

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

**REQUEST FOR PROPOSAL (RFP) COVER SHEET**

**RFP Number: P357-16**

**Offer Due Date/Time: September 28, 2016 @ 2:00 pm MDT**

**TITLE: Food Items for Espresso Cafe**

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. Proposals must be submitted no later than the proposal deadline date of **September 28, 2016 @ 2:00 pm MDT**. New Mexico civil and criminal law prohibit bribes, gratuities and kickbacks.

**UNMH Bid Administrator Contact Information:**

Name: Justin M. Ayala  
Title: Procurement Specialist  
Telephone: 505-925-4333  
E-mail: [jmayala@salud.unm.edu](mailto:jmayala@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,”  
four (4) copies, marked on the cover of each as “Copy,” and  
One (1) CD/DVD disc

- 2. Hard copies must be printed in ink and corrections must be initialed. Any Offeror’s submitted sealed Proposal envelope, box or package must be clearly marked with the RFP Number, Opening Date (see Offer Due By date above) and UNMH Bid Administrators name in the lower left hand corner. Failure to mark your sealed offer may result in your offer being opened early or your offer not being included in the Request for Proposal opening.**

3. Address if RFP delivered by courier, hand delivered or first class mail

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

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**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.

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## **SECTION I. SCOPE OF WORK**

### **1.1. Scope of Work**

The University of New Mexico Hospitals (“UNMH”) is soliciting proposals for Burritos, Bagels, pastries, and dairy products for The Espresso Café. Espresso Café has three locations serving the UNMH campus. The program pricing will be the only payment from UNMH that will be honored to all participating vendors and suppliers. As a result of reviewing the proposals submitted, it is anticipated that UNMH will set a reasonable cost for products and services. Offerors are not required to respond to all components but are encouraged to submit responses as their ability to furnish services and products dictates.

#### **1.1.1 Product Categories:**

I) Burritos, II) Bagels, III) pastries, IV) Dairy Products

##### **I. Burritos**

A. UNMH seeks to purchase a variety of burritos including breakfast and non-breakfast varieties.

1. Delivery quantities can be found in Attachment I

##### **II. Bagels**

A. UNMH seeks to purchase bagels in a variety of flavors.

1. Delivery quantities can be found in Attachment I

##### **III. Pastries**

A. UNMH seeks to purchase pastries in a variety of flavors.

1. Delivery quantities can be found in Attachment I

##### **IV. Dairy Products**

A. To include, but not limited to; 2% milk, fat free milk, half & half, light whipped cream, and eggnog (seasonally)

1. Delivery quantities can be found in Attachment I

#### **1.1.2 Service and Delivery Requirements**

##### **I. Burritos**

A. Delivery will be required to each of the three locations Monday through Friday by 7:00AM.

1. Additional deliveries are required on Saturday and Sunday to the Espresso Café located at the Barbara & Bill Richardson Pavilion by 7:00AM.

- i. Additional deliveries may be required to fulfill the needs of catering orders.

B. Burritos must be delivered at a temperature in compliance with food service regulations and will be tested at each delivery site with thermometer.

C. Heated Display cases must be provided to accommodate the number of burritos delivered at no cost to UNMH/Espresso Café.

1. Display cases must be kept clean & in good repair, at the expense of the vendor.

## **II. Bagels**

- A. Delivery will be required to each location Monday through Friday by 7:00AM.
- B. Additional deliveries are required on Saturday and Sunday to the Espresso Café located at the Barbara & Bill Richardson Pavilion by 7:00AM.
  1. Additional deliveries may be required to fulfill the needs of catering orders on an as needed basis.

## **III. Pastries**

- A. Delivery will be required to each location Monday through Friday by 7:00AM.
- B. An additional delivery is required on Saturday to the Espresso Café located at the Barbara & Bill Richardson Pavilion by 7:00AM.
  1. Additional deliveries may be required to fulfill the needs of catering orders on an as needed basis.

## **IV. Dairy Items**

- A. Delivery will be required to each location and stocked into refrigerators twice a week, as well as on an as needed basis.
  1. Stocking refrigerators includes both storage refrigerators and small under counter refrigerators.
  2. Items delivered must be stocked in the 'first in, first out' (FIFO) method.
  3. It is the responsibility of the contractor to keep and maintain inventory levels for each item.
- B. Items which have surpassed their expiration date are to be removed by the vendor.
  1. UNMH will be financially responsible for items used, either by theft, or consumed.
  2. Items removed by vendor due to expiration date will remain the financial responsibility of the vendor.

### **The UNMH seeks to satisfy at the minimum the following objectives:**

- Obtain the highest quality and delivery of products and services at best overall value
- Enhanced customer satisfaction
- Facilitate purchases and not limit UNMH choices or negate requirements
- Obtain an extensive selection of products and services
- Support Offeror(s) that act in an efficient and effective responsible manner

This request for proposals documents the required specifications and terms and conditions. It also provides instructions for responding. Please read carefully all information herein because failure to comply with the instructions in this RFP may result in your proposal being classified as non-responsive or negatively evaluated. New Mexico criminal law prohibits bribes, gratuities and kickbacks. (13-1-191 NMSA 1978).

The University of New Mexico Hospitals (UNMH) is New Mexico's only academic medical center and the State's only Level One Trauma Center, treating nearly 90,000 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 (UNMHS). There are five hospitals included within the UNM Hospital System: UNM Hospital (UNMH), Carrie Tingley Children's Hospital (CTH), Children's Psychiatric Center (CPC), UNM Psychiatric Center (UNMPC), Sandoval Regional Medical Center (SRMC). UNM Hospitals (UNMH, CTH, CPC, UNMPC) are located as part of the Main UNMHS 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 visits are approximately 178,092 per year.

UNMH is recognized for clinical excellence in many specialties including Trauma and Emergency Medicine, Pediatrics, Orthopedics, Cancer Research and Treatment, Transplantation and many others. The Hospital and its components provide primary, secondary, tertiary and quaternary care and receive referrals from counties throughout New Mexico and the entire Southwest.

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

To the best knowledge of the 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. UNMH does not represent or warrant that the information is comprehensive or exhaustive and assume no responsibility for the completeness or accuracy of the information. In particular, where information includes historical data or information, UNMH makes no representation or warranty that such data or information represents an accurate forecast of volumes and/or needs.

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**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.

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

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

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

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

**1.3.1.** Only the Bid Administrator is authorized by UNMH to amend or waive the requirements of the RFP pursuant to the terms of this RFP;

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

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

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

**1.4. Information**

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

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

**1.4.3. Offerors shall not:**

**1.4.3.1.** Claim after submission of a Proposal that there was any misunderstanding or that any of the conditions set out in Section 1.5.1 Offeror to Review were present with respect to this RFP; or

**1.4.3.2.** Hold any staff of UNMH liable for any uncertainty, inconsistency, error, omission, or ambiguity in any part of this RFP.

## **1.5. Clarification and Questions**

**1.5.1. Submission.** Offerors may request clarification of this RFP by:

- 1.5.1.1.** Submitting all requests for clarification by email to the Bid Administrator at [jmayala@salud.unm.edu](mailto:jmayala@salud.unm.edu) or as otherwise directed by the Bid Administrator;
- 1.5.1.2.** Including the Offeror's address, telephone number, facsimile number and email address;
- 1.5.1.3.** If the question pertains to a specific section of this RFP, reference should be made to the specific section number and page; and
- 1.5.1.4.** Submitting all requests for clarification no later **than 2:00 PM MDT, Tuesday, September 20, 2016.**

**1.5.2. 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 1.6.1. All addenda shall form part of this RFP. Questions and answers will be distributed in numbered addenda. In answering the Offeror's questions, the Bid Administrator will include in all addenda the questions asked but will not attribute the questions to any Offeror. Notwithstanding the foregoing, the Bid Administrator may in its sole discretion answer similar questions from various Offerors only once, edit the questions for clarity, and elect not to respond to questions that are either inappropriate or not comprehensible or after the deadline.

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

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

## **1.8. Clarification of Offeror's Proposal**

- 1.8.1.** 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.
- 1.8.2.** Any clarifications sought shall not be an opportunity to either correct errors or to change the Offeror's Proposal in any substantive manner. In the clarification process, no change in the substance of the Proposal shall be offered or permitted. Subject to the qualification in this Section, any written information received by UNMH from an Offeror in response to a request for clarification from UNMH shall be considered part of the Offeror's Proposal.

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

- 1.9.1.** Verify any Offeror statement or claim by whatever means the UNMH deems appropriate, including contacting persons in addition to those offered as references, and to reject any Offeror statement or claim, if the statement or claim or its Proposal is patently unwarranted or is questionable; or
- 1.9.2.** Access the Offeror's premises where any part of the work is to be carried out to confirm Proposal information, quality of processes, and to obtain assurances of viability; and
- 1.9.3.** The Offeror shall cooperate in the verification of information and is deemed to consent to UNMH verifying such information.

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## SECTION II. ORGANIZATION OF PROPOSAL

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

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

RFP Response P357-16  
University of New Mexico Hospitals  
Company Name  
Address  
City, State, Zip  
Contact Number  
Response prepared by: (use as many names as needed)  
Name, Email Address

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## SECTION III. EVALUATION CRITERIA

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

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

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

### 3.1 Business Profile, Qualifications, Financial Information, and References (10 Points Possible)

- 3.1.1 Provide a brief narrative of your firm identifying number of years in business, number of employees, organizational structure, mission statement, location of business, location of staff, and type of ownership.
- 3.1.2 Has the firm ever filed bankruptcy, been in loan default, or are there any pending liens, claims or lawsuits against the firm. If so, please explain in detail.
- 3.1.3 What is your employee turnover rate for the last three years?
- 3.1.4 Provide no less than three (3) references of customers you have extended into an agreement within the last three (3) years who can verify the quality of service your company provides. Indicate if the agreement(s) are still active and if not, why not? Company name, address, contact person and title, phone, contract period and scope of work must be included. **One (1) of the three (3) references shall be similar in size to UNMH and scope of work as called for in this RFP. Please indicate which of the references is similar in size.**
- 3.1.5 The Offeror should provide financial information sufficient for UNMH to adequately establish the Offeror's financial capability to provide and support the scope of work in its Proposal. Such information may take the form of an annual report, banking information and/or guarantees.
- 3.1.6 List any other factor known that could materially impair your ability to carry out the duties and obligations under this Agreement or that could materially affect your decision.

**3.2 Product: (30 Points Possible)** Provide PROPOSER's specific product descriptions, part numbers, product specifications, and warranty specifications for each category of product.

- 3.2.1 Describe in detail any unique features of the products being proposed
- 3.2.2 Has a contracted customer ever rejected or returned your products as called for in this RFP? If yes, please explain and provide customer name and location.
- 3.2.3 How does your company make sure that the processes being used to manufacture and/or inspect the product are correct?
- 3.2.4 Does your company have standard inspection procedures and how often are they used.
- 3.2.5 Tell us how your company will ensure your products will meet UNMH requirements.
- 3.2.6 Provide an ingredients list for all items proposed.
- 3.2.7 Provide the size (in weight) of each item proposed.
- 3.2.8 Does your company have a quality assurance program? If yes, describe the procedures your company has in place.
- 3.2.9 Has your company ever failed to meet Federal, State or local requirements for your type of products? If yes, explain. If not, explain what you are doing to prevent it from occurring?
- 3.2.10 Describe the type and size of inventory carried. All dated products and equipment must have a long expiration date.

**3.3 Services, Ongoing Support Model. (30 Points Possible)**

- 3.3.1 Provide a point by point response to the scope of work and service requirements as identified in Section I, 1.1 clearly showing that your company, using your past and current experiences, has the capacity to support and to successfully deliver the volume of work anticipated from UNMH to include but not limited to describing your firm's philosophy, approach (es) and preferred methods for meeting requirements. If vendor is not able to meet the specification, briefly explain why, noting any concerns or issues the University of New Mexico Hospital should be aware of.
- 3.3.2 Describe in detail your ability to provide superior ongoing customer support and service to UNMH.
- 3.3.3 Describe your firm's philosophy, approach (es) and preferred methods for meeting requirements and/or deliverables in this RFP.
- 3.3.4 Provide the greatest amount of meaningful detail possible to describe the proposed products/services. Indicate if vendor can meet the specifications, or if the specifications can be met only under certain conditions or circumstances. If vendor is not able to meet the specification, briefly explain why, noting any concerns or issues the University of New Mexico Hospital should be aware of.
- 3.3.5 Provide vendor responsibilities and resources needed from the University of New Mexico Hospital.
- 3.3.6 What certifications must your company possess in your industry? What certifications does your company currently possess? Do you have any pending certifications?

- 3.3.7 Please submit a copy of each applicable Federal, State and local licenses required to perform the work specified in the requirements.
- 3.3.8 If your products/approaches are not the incumbent, propose an approach to the skills, processes and practices “conversion” that will have to take place. Describe the implementation process including needed resources at UNMH, length of implementation and support to the organization after implementation.
- 3.3.9 What are your turnaround times for delivery and is express delivery available? For example, for emergencies or short on products. What is the process for express delivery?
- 3.3.10 Describe the number of products you are willing to keep on hand for UNMH. What are your minimum and maximum order amounts? What is the process for ordering?
- 3.3.11 Describe in detail any unique services and/or miscellaneous capabilities your company can provide to UNMH.
- 3.3.12 Describe in-house/or corporate resources available to support this contract.
- 3.3.13 What is your company’s problem resolution process?
- 3.3.14 Detail the structure of your account team that would be assigned to UNMH.
- 3.3.15 List the hours when live assistance is available.
- 3.3.16 Document how your company will provide after-hours support?
- 3.3.17 In the event of delays in delivery of products, absenteeism, etc., delineate your back-up resources for both delivery and personnel.
- 3.3.18 Describe in detail any other “value added” opportunities (i.e.; rebates, education, free overnight shipping, etc.) that may not be requested herein, that would be available to UNMH if your Firm is selected.

**3.4 Price Proposal (30 Points Possible)**

- 3.4.1 **Prices** – All prices/discounts shall be **F.O.B. destination** and shall include all labor, materials, surcharges, etc., to fulfill the terms, conditions, and scope of work as called for in this RFP.
- 3.4.2 UNMH is seeking an all-inclusive price per visit for the products and services as called for in this RFP. Offeror shall complete and submit Exhibit H: Cost Response Form.

**Evaluation Criteria Summary:** The following is a summary of the evaluation factors and the weighted value assigned to each.

Section	Evaluation Criteria	Total Points Possible
3.1	Business Profile, Qualifications, Financial Information and References	10
3.2	Product	30
3.3	Services, Ongoing Support Model.	30
3.4	Price Proposal	30
	<b>Maximum Total Points Possible</b>	<b>100</b>

## 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 A)
  - 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 A) 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 C.
- 4.4. **CONFLICT OF INTEREST CERTIFICATION FORM:** Review and submit Conflict of Interest Certification Form attached hereto as Exhibit D.
- 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. Offeror must submit proof of insurance in the form of a "Certificate of Insurance" (Exhibit E) 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 F.
- 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. The successful Awardee may be required to complete the UNMHs Information Security Plan Information hereto attached as Exhibit G and submit to UNMH's IT department for approval. Failure to complete form upon UNMH's request or failing to receive IT approval may result in Offeror(s) being considered as non-responsive and/or termination of agreement.
- 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 G.

- 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 may be for an initial term of three (3) years with the option to renew as provided for in NMSA 13-1-150 (Multi-Term Contract).
- 4.12. QUANTITIES.** UNMH may purchase all, some or none of the elements described in this proposal or Offerors responses. In addition, actual quantities may fluctuate up or down based on UNMH needs. The successful bidder will be required to fill all orders placed regardless of quantities ordered.

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

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

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

An Awardee of a Price Agreement established with UNMH has the opportunity to market the resultant Price Agreement to other local public bodies and state agencies under the State of New Mexico Public Purchases and Property Act, NMSA 1978, Article 1, Procurement, Section 13-1-129, "Procurement under existing contracts."

- 5.1 ACCEPTANCE AND REJECTION.** If prior to final acceptance, any goods or services are found to be defective or not as specified, or if the University is entitled to revoke acceptance of them the University may reject or revoke acceptance, require Seller to correct without charge within a reasonable time, or require delivery at an equitable reduction in price, at the University's option. Seller shall reimburse the University for all incidental and consequential costs related to unaccepted goods or services. Notwithstanding final acceptance and payment, Seller shall be liable for latent defects, fraud, or such gross mistakes as amount to fraud. Acceptance of goods or services shall not waive the right to claim damages for breach of contract.
- 5.2 ALTERNATE OFFERS.** Alternate offers will be accepted and considered provided they are "equal to" and meet all specifications of this RFP which may include all specifications of the Brand used to identify the quality of the goods and/or services requested. The University reserves the right to make the final determination as to whether or not an alternate offer is equal. It is the Offeror's responsibility to provide, as part of the offer, descriptive literature, specifications and information on all alternate products and services offered. References of current users should be included. If the item(s) or service(s) offered are not clearly identified as alternate item(s) or services, it is understood that the offer is for item(s) and service exactly as specified in this RFP.
- 5.3 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.
- 5.4 ASSIGNMENT.** Any resultant Purchase Order/Agreement may be assignable by the University. Except as to any payment due hereunder, any resultant Purchase Order/Agreement shall not be assignable by Seller without written approval from the University.

- 5.5 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.
- 5.6 BRAND NAME OR EQUAL.** The brand name(s), part and/or catalog number(s) are used to establish a level of quality and to describe the item(s) required. If offering a brand, part or catalog number other than that listed, please indicate items offered and include literature and/or technical specifications. Failure to do so may cause offer to be declared non-responsive.
- 5.7 CANCELLATION.** The University reserves the right to cancel without penalty, this RFP, any resultant Purchase Order/Agreement, or any portion thereof for convenience, unsatisfactory performance, or unavailability of funds.
- 5.8 CHANGES.** The University may make changes within the general scope of any resultant Purchase Order/Agreement by giving notice to Seller and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of a resultant Purchase Order/Agreement, an appropriate equitable adjustment shall be made. No change by Seller shall be recognized without written approval of the University. Any claim of Seller for an adjustment under this Paragraph must be made in writing within thirty (30) days from the date of receipt by Seller of notification of such change. Nothing in this Paragraph shall excuse Seller from proceeding with the performance of the Purchase Order/Agreement as changed hereunder.
- 5.9 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.
- 5.10 CLEAN UP.** It is the Seller's responsibility that the job site be kept clean and free of rubble while work is performed under this contract. Upon completion of work, all areas shall be cleared of all contractors' equipment excess materials and rubble.
- 5.11 CONFLICT OF INTEREST.** Seller shall disclose to the University Purchasing Department the name(s) of any University employee or member of the Board of Regents who has a direct or indirect financial interest in the Seller or in the proposed transaction. A University employee (or Regent) has a direct or indirect financial interest in the Seller or in the proposed transaction if presently or in the preceding twelve (12) months the employee/Regent or a close relative has an ownership interest in the Seller (other than as owner of less than 1% of the stock of a publicly traded corporation); works for the Seller, is a partner, officer, director, trustee or consultant to the Seller, has received grant, travel, honoraria or other similar support from the Seller, or has a right to receive royalties from the Seller. Seller shall file a Conflict of interest Disclosure form with the University Purchasing Department.
- 5.12 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
- 5.13 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.
- 5.14 DELIVERY DATE.** Delivery is an important consideration and is a factor in determining the award. If you cannot meet the delivery date stated, please state your earliest delivery date in your offer.
- 5.15 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.

- 5.16 DISRUPTION OF NORMAL ACTIVITY.** All work shall be performed so as not to interfere with normal College activities. When it is necessary to disrupt normal activities, the schedule of work, and the areas to be affected must be approved by UNMH's authorized representative prior to commencement of the work.
- 5.17 DISCOUNTS.** If prompt payment discounts apply to any resultant Purchase Order/Agreement, any discount time will not begin until the materials, supplies, or services have been received and accepted and a correct invoice has been received by the University's Accounts Payable Department. In the event testing is required prior to acceptance, the discount time shall begin upon completion of the tests and acceptance.
- 5.18 ECCN REPORTING REQUIREMENT.** Seller acknowledges that providing goods and services under any resultant Purchase Order/Agreement is subject to compliance with all applicable United States laws, regulations, or orders, including those that may relate to the export of technical data or equipment, such as International Traffic in Arms Regulations ("ITAR") and/or Export Administration Act/Regulations ("EAR"). Seller agrees to comply with all such laws, regulations and orders as currently in effect or hereafter amended. Seller shall not disclose any export-controlled information, or provide any export-controlled equipment or materials to UNMH without prior written notice. In the event that UNMH agrees to receive such export-controlled information, equipment or materials, Seller shall: (i) include the Export Control Classification Number (ECCN) on the packing documentation, and, (ii) send an electronic copy of the ECCN number and packing documentation to: [ECCN@UNM.EDU](mailto:ECCN@UNM.EDU)
- 5.19 ELIGIBILITY FOR PARTICIPATION IN GOVERNMENT PROGRAMS.** Each party represents that neither it nor any of its management or any other employees or independent contractors who will have any involvement in the services or products supplied under a resultant Purchase Order/Agreement, have been excluded from participation in any government healthcare program, debarred from or under any other federal program (including but not limited to debarment under the Generic Drug Enforcement Act), or convicted of any offense defined in 42 U.S.C. Section 1320a-7, and that each party, its employees and independent contractors are not otherwise ineligible for participation in federal healthcare programs. Further, each party represents that it is not aware of any such pending action(s) (including criminal actions) against each party or its employees or independent contractors. Each party shall notify the other immediately upon becoming aware of any pending or final action in any of these areas.
- 5.20 EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION.** In performing or providing the services and goods required under a resultant Purchase Order/Agreement, each party shall be an equal opportunity employer and shall conform to all affirmative action and other applicable requirements; accordingly, each party shall neither discriminate nor permit discrimination in its operations or employment practices against any person or group of persons on the basis of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or medical condition, sexual preference, prior military involvement or any other manner prohibited by law.
- 5.21 EQUIPMENT REQUIRED.** The proposer shall be responsible for supplying and maintaining all equipment and materials necessary to complete the work to be performed under this RFP except as otherwise noted in the Specifications.
- 5.22 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.
- 5.23 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.
- 5.24 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.
- 5.25 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.

- 5.26 GOVERNING LAW.** All resultant Purchase Order/Agreements shall be construed in accordance with the laws of the State of New Mexico as they pertain to Purchase Order/Agreements executed and fully to be performed within New Mexico, or federal law where applicable, but in either case excluding that body of law relating to choice of law.
- 5.27 GRAMM-LEACH-BLILEY ACT.** Pursuant to the Gramm-Leach-Bliley Act and the regulations set forth at 16 CFR Part 314, the University of New Mexico Hospitals (“University”) requires its Service Providers to implement and maintain appropriate safeguards for the protection of Customer Information. Accordingly, the Service Provider shall implement and maintain a comprehensive information security program that contains administrative, technical and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of confidential Customer Information that it creates, receives, maintains, or transmits on behalf of the University. In addition, the Service Provider will require and ensure that any of its agents, sub-contractors, or sub-consultants, to which it provides confidential Customer Information of the University, implements appropriate security measures to protect confidential Customer Information of the University.

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

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

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

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

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

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

- 5.29 INDEPENDENT BUSINESS.** Neither Seller nor any of its agents shall be treated as an employee of the University for any purpose whatsoever. Seller declares that Seller is engaged in an independent business and has complied with all federal, state and local laws regarding business permits and licenses of any kind that may be required to carry out the said business and the tasks to be performed under any resultant Purchase Order/Agreement. Seller further declares that it is engaged in the same or similar activities for other clients and that the University is not Seller's sole or only client or customer.
- 5.30 INSPECTION.** The University may inspect, at any reasonable time, any part of Seller's plant or place of business, which is related to performance of any resultant Purchase Order/Agreement. Final Inspection will be made at the destination upon completion of delivery of goods and services. Acceptance of delivery shall not be considered acceptance of the goods and/or services furnished. Final inspection shall include any testing or Inspection procedures required by the Specifications.
- 5.31 INSPECTIONS, SELLER.** The Seller shall be responsible for securing at Seller's expense, all required inspections to comply with Federal, State and/or Local regulations governing the work performed under this RFP
- 5.32 INSTRUMENTALITIES:** Seller shall supply all equipment, tools, materials and supplies required for the performance of the designated tasks or requirements set forth in any resultant Purchase Order/Agreement or its attachments.
- 5.33 INSURANCE REQUIREMENTS:** The Offeror is required to carry insurance, meeting the requirements in the Section labeled "Insurance Requirements" or as noted in the specifications. Offeror must submit proof of insurance in the form of a "Certificate of Insurance" to the appropriate Buyer prior to commencing work under this contract. Offeror's insurance shall remain in effect for the entire term of the contract and must be extended to coincide with any future contract extensions. This Request for Proposal Number must appear on the Certificate of Insurance.
- 5.34 LATE SUBMISSIONS.** Late submissions of offers will not be accepted or considered unless it is determined by the University that the late receipt was due solely to mishandling by the University or the offer is the only offer received. Late submissions will be returned unopened.
- 5.35 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.
- 5.36 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.
- 5.37 NON-PERFORMANCE PENALTIES.** The Offeror agrees to pay UNMH an amount equal to \$500.00 per day for each calendar day past the completion date specified in this contract that completion or delivery is delayed. UNMH may subtract this amount from any monies due to the Offeror.
- 5.38 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

- 5.39 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.

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

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

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

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

- 5.43 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.
- 5.44 PATENT AND COPYRIGHT INDEMNITY.** Seller shall indemnify, defend and hold harmless UNMH against all losses, liabilities, lawsuits, claims, expenses (including attorneys' fees), costs, and judgments incurred through third party claims of infringement of any copyright, patent, trademark or other intellectual property rights.
- 5.45 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.
- 5.46 PAYMENT TERMS.** Upon written request from Seller for payment, the University shall, within 30 days, issue a written certification of complete or partial acceptance or rejection, with payment to follow within 30 days after certificate of acceptance. Late payment charges will not be accepted.
- 5.47 PAYROLL OR EMPLOYMENT TAXES.** No federal, state, or local income, payroll or employment taxes of any kind shall be withheld or paid by the University with respect to payments to Seller or on behalf of Seller its agents or employees. Seller shall withhold and pay any such taxes on behalf of its employees as required by law. The payroll or employment taxes that are the subject to this paragraph include but are not limited to FICA, FUTA, federal personal income tax, state personal income tax, state disability insurance tax, and state unemployment insurance tax. If Seller is not a corporation, Seller further understands that Seller may be liable for self-employment (Social Security) tax, to be paid by Seller according to law.

- 5.48 PENALTIES.** The Procurement Code, Section 13-1-28 at seq. NMSA 1978, as amended imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose criminal penalties for bribes, gratuities and kickbacks.
- 5.49 PERIOD FOR OFFER ACCEPTANCE.** Offeror agrees that any offer made submitted will be good for a period of one hundred and eighty days (180) calendar days; an additional time period may be requested by UNMH.
- 5.50 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.)
- 5.51 PURCHASE ORDER/AGREEMENT.** Any resultant Purchase Order/Agreement shall be the sole and entire Purchase Order/Agreement between the parties; any documents incorporated into the Purchase Order/Agreement are listed explicitly on the front side of the Purchase Order/Agreement, or are incorporated by implication by the terms of any resultant Purchase Order/Agreement. Any terms inconsistent with or in addition to any resultant Purchase Order/Agreement proposed by Seller are deemed rejected unless agreed to in writing by an appropriate University official.
- 5.52 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.
- 5.53 RELEASE UNMH REGENTS.** The Contractor shall, upon final payment of the amount due under the contract release Regents of the University of New Mexico Hospitals, their officers and employees and the State of New Mexico from liabilities, claims and obligations whatsoever arising from the contract. The Contractor agrees not to purport to bind the University of New Mexico Hospitals or the State of New Mexico to any obligation not assumed in the contract by the Regents of the University of New Mexico Hospitals or the State of New Mexico unless the Contractor has express, written authority to do so, and then only within the strict limits of that authority.
- 5.54 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.
- 5.55 REQUEST AS AGREEMENT:** This Request for Proposal governs any offer and the selection process. Submission of an offer in response to this Request for Proposal constitutes acceptance of all this Request's terms and conditions. The terms and conditions of the Request may not be modified, altered, nor amended in any way by any Offer. Any such modification, alteration, or amendment shall be considered to be a request for modification, alteration or amendment, which request shall be deemed denied unless specifically accepted in writing by UNMH. Upon issuance of a Purchase Order, this Request shall be superseded, unless it is referenced on the front page of the Purchase Order, in which case it shall be deemed to be fully incorporated and integrated into the resultant contract.
- 5.56 RETENTION OF RECORDS.** Contractor will maintain detailed records indicating the date, time and nature of services provided under the Agreement for a period of at least five years after termination of the Agreement, and will allow access for inspection by the University of New Mexico Hospitals, the Secretary for Health and Human Services, the Comptroller General and the Inspector General to such records for the purpose of verifying costs associated with provisions of services under the Agreement.
- 5.57 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>.
- 5.58 RIGHT TO WAIVE MINOR IRREGULARITIES.** The UNMH Evaluation Committee reserves the right to waive minor irregularities. The UNMH Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the UNMH Evaluation Committee.

- 5.59 SCHEDULE DELAYS.** If after the award, the Seller becomes aware of possible problems that could result in delay in completion of the work on the agreed-to schedule; the Seller must immediately notify the Buyer or the designated representative. The initial notification of the delay may be verbal with a written confirmation, giving the probable cause and effect, with recommendations for alternate action. Nothing in this paragraph will be interpreted as relieving the Seller of its contractual obligations; however, failure to notify UNMH promptly will be basis for determining the Seller responsibility in an otherwise excusable delay.
- 5.60 SELLER'S EMPLOYEES AND AGENTS.** Seller shall have complete charge and responsibility for persons employed by Seller and engaged in the performance of the specified work. The Seller, its agents and employees state that they are independent contractors and not employees of the University. Seller, its agents and employees shall not accrue leave, retirement, insurance, bonding or any other benefit afforded to employees of the University as a result of any resultant Purchase Order/Agreement.
- 5.61 SITE FAMILIARITY.** The Seller shall be responsible for thoroughly inspecting the site and work to be done prior to submission of an offer. The Seller warrants by this submission that the site has been thoroughly inspected and the work to be done and that the offer includes all costs required to complete the work. The failure of the Seller to be fully informed regarding the requirements of this Request will not constitute grounds or any claim, demand for adjustment or the withdrawal of an offer after the opening.
- 5.62 SITE INSPECTION.** The site(s) referenced in this RFP are available for inspection. Arrangements may be made by contacting the individual listed on the cover sheer.
- 5.63 STATE AND LOCAL ORDINANCES.** The Seller shall perform work under the resultant contract in strict accordance with the latest adopted version of all State and local codes, ordinances, and regulations governing the work involved. All materials and labor necessary to comply with the rules, regulations and ordinances shall be provided by the Seller. Where the drawings and/or specifications indicate materials or construction in excess of the code requirements, the drawings and/or specifications shall govern. The Seller shall be responsible for the final execution of the work to meet these requirements. In the event of a conflict between various codes and standards, the more stringent shall apply.
- 5.64 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.
- 5.65 TAX SEGREGATION (CONSTRUCTION RELATED PROJECTS).** In the performance of construction related services under this solicitation, the Seller agrees to work with and cooperate with the University's Tax Cost Segregation Consultant. The University's tax cost segregation consultant will be responsible for coordination, oversight and analysis of the effective application of New Mexico Gross Receipts Tax for each general Offeror involved with the construction projects at UNMH. Such services of the segregation consultant will be performed in accordance with New Mexico Statutes and relative regulations governing the application of New Mexico gross receipts tax to tangible personal property acquisition made by UNMH for various construction projects.
- 5.66 TERMINATION AND DELAYS.** The University may by written notice stating the extent and effective date, terminate any resultant Purchase Order/Agreement for convenience in whole or in part, at any time. The University shall pay Seller as full compensation for performance until such termination: (1) the unit or pro rata order price for the delivered and accepted portion; and (2) incidental damages, not otherwise recoverable from other sources by Seller, as approved by the University, with respect to the undelivered or unaccepted portion of any resultant Purchase Order/Agreement provided compensation hereunder shall in no event exceed the total contracted price. Such amount will be limited to Seller's actual cost, and may not include anticipated profits. The University shall not be liable for consequential damages. The University may by written notice terminate any resultant Purchase Order/Agreement in whole or in part for Seller's default if Seller refuses or fails to comply with the provisions of a resultant Purchase Order/Agreement or fails to make progress so as to endanger performance and does not cure such failure within a reasonable period of time. In such event, the University may otherwise secure the materials, supplies or services ordered, and Seller shall be liable for damages suffered by the University thereby, including incidental and consequential damages. If after notice of termination, the University determines Seller was not in default, or if Seller's default is due to failure of the University, termination shall be deemed for the convenience of the University. The rights and remedies of the University provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under a resultant Purchase Order/Agreement as used in this paragraph, the word "Seller" includes Seller and Seller's sub-suppliers at any tier.
- 5.67 THIRD PARTIES.** Nothing in this Agreement, express or implied, is intended to confer any rights, remedies, claims, or interests upon a person not a party to this Agreement.

- 5.68** TITLE AND DELIVERY. Title to the materials and supplies passed hereunder shall pass to the University upon acceptance at the FOB point specified, subject to the right of the University to reject. For any exception to the delivery date specified, Seller shall give prior notification and obtain approval thereto from the University's Purchasing Department. Time is of the essence and the Purchase Order/Agreement is subject to termination for failure to deliver on time.
- 5.69** WAIVER. The Contract shall contain a provision that states that no waiver of any breach of the Contract or any terms or conditions thereof shall be held to be a waiver of any other or subsequent breach; nor shall any waiver be valid, alleged or binding unless the same shall be in writing and signed by the party to have granted the waiver.
- 5.70** WARRANTIES. Seller warrants the goods and/or services furnished to be exactly as specified in any resultant Purchase Order/Agreement, free from defects in Seller's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by Seller. All applicable UCC warranties express and implied are incorporated herein.
- 5.71** WARRANTY: Please state the warranty for equipment to be supplied under this RFP. A copy of the warranty should be included in your submission.
- 5.72** WORKERS COMPENSATION. No workers compensation insurance has been or will be obtained by UNMH on account of Seller or its employees or agents. Seller shall comply with the workers compensation laws with respect to Seller and Seller's employees and agents.
- 5.73** WORKMANSHIP/COOPERATION. All work shall be done in a neat, workman-like manner using acceptable equipment and methods consistent with that level of care and skill ordinarily exercised by members of the profession/trade and in accordance with sound professional/trade standards and ethical practice. The Seller will cooperate with the University and other contractors and coordinate their work involving other contractors through the University's authorized representative.

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**Exhibit A**

**Resident Veterans Preference Certification**

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

Please check one only:

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

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

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

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

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

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

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

\_\_\_\_\_  
(Signature of Business Representative)\* 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 B**

**AUTHORIZED SIGNATURE PAGE**

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

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

**ACKNOWLEDGMENT OF ADDENDA**

The undersigned acknowledges receipt of the following addenda:

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

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

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

- Resident Business: Pref. Number \_\_\_\_\_
- Resident Manufacturer: Pref. Number \_\_\_\_\_
- Resident Offeror: Pref. Number \_\_\_\_\_
- New 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**

**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

1 **THANK YOU FOR YOUR COOPERATION**

Signature and Title of Individual Completing Form:

\_\_\_\_\_

Date \_\_\_\_\_

<p><b>Please return this form to:</b></p> <p>The University of New Mexico                  Hospitals                  Purchasing Department                  MSC01 1240                  Albuquerque, NM 87131                  505-277-2036 (voice)                  505-277-7774 (fax)</p>	<p><b>NOTE:</b></p> <p>This certification is valid for a one year period. It is your responsibility to notify us if your size or ownership status changes during this period. After one year, you are required to re-certify with us.</p>
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Notice: In accordance with U.S.C. 645(d), any person who misrepresents a firm's proper size classification shall (1) be punished by imposition of a fine, imprisonment, or both; (2) be subject to administrative remedies; and (3) be ineligible for participation in programs conducted under the authority of the Small Business Act.

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

EXHIBIT D

THE UNIVERSITY OF NEW MEXICO HOSPITALS 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:

## EXHIBIT E

### INSURANCE REQUIREMENTS

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

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

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

#### **COMPENSATION INSURANCE:**

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

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

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

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

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

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

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

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

The Offeror shall either:

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

#### **GENERAL:**

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

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

# Exhibit F – SAMPLE AGREEMENT

## AGREEMENT

UNMH Contract Number: XXX  
RFP Number: PXXX-16

Pursuant to UNMH RFP number PXXX-16, and response to UNMH RFP number PXXX-16, THIS AGREEMENT, made and entered into this \_\_\_ day of **Month**, 2016, in the State of New Mexico, by and between the Regents of the University of New Mexico, for its public operation known as UNM Hospitals, hereafter called UNMH and **Contractor Name, Address**, hereafter called Contractor/Offeror/Seller, does hereby agree to furnish to UNMH products and services as follows:

### RECITALS

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

### The parties agree as follows:

1. **RESPONSIBILITIES OF CONTRACTOR:** The Contractor shall perform the services described in Attachment A, attached to an incorporated by reference in this agreement.
2. **PROCESS FOR AWARDED INDIVIDUAL PROJECTS**
  - 2.1. The Awardee(s) shall designate one person to be the point of contact for daily operations that include but are not limited to meeting UNMH order demands, coordinating and responding to issues, and assure follow-up actions are identified and completed throughout the term of the agreement. UNMH may request quotes from all, some, or none of the successful Awardees as needed at its sole discretion. Individual project requests for quotes will be awarded on separate purchase order(s) (release). UNMH shall reserve the right to award individual projects based on this RFP without requesting for quotes and/or may reopen this RFP to recruit additional Offerors if through attrition, Awardees(s) are lost or projected workloads are expected to exceed their capacities or for the convenience of UNMH.
  - 2.2. **Substitution.** With respect to any substitution of representative, the Contractor must inform UNMH of the necessity for the substitution. No substitute personnel are authorized to begin work until the Contractor has received written notification to proceed from the UNMH.
3. **CONTRACTOR MUST MEET OR EXCEED THE REQUIREMENTS BELOW**
  - 3.1. Contractor must have the ability to work within the security, regulatory and internal policy requirement needs of various UNMH facilities.
  - 3.2. Contractor shall provide no less than manufacturer's warranty.
  - 3.3. Contractor shall have an extensive knowledge of networking systems and products, deploying, maintaining, and upgrade path for the product line as well as ancillary products.
  - 3.4. Contractor must be authorized to sell/resell the products and services being proposed. The products and services must be available for warranty without any required re-certification from another party. Contractor may be asked to provide certificates of authorization or verifications of such facts.
  - 3.5. Contractor shall guarantee that the products and services offered will meet or exceed specifications identified in this RFP. All items shall be newly manufactured, in first class condition, latest model and design, including, where applicable, containers suitable for shipment and storage, unless otherwise indicated in the RFP.

- 3.6. Contractor hereby guarantees that everything furnished hereunder will be free from defects in design, workmanship and material, that if sold by drawing, sample or specification, it will conform thereto and will serve the function for which it was furnished. Offeror further guarantees that if the items furnished hereunder are to be installed by the Offeror, such items will function properly with installation.
- 3.7. Contractor should have an extensive knowledge of the company's product roadmap, and understanding of industry best products and practices.
- 3.8. Must perform all work compliant with applicable industry standards and recommended practices.
- 3.9. The Contractor also guarantees that all applicable laws have been complied with relation to construction, packaging, labeling and registration.

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

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

#### 5. FINANCIAL REQUIREMENTS

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

## 6. LIABILITY, INDEMNIFICATION, AND INSURANCE

- 6.1. Liability.** As between the parties, each party acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or property to the extent they result from negligence of that party's employees. Contractor understands that UNMH is not indemnifying Contractor for the acts or omissions of UNMH. The liability of UNMH will be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1 *et seq.* NMSA 1978, as amended.
- 6.2. Indemnification.** Notwithstanding the foregoing, Contractor will indemnify and hold harmless UNMH, its Regents, officers, agents and employees from any claims for losses, costs, damages, expenses or liability by reason of bodily injury (including death) or property damage, to the extent such damages are determined by a court of competent jurisdiction in a proceeding to which Contractor is a party to result from Contractor's negligence, act or omission, except to the extent of UNMH's negligence. The foregoing indemnification obligation shall specifically include, but not be limited to, any breach of the Contractor's obligations as a Business Associate, as set forth in the Business Associate Addendum, and any breach of Contractor's non-assignment and/or subcontractor obligations set forth in this Agreement.
- 6.3. Insurance.** Contractor will procure and maintain, at its own expense, professional liability insurance with limits of \$1,000,000 per occurrence and \$3,000,000 in the aggregate covering the acts or omissions of any individuals who may be performing services under this Agreement.

## 7. PRODUCT RECALLS, RETURNS AND REPLACEMENTS

- 7.1. Defective, Recalled or Outdated Products.** The Contractor will provide free replacement of product when product is defective, recalled, or outdated. Contractor is responsible for returning or disposing of any recalled product at Hospital facilities.
- 7.2. Tracking.** Vendor is responsible for tracking recalled products at the item and lot combination level.
- 7.3. Notification.** The vendor shall notify the Hospital immediately of any product recall or product alert, voluntary or otherwise for product purchased by the Hospital. Recalls must be managed and handled by the vendor. So long as the vendor notifies the Hospital of the recall or field notification, the Hospital is willing to notify Hospital facilities of the product recall or field notification and also document such notification to vendor. The vendor is responsible for determining the quantity of any recalled product remaining at Hospital facilities.
- 7.4. Cost for Return of Recalled Items.** The Hospital is not responsible for the return, payment for or cost of return for recalled items for any recalled product that is not replaced, replacements and recalls must be credited to the Hospital on the next invoice. No reimbursements will be accepted.
- 7.5. Product Alerts.** In the case of any product alerts, the Hospital shall be able to follow any recommendations made in the alert. If the alert recommends the stoppage of use of a product, the Hospital may, at its sole discretion, return the product for refund or replacement.

## 8. TERM AND TERMINATION.

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

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

amount will be limited to Contractor's actual cost, and may not include anticipated profits. UNMH shall not be liable for consequential damages.

**8.2.** In the even that Contractor refuses or fails to comply with the provisions of this Agreement or fails to make progress so as to endanger performance and does not cure such failure within a reasonable period of time, UNMH may otherwise secure the materials, supplies or services ordered, and Contractor shall be liable for damages suffered by the University thereby, including incidental and consequential damages.

## **9. MISCELLANEOUS.**

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

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

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

**9.4. Binding Effect.** This Agreement is binding upon, and inures to the benefit of, the parties to this Agreement and their respective successors and assigns.

**9.5. Changes.** UNMH may make changes within the general scope of any scope of work by giving notice to Contractor and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of a resultant scope of work, a mutually agreeable and equitable adjustment shall be made. No change by Contractor shall be recognized without written approval of UNMH. Any claim of Contractor for an adjustment under this Paragraph must be made in writing within thirty (30) days from the date of receipt by Contractor of notification of such change. Nothing in this Paragraph shall excuse Contractor from proceeding with the performance of this Agreement as changed hereunder.

**9.6. Clean up.** It is the Contractor's responsibility that the job site be kept clean and free of rubble while work is performed under this contract. Upon completion of work, all areas shall be cleared of all Contractor' equipment excess materials and rubble.

**9.7. Confidentiality.** The confidentiality of client records will be maintained by the parties in accordance with applicable federal and state laws and regulations. The parties hereby agree to the terms and conditions of the Business Associate Addendum attached to and incorporated in this Agreement as Attachment B.

**9.8. 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.

- 9.9. Damage and Security of UNMH Property.** The contractor shall be responsible for all damage to persons or property that occurs as a result of proposer's fault or negligence, or that of any of his employees, agents and/or subcontractors. Any equipment, software or facilities damaged by the proposer's operations shall be repaired and/or restored to their original condition at the contractor's expense.
- 9.10. Dispute Resolution and Cooperation.** The parties agree that, to the extent compatible with the separate and independent management of each, they will maintain effective liaison and close cooperation. If a dispute arises related to the obligations or performance of either party under this Agreement, representatives of the parties will meet in good faith and work within reasonable efforts to resolve the dispute.
- 9.11. Disruption of Normal Activity.** All work shall be performed so as not to interfere with normal College activities. When it is necessary to disrupt normal activities, the schedule of work, and the areas to be affected must be approved by UNMH's authorized representative prior to commencement of the work.
- 9.12. ECCN Reporting Requirement.** Contractor acknowledges that providing goods and services under this Agreement is subject to compliance with all applicable United States laws, regulations, or orders, including those that may relate to the export of technical data or equipment, such as International Traffic in Arms Regulations ("ITAR") and/or Export Administration Act/Regulations ("EAR"). Contractor agrees to comply with all such laws, regulations and orders as currently in effect or hereafter amended. Contractor shall not disclose any export-controlled information, or provide any export-controlled equipment or materials to UNMH without prior written notice. In the event that UNMH agrees to receive such export-controlled information, equipment or materials, Contractor shall: (i) include the Export Control Classification Number (ECCN) on the packing documentation, and, (ii) send an electronic copy of the ECCN number and packing documentation to: [ECCN@UNM.EDU](mailto:ECCN@UNM.EDU).
- 9.13. Eligibility for Participation in Government Programs.** Each party represents that neither it, nor any of its management or any other employees or independent contractors who will have any involvement in the services or products supplied under this Agreement, have been excluded from participation in any government healthcare program, debarred from or under any other federal program (including but not limited to debarment under the Generic Drug Enforcement Act), or convicted of any offense defined in 42 U.S.C. Section 1320a-7, and that it, its employees, and independent contractors are not otherwise ineligible for participation in federal healthcare programs. Further, each party represents that it is not aware of any such pending action(s) (including criminal actions) against it or its employees or independent contractors. Each party shall notify the other party immediately upon becoming aware of any pending or final action in any of these areas.
- 9.14. Employee Certification.** The Contractor and all Contractor's employees utilized on the work to be performed under this agreement must have the proper certification(s) and license(s) to comply with State and local requirements connected to this agreement. The Contractor shall use only fully qualified and approved service technicians to perform inspections, installations, support, maintenance service, repairs and upgrades under this request.
- 9.15. Entire Agreement.** This Agreement and the terms and conditions included in the purchase order incorporates all UNMH's RFP P357-16 and addendums thereto, (Attachment C) and Contractor's response to RFP P3457-16 (Attachment D) and are made part of this agreement. This represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. All of the conditions, agreements, and understandings between the parties concerning the subject matter of this Agreement, and all such conditions, understandings, and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents, shall be valid or enforceable unless embodied in this written Agreement.

- 9.16. Equal Opportunity and Affirmative Action.** In performing or providing the services and goods required under this agreement, each party shall be an equal opportunity employer and shall conform to all affirmative action and other applicable requirements; accordingly, each party shall neither discriminate nor permit discrimination in its operations or employment practices against any person or group of persons on the basis of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or medical condition, sexual preference, prior military involvement or any other manner prohibited by law.
- 9.17. Force Majeure.** Neither party shall be in default or otherwise liable for any delay in or failure of its performance under this Agreement if such delay or failure arises by any reason beyond its reasonable control, including any act of God, any acts of the common enemy, the elements, earthquakes, floods, fires, epidemics, riots, failures or delay in transportation or communications, or any act or failure to act by the other party or such other party's employees, agents or contractors; provided however, that lack of funds shall not be deemed to be a reason beyond a party's reasonable control. The parties will promptly inform and consult with each other as to any of the above causes, which in their judgment may or could be the cause of delay in the performance of this Agreement.
- 9.18. Foreign Payments.** Payment for services performed by a foreign individual or a foreign corporation while in the US may be subject to 30% tax withholding per IRS Publication 515.
- 9.19. Governing Law.** This Agreement will be construed, interpreted, governed and enforced in accordance with the statutes, judicial decisions, and other laws of the State of New Mexico.
- 9.20. Gramm-Leach-Bliley Act.** Pursuant to the Gramm-Leach-Bliley Act and the regulations set forth at 16 CFR Part 314, UNMH requires its Contractors to implement and maintain appropriate safeguards for the protection of Customer Information. Accordingly, the Contractor shall implement and maintain a comprehensive information security program that contains administrative, technical and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of confidential Customer Information that it creates, receives, maintains, or transmits on behalf of UNMH. In addition, the Contractor will require and ensure that any of its agents, sub-contractors, or sub-consultants, to which it provides confidential Customer Information of UNMH, implements appropriate security measures to protect confidential Customer Information of UNMH.

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

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

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

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

- 9.21. Headings.** Headings and captions used in this Agreement are for convenience and ease of reference only and will not be used to construe, interpret, expand or limit the terms, conditions, or other provisions of this Agreement.
- 9.22. Inconsistencies.** In the event there are any inconsistencies or incompatibilities in provisions, the agreement shall take precedence by terms herein this agreement, the terms and conditions included in the purchase order, UNMH's RFP P357-16 and addendums thereto and Contractors response.
- 9.23. Independent Business.** Neither Contractor nor any of its agents shall be treated as an employee of UNMH for any purpose whatsoever. Contractor declares that Contractor is engaged in an independent business and has complied with all federal, state and local laws regarding business permits and licenses of any kind that may be required to carry out the said business and the tasks to be performed under this Agreement. Contractor further declares that it is engaged in the same or similar activities for other clients and that UNMH is not Contractor's sole or only client or customer.
- 9.24. Information Security Plan.** Contractor shall not install any systems software and hardware, applications, databases, information or etc. on UNMH's computing devices-assets including export/import files, custom files or etc. without prior approval from UNMH's IT division. If applicable, the Contractor **WILL** complete the UNMH's Information Security Plan hereto attached as Attachment E and submit to UNMH's IT department for approval within 30 days from date of execution of this agreement. Failure to complete form upon UNMH's request or failing to receive IT approval may result in Offeror(s) being considered as non-responsive and/or termination of agreement. UNMH reserves the right to review and verify the Information Security Plan. If UNMH identifies any deficiencies with the Information Security Plan it will notify Contractor within 30 days of such deficiencies. Thee parties shall thereafter negotiate in good faith to resolve any such deficiencies related to the foregoing. The agreement or addendums shall not be effective until the Exhibit G is approved by UNMH IT.
- 9.25. Inspection.** UNMH may inspect, at any reasonable time, any part of Contractor's plant or place of business, which is related to performance of this Agreement. Final Inspection may be made at the destination upon completion of delivery of goods and services. Acceptance of delivery shall not be considered acceptance of the goods and/or services furnished. Final inspection shall include any testing or Inspection procedures required by the Specifications.
- 9.26. Inspections, Contractor.** The Contractor shall be responsible for securing at Contractor's expense, all required inspections to comply with Federal, State and/or Local regulations governing the work performed under this Agreement.
- 9.27. Multi-Term Determination.** Pursuant to Sections 13-1-150 and 13-1-151 NMSA 1978, it has been determined that the estimated requirements covered in this Agreement are reasonably firm and continuing and a multi-term contract will serve the best interests of UNMH.
- 9.28. No Inducement to Refer.** Nothing contained in this Agreement will require UNMH or any UNMH physician to refer any patients to CONTRACTOR or require CONTRACTOR to refer patients to UNMH or any UNMH physician. The parties enter into this Agreement with the intent of conducting their relationship in full compliance with applicable federal, state and local law, including the Medicare/Medicaid Anti-Fraud and Abuse Amendments and the Physician Ownership and Referral Act (commonly known as the Stark Law). Notwithstanding any unanticipated effect of any of the provisions herein, neither party will intentionally conduct itself under the terms of this Agreement in a manner to constitute a violation of these provisions.

**9.29. Non-Assignability.** This Agreement will not be assigned by either party, nor will the duties imposed upon either party by this Agreement be delegated, subcontracted, or transferred by either party, in whole or in part, without the prior written consent of the other party; provided, however, that UNMH may assign this Agreement to a wholly-owned subsidiary or affiliate of UNMH or any component part thereof without the consent of Contractor. Contractor shall require any subcontractors to demonstrate that they have in place administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic Protected Health Information, in accordance with the Business Associate Addendum to this Agreement, and shall, upon request, provide evidence of such to UNMH. Contractor shall not, in any event, assign, delegate, transfer, or subcontract this Agreement, in whole or in part and/or directly or indirectly, to any off-shore entity. Furthermore, Contractor will not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without prior written approval of UNMH. Violation of this provision shall give UNMH the right to immediately terminate this Agreement and subject Contractor to the indemnification provision set forth in this Agreement.

**9.30. 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 address:

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

Contractor Name	University of New Mexico Hospitals
Address 1	Purchasing Department Ste 3165
Address 2	Attn: Purchasing Director
	933 Bradbury Dr. Se
	Albuquerque, New Mexico 87106

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

**9.32. Other Applicable Laws.** Any provision required to be included in a resultant Purchase Order/Agreement by any applicable and valid executive order, federal, state or local law, ordinance, rule or regulation shall be deemed to be incorporated herein.

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

**9.34. Patent and Copyright Indemnity.** Contractor shall indemnify, defend and hold harmless the University against all losses, liabilities, lawsuits, claims, expenses (including attorneys' fees), costs, and judgments incurred through third party claims of infringement by the Services provided hereunder of any copyright, patent, trademark or other intellectual property rights.

**9.35. Payroll or Employment Taxes.** No federal, state, or local income, payroll or employment taxes of any kind shall be withheld or paid by the University with respect to payments to Contractor or on behalf of Contractor its agents or employees. Contractor shall withhold and pay any such taxes on behalf of its employees as required by law. The payroll or employment taxes that are the subject to this paragraph include but are not limited to FICA, FUTA, federal personal income tax, state personal income tax, state disability insurance tax, and state unemployment insurance tax. If Contractor is not a corporation, Contractor further understands that Contractor may be liable for self-employment (Social Security) tax, to be paid by Contractor according to law.

- 9.36. 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.
- 9.37. Prices.** All prices/discounts shall be F.O.B. destination and shall include all parts, labor, materials, software, supplies, freight, delivery, surcharges, administrative costs, etc., to fulfill the terms, conditions, and scope of work as called for in this Agreement.
- 9.38. Protection of Confidential Data.** As applicable, Service Provider agrees to abide by the limitations on re-disclosure of personally identifiable information from education records set forth in The Family Educational Rights and Privacy Act (34 CFR § 99.33 (a)(2) and with the terms set forth below. 34 CFR 99.33 (a)(2) states that the officers, employees and agents of a party that receives education record information from the Institution may use the information, but only for the purposes for which the disclosure was made.

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

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

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

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

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

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

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

**9.39. Quantities:** UNMH may purchase all, some or none of the elements described in this proposal or Offerors responses. In addition, actual quantities may fluctuate up or down based on UNMH needs. The successful bidder will be required to fill all orders placed regardless of quantities ordered.

**9.40. 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.

Contractor, upon final payment of the amount due under this Agreement, will release UNMH, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations not assumed in this Agreement by UNMH or the State of New Mexico.

**9.41. Release.** Contractor, upon final payment of the amount due under this Agreement, will release UNMH, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations not assumed in this Agreement by UNMH or the State of New Mexico.

**9.42. Removal of Contractor's Employee(s).** UNMH may remove Contractor's employee(s) from the work under the contract for cause or convenience. UNMH may immediately terminate, with written notice to Contractor, the services of any of the Contractor's employee(s), if the University of New Mexico's management believes in good faith that Contractor's employee is unable to perform the services with reasonable skill.

**9.43. Scheduled Delays.** If the Contractor becomes aware of possible problems that could result in delay in completion of the work on the agreed-to schedule; the Contractor must immediately notify the UNMH or the designated representative. The initial notification of the delay may be verbal with a written confirmation, giving the probable cause and effect, with recommendations for alternate action. Nothing in this paragraph will be interpreted as relieving the Contractor of its contractual obligations; however, failure to notify UNMH promptly will be basis for determining the Contractor responsibility in an otherwise excusable delay.

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

**9.45. Site Familiarity.** The Contractor shall be responsible for thoroughly inspecting the site and work to be done prior to commencement of work. The Contractor warrants by this submission of an offer that the site has been thoroughly inspected and the work to be done and that the offer includes all costs required to complete the work. The failure of the Contractor to be fully informed regarding the requirements of a request under this agreement will not constitute grounds or any claim or demand for adjustments to the associated costs.

**9.46. State and Local Ordinances.** The Contractor shall perform work under this contract in strict accordance with the latest adopted version of all State and local codes, ordinances, and regulations governing the work involved.

**9.47. Submission of Drawings / Literature.** If applicable, the submission of samples, drawings and literature to be used must be submitted by the date designated by UNMH in order to be considered. All submissions shall be made at no expense to the University. Returns shall only be made at the Offers request and expense.

**9.48. Taxes.** UNMH is exempt from Federal Excise Taxes and from New Mexico Gross Receipts Taxes on materials. Services are not exempt. Taxes on services should be included as a separate line item and not included in the base price offer. Applicable taxes are excluded from the RFP evaluation. Reference Attachment F, UNMH Tax exempt certificate, attached to an incorporated by reference in this agreement.

**9.49. Third Parties.** Nothing in this Agreement, express or implied, is intended to confer any rights, remedies, claims, or interests upon a person not a party to this Agreement.

- 9.50. U.S. Government Restricted Rights.** This provision applies to any hospital operating on behalf of any part of the United States Government. The System, including the related documentation, is provided with restricted rights. The System is deemed to be “commercial software” and “commercial software documentation,” respectively, pursuant to DFAR Section 227.7202 and FAR 122.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the System, including related documentation by the U.S. Government or any of its agencies shall be governed solely by the terms of the license granted by this Agreement and shall be prohibited except to the extent expressly permitted by the terms of the license granted by this Agreement.
- 9.51. Waiver.** No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by the party making the waiver and addressed to the other party; nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of either party to insist upon the performance by the other party in strict accordance with the terms hereof. Further, the waiver by any party or a breach by the other party, of any term, covenant, or condition hereof, shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.
- 9.52. Workers Compensation.** No workers compensation insurance has been or will be obtained by UNMH on account of Contractor or its employees or agents. Contractor shall comply with the workers compensation laws with respect to Contractor and Contractor’s employees and agents.
- 9.53. Workmanship.** All work shall be done in a neat, workman-like manner using acceptable equipment and methods consistent with that level of care and skill ordinarily exercised by members of the profession/trade and in accordance with sound professional/trade standards and ethical practice.
- 10. WORKPLAN REQUIRED:** Contractor shall include a proposed schedule for all SOWs. The SOW shall provide at the minimum sufficient detail to enable UNMH to fully understand the intentions of Contractor. It should include a detailed workplan for the fulfillment of its proposed scope of work and services. The work plan should identify Contractor plan(s) for UNMH, including all tasks, fees, exclusions, milestones, type of of liscense included subcontractors, third parties and time frames involving completion of the scope. Contractor may employ gant charts, graphics or other scheduling tools, preferably in electronic media. It should clearly outline UNMH’s and Contractor required resources, responsibilities, staffing and training. It shall include all expenses which Contractor is incurring in rendering the services to which it expects UNMH to reimburse Contractor.

**(Signature page to follow)**

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

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

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

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

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

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

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

**ATTACHMENT A  
TO  
SERVICES AGREEMENT**

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

1. **PAYMENT**

1.1. **Compensation.** UNMH will pay Contractor for product and services provided under this Agreement.

1.2. **Payment.** UNMH will pay Contractor at the following address:

2. **TERM.** The term of Agreement shall be for an initial term of **three (3)** years with the option to renew as provided for in NMSA 13-1-150 (Multi-Term Contract) and, subject to the early termination rights of the parties set forth in Section IV of the Agreement.

**Exhibit G**

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

1. The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to influence Certain Federal Transactions, I included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.
  
2. The Offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after; December 23, 1989;
  - a. Federal appropriated funds have not been paid and will not be paid to any person for influencing or attempting to Influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;
  
  - b. If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal Transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the Offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
  
  - c. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**1.1.1 CERTIFICATION**

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

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

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

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