

**THE UNIVERSITY OF NEW MEXICO HOSPITALS  
PURCHASING DEPARTMENT  
933 Bradbury Dr. SE, Suite 3165  
ALBUQUERQUE, NM 87106**

**REQUEST FOR PROPOSAL (RFP)**

**RFP Number:** P349-16

**TITLE:** Intraoperative 3D Mobile Imaging Solution

**Offer Due Date/Time:** ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT SPECIALIST OR DESIGNEE NO LATER THAN **2:00 PM MOUNTAIN STANDARD TIME/DAYLIGHT TIME ON , December 2, 2016**. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal.

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

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

Name: Anna Roybal  
Title: Procurement Specialist  
Address: 933 Bradbury Dr. SE, Suite 3165  
Albuquerque, NM 87106  
Telephone: (505) 272-9571  
E-mail: [anroybal@salud.unm.edu](mailto:anroybal@salud.unm.edu)

**Electronic Format and Hard Copies:**

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

One (1) Original, marked on the cover as “Original,”  
Eight (8) copies, marked on the cover of each as “Copy,” and  
One (1) CD/DVD disc, Thumb Drive

2. Hard copies must be printed in ink and corrections must be initialed. Any Offeror’s submitted sealed Proposal envelope, box or package must be clearly marked with the RFP Number, RFP

Name and Opening Date (see Offer Due By date above) in the lower left hand corner. Failure to mark your sealed offer may result in your offer being opened early or your offer not being included in the Request for Proposal opening.

- 3. Address of delivery of responses via express carrier, hand delivered or first class mail must as follows:

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

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**OTHER INFORMATION:**

Freight Terms: FOB Destination

Payment Terms: NET 30

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

**SECTION I****SCOPE OF WORK**

The purpose of this Request for Proposal (RFP) is to solicit sealed proposals to establish contract(s) through competitive negotiations for the procurement of an Intraoperative Mobile 3D Imaging Solution that can integrate with the hospitals existing Medtronic Stealth Navigation.

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

**Scope of Work**

The University of New Mexico Hospitals (“UNMH”) is soliciting proposals for the purchase of an Intraoperative Mobile 3D Imaging Solution that can integrate with the hospitals existing Medtronic Stealth Navigation System for both Spine and Neuro Surgery modalities. As well the system solution should include Vascular capability including features for optimal vascular imaging i.e. (Image storage capabilities of 200-1000 images. Frames acquired at a rate of 8 to 15 frames/second) Offerors should submit responses as to their ability to furnish equipment, services and product.

Offerors shall provide information for the equipment, supplies and service sought through this RFP.

**Equipment Requirements**

1. Intraoperative Mobile 3D Imaging Equipment
  - a. Line Item Quote for Mobile 3D Imaging Equipment and Software
  - b. Line item quote for most common replacement items (To include pendants)
  - c. Installation Requirements
  - d. Site Requirements
  - e. Gantry and Field of View
  - f. X-Ray Generation
  - g. X-ray Detection
  - h. Safeguards/Compliance (i.e. XR-29 Compliant)
  - i. Patient Dose Savings Options (e.g., mA or kV modulation)
  - j. Rotation

- k. Image Quality
  - l. Connectivity
  - m. Dimensions
  - n. Indications and Contra-indications for use
  - o. Integration Capabilities with current Hospital owned Medtronic Stealth System
  - p. Diminished Capabilities with current Hospital owned Medtronic Stealth System
  - q. Disposables with line item quotes
  - r. Re-imbursement information for disposables
  - s. Line item quotes of instrumentation if needed complete with IFU's for Sterile processing verification
  - t. Education (Inclusive of Physicians, Radiology, OR Staff and Clinical Engineering)
  - u. Flow Chart of Process including people needed to appropriately work the Mobile 3D Imaging Solution
  - v. Software and Hardware upgrade inclusions for the life of the equipment
  - w. IT Security Plan
  - x. Warranty and Preventative Maintenance Proposal
  - y. Ability to be moved between OR's (Logistics and Safety) to be addressed
  - z. Ability to populate a Modality work list from the EMR (Cerner) and send & receive dicom images
2. Surgical Table/Tables for use with Mobile 3D Imaging Equipment
- a. Line item quote for beds
  - b. Line item quote for most common replacement items (To include pendants)
  - c. List of different beds and capabilities if choice is available
  - d. Dimensions
  - e. Safety/Weight Limits
  - f. Accessories for bed (Non-Disposable Positioners, Bariatric Extensions etc.)
  - g. Disposables with line item quotes
  - h. Re-imbursement information for disposables
  - i. Education (Inclusive of Physicians, Radiology, OR Staff and Clinical Engineering)
  - j. Warranty and Preventative Maintenance Proposal

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

Technical and Clinical Training

- a. Training to include but should not be limited to operation of equipment, diagnostic software and integration of the software (modules) and required hardware with the Hospital's existing systems;
- b. The awarded vendor is required to provide training and training materials for primary users at no additional cost.
- c. The successful vendor shall submit to UNM Hospitals, at no charge, electronic copies the operator's and service manuals.

### Subsequent Training

- a. After the training on equipment has been completed, the Hospital reserves the right to request subsequent training at no additional charge.
- b. Additional follow-up training as reasonably required ensuring that equipment, software (modules) and required hardware is utilized efficiently.
- c. 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.

**Warranty Specifications.** All servicing, maintenance and preventative maintenance required on the proposed parts, services, training, and installation etc. during the Warranty Period will be provided by the Offeror at no additional cost to the Hospital.

### Background

The UNMH is New Mexico's only academic medical center and the State's only Level One Trauma Center, treating over 80,000 emergency patients and seeing more than 500,000 outpatient visits annually. UNMH is also the largest clinical component of the University of New Mexico Health Sciences Center (UNMHSC). There are five hospitals included within the UNM Hospital System: UNM Hospital (UNMH), UNM Children's Hospital, Carrie Tingley Children's Hospital (CTH), Children's Psychiatric Center (CPC), and UNM Psychiatric Center (UNMPC). UNM Hospitals (UNMH, CTH, CPC, UNMPC) are located as part of the Main UNMH campus.

UNMH currently has 629 beds and is recognized for clinical excellence in many specialties including Trauma and Emergency Medicine, Pediatrics, Orthopedics, Cancer Research and Treatment, Transplantation and many others. The Hospital and its components provide primary, secondary, tertiary and quaternary care and receive referrals from counties throughout New Mexico and the entire Southwest. Inpatient discharges are approximately 27,650 per year. UNMH has 36 hospital-based clinics located at the main facility as well as various off-site locations. There are approximately 553,000 outpatient visits/encounters per year. UNMH has six retail pharmacy locations located within off-site clinic. UNMH qualifies for 340B drug pricing. UNMH Statistics for the year ending June 30, 2015:

a. Emergency Room Visits	-	80,020
b. Outpatient Visits	-	552,841
c. Inpatient Days	-	179,739
d. Outpatient Operations	-	11,090
e. Inpatient Operations	-	8,370
f. Births	-	2,979

**SECTION II****CONDITIONS GOVERNING THE PROCUREMENT****2.1 Forms and Exhibits.**

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

**2.2 Requirements.** For the purposes of the requirements stated in this RFP

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

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

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

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

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

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

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

**2.4 Information**

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

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

**2.4.3 Offerors shall not:**

- 2.4.3.1 Claim after submission of a Proposal that there was any misunderstanding or that any of the conditions set out in Section 3.4.1 Offeror to Review were present with respect to this RFP; or
- 2.4.3.2 Hold any staff of UNMH liable for any uncertainty, inconsistency, error, omission, or ambiguity in any part of this RFP.

## 2.5 Clarification and Questions

### 2.5.1 Submission. Offerors may request clarification of this RFP by:

- 2.5.1.1 Submitting all requests for clarification by email to the Procurement Specialist at [anroybal@salud.unm.edu](mailto:anroybal@salud.unm.edu) or as otherwise directed by the Procurement Specialist;
- 2.5.1.2 Including the Offeror's address, telephone number, facsimile number and email address;
- 2.5.1.3 If the question pertains to a specific section of this RFP, reference should be made to the specific section number and page; and
- 2.5.1.4 Submitting all requests for clarification no later **than 2:00 PM MST/MDT December 2, 2016**

### 2.5.2 Questions and Answers. The UNMH will provide Offerors with written responses in the form of addenda to questions that are submitted in accordance with Section 3.5.1.1. All addenda shall form part of this RFP. Questions and answers will be distributed in numbered addenda. In answering the Offeror's questions, the Procurement Specialist will include in all addenda the questions asked but will not attribute the questions to any Offeror. Notwithstanding the foregoing, the Procurement Specialist 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.

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

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

### 2.8 Clarification of Offeror's Proposal

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

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

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

- 2.9.1** 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 Proposal is patently unwarranted or is questionable; or
- 2.9.2** Access the Offeror's premises where any part of the work is to be carried out to confirm Proposal information, quality of processes, and to obtain assurances of viability; and
- 2.9.3** The Offeror shall cooperate in the verification of information and is deemed to consent to UNMH verifying such information.

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### SECTION III

#### STANDARD TERMS AND CONDITIONS

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

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

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

- 3.1 ACCEPTANCE AND REJECTION.** If prior to final acceptance, any goods or services are found to be defective or not as specified, or if the University is entitled to revoke acceptance of them the University may reject or revoke acceptance, require Offeror to correct without charge within a reasonable time, or require delivery at an equitable reduction in price, at the University's option. Offeror shall reimburse the University for all incidental and consequential costs related to unaccepted goods or services. Notwithstanding final acceptance and payment, Offeror 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 ALTERNATE OFFERS.** Alternate offers will be accepted and considered provided they are "equal to" and meet all specifications of this RFP which may include all specifications of any Brand used to identify the quality of the goods and/or services requested. The University reserves the right to make the final determination as to whether or not an alternate offer is equal. It is the Offeror's responsibility to provide, as part of the offer, descriptive literature, specifications and information on all alternate products and services offered. References of current users should be included. If the item(s) or service(s) offered

are not clearly identified as alternate item(s) or services, it is understood that the offer is for item(s) and service exactly as specified in this RFP.

- 3.3 APPROPRIATION.** The terms of the contract are contingent upon sufficient appropriations and authorization being made by the Regents of the University of New Mexico. If sufficient appropriations and authorization are not made by the Regents of the University of New Mexico, the contract shall, notwithstanding any other provisions of the contract, terminate immediately upon the Offeror's receipt of written notice of termination from the UNMH.
- 3.4 ASSIGNMENT.** Any resultant Agreement may be assignable by the University. Except as to any payment due hereunder, any resultant Agreement shall not be assignable by Offeror without written approval from the University.
- 3.5 AWARDS – MULTIPLE.** The University reserves the right to make multiple awards to primary and secondary source or to otherwise split the award of the items, projects and/or sections of this proposal.
- 3.6 BRAND NAME OR EQUAL.** If a brand name is indicated, the brand name(s), part and/or catalog number(s) are used to establish a level of quality and to describe the item(s) required. If offering a brand, part or catalog number other than that listed, please indicate items offered and include literature and/or technical specifications. Failure to do so may cause offer to be declared non-responsive.
- 3.7 CANCELLATION.** The University reserves the right to cancel without penalty, this RFP, any resultant Agreement, or any portion thereof for convenience, unsatisfactory performance, or unavailability of funds.
- 3.8 CHANGES.** The University may make changes within the general scope of any resultant Agreement by giving notice to Offeror and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of a resultant Agreement, an appropriate equitable adjustment shall be made. No change by Offeror shall be recognized without written approval of the University. Any claim of Offeror for an adjustment under this Paragraph must be made in writing within thirty (30) days from the date of receipt by Offeror of notification of such change. Nothing in this Paragraph shall excuse Offeror from proceeding with the performance of the Agreement as changed hereunder.
- 3.9 CASH DISCOUNTS.** The University will take advantage of cash discounts offered whenever possible; however, cash discounts will not be used as a means to determine the lowest cost.
- 3.10 CLEAN UP.** If work is required by the contractor under the resulting contract, it is the contractor's responsibility to keep the job site clean and free of rubble while work is performed. Upon completion of work, all areas shall be cleared of all contractors' equipment, excess materials and rubble.
- 3.11 CONFLICT OF INTEREST.** Offeror shall disclose to the University Purchasing Department the name(s) of any University employee or member of the Board of Regents

who has a direct or indirect financial interest in the Offeror or in the proposed transaction. A University employee (or Regent) has a direct or indirect financial interest in the Offeror 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 Offeror (other than as owner of less than 1% of the stock of a publicly traded corporation); works for the Offeror, is a partner, officer, director, trustee or consultant to the Offeror, has received grant, travel, honoraria or other similar support from the Offeror, or has a right to receive royalties from the Offeror. Offeror shall file a Conflict of interest Disclosure form with the University Purchasing Department.

**3.12 COOPERATION AND DISPUTE RESOLUTION.** The parties agree that, to the extent compatible with the separate and independent management of each, they will maintain effective liaison and close cooperation. If a dispute arises related to the obligations or performance of either party under this Agreement, representatives of the parties will meet in good faith to resolve the dispute

**3.13 DAMAGE AND SECURITY OF UNMH PROPERTY.** The proposer shall be responsible for all damage to persons or property that occurs as a result of proposer's fault or negligence, or that of any of his employees, agents and/or subcontractors. The proposer shall save and keep harmless UNMH against any and all loss, cost, damage, claims, expense or liability in connection with the performance of this contract. Any equipment or facilities damaged by the proposer's operations shall be repaired and/or restored to their original condition at the proposer's expense, including but not limited to cleaning and painting.

**3.14 DELIVERY DATE.** Delivery is an important consideration and may be a factor in determining the award. If you cannot meet the delivery date stated, please state your earliest delivery date in your offer.

**3.15 DISCLOSURE OF PROPOSAL CONTENTS.** The proposals will be kept confidential until UNMH awards a price agreement. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is proprietary or confidential. The Procurement Managers will not disclose or make public any pages of a proposal on which the Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret in accordance with the 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

- 3.16 DISRUPTION OF NORMAL ACTIVITY.** Any 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.
- 3.17 DISCOUNTS.** If prompt payment discounts apply to any resultant Agreement, any discount time will not begin until the materials, supplies, or services have been received and accepted and a correct invoice has been received by the University's Accounts Payable Department. In the event testing is required prior to acceptance, the discount time shall begin upon completion of the tests and acceptance.
- 3.18\*\*ECCN REPORTING REQUIREMENT.** Offeror acknowledges that providing goods and services under any resultant 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"). Offeror agrees to comply with all such laws, regulations and orders as currently in effect or hereafter amended. Offeror 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, Offeror 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)
- 3.19 ELIGIBILITY FOR PARTICIPATION IN GOVERNMENT PROGRAMS.** Each party represents that neither it nor any of its management or any other employees or independent contractors who will have any involvement in the services or products supplied under a resultant 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.
- 3.20 EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION.** In performing or providing the services and goods required under a resultant 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.
- 3.21 EQUIPMENT REQUIRED.** The Contractor shall be responsible for supplying and maintaining all equipment and materials necessary to complete the work to be performed under this RFP except as otherwise noted in the Specifications.

- 3.22 EMPLOYEE CERTIFICATION.** The Offeror and all Offerors' employees utilized on the work to be performed under this RFP must have the proper certification(s) and license(s) to comply with State and local requirements connected to this RFP. The Offeror shall use only fully qualified and approved service technicians to perform inspections, service and/or repairs under this request.
- 3.23 GENERAL TERMS AND CONDITIONS:** UNMH's General Terms and Conditions are an equal and integral part of this request. All terms and conditions of this request will remain unchanged for the duration of the contract and will supersede and take precedence over any Offeror's agreement forms. Offeror must include a detailed description regarding any exceptions to the terms and conditions of this RFP. If exceptions or deviations are not clearly stated, it is understood that the terms and conditions of this proposal shall govern.
- UNMH reserves the right to reject any proposal that does not meet the terms and conditions of the request for proposal. It further reserves the right to accept or reject any modifications to the terms and conditions if it is in the best interest of the UNMH to do so.
- 3.24 F.O.B.** Unless stated otherwise, the price for goods is F.O.B. the place of destination, and the place of destination is the University's designated campus address.
- 3.25 FOREIGN PAYMENTS.** Payment for services performed by a foreign individual or a foreign corporation while in the US may be subject to 30% tax withholding per IRS Publication 515.
- 3.26 GOVERNING LAW.** All resultant Purchase Agreements shall be construed in accordance with the laws of the State of New Mexico as they pertain to 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.
- 3.27 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).** The parties agree to enter into a mutually acceptable amendment to a resultant 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.
- 3.28 INDEMNIFICATION AND INSURANCE.** Offeror 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 Offeror or the performance of the work by Offeror its agents, employees, sub-contractors or consultants, except to the extent of liability arising out of the negligent performance of the work by or willful misconduct of the University. Offeror shall indemnify, defend and hold harmless the University, its officers, agents, and employees from any and all liability for such losses, expenses, damages, demands, and claims and shall defend any suit or action brought against any or all of them based on any actual or alleged personal injury or damages and shall pay any damage costs and expenses including attorneys' fees, in connection with or resulting from such suit or action. Offeror will also

indemnify, defend and hold harmless the University against any joint and several liabilities imposed against the University with respect to strict products liability claims attributable to the fault of the Offeror.

Offeror 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 Agreement on premises occupied by or under the control of the University. The liability of the University will be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1 et seq. NMSA 1978, as amended."

- 3.29 INDEPENDENT BUSINESS.** Neither Offeror nor any of its agents shall be treated as an employee of the University for any purpose whatsoever. Offeror declares that Offeror 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 Agreement. Offeror further declares that it is engaged in the same or similar activities for other clients and that the University is not Offeror's sole or only client or customer.
- 3.30 INSPECTION.** The University may inspect, at any reasonable time, any part of Offeror's plant or place of business, which is related to performance of any resultant 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.
- 3.31 INSPECTIONS, OFFEROR.** The Offeror shall be responsible for securing at Offeror's expense, all required inspections to comply with Federal, State and/or Local regulations governing the work performed under this RFP
- 3.32 INSTRUMENTALITIES:** Offeror shall supply all equipment, tools, materials and supplies required for the performance of the designated tasks or requirements set forth in any resultant Agreement or its attachments.
- 3.33 INSURANCE REQUIREMENTS:** The Offeror is required to carry insurance, meeting the requirements in the Section labeled "Insurance Requirements" or as noted in the specifications. Offeror must submit proof of insurance in the form of a "Certificate of Insurance" to the appropriate Buyer prior to commencing work under this contract. Offeror's insurance shall remain in effect for the entire term of the contract and must be extended to coincide with any future contract extensions.
- 3.34 LATE SUBMISSIONS.** Late submissions of offers will not be accepted or considered unless it is determined by the University Hospital that the late receipt was due solely to mishandling by the University Hospital or the offer is the only offer received. Late submissions will be returned unopened.

- 3.35 MERGER.** The contract shall incorporate all the agreements, covenants, and understandings between the parties thereto concerning the subject matter thereof. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the contract.
- 3.36 NEW MATERIALS REQUIRED.** All materials and equipment delivered and/or installed under this RFP shall be new and be the standard products of a manufacturer regularly engaged in the production of the materials and equipment. Where two or more units of the same class of materials and/or equipment are required, the units shall be the products of the same manufacturer. Any manufacturer's data supplied with the item(s) shall be submitted to UNMH's authorized representative.
- 3.37 NOTICES:** Any notice required to be given or which may be given under this RFP or a resultant contract shall be in writing and delivered in person or via first class mail.

**UNMH Address**

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

- 3.38 OPTION TO RENEW.** UNMH reserves the option to renew the RFP's resultant contract if such renewal is mutually agreed to and found to be in the best interests of UNMH. These renewal options will be exercised in increments as indicated in the RFP's specifications, or if not stated, in one-year terms.
- 3.39 OTHER APPLICABLE LAWS.** Any provision required to be included in a resultant Agreement by any applicable and valid executive order, federal, state or local law, ordinance, rule or regulation shall be deemed to be incorporated herein.
- 3.40 OSHA REGULATIONS.** The Offeror shall abide by Federal Occupational Safety and Health Administration (OSHA) regulations, the State of New Mexico Environmental Improvement Board's Occupational Health and Safety Regulations that apply to the work performed under this RFP. The Offeror 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.
- 3.41 OWNERSHIP OF DOCUMENTS.** All documents which are prepared by the Offeror or any member of the consulting team that form a part of its services under a resultant Agreement are the sole property of the University of New Mexico Hospitals and such works may not be reproduced nor distributed without the express written consent of the University of New Mexico Hospitals and shall be delivered to UNMH upon termination and or completion of this Agreement if UNMH so requests. The Offeror shall be responsible for the protection and/or replacement of any original documents in its possession. UNMH shall receive all original drawings and the Offeror shall retain a reproducible copy.

*Work Made for Hire* - For the consideration payable under a resultant Agreement, the work product required by the 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 Agreement to UNMH.

*Inventions*. For the consideration payable under a resultant Agreement, the Offeror agrees to report any invention arising out of the Work required by the 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 Offeror or member of the consulting team as part of the performance of Work. The Offeror 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. Offeror 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 Agreement to UNMH.

*Survival of Provision*. This provision shall survive expiration and termination of the Agreement.

- 3.42 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.
- 3.43\*\*PATENT AND COPYRIGHT INDEMNITY.** Offeror shall indemnify, defend and hold harmless the University Hospital 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.
- 3.44 PAYMENTS FOR PURCHASING.** No warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction, or items of tangible personal property unless the Purchasing Office or the UNMH using agency certifies that the services, construction or items of tangible personal property have been received and meet specifications.
- 3.45 PAYMENT TERMS.** Upon written request from Offeror for payment, the University shall, within 30 days, issue a written certification of complete or partial acceptance or rejection, with payment to follow within 30 days after certificate of acceptance. Late payment charges shall be ½ of 1% per month.
- 3.46 PAYROLL OR EMPLOYMENT TAXES.** No federal, state, or local income, payroll or employment taxes of any kind shall be withheld or paid by the University with respect to



payments to Offeror or on behalf of Offeror its agents or employees. Offeror 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 Offeror is not a corporation, Offeror further understands that Offeror may be liable for self-employment (Social Security) tax, to be paid by Offeror according to law.

- 3.47 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.
- 3.48 PERIOD FOR OFFER ACCEPTANCE.** Offeror agrees that any offer made submitted will be good for a period of 365 calendar days.
- 3.49 PUBLIC INFORMATION.** All information, except that classified as confidential, will become public information at the time that the RFP is awarded. Confidential information must be marked "CONFIDENTIAL" in red letters in the upper right hand corner of the pages containing the confidential information. Price and information concerning the specifications cannot be considered confidential. (UNMH Purchasing Regulations 11.6.3.)
- 3.50 AGREEMENT.** Any resultant Agreement shall be the sole and entire Agreement between the parties; any documents incorporated into the Agreement are listed explicitly on the front side of the Agreement, or are incorporated by implication by the terms of any resultant Agreement. Any terms inconsistent with or in addition to any resultant Agreement proposed by Offeror are deemed rejected unless agreed to in writing by an appropriate University Hospital official.
- 3.51 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.
- 3.52 RELEASE UNMH REGENTS.** The Contractor shall, upon final payment of the amount due under the contract release Regents of the University of New Mexico Hospitals, their officers and employees and the State of New Mexico from liabilities, claims and obligations whatsoever arising from the contract. The Contractor agrees not to purport to bind the University of New Mexico Hospitals or the State of New Mexico to any obligation not assumed in the contract by the Regents of the University of New Mexico 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.
- 3.53 REMOVAL OF OFFEROR'S EMPLOYEE(S).** UNMH may request that Offeror's employee(s) be removed from the work under the contract for cause. The UNMH may immediately terminate, with written notice to Offeror, the services of any Contractor employee, if the University of New Mexico's management believes in good faith that

Offeror's employee is unable to perform the services with reasonable skill. Offeror's agreement may also be terminated if Offeror's liability insurance coverage is modified or terminated.

- 3.54 REQUEST AS AGREEMENT:** This Request for Proposal governs any offer and the selection process. Submission of an offer in response to this Request for Proposal constitutes acceptance of all this Request's terms and conditions. The terms and conditions of the Request may not be modified, altered, nor amended in any way by any Offer. Any such modification, alteration, or amendment shall be considered to be a request for modification, alteration or amendment, which request shall be deemed denied unless specifically accepted in writing by UNMH.
- 3.55 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.
- 3.56 RIGHT TO PROTEST.** The solicitation of the award of an RFP/Invitation for Bid (IFB) may be protested as per the UNMH Purchasing Regulation 11, Protest Procedures, which may be found at the following UNMH web site: <http://www.UNMH.edu/~purch/reg11.pdf>.
- 3.57 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.
- 3.58 SCHEDULE DELAYS.** If after the award, the Offeror becomes aware of possible problems that could result in delay in completion of the work on the agreed-to schedule; the Offeror 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 Offeror of its contractual obligations; however, failure to notify UNMH promptly will be basis for determining the Offeror responsibility in an otherwise excusable delay.
- 3.59 OFFEROR'S EMPLOYEES AND AGENTS.** Offeror shall have complete charge and responsibility for persons employed by Offeror and engaged in the performance of the specified work. The Offeror, its agents and employees state that they are independent contractors and not employees of the University. Offeror, 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 Agreement.

- 3.60 SITE FAMILIARITY.** If there is work associated with the requirements of this RFP, the Offeror shall be responsible for thoroughly inspecting the site and work to be done prior to submission of an offer. The Offeror 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 Offeror 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.
- 3.61 SITE INSPECTION.** If a site is referenced in this RFP, it is available for inspection. Arrangements may be made by contacting the individual listed on the cover sheet.
- 3.62 STATE AND LOCAL ORDINANCES.** The Offeror shall perform work under the resultant contract in strict accordance with the latest adopted version of all State and local codes, ordinances, and regulations governing the work involved. All materials and labor necessary to comply with the rules, regulations and ordinances shall be provided by the Offeror. Where the drawings and/or specifications indicate materials or construction in excess of the code requirements, the drawings and/or specifications shall govern. The Offeror shall be responsible for the final execution of the work to meet these requirements. In the event of a conflict between various codes and standards, the more stringent shall apply.
- 3.63 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.
- 3.64 TAX SEGREGATION (CONSTRUCTION RELATED PROJECTS).** In the performance of any construction related services under this solicitation, the Offeror agrees to work with and cooperate with the University's Tax Cost Segregation Consultant. The University's tax cost segregation consultant will be responsible for coordination, oversight and analysis of the effective application of New Mexico Gross Receipts Tax for each general Offeror involved with the construction projects at UNMH. Such services of the segregation consultant will be performed in accordance with New Mexico Statutes and relative regulations governing the application of New Mexico gross receipts tax to tangible personal property acquisition made by UNMH for various construction projects.
- 3.65 TERMINATION AND DELAYS.** The University Hospital may by written notice stating the extent and effective date, terminate any resultant Agreement for convenience in whole or in part, at any time. The University Hospital shall pay Offeror as full compensation for performance until such termination: (1) the unit or pro rata order price for the delivered and accepted portion, as approved by the University, and shall in no event exceed the total contracted price. Such amount will be limited to Offeror's actual cost, and may not include anticipated profits. The University Hospital shall not be liable for consequential damages. The University Hospital may by written notice terminate any resultant Agreement in whole or in part for Offeror's default if Offeror refuses or fails to comply with the provisions of a resultant Agreement or fails to make progress so as to endanger performance and does not cure such failure within a reasonable period of time. In such event, the University Hospital may otherwise secure the materials, supplies or services ordered, and Offeror shall be liable for damages suffered by the University Hospital thereby, including incidental and

consequential damages. If after notice of termination, the University Hospital determines Offeror was not in default, or if Offeror's default is due to failure of the University Hospital, termination shall be deemed for the convenience of the University Hospital. The rights and remedies of the University Hospital 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 Agreement as used in this paragraph, the word "Offeror" includes Offeror and Offeror's sub-suppliers at any tier.

- 3.66 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.
- 3.67 TITLE AND DELIVERY.** Title to the materials and supplies passed hereunder shall pass to the University Hospital upon acceptance at the FOB point specified, subject to the right of the University Hospital to reject. For any exception to the delivery date specified, Offeror shall give prior notification and obtain approval thereto from the University's Purchasing Department. Time is of the essence and the Agreement is subject to termination for failure to deliver on time.
- 3.68 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.
- 3.69 WARRANTIES.** Offeror warrants the goods and/or services furnished to be exactly as specified in any resultant Agreement, free from defects in Offeror's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by Offeror. All applicable UCC warranties express and implied are incorporated herein.
- 3.70 WARRANTY:** Please state the warranty for equipment to be supplied under this RFP. A copy of the warranty should be included in your submission.
- 3.71 WORKERS COMPENSATION.** No workers compensation insurance has been or will be obtained by UNMH on account of Offeror or its employees or agents. Offeror shall comply with the workers compensation laws with respect to Offeror and Offeror's employees and agents.
- 3.72 WORKMANSHIP/COOPERATION.** Any work performed under this RFP 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 Offeror will cooperate with the University Hospital and other contractors and coordinate their work involving other contractors through the University Hospital's authorized representative.

**SECTION IV****ADDITIONAL INSTRUCTIONS TO OFFERORS**

- 4.1 VETERANS PREFERENCE.** In accordance with sections 13-1-21 and 13-1-22 NMSA 1978 resident veterans businesses are to receive the following preferences:
- 4.1.1** Resident veterans businesses with annual revenues of \$1M or less are to receive a 10% preference discount on their bids and proposals.
  - 4.1.2** 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
  - 4.1.3** Resident veterans businesses with annual revenues of more than \$5M are to receive a 7% preference discount on their bids and proposals.
  - 4.1.4** 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.
  - 4.1.5** Points will be awarded based on Offerors ability to provide a copy of a current Resident Veterans Certificate (**Exhibit F**)
  - 4.1.6** 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.
  - 4.1.7** RFP's are to be evaluated on preference as follows:
    - 4.1.7.1** 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.
  - 4.1.8** The attached "Resident Veteran Preference Certification" form (**Exhibit F**) must filled out, signed and included the offeror's RFP from any business wishing to receive a resident veteran's preference.
- 4.2 AUTHORIZED SIGNATURE PAGE:** Review and submit the Authorized Signature Page attached hereto as **Exhibit B**.
- 4.3 SMALL AND DISADVANTAGED BUSINESS CERTIFICATION FORM:** Review and submit the Small and Small Disadvantaged Business Certification Form attached hereto as **Exhibit G**.
- 4.4 CONFLICT OF INTEREST CERTIFICATION FORM:** Review and submit Conflict of Interest Certification Form attached hereto as **Exhibit H**.
- 4.5 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 K**). 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.

- 4.6 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 L**.
- 4.7 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. Offerors *must complete and submit* the UNMH Information Security Plan Information addressed in Exhibit J and submit with RFP. Failure to complete form or failing to receive IT approval may result in Offeror(s) being considered as non-responsive. To view this exhibit please visit [http://hospitals.unm.edu/about/proposals\\_2016.shtml](http://hospitals.unm.edu/about/proposals_2016.shtml).
- 4.8 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.
- 4.9 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS.** Review and submit the Certification And Disclosure Regarding Payments To Influence Certain Federal Transactions (April 1991) form attached hereto as **Exhibit I**.
- 4.10 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.
- 4.11 PERIOD OF CONTRACT.** The term of the resultant Price Agreement(s) arising from this proposal shall be for one year with an option to renew by written addendum for additional one year terms, not to exceed a total of eight (8) years, as provided for in NMSA 13-1-150 (Multi-Term Contract).
- 4.12 QUANTITIES.** UNMH may purchase all, some or none of the elements described in this proposal or Offerors responses. In addition, additional quantities may fluctuate up or down based on UNMH needs during the term of the agreement. The successful Offeror will be required to fill all orders placed regardless of quantities ordered.
- 4.13 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.

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**SECTION V****RESPONSE FORMAT**

1. Submit a minimum of three (3) references similar in size to UNMH using the equipment proposed in your offer.
  - a. Radiology leadership to inquire at other locations staffing and practice patterns.
2. Will your company arrange for a site visit at no charge to UNMH to one of these hospitals for eight individuals?
3. Equipment (Physician Requirements) Provide an in-depth response to the Scope of Work as it relates to Intraoperative Intraoperative Mobile 3D Imaging Solution that can integrate with the hospitals existing Medtronic Stealth Navigation. but not limited to the following:
  - 3.1 Intraoperative Mobile 3D Imaging Solution
    - a. Indications and Contra-indications for use
    - b. Integration Capabilities with current Hospital owned Medtronic Stealth System
    - c. Diminished Capabilities with current Hospital owned Medtronic Stealth System
    - d. Image Quality
  - 3.2 Surgical Table/Tables for use with Intraoperative Mobile 3D Imaging Solution
    - a. List of different beds and capabilities if choice is available
    - b. Accessories for bed (Non-Disposable Positioners, Bariatric Extensions etc...
    - c. Safety/Weight Limits
4. Equipment (Radiology) Provide an in-depth response to the Scope of Work as it relates to Intraoperative 3D Imaging Equipment, Surgical Table/Tables for use with 3D System and Navigation System including, but not limited to the following:
  - 4.1 Intraoperative Mobile 3D Imaging Solution
    - a. Gantry size and/or SID
    - b. Imaging Field of View
    - c. X-Ray Generation
    - d. X-ray Detection
    - e. Solution to send dicom information for images and radiation doses
    - f. Safe-Guards/Compliance (i.e. XR-29 Compliant)
    - g. Patient Dose Savings Options (e.g., mA or kV modulation)
    - h. Structured dose reporting
    - i. Rotation
    - j. Image Quality
    - k. Connectivity



- l. Flow Chart of Process including people needed to appropriately operate the 3D Imaging System
- m. Software and Hardware upgrade inclusions for the life of the equipment
- n. Vendor to comply with UNM Medical Physics Tests and acceptance

#### 4.2 Surgical Table/Tables for use with 3D Imaging System

5. Installation, Warranty and Preventative Maintenance - (Facilities and Clinical Engineering) Provide an in-depth response to the Scope of Work as it relates to installation, warranty and Preventative Maintenance requirements, including but not limited to the following:

#### Installation Requirements

- 5.1 Intraoperative Mobile 3D Imaging Solution Installation Requirements
  - a. Site Requirements
  - b. Connectivity
  - c. Dimensions
  - d. Ability to be moved between OR's (Logistics and Safety) to be addressed
- 5.2 Surgical Table/Tables for use with Intraoperative Mobile 3D Imaging Solution
  - a. Dimensions
  - b. Safety/Weight Limits

#### Warranty

- 5.3 General Guarantees and Performance Guarantee. Include specific, detailed descriptions of all guarantees, warranties and conditions with respect to the Equipment to enable the UNMH to fully understand the nature, extent and limitations of the Warranty provided by the Offeror to include but not limited to the following:
  - a. The Warranty shall commence on the successful completion of the Acceptance Testing and the delivery by UNMH of the Acceptance Certificate. Indicate the length of the Warranty, extent of the coverage and any terms, conditions or limitations and performance guarantee.
  - b. Preventative Maintenance – provide a description of service components included in post warranty Preventative Maintenance.

6. Education and Training – All initial training for equipment will be provided at no charge to UNM Hospitals. Include information on all Education and Training Offered during and after installation including but not limited to the following
- a. What is the training methodology?
  - b. Vendor to provide a competency check list to be used for training review
  - c. If applicable, describe the training you provide coders, CDI specialists, and system administrators.
  - d. How will you ensure all training will be scheduled to coincide with UNM Hospital schedules and staffing?
  - e. What type of staff will you make available to provide to be onsite and for how many days and for how long?
  - f. 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. Do you offer ongoing webinars, seminars, in-service training or user group meetings?
  - g. Do you offer post installation clinical and/or technical continuing education/training? If so, what and where is it offered.
7. Cost – Equipment, Education, Training and Warranty- Purchasing/OR Administration -

**Complete and Submit Exhibit A for the following:**

- 7.1 Intraoperative Mobile 3D Imaging Solution Equipment –
- a. Line Item Quote for Intraoperative Mobile 3D Imaging Equipment and Software
  - b. Line item quote for most common replacement items (To include pendants)
  - c. Disposables with line item quotes
  - d. Re-imbusement information for disposables
  - e. Line item quotes of instrumentation if needed complete with IFU's for Sterile processing verification
  - f. Warranty and Preventative Maintenance Price Proposal
- 7.2 Surgical Table/Tables for use with Intraoperative Mobile 3D Solution Equipment
- a. List of compatible procedure tables/beds
  - b. Line item quote for beds
  - c. Line item quote for most common replacement items (To include pendants)
  - d. Safety/Weight Limits
  - e. Disposables with line item quotes
  - f. Re-imbusement information for disposables
  - g. Warranty and Preventative Maintenance Price Proposal
- 7.3 Education and Training – Cost proposal all continuing education and training offered post installation inclusive of Physician, OR Staff and Clinical Engineering.
8. Information Technology Requirements – **IT Security Plan (Exhibit J) must be submitted and questions below must be answered for related software**

- a. Vendor must provide workflow diagram of application/system for security control point understanding.
- b. Describe access controls at all points.
- c. Describe your remote access requirements.
- d. Provide remote support capabilities for UNMH personnel.
- e. Describe the systems processes for Separation of duty, data integrity checks, if this system creates error reports, where and how are they logged?
- f. Describe: business continuity, backup and general DR abilities.
- g. Does your system provide controls to limit access to unauthorized users? Please explain:
- h. Does your product provide access to individual system functions through a hierarchy of privileges defined by the data owner?
- i. Provide controls, logging capability and audits of user access to patient information based on user ID?
- j. Explain your capabilities to provide automatic logoff after a defined amount of time.
- k. Does your system have the ability to prevent the download of patient information to hard drives, other media and printers? Please Explain
- l. Does your system have an electronic audit trail of access to all users who have accessed or updated a patient record, including date and time stamps, and location of access?
- m. Provide exactly how your system/application stores log off of the system and how access to security system logs is controlled.
- n. Does your system provide security checks/controls based on roles (e.g. Physician vs. Users)
- o. Provide information on how your system provides single sign-on capabilities and password complexity or synchronize with enterprise active directory or LDAP?
- p. Provide security training capabilities or offerings.
- q. Provide web-based or other monitoring tool information.
- r. Provide web or networking dependencies.
- s. Provide information on the biometric or other two factor authentication of your system.
- t. Provide contractual guarantee to provide updates, software releases and upgrades to ensure HIPAA/HITECH compliance and/or other regulations with no cost?
- u. Provide information on how the system is patched, updated and does it support AV?
- v. Provide incident response processes including breach reporting priorities and, response and reporting times.
- w. Please provide IT application/system supports operating system, application and antiviral updates. Specifically, what is the guaranteed turnaround for applying the above patches or mitigation of security vulnerabilities found by vendors, experts and UNMH security staff?
- x. Tell us how your system complies with HITECH NIST transport layer security and data at rest encryption protocols?

- y. Provide information on how your system provides: Support data level access controls that allow assignment of security data level in files?
- z. Does your system have the ability to assign specific access levels by profession or ID?
- aa. Does your client-server (data security) allow browser-based access from anywhere inside or outside hospital
- bb. Date when your first and most recent commercial system was installed, e.g. is this a beta version or has it been in use for a while without problems

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## SECTION VI

### EVALUATION CRITERIA

This section describes the criteria to be used for analyzing and evaluating the various proposals. Cost will be a factor in the proposal evaluation with negotiable expectations; however, it is specifically a consideration of secondary importance to the need for competent and high-quality skilled Offeror(s).

UNMH reserves the right to make an award based directly on the proposals or to negotiate with one or more Offerors or reject all proposals. The Offeror selected for the award will be chosen on the basis of the greatest benefit to UNMH, not on the basis of lowest price. All responses to this Request for Proposals become the property of UNMH and will become public information upon completion of UNMH contract negotiation process.

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

<b>Cost</b>	<b>40</b>
<b>Equipment Acceptability</b>	<b>30</b>
<b>Installation, Warranty and Preventative Maintenance</b>	<b>10</b>
<b>Education/Training</b>	<b>15</b>
<b>Information Technology Requirements</b>	<b>5</b>
<b>TOTAL POINTS</b>	<b>100</b>

## SECTION VII

### ORGANIZATION OF PROPOSAL

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

**5.1** Offerors are to organize Proposals in the order as stated in this section. To this end, the organization of your proposal shall be clearly labeled and numbered and indexed as follows:

- 5.1.1 Table of Contents
- 5.1.2 Signed Authorized Signature Page (Exhibit B)
- 5.1.3 Proposal Summary (Optional)
- 5.1.4 Response Format (Section V)
- 5.1.5 Installation (Exhibit C)
- 5.1.6 Acceptance Testing (Exhibit D)
- 5.1.7 Manuals, Bulletins and Documentation (Exhibit E)
- 5.1.8 Resident Veterans Preference Certificate (Exhibit F)
- 5.1.9 Small & Small Disadvantaged Business Certification (Exhibit G)
- 5.1.10 Conflict of Interest and Debarment Certificate Form (Exhibit H)
- 5.1.11 Certification and Disclosure regarding Payments to Influence certain Federal Transactions (April 19910) (Exhibit I)
- 5.1.12 Information Security Plan (Exhibit J)
- 5.1.13 Insurance Requirements (Exhibit K)
- 5.1.14 Sample Agreement (Exhibit L)
- 5.1.15 Other Supporting Material (If applicable)

**5.2** Submittals should completely address each of the evaluation criteria in the order presented, elaborating on all responses where possible, and should not exceed 60 single sided, 8 ½ x 11 inch paper (excluding exhibits, samples, or other attachments in a font not smaller than 10). Number each page 1 of \_\_\_ total pages and include your firms' name. The original copy shall be clearly marked as such on the front of the binder.

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**EXHIBIT A**  
**COST PROPOSAL**

**Cost proposal shall include the following:**

**INTRAOPERATIVE 3D IMAGING EQUIPMENT**

1. Line item quote for CT Equipment and Software
2. Most common replacement items with line item quote (To include pendants)
3. Disposables with line item quotes
4. Line item quotes for instrumentation if needed complete with IFU's for Sterile Processing verification.
5. Other costs associated with purchase

**SURGICAL TABLE/TABLES FOR USE WITH 3D IMAGING EQUIPMENT**

1. Line item quote for beds
2. Line item quote for most common replacement items (to include pendants)
3. Disposables with line item quotes
4. Warranty and preventative Maintenance cost proposal
5. Other costs associated with purchase

- 1.

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Exhibit A

**INTRAOPERATIVE CT EQUIPMENT**

Item#	Equipment and Software	Qty	Part #	List Price	% Off List Price	UNMH Price (ea)	UNMH Ext Price

Item#	Most common replacement items	Qty	Part #	List Price	% Off List Price	UNMH Price (ea)	UNMH Ext Price

Item#	Disposables	Qty	Part #	List Price	% Off List Price	UNMH Price (ea)	UNMH Ext Price

Item#	Instrumentation if needed	Qty	Part #	List Price	% Off List Price	UNMH Price (ea)	UNMH Ext Price

Item #	Warranty/Preventative Maintenance	Qty	Part#	List price	%Off List Price	UNMH Price (ea)	UNMH Ext Price



Item#	Post install Training /Education Costs	Qty	Part #	List Price	% Off List Price	UNMH Price (ea)	UNMH Ext Price

Installation and Implementation: Any applicable costs associated with installation and implementation should be clearly identified. Installation and implementation charges should cover all necessary components, including but not limited to cabling, connections, and wall plates, all with the intention of providing a complete operational system. Offerors should detail clearly, in the Installation Plan, any parts of the installation that the Offerors believes are the responsibility of the Hospital.

Item#	Installation Costs	Qty	Part #	List Price	% Off List Price	UNMH Price (ea)	UNMH Ext Price

I tem#	Other Costs	Qty	Part #	List Price	% Off List Price	UNMH Price (ea)	UNMH Ext Price

**SURGICAL TABLE/TABLES FOR USE WITH 3D Imaging System**

Item#	Beds/ Cost	Qty	Part #	List Price	% Off List Price	UNMH Price (ea)	UNMH Ext Price

Item#	Common Replacement Items/Cost	Qty	Part #	List Price	% Off List Price	UNMH Price (ea)	UNMH Ext Price



--	--	--	--	--	--	--	--

Item#							

Item#	Common Replacement Items/Cost	Qty	Part #	List Price	% Off List Price	UNMH Price (ea)	UNMH Ext Price

Item#	Disposables	Qty	Part #	List Price	% Off List Price	UNMH Price (ea)	UNMH Ext Price

Item#	Instrumentation if needed	Qty	Part #	List Price	% Off List Price	UNMH Price (ea)	UNMH Ext Price

Item#	Post installation Training /Education Costs	Qty	Part #	List Price	% Off List Price	UNMH Price (ea)	UNMH Ext Price

Item#	Warranty/Preventative Maint	Qty	Part #	List Price	% Off List Price	UNMH Price (ea)	UNMH Ext Price
Item#	Other Costs	Qty	Part #	List Price	% Off List Price	UNMH Price (ea)	UNMH Ext Price

**EXHIBIT B**

**AUTHORIZED SIGNATURE PAGE**

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

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

**ACKNOWLEDGMENT OF ADDENDA**

The undersigned acknowledges receipt of the following addenda:

Addenda No. \_\_\_\_\_ Dated \_\_\_\_\_ Addenda No. \_\_\_\_\_ Dated \_\_\_\_\_

Addenda No. \_\_\_\_\_ Dated \_\_\_\_\_ Addenda No. \_\_\_\_\_ Dated \_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**EXHIBIT C****INSTALLATION****1. Installation**

- 1.1. The Vendor shall install equipment and required software (modules), cables, hardware at the Hospital on the date or dates specified in the Implementation Plan or as mutually agreed upon with UNMH.

**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 required equipment, software (modules), cables, and hardware at the Hospital.

**3. Damage to Hospital Property**

- 3.1. When installing the equipment, and required software (modules), cables, and 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 equipment, required software (modules), cables, and 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 D****ACCEPTANCE TESTING**

1. The Acceptance Testing protocol described herein is a minimum standard which is intended to demonstrate that any equipment, hardware, software (modules), cables, and required hardware, once fully delivered, installed and commissioned will meet the requirements as called for in this RFP on a continuous and reliable basis and will meet or surpass the clinical requirements set by UNMH in this RFP. Without limiting the generality of the foregoing, the Acceptance Testing is also intended to demonstrate that the software (modules), cables, and required hardware will meet or surpass the requirements of the Performance Guarantee.
  - 1.1. Performance Certificate. Following installation of the software (modules), cables, and required hardware, the Vendor shall provide to UNMH a performance certificate certifying that such software (modules), cables, and required hardware has been fully and completely supplied and/or installed, is mechanically complete, is fully commissioned, and is ready for Acceptance Testing (the "Equipment Performance Certificate"). Title to the software (modules), cables, and required hardware will pass to the UNMH upon receipt by the Hospital of the Performance Certificate.
  - 1.2. UNMH Acceptance Testing. Following receipt of the Performance Certificate, the UNMH shall proceed to conduct acceptance testing ("Acceptance Testing") and the Vendor shall cure any identified non-conformance in accordance with the terms therein.
2. **General**
  - 2.1. Without prejudice to the Hospital's right to reject unordered, defective or non-conforming software (modules), cables, and required hardware, the Hospital shall be entitled to conduct Acceptance Testing. The software (modules), cables, and required hardware must comply with the Vendor's Technical Specifications and any acceptance criteria that are mutually defined ("Acceptance Criteria"). The Acceptance Testing shall be based on the Vendor's formal factory test procedures and the Acceptance Criteria unless otherwise agreed to. A successful Acceptance Test shall have occurred only after the Equipment has fully met the requirements set out in this Schedule for a period of \_\_\_\_\_ (*Offeror Insert*) consecutive calendar days following validation.
  - 2.2. All Acceptance Criteria used as part of the Acceptance Testing shall be considered as baseline parameters of performance and shall be used by the Hospital for comparison purposes during all subsequent quality assurance testing.
3. **Acceptance Testing Environment.** Unless otherwise agreed to by the parties, the Vendor agrees that all Acceptance Testing shall occur during the peak working period of the use of the software (modules) and required hardware as determined by the Hospital.
4. **Timing of Acceptance Testing.** Unless otherwise agreed to by the Hospital, software (modules), cables, and required hardware shall not be considered ready for any Acceptance Testing unless all quantities of all components related thereto have been delivered to the Hospital and, where appropriate, installed.
5. **In accordance with the Implementation Plan;**
  - 5.1. **the Vendor shall give approximately two (2) weeks' notice prior to the Hospital to organize the appropriate people within the Hospital for Acceptance Testing; and**

5.2. *the Acceptance Testing shall commence upon the Hospital's receipt of the Performance Certificate from the Vendor.*

6. **Acceptance Testing.** The Acceptance Testing shall extend for a period of \_\_\_\_\_(*Offeror Insert*)days, or such longer period as the parties may agree. If the Equipment does not meet the Acceptance Criteria, during the initial \_\_\_\_\_ (*Offeror Insert*) consecutive day period, the Hospital shall provide immediate written notice of the failed Acceptance Testing to the Vendor. The Vendor shall take corrective measures within twenty-four (24) hours of receipt of the failed Acceptance Testing notice and provide written notice to the Hospital when the Vendor is ready to commence a second \_\_\_\_\_ (*Offeror Insert*) consecutive calendar day Acceptance Testing period. Should the Equipment not meet the Acceptance Criteria during this second [**insert number of days**] consecutive day period, the Hospital provide immediate written notice of failed Acceptance Testing to the Vendor. The Vendor shall take corrective measures within twenty-four (24) hours of the receipt of the failed Acceptance Testing notice and provide written notice to the Hospital that the Equipment is ready to commence a third \_\_\_\_\_(*Offeror Insert*) Acceptance Testing period. If the Equipment fails to meet the Acceptance Criteria during the third (*Offeror Insert*) day Acceptance Testing period, the Hospital may, at its option:

- 6.1. Request and have replaced the software (modules), cables, and required hardware that has been the source of the failure;
- 6.2. Grant an extension of the period allowed for successful completion of the Acceptance Testing in which case, the Vendor shall promptly make every reasonable commercial effort to correct the deficiencies and defects, and the Acceptance Testing period shall be extended for such further period of time as the Hospital may determine in order to permit the Vendor a reasonable opportunity to correct the deficiencies and defects and for the Hospital to conduct any new Acceptance Testing; or
- 6.3. Terminate this Agreement and request immediate removal of the software (modules), cables, and required hardware from the Hospital's premises, at no cost to the Hospital and provide a full refund of money paid to date to the Hospital. Upon the removal, the Vendor shall ensure the installation site is returned to its original condition, to the Hospital's satisfaction, at the Vendor's expense.

7. **Successful Acceptance Test.** If the Acceptance Testing is successful, following the end of the Acceptance Testing period, the Hospital shall execute a Hospital Acceptance Certificate confirming that the Equipment has satisfied the Acceptance Criteria.

8. **Title and Risk of Loss**

- 8.1. Regardless of whether or not any payment has been made for the software (modules), cables, and required hardware and notwithstanding any Acceptance Testing to be conducted, title to the software (modules), cables, and required hardware shall pass upon receipt by the Hospital of the Performance Certificate.
- 8.2. Risk of loss or damage to the software (modules), cables, and required hardware shall pass to the Hospital upon receipt by the Hospital of the Performance Certificate.

9. **Warranty.** The Vendor agrees that the Warranty shall only commence upon the Hospital's execution of a Hospital Acceptance Certificate.

10. **Other Remedies.** The holding of, or the failure to hold any Acceptance Testing, shall in no way impair the Hospital's right to avail itself of any other remedies to which the Hospital may be entitled in respect of defective or non-conforming Equipment..



- 11. Deemed Acceptance.** If, one (1) day after the completion of the last Acceptance Testing period the Hospital has failed to provide notice to the Vendor that Acceptance Testing has failed, the Vendor shall notify the Hospital in writing requesting that the Hospital either execute a Hospital Acceptance Certificate or inform the Vendor of the failed Acceptance Testing within ten (10) days of receipt of the notification. If the Hospital does not respond within such ten (10) day period, the Hospital shall be deemed to have accepted the Equipment.
- 12. Other Acceptance Testing Procedures.** The Vendor is advised that individual hospitals may have other procedures for Acceptance Testing that may need to be included in any final agreement.

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**EXHIBIT E****MANUALS, BULLETINS AND DOCUMENTATION**

1. **Content of Exhibit.** Service/Training/Parts Manuals, Bulletins and Document should outline in detail the manuals, bulletins, documentation, drawings, spare parts and other materials which the Offeror will supply to support the Equipment, products or services offered in its Proposal.
2. **Electronic Availability.** One of the obligations of a successful Offeror under the Agreement is to provide the documents and other materials described in the Service/Training/Parts Manuals, Bulletins and Documentation. The Offeror may propose to provide such documentation and materials through electronic links provided that such links are properly secure, can be accessed by the UNMH personnel easily and are provided at no cost.
3. **The Offeror should disclose:**
  - 3.1. The guaranteed response time to assess recalled devices that have been identified by the UNMH.
  - 3.2. Resources available from the Offeror to assess all recalled devices in order to ensure the devices meet current safety standards and regulations and to further ensure uninterrupted usage of Equipment by the Hospital.
  - 3.3. Any discussions with regulatory agencies related to the device, which may impact on the future availability or use of the Equipment or its accessories, or has an impact on the service or Warranty support provided by the Offeror.
4. **Service/Training/Parts Manuals and Documentation.** The following manuals/materials shall be provided at no charge and shipped with the software (modules) and required hardware, unless otherwise specified in this Agreement:
  - 4.1.2 complete sets of operator/user manuals, including software (modules) and required hardware manuals as applicable and any other printed or electronic media available for user education (e.g. videos, CD-ROMS, etc.).
  - 4.2.1 complete set of service manuals including but not limited to, electrical/mechanical/pneumatic schematics manuals, parts lists, pricing lists or schedules, software manuals, troubleshooting guides, training, health and safety manuals, as applicable.
  - 4.3.A list of any installation and/or special test tools and/or components and/or preventative maintenance kits requirements for the proper use and maintenance of the Equipment, replacement parts, and the current parts costs. UNMH should be notified of such requirements before the Equipment is shipped.
  - 4.4. All service documentation for diagnostic software (modules) and required hardware Schematics, drawings, blueprints and data sheets, as applicable.
  - 4.5.2 copies of As-built drawings at the end of construction in electronic form suitable to the Hospital, as applicable
5. **Bulletins and Updates.** The Vendor shall, on a timely basis, forward to UNMH designated personnel:
  - 5.1. Any service bulletins, clinical user bulletins, or similar type of or related bulletin including, but not limited to, on-line technical resources that relate to the Equipment.
  - 5.2. Updates to the manuals/materials referred to in this Schedule as long as the Equipment is still being used or the Hospital still requires the Equipment, at no additional cost to the Hospital.

**EXHIBIT F**

**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)\* Date:

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

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

EXHIBIT G

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

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

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

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

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

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

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

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

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

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

Check All Categories That Apply:

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

Signature and Title of Individual Completing Form:

Date

Please return this form to:

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

NOTE:

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

THANK YOU FOR YOUR COOPERATION

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

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

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EXHIBIT H

THE UNIVERSITY OF NEW MEXICO HOSPITALS SUPPLIER CONFLICT OF INTEREST AND DEBARMENT/SUSPENSION CERTIFICATION FORM

CONFLICT OF INTEREST

The authorized Person, Firm and/or Corporation states that to the best of his/her belief and knowledge:

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

DEBARMENT/SUSPENSION STATUS

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

CERTIFICATION

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

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

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

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

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

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**EXHIBIT I**

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

- 5. 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.
- 6. 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;
  - g. 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;
  - h. 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.
  - i. 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.

**5.1.1 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 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 ITSecurity 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. To view this exhibit please visit RFP P349-16:

[http://hospitals.unm.edu/about/proposals\\_2016.shtml](http://hospitals.unm.edu/about/proposals_2016.shtml)

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

## **EXHIBIT K 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 L - SAMPLE AGREEMENT**

**INTRAOPERATIVE CT EQUIPMENT AGREEMENT**

THIS AGREEMENT, made and entered into, in the State of New Mexico, by and between the **REGENTS OF THE UNIVERSITY OF NEW MEXICO, FOR ITS PUBLIC OPERATION KNOWN AS UNIVERSITY OF NEW MEXICO HOSPITALS**, hereinafter referred to as the “UNMH” and \_\_\_\_\_, hereafter referred to as the “Contractor/Offeror,” and is effective as of date of last signature.

**RECITALS**

- A. UNMH has issued RFP NUMBER P349-16 and wishes to purchase an Intraoperative CT System as described in this Agreement and “Contractor” has submitted its proposal in response to the RFP.
  
- B. This Agreement sets forth the terms and conditions under which the Contractor will deliver equipment, products and services described herein, and UNMH will reimburse Contractor for such equipment, products and services.

**NOW THEREFORE**, the Agency and the Contractor in consideration of mutual covenants and agreements herein contained, do hereby agree as follows:

**1. RESPONSIBILITIES ON CONTRACTOR:**

- 1.1.** The Contractor shall provide the Equipment, Products and Services at the prices described in Exhibit A, attached to and incorporated by reference in this Agreement.
- 1.2.** Contractor must have the ability to work within the security, regulatory and internal policy requirement needs of various UNMH facilities.
- 1.3.** 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.
- 1.4.** Contractor shall guarantee that the equipment, products and services offered will meet or exceed specifications identified in this Agreement.
- 1.5.** 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.
- 1.6.** 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.

- 1.7. Contractor should have an extensive knowledge of the company's product roadmap, and understanding of industry best products and practices.
- 1.8. Depending on the nature of the work, Contractor may be required to possess specialty licensure/certification.
- 1.9. Must perform all work compliant with applicable industry standards and recommended practices.

## 2. NEW PRODUCTS, SERVICES, TECHNOLOGIES AND PRICE ADJUSTMENTS

- 2.1. Any and all Contractor's new product additions, technological advancements or new technology must be within the scope of work of this agreement. All new innovative and revolutionary technologies must be approved by UNMH prior to any use. Products brought into UNMH without prior approval can result in credentialing revocation.
- 2.2. Pricing on new products and technology will be mutually agreed upon and commensurate with the level of discount provided on existing products in the same category. The new products and prices will not be enforceable without an addendum to this agreement.

## 3. INCORPORATION BY REFERENCE

- 3.1 If this Agreement has been procured pursuant to a request for proposal, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by UNMH and (5) the Contractor's response to the request for proposals.

## 4. FINANCIAL REQUIREMENTS

- 4.1. **Compensation.** UNMH will pay Contractor for equipment, products and services rendered at the rates set forth in Attachment A. Pricing shall be firm for the term of the agreement.
- 4.2. **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.

- 4.3. Payment.** UNMH will pay Contractor within a reasonable time after receipt of invoices from Contractor. Disputed invoices will be resolved in good faith by Contractor and UNMH in a timely manner.
- 4.4. Accounting.** Contractor will keep an accurate record of all work performed regarding this Agreement, and will make such records available to UNMH at all reasonable times.
- 4.5. Discounts.** For the early payment discount, the discount time will not begin until the goods and 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. QUALITY MANAGEMENT COMPLIANCE.** Contractor will comply with all quality management programs required by UNMH, The Joint Commission, the federal Centers for Medicare and Medicaid Services, and any other applicable accrediting or regulatory agencies, as well as all policies and procedures of UNMH facilities.

## **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.** If the services contemplated under this Agreement will be performed on or in UNMH facilities or property, Contractor will procure and maintain, at its own expense, (1) general liability insurance coverage with minimum limits of \$1 million per occurrence and \$3 million aggregate; and (2) as applicable, professional liability insurance coverage within minimum limits of \$1 million per occurrence and \$3

million in aggregate; vehicle liability insurance coverage in the amount of \$1,000,000 per occurrence, \$2,000,000 in the aggregate and (3) workers' compensation insurance coverage within statutory limits of the state in which Contractor is located.

**7. TERM AND TERMINATION. TERM.** This Agreement will become effective as of **date of last signature**, with an initial term of one year with the option to renew by written amendment up to eight (8) years as provided for in NMSA 13-1-150 (Multi-Term Contract). Either party may terminate this Agreement by delivering written notice to the other party at least 30 days in advance of the proposed date of termination.

**7.1.** In the event of termination, UNMH shall pay Contractor as full compensation for performance until such termination: (1) the unit price for the delivered and accepted portion. UNMH shall not be liable for consequential damages.

## **8. MISCELLANEOUS**

**8.1. Acceptance and Rejection.** If prior to final acceptance, any goods or services are found to be defective or not as specified, or if the UNMH is entitled to revoke acceptance of them UNMH may reject or revoke acceptance, require Contractor to correct without charge within a reasonable time, or require delivery at an equitable reduction in price, at UNMH's option.

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

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

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

this Agreement and their respective successors and assigns.

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

In the event that UNMH agrees to receive such export-controlled information, equipment or materials, Contractor shall: (i) include the Export Control Classification Number (ECCN) on the packing documentation and, (ii) send an electronic copy of the ECCN number and packing documentation to: [ECCN@UNM.EDU](mailto:ECCN@UNM.EDU)

- 8.11. Eligibility for Participation in Government Programs.** Each party represents that neither it, nor any of its management or any other employees or independent contractors who will have any involvement in the services or products supplied under this Agreement, have been excluded from participation in any government healthcare program, debarred from or under any other federal program (including but not limited to debarment under the Generic Drug Enforcement Act), or convicted of any offense defined in 42 U.S.C. Section 1320a-7, and that it, its employees, and independent contractors are not otherwise ineligible for participation in federal healthcare programs. Further, each party represents that it is not aware of any such pending action(s) (including criminal actions) against it or its employees or independent contractors. Each party shall notify the other party immediately upon becoming aware of any pending or final action in any of these areas.
- 8.12. Employee Certification.** The Contractor and all Contractors' employees utilized on the work to be performed under this agreement must have the proper certification(s) and license(s) to comply with any State and Local requirements connected to this agreement. If applicable, the Contractor shall use only fully qualified and approved service technicians to perform inspections, installations, support, maintenance service, repairs and upgrades under this request.
- 8.13. Equal Opportunity and Affirmative Action.** In performing or providing the services and goods required under this agreement, each party shall be an equal opportunity employer and shall conform to all affirmative action and other applicable requirements; accordingly, each party shall neither discriminate nor permit discrimination in its operations or employment practices against any person or group of persons on the basis of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or medical condition, sexual preference, prior military involvement or any other manner prohibited by law.
- 8.14. 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.
- 8.15. 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.



- 8.16. 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.
- 8.17. Headings.** Headings and captions used in this Agreement are for convenience and ease of reference only and will not be used to construe, interpret, expand or limit the terms, conditions, or other provisions of this Agreement.
- 8.18. Independent Business.** Neither Contractor nor any of its agents shall be treated as an employee of UNMH for any purpose whatsoever. Contractor declares that Contractor is engaged in an independent business and has complied with all federal, state and local laws regarding business permits and licenses of any kind that may be required to carry out the said business and the tasks to be performed under this Agreement. Contractor further declares that it is engaged in the same or similar activities for other clients and that UNMH is not Contractor's sole or only client or customer.
- 8.19. 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. Failure to submit form with RFP or failing to receive IT approval may result in Offeror(s) being considered as non-responsive. UNMH reserves the right to review and verify the Information Security Plan. UNMH may not fully execute an agreement without the IT's approval of the security plan.
- 8.20. Modifications.** No changes, amendments or alterations to this Agreement will be effective unless in writing and signed by both parties.
- 8.21. Multi-Term Determination.** Pursuant to Sections 13-1-150 and 13-1-151 NMSA 1978, it has been determined that the estimated requirements covered in this Agreement are reasonably firm and continuing and a multi-term contract will serve the best interests of UNMH.
- 8.22. No Inducement to Refer.** Nothing contained in this Agreement will require UNMH or any UNMH physician to refer any patients to Contractor or require Contractor to refer patients to UNMH or any UNMH physician. The parties enter into this Agreement with the intent of conducting their relationship in full compliance with applicable Federal, State and Local law, including the Medicare/Medicaid Anti-Fraud and Abuse Amendments and the Physician Ownership and Referral Act (commonly known as the Stark Law). Notwithstanding any unanticipated effect of any of the provisions herein, neither party will intentionally conduct itself under the terms of this Agreement in a manner to constitute a violation of these provisions.
- 8.23. Non-Assignability.** This Agreement will not be assigned by either party, nor will the duties

imposed upon either party by this Agreement be delegated, subcontracted, or transferred by either party, in whole or in part, without the prior written consent of the other party; provided, however, that UNMH may assign this Agreement to a wholly-owned subsidiary or affiliate of UNMH or any component part thereof without the consent of Contractor. Contractor shall require any subcontractors to demonstrate that they have in place administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic Protected Health Information, in accordance with the Business Associate Addendum to this Agreement, and shall, upon request, provide evidence of such to UNMH. Contractor shall not, in any event, assign, delegate, transfer, or subcontract this Agreement, in whole or in part and/or directly or indirectly, to any off-shore entity. Furthermore, Contractor will not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without prior written approval of UNMH. Violation of this provision shall give UNMH the right to immediately terminate this Agreement and subject Contractor to the indemnification provision set forth in this Agreement.

**8.24. 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:**

Contractor

And

University of New Mexico Hospitals  
Purchasing Department Ste. 3165  
Attn: Purchasing Director  
933 Bradbury Dr. SE  
Albuquerque, NM 87106

**8.25. Vizient 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 Vizient and the products/services proposed are on the contract with Vizient, the awarded Offeror will be required to report all sales to Vizient.

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

**8.27. Patient Information/Records.** To the extent individually identifiable health information (commonly referred to as "Protected Health Information" or "PHI") is used or disclosed in connection with the services provided under this Agreement, the Parties agree that such use and disclosure shall be in accordance with all applicable state and federal laws, including without

limitation, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulations (45 C.F.R. Parts 160-164).

- 8.28. Payroll or Employment Taxes.** No Federal, State, or Local income, payroll or employment taxes of any kind shall be withheld or paid by UNMH with respect to payments to Contractor or on behalf of Contractor its agents or employees. Contractor shall withhold and pay any such taxes on behalf of its employees as required by law. The payroll or employment taxes that are the subject to this paragraph include but are not limited to FICA, FUTA, federal personal income tax, state personal income tax, state disability insurance tax, and state unemployment insurance tax. If Contractor is not a corporation, Contractor further understands that Contractor may be liable for self-employment (Social Security) tax, to be paid by Contractor according to law.
- 8.29. Penalties.** The Procurement Code, Section 13-1-28 at seq. NMSA 1978, as amended imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose criminal penalties for bribes, gratuities and kickbacks.
- 8.30. Performance.** In the event that Contractor refuses or fails to comply with the provisions of this Agreement or fails to make progress so as to endanger performance and does not cure such failure within a reasonable period of time, UNMH may otherwise secure the materials, supplies or services ordered, and Contractor shall be liable for damages suffered by the University thereby, including incidental and consequential damages.
- 8.31. Quantities.** UNMH may purchase all, some or none of the goods and services described in this Agreement. In addition, actual quantities may fluctuate up or down based on UNMH needs.
- 8.32. Relationship to Parties.** The parties and their respective employees are at all times acting as independent contractors. Contractor and its employees will not be considered employees of UNMH for any purpose, including, but not limited to, workers' compensation, insurance, bonding or any other benefits afforded to employees of UNMH. Neither party has any express or implied authority to assume or create any obligation or responsibility on behalf of or in the name of the other party.
- 8.33. Release.** Contractor, upon final payment of the amount due under this Agreement, will release UNMH, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations not assumed in this Agreement by UNMH or the State of New Mexico.
- 8.34. Retention of Records.** Contractor will maintain detailed records indicating the date, time and nature of services provided under this Agreement for a period of at least five years after termination of this Agreement, and will allow access for inspection by UNMH, 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 provision of services under this

Agreement.

- 8.35. Severability.** The invalidity or unenforceability of any term or provision of this Agreement will in no way affect the validity or enforceability of any other term or provision to the extent permitted by law.
- 8.36. Site Familiarity.** If applicable, the Contractor shall be responsible for thoroughly inspecting the site and work to be done prior to commencement of work. The Contractor warrants by this submission of an offer that the site has been thoroughly inspected and the work to be done and that the offer includes all costs required to complete the work. The failure of the Contractor to be fully informed regarding the requirements of a request under this agreement will not constitute grounds or any claim or demand for adjustments to the associated costs.
- 8.37. Taxes.** UNMH is exempt from Federal Excise Taxes and from New Mexico Gross Receipts Taxes on materials. Services are not exempt. Taxes on services should be included as a separate line item and not included in the base price offer. Applicable taxes are excluded from the RFP evaluation. UNMH Tax Exempt Certificate is available upon request.
- 8.38. Third Parties.** Nothing in this Agreement, express or implied, is intended to confer any rights, remedies, claims, or interests upon a person not a party to this Agreement.
- 8.39. 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.
- 8.40. Waiver.** No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of either party to insist upon the performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party or a breach by the other party, of any term, covenant, or condition hereof, shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

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

**CONTRACTOR:**

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

**THE REGENTS OF THE UNIVERSITY OF NEW MEXICO, FOR UNM HOSPITALS:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: Jeffery C. Gilmore  
Title: Purchasing Director

**AND**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: Stephen McKernan  
Title: CEO, UNM Hospitals

**EXHIBIT A  
PRICING**

**1. SCOPE OF WORK**

Contractor will provide Intraoperative CT Navigation System, supplies and services as outlined in the terms and conditions of this agreement.

**2. PAYMENT**

2.1. **Compensation.** UNMH will pay Contractor for the equipment, goods and services provided under this Agreement at the amounts listed below.

**(insert pricing)**

**EXHIBIT B****BUSINESS ASSOCIATE ADDENDUM**

This Business Associate Addendum (this “**Addendum**”) is entered into between the Regents of the University of New Mexico, for its public operation known as the UNM Hospitals (referred to in this Addendum as the “Covered Entity”) and Contractor (referred to in this Addendum as the “Business Associate”). The “Effective Date” of this Addendum shall be the Effective Date of the Underlying Agreement, as defined below.

**I. RECITALS**

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

- D. Business Associate hereby acknowledges and agrees that Covered Entity is a Covered Entity and that Business Associate is a Business Associate of Covered Entity.

The Parties agree as follows:

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

- A. Services. Pursuant to the Underlying Agreement, Business Associate provides services (“**Services**”) for Covered Entity that involve the receipt, use and disclosure of PHI. Except as otherwise specified herein, the Business Associate may make any and all uses of PHI necessary to perform its obligations under the Underlying Agreement. All other uses not authorized by this Addendum are prohibited. Moreover, Business Associate may disclose PHI for the purposes authorized by this Addendum only: (i) to its employees, subcontractors and agents, in accordance with Section III.A.7, or (ii) as otherwise permitted by or as required by the Privacy or Security Rule.
- B. Business Activities of the Business Associate. Unless otherwise limited herein and if such use or disclosure of PHI would not violate the Privacy or Security Rules if done by the Covered Entity, the Business Associate may:
1. Use the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate provided that such uses are permitted under state and federal confidentiality laws;
  2. Disclose the PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of the Business Associate, provided that the Business Associate represents to Covered Entity, in writing, that (i) the disclosures are required by law, as defined within 45 C.F.R. §164.501; or (ii) the Business Associate has received from the third party written assurances regarding its confidential handling of such PHI as required under 45 C.F.R. §164.504(e)(4) and §164.314, and the third party notifies the Business Associate of any



instances of which it is aware in which the confidentiality of the information has been breached; and

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

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

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

1. Not use or further disclose PHI other than as permitted or required by this Addendum, or the Underlying Agreement;
2. Not, without the prior written consent of Covered Entity, disclose any PHI on the basis that such disclosure is required by law without notifying Covered Entity so that Covered Entity shall have an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, Business Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all alternatives for relief. Business Associate shall require reasonable assurances from persons receiving PHI in accordance with Section II.B.2 hereof that such persons will provide Covered Entity with similar notice and opportunity to object before disclosing PHI on the basis that such disclosure is required by law;
3. Ensure the confidentiality, integrity, and availability of all electronic PHI created, received, maintained, or transmitted;
4. Use reasonable and appropriate safeguards to prevent the unauthorized use or disclosure of PHI other than pursuant to the terms and conditions of this Addendum, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Addendum;
5. Use appropriate administrative, physical and technical safeguards consistent with the HIPAA Security Rule that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic PHI in accordance with the HIPAA Security Rule and the HITECH Standards;

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

13. As applicable, maintain and make available the information required to provide an accounting of disclosures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528;
14. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);
15. Upon request, make its internal practices, books, and records available to the Secretary and to the Covered Entity for purposes of determining compliance with the HIPAA Rules; and
16. Comply with minimum necessary requirements under the HIPAA Rules.

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

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

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

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

4. That it will notify the other party immediately after it becomes aware that any of the foregoing representations may be inaccurate or may become inaccurate.

## V. TERM AND TERMINATION

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

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

## VI. CONFIDENTIALITY

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

## VII. INSURANCE, LIABILITY, AND INDEMNIFICATION

- A. 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, 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.** 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.

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

**CONTRACTOR:**

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

Printed Name: \_\_\_\_\_

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

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

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

Printed Name: Jeffrey Gilmore

Title: Purchasing Director

**and**

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

Printed Name: Stephen McKernan

Title: Chief Executive Officer

*Approved as to form by  
6.1.1.1.1. Ariadna Vazquez Assistant University Counsel*

*11/06/13*