

**GENERAL SERVICES DEPARTMENT
Risk Management Division**

REQUEST FOR PROPOSALS (RFP)

Workers' Compensation Pharmacy Benefits Manager



RFP#24-350-4520-00002

RFP Release Date: March 18, 2024

Proposal Due Date: April 17, 2024

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The purpose of the Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiations for the procurement of a Pharmacy Benefits Manager (PBM) for the New Mexico General Services Department Worker's Compensation Bureau of the Risk Management Division (RMD).

B. BACKGROUND INFORMATION

The Risk Management Division is responsible for the intake and administration of all Worker's Compensation claims for all State of New Mexico RMD pool participants. The State of New Mexico is struggling to hire and retain adjusters due to the inability to stay competitive with private industry regarding higher salaries and the ability to work from home. Due to this issue the State has decided to contract with a qualified third-party claims administrator (TPA) to take on the administration of the State's workers compensation claims processing to include a PBM for the program.

C. SCOPE OF PROCUREMENT

The General Services Department is seeking a qualified Pharmacy Benefits Manager (PBM) "Contractor" to handle all State of New Mexico Worker's Compensation pharmacy claims made by covered State employees. The Contractor must have an effective pharmacy claims management system that is easy to access with enough information that is readily available when RMD asks for information. The PBM and its claims management system must be capable of interfacing with RMD's Worker's Compensation third party administrator's existing claims management software for a two-way data exchange. The Offeror is required to specify the essential criteria, to include documents and data, for extracting the current fields from the Procuring Agency's existing PBM's system, Mitchell International Inc. This inclusive process encompasses the integration of stored documents linked to both new and re-opened claims. The Contractor shall provide a prescription management program with a formulary that assures therapeutic and economic value for injured workers and State of New Mexico and cover all therapeutic diagnostic categories to include the issuance of Drug card to all claimants. The PBM must conduct ongoing drug utilization reviews that identify and address instances of potential fraud and abuse as well as key prescribing and utilization patterns.

This RFP will result in a single award. This procurement will result in a contractual agreement between two parties; the procurement may ONLY be used by those two parties exclusively. The contract term will be for four years with a fixed fee schedule. Contract can be negotiated based on increased utilization up to no more than 2%. Either party may terminate the Contract with 90 days advance written notice to the other party, except in the event of bankruptcy or business failure of Pharmacy Benefit Management Program, in which case written notice period shall be 30 days. Any other costs associated with the RFP must have a clear description of cost, rate or amount, and

the frequency (monthly, or other). The cost requirement must include the services required by the Offeror to ensure the two-way data transfer/exchange is completed and successful.

D. PROCUREMENT MANAGER

The General Services Department has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

Name: Gerardo Ruelas, Procurement Manager

Telephone: (505) 819-7815

Email: Gerardo.Ruelas@gsd.nm.gov

Physical address:

Gerardo, Ruelas, Procurement Manager

Joseph M. Montoya Building

1100 S. St. Francis Dr., Room 2073

Santa Fe, NM 87505

Mailing Address:

PO Box 6850

Santa Fe, NM 87502

1. **Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Procurement Manager. Offerors may contact **ONLY** the Procurement Manager regarding this procurement. Other state employees or Evaluation Committee members do not have the authority to respond on behalf of the Agency.
2. **Protests of the solicitation or award must be submitted in writing to the Protest Manager identified in Section I.D.** As a Protest Manager has been named in this Request for Proposals, pursuant to §13-1-172 NMSA 1978 and 1.4.1.82 NMAC, **ONLY** protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. Protests submitted or delivered to the Procurement Manager will **NOT** be considered properly submitted.

Alexis Johnson, Protest Manager

alexis.johnson@gsd.nm.gov

E. PROPOSAL SUBMISSION

Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph D. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the **Worker's Compensation, Pharmacy Benefits Manager RFP, 24-350-4520-00002**. Proposals submitted by facsimile, or other electronic means, will not be accepted.

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to NMSA 1978, § 13-1-116, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Proposals. Awarded in this context means the final required state agency signature on the contract(s) resulting from the procurement has been obtained.

F. DEFINITION OF TERMINOLOGY

This section contains definitions of terms used throughout this procurement document, including appropriate abbreviations:

1. “**Agency**” means the General Services Department.
2. “**Award**” means the final execution of the contract document.
3. “**Business Hours**” means weekdays (Monday – Friday) 8:00 AM through 5:00 PM MST/MDT, whichever is in effect on the date given.
4. “**Close of Business**” means weekdays (Monday – Friday) 5:00 PM MST/MDT, whichever is in effect on the date given.
5. “**Confidential**” means confidential financial information concerning Offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act §§57-3-A-1 through 57-3A-7 NMSA 1978. See also NMAC 1.4.1.45. The following items may **not** be labelled as confidential: Offeror’s submitted Cost response, Staff/Personnel Resumes/Bios (excluding personal information such as personal telephone numbers and/or home addresses), and other submitted data that is **not** confidential financial information or that qualifies under the Uniform Trade Secrets Act.
6. “**Contract**” means any agreement for the procurement of items of tangible personal property, services or construction.
7. “**Contractor**” means any business having a contract with a state agency or local public body.
8. “**Determination**” means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.
9. “**Desirable**” – the terms “may,” “can,” “should,” “preferably,” or “prefers” identify a desirable or discretionary item or factor.
10. “**Electronic Version/Copy**” means a digital format consisting of text, images or both, readable on computers or other electronic devices, which includes all content that the

original document contains. The electronic version/copy CANNOT be emailed. This shall be submitted along with hard copy in USB format.

11. **“Evaluation Committee”** means a body appointed to perform the evaluation of Offerors’ proposals.
12. **“Evaluation Committee Report”** means a report prepared by the Procurement Manager and the Evaluation Committee to support the Committee’s recommendation for contract award. It will contain scores and written evaluations of all responsive Offeror proposals.
13. **“Final Award”** means, in the context of this Request for Proposals and all its attendant documents, that point at which the final required signature on the contract(s) resulting from the procurement has been affixed to the contract(s) thus making it fully executed.
14. **“Financial Responsibility”** means, an Offeror who can show financial stability by means of audited financial statements for the last five years to include debt-to-equity, gross margin and return on investment ratios.
15. **“Finalist”** means an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee, as explained in Section II.B.8.
16. **“Hourly Rate”** means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.
17. **“IT”** means Information Technology.
18. **“Mandatory”** – the terms ”must,” ”shall” ”will,” ”is required,” or ”are required,” identify a mandatory item or factor. Failure to meet a mandatory item or factor may result in the rejection of the Offeror’s proposal.
19. **“Minor Irregularities”** means anything in the proposal that does not affect the price, quality and/or quantity, or any other mandatory requirement.
20. **“Offeror”** is any person, corporation, or partnership who chooses to submit a proposal.
21. **“Procurement Manager”** means any person or designee authorized by a state agency or local public body with the responsibility, authority, and resources to conduct the RFP procurement, make written determinations regarding the RFP procurement, and/or enter into or administer contracts as a result of the RFP procurement.
22. **“Procuring Agency”** means all State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to procure items of tangible personal property, services or construction from the agreement(s) awarded as a result of this RFP.

23. **“Project”** means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved, and project acceptance is given by the project executive sponsor.
24. **“Redacted”** means a version/copy of the Offeror’s proposal with the information considered proprietary or confidential (as defined by §§57-3A-1 to 57-3A-7 NMSA 1978 and NMAC 1.4.1.45 and summarized herein and outlined in Section II.C.8 of this RFP) blacked-out BUT NOT omitted or removed.
25. **“Request for Proposals (RFP)”** means all documents, including those attached or incorporated by reference, used for soliciting proposals.
26. **“Responsible Offeror”** means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the proposal.
27. **“Responsive Offer”** or means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to price, quality, quantity or delivery requirements.
28. **“Sealed”** means a package that is sealed shut and contains the proposal and will remain sealed until opened by at least two individuals-one opening the contents and one witnessing the unsealing of the contents and documenting the contents of the package.
29. **“Single Source Award”** means an award of contract for items of tangible personal property, services or construction to only one Offeror.
30. **“SPD”** means State Purchasing Division of the New Mexico State General Services Department. This includes the Contract Review Bureau.
31. **“Staff”** means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.
32. **“State (the State)”** means the State of New Mexico.
33. **“State Agency”** means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. “State agency” includes the Purchasing Division of the General Services Department and the State Purchasing Agent but does not include local public bodies.

34. **“State Purchasing Agent”** means the Director of the Purchasing Division of the General Services Department.
35. **“Statement of Concurrence”** means an affirmative statement from the Offeror indicating its response to a required Section IV specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offerors proposal, pursuant to Section III.C.1. (E.g. “We concur,” “Understands and Complies,” “Comply,” “Will Comply if Applicable,” etc.)
36. **“Unredacted”** means a version/copy of the proposal containing all complete information; including any that the Offeror would otherwise consider confidential, such copy for use only for the purposes of evaluation.
37. **“Written”** means typed in standard 8 ½ x 11-inch document format, by common electronic means (such as Microsoft Word, Adobe PDF, etc.). A larger size document is permissible for charts, spreadsheets, etc.

G. PROCUREMENT LIBRARY

The Risk Management Division's Procurement Library within the General Services Department, housing all RFP postings, Q&A sessions, and RFP amendments, can be accessed online at: <https://www.generalservices.state.nm.us/risk-management/solicitations/>

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule of events, the descriptions of each event, and the conditions governing this procurement.

A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere to the following schedule:

Action	Responsible Party	Due Dates
1. Issue RFP	Agency	03/18/2024
2. Acknowledgement of Receipt Form	Potential Offerors	03/25/2024 5PM MDT
3. Deadline to submit Written Questions	Potential Offerors	04/01/2024 by 5PM MDT
4. Response to Written Questions	Procurement Manager	04/08/2024
5. Submission of Proposal	Potential Offerors	04/17/2024 by 4PM MDT
6.* Proposal Evaluation	Evaluation Committee	04/18/2024-04/23/2024
7.* Selection of Finalists	Evaluation Committee	04/25/2024
8.* Oral Presentation(s)	Finalist Offerors	04/30/2024-05/02/2024
9.* Best and Final Offers	Finalist Offerors	05/09/2024
10.* Finalize Contractual Agreements	Agency/Finalist Offerors	05/13/2024
11.* Contract Awards	Agency/ Finalist Offerors	05/15/2024
12.* Protest Deadline	Agency	05/30/2024 by 5PM

* Dates indicated in Events 7 through 13 are estimates only and may be subject to change without necessitating an amendment to the RFP.

B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the Sequence of Events shown in Section II.A., above.

1. Issue RFP

This RFP is being issued on behalf of the State of New Mexico General Services Department on the date indicated in Section II.A, Sequence of Events.

2. Acknowledgement of Receipt Form

Potential Offerors may e-mail the Acknowledgement of Receipt Form (APPENDIX A), to the procurement manager, Gerardo Ruelas at Gerardo.Ruelas@gsd.nm.gov, to have their

organization placed on the procurement Distribution List. The form must be returned to the procurement manager by 5:00 pm MDT on the date indicated in Section II.A, Sequence of Events.

The procurement distribution list will be used for the distribution of written responses to questions, and/or any amendments to the RFP. Failure to return the Acknowledgement of Receipt Form does not prohibit potential Offerors from submitting a response to this RFP. However, by not returning the Acknowledgement of Receipt Form, the potential Offeror's representative shall not be included on the distribution list and will be solely responsible for obtaining from the Procurement Library (Section I.F.) responses to written questions and any amendments to the RFP.

Potential Offeror(s) are encouraged to submit written questions to the Procurement Manager (see Section I.D). The identity of the organization submitting the question(s) will not be revealed. All written questions will be addressed in writing on the date listed in Section II.A, Sequence of Events.

3. Deadline to Submit Written Questions

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP until 5pm MDT as indicated in Section II.A, Sequence of Events. All written questions must be addressed to the Procurement Manager as declared in Section I.D. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

4. Response to Written Questions

Written responses to the written questions will be provided via e-mail, on or before the date indicated in Section II.A, Sequence of Events, to all potential Offerors who timely submitted an Acknowledgement of Receipt Form (Section II.B.2 and APPENDIX A).

The Questions and Answers will be posted to:

<https://www.generalservices.state.nm.us/risk-management/solicitations/>

5. Submission of Proposal

At this time, a physical submission with one original is required along with one **electronic** proposal in USB format. **Do not** only submit hard copy or electronic copy. One hard copy and one electronic copy are required and must be submitted together.

ALL PROPOSALS MUST BE RECEIVED BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 4:00 PM MDT ON THE DATE INDICATED IN SECTION II.A, SEQUENCE OF EVENTS. **NO LATE PROPOSAL CAN BE ACCEPTED.** The date and time of receipt will be recorded on each proposal.

It is the Offeror's responsibility to ensure all documents are completely submitted (both hard copy and USB/electronic) by the deadline set forth in

*this RFP. No proposals will be considered that are received after the deadline. Please ensure that you, as the Offeror, **allow adequate time to deliver your proposal by the deadline.** A submission that is not both: (1) fully complete; and (2) received, by the deadline, will be deemed late. Further, a submission that is not fully complete and received by the deadline will be deemed late. In accordance with statute and rule, **NO LATE PROPOSAL CAN BE ACCEPTED.***

Hard copies of the proposals must be submitted to the address specified in the Section I D. Electronic copies should be submitted via a USB drive and this should be included with your hard copy submission.

A log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to §13-1-116 NMSA 1978, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Proposals. Awarded in this context means the final required state agency signature on the contract(s) resulting from the procurement has been obtained.

6. Proposal Evaluation

An Evaluation Committee will perform the evaluation of proposals. This process will take place as indicated in Section II.A, Sequence of Events, depending upon the number of proposals received. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

7. Selection of Finalists

The Evaluation Committee will score accepted proposals as per the criteria in part V Evaluation section and the Procurement Manager will notify the finalist Offeror as per schedule Section II.A, Sequence of Events or as soon as possible thereafter. A schedule for the Oral Presentation, if any, will be determined at this time. Oral Presentations Finalist Offerors, as selected per Section II.B.8 above, may be required to conduct an oral presentation at a venue to be determined as per schedule Section II.A., Sequence of Events, or as soon as possible thereafter. If Oral Presentations are held, Finalist Offerors may be required to make their presentations through electronic means (Microsoft Teams, Zoom, etc.). The Agency will provide Finalist Offerors with an agenda and applicable details, including an invitation to the event. ***Whether or not Oral Presentations will be held is at the sole discretion of the Evaluation Committee.***

8. Best and Final Offers

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers by as per schedule Section II. A., Sequence of Events or as soon as possible. Best and final offers may also be clarified and amended at finalist Offeror's oral presentation.

9. Finalize Contractual Agreements

After approval of the Evaluation Committee Report, any contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s), taking into consideration the evaluation factors set forth in this RFP, as per Section II.A., Sequence of Events, or as soon as possible thereafter. The most advantageous proposal may or may not have received the most points. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the timeframe specified, the State reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

10. Contract Awards

Upon receipt of the signed contractual agreement, the Agency Procurement office will award as per Section II.A., Sequence of Events, or as soon as possible thereafter. The award is subject to appropriate Department and State approval.

11. Protest Deadline

Any protest by an Offeror must be timely submitted and in conformance with §13-1-172 NMSA 1978 and applicable procurement regulations. As a Protest Manager has been named in this Request for Proposals, pursuant to §13-1-172 NMSA 1978 and 1.4.1.82 NMAC, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. The 15-calendar day protest period shall begin on the day following the notice of award of contract(s) and will end at 5:00 pm MDT on the 15th day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. The protest must be directed to:

Alexis Johnson, Protest Manager
alexis.johnson@gsd.nm.gov

PROTESTS RECEIVED AFTER THE DEADLINE WILL NOT BE ACCEPTED.

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

Offerors **must** indicate their acceptance to be bound by the Conditions Governing the Procurement, Section II.C, and Evaluation, Section V, by completing and signing the Letter of Transmittal form, pursuant to the requirements in Section II.C.30, located in APPENDIX E.

2. Incurring Cost

Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror. Any cost incurred by the Offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.

3. Prime Contractor Responsibility

Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with a State Agency which may derive from this RFP. The State Agency entering into a contractual agreement with a vendor will make payments to only the prime contractor.

4. Subcontractors/Consent

The use of subcontractors is not allowed. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime contractor must receive approval, in writing, from the agency awarding any resultant contract before any subcontractor is used during the term of this agreement.

5. Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. **Agency personnel will not merge, collate, or assemble proposal materials.**

6. Offeror's Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request addressed to the Procurement Manager and signed by the Offeror's duly authorized representative.

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations, 1.4.1.5 & 1.4.1.36 NMAC.

7. Proposal Offer Firm

Responses to this RFP, including proposal prices for services, will be considered firm for one-hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

8. Disclosure of Proposal Contents

The contents of all submitted proposals will be kept confidential until the final award has been completed by the Agency. At that time, all proposals and documents pertaining to the proposals will be available for public inspection, *except* for proprietary or confidential material as follows:

- a. ***Proprietary and Confidential information is restricted to:***
 1. confidential financial information concerning the Offeror's organization; and
 2. information that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, §§57-3A-1 through 57-3A-7 NMSA 1978.
- b. An additional but separate redacted version of Offeror's proposal, as outlined and identified in Section III.B.2.a, shall be submitted containing the blacked-out proprietary or confidential information, in order to facilitate eventual public inspection of the non-confidential version of Offeror's proposal.

IMPORTANT: The price of products offered, or the cost of services proposed **SHALL NOT** be designated as proprietary or confidential information.

If a request is received for disclosure of proprietary or confidential materials, the Agency shall examine the 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 proprietary or confidential information.

9. No Obligation

This RFP in no manner obligates the State of New Mexico or any of its Agencies to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate authorities.

10. Termination

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the Agency determines such action to be in the best interest of the State of New Mexico.

11. Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such terminations will be affected by sending written notice to the contractor. The Agency's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

12. Legal Review

The Agency requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror's concerns must be promptly submitted in writing to the attention of the Procurement Manager.

13. Governing Law

This RFP and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico.

14. Basis for Proposal

Only information supplied in writing by the Procurement Manager or contained in this RFP shall be used as the basis for the preparation of Offeror proposals.

15. Contract Terms and Conditions

The contract between an agency and a contractor will follow the format specified by the Agency and contain the terms and conditions set forth in the Draft Contract Appendix C. However, the contracting agency reserves the right to negotiate provisions in addition to those contained in this RFP (Draft Contract) with any Offeror. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of any resultant contract.

The Agency discourages exceptions from the contract terms and conditions as set forth in the RFP Draft Contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Agency (and the Evaluation Committee), the proposal appears to be conditioned on the exception, or correction of what is deemed to be a deficiency, or an unacceptable exception is proposed which would require a substantial proposal rewrite to correct.

Should an Offeror object to any of the terms and conditions as set forth in the RFP Draft Contract (APPENDIX C) strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose **specific** alternative language. The Agency may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of the Draft Contract are not acceptable to the Agency and will result in disqualification of the Offeror's proposal.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

If an Offeror fails to propose any alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror), no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions during the procurement process (the RFP process

prior to selection as successful Offeror) is an **explicit agreement** by the Offeror that the contractual terms and conditions contained herein are **accepted** by the Offeror.

16. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the Agency. See Section II.C.15 for requirements.

17. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation (such terms and conditions having been proposed during the procurement process, that is, the RFP process prior to selection as successful Offeror), will be discussed only between the Agency and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's proposal.

18. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the potential Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any potential Offeror who is not a Responsible Offeror or fails to submit a Responsive Offer as defined in §13-1-83 and §13-1-85 NMSA 1978.

19. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities, as defined in Section I.F.19. The 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 Evaluation Committee.

20. Change in Contractor Representatives

The Agency reserves the right to require a change in contractor representatives if the assigned representative(s) is (are) not, in the opinion of the Agency, adequately meeting the needs of the Agency.

21. Notice of Penalties

The Procurement Code, §§13-1-28 through 13-1-199 NMSA 1978, imposes civil, and misdemeanor and felony criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

22. Agency Rights

The Agency in agreement with the Evaluation Committee reserves the right to accept all or a portion of a potential Offeror's proposal.

23. Right to Publish

Throughout the duration of this procurement process and contract term, Offerors and contractors must secure from the agency written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or agency contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or removal from the contract.

24. Ownership of Proposals

All documents submitted in response to the RFP shall become property of the State of New Mexico. If the RFP is cancelled, all responses received shall be destroyed by the Agency.

25. Confidentiality

Any confidential information provided to, or developed by, the contractor in the performance of the contract resulting from this RFP shall be kept confidential and shall not be made available to any individual or organization by the contractor without the prior written approval of the Agency.

The Contractor(s) agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the procuring Agency's written permission.

26. Electronic mail address required.

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). The offeror must have a valid e-mail address to receive this correspondence. (See also Section II.B.3-4, Response to Written Questions).

27. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the agency, the Offeror acknowledges that the version maintained by the agency shall govern.

28. New Mexico Employees Health Coverage

A. If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for those employees if the

expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

- B. The offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- C. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <https://bewellnm.com>.
- D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

29. Campaign Contribution Disclosure Form

The offeror must complete, sign, and return the Campaign Contribution Disclosure Form (APPENDIX B) as a part of their proposal. This requirement applies regardless of whether a covered contribution was made or not made for the positions of Governor and Lieutenant Governor or other identified official. **Failure to complete and return the signed, unaltered form will result in Offeror's disqualification.**

30. Letter of Transmittal

The offeror's proposal must be accompanied by a Letter of Transmittal Form (APPENDIX E), which must be **signed** by the individual authorized to contractually obligate the company, identified in #2 below.

Provide the following information:

1. Identify the submitting business entity; Name, Mailing Address, Phone Number, Federal Tax ID Number (TIN), and New Mexico Business Tax ID Number (BTIN, formerly CRS).
2. Identify the Name, Title, Telephone, and E-mail address of the person authorized by the Offeror's organization to (A) contractually obligate the business entity providing the Offer, (B) negotiate a contract on behalf of the organization; and/or (C) provide clarifications or answer questions regarding the Offeror's proposal content (*A response to B and/or C is only necessary if the responses differs from the individual identified in A*);
3. Identify any subcontractors that may be utilized in the performance of any resultant contract award.
4. Identify any other entity(ies) (such as State Agency, reseller, etc., that is not a subcontractor identified in #3) that may be used in the performance of this awarded contract; and

5. The individual identified in #2 above, must sign and date the form, attesting to the veracity of the information provided, and acknowledging (a) the organization's acceptance of the Conditions Governing the Procurement stated in Section II.C.1, (b) the organizations acceptance of the Section V Evaluation Factors, and (c) receipt of any and all amendments to the RFP.

Failure to submit a signed Letter of Transmittal Form (Appendix E) will result in Offeror's disqualification.

31. Disclosure Regarding Responsibility

- A. Any prospective Contractor and any of its principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:
 1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.
 2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
 - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract.
 - b. violation of Federal or state antitrust statutes related to the submission of offers; or
 - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property.
 3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure.
 4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
 - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
 - c. Have within a three-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a

business entity or related entities.

- C. The Contractor shall provide immediate written notice to the Agency, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
- D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.
- E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.
- F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the Agency or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, Central Purchasing Officer may terminate the involved contract for cause. Still further the Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the Central Purchasing Officer.

32. New Mexico/Native American Resident Preferences

To ensure adequate consideration and application of §13-1-21 NMSA 1978 (as amended), **Offeror must submit a copy of its valid New Mexico/Native American Resident Preference Certificate or its valid New Mexico/Native American Resident Veteran Preference with its proposal.** Certificates for preferences must be obtained through the New Mexico Department of Taxation & Revenue
<http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>.

In accordance with §13-1-21(H) NMSA 1978, an agency shall not award any combination of New Mexico/Native American Resident Preferences.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit only one proposal in response to this RFP.

B. PROPOSAL SUBMISSION

One original hard copy of the proposal along with one electronic copy on a USB hard drive shall be submitted. Any proposal that does not adhere to the requirements of this **Section II.B** and **Section III.C Proposal Content and Organization** may be deemed non-responsive and rejected on that basis.

Offerors shall provide 1 original hard copy of their technical proposal and cost proposal and one electronic copy in USB format. *Binder 3 is optional* and shall contain any other supporting documentation the organization would consider relevant to this procurement. The complete proposal shall be delivered to the location specified in Section I, Paragraph E on or before the closing date and time for receipt of proposals.

The offeror's proposals must be clearly labeled and numbered and indexed as outlined in **Section III.C. Proposal Format**. Proposals must be submitted in the manner outlined below, and sealed according to the definition provided in Section I.F. The ORIGINAL binder (Technical and Cost) shall be clearly marked as "ORIGINAL" on the front of the binder.

Technical and Cost portions of Offerors proposal **must** be submitted in separate binders as indicated below in this section, and **must** be prominently identified as "Technical Binder," or "Cost Binder," on each front cover. Envelopes, packages or boxes containing the original and the copies must be clearly labeled and submitted in a sealed envelope, package or box according to the information provided in Section I.E. It is not necessary to separate Technical Binders from Cost Binders, if they are submitted within the same sealed envelope, package or box, as long as the Technical Binders and Cost Binders are each submitted in separate binders. **DO NOT submit ANY cost in the Technical Binder.**

Offerors **must** deliver:

- a) **Technical Proposals** – One (1) ORIGINAL Binder One, and one (1) ELECTRONIC copy of the proposal in USB format. The electronic copy **MUST** be submitted as a USB and **CANNOT** be emailed. **The Technical Proposals SHALL NOT contain any cost information.**
 - a. **Confidential Information:** If Offeror's proposal contains confidential information, as defined in Section I.F.5 and detailed in Section II.C.8, Offeror **must** submit:
 - i. all of the requisite proposals identified in Section III.B.1.a above as **unredacted** (def. Section 1.F) versions for evaluation purposes; **AND**

- ii. ONE (1) additional **redacted** (def. Section 1.F) HARD COPY version and ONE (1) additional **redacted** electronic version for the public file, in order to facilitate eventual public inspection of the non-confidential version of Offeror’s proposal. Redacted versions **must** be clearly marked as “REDACTED” or “CONFIDENTIAL” on the front cover of the hard-copy binder and on the first page of the electronic file.
- b) **Cost Proposals** – One (1) ORIGINAL HARD COPY, and one (1) ELECTRONIC copy of the proposal containing **ONLY** the Cost Proposal; ORIGINAL and all HARD COPIES of the Cost Proposal shall be in separate labeled binders from the Technical Proposals. **The electronic copy MUST be submitted as a USB and CANNOT be emailed.**

The electronic version/copy of the proposal **must** mirror the physical binder submitted (i.e. One (1) **unredacted USB**, one (1) **redacted USB**). **The electronic version can NOT be emailed.**

The ORIGINAL HARD COPY and ELECTRONIC copy information **must** be identical. In the event of a conflict between versions of the submitted proposal, the ORIGINAL shall govern.

Any proposal that does not adhere to the requirements of this Section and **Section III.C.1 Proposal Content and Organization**, may be deemed non-responsive and rejected on that basis.

Binder 1/TECHNICAL-One original clearly labeled with each portion clearly delineated with tabs.

Binder 2/COST-One original clearly labeled.

Binder 3/Supporting Documentation is optional. If you choose to submit Binder 3, submit one original.

C. PROPOSAL FORMAT

All proposals must be typewritten on standard 8 ½ x 11-inch paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within binders with tabs delineating each section.

Organization of folders/envelopes for hard copy proposals and electronic copy proposal:

1. Proposal Content and Organization

All proposals must be submitted as follows:

Binder #1 (Technical Proposal) REQUIRED

- a) Letter of transmittal
- b) Table of contents of proposal
- c) Summary of proposed services

- d) Response to mandatory specifications
- e) Response to Terms and Conditions
- f) Offeror's Additional Terms and Conditions
- h) Campaign Contribution Form
- i) Employee Health Coverage Form

Binder #2 (Cost) REQUIRED

The Offerors should fill out the life of claims and cost-plus pricing worksheet in Appendix D.

Within each section of their proposal, offerors should address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal. All discussion of proposed costs, rates, or expenses must occur only in Binder 2.

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

The proposal summary may be included by offerors to provide the Evaluation Committee with an overview of the technical and business features of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the offeror's proposal.

2. **Letter of Transmittal** - Each proposal must be accompanied by a letter of transmittal. The letter of transmittal MUST:
- a. Identify the submitting organization.
 - b. Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized by the organization to contractually obligate the organization.
 - c. Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized to negotiate the contract on behalf of the organization.
 - d. Identify the names, titles, telephone and fax numbers, and e-mail addresses of persons to be contacted for clarification.
 - e. Explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section II, Paragraph C.1.
 - f. Be signed by the person authorized to contractually obligate the organization.
 - g. Acknowledge receipt of any and all amendments to this RFP.

D. PROPOSAL CONTENT AND ORGANIZATION

All proposals must be submitted as follows:

Direct reference to pre-prepared or promotional material may be used if referenced and clearly marked. Promotional material must be minimal. Within each section of the proposal, Offerors

must organize and address the RFP requirements in the order indicated below. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of Offeror's proposal. **Any and all discussion of proposed costs, rates or expenses must occur ONLY in the Cost Proposal.**

Technical Proposal – DO NOT INCLUDE ANY COST INFORMATION IN THE TECHNICAL PROPOSAL.

1. Signed Letter of Transmittal
2. Signed Campaign Contribution Form
3. Table of Contents
4. Proposal Summary (Optional)
5. Response to Contract Terms and Conditions (from Section II.C.15)
6. Offeror's Additional Terms and Conditions (from Section II.C.16)
7. Response to Specifications (**except Cost information which shall be included ONLY in Cost Proposal**)
 - a. Organizational Experience
 - b. Organizational References
 - c. Oral Presentation (if applicable)
 - d. Mandatory Specification
 - e. Desirable Specification
 - f. Financial Stability (Financial information considered confidential, as defined in Section I.F 14. and detailed in Section II.C.8, should be placed in the **Confidential Information** file, per Section III.B.2.a, as applicable)
 - g. Proof of Insurance per Section IV I 16.
 - h. New Mexico/Native American Resident Preferences (if applicable)
8. Other Supporting Material (if applicable)
 - Provide a copy of Quality Control Program
 - Indicate the location(s) of handling offices.
 - Outline Advantages and Benefits to the State of New Mexico in using your services over your competition.
 - Explain how you maximize technology for adjusters and clients.
 - Explain strategy to minimize turnover of adjusters and how these transitions are communicated.
 - Explain how you manage workload and outcomes; why is your model better?
 - Provide experience in taking over Self Insured/Self Administrative Programs and the rebadging process.
 - Provide a Transition or Implementation Plan

Cost Proposal:

1. Completed Cost Response Form (APPENDIX D)

A Proposal Summary may be included in Offeror's Technical Proposal, to provide the Evaluation Committee with an overview of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal. **DO NOT INCLUDE COST INFORMATION IN THE PROPOSAL SUMMARY.**

IV. SPECIFICATIONS

A. DETAILED SCOPE OF WORK

The General Services Department is seeking a qualified Pharmacy Benefits Manager (PBM) “Contractor” to handle all State of New Mexico Worker’s Compensation pharmacy claims made by covered State employees. The Contractor must have an effective claims management system that is easy to access with enough information that is readily available when RMD asks for information. The PBM and its claims management system must be capable of interfacing with RMD’s TPA’s existing claims management software for a two-way data exchange. The Contractor shall provide a prescription management program with a formulary that assures therapeutic and economic value for injured workers and State of New Mexico and cover all therapeutic diagnostic categories to include the issuance of Drug card to all claimants. The PBM must conduct ongoing drug utilization reviews that identify and address instances of potential fraud and abuse as well as key prescribing and utilization patterns. Contractor shall guarantee lower costs are passed onto the workers’ compensation employees. The contract term will be for four years with a fixed fee schedule. Contract can be negotiated based on increased utilization up to no more than 2%.

B. TECHNICAL SPECIFICATIONS

1. Organizational Experience

Offeror **must**:

- a) provide a detailed yet brief description of relevant corporate experience with state government and private sector. The experience of all proposed subcontractors must be described. The narrative **must** thoroughly describe how the Offeror has supplied expertise for similar contracts and must include the extent of their experience, expertise, and knowledge as a provider of worker’s compensation claims and the basis for approvals and denials of such claims. All claim adjuster experience provided to the private sector will also be considered.
- b) provide a detailed/brief resume/bio of all key personnel Offeror proposes to use in performance of the resulting contract, should Offeror be awarded. Key personnel are identified as claims adjusters, principles, claims investigators. The offer must include key personnel education, work experience, relevant/applicable certifications/licenses.
- c) indicate the average number of Rx claims processed by your organization on an annual basis and what types of claims are processed by your organization.
- d) describe at least two project successes and failures of an adjuster engagement-specifically for worker’s compensation PBM claims. Include how each experience improved the Offeror’s services.

2. Organizational References

The offer must provide a list of a minimum of three (3) external references from similar projects/programs performed for private, state or large local government clients within the last three (3) years.

Offeror shall include the following Business Reference information as part of its proposals:

- a) Client name.
- b) Project description.
- c) Project dates (starting and ending).
- d) Technical environment (i.e., Software applications, Internet capabilities, Data communications, Network, Hardware).
- e) Staff assigned to reference engagement that will be designated for work per this RFP; and
- f) Client project manager's name, telephone number, fax number and e-mail address.

The offeror is required to submit APPENDIX F, Organizational Reference Questionnaire ("Questionnaire"), to the business references it lists. **The business references must submit the Questionnaire directly to the designee identified in APPENDIX F. The business references must not return the completed Questionnaire to the Offeror.** It is the Offeror's responsibility to ensure the completed forms are submitted on or before the date indicated in Section II.A, Sequence of Events, for inclusion in the evaluation process. Organizational References that are not received or are not complete, may adversely affect the Offeror's score in the evaluation process. Offerors are encouraged to specifically request that their Organizational References provide detailed comments.

3. Mandatory Specification

Offerors must respond to this statement by exception only. The Offeror must respond by indicating "Agreed" for each requirement it complies with.

a) Coverage's Requiring Claim Handling Expertise – All States

1. Workers' Compensation – PBM Claim Service Provider must have experience managing PBM program for public entities.
2. New Mexico office preferred.

b) Pharmacy Benefit Management Program

1. The Pharmacy Benefit Management Program must provide a prescription management program with a formulary that assures therapeutic and economic value for injured workers and State of New Mexico and covers all therapeutic diagnostic categories.

2. Pharmacy Benefit Management Program must conduct ongoing drug utilization reviews that effectively and efficiently identify and address instances of potential fraud and abuse, as well as key prescribing and utilization patterns.
3. Able to notify of any instances of suspected prescription fraud and abuse.
4. Pharmacy Benefit Management Program must have ability to have Peer-to-Peer review, if needed on program
5. Pharmacy Benefit Management Program must be able to work with selected TPA for State of New Mexico
6. PBM is run through Mitchell Script Advisor for any Rx prescribed by an authorized treating physician on the work comp claim.
7. All claimants are provided a Drug card either by mail or the adjuster can send one from the PBM website.
 - 1.7.1. Confirm the worker takes the prescription to a pharmacy of their choice or in network and provides the prescription along with the claim info and contact/drug card to the pharmacy.
 - 1.7.2. Confirm the pharmacy contacts Pharmacy Benefit Management Program for approval to dispense or Pharmacy Benefit Management Program contacts adjuster for a one-time only, continual or denial via email.

4. Quality Control Program

- a. Proposing Pharmacy Benefit Management Program must have written Quality Control Program

5. Accounts and Invoicing

- a. Pharmacy Benefit Management Program bills TPA monthly on all dispensed Pharmacy after mapping per New Mexico fee schedule and PPO savings
- b. Pharmacy Benefit Management Program billings are paid by TPA.
- c. The State of New Mexico retains the right to audit the books and records of provider to validate all charges, fees, and expenses.
- d. Each invoice must be accompanied by sufficient back-up documentation to support all charges and calculations.
- e. All invoices related to any of the accounts are to be sent exclusively to the State of New Mexico Risk Management Department
- f. Ability to have electronic transfer of funds required.
- g. Offeror must obtain PCI compliance immediately after award is made if credit card payments will be accepted.
- h. Offeror should explain how rebates are aggregated and collected to include rebate aggregator relationships and fees.
- i. Offeror should publish and maintain a single maximum allowable cost list for Agency's pharmacy program.
- j. Any other costs associated with the RFP must have a clear description of cost , rate or amount, and the frequency (monthly, or other). The cost requirement must include the services required by the Offeror to ensure the two-way data transfer/exchange is completed and successful.

6. Audits and Claim Reviews

- a. Pharmacy Benefit Management Program will permit and cooperate fully with scheduled medical audits, as requested by the Agency.
- b. Open items call to be conducted with client monthly, or as requested by the Agency.
- c. Conference calls will be scheduled on high exposure pharmacy use and/or flagged claims, as needed.
- d. Offeror must provide clear explanations of its maximum allowable cost policy and management.
- e. Agency will evaluate Offeror's business models regularly via a scheduled audit to provide overall performance reporting.

7. Contract Period

- a. The contract term will be for four years with a fixed fee schedule. Contract can be negotiated based on increased utilization up to no more than 2%. Either party may terminate the Contract with 90 days advance written notice to the other party, except in the event of bankruptcy or business failure of Pharmacy Benefit Management Program, in which case written notice period shall be 30 days.

8. Account Management and Stewardship

- a. Pharmacy Benefit Management Program shall assign an Account Manager with responsibility and authority to take all necessary steps within the Pharmacy Benefit Management Program to assure that the State of New Mexico and TPA expectations are met and to solve all professional performance, invoicing and other conflicts that may arise between the State of New Mexico and TPA
- b. Pharmacy Benefit Management Program Account Manager will meet with the State of New Mexico at least quarterly to review and resolve open items and to review all invoices prior to the State of New Mexico approval of such invoices for payment.
- c. Stewardship report will contain at least the following:
- d. Statistical analysis of services provided.
- e. Statistical analysis of savings realized as result of Pharmacy Benefit Management Program services.
- f. Statistical analysis of claims and the State of New Mexico exposures
- g. Recommendations to reduce expenses.
- h. Recommendations to reduce frequency.
- i. Recommendations to improve quality of Pharmacy Benefit Management Program services.
- j. Other information, analysis, and recommendations at the discretion of Pharmacy Benefit Management Program

9. Data System, Transfer of Two-Way data Interface, and Reporting

- A. The Offeror shall ensure continuous and reliable management of the bidirectional data interface, guaranteeing seamless data exchanges between the Offeror's pharmacy claims processing system and the Agency's Workers' Compensation third-party administrator system.

1. The Offeror shall implement a high-availability architecture for the bidirectional data interface, ensuring a minimum of 99.9% uptime to facilitate continuous and reliable data exchanges between the Offeror's pharmacy claims processing system and the Agency's Workers' Compensation third-party administrator system. This shall include, but not be limited to, the use of redundant systems and failover mechanisms, routine system updates, and effective troubleshooting protocols to address and resolve any interoperability issues swiftly, thereby maintaining uninterrupted system interoperability.
 2. The Offeror must enforce stringent data validation and integrity checks within the bidirectional data interface to ensure that every piece of data exchanged between the Offeror's pharmacy claims processing system and the Agency's Workers' Compensation third-party administrator system is accurate, complete, and consistent. This includes implementing automated error detection and correction mechanisms, as well as manual review processes, to identify and rectify any discrepancies or anomalies in the data exchange process, thereby guaranteeing the reliability and quality of the data transferred.
 3. The Offeror is required to establish a comprehensive security protocol for the data interface, including end-to-end encryption for data in transit and at rest, to protect sensitive information against unauthorized access, breaches, and other cyber threats. Compliance with relevant data protection regulations, such as HIPAA for healthcare information, is mandatory. The Offeror must also conduct regular security audits and vulnerability assessments to identify and mitigate potential security risks, ensuring the confidentiality and integrity of the data exchanged between systems.
 4. The Offeror shall provide a detailed specification of the criteria, documents, and data required for extracting existing data fields from the Procuring Agency's current Pharmacy Benefit Manager (PBM) system, Mitchell International Inc. This specification must encompass the integration process for documents related to both newly initiated and reopened claims, to ensure complete and comprehensive data transfer.
- B. The Offeror will grant the Agency direct web-based access to their system for reports:
1. The Offeror shall provide the Agency with direct, secure web-based access to the Offeror's system, enabling the generation of ad-hoc reports. This access must support real-time data analysis and reporting capabilities, ensuring the Agency can perform timely and accurate data assessments as required.
 2. The Offeror must ensure that the web-based access portal for generating ad-hoc reports features a user-friendly interface, including intuitive navigation and customizable report templates, to accommodate the Agency's diverse reporting needs without requiring advanced technical skills.
- C. The Offeror is required to implement robust security measures, including multi-factor authentication and data encryption, for the web-based access portal to safeguard sensitive information and ensure that the Agency's data analysis and reporting activities are conducted in a secure environment.
- D. The Agency reserves the right to audit any or all data managed by the Offeror to ensure compliance and accuracy in data handling and reporting.

- E. The Offeror shall establish and adhere to a scheduled maintenance plan for regularly updating its system with the latest software patches and versions.
 - 1. Plans must include, but not be limited to, a timeline for routine updates, procedures for emergency patches in response to critical security vulnerabilities.
 - 2. A process for testing and validating updates to ensure compatibility and system functionality.
- F. The Offeror is required to provide comprehensive documentation that discloses the physical or cloud-based location of the claims data storage, specifies the operating system in use, and identifies the nature of the database as either industry-standard or proprietary.
 - 1. Documentation must include details on the system's architecture, data security measures, and interoperability capabilities to ensure full transparency regarding system infrastructure and compatibility with the Agency's technological environment.
- G. The Offeror must submit a detailed proposal that includes the objectives, technical approach, and timelines for fulfilling the requirements specified in this request. This proposal should also cover any warranties related to the accuracy and completeness of the delivered products and services.

C. BUSINESS SPECIFICATIONS

1. Financial Stability

Provide all financial reports as requested by the Offeror. See Section I F-14 and Section II.C.8. The offeror must show financial stability by means of audited financial statements for the last five years to include debt-to-equity, gross margin and return on investment ratios.

2. Insurance Requirements

Ability to provide certification of Cyber Insurance coverage at or above \$5,000,000, if requested, \$1,000,000 of professional liability coverage per occurrence and \$1,000,000 of general liability coverage per occurrence.

3. Letter of Transmittal Form

The Offeror's proposal **must** be accompanied by the Letter of Transmittal Form located in APPENDIX E. The form **must** be completed and must be signed by the person authorized to obligate the company. **Failure to submit a signed form will result in Offeror's disqualification.**

4. Campaign Contribution Disclosure Form

The Offeror must complete an unaltered Campaign Contribution Disclosure Form and submit a signed copy of the Offeror's proposal. This must be accomplished whether or not

an applicable contribution has been made. (See APPENDIX B). **Failure to complete and return the signed, unaltered form will result in Offeror's disqualification.**

5. Oral Presentation

If oral presentations are held, finalist Offeror(s) may be required to explain, demonstrate, detail, and/or clarify any aspect of its submitted proposal, to which the Evaluation Committee may ask questions and/or seek clarifications. Pursuant to Section II.B.9, Oral Presentations may be held at the sole discretion of the Evaluation Committee.

6. Cost

7. The evaluation of each Offeror's cost proposal will be conducted by comparing annual loss data plus additional fee proposals in Appendix D for each submission. The ability of the Offeror to demonstrate the formula transparency used to process prescriptions will be evaluated. The offeror must disclose the price for in-network and out-of-network transactions for brand name medications. Offeror must include cost and time involved in migrating claims data from existing PBM to include future data transfers to another PBM. Cost proposals should not include gross receipts tax.

8. New Mexico/Native American Resident Preferences

To ensure application of § 13-1-21 NMSA 1978 (as amended), an Offeror **MUST** submit a copy, in this section, of its valid New Mexico/Native Resident Preference Certificate or its valid New Mexico/Native American Resident Veteran Preference Certificate, as issued by the New Mexico Taxation and Revenue Department.

V. EVALUATION

A. EVALUATION POINT SUMMARY

The following is a summary of evaluation factors with point values assigned to each. These weighted factors will be used in the evaluation of individual potential Offeror proposals by sub-category.

Evaluation Factors <i>(Correspond to Sections IV.B and IV.C)</i>	Points Available
B. Technical Specifications (## Total Points)	550
B. 1. Organizational Experience	150
B. 2. Organizational References	150
B. 3. Mandatory Specification	200
B. 4. Desirable Specification	50
C. Business Specifications (## Total Points)	450
C.1. Financial Stability	50
C.2. Insurance Requirements	Pass/Fail
C.3. Letter Of Transmittal	Pass/Fail
C.4. Campaign Contribution Disclosure Form	Pass/Fail
C. 5. Oral Presentations	100
C.6. Cost	300
TOTAL POINTS AVAILABLE	1,000
C.7. New Mexico / Native American Resident Preference	80
C.7. New Mexico / Native American Resident Veteran Preference Points per Section IV C.7	100

Table 1: Evaluation Point Summary

B. EVALUATION FACTORS

1. B.1 Organizational Experience (See Table 1)

Points will be awarded based on the thoroughness and clarity of the Offeror's response in this Section. The Evaluation Committee will also weigh the relevancy and extent of Offeror's experience, expertise and knowledge; and of personnel education, experience and certifications/licenses. In addition, points will be awarded based on the Offeror's candid and well-thought-out response to successes and failures, as well as the ability of the Offeror to learn from its failures and grow from its successes.

2. B.2 Organizational References (See Table 1)

Points will be awarded based upon an evaluation of the responses to a series of questions on the Organizational Reference Questionnaire (Appendix F). The offer will be evaluated on

references that show positive service history, successful execution of services and evidence of satisfaction by each reference. References indicating significantly similar services/scopes of work and comments provided by a submitted reference will add weight and value to a recommendation during the evaluation process. Points will be awarded for each individual response up to 1/3 of the total points for this category. The Offeror must demonstrate experience with similar companies and or government organizations and show experience and strength of the assigned claims person and team. The Offeror shall demonstrate innovative ways to save money through return-to-work strategies and avoiding litigation. Lack of a response will receive zero (0) points.

The Evaluation Committee may contact any or all business references for validation of information submitted. If this step is taken, the Procurement Manager and the Evaluation Committee must all be together on a conference call with the submitted reference so that the Procurement Manager and all members of the Evaluation Committee receive the same information. Additionally, the Agency reserves the right to consider any and all information available to it (outside of the Organizational Reference information required herein), in its evaluation of Offeror responsibility per Section II.C.18.

3. B.4 Mandatory Specifications

Offerors will be evaluated on their ability to demonstrate how they provide operational services related to the mandatory requirements in Section IV B-3. Offerors must show how they facilitate the Rx claim settlement process by administrating tasks while keeping fees low and maintaining quality service. Offeror's will be evaluated on average wholesale price (AWP) and cost-price models for comparison purposes. The Offerors must be able to define the cost part of the cost-plus equation to include any factors for lease rates. Offerors will include a definition of what is included in their administrative fees. Offerors must be able to demonstrate how administration fees are assessed for in-network and out-of-network claims. Offerors must rebates are applied for brand-name medications. Offerors must demonstrate data security to include implemented measures for fraud prevention and data breaches.

4. B.5 Desirable Specifications

The Agency would prefer the awarded contractor to have a New Mexico office. Extensive experience in processing pharmaceutical prescriptions for worker's compensation claims in New Mexico would be beneficial to the agency. This is not a mandatory specification but would be desirable to the state. Any offeror with a New Mexico Office could argue that organization would also have extensive experience and background with New Mexico laws and, therefore, more expertise in this area.

5. C.1 Financial Stability (See Table 1)

The Offeror must show financial stability by means of audited financial statements for the last five years in the industry to include debt-to-equity, gross margin and return on investment ratios.

6. C.2 Insurance Requirements

Pass/Fail only. No points assigned. Ability to provide certification of Cyber Insurance coverage at or above \$5,000,000, if requested, \$1,000,000 of professional liability coverage per occurrence and \$1,000,000 of general liability coverage per occurrence.

7. C.3 Letter of Transmittal (See Table 1)

Pass/Fail only. No points assigned.

8. C.4 Campaign Contribution Disclosure Form (See Table 1)

Pass/Fail only. No points assigned.

9. C.5 Oral Presentation (See Table 1)

Points will be awarded based on the quality, organization, and effectiveness of communication of the information presented, as well as the professionalism of the presenters and technical knowledge of the proposed staff. Prior to the Oral Presentation, the Agency will provide the Offeror with a presentation agenda. (If no Oral Presentations are held all Offerors will receive the maximum number of total points for this Evaluation Factor).

10. C.6 Cost (See Table 1)

The evaluation of each Offeror’s cost proposal will be conducted by comparing annual loss data plus additional fee proposals in Appendix D for each submission. The ability of the Offeror to demonstrate the formula transparency used to process prescriptions will be evaluated. The offeror must disclose the price for in-network and out-of-network transactions for brand name medications. Offeror must include cost and time involved in migrating claims data from existing PBM to include future data transfers to another PBM. Cost proposals should not include gross receipts tax.

11. C.7. New Mexico/Native American Resident Preferences

Percentages will be determined based upon the point-based system outlined in § 13-1-21 NMSA 1978 (as amended).

A. New Mexico Resident Business Preference / Native American Resident Preference

If an Offeror has provided a copy of its New Mexico Resident Preference Certificate or Native American Resident Preference Certificate, the points awarded will be calculated as 8% of the total points available in this RFP.

B. New Mexico/Native American Resident Veteran Preference

If an Offeror has provided a copy of its New Mexico Resident Veteran Preference Certificate or Native American Resident Veteran Preference Certificate the points awarded will be calculated as 10% of the total points available in this RFP.

C. EVALUATION PROCESS

1. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II. B.7.
3. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value in Section V. The responsible Offerors with the highest scores may be selected as finalist Offerors, based upon the proposals submitted. In accordance with §13-1-117 NMSA 1978, the responsible Offerors whose proposals are most advantageous to the State taking into consideration the Evaluation Factors in Section V will be recommended for award (as specified in Section II.B.12). Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDIX A

ACKNOWLEDGEMENT OF RECEIPT FORM

APPENDIX A

REQUEST FOR PROPOSAL Worker's Compensation Program Benefits Manager 24-350-4520-00002

ACKNOWLEDGEMENT OF RECEIPT FORM

This optional Acknowledgement of Receipt Form establishes a distribution list to be used for the distribution of written responses to questions, and/or any amendments to the RFP. Failure to return the Acknowledgement of Receipt Form does not prohibit potential Offerors from submitting a response to this RFP. However, by not returning the Acknowledgement of Receipt Form, the potential Offeror's representative shall not be included on the distribution list and will be solely responsible for obtaining from the Procurement Library (Section I.G.) responses to written questions and any amendments to the RFP.

The information below will be used for all correspondence related to the Request for Proposal. Only one contact per Offeror is permitted.

ORGANIZATION: _____

CONTACT NAME: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

Submit Acknowledgement of Receipt Form to:

To: Gerardo Ruelas

E-mail: Gerardo.Ruelas@gsd.nm.gov

Subject Line: Worker's Compensation Program Benefits Manager 24-350-4520-00002

APPENDIX B

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, *et seq.* NMSA 1978 and § 13-1-191.1 NMSA 1978 (2006), as amended by Laws of 2007, Chapter 234, a prospective contractor subject to this section shall disclose all campaign contributions given by the prospective contractor or a family member or representative of the prospective contractor to an applicable public official of the state or a local public body during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds two hundred fifty dollars (\$250) over the two-year period. A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.

A prospective contractor or a family member or representative of the prospective contractor shall not give a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or during the pendency of negotiations for a sole source or small purchase contract.

Furthermore, a solicitation or proposed award for a proposed contract may be canceled pursuant to Section [13-1-181](#) NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section [13-1-182](#) NMSA 1978 if a prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or a prospective contractor or family member or representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“**Applicable public official**” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the

authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official, or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family member” means a spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“Prospective contractor” means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code [Sections [13-1-28](#) through [13-1-199](#) NMSA 1978] or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

Name(s) of Applicable Public Official(s) if any: Governor Michelle Lujan Grisham, Lieutenant Governor Howie Morales_____

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

--OR--

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

Title (Position)

APPENDIX C
DRAFT CONTRACT

STATE OF NEW MEXICO

General Services Department

INFORMATION TECHNOLOGY AGREEMENT

Agreement No. _____

THIS INFORMATION TECHNOLOGY AGREEMENT (this “Agreement”) is made by and between the State of New Mexico (the “State”), General Services Department hereinafter referred to as “Procuring Agency” and **[Insert Contractor Name]**, hereinafter referred to as “Contractor” and collectively the parties are hereinafter referred to as the “Parties.” This Agreement must be approved by the Department of Information Technology (“DoIT”).

WHEREAS, pursuant to the **[CHOICE #1]** - Procurement Code, NMSA 1978 13-1-28 *et seq.*; and Procurement Code, NMAC 1.4.1 *et seq.*; Contractor has held itself out as an expert in implementing the Scope of Work attached hereto and Procuring Agency has selected Contractor as the offeror most advantageous to the State; and

[WHEREAS, all terms and conditions of the **[RFP Number and Name]** and Contractor’s response to such document(s) are incorporated herein by reference; and]

THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

ARTICLE 1 – DEFINITIONS

- A. **“Acceptance,” “Accept” or “Accepted”** means the approval, following Quality Assurance, of all the Deliverables by Procuring Agency’s ELR (“ELR”).
- B. **“Agency CIO”** means Procuring Agency’s Chief Information Officer.
- C. **“Application Deployment Package” or “ADP”** means Contractor’s centralized and systematic delivery of business-critical applications, including the source code (for custom software), documentation, executable code and the deployment tools necessary to successfully install application software fixes, including Contractor’s Software related additions, modifications, or deletions.
- D. **“Business Days”** means Monday through Friday, 7:30 a.m. (MST or MDT) to 5:30 p.m. except for Federal and State holidays.
- E. **“Change Request”** means a written document utilized by either Party to request changes or revisions in the Scope of Work – Exhibit A, attached hereto.
- F. **“Confidential Information”** means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) that consists of: (1) confidential

Procuring Agency or client information as the term is defined in State and/or Federal statutes or regulations; (2) all non-public State budget, expense, payment and other financial information; (3) all attorney-client privileged work product; (4) all information designated by Procuring Agency or any other State office or agency as confidential, including all information designated as confidential under Federal and State statutes or regulations; (5) unless publicly disclosed by Procuring Agency or the State, the pricing, payments, and terms and conditions of this Agreement, and (6) State information that has not been publicly disclosed and that is utilized, received, or maintained by Procuring Agency, Contractor, or other participating State agencies for the purpose of fulfilling a duty or obligation hereunder.

- G. “Contract Manager” means a Qualified Person designated by Procuring Agency who is responsible for all aspects of the administration of this Agreement. Under the terms of this Agreement, the Contract Manager will be **TBD** or his/her Representative.
- H. “Data” means a compilation, body, set or sets, of discrete information gathered by Procuring Agency and/or Contractor which Procuring Agency owns and/or controls and which concerns, and may be utilized or manipulated by Procuring Agency and/or Contractor, to further Procuring Agency’s governmental interests, role and mission (“Mission”). Data includes, but is not limited to, Procuring Agency’s information, whether or not stored in one or more databases, Confidential Information and other internal information which affects or may affect Procuring Agency’s ability to further its Mission.
- I. “Default” means a violation or breach of this Agreement by a Party’s either: (1) failing to perform one’s own contractual obligations hereunder, or (2) by interfering with the other Party’s performance of its obligations hereunder.
- J. “Deliverable” means the verifiable outcomes, results, the Services or products that Contractor will develop, perform, and/or produce and deliver to Procuring Agency according to the Scope of Work.
- K. “DoIT” means the New Mexico State Department of Information Technology.
- L. “DoIT CIO” means DoIT’s Cabinet Secretary or Chief Information Officer, who also serves as the State’s Chief Information Officer.
- M. “Employees” means stockholders, directors, officers, employees and agents.
- N. “Escrow” means a legal document (such as Source Code) delivered by Contractor to a third-party escrow agent (“Escrow Agent”) and held by Escrow Agent until Procuring Agency Accepts one or more the Deliverables; in the event Contractor Defaults this Agreement, Procuring Agency will receive the legal document, *e.g.*, Source Code, from Escrow Agent.
- O. “Enhancement” means any modification including addition(s), modification(s), or deletion(s) that, when Contractor makes or adds to a Deliverable, materially improves the Deliverable’s utility, efficiency, functional capability, or application (“Utility”). An error correction is not an Enhancement unless the Deliverable’s Utility is improved in Contractor’s process of making the error correction.
- P. “Executive Level Representative” or “ELR” means the individual designated and empowered with the authority to represent and make decisions on behalf of Procuring Agency or the Representative of the Executive Level Representative.
- Q. “GRT” means New Mexico gross receipts tax.
- R. “GSD” means the General Services Department; “GSD/CRB” means the General Services Department, Contracts Review Bureau.

- S. “Intellectual Property (IP)” means any and all proprietary information or material, whether tangible or intangible, whether derived, embodied, composed or comprised of any hard copy, soft copy, electronic format, hardware, firmware, software or manifested in any other form, whether solid, liquid or vapor, that consists of, or is directly or indirectly related to, Know How, trade secrets, copyrightable material, patent protected or protectable inventions and/or information, U.S. and foreign patent applications and patents, service marks, trademarks, and trade names, any of which is conceptualized, created or developed by either one or both of the Parties. For the purposes of this Agreement each Party will have exclusive ownership rights and control over Intellectual Property that the Party owns or controls prior to the commencement of this Agreement (“Pre-Owned IP”). Intellectual Property that Contractor creates during the course of Contractor’s performance of work hereunder will be deemed work made for hire (“Work Made for Hire”). Procuring Agency will be considered to be the creator and sole and exclusive owner of all Work Made for Hire. Contractor agrees that Contractor will not make any application for nor any other claim of ownership regarding any Work Made For Hire or any of the Procuring Agency’s Pre-Owned IP. Together, any and all combinations of Procuring Agency’s Pre-Owned IP and Work Made for Hire will comprise “Agency IP.”
- T. “Independent Verification and Validation (“IV&V”)” means the process whereby Procuring Agency retains an independent expert to evaluate, verify and issue a written validation opinion concerning Contractor’s performance of the Project and to determine Contractor’s compliance with the requirements stated in the Scope of Work, whether with respect to evaluating certain stages of the Deliverables, or to evaluating the body of the Deliverables as a whole, or both.
- U. “Know How” means the idea(s), technical information and knowledge including, but not limited to, documents, computer storage devices, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating to, or causing the enablement of the Work Made for Hire and the Intellectual Property developed hereunder.
- V. “Payment Invoice” means each of Contractor’s detailed, certified and written requests for payment concerning the Deliverables that Contractor renders to Procuring Agency. Each Payment Invoice must identify each Deliverable for which the Payment Invoice is submitted and must include the price stated in the Scope of Work (Deliverables section), and in Article 3, below, as well as Contractor’s actual charge, for each Deliverable.
- W. “Performance Bond” means a surety bond which guarantees against Contractor’s Default as well as Contractor’s full performance of its obligations hereunder.
- X. “Project” means the sum of Contractor’s efforts necessary to produce and deliver the Deliverables to Procuring Agency according to the Scope of Work. **[If applicable, insert only for DoIT certified projects:**
- Y. “Project Manager” means a Qualified Person appointed by Procuring Agency who oversees and manages Contractor’s efforts to produce and deliver the Deliverables to Procuring Agency. The Project Manager for this Project is **TBD** or his Representative.
- Z. “Qualified Person” means a person who has demonstrated experience performing and completing activities and tasks similar to the Project.
- AA. “Quality Assurance” or “Quality Assurance Review” means the planned and systematic pattern of rules, measures, procedures and process established by Procuring Agency to ensure that each Deliverable conforms to the requirements stated in the Scope of Work.

- BB. “Representative” means one or more substitute person(s) for a title or role, e.g. Project Manager or Contract Manager, when the Party’s primary contact person is unavailable.
- CC. “Scope of Work” or “SOW” means the statements of Purpose and the Deliverables attached to this Agreement as Exhibit “A.”
- DD. “Service” or “the Services” means the task(s), function(s), and responsibility(ies) assigned to, and performed by Contractor according to the SOW.
- EE. “State” means the State of New Mexico.
- FF. “State Purchasing Agent (NMSPA)” means the New Mexico State Purchasing Agent or his/her Representative.
- GG. “State Purchasing Division (SPD)” means the State Purchasing Division of the New Mexico General Services Department.
- HH. “Software” means the operating system and/or application software used by Contractor to provide the Deliverables hereunder. Software may include, but is not limited to, Third Party Software. “Third Party Software” means software owned by third parties which is utilized by Contractor and/or Procuring Agency hereunder.
- II. “Software Maintenance” means the set of activities that result in changes to the Accepted (baseline) product set of Software. These activities consist of corrections, insertions, deletions, extensions, and Enhancements to the baseline Software and operating system.
- JJ. “Source Code” means the human-readable programming instructions organized into sets of files that represent the business logic for the Project application. Source Code may be read as text and subsequently edited, requiring compilation or interpretation by a Qualified Person into binary or machine-readable form before being directly useable by a computer.
- KK. “Turnover Plan” means the written plan developed by Contractor and approved by Procuring Agency to continue the Project in the event the Deliverables stated in the SOW are transferred, either directly to Procuring Agency or to a third party.

ARTICLE 2 – SCOPE OF WORK

- A. The Scope of Work. The Scope of Work, or “SOW” attached hereto as “Exhibit A,” is incorporated into this Agreement as if fully set forth herein. The SOW governs Contractor’s production and delivery of the Deliverables to Procuring Agency. The Parties may amend the SOW by executing one or more mutually agreed upon written amendments. In the event a conflict of terms exists between this Agreement and the SOW, the terms of this Agreement will govern.
- B. Contractor Default. Contractor will deliver the Deliverables as stated in the SOW. In the event Contractor fails to deliver the Deliverables according to the SOW, Procuring Agency may declare Contractor to be in Default hereunder. In the event Procuring Agency declares Contractor to be in Default, Procuring Agency will give written notice to Contractor describing the Default and will specify a reasonable period of time during which Contractor will remediate the Default. Contractor will then give Procuring Agency a written response that advises Procuring Agency concerning the measures Contractor will take to cure the Default as well as Contractor’s proposed timetable for implementing those measures. Nothing in this Section will be construed to prevent Procuring Agency from exercising Procuring Agency’s rights pursuant to Article 6 or Article 16, below.

- C. Schedule. Contractor will deliver the final Deliverables to Procuring Agency on or before the due dates stated in the SOW. The due dates will not be altered or waived by Contractor absent Procuring Agency's prior written consent, according to the Amendment process stated in Article 25, below.
- D. License. [If a software license is required, use the following language:] Contractor hereby grants Procuring Agency a [CHOICE #1- If a perpetual license is required, use the following language:] non-exclusive, irrevocable, perpetual license to use, modify, and copy the following Software: [Insert name of the software and the patent number if applicable] [CHOICE #2- If a Software license is required for the term of this Agreement, use the following language:] non-exclusive, irrevocable, license to use, modify, and copy the [Insert name of Software and patent number if applicable] Software and any and all updates, corrections and revisions as stated in Article 2 and the SOW for the term of this Agreement.

Procuring Agency's right to copy the Software is limited to Procuring Agency's archival, backup and training purposes only. All of Procuring Agency's archival and backup copies of the Software are subject to the provisions of this Agreement, and Procuring Agency will reproduce all Software related titles, patent numbers, trademarks, copyright and other restricted rights notices on Procuring Agency's Software copies.

1. Contractor will maintain, at Contractor's sole expense, a copy of the Software Source Code to be kept by Escrow Agent and will identify Procuring Agency as an authorized recipient of the Software Source Code from Escrow Agent. Contractor will store the Software Source Code in magnetic form on media specified by Procuring Agency. Escrow Agent will be responsible for storing and safekeeping the Software Source Code magnetic media. Contractor will replace the escrowed Software Source Code magnetic media at least every six (6) months to ensure readability and to preserve the Software at the then current revision level. Contractor will include all associated Software documentation with the magnetic media, which will allow Procuring Agency to "top load," compile and maintain the Software in the event of Contractor's Default(s).
2. In the event Contractor (a) ceases to do business or ceases to support the Project, or (b) fails to make adequate provision for continued support of the Software that Contractor develops or provides to Procuring Agency, or (c) if Contractor Defaults hereunder, or (d) if this Agreement is terminated, Contractor will, within a twenty-four (24) hour period, make all of the following items available to Procuring Agency: (i) the latest available Source Code and documentation related to the Software that Contractor develops or provides according to the SOW; (ii) the Source Code and compiler/utilities necessary to maintain Procuring Agency's system; and, (iii) Contractor's related documentation for Software developed by third parties to the extent Contractor is authorized to disclose such Software to Procuring Agency. In any of the above circumstances (a), (b), (c) or (d), Contractor will, by virtue of this Section, grant Procuring Agency an automatic, uncontested and unlimited right to use, modify and copy the Software, the Source Code and all of their related documentation.

[**CHOICE #3** – Not Applicable. The Parties agree there is no License.]

- E. Source Code. [**CHOICE #1 – If this is a new development and/or a maintenance and operations agreement, use the following language:**] Contractor will deliver any and all Software and Source Code that Contractor develops as a result of Contractor’s new development and/or maintenance Software releases. Each of Contractor’s Application Deployment Packages (“ADP”) must be able to reproduce fully operational applications that include all base application functionalities, all cumulative release functionalities and include the functionalities, as documented, verified and supported by Contractor, which comprise each new application release.

[**CHOICE #2 – If Contractor will hold Software and Source Code in escrow, use the following language:**] For each maintenance release, at Contractor’s sole expense, Contractor will update Contractor’s Application Deployment Packages (“ADP”) and place the updated ADP for escrow with Escrow Agent. The ADP will be in magnetic or digital form on media specified by Procuring Agency. Escrow Agent will be responsible for storage and safekeeping of the ADP storage media. Contractor will identify Procuring Agency to Escrow Agent as an authorized recipient of the ADP storage media, which will contain the most recent application release.

[**CHOICE #3 – If Contractor will not hold Software and/or Source Code in escrow, use the following language:**] For each maintenance release, at Contractor’s sole expense, Contractor will update Contractor’s Application Deployment Packages (“ADP”) and deliver the updated ADP to Procuring Agency in magnetic or digital form on media specified by Procuring Agency.

[**CHOICE #4** – Not Applicable. The Parties agree there is no Source Code.]

- F. Procuring Agency’s Rights.

1. Rights to Software. [**CHOICE #1 – If Procuring Agency has right to own the Software, use the following language:**] Procuring Agency will own all right, title, and interest in and to Procuring Agency’s Confidential Information, the Software, the Source Code and other Deliverables, including without limitation, the specifications, the work plan, and the Custom Software, except that the Deliverables will not include third party software and its associated documentation for the purposes of this Section. Contractor will take all actions necessary and transfer ownership of the Confidential Information, the Software, the Source Code and the other Deliverables to Procuring Agency, without limitation, as well as the Custom Software and associated Documentation on Final Acceptance or as otherwise provided hereunder.] [**CHOICE #2** –Procuring Agency will have rights to the software as stated in Article 2. D., above.] [**CHOICE #3** – Not Applicable. The Parties agree that this is an agreement pertaining only to professional services and does not involve the provision or use of Software.]
2. Protection of Proprietary Rights. Contractor will reproduce and attach the State’s copyright, product identifications and other proprietary notices on the copies

Contractor makes and delivers of the Software, the Source Code and other Deliverables for Procuring Agency, in whole or in part, or on any electronic, hard copy or other tangible form of the Deliverables.

3. Protection of Data. Contractor will protect and safekeep all of Procuring Agency's Data to the same or a higher degree of care that Contractor takes with respect to its own information and data. Contractor will implement all measures necessary to protect Procuring Agency's Data from any and all harm, including but not limited to, breach, intrusion, contamination, corruption, loss, leak, theft, disintegration, viral attack, denial-of-service, malware, worms, trojans, ransomware, hacking, phishing, skimming and other damage of any kind (collectively "Data Damage"), whether caused by Contractor, Contractor's Employees or one or more third parties. In the event a Data Damage incident occurs while Procuring Agency's Data is within Contractor's purview and/or control, within one (1) hour of Contractor's discovery of a Data Damage incident, Contractor will notify the Project Manager concerning the Data Damage incident, including sufficient information for the Project Manager to determine, in conjunction with Contractor, which measures, if any, Contractor must implement to mitigate the Data Damage.
4. Rights to Data. **The Data belongs to the Procuring Agency.** All of the Procuring Agency's Data that is stored upon Contractor's servers or lies within Contractor's custody hereunder, is Procuring Agency's sole and separate property and inures to Procuring Agency's exclusive benefit. None of Contractor or Contractor's Employees, subcontractor(s), affiliates and/or assigns will make use of, disclose, sell, copy, license or reproduce Procuring Agency's Data in any manner, or provide of Procuring Agency's Data to any third party absent Procuring Agency's prior written authorization.
- 5.

ARTICLE 3 - COMPENSATION

- A. Compensation Schedule. Procuring Agency will pay Contractor according to the fixed price set for each Deliverable, per the schedule stated in the SOW, less retainage, if any, as identified in Paragraph D.
- B. Payment. The total compensation hereunder will not exceed [**Insert Dollar Amount**] [**CHOICE #1** - excluding New Mexico gross receipts tax. **CHOICE #2** - including New Mexico gross receipts tax.] This amount is the maximum total amount; it is not a guarantee that the work to be performed by Contractor, and the total of the corresponding payments that Procuring Agency pays to Contractor, will equal the maximum total amount. However, the Parties do not intend for Contractor to continue to deliver the Deliverables without compensation once the total compensation amount has been reached. Therefore, Contractor must notify Procuring Agency before the price of a Deliverable reaches the compensation amount for that Deliverable stated in the SOW. In no event will Procuring Agency pay Contractor for any Deliverables in an amount that exceeds the maximum total amount without this Agreement being amended in writing prior to Contractor's continued delivery of the Deliverables.

Procuring Agency will pay Contractor upon Procuring Agency's Acceptance of each Deliverable according to Article 4, below, and upon the receipt and Acceptance of

Contractor's detailed and certified Payment Invoice(s). Procuring Agency will forward its payments to Contractor's designated mailing address, stated in Article 28, below. In accordance with Section 13-1-158 NMSA 1978, Procuring Agency will tender payment to Contractor within thirty (30) days of the date of Procuring Agency's written certification of Acceptance. All Payment Invoices MUST BE received by Procuring Agency no later than fifteen (15) days after the termination of this Agreement. Contractor's Payment Invoices received by Procuring Agency later than fifteen (15) days after the termination of this Agreement WILL NOT BE PAID.

C. Taxes.

Contractor will be reimbursed by Procuring Agency for applicable New Mexico gross receipts taxes ("GRT"), excluding interest or penalties assessed on Contractor by the New Mexico Taxation and Revenue Department. Contractor is solely responsible for the payment of GRT for any money Contractor receives hereunder. Contractor must report its GRT, income tax and other tax obligations under Contractor's Federal and State tax identification number(s).

Contractor and its subcontractors, if any, will pay all Federal, State and local income and other taxes and government fees applicable to its operation(s) as well as the taxes and fees associated with Contractor's employment of its Employees. Contractor will require its subcontractors, if any, to hold Procuring Agency harmless from any responsibility for taxes, damages, fees and interest, if applicable, as well as any and all contributions required under Federal and/or state and local laws and regulations, including any other costs, transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

D. Retainage- Procuring Agency will retain **twenty percent (20%)** of the fixed-price cost of each stated Deliverable as security for the Contractor's full performance of this Agreement. Procuring Agency will release all retained amounts to Contractor upon Procuring Agency's Acceptance of the final Deliverable.

E. Performance Bond. [Not Applicable. The Parties agree there is no Performance Bond.]

ARTICLE 4 – ACCEPTANCE

A. Submission. Upon Contractor's completion and delivery of each Deliverable stated in the SOW, Contractor will submit a Payment Invoice, together with an accurate description of the Deliverable, to Procuring Agency. Contractor will submit its Payment Invoices to Procuring Agency according to, or lower than, the Deliverable price stated in the SOW, less the retainage, if any, stated in Article 3(D), above. Contractor will not submit Payment Invoices to Procuring Agency for any amount(s) that exceed the amount(s) stated in the SOW absent Procuring Agency's prior written permission.

B. Acceptance. According to Section 13-1-158 NMSA 1978, the ELR will determine whether the Deliverable(s) meet(s) the specifications stated in the SOW. Procuring Agency will not pay for any Deliverable until the ELR Accepts the Deliverable in writing. In order to Accept a Deliverable, the ELR, in conjunction with the Project Manager, will perform a Quality Assurance Review of the Deliverable to determine, at a minimum, whether the Deliverable:

1. Meets or exceeds the Deliverable requirements stated in the SOW; and
2. Complies with the terms and conditions of RFP or Sole Source Agreement and
3. Meets or exceeds the generally accepted industry standards and procedures applicable to the Deliverable(s); and
4. Complies with all other of Contractor's requirements, duties and obligations hereunder.

In the event the ELR Accepts a Deliverable according to the ELR's Quality Assurance Review, the ELR will send Contractor the ELR's written Acceptance **no less than twenty (20) Business Days**] (the "Acceptance/Rejection Period") from the date the ELR receives each of Contractor's Payment Invoice(s).

C. Rejection. If the ELR fails to give Contractor notice of Procuring Agency's rejection of a Payment Invoice within the Acceptance/Rejection Period, the Deliverable, together with its corresponding Payment Invoice will be deemed to be accepted by Procuring Agency. In the event the ELR rejects the Deliverable following the ELR's Quality Assurance Review within the Acceptance/Rejection Period, the ELR will send Contractor a rejection notice together with a consolidated set of comments ("Comments") indicating the issues, unacceptable items, and/or requested revisions that Contractor should make or perform with respect to the rejected Deliverable. Upon Contractor's receipt of the ELR's rejection and Comments, Contractor will have ten (10) Business Days to resubmit the rejected Deliverable to Procuring Agency together with Contractor's revisions, corrections and/or modifications made according to the ELR's Comments. Upon receipt of Contractor's revised, corrected or modified ("Revised") Deliverable, the ELR will determine whether the Revised Deliverable is Acceptable by conducting a second Quality Assurance Review. The ELR will then issue a written determination of Procuring Agency's acceptance or rejection of the Revised Deliverable within fifteen (15) Business Days of Procuring Agency's receipt of the Revised Deliverable. In the event the ELR rejects the Revised Deliverable according to the second Quality Assurance Review, Contractor will be then required to provide a remediation plan that will include a list of Contractor's planned corrective measures and an associated timeline for Contractor to complete its remediation of the Deliverable. Contractor's remediation plan must be accepted by the ELR prior to Contractor's implementation of its Deliverable remediation plan. At the same time, Contractor will also be subject to pay Procuring Agency all of Procuring Agency's monetary damages associated with Contractor's failure to timely deliver an Acceptable Deliverable and must complete all remedies attributable to Contractor's late delivery of the Deliverable. In the event ELR rejects a Deliverable three times, Procuring Agency may declare Contractor to be in Default and may immediately terminate this Agreement.

Procuring Agency may then seek to recover from Contractor any and all damages and remedies available hereunder and otherwise available in law or equity.

ARTICLE 5 – TERM

THIS AGREEMENT WILL BECOME EFFECTIVE AND BINDING ONLY UPON THE SIGNATURE OF THE STATE PURCHASING DIVISION.

This Agreement will terminate [**Insert Termination Date**], unless terminated pursuant to Article 6, below. The term of this Agreement, including extensions and renewals, will not exceed four years, except as may otherwise be allowed by Section 13-1-150 NMSA 1978.

ARTICLE 6 – TERMINATION

- A. Grounds. Procuring Agency may terminate this Agreement at any time for convenience or cause. Contractor may only terminate this Agreement in the event Procuring Agency materially Defaults hereunder and subsequently fails to cure its Default within ninety (90) days from the date Contractor first declares Procuring Agency to be in Default.
- B. Appropriations. Procuring Agency may terminate this Agreement if required by changes in State or federal law, or so ordered by a court of competent jurisdiction, or due to insufficient appropriations made available by the United States Congress and/or the State Legislature concerning the Parties' performance hereunder. Procuring Agency's determination concerning whether sufficient appropriations are available will be deemed fully accepted by Contractor and will be final. In the event Procuring Agency terminates this Agreement pursuant to this subparagraph B, Procuring Agency will provide Contractor written notice of such termination at least fifteen (15) Business Days prior to the effective date of the termination.
- C. Notice: Opportunity to Cure.
 - 1. Except as otherwise provided in Paragraph (B), immediately above, Procuring Agency will give Contractor written notice of Procuring Agency's intended termination at least thirty (30) days prior to the effective termination date.
 - 2. Contractor will give Procuring Agency written notice of Contractor's termination at least thirty (30) days prior to Contractor's effective termination date, which notice will (i) identify Procuring Agency's material Default(s) upon which Contractor bases its termination, and (ii) state the measures Procuring Agency should implement to cure such material Default(s). Contractor's termination notice to Procuring Agency will only take effect: (i) if Procuring Agency fails to commence curing Procuring Agency's material Default(s) within Contractor's thirty (30) day notice period, or (ii) in the event Procuring Agency cannot commence to cure its material Default(s) within Contractor's thirty (30) day notice period, Procuring Agency will issue a written notice to Contractor concerning: (a) Procuring Agency's intent to cure, and (b) Procuring Agency's commencement of the due diligence necessary to cure its material Default.

3. Notwithstanding the foregoing, Procuring Agency may terminate this Agreement immediately upon its written notice sent to Contractor: (i) in the event Contractor becomes patently unable to deliver the Deliverables, as Procuring Agency may, in its sole and exclusive discretion, determine; (ii) if, during the term of this Agreement, Contractor is suspended or debarred by the State Purchasing Agent; or (iii) this Agreement is terminated pursuant to Article 5, above.
- D. Liability. Except as otherwise expressly allowed or provided hereunder, Procuring Agency's sole liability upon termination by either Party will be to compensate Contractor for Contractor's Acceptable work performed prior to Contractor's receipt or issuance of a written termination notice; provided, however, that a notice of termination issued by either Party will not nullify or otherwise affect either Party's liability for pre-termination defaults hereunder. Contractor will submit a Payment Invoice to Procuring Agency for Contractor's Acceptable work within thirty (30) days of receiving or issuing a notice of termination.

THE PROVISIONS CONTAINED WITHIN THIS ARTICLE 6 ARE NOT EXCLUSIVE AND DO NOT ACT TO WAIVE PROCURING AGENCY'S OTHER LEGAL RIGHTS AND EQUITABLE REMEDIES ENGENDERED BY CONTRACTOR'S DEFAULT HEREUNDER.

ARTICLE 7 – TERMINATION MANAGEMENT

- A. Contractor's Duties. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all of Procuring Agency's other rights to receive Deliverables and other property hereunder, Contractor will:
1. Transfer, deliver, and/or make readily available to Procuring Agency every Deliverable, partially completed Deliverable, and any and all other property in which Procuring Agency has a financial interest, including but not limited to, any and all Procuring Agency Data and/or Procuring Agency Intellectual Property.
 2. Not incur any further financial obligations for materials, services, or facilities hereunder absent Procuring Agency's prior written approval.
 3. Terminate all of Contractor's purchase orders, procurements and subcontractors and will cease all work, except as Procuring Agency may direct, for the orderly completion of the Deliverables and the transition, if any, to a third party.
 4. Take and effect all actions as Procuring Agency may direct, for the protection and preservation of the Deliverables, the Data, Procuring Agency's Intellectual Property and all other all Procuring Agency property as well as any and all records pertaining to, related to and/or required hereunder.
 5. Agree in writing that Procuring Agency is not liable for any costs arising out of the termination other than the costs related to the Deliverables Accepted by Procuring Agency prior to the termination.
 6. Cooperate fully in the closeout or transition of Contractor's activities to facilitate Procuring Agency's administration continuity with respect to Procuring Agency's ongoing projects and programs.
 7. In the event this Agreement is terminated due to Contractor's Default, lack of performance and/or negligence or willful misconduct, which result(s) in funding

reduction(s) to Procuring Agency from any governmental or other source, Contractor will remit the full amount of the funding reduction(s) to Procuring Agency within thirty (30) days of the date of Procuring Agency's request to Contractor for remittance of the funding reduction(s);

8. Should this Agreement terminate due to Contractor's Default, Contractor will reimburse Procuring Agency for all costs arising from retaining one or more third party(ies) at potentially higher rates as well as for all other direct and indirect costs incurred by Procuring Agency following Contractor's Default up to the full amount of the total compensation stated in Article 3. B. above.
9. In the event this Agreement is terminated for any reason, or upon its expiration, Contractor will develop and submit for Procuring Agency's Acceptance a turnover plan ("Turnover Plan") at least ten (10) Business Days prior to the effective date of termination or expiration of this Agreement. Contractor's Turnover Plan will state Contractor's policies, procedures, and measures necessary to ensure: (1) the least disruption in the delivery of the Deliverables during Procuring Agency's transition of the Project to a third party; and (2) Contractor's cooperation with Procuring Agency and the third party with respect to Contractor's orderly transfer of all partial or completed Deliverables to Procuring Agency and the third party.

Contractor's Turnover Plan will consist of Contractor's orderly and timely transfer or return to Procuring Agency of any and all documents, files, Procuring Agency Data, the Software, the Source code, all other related software, documentation, the system turnover plan, IP Procuring Agency IP and other materials. Upon receipt of Procuring Agency's written request for such transfer or return, Contractor will, within five (5) Business Days, provide to Procuring Agency a copy of Contractor's most recent versions of all pertinent documents, files, Procuring Agency's Data, the Software, the Source Code, all other related software, documentation, the system turnover plan, IP Procuring Agency IP and other materials, whether provided by Procuring Agency or created by Contractor hereunder.

- B. Procuring Agency. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, Procuring Agency will:
1. Retain ownership of all Deliverables, Procuring Agency's Intellectual Property, Contractor's other work products hereunder, and all related documentation created by Contractor hereunder; and
 2. Pay Contractor all amounts due for the Deliverables Accepted by Procuring Agency prior to the effective date of such termination or expiration.

ARTICLE 8 – INDEMNIFICATION

- A. General. - Contractor will defend, indemnify and hold harmless Procuring Agency, the State and their Employees free from all actions, proceedings, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of Contractor's performance of this Agreement, which is caused by Contractor's or Contractor's Employees' negligent act(s) or failure(s) to act, during the

time when Contractor, and/or any of Contractor's Employees, has delivered or is delivering the Deliverables hereunder. In the event that any action, suit or proceeding related to the Deliverables is brought against Contractor and/or any of Contractor's Employees, Contractor will, as soon as practicable, but no later than two (2) Business Days after Contractor receives notice thereof, will notify, by certified mail, the legal counsel of Procuring Agency, the Risk Management Division of GSD, and DoIT.

- B. The indemnification obligation hereunder will not be limited by the existence of any insurance policy or by any limitation concerning the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor and will survive the termination of this Agreement. Money due or to become due to Contractor hereunder may be retained by Procuring Agency, as necessary, to satisfy any outstanding claim that Procuring Agency may have against Contractor.

ARTICLE 9 – INTELLECTUAL PROPERTY (IP)

Ownership. Procuring Agency IP will solely belong and inure to Procuring Agency for Procuring Agency's sole and exclusive use and benefit. Procuring Agency will own and control all rights, title and interest to Procuring Agency IP on a worldwide basis. None of Contractor or Contractor's Employees, subcontractor(s), affiliates, and assigns will utilize, copy, re-compile, re-engineer, reverse engineer, create derivative works, or otherwise utilize Procuring Agency IP for Contractor's benefit or the benefit of any third party or for any purpose other than to fulfill Contractor's obligations hereunder. Contractor will not disclose Procuring Agency IP to any entity or person outside of Procuring Agency absent Procuring Agency's prior written permission.

Contractor will notify Procuring Agency, within ten (10) Business Days, of any IP created hereunder by Contractor, Contractor's Employees or Contractor's subcontractor(s), all of which IP will be considered Work For Hire and a part of Agency IP. Contractor, on behalf of itself and its Employees and subcontractor(s), will execute or will cause to have executed any and all written assignments and other document(s) necessary to ensure that ownership of such IP vests solely in Procuring Agency. Contractor will take no affirmative action(s) that might have the effect of vesting all or any portion of Procuring Agency IP in any person or entity other than Procuring Agency.

In the event, by judgment of a court of competent jurisdiction, Procuring Agency IP is deemed not to have been created or owned by Procuring Agency, Contractor will grant to Procuring Agency and the State, a perpetual, non-exclusive, royalty free license to reproduce, publish, use, copy and modify all or any portion of the disputed IP for Procuring Agency's and/or the State's continued use. Procuring Agency, together with DoIT, may extend to Contractor the privilege of utilizing all or any portion(s) of Procuring Agency IP through one or more intellectual property use license agreements that may be created separate and apart from this Agreement.

ARTICLE 10 – INTELLECTUAL PROPERTY LICENSE AND INDEMNIFICATION

- A. **Intellectual Property License.** For the purpose of this Agreement, Contractor hereby grants Procuring Agency a full, complete and non-transferable right and license to utilize any and all of Contractor's Related Pre-Owned IP for so long as Procuring Agency utilizes the Software, Source Code and other Deliverables. Contractor does not grant Procuring Agency any right or license to utilize Contractor's Unrelated Pre-Owned IP. If Contractor expects that any of Contractor's Pre-Owned IP will be used by Contractor to fulfill the scope of work under this Agreement, it is Contractor's responsibility to make the Procuring Agency aware of such Pre-Owned IP in order to eliminate questions of ownership of such IP. If Contractor does use Pre-Owned IP to fulfill the scope of work under this Agreement and identifies such, Contractor, at Procuring Agency's request, hereby grants Procuring Agency a permanent, full, complete, non-sublicensable, and non-transferable right and license to utilize any and all such IP.
- B. **Intellectual Property Indemnification.** At Contractor's sole expense, Contractor will defend Procuring Agency, the State and/or any other State entity against any claim brought or made by a third party alleging that any product, Service or Deliverable that Contractor provides hereunder infringes the third party's Intellectual Property (an "Infringement Claim"). Contractor will pay all costs, damages and attorney's fees and monetary damages that may be awarded as a result of such Infringement Claim(s) in addition to the amount of the judgment award(s). To qualify to receive Contractor's defense cost(s) and/or other payment(s) related to any Infringement Claim(s), Procuring Agency will:
1. Give Contractor written notice, within forty-eight (48) hours of Procuring Agency's receipt of an Infringement Claim;
 2. Work with Contractor to control the defense and settlement of the Infringement Claim(s); and
 3. Cooperate with Contractor, in a reasonable manner, to facilitate Contractor's defense or settlement of the Infringement Claim(s).
- C. **Procuring Agency's Rights.** In the event any product, Service or Deliverable that Contractor provides to Procuring Agency hereunder becomes, or in Contractor's opinion is likely to become, the subject of an Infringement Claim, Contractor will, at its sole cost and expense:
1. Provide Procuring Agency the right to continue using the product, Service or Deliverable and fully indemnify Procuring Agency against any and all third Infringement Claim(s) that may arise from Procuring Agency's use of the product, Service or Deliverable.
 2. Replace or modify the product, Service or Deliverable so that such product, Service or Deliverable becomes non-infringing; or
 3. Accept the return of the product, Service or Deliverable and refund an amount equal to the value of the returned product, Service or Deliverable, less the unpaid portion of the purchase price and any other amounts, which Procuring Agency owes to Contractor. Contractor's obligation will be void with respect to any product, Service or Deliverable modified by Procuring Agency to the extent the modification is the direct cause of the Infringement Claim.

ARTICLE 11 - WARRANTIES

- A. General. Contractor hereby expressly warrants the Deliverable(s) will be correct in all aspects according to the specifications stated in the SOW and all generally accepted industry standards (the combination of which comprise the “Applicable Specifications”). Contractor’s warranty includes, but is not limited to, Contractor’s making correction(s) of defective Deliverable(s) and revision(s) of those defective Deliverables, as necessary, including Contractor’s repair of deficiencies in the Deliverables that are discovered during testing, implementation, or post-implementation phases. Contractor will correct the deficiencies, at no additional cost to Procuring Agency, so that the Software meets the Applicable Specifications.
- B. Software. **[CHOICE #1- Use only if the Parties intend to purchase or develop software.]** Contractor warrants that Software will be correct in all aspects according to the Applicable Specifications. Contractor further warrants that Software will meet the Applicable Specifications for **[INSERT # of years - recommend 6mo.-2yrs.]** years following Acceptance by the ELR and implementation by Procuring Agency. In the event Software fails to meet the Applicable Specifications during the warranty period, Contractor will correct the deficiencies, at no additional cost to Procuring Agency, so that the Software meets the Applicable Specifications. **[CHOICE #2 – Not Applicable. The Parties agree there is no Software.]**

ARTICLE 12 – CONTRACTOR PERSONNEL

- A. Key Personnel. Contractor’s key personnel (“Key Personnel”) will not be diverted from this Agreement absent Procuring Agency’s prior written approval. Key Personnel are those individuals Procuring Agency considers to be mandatory for the work to be performed hereunder. Contractor’s Key Personnel hereunder will be:
- [Insert Contractor and/or Subcontractor Key Personnel name(s) and title(s), as listed in their statewide price agreement or procurement method.]**
- B. Personnel Changes. In the event Contractor replaces any of its personnel, Contractor will make such replacement(s), with Contractor’s other personnel of equal or superior ability, experience, and qualifications. Contractors’ personnel replacements must be pre-approved in writing by Procuring Agency’s Project Manager. For all of Contractor’s personnel, Procuring Agency reserves the right to require submission of their resumes prior to receiving Procuring Agency’s approval. In the event Contractor reduces the number of its personnel assigned to the Project for any reason, Contractor will, within ten (10) Business Days of its personnel reduction, replace those persons with the same or a greater number of persons with equal or superior ability, experience, and qualifications, subject to Procuring Agency’s prior written approval. Procuring Agency, in its sole and exclusive determination, may extend the time Contractor is allowed beyond the required ten (10)

Business Day period concerning Contractor's replacement of its personnel. Contractor will include status reports to Procuring Agency concerning Contractor's personnel replacement efforts as well as the impact upon the progress of the Project due to the absence of Contractor's personnel. In addition, Contractor will make interim arrangements to assure that the progress of the Project remains unimpeded by the loss of any of Contractor's personnel. Procuring Agency reserves the right to require a change in Contractor's personnel in the event Contractor's personnel are not, in Procuring Agency's sole and exclusive determination, meeting Procuring Agency's standards and/or expectations.

ARTICLE 13 – INDEPENDENT CONTRACTOR STATUS

- A. Independent Contractor. For the purposes of this Agreement, Contractor and Contractor's Employees are independent Contractors who produce and deliver the Deliverables to Procuring Agency. Contractor's Employees are neither employees nor agents of the State ("State Employees"). None of Contractor and Contractor's Employees will accrue State benefits, including but not limited to, leave, retirement, insurance, bonding, use of state vehicles, or any other benefits that may be afforded to State Employees as a result of Contractor's entering this Agreement. Contractor acknowledges and agrees that all sums received hereunder are either reportable as a separate business entity or are, in the event Contractor operates as a sole proprietorship, personally reportable by Contractor for income and GRT tax purposes as self-employment or business income and are reportable for self-employment tax.
- B. Subject of Proceedings. Contractor warrants that neither Contractor nor any of Contractor's Employees are presently subject to any litigation or administrative proceeding before any court or administrative body which could adversely affect Contractor's ability to perform hereunder; nor, to the best of Contractor's knowledge, information or belief, is any such litigation or proceeding presently threatened against Contractor or any of Contractor's Employees. In the event any such proceeding is initiated or threatened during the term of this Agreement, Contractor will immediately disclose such initiation or threat to Procuring Agency.

ARTICLE 14 - CHANGE MANAGEMENT

Change Request Process. In the event circumstances warrant Contractor making a Change to accomplish the SOW, Contractor will submit a Change Request to Procuring Agency. Each Change Request must meet the following criteria:

1. The Project Manager will draft a written Change Request for the ELR's review and approval, including:
 - (a) the name of the person requesting the Change.
 - (b) a summary of the requested Change.
 - (c) the start date for the requested Change.

- (d) the reason and necessity for the requested Change.
 - (e) the elements in the Deliverable(s) and/or the SOW that must be altered in order for Contractor to produce and deliver the Change; and
 - (f) the impact of the Change upon the Project.
2. The ELR will provide a written decision concerning each Change Request to Contractor within ten (10) Business Days of the ELR's receipt of each Change Request. All decisions made by the ELR concerning a Change Request will be deemed final. Each Change Request, once approved by the ELR, will be integrated into the SOW through an Amendment executed by the Parties if required by Article 25, Section 2.

ARTICLE 15 – INDEPENDENT VERIFICATION AND VALIDATION

- A. In the event IV&V Professional Services are used for the Project associated with this Agreement, Contractor will fully comply and cooperate with the IV&V vendor. Contractor's cooperation includes, but is not limited to:
- 1. Providing the Project documentation.
 - 2. Allowing the IV&V vendor to attend Project related meetings; and
 - 3. Supplying the IV&V vendor with any/all other information and/or material(s) as may be directed by the Project Manager.
- B. In the event the purpose of this Agreement is for Contractor to provide IV&V Professional Services, then Contractor will:
- 1. Submit its IV&V reports directly to DoIT's Project Oversight and Compliance Division (EPMO@doit.nm.gov) according to DoIT's IV&V Reporting Template and Guidelines located on DoIT's webpage: <https://www.doit.nm.gov/programs/epmo/project-certification-templates-and-guidance/>, with a copy to Procuring Agency.
 - 2. Use a report format consistent with DoIT's IV&V Reporting Template and Guidelines located on the same DoIT website.

ARTICLE 16 – DEFAULT

In case of Contractor's Default, for any reason whatsoever, Procuring Agency and/or the State may procure the Deliverables from another source and hold Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages and special damages. Procuring Agency and/or the State may also seek all other available remedies against Contractor hereunder or which may be otherwise available under law or equity.

ARTICLE 17 – EQUITABLE REMEDIES

Contractor acknowledges that its failure to comply with any provision hereunder may cause Procuring Agency irrevocable harm and that a remedy at law for such a failure would constitute an inadequate remedy for Procuring Agency. Contractor consents to Procuring Agency's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency's right to obtain equitable relief pursuant to this Agreement will be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

ARTICLE 18 - LIABILITY

Contractor will be liable for damages arising out of injury to persons and/or damage to real, tangible or intangible property at any time, in any way, if and to the extent that the injury or damage was caused by or due to Contractor's fault or negligence or to a defect in Contractor's production or delivery of any Deliverable hereunder, whether Contractor produces or delivers the Deliverable in whole or part. Contractor will not be liable for damages arising out of, or caused by, alterations made by Procuring Agency to any equipment or its installation or for losses caused by Procuring Agency's fault or negligence. In the event Contractor's negligent or omitted production or delivery of any Deliverable results in a defect which is the direct or indirect cause of injury to any third party and/or employee of Procuring Agency or the State, nothing hereunder will act to limit Contractor's, or Contractor's Employees' liability to such third party and/or employee, or will act to limit any remedy that may exist under law or equity with respect to Contractor's and/or Contractor's Employees' negligent act or omission.

ARTICLE 19 – ASSIGNMENT

Contractor will not assign or transfer any of Contractor's interests, rights, responsibilities, duties, obligations and/or liabilities hereunder or assign any of Contractor's claims for money due or that might become due hereunder absent Procuring Agency's prior written approval.

ARTICLE 20 – SUBCONTRACTING

- A. General Provision. Contractor will not subcontract or assign any portion of this Agreement or the SOW to any subcontractor absent Procuring Agency's prior written approval. No such subcontracting or assignment will relieve Contractor of its direct and indirect responsibilities, duties, obligations and/or liabilities hereunder, nor will any such subcontracting trigger or obligate Procuring Agency to make a payment, either directly or indirectly, to any subcontractor.

- B. Responsibility for Subcontractors to Maintain Confidentiality. Contractor will not disclose any of Procuring Agency's or State's Confidential Information to a subcontractor absent Procuring Agency's prior written consent. Each subcontractor will agree in a written form pre-approved by Procuring Agency to protect and keep confidential any and all Confidential Information in the same manner required of Contractor stated in Article 22, below.

ARTICLE 21 – RELEASE

Contractor's Acceptance of Procuring Agency's final payment made hereunder will operate as Contractor's full release of Procuring Agency, the State, and their officers, employees and agents from any and all liabilities, claims and obligations whatsoever arising hereunder.

ARTICLE 22 – CONFIDENTIALITY

Contractor will protect and keep confidential any and all Confidential Information that Procuring Agency provides to Contractor as well as any and all Confidential Information that Contractor develops based upon information provided by Procuring Agency during Contractor's performance hereunder. Contractor will not make available or provide Confidential Information to any third party absent Procuring Agency's prior written approval. Upon termination of this Agreement, Contractor will: (a) deliver all Confidential Information in its possession to Procuring Agency within thirty (30) Business Days of the termination, and (b) Contractor will protect and will not make available or provide Confidential Information to any third party absent Procuring Agency's prior written approval for a period of five (5) years commencing on the termination or expiration date. Contractor acknowledges that Contractor's failure: (a) to deliver such Confidential Information to Procuring Agency, or (b) to protect and keep Confidential Information secret may result in Procuring Agency's seeking to obtain direct, special and/or incidental damages from Contractor.

ARTICLE 23 –CONFLICT OF INTEREST

Contractor warrants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with Contractor's delivery of the Deliverables required hereunder. Contractor certifies that it has followed the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer, state employee or former state employee.

ARTICLE 24 - RECORDS AND AUDIT

Contractor will maintain detailed time and expenditure records, which indicate the date, time, nature and cost of the Deliverables rendered during this Agreement's term and will retain those records for a period of a **minimum is three (3) years** from the date of Procuring Agency's final

payment to Contractor hereunder. Contractor's records will be subject to inspection by Procuring Agency, DoIT's CIO, NMSPA, GSD, Department of Finance Authority and the New Mexico State Auditor's Office. Procuring Agency will have the right to audit Contractor's billings prior and subsequent to each of Procuring Agency's payments made to Contractor. Procuring Agency's payment for the Deliverables hereunder will not foreclose Procuring Agency's right to recover Procuring Agency's payments made to Contractor or its affiliates against Contractor's excessive or illegal Payment Invoices, if any.

ARTICLE 25 - AMENDMENT

This Agreement will not be altered, changed, or amended except by an instrument in writing executed by the Parties. No amendment will be effective or binding unless approved by all of the State's and Contractor's approval authorities. Amendments are required for the following:

1. Deliverable requirements stated in the SOW.
2. Due Date of any Deliverable stated in the SOW only if due date change requires extension of Article 5 termination date.
3. Compensation for any Deliverable stated in the SOW.
4. Agreement Compensation, pursuant to Article 3; or
5. Agreement termination, pursuant to Article 5.

ARTICLE 26 – NEW MEXICO EMPLOYEES HEALTH COVERAGE

- A. In the event Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period on the Project during the term of this Agreement, Contractor certifies, by signing this Agreement, to have in place, and agree to maintain for the term of this Agreement, health insurance for those employees and offer that health insurance to those employees in the event the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- B. Contractor will maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. Contractors' records are subject to review and audit by a representative of the State.
- C. Contractor will advise Contractor's Employees concerning the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <https://www.bewellnm.com>.
- D. For Indefinite Quantity, Indefinite Delivery contracts (statewide or agency price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against them); Contractor agrees those requirements will become applicable on the first day of the second month after Contractor reports its

combined sales (to the State and, if applicable, to local public bodies in the event those sales are made pursuant to a statewide or agency price agreement) in the aggregated amount of \$250,000 or more.

ARTICLE 27 – SEVERABILITY, MERGER, SCOPE, ORDER OF PRECEDENCE

- A. Severability. The provisions of this Agreement are severable, and in the event for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court, agency or commission having jurisdiction over the subject matter hereof, such invalidity will not affect the other provisions of this Agreement, which will be given effect absent the invalid provision.
- B. Merger/Scope/Order. This Agreement incorporates any and all agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants and understanding have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents or assignees will be valid or enforceable unless stated in this Agreement.

ARTICLE 28 – NOTICES

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement will be in writing and will be deemed to have been given when sent by registered or certified mail (return receipt requested), when sent by overnight carrier, or by email addressed to the other Party’s Representative.

Notices will be addressed as follows:

For PROCURING AGENCY

[Insert: Name of Individual, Position
Procuring Agency Name
E-mail Address
Telephone Number
Mailing Address]

For CONTRACTOR

[Insert Name of Individual, Position
Company Name
E-mail Address
Telephone Number
Mailing Address]

Any change made concerning either a change of address or a replacement of a Party's Representative must be made by an email, or a hard copy letter addressed to the other Party's Representative.

ARTICLE 29 – GENERAL PROVISIONS

- A. Contractor will abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State, including but not limited to:
1. Civil and Criminal Penalties. The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
 2. Equal Opportunity Compliance. Contractor will abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State, pertaining to equal employment opportunity. In accordance with all such laws of the State, Contractor will assure that no person in the United States will, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed hereunder. In the event Contractor is found to be out of compliance with these requirements during the life of this Agreement, Contractor will take appropriate measures to correct its deficiencies.
 3. Nondiscrimination. Contractor, and all deliverables under this Agreement, shall comply, as applicable, with the Federal Civil Rights Act of 1964, the American with Disabilities Act of 1990 (Public Law 101-336), and every other federal and state law that prohibits discrimination or mandates accommodation for disability, injury, sickness, disease or specified hardship. Any deliverable constituting an interactive or informational system or display solely for use or consumption by a public employee shall comply with accessibility standards for a comparable system or display used or consumed by a member of the public.
 4. Workers Compensation. Contractor will comply with state laws and rules applicable to workers compensation benefits for its employees. In the event Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by Procuring Agency.
- B. Applicable Law. The laws of the State will govern this Agreement. Venue will be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By executing this Agreement, Contractor acknowledges and will submit to the jurisdiction of the courts of the State over any and all such lawsuits arising hereunder.

- C. Waiver. A Party's failure to require strict performance of any provision of this Agreement will not waive or diminish that Party's right thereafter to demand strict compliance with that or any other provision. No waiver by a Party of any of its rights hereunder will be effective unless made in writing, and no effective waiver by a Party of any of its rights will be effective to waive any of its other rights, duties or obligations hereunder.
- D. Headings. Any and all headings within this Agreement are inserted for convenience and ease of reference and will not be considered in the construction or interpretation of any article, section or provision of this Agreement or the SOW. Numbered or lettered provisions, sections and subsections contained herein refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.
- E. Dispute Resolution. In the event dispute arises between the Parties, either Party may send a letter to the other Party requesting the other Party to enter into a dispute resolution process, such as mediation or arbitration, in accordance with NMSA 1978 12-8A-1 through 12-8A-3.

ARTICLE 30 - SURVIVAL

The Articles titled Intellectual Property, Intellectual Property Ownership, **Confidentiality, and Warranties** will survive the expiration or termination of this Agreement. Software License and Software Escrow agreements entered into by the Parties in conjunction with this Agreement will survive the expiration or termination of this Agreement. **[Choice #1 – Other unexpired agreements, promises, or warranties that will survive the termination of this Agreement are: (list here.)]**

ARTICLE 31 - TIME

Calculation of Time. Any time period herein calculated by reference to a “day” or “days” means a calendar day or calendar days, unless Business Days are used; provided, however, that in the event the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State, the day for such given act will be the first day following that is not a Saturday, Sunday, or a State observed holiday.

ARTICLE 32 – FORCE MAJEURE

Neither Party will be liable for damages or have any right to terminate this Agreement for any delay or Default in performing hereunder in the event such delay or Default is caused by conditions beyond the Party’s control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), war, insurrection and/or any other cause beyond the reasonable control of the Party whose performance is affected thereby.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement, which will take effect on the last signature date of the required approval authorities below. Each of the signatories, below, may execute this Agreement by hard copy original, facsimile, digital or electronic signature, any of which will be deemed to be a true and original signature hereunder.

By: _____ Date: _____
Robert E. Doucette, Jr., Cabinet Secretary
General Services Department

By: _____ Date: _____
[Insert Contractor Name, Title]
[Company Name]

By: _____ Date: _____
Alex Harding, Chief Information Officer
General Services Department

Approved for legal sufficiency:

By: _____ Date: _____
Alexis Johnson, Acting General Counsel
General Services Department

Approved for financial sufficiency:

By: _____ Date: _____
Silvia O. Rodarte, Chief Financial Officer
General Services Department

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes:

BTIN ID Number: Enter this number before uploading to DocuSign

By: _____ Date: _____
Taxation & Revenue Department

Taxation and Revenue is only verifying the registration and will not confirm or deny taxability statements contained in this contract.

Approved for compliance with the Department of Information Technology Act, Chapter 9, Article 27 NMSA 1978 and Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico.

By: _____ Date: _____
Raja Sambandam, Acting Cabinet Secretary and State Chief Information Officer
Department of Information Technology

This Agreement has been approved by the General Services Department, State Purchasing Division:

By: _____ Date: _____
State of New Mexico, State Purchasing Division

EXHIBIT A – SCOPE OF WORK

This scope of work and deliverables will be finalized during the “Finalize Contractual Agreement” phase of this request for proposal process.

I. Purpose:

The Purpose of this Agreement, including its goals and objectives, is:

The Contractor will handle all State of New Mexico Worker’s Compensation pharmacy claims made by covered State employees. The Contractor must have an effective pharmacy claims management system that is easy to access with enough information that is readily available when the Procuring Agency requests information. The Contractor and its pharmacy claims management system must be capable of interfacing with the Procuring Agency’s Worker’s Compensation third party administrator’s existing claims management software for a two-way data exchange. The Contractor shall provide a prescription management program with a formulary that assures therapeutic and economic value for injured workers and State of New Mexico and cover all therapeutic diagnostic categories to include the issuance of Drug card to all claimants. The Contractor must conduct ongoing drug utilization reviews that identify and address instances of potential fraud and abuse as well as key prescribing and utilization patterns. The contract term will be for four years with a fixed fee schedule. Contract can be negotiated based on increased utilization up to no more than 2%. Any other costs associated with the RFP must have a clear description of cost , rate or amount, and the frequency (monthly, or other). The cost requirement must include the services required by the Offeror to ensure the two-way data transfer/exchange is completed and successful.

II. The Deliverables:

The following sections describe the required tasks and subtasks to be performed by Contractor concerning each service or product delivered by Contractor to Procuring Agency (a “Deliverable”) pursuant to this Agreement. Contractor will deliver each Deliverable, but Contractor is not limited to delivering only the identified Deliverables in a given area of the Project. The Parties agree that the Deliverables are the controlling items and that Contractor’s primary obligation is to deliver the Deliverables to Procuring Agency according to the following sections.

A. Deliverable Number 1 – Two Way Data Exchange Framework and Reporting

<u>Deliverable Name</u>	<u>Due Date</u>	<u>Compensation</u>
Two Way Data Exchange Framework	No later than TBD	[Total Compensation not to exceed \$ amount, including __% GRT of \$ amount or excluding GRT; To be Paid (include frequency of payment, Monthly, Quarterly, Upon Review and Acceptance or if one payment, indicate Fixed Cost to Be Paid in Full Upon Invoice) at \$ amount rate per hour, hours not to exceed XX. If retainage, include: Less __% retainage of \$ amount.] Amount Payable on Acceptance Not to Exceed \$ amount including or excluding GRT.

Task Item	Sub Tasks	Description
Work with current vendor on data mapping for data transfer of open claims.	1	The Contractor shall do the following: Establish criteria necessary to pull existing fields into TPA claim system, to include stored documents. [Include the expected deliverable and the agreed upon format. For example, weekly reports to be delivered in Word format, schedule to be delivered in Microsoft Project format. If there is a designated repository the Contractor should use for storing files, include here.] [Conclude with review and acceptance of the deliverable by the Procuring Agency.]

<p>Implementation and testing of the two-way data exchange framework</p>	<p>2</p>	<p>The Contractor is obligated to facilitate and engage in comprehensive review and testing procedures of the data exchange between systems. This includes the accuracy and integrity of the migrated data and addressing any discrepancies and issues that may arise.</p>
<p>IT system error reports and electronic acknowledgement of new claims.</p>	<p>3</p>	<p>The Contractor will conduct regular reviews and analysis of reported errors to identify patterns or recurring issues to be resolved.</p>

D. Deliverable Number 2 – Retainage Release

<u>Deliverable Name</u>	<u>Due Date</u>	<u>Compensation</u>
Retainage Release	No later than TBD	[Total Compensation not to exceed \$ amount, including __% GRT of \$ amount or excluding GRT; To be Paid (include frequency of payment, Monthly, Quarterly, Upon Review and Acceptance or if one payment, indicate Fixed Cost to Be Paid in Full Upon Invoice) at \$ amount rate per hour, hours not to exceed XX. If retainage, include: Less __% retainage of \$ amount.] Amount Payable on Acceptance Not to Exceed \$ amount including or excluding GRT.

Task Item	Sub Tasks	Description
4.0 Retainage Release	Notice of Acceptance of All Deliverables	Procuring Agency shall release payment for the retainage invoice, representing retainage held against this contract, upon review and acceptance of the Deliverables specified in this scope of work.

APPENDIX D

COST RESPONSE FORM

Contractor shall guarantee lower costs are passed onto the payers of workers' compensation claims.

The Cost Response Form is available for direct download from:

<https://www.generalservices.state.nm.us/wp-content/uploads/GSD-RFP-Workers-Comp-Pharmacy-Benefits-Cost-Response-Form.pdf>

APPENDIX E

LETTER OF TRANSMITTAL FORM

APPENDIX E
Letter of Transmittal Form

Please complete this form in its entirety. Failure to **sign and/or submit** this form will result in the disqualification of Offeror's proposal.

Workers Compensation Pharmacy Benefits Manager
RFP#: 24 350 4520 00002

1. Identify the following information for the submitting organization:

Offeror Name	
Mailing Address	
Telephone	
FED TIN#	
NM BTIN#	

2. Identify the individual(s) authorized by the organization to (A) contractually obligate, (B) negotiate, and/or (C) clarify/respond to queries on behalf of this Offeror:

	A Contractually Obligate	B Negotiate*	C Clarify/Respond to Queries*
Name			
Title			
E-mail			
Telephone			

* If the individual identified in Column A also performs the functions identified in Columns B & C, then no response is required for those Columns. If separate individuals perform the functions in Columns B and/or C, they must be identified.

3. Will any subcontractor/s be used in the performance of any resultant contract? (Select one):

No.
 Yes. Identify subcontractor/s: _____

4. Will any other entity(ies) (such as a State Agency, reseller, etc., that is not a subcontractor identified in #3 above) be used in the performance of any resultant contract? (Select one)

No.
 Yes. Identify entity(ies): _____

By signing the form below, the Authorized Signatory attests to the accuracy and veracity of the information provided on this form, and explicitly acknowledges the following:

- On behalf of the submitting-organization identified in item #1 above, I accept the Conditions Governing the Procurement, as required in Section II.C.1. of this RFP;
- I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP; and
- I acknowledge receipt of any and all amendments to this RFP, if any.

Sign: _____ Date: _____

(Must be signed by the individual identified in item #2.A, above.)

APPENDIX F

ORGANIZATIONAL REFERENCE QUESTIONNAIRE

The State of New Mexico, as a part of the RFP process, requires Offerors to list a minimum of three (3) positive organizational references in their proposals. The purpose of these references is to document Offeror's experience relevant to the Section IV.A, Detailed Scope of Work in an effort to evaluate Offeror's ability to provide goods and/or services, performance under similar contracts, and ability to provide knowledgeable and experienced staffing.

Offeror is required to send the following Organizational Reference Questionnaire to each business reference listed in its proposal, as per Section IV.B.2. The business reference, if it chooses to respond, is required to submit its response to the Organizational Reference Questionnaire directly to: Gerardo.Ruelas@gsd.nm.gov no later than proposal due date indicated on Sequence of Events for inclusion in the evaluation process. The Questionnaire and information provided will become a part of the submitted proposal. Businesses/Organizations providing references may be contacted for validation of content provided therein.

RFP # 24-350-4520-00002
ORGANIZATIONAL REFERENCE QUESTIONNAIRE
FOR:

(Name of Offeror)

This form is being submitted to your company for completion as a reference for the organization listed above. Submit this Questionnaire to the State of New Mexico, General Services Department via e-mail at:

Name: Procurement Manager Gerardo Ruelas
Email: Gerardo.Ruelas@gsd.nm.gov

Forms must be submitted no later than the date indicated in Sequence of Events, and **must not** be returned to the organization requesting the reference. References are **strongly encouraged** to provide comments in response to organizational ratings. The comments you provide will help the State evaluate the above-referenced Offeror’s service history, successful execution of services and evidence of customer/client satisfaction.

For questions or concerns regarding this form, please contact the State of New Mexico Procurement Manager at 505-819-7815 or Gerardo.Ruelas@gsd.nm.gov . When contacting the Procurement Manager, include the Request for Proposal number provided at the top of this page.

Organization providing reference	
Contact name and title/position	
Contact telephone number(s)	
Contact e-mail address	
Project description	
Project dates (start and end dates)	
Public Sector Worker’s Compensation TPA experience Number of years	
NAIC score	

QUESTIONS:

1. In what capacity have you worked with this vendor in the past?

COMMENTS:

2. How would you rate this firm's knowledge and expertise?

____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

3. How would you rate the vendor's flexibility relative to meeting reporting requests?

____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

4. What is your level of satisfaction with services provided by the vendor?

____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable, N/A = Not applicable)

COMMENTS:

5. How would you rate the dynamics/interaction between vendor personnel and your staff?

_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

6. Who are/were the vendor's principal representatives involved in your project and how would you rate them individually? Would you, please, comment on the skills, knowledge, behaviors or other factors on which you based the rating?

_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

Name: _____ Rating:

Name: _____ Rating:

Name: _____ Rating:

Name: _____ Rating:

COMMENTS:

7. How satisfied are/were you with the products developed by the vendor?

_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable, N/A = Not applicable)

COMMENTS:

8. With which aspect(s) of this vendor's services are/were you most satisfied?

COMMENTS:

9. With which aspect(s) of this vendor's services are/were you least satisfied?

COMMENTS:

10. Would you recommend this vendor's services to your organization again?

COMMENTS: