1. During installation of the software (modules), cables, and required hardware, the Vendor shall keep the installation site in as tidy a condition as practicable and, upon completion of the installation, the Vendor shall remove all tools, equipment, surplus materials and debris and shall leave the installation site in a clean and safe condition satisfactory to the Hospital, acting reasonably.

**5. Authorization Required**

5.1. Written authorization must be received prior to the installation or attachment of any of the Vendor's software, (modules) modules, cables, and required hardware or devices on or to Hospital owned or leased equipment, software, or communications networks. In the event of problems created by any such installation or attachment as referred to in this Section, the Vendor shall be solely responsible for all repairs and services to correct the problems. The Vendor's installers will need to complete a UNM Hospitals EOC 3 hour training class prior to any work that requires above ceiling, penetrations, in the walls, installation of cables above ceiling or in walls, etc.

## EXHIBIT J

### Information Systems Security Plan Information

UNMH Information Security Plans are to be developed and documented for IT systems, as per the UNM Hospitals' Information Technology Security Procedures. This template is to be used as a guide in developing individual security plans for new and changing application and infrastructure systems. All projects must also be placed into the Online Request System (ORS) for project prioritization, development and resource review.

**Purchases, Contracts and Implementation of new IT assets will not move forward without the completion of an IT Security Plan.**

- Note to our vendors: your equipment, applications, databases, etc. end up on our environment. All of these must be reviewed for proper resources, security, backup, etc. You must work with the team or project leader to complete the questions below for the most effective and timely implementation.
- The IT Security Plan answers start with the data flow diagram. Without an understanding how the system works and where the application, system or database resides and how the users and support access and support the system is very difficult to answer the following questions.

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

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

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

Please complete all sections of the plan. Contact the IT Security Office with questions at 272- 3282.

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**Completed System Security Plans are UNM HOSPITALS Restricted (Internal Use Only). Handle accordingly and limit distribution per UNM Hospitals' Information Classification procedure.**

| <b>Information System Security Plan</b><br>System Name:   |  |
|---|--|
| <b>System Name/Version/IP address</b><br>Vendor and UNMH Analyst: Use system name as listed in IT application system inventory. Provide IP address. This information will go into the scheduled reboot calendar and on to the production vulnerability scanning list.   |  |
| <b>Brief Description</b><br>Vendor: Brief description of application on system's business function, purpose (e.g. clinical monitoring, payroll system, etc.).   |  |
| <b>System/Data and/or Business Process Owner(s)</b><br>Project Lead or UNMH Analyst: Use position titles, departments, business area names – don't use people's names. See UNMH ITSecurity-Administrative Responsibilities Procedure for definitions.   |  |
| <b>Location/Business Area</b><br>UNMH Analyst: Use departments, business area names and location names  |  |
| <b>Summary of Hardware / Software/OS</b><br>Vendor Provides Detail and Summary:<br>Example: Microsoft Windows O/S, SQL, C++, Compaq, Dell, HP, etc.; how many, locations  |  |
| <b>Online Request System number.</b><br>Project Lead and/or UNMH analyst: UNMH place the ORS number in the next column. To obtain an ORS number, to the following <a href="#">Webpage</a> and complete the form.  |  |
| For each of the following, please provide description and sufficient details of the processes, procedures and requirements for providing and maintaining security over the application system and its related data. Please review the various IT Security procedures for further guidance on requirements. This Plan is not a procedures document; as needed, refer to specific procedures documents. |  |
| <b>Overview of Data Flow Diagram and Processes (Required)</b><br>Vendor: A copy of the application, database, and etc. data flow is required. More than one data flow charts or diagrams may be used to properly describe the flow of information from data capture points through the application to databases, including backup and recovery processes.   |  |

# Information System Security Plan

System Name:

|  |   |
|--|---|
| <p><b>Overview of Security Requirements and Processes</b></p> <p><b>Vendor:</b> One or two paragraphs describing overview of security requirements, processes</p>  |   |
| <p><b>Data Classification.</b></p> <p><b>Vendor:</b> Describe Data Classification. Protected individually identifiable, electronic protected health information, personnel information, hospital restricted information or unrestricted (public) information to be used, created, received, transmitted or stored.</p>   | <p>Data classification:</p>                                   |
| <p><b>Legal / Regulatory Requirements for Security / Privacy</b></p> <p><b>Vendor:</b> SOX, GLBA, HIPAA, PCI, privacy laws, etc. – indicate what laws or regulations affect this system and data, how they affect it. If HIPAA, a Business Associates Agreement must be filed or in place.</p>   | <p>Requirement:<br/>if HIPAA, and must be a BAA in place:</p> |
| <p><b>Confidentiality Requirements / Data Classification</b></p> <p><b>Vendor And/or UNMH Analyst:</b> Describe confidentiality issues and requirements; Classify the data as confidential, restricted, unrestricted -refer to UNM HOSPITALS Information Classification and Information Security policies.</p>   |   |
| <p><b>Administration, Roles &amp; Responsibilities for Security Functions</b></p> <p><b>UNMH Analyst:</b> What position administers the userids - is it centralized? Business area or IT Division Administration? Access permissions - how are these done, authorization process, overview security administration procedures? Who (position title) approves access requests? What positions are responsible for the various security functions; indicate positions by job title, and indicate responsibilities by role and or position?</p> |   |
| <p><b>Access Requirements and Restrictions</b></p> <p><b>Vendor:</b> Describe access rules and requirements; what types of employees can access which data elements. Will access be by 'roles', groups? What access restrictions are there? What 'external' users need access? What requirements for external access into the UNM Hospitals' network/systems?</p> <p>Also, consider these questions:</p>   |   |



# Information System Security Plan

System Name:

|   |  |
|---|--|
| <p>What are the data security access levels?<br/>Are there varying levels of security access for different types of transactions:</p> <ul style="list-style-type: none"> <li>• inquiry only</li> <li>• update non-monetary or clinical transactions</li> <li>• update financial or clinical transactions</li> <li>• add/delete records</li> </ul> <p>How do the roles and accesses permissions provide proper segregation of duties?</p>                      |  |
| <p><b>Security Logging and Monitoring</b></p> <p><b>Vendor:</b> Describe the security and access logging processes, transaction logging, review of security exceptions, monitoring of security events, log review processes. Logging can be at O/S, database and application levels.</p>  |  |
| <p><b>Security Training</b></p> <p><b>Vendor:</b> Security awareness and security administrative process training, initial training, new user and ongoing security training plans.</p>  |  |
| <p><b>Security Testing</b></p> <p><b>Vendor and UNMH Analyst:</b> Initial implementation and periodic testing to ensure ongoing compliance to security requirements – should link to QA testing and Change Management processes, also periodic security assessment reviews.</p>   |  |
| <p><b>Infrastructure, and Environment Security Components I</b></p> <p><b>Telecommunications</b></p> <p><b>Vendor:</b> Dependencies, interaction with firewalls, router configuration or ACL's, intrusion detection, anti-virus, system logging, operating system security settings/configurations, network segregation, Web application based security requirements, configurations for web application/DMZ, secure telecommunications, SSH, HTTPS, etc.</p> |  |
| <p><b>Secure Data Exchange</b></p> <p><b>Vendor:</b> Specify controls for securing/authenticating data in transit. This includes certificate authorities and dependencies. Please list the vendor standards and expectations of UNM Hospitals</p>   |  |

# Information System Security Plan

System Name:

|   |  |
|---|--|
| <p><b>Incident Response Components.</b></p> <p><b>Vendor we require information so that we can contact appropriate staff during incidents:</b></p> <p>Please describe what plans are in place for a breach, compromise, virus infection, etc? List titles and phone numbers of those to be contacted during incident issues.</p>  |  |
| <p><b>Business Continuity, Backup and Disaster Recovery Requirements</b></p> <p><b>Business Process Owner:</b> Availability requirements for system, backup requirements/frequency, DR requirements – brief description here, refer to the specific DR Plan for details. Data retention requirements. Restart requirements. It is required that the Business Process Owner complete a Business Impact Analysis. Vendor response should include DR and BC controls in place if hosting data.</p>   |  |
| <p><b>Remote Access Requirements</b></p> <p><b>Vendor:</b> What restrictions/allowances for remote access by your staff are required for support? Is there any modem or VPN requirements for vendor or technical support? UNM Hospitals provides Virtual Private Network (VPN) access for vendor remote support. Third-party remote access applications are not approved for remote access (LogMeIn, PcAnywhere, etc.). Access to enterprise applications must be through our designated systems. UNM Hospitals must be able to enforce centrally controlled remote access controls, standards and audit activity.</p> <p><b>Authorized Business Process Owner Authorization for Remote Access.</b></p> <p><b>Vendor name:</b> _____ <b>requiring access.</b></p> <p><b>Business Process Owner: authorization signature</b> _____</p> |  |
| <p><b>Data Integrity</b></p> <p>Definition of Data Integrity: Integrity means the characteristic of data and information being accurate and complete and the preservation of accuracy and completeness by protecting the data and information from unauthorized, unanticipated, or unintentional modification.</p> <p><b>Vendor please:</b> Discuss data integrity controls – application and database controls to ensure data accuracy, such as batch and record totals, separation of duties, database integrity checks, and other measures to ensure data maintains accuracy and completeness.</p>   |  |

# Information System Security Plan

System Name:

## Data Encryption

Definition of Data Encryption: Technologies and Methodologies that render information Unreadable, Unusable or Indecipherable to unauthorized individuals. **Vendor:** Please describe the systems abilities to encrypt data in transit, at rest, in use and when written on end point devices. Endpoint devices, data in motion and data at rest must be encrypted.

## Data Retention and Use.

**Vendor:** Please describe data retention policies and practices if required. If outsourced data, describe not only retention and use but importantly data recovery at end of contract or request by UNMH.

## Password Controls

Definition of Password Controls can be found in the UNMH Password Standards document. **Vendor provide password controls:** Password complexity, 05 failed logins lockouts, 11 password history and other abilities in the system must be described.

## Data and System Interfaces, Interconnections and Dependencies

**Vendor:** What data and system interfaces, interconnections are there with other systems, and what security protections are needed? **Example a requirement is Secure Data Exchange: Secure Socket Layer (SSL) Sensitive data traversing public networks via SSL requires a trusted third party certificate.**

## Web and HTML Dependencies

**Vendor:** Does the application or system have Web dependencies? The network and Web development teams must know about any special requirements for the application in regard to the data or webpages that enter and exit our network.

## Antiviral and Malware Protection

**Vendor Please specify** which antiviral software is allowed on the system? Who will support the updates to the software and signatures? **UNMH Analyst** Has Host Intrusion Prevention been placed on the server?

# Information System Security Plan

System Name:

## Security and Application

### Patching

**Vendor:** Which organization or vendor is supplying system and application patches upgrades?

\*If available, attach vendor patching and AV documentation. If not available, an SLA for patching and AV will be required.

**Business process owner: A monthly patch time and monthly maintenance time must be specified: \_\_\_\_\_ & \_\_\_\_\_**

### Third-party Applications & Patching

**Vendor:** Are there any required third-party applications (e.g. Java, Adobe shockwave, Acrobat, ActiveX, Flash, etc.)? If yes, which of these third-party applications may not be upgraded or patched?

\*If available, attach vendor required third-party documentation." If not available, an SLA for patching third-party applications will be required.

### Physical Security

**Vendor:** Where are the physical components for the system, what physical security requirements are needed; What secure room/computer facility to be used; controls, logging and monitoring of physical access to computer hardware, data backups, etc. Note: Servers may not be located in department areas.

### Inventory Control

**UNMH Analyst:** All components of the system are required to be placed into the UNMH Inventory system. Please supply a complete list of types of workstations, servers, etc. for entry into the inventory system.

### Outsourcing Requirements.

#### No exceptions.

**Vendor:** If any component or data in the system is outsourced (held or controlled by the vendor or another party), ISO 2700x, SysTrust, or SSAE 16 independent audit reviews are required of the business partner. If so business partner users a different company to host the data, the hosting company must also supply a SSAE 16 or equivalent document. At least once a year.

**Note: A vendor may submit a SSAE 16 that includes their data center. Vendors that use a hosting site by different business partner to**

## Information System Security Plan

System Name:

|   |  |
|---|--|
| <b>store our data must provide both a third-party independent audit for both the vendor site &amp; data center site.</b>  |  |
| <p><b>ICD-10 or 5010 Transaction Standards</b><br/> <b>Vendor:</b> Does the application or database create, transmit or store ICD 10, ICD-10-PCS and/or 5010 Electronic Transactions? UNM Hospitals must be compliant with all HIPAA electronic transaction standards.<br/>                 Note: ICD-10 is the coding standard referred to within the overall HIPAA electronic transactions standards.</p> |  |
| <p><b>Vendor Name and Contact Information</b><br/> <b>Required:</b> Vendor's company name, support and other contact information must be provided. Will there be any need for access to the system after implementation?</p>  |  |
| <p><b>Security Review and Authorization</b><br/>                 Director Network and Infrastructure, Director PC Systems, Executive Director IT, Director Systems/Admin &amp; Manager IT Security have reviewed and checked their responsible areas.</p>   | Director Network and Infrastructure approval Y/N comments: _____ , _____<br>Director PC Systems approval Y/N comments: _____ , _____<br>Administrator IT approval Y/N comments: _____ , _____<br>Manager IT Security approval Y/N comments: _____ , _____<br>Director Systems Development/Admin approval Y/N comments: _____ , _____<br>Director Clinical Systems approval Y/N comments: _____ , _____ |

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***Completed System Security Plans are UNM HOSPITALS Restricted (Internal Use Only). Handle accordingly and limit distribution per UNM Hospitals' Information Classification policies and guidelines.***

## **Exhibit K**

### **TRAINING**

**1. Training.** At the request of the UNMH, the Vendor shall provide the following training as specified by the Hospital:

**1.1. Technical and Clinical Training**

**1.2.** Training to include but should not be limited to diagnostic software and integration of the software (modules) and required hardware with the Hospital's existing systems;

**1.3.** The awarded training Bidder will be required to provide training and training materials for primary users at no additional cost.

**1.4.** The cost of all technical training, including travel and accommodation for the Hospital's staff to attend training course(s) at the Vendor's facilities if necessary, shall be at a cost mutually agreed to by the parties.

**1.5.** The successful Bidders shall submit to UNM Hospitals, at no charge, electronic copies the operator's and service manuals.

**1.6.** What is the training methodology?

**1.7.** Describe the training you provide coders, CDI specialists, and system administrators.

**1.8.** Do you offer ongoing webinars, seminars, in-service training or user group meetings?

**1.9.** How will you ensure all training will be scheduled to coincide with UNM Hospital schedules and staffing?

**1.10.** What type of staff will you make available to provide to be onsite and for how many days and for how long?

**1.11.** Will you have someone readily available for on-site visits to respond to questions or needs as they occur and what is the response time for page, onsite, etc.

**1.12.** Except as otherwise agreed by the Hospital, the cost of all clinical training, including travel and accommodation for the Hospital's staff to attend training course(s) if necessary, shall be borne by the Vendor.

**2. Subsequent Training**

**2.1.** After the training on the software (modules) and required hardware has been completed, the Hospital reserves the right to request at no additional charge.

**2.2.** Additional follow-up training as reasonably required to ensure the software (modules) and required hardware is utilized efficiently.

- 2.3. Technical and consultative support for the Equipment sold by the Vendor to the Hospital under this Agreement. Such support shall include, but shall not be limited to, support for and assistance with the resolution of any problems or difficulties with the operations of the software (modules) and required hardware.

*End of document*