**STATE OF NEW MEXICO**

**HUMAN SERVICES DEPARTMENT**

INFORMATION TECHNOLOGY AGREEMENT

Agreement No. 23-630-4000-00xx

THIS INFORMATION TECHNOLOGY AGREEMENT (this “Agreement”) is made by and between the State of New Mexico (the “State”), **Human Services Department**, hereinafter referred to as “Procuring Agency” and [**Insert Contractor Name and Vendor Number**], 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 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 [**RFQ Name**] and Contractor’s response to such document(s) are incorporated herein by reference; and

**WHEREAS**, this Agreement is issued against the statewide or agency price agreement, established and maintained by the New Mexico State Purchasing Division (“SPD”) of the General Services Department, [**Insert statewide or agency price agreement number and name**], and through this language the Parties hereby incorporate the statewide price agreement by reference and give the statewide or agency price agreement’s terms and conditions precedence over the terms and conditions contained in this Agreement;

**THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:**

**ARTICLE 1 – DEFINITIONS**

1. “Acceptance,” “Accept” or “Accepted” means the approval, following Quality Assurance, of all the Deliverables by Procuring Agency’s ELR (“ELR”).
2. “Agency CIO” means Procuring Agency’s Chief Information Officer.
3. “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 [**Insert Name, must not be same person as project manager nor a contractor**] 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:** The title for this Project is [**Insert Name of Project**].

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 [**Insert Name, must not be same person as Contract Manager**] or his/her 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**

1. 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.
2. Performance Measures. The Contractor shall perform to the satisfaction of the Procuring Agency the Performance Measures set forth in Exhibit A, as determined within the sole discretion of the Procuring Agency. In the event the Contractor fails to obtain the results described in Exhibit A, the Procuring Agency may provide written notice to the Contractor of the Default and specify a reasonable period of time in which the Contractor shall advise the Procuring Agency of specific steps it will take to achieve these results and the proposed timetable for implementation. Nothing in this Section shall be construed to prevent the Procuring Agency from exercising its rights pursuant to Article 6 or Article 16.
3. 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.
4. 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.
5. License. Not Applicable. The Parties agree there is no License.
6. Source Code. Not Applicable. The Parties agree there is no Source Code.
7. Procuring Agency’s Rights.
8. Rights to Software.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.
9. 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.
10. 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.
11. Rights to Data. Any and all of 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.

**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**] 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.

Compensation for a statewide price agreement shall not exceed the SPD or DoIT approved price maximums as established in the state price agreement used for this contract. Contractor hereby agrees to perform any requested work through change requests from any price agreement approved services at or below the published maximum rates of the statewide price agreement as follows:

| Contract Service | Rate Inclusive of NMGRT |
| --- | --- |
| SWPA Listed Service or Position | $XXX.00 |
| Other positions | $XXX.00 |

Contractor compensation includes all costs associated with traveling to and from Santa Fe and costs for staying in Santa Fe on the agreed-upon schedule.

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 20% of the fixed-price cost of each stated Deliverable as security for 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. Contractor will execute and deliver to Procuring Agency, contemporaneously with the execution of this Agreement, a performance bond in the amount of [**Insert Total Amount of the agreed upon Performance Bond**] (the “Performance Bond”) in Procuring Agency’s name. The Performance Bond will be in effect for the duration of this Agreement and any renewals hereof. Procuring Agency will condition its release of the Performance Bond upon Procuring Agency’s Acceptance of Contractor’s full performance and fulfillment of each and every of its Deliverables, terms, conditions, provisions, and obligations hereunder. Procuring Agency’s right to recoup monies against the Performance Bond will include all of Procuring Agency’s costs and damages associated with the transfer of the Deliverables to a third party or to the State as a result of Contractor’s performance failure(s).

**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 statewide or agency price 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 within **fifteen (15) Business Days**] (the “Acceptance/Rejection Period”), or other such period as approved by the Procuring Agency, 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, or other such period as approved by the Procuring Agency], 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 shall terminate on [**Insert Termination Date]**, with four (4) base years and four (4) optional one (1) year extensions, not to exceed eight (8) years in total, unless terminated pursuant to Article 6, below. This Agreement falls within the exception to the four-year limitation established by NMSA 1 978, §13-1-150(B)(l) for services required to support or operate federally certified Medicaid, financial assistance, and child support enforcement management information or payment systems.

**ARTICLE 6 – TERMINATION**

1. 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.
2. 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.
3. 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.
4. 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.]

**[OPTION: Use only with OGC Approval:** Contractor and Procuring Agency will

**ARTICLE 9 – INTELLECTUAL PROPERTY**

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 right, 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.

In the event Procuring Agency grants Contractor the right to own and/or use any Procuring Agency IP, Contractor hereby acknowledges and grants to Procuring Agency and the State, a perpetual, non-exclusive, royalty free license to reproduce, publish, sell, trade, transfer, transmit, use, copy and modify any and all Procuring Agency IP.

**ARTICLE 10 – INTELLECTUAL PROPERTY LICENSE AND INDEMNIFICATION**

1. 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.
2. 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.

B. Software. Not Applicable. The Parties agree there is no Software.

**ARTICLE 12 – CONTRACTOR PERSONNEL**

1. 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 to the work to be performed hereunder. Contractor’s Key Personnel hereunder will be:

[**Insert Contractor and/or Subcontractor Key Personnel Name(s). Per HSD OGC, at a minimum, insert contractor manager as point of contact.**]

|  |  |  |
| --- | --- | --- |
| **Project Role** | **Name** | **Project Responsibilities** |
| Project Executive / Director | [To be inserted] | Executive oversight of the project. Signatory of contractor to approve project changes to scope, schedule and budget. |
| Project Manager | [To be inserted] | Ongoing, full time project management of the project from Planning through Implementation and Go Live. Lead in project plans creation, advanced planning document creation, feasibility study and monthly status reports. |
| Business Analyst | [To be inserted] | Intermittent, business analysis. Requirements management. Assist in creation of plans and feasibility study. |
| Subject Matter Experts | [To be inserted] | Intermittent. Assist in creation of plans and feasibility study, as well as ongoing project needs. |

1. 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. Contractor’s 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.

Per 45 CFR 75.308(c)(1), changes in key personnel listed in Office of Child Support Enforcement applications or federal awards must obtain approval from the Office of Child Support Enforcement.

**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.

**ARTICLE 16 – DEFAULT**

In case of Contactor’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.

This Contract shall be construed in accordance with and is subject to 45 CFR §75.112; §75.328(a); 75.328(b)&(c)(1)&(2), as applicable.

**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 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. Contractor’s 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.

1. 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 in an email or a hard copy letter addressed to the other Party’s Representative.

**ARTICLE 29 – GENERAL PROVISIONS**

1. 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. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. This contract shall be construed in accordance with and is subject to the laws and rules of the State of New Mexico, as well as the Federal Government, as mandated by 45 CFR 75.326, 45 CFR 75.302, 45 CFR 75.303, and 45 CFR 75.327(a).”

**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.

**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.

**ARTICLE 33 - DEBARMENT AND SUSPENSION**

* 1. Consistent with all applicable federal and/or state laws and regulations, as applicable, and as a separate and independent requirement of this Agreement the Contractor certifies by signing this Agreement, that it and its principals, to the best of its knowledge and belief: (1) are not debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency; (2) have not, within a three-year period preceding the effective date of this Agreement, been convicted of or had a civil judgment rendered against them for: 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; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; (3) have not been indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with, commission of any of the offenses enumerated above in this Paragraph A; (4) have not, within a three-year period preceding the effective date of this Agreement, had one or more public agreements or transactions (Federal, State or local) terminated for cause or default; and (5) have not been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a-7.
  2. The Contractor’s certification in Paragraph A, above, is a material representation of fact upon which the PROCURING AGENCY relied when this Agreement was entered into by the parties. The Contractor’s certification in Paragraph A, above, shall be a continuing term or condition of this Agreement. As such at all times during the performance of this Agreement, the Contractor must be capable of making the certification required in Paragraph A, above, as if on the date of making such new certification the Contractor was then executing this Agreement for the first time. Accordingly, the following requirements shall be read so as to apply to the original certification of the Contractor in Paragraph A, above, or to any new certification the Contractor is required to be capable of making as stated in the preceding sentence:

1. The Contractor shall provide immediate written notice to the PROCURING AGENCY’s Contract Manager if, at any time during the term of this Agreement, the Contractor learns that its certification in Paragraph A, above, was erroneous on the effective date of this Agreement or has become erroneous by reason of new or changed circumstances.

2. If it is later determined that the Contractor’s certification in Paragraph A, above, was erroneous on the effective date of this Agreement or has become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Procuring Agency, the Procuring Agency may terminate the Agreement.

* 1. As required by statute, regulation or requirement of this Agreement, and as contained in Paragraph A, above, the Contractor shall require each proposed first-tier subcontractor whose subcontract will equal or exceed $25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by any Federal department or agency. The Contractor shall make such disclosures available to the Procuring Agency when it requests subcontractor approval from the Procuring Agency. If the subcontractor, or its principals, is debarred, suspended, or proposed for debarment by any Federal, state, or local department or agency, the Procuring Agency may refuse to approve the use of the subcontractor.

**ARTICLE 34 - CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

* 1. The applicable definitions and exceptions to prohibited conduct and disclosures contained in 31 U.S.C. § 1352 and 45 C.F.R. Part 93, as applicable, are hereby incorporated by reference in subparagraph (B) of this certification.
  2. The Contractor, by executing this Professional Services Contract (PSC), certifies to the best of its knowledge and belief that:

1. No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement; and

2. If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the contractor shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer.

* 1. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
  2. This certification is a material representation of fact upon which reliance is placed when this Agreement is made and entered into. Submission of this certification is a prerequisite for making and entering into this Agreement imposed under 31 U.S.C. § 1352. It shall be a material obligation of the Contractor to keep this certification current as to any and all individuals or activities of anyone associated with the Contractor during the pendency of this Agreement. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to: (1) a civil penalty of not less than $10,000 and not more than $100,000 for such failure; and/or (2) at the discretion of the Procuring Agency, termination of the Agreement.

**ARTICLE 35 - NON–DISCRIMINATION**

* 1. The Contractor agrees to comply fully with Title VI of the Civil Rights Act of 1964, as amended; the Rehabilitation Act of 1973, Public Law 93-112, as amended; and the Americans With Disabilities Act of 1990, Public Law 101-336; in that there shall be no discrimination against any employee who is employed in the performance of this Agreement, or against any applicant for such employment, because of age, color, national origin, ancestry, race, religion, creed, disability, sex, or marital status.
  2. This provision shall include, but not be limited to, the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.
  3. The Contractor agrees that no qualified handicapped person shall, on the basis of handicap, be excluded from participation or be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the Contractor. The Contractor further agrees to insert similar provisions in all subcontracts for services allowed under this Agreement under any program or activity.
  4. The Contractor agrees to provide meaningful access to services for individuals with Limited English Proficiency (LEP) in accordance with Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency.”

**ARTICLE 36 – DRUG FREE WORKPLACE**

1. Definitions*.* As used in this paragraph—
2. “Controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act, 21 U.S.C. § 812, and as further defined in regulation at 21 CFR §§ 1308.11 - 1308.15.
3. “Conviction” means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.
4. “Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.
5. “Drug-free workplace” means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.
6. “Employee” means an employee of a Contractor directly engaged in the performance of work under a Government contract. “Directly engaged” is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.
7. “Individual” means a contractor that has no more than one employee including the contractor.
8. The Contractor, if other than an individual, shall:
9. Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor’s workplace and specifying the actions that will be taken against employees for violations of such prohibition;
10. Establish an ongoing drug-free awareness program to inform such employees about:
    1. The dangers of drug abuse in the workplace;
    2. The Contractor’s policy of maintaining a drug-free workplace:
    3. Any available drug counseling, rehabilitation, and employee assistance programs; and
    4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
11. Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph B. (1);
12. Notify such employees in writing in the statement required by subparagraph B. (1) of this clause that, as a condition of continued employment on this Agreement, the employee will:
    1. Abide by the terms of the statement; and
    2. Notify the employer in writing of the employee’s conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;
13. Notify Procuring Agency in writing within 10 days after receiving notice under B. (4)(b) of this paragraph, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
14. Within 30 days after receiving notice under B.(4)(b) of this paragraph of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
    1. Taking appropriate personnel action against such employee, up to and including termination; or
    2. Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
15. Make a good faith effort to maintain a drug-free workplace through implementation of B. (1) through B. (6) of this paragraph.
16. The Contractor, if an individual, agrees by entering into this Agreement not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.
17. In addition to other remedies available to the Procuring Agency, the Contractor’s failure to comply with the requirements of subparagraph B or C of this paragraph will render the Contractor in default of this Agreement and subject the Contractor to suspension of payments under the Agreement and/or termination of the Agreement in accordance with paragraph 4, above.

**ARTICLE 37 - FINDINGS AND SANCTIONS**

* 1. The Contractor agrees to be subject to the findings, sanctions and disallowances assessed or required as a result of audits pursuant to this agreement.
  2. The Contractor will make repayment of any funds expended by the Procuring Agency, subject to which an auditor acting pursuant to this Agreement finds were expended, or to which appropriate federal funding agencies take exception and request reimbursement through a disallowance or deferral based upon the acts or omissions of the Contractor that violate applicable federal statues and/or regulations.
  3. If the Procuring Agency becomes aware of circumstances that might jeopardize continued federal funding, the situation shall be reviewed and reconciled by a mutually agreed upon panel of Contractor and the Procuring Agency officials. If reconciliation is not possible, both parties shall present their view to the Director of the Administrative Services Division who shall determine whether continued payment shall be made.

**ARTICLE 38 – PERFORMANCE**

In performance of this Agreement, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees and/or Business Associates, as applicable, with the following requirements:

* 1. All work will be performed under the supervision of the Contractor or the Contractor's employees.
  2. The Contractor and the Contractor’s employees with access to or who use Federal Tax Return Information (FTI) must meet the background check requirements defined in IRS Publication 1075.
  3. The Contractor agrees that, if Federal Tax Information (FTI) is introduced into Contractor’s information systems, work documents, and /or other media by written agreement, any FTI as described in 26 U.S.C. § 6103, limited to FTI received from, or created on behalf of Procuring Agency by Contractor; Protected Health Information (PHI) as defined in 45 C.F.R. § 160.103, limited to PHI received from or created on behalf of Procuring Agency by Contractor; or Personally Identifiable Information (PII) as defined by the National Institute of Standards of Technology, limited to PII received from or created on behalf of Procuring Agency by Contractor pursuant to the Services; collectively referred to hereafter as Confidential Information made available to Contractor shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and will not be divulged or made known in any manner to any person or entity except as may be necessary in the performance of this contract. Inspection by, or disclosure to, any person or entity other than an officer, employee, or Business Associate is prohibited.
  4. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection by the Contractor as required for the source material.
  5. The Contractor certifies that the data processed during the performance of this Agreement will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Contractor at the time the work is completed.  If immediate purging of all electronic data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosure
  6. Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the Procuring Agency or his or her designee.  When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the Procuring Agency, or his or her designee, with a statement containing the date of destruction, description of material destroyed, and the method used.
  7. All computer systems processing, storing, or transmitting Confidential Information including FTI must meet the requirements defined in IRS Publication 1075, HIPAA Privacy Rule (45CFR Part 160 and Subparts A and E of Part 164), HIPAA Security Rule (45C.F.R. Part 160 and Subparts A and C of Part 164); and/or any other federal requirements that may apply to this contract.  To meet functional and assurance requirements, the security features of the environment must provide security across relevant managerial, operational, and technical controls.  All security features must be available and activated to protect against unauthorized use of and access to Confidential Information including FTI.
  8. No work involving Confidential Information including FTI furnished under this Agreement will be subcontracted without prior written approval of the IRS and Procuring Agency.
  9. The Contractor will maintain a list of employees with authorized access to Confidential Information including FTI. Such list will be provided to the Procuring Agency and, upon request, to the IRS reviewing office.
  10. The Procuring Agency will have the right to void the Agreement if the Contractor fails to provide the safeguards described above.
  11. All incidents affecting the compliance, operation, or security of the Procuring Agency’s Confidential Information including FTI must be reported to the Procuring Agency. The Contractor shall notify the Procuring Agency of any instances of security or privacy breach issues or non-compliance promptly upon their discovery, but no later than a period of 24 hours (as stated above). Notification shall include a description of the privacy and security non-compliance issue and corrective action planned and/or taken.
  12. The Contractor must provide the Procuring Agency with a summary of a corrective action plan (if any) to provide any necessary safeguards to protect PII from security breaches or non-compliance discoveries. The corrective action plan must contain a long-term solution to possible future privacy and security threats to Personally Identifiable Information (PII). In addition to the corrective action, the Contractor must provide updates as to the progress of all corrective measures taken until the issue is resolved. The Contractor shall be responsible for all costs of implementing the corrective action plan.
  13. The Procuring Agency will have the right to seek remedies consistent with the liability terms of this Agreement and/or terminate the Agreement if the Contractor and/or Business Associate fails to provide the safeguards or to meet the security and privacy requirements to safeguard FTI, PHI, and PII as described above, consistent with the liability and/or termination clauses herein.
  14. All client files and patient records created or used to provide services under this Agreement, as between the parties, are at all times property of Procuring Agency. Upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI in its possession and shall retain no copies of the PHI. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to the Department notification of the conditions that make return or destruction of PHI not feasible. Upon consideration and mutual agreement of the Parties that return or destruction of the PHI is infeasible, Business Associate shall agree, and require that its agents, affiliates, subsidiaries and subcontractors agree to the extension of all protections, limitations, and restrictions required of Business Associate hereunder.
  15. Procuring Agency Personally Identifiable Information (PII) cannot be accessed by Procuring Agency employees, agents, representatives, or contractors located offshore, outside of the United States territories, embassies, or military installations. Further, Procuring Agency PII may not be received, processed, stored, transmitted, or disposed of by information technology (IT) systems located offshore.

**ARTICLE 39 - CRIMINAL/CIVIL SANCTIONS**

A. It is incumbent upon Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C.552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C.552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to Procuring Agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully disclose the material in any manner to any person not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

B. Contractor agrees that granting access to PHI and PII must be preceded by certifying that each individual understands the Procuring Agency’s applicable security policy and procedures for safeguarding PHI and PII. Contractors must maintain their authorization to access PHI and PII through annual recertification. The initial certification and recertification must be documented and placed in the agency’s files for review.

**ARTICLE 40 – INSPECTION**

The Procuring Agency shall have the right to send its inspectors into the offices and/or plants of the Contractor to inspect the facilities and operations provided for the performance of any work related to this Agreement. On the basis of such inspection specific measures may be required in cases where the Contractor is found to be noncompliant with contract safeguards.

The Contractor shall grant access to affiliated federal agencies supporting this Contract consistent with 45 CFR 95.615.

**ARTICLE 41 - CONTRACTOR’S RESPONSIBILITY FOR COMPLIANCE WITH LAWS AND REGULATIONS**

A. The Contractor is responsible for compliance with applicable laws, regulations, and administrative rules that govern the Contractor’s performance of the Scope of Work of this Agreement and Exhibit A, including but not limited to, applicable State and Federal tax laws, State and Federal employment laws, State and Federal regulatory requirements and licensing provisions.

B. The Contractor is responsible for causing each of its employees, agents or subcontractors who provide services under this Agreement to be properly licensed, certified, and/or have proper permits to perform any activity related to the Scope of Work of this Agreement and Exhibit A.

C. If the Contractor’s performance of its obligations under the terms of this agreement qualifies it as a Business Associate of the Procuring Agency as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and regulations promulgated thereunder, the Contractor agrees to execute the Procuring Agency Business Associate Agreement (BAA), attached hereto as Exhibit B, and incorporated herein by this reference, and comply with the terms of the BAA and subsequent updates.

**ARTICLE 42 - CONTRACTOR’S RESPONSIBILITY FOR COMPLIANCE WITH LAWS AND REGULATIONS RELATING TO INFORMATION TECHNOLOGY**

The Contractor agrees to monitor and control all its employees, subcontractors, consultants, or agents performing the Services under this PSC in order to assure compliance with the following regulations and standards as far as they apply to Contractor’s processing or storage of Procuring Agency’s Confidential Information or other data:

* 1. The Federal Information Security Management Act of 2002 (FISMA);
  2. The Health Insurance Portability and Accountability Act of 1996 (HIPAA);
  3. The Health Information Technology for Technology for Economic and Clinical Health Act (HITECH Act);
  4. IRS Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies to include any Service Level Agreement requirements;
  5. Electronic Information Exchange Security Requirements, Guidelines, And Procedures for State and Local Agencies Exchanging Electronic Information with The Social Security Administration; and
  6. NMAC 1.12.20, *et seq*. “INFORMATION SECURITY OPERATION MANAGEMENT”
  7. CMS Minimum Acceptable Risk Standards for Exchanges (MARS-E), v. 2.2, 9/16/21

**ARTICLE 43 ENFORCEMENT**

A party's failure to require strict performance of any provision of this Agreement shall 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 under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**ARTICLE 44 AUTHORITY**

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

**ARTICLE 45 MEDIA**

Contractor shall not release or distribute, via news media, social media, or any other consumable media source, any Agreement-related information, including but not limited to, information regarding Contractor’s work under the terms of the Agreement, or the status of the work under the Agreement, without the prior express consent of Procuring Agency. The Contractor’s request to release any Agreement information shall contain a copy of the specific information the Contractor is seeking approval to release and a description of the intended form of release. This provision shall survive the term of this Agreement.

**ARTICLE 46 CLEAN AIR CLEAN WATER ACT**

Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387) and will report violations to the Procuring Agency and the Regional Office of the Environmental Protection Agency (EPA).

**ARTICLE 47 FEDERAL LICENSE**

In compliance with federal funding provisions supporting this contract, the following conditions, as applicable, will apply to both Procuring Agency procurement of, or subscription to, Contractor’s software.

A. General. The Procuring Agency will have all ownership rights or copyright options in software, or modifications thereof, and associated documentation which is designed, developed, or installed with federal financial participation.

B. Federal License. The Contractor shall deliver to the affiliated federal department supporting this contract a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for federal government purposes, such software, modifications, and documentation.

C. Proprietary Software. The Contractor shall not be subject to the federal license or federal ownership provisions for proprietary operating/vendor software packages which are provided at established catalog or market prices and sold or leased to the general public.

D. Software as a Service. For Software as a Service which provides the Procuring Agency a subscription to Contractor’s proprietary applications or services, the Contractor shall provide the Procuring Agency change or configuration documentation related to Procuring Agency and/or federal compliance directives, policies, operation requirements, and/or statutory or regulatory requirements. Software as a Service is not subject to the federal license or federal ownership provisions as stated above.

E. Data. The Procuring Agency and the federal government shall have the right to obtain, reproduce, publish, or otherwise use the data produced under this contract and authorize others to receive, reproduce, publish, or otherwise use such data for federal purposes.

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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

David R. Scrase, MD, HSD, Cabinet Secretary

//$agency-cab-sec

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

[NAME] [Title] [Organization]

//$contractor

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

Sean Pearson, HSD, Chief Information Officer

//$agency-cio

Approved for legal sufficiency:

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

Paul Ritzma, HSD, General Counsel

//$agency-gc

Approved for financial sufficiency:

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

Carolee Graham, HSD, Acting Chief Financial Officer

//$agency-cfo

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:

**BTI Number: XX-XXX-XXXXXX**

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

Taxation & Revenue Department

//$trd

*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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Peter Mantos, 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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A – SCOPE OF WORK**

1. Purpose:

The purpose of this Agreement, including its goals and objectives, is to engage the services of [Vendor Name] to organize a project management office to manage the implementation of the New Mexico Child Support Enforcement System Replacement (CSESR) project, including developing an overall strategy and Project Management Plan to meet the goals and objectives outline in all Advanced Planning Documents including but not limited to, updates, gaining stakeholder approval of the plan, monitoring the budget and the execution of the replacement project. The PMO will serve as a liaison between the Procuring Agency, the Developers of the replaced CSES, and other stakeholders, as needed.

This Agreement also outlines the Procuring Agency’s expectations related to Deliverables and tasks, including subtasks, required of the Contractor to supply the staff and skills necessary for Project and Program Management, Scope and Change Management, Requirements Management, Budget/Financial Management, Schedule Management and Reporting. The Contractor is also required to provide Risk Mitigation, Project Planning, and incorporate quality processes into the PMO to ensure the success of the replacement project. The Contractor shall be responsible for RFP development, documentation, deliverables management, and facilitation of project activities with stakeholders. Contractor shall coordinate with the HSD project team in project activities including: Joint Application Design (“JAD”) sessions, conversion and interface activities, testing, implementation, training, system certification, closeout, and other activities required by the established contract and its scope of work. The Contractor is required to follow HSD standards and project controls that closely monitor and allow for quick identification and resolution of issues.

**Certified Project Name:** Child Support Enforcement System Replacement

1. Performance Measures:

The Procuring Agency will monitor the following Performance Measures:

1. The Contractor shall coordinate its project or program management functions in alignment with the Procuring Agency project controls.
2. The Contractor shall develop appropriate training and operations documentation, in accordance with Procuring Agency requirements.
3. Contractor shall, on an ongoing basis, maintain a proactive approach to security and operational requirements required by federal or state regulations.
4. The Contractor must maintain general staff resources (including staff, training, onboarding, and ongoing competence) required to meet the Procuring Agency’s requirements to maintain the eligibility system and affiliated functions.
5. The Contractor shall provide all the support necessary to operate and maintain its business services over the contract life, including creating and maintaining required documentation.
6. Contractor shall collaborate with the Procuring Agency, affiliated Procuring Agency contractors, other state, or federal agencies to maintain system compliance with federal and other certification regulations.
7. Activities:

In addition to any other requirements, this Agreement requires the completion and submission of Deliverables, as identified in this Scope of Work. Activities related to the delivery and approach to delivery, including but not limited to:

1. Contractor will coordinate its activities and resources with the Procuring Agency to present service or performance reports and updates to stakeholders, legislative committees, or other Procuring Agency information commitments.
2. Contractor will participate with Procuring Agency, and other affiliated contractors, in Procuring Agency activities to improve services to Procuring Agency clients and stakeholders.
3. Contractor will achieve all deliverable outcomes and services as defined by the contract to function with other Procuring Agency or state information systems.
4. Contractor will periodically evaluate its staffing to confirm proficiency with Procuring Agency business tools to meet contract or project deadlines or performance levels.
5. Contractor will update the Procuring Agency system development efforts related to hardware or software modifications.
6. Contractor must maintain, as approved by the Procuring Agency, the contract activities, deliverable quality, project management practices, and administrative support required for contract performance in a timely and complete manner.
7. At the request of the Procuring Agency, the Contractor will develop “Deliverable Expectation Documents (“DED”),” for Deliverables listed in this Scope of Work. The DED will describe the Deliverable, expected specifications consistent with this Agreement and Acceptance criteria. The DED shall be submitted to the Procuring Agency for review. Upon final review and acceptance of the DED by the Procuring Agency, the Contractor shall submit the Deliverable in accordance with the DED.
8. The Contractor shall become familiar with the Procuring Agency’s organization and operations in order to reduce its reliance on agency staff and improve its ability to obtain information required for successful Project completion.
9. The Contractor shall become familiar with other state agencies and their requirements related to the Procuring Agency’s operations related to this project.
10. The Contractor shall become familiar with other contractors and their requirements related to the Procuring Agency’s operations related to this project.
11. The Contractor shall, through its own efforts, orient and familiarize its staff with the Procuring Agency’s organization, operations, and requirements prior to beginning work.
12. The Contractor shall become familiar with accounting, project, and other operational related reports, documents, and forms related to meeting federal or other regulation project reporting requirements.
13. The Contractor shall stay abreast of any new statutory or regulatory changes or revisions related to Child Support Enforcement as they relate to this project.
14. All CSESR artifacts shall be stored on a NM controlled SharePoint Site and are not to be stored on a vendor provided and/or vendor-controlled SharePoint Site.
15. 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.

**Deliverable Number 1 CSESR Project Plans & Ongoing Project Management**

|  |  |  |
| --- | --- | --- |
| **Deliverable Name** | **Due Date** | **Compensation** |
| CSESR Project Plans & Ongoing Project Management | TBD | TBD |

| Task Item | Sub Tasks | Description |
| --- | --- | --- |
| **1.0 Project Plans** | | |
|  | **1.0.1 Project Management Plan** | The contractor will create and maintain a Project Management Plan (PMP) for the CSESR project, as defined and approved by the HSD, throughout the life of the project. When the project encounters a Baseline Change, this PMP will be updated to reflect the changes. The PMPs and supporting documents will be stored, organized, and referenced for project reporting in a project SharePoint site.  The PMP content can come from the following references:  The PMO1 PMP from the HHS2020 project  The NM DOIT PMP Template |
|  | **1.0.2 Requirements Management Plan** | The Contractor will develop and maintain a Requirements Management Plan (RMP) as part of the PMP for HSD review and approval. This plan identifies the process and procedures used to plan, develop, monitor and control requirements in all stages of the project's lifecycle. This Plan is the foundation for all project requirement management activities. It will also define the process for requirements traceability to report compliance, completeness, coverage, and consistency.  The RMP can come from the following reference:   * The PMO15 RMP from the HHS2020 project |
|  | **1.0.3 Risk Management Plan** | The Contractor will create and maintain a Risk Management Plan, for HSD review and approval. The Plan will include the defined Risk Management Tool, provided by the Contractor. The Plan will include how to identify and document risks associated with the project, a description of each risk event, evaluate the impact and likelihood of each risk occurring, mitigations, prioritize risks, develop actions to address, prioritize risk actions, establish an owner to address each risk and assign associated cost to risks, plan risk mitigation, and monitor risk status.  The Risk Management Plan can come from the following reference:   * The PMO7 Risk Management Plan from the HHS2020 project. |
|  | **1.0.4 Issue Management Plan** | The Contractor will create and maintain an Issue Management Plan, for HSD review and approval. This plan will establish standards and project controls that closely monitor and allow for quick identification and resolution of organizational and project issues. The Plan will define how issues will be managed and track issues to assure that each is addressed, assigned an owner and tasks to resolve are identified and communicated. The plan will define controls for who has authority to close issues and how issues will be resolved. |
|  | **1.0.5 Master Project Schedule** | The contractor will work with the HSD to produce a master project schedule for the CSESR project. The master project schedule will include all project deliverables and milestones. This schedule must include defining the work in activities. The activities, major milestones, and deliverables are defined along with dependencies (predecessors / successors), durations, and resources. The completed master schedule will become the Project Baseline (resource-loaded) project schedule which will include a critical path. This schedule will be approved by the HSD and serve as a project reporting resource.  This schedule will be updated weekly for the previous week’s performance and reported on monthly. The schedule will be maintained by the Contractor within an HSD instance of Project Web Access and be available online to all authorized stakeholders. |
|  | **1.0.6 Project Change Management Plan** | The Contractor will develop and maintain a Project Change Management Plan, for HSD review and approval, to be utilized in the CSESR project. This Plan will define how changes occurring within the project are promptly identified, coordinated, and properly managed. It will define how the HSD approved project change control processes and activities are managed. The Plan will encompass modifications to scope, project baseline plans and supporting documents, PMPs and issues since issues have the potential to become changes. It will also include how to address requirements changes introduced in JAD sessions, or during any part of project development, from Design to UAT. The Contractor will lead the analysis and project change impacts, regarding any Federal or State proposed or final requirements or legislation.  The Project Change Management Plan can come from the following reference:   * The PM10 Project Change Management Plan from the HHS2020 project. |
|  | **1.0.7 Quality Management Plan** | The Contractor will develop and maintain a Quality Management Plan, for HSD review and approval, to be utilized in the CSESR project. This Plan should define guidelines for incorporating Quality Assurance (QA) and Quality Control (QC) processes into all aspects of the project lifecycle. The Quality Management Plan will define how activities will be completed by the Contractor, who will monitor and verify that the business goals, quality goals, financial goals, delivery goals and team goals are delivered through the project’s phases. The Quality Management Plan will include how administrative and technical reviews, standards, processes, and controls are managed and reported. The Plan will define Quality Management metrics. The Plan will define quality controls and processes to track, review, approve and process payments for all project deliverables or work products.  The Quality Management Plan can come from the following reference:   * The PM13 Quality Management Plan from the HHS2020 project. |
|  | **1.0.8 Resource Management Plan** | The Contractor will complete and maintain a Resource Management Plan, for HSD review and approval, to be utilized in the CSESR project. This Plan will identify and describe all required positions associated with the CSESR project. The Plan will address how these roles and responsibilities will be fully defined in the project schedule activities and maintain resource availability throughout the life of the projects.  The Resource Management Plan can come from the following reference:   * The PMO2 Resource Management Plan from the HHS2020 project. |
|  | **1.0.9 Communication Management Plan** | The Contractor will develop and maintain a Communication Plan, for HSD review and approval, to be utilized in the CSESR project. The Plan will identify the methods of exchanging information between the HSD, the Project Teams, and other project stakeholders. The Communications Plan will identify the formal communication approach, processes, procedures, and protocols that will be employed to keep all stakeholders informed throughout the duration of the project. The Plan will also address the challenges of managing multiple project vendors and meeting the needs of the project. The Plan will define all project communications and processes for the Executive Management, staff, contractors, and stakeholders. The Plan will also address how all stakeholders and project groups are identified.  The Communication Management Plan can come from the following reference:   * The PMO3 Communication Management Plan from the HHS2020 project. |
| **1.1 Ongoing Project Management** | | |
|  | **1.1.1 Manage Project Communications & Documents** | The Contractor will schedule meetings to include appropriate staff, equipment, locations, and conference call numbers. A detailed agenda for all meetings will be sent in advance of any meeting. Meeting notes will be uploaded to a project SharePoint site.  The Contractor will manage and maintain all documents within a project SharePoint site, including but not limited to all project plans from Deliverable 1, all project requirements, any other plans related to the project and project status reports. |
|  | **1.1.2 Manage Project Changes** | The Contractor will utilize the Project Change Management Plan to manage any project changes that may arise during the life of the project. The Contractor will lead the analysis and project change impacts for any Federal or State proposed or final requirements or legislation. |
|  | **1.1.3 Manage Project Risks and Issues** | The Contractor will utilize the Risk Management Plan and the Issues Management Plan to manage risks and issues that may arise during the life of the project. The Contractor will complete monthly risks & issues reports, defined in the Risk Management Plan, and the Issues Management Plan. |
|  | **1.1.4 Complete Monthly Status Reporting** | Contractor will create and deliver a monthly project status report for CSESR project stakeholders, which includes, but not limited to Requirements Management, Risk Management, Issue Management, Project Schedule status, Change Management, Quality Management, Resource Management and Communications Management.  Contractor shall also use an HSD Project SharePoint Site for archiving all reports and maintain dashboards to display dynamic views of project presentations, schedules, and progress updates. |
|  | **1.1.5 Maintain Master Project Schedule** | The Contractor will update the master project schedule weekly, based on input from all project stakeholders and HSD management. The Contractor will define and mitigate issues and risks to scope, time, and budget regarding the project's master schedule. Contractor shall maintain The Master Schedule within HSD’s instance of Project Web Access, with full access by authorized stakeholders.  The Contractor will participate in meetings with other HSD projects including the Medicaid Management Information System Replacement (MMISR) project to define and track dependencies between these projects and the CSESR project. Contractor will include and track all dependencies between CSESR and other HSD projects within the CSESR Master Project Schedule. |
|  | **1.16 Complete inputs to Multi-Ops APD, State budget requests, and Certification and Release of Funds** | The Contractor will compile all information and complete inputs related to the project including timeline, budget and other descriptive information on a periodic basis as inputs for the HSD submittals of annual documents including:   1. Multi-Operational Advance Planning Document to Center of Medicaid Services (CMS) and other US Federal agencies 2. CSESR Project Annual Advanced Planning Document Update (AAPDU) submitted to OCSE 3. New Mexico State budget requests for new and continuing projects, including a full business case submitted to Department of Information Technology (DoIT) 4. Change Request for Certification and Release of Funds to DoIT   The Contractor will submit all information to the HSD for review and make any necessary edits to the information requested by the HSD prior to submittal of documents to Federal and State agencies. Contractor will summarize information within PowerPoint presentation slides, as needed. |
|  | **1.17 Manage Project through Go Live of CSES Replacement** | The Contractor will manage the CSESR project through all phases of the project, including:   1. Planning 2. Procurement 3. Design, Develop & Implementation 4. Ongoing Project Management support through Go Live   Contractor will continuously manage the project through sub-tasks 1.1.1 to 1.1.6 for the entire duration of the project. |

**Deliverable Number 2 Streamlined Feasibility Study**

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| --- | --- | --- |
| **Deliverable Name** | **Due Date** | **Compensation** |
| Streamlined Feasibility Study, HSD Version | TBD | TBD |

| Task Item | Sub Tasks | Description |
| --- | --- | --- |
| **2.0** Create and submit Streamlined Feasibility Study for CSES replacement (CSESR) | | |
|  | **2.1 Feasibility Study Introduction & Project Information** | Contractor will create an introduction and project information for the Streamlined Feasibility Study for CSES modernization. The Feasibility Study will conform to the latest version of The Streamlined Feasibility Study Guide published by OCSE.  The most recent version is Version 1.0, published December 15, 2020, and is available online in Action Transmittal AT-20-16. The URL to the document is available within the procurement library.  Contractor can use an HSD draft of a Feasibility Study from 2019 as a reference for creating this deliverable. This draft is available within the procurement library. |
| **2.2 Status of NM CSES** | Contractor will provide basic information and data about NM CSES for inclusion within the Feasibility Study, including architecture diagrams, service delivery model, case load data and a list of foundational documents. |
| **2.3 Statement of Need / Problem** | Contractor will work with HSD to define a business case for CSES modernization in the form of a statement of need/problem (SON). The SON will include significant problems and issues with NM CSES, gaps between the current and desire system, and the measurability of problems and issues. Problems will be categorized as functional and/or technical. |
| **2.4 Desired benefits and system objectives** | Contractor will identify desired benefits, improvements, changes, results, and/or mission outcomes to NM CSES. These may include requirements, capabilities, features, and/or enhancements not supported in the current system.  Contractor will further define system objectives including program needs, costs, level of effort, time schedules, allowable operational changes, ease of future modification and expansion, system security, maintainability, and reliability. |
| **2.5 Requirements Analysis** | Contractor will define requirements for the Streamlined Feasibility Study for CSES modernization that meet state specific functional and technical requirements related to features, capabilities, and usability of the modernized system. |
| **2.6**  **Alternatives Analysis** | Contractor will conduct a lightweight analysis of alternatives as defined in the OCSE Feasibility Study Guidelines and leverage our recently replatformed/refactored system where appropriate. |
| **2.7 Cost and Benefits Analysis** | Contractor will conduct an abbreviated cost and benefits analysis for the current NM CSES as compared to the identified alternatives from the Alternatives Analysis, section 2.6. |
| **2.8 Risk Assessment** | Contractor will define and assess the risks associated with each of the identified alternatives from the Alternatives Analysis, section 2.6. The risk assessment will include project, technical, security, operational, business, and other risks affecting planning, development, O&M and other lifecycle activities. |
| **2.9 Preferred Alternative** | Contractor will work with HSD to define the preferred alternative from the identified alternatives from Alternatives Analysis, section 2.6. The preferred alternative will be supported by the analyses defined in sections 2.3 to 2.8 and include supporting artifacts.  Contractor will present the preferred solution and the Streamlined Feasibility Study to HSD stakeholders in a meeting including a PowerPoint presentation. The presentation must include a total cost estimate of the preferred solution. |
| **2.10 OCSE submittal** | Contractor will make all edits required by HSD that are contingent upon HSD approval, whereby the document will be submitted by HSD to OCSE for review. |

**Deliverable Number 3 CSESR Implementation Advanced Planning Document (IAPD)**

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| --- | --- | --- |
| **Deliverable Name** | **Due Date** | **Compensation** |
| CSESR Implementation Advanced Planning Document (IAPD) | TBD | TBD |

| Task Item | Sub Tasks | | Description | |
| --- | --- | --- | --- | --- |
| **3.1 Complete Planning Expectations, Activities, and Guidelines** | | | | |
|  | | **3.1.1 Identify, Communicate, and Schedule Planning Activities and Resources** | | The Contractor will facilitate and lead IAPD meetings, document meeting minutes, and distribute to attendees within two working days. The Meeting Minutes should include but not be limited to documenting issues, decisions made, action items, etc. The Contractor will be required to give meeting presentations to project stakeholders as required by the HSD, throughout the course of the project.  The Contractor will update the Master Project Schedule and distribute a sub-schedule of planned meetings and activities required to update the IAPD (and associated documents). The Contractor will distribute the sub schedule to project stakeholders and staff involved in planning activities (business and technical) and will set up meetings and resources (staff, rooms, equipment) necessary. | |
| **3.1.2 Complete State and Federal Requirements Matrix** | | The Contractor will compile and submit for HSD approval a State and Federal Requirements Matrix to capture all relevant state and federal requirements. The Contractor will identify and document all requirement sources in the DED Document. | |
| **3.2 Plan Project Development** | | | | | |
|  | | **3.2.1 Provide Needs Assessment** | | The Contractor will complete a Needs Assessment, based on Federal requirements. The Contractor will develop and submit a Needs Assessment document. This Needs Assessment Document will be validated by key project staff and submitted to OCSE, if necessary. | |
|  | | **3.2.2 Analyze Business Requirements** | | The Contractor will develop, validate and update the CSESR Business Requirements Document (BRD) for the CSESR Project. The Contractor will conduct a series of workshops or requirement gathering sessions with all required stakeholders including but not limited to business program policy, program and field staff, interface partners, state partners, and federal partners. The business requirements, in a format approved by HSD, will provide the necessary level of clarity to allow the potential implementation vendors to respond with proposals. The BRD will be an addendum to the CSES Development RFP(s). The Contractor will evaluate the scope and complexity of the project requirements for requirements gathering to ensure adherence to project needs, policies and procedures. The Contractor will define the strategy, tasks, deliverables, work estimates, assumptions, dependencies and tools for the project work to complete an accurate and complete BRD.The Contractor will complete a gap analysis of current system requirements to planned system requirements consistent to the business requirements gathering sessions. The Contractor will document all gaps and will be in a format that clearly identifies and defines the gaps in requirements. During business requirement gathering activities of the planning phase of the project, the Contractor will also gather any new or additional business requirements and business rules as needed to enhance automation efficiencies. Changes to the project requirements will be managed through the change management process, defined in the Project Change Management Plan. Document management of the BRD for updates, versions, and security access through the document library will be required.  The Contractor will add and modify business requirements already captured within the CSED Business Requirements Document (BRD). | |
|  | | **3.2.3 Provide Gap Analysis** | | The Contractor will develop a Gap Analysis Document. This Gap Analysis Document will be validated by key project staff and submitted to OCSE with the IAPD. The Analysis will detail current business and system requirements to planned system requirements consistent to the business requirements gathering sessions (As-Is/To-Be Gap). Documentation of all gaps will be in a format that clearly identifies and defines the gaps in requirements. The Contractor will work with the HSD to address and resolve the GAPs. | |
|  | | **3.2.4 Complete Concept of Operations** | | The Contractor will complete a Concept of Operations, to describe current business operations and to envision a future transformation that meets the needs of stakeholders and responds to enablers (e.g., new policy, legislation, and technology). The Contractor will conduct a walkthrough, for the HSD review and approval. | |
|  | | **3.2.5 Complete Business Architecture** | | The Contractor, in conjunction with the HSD, will identify all Business Process Subject Matter Experts (SMEs). The Contractor will schedule and conduct the Business Architecture Gathering Sessions, create Business Process Maps, complete Business Capabilities, prepare & submit Business Architecture Validation Materials for HSD review & approval. The Contractor will conduct and report Business Architecture Deliverables walkthroughs for HSD review & approval. | |
|  | | **3.2.6 Complete Technical Architecture** | | The Contractor will identify the Technical Architecture scope (along with the HSD), identify SME's, and Security & Privacy Officers, review current system documentation, develop & administer surveys, schedule & conduct interviews, analyze Survey and Interview responses, complete To-Be Business Capabilities, draft, and conduct Technical Architecture walkthrough & deliver reports for HSD review & approval. | |
|  | | **3.2.7 Complete Information Architecture** | | Upon completion of tasks 3.2.1 through 3.2.6, the Contractor will:  1. Define and identify the Information Architecture Scope, review current documentation, develop & administer surveys, schedule & conduct interviews with SMEs.  2. Review, Survey, and Interview responses to develop a Data Management Strategy,  3. Review, survey, & document data standards,  4. Review, survey, and document Inputs and Outputs,  5. Review, survey, and document Conceptual Data Models,  6. Review, survey, and document Logical Data Models,  7. Complete To Be Business Capabilities prepare & submit Business Capabilities Validation Materials for HSD review & approval,  8. Draft, Conduct Walk through, document, & deliver Information Architecture to HSD for review, approval, and invoice for payment. | |
|  | | **3.2.8 Provide Conceptual System Design** | | Contractor will develop and submit a Conceptual System Design (of recommended solution and proposed architecture). This document will be validated by key project staff and submitted with the IAPD. | |
|  | | **3.2.9 Provide Implementation Budget** | | The Contractor will develop and submit a required Budget for implementing recommended solution, including details for all required cost allocations. This Budget will be available to support the IAPD submissions. | |
|  | | **3.2.10 Provide IAPD** | | The Contractor will develop and submit the IAPD used to seek reimbursement for costs of designing, developing, and implementing a system solution. This IAPD will be validated by key project staff and submitted to the OCSE with all supporting documents. The Contractor will use tools, templates and checklists defined in their proposal to identify and define the CSESR solution and maximize APD funding to be validated by key project staff. | |
| **3.3 Complete IAPD Submission and Approval** | | | | | |
|  | | **3.3.1 Prepare IAPD and Documentation for OCSE Submission** | | The Contractor will prepare the IAPD and all required documents for HSD review and approval. | |
|  | | **3.3.2 Revise IAPD and Documentation for Approval** | | The Contractor will update and finalize the IAPD and all related documentation based on feedback from all relevant parties, including but not limited to federal partners, DoIT, the HSD, and OCSE. | |
| **3.4 Complete IAPD Annual Updates for Submission and Approval** | | | | | |
|  | | **3.4.1 Prepare IAPD Update and Documentation for OCSE Submission** | | The Contractor will prepare an IAPD Update and all required documents for HSD review and approval, on an annual basis for the duration of the project. The annual updates must be completed by the deadlines set by the HSD and OCSE. | |
|  | | **3.3.2 Revise IAPD Update and Documentation for Approval** | | The Contractor will update and finalize the IAPD Update and all related documentation based on feedback from all relevant parties, including but not limited to federal partners, DoIT, the HSD, and OCSE. Updates will occur on an annual basis and must be completed by the deadlines set by the HSD and OCSE. | |

**Deliverable Number 4 RFP Development and Procurement Support-CSESR**

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| --- | --- | --- |
| **Deliverable Name** | **Due Date** | **Compensation** |
| CSESR RFP Development and Procurement Support | TBD | TBD |

| Task Item | Sub Tasks | Description |
| --- | --- | --- |
| **4.0** **RFP Development RFP(s) for CSESR** | | |
|  | **4.1 Develop DED** | The Contractor will review New Mexico RFP and contract requirements for IT procurements and develop a Deliverable Expectations Document for the CSESR RFP(s), including the draft contract and a list of appendices. |
| **4.2 Conduct Requirements Training/Orientation** | The Contractor will organize and conduct training and orientation sessions for HSD staff that will be participating in requirements gathering sessions. |
| **4.3 Capture Project Management and General Business Requirements** | The Contractor will organize and conduct information gathering sessions with appropriate HSD staff to identify and update the project management and general business requirements for the CSESR project. Following these sessions, the Contractor will work with HSD leadership to define the structure of the upcoming procurement, specifically whether the work will be procured using a single RFP and contract or whether the scope of work will be split into multiple RFPs/contracts. |
| **4.4 Capture Functional Requirements** | The Contractor will organize and conduct information gathering sessions with appropriate HSD staff to identify the functional requirements of the replacement CSES. |
| **4.5 Capture Technical Requirements** | The Contractor will organize and conduct information gathering sessions with appropriate HSD staff to identify the technical requirements of the replacement CSES. The technical requirements will include (but not limited to) network data lines, network equipment, servers, etc.  The requirements will include at the minimum, the objectives, strategy (including but not limited to criteria for member/case conversion and data archiving) standards, methods, procedures, roles responsibilities, legacy data requirements, data mapping and designs, data dictionary, exception handling, risks & mitigation strategies.  The Contractor will include database requirements that adhere to Federal and State of New Mexico policies and regulations for data security, reliability, integrity, and privacy. The database requirements structure, fields, files and tables will comply with all federal and state regulations and guidelines including: IRS Publication 1075 Safeguarding and monitoring of access to federal tax information (FTI); NIST Special Publication Risk Management Guide for Information Technology Systems; and Federal regulations including those listed in OCSE’s Certification Guide and Security Agreement: Section H. Security and Privacy. |
| **4.6 Capture Operational Requirements** | The Contractor will organize and conduct information gathering sessions with appropriate HSD staff to identify the operational requirements of the replacement CSES scope of work. |
| **4.7 Perform Requirements Validation** | The Contractor will validate all requirements to eliminate duplication and resolve conflicting requirements. The Contractor will work with HSD staff to finalize requirements for the RFP(s) and accompanying Design, Development, and Implementation (DDI), QA Services, Training Services, and additional contracts as needed. |
| **4.8 Develop Requirements Traceability Matrix** | The Contractor will develop a Requirements Traceability Matrix (RTM) that shall become an Appendix of the final RFP(s). |
| **4.9 Complete a Project Testing Plan** | The Contractor will develop and maintain a CSESR Project Testing Plan, for HSD review and approval. This plan will cover all testing to be completed and will provide definitions of each test type, e.g. unit testing, system testing, integration testing, user acceptance testing, load testing, etc. The plan will address who is leading the testing and how the project teams will participate and document testing the software, identify bugs, report test results, and incorporate software changes. This plan will include a test schedule, and how the Contractor will Review the projects' testing to define how they evaluate key portions of the System Unit, System Integration, and Regression testing efforts from a functional, business, and technical perspective. The Contractor will evaluate software artifacts, system documentation, test data, and test plans for Unit, Integration, System, and Regression testing for schedule, server test environments, tool configurations, script approach (development, execution and results); validation of test data; validation of requirements (mapped to appropriate milestone and scenario); verification that testing sufficiently addresses the full range of functional and non-functional operations across the system(s); documenting results and anomalies; and ongoing tracking of issues for resolution and ongoing assessment within future releases. The plan will include test plans that include all stakeholders including interface partners and other stakeholders. The Contractor will also report on the quality of the systems based on testing results.  A reference for using in creating this plan includes:  HHS 2020 Master Test Plan |
| **4.10 Develop Draft RFP(s) and Contract(s)** | The Contractor shall develop a draft RFP(s) for review and approval by HSD and, upon HSD approval, by the Department of Information Technology and the Office of Child Support Enforcement. The draft RFP(s) will include a draft contract, the RTM, and other appendices that will be useful to prospective contractors. |
| **4.11 Finalize RFP(s) and Contract(s)** | The RFP(s) and accompanying Design, Development, and Implementation (DDI), Quality Assurance (QA) Services, Training Services, and additional contracts as needed will be updated based on comments received from State and federal reviewers and prepared for released by the State. |

**Exhibit B**

**HIPAA Business Associate Agreement**

This Business Associate Agreement (“BAA”) is entered into between the **New Mexico Human Services Department** (“Department”) and [**NAME OF CONTRACTOR]**., hereinafter referred to as “Business Associate” , in order to comply with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) as amended by Health Information Technology for Economic and Clinical Health Act of 2009 (the “HITECH Act”), including the Standards of the Privacy of Individually Identifiable Health Information and the Security Standards at 45 CFR Parts 160 and 164.

**Business Associate**, by this ` has agreed to provide services to, or on behalf of, the Department which may involve the disclosure by the Department to the Business Associate (referred to in PSC 21-630-4000-00xx as “Contractor”) of Protected Health Information. This Business Associate Agreement is intended to supplement the obligations of the Department and the Contractor as set forth in PSC 21-630-4000-00xx and is hereby incorporated therein.

**The parties** acknowledge HIPAA, as amended by the HITECH Act, requires that Department and Business Associate enter into a written agreement that provides for the safeguarding and protection of all Protected Health Information which Department may disclose to the Business Associate, or which may be created or received by the Business Associate on behalf of the Department.

1. **Definition of Terms**
2. Breach. “Breach” has the meaning assigned to the term breach under 42 U.S.C. § 17921(1) [HITECH Act § 13400 (1)] and 45 CFR § 164.402.
3. Business Associate. "Business Associate", herein being the same entity as the Contractor in the same or Related Agreement, shall have the same meaning as defined under the HIPAA standards as defined below, including without limitation Contractor acting in the capacity of a Business Associate as defined in 45 CFR § 160.103.
4. Department. "Department" shall mean in this agreement the State of New Mexico Human Services Department.
5. Individual. "Individual" shall have the same meaning as in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502 (g).
6. HIPAA Standards. “HIPAA Standards” shall mean the legal requirements as set forth in the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act of 2009, and the regulations and policy guidance, as each may be amended over time, including without limitation:

i. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information in 45 CFR Part 160 and Part 164, Subparts A and E.

ii. Breach Notification Rule. “Breach Notification” shall mean the Notification in the case of Breach of Unsecured Protected Health Information, 45 CFR Part 164, Subparts A and D

iii. Security Rule. “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, Subparts A and C, including the following:

1. Security Standards. “Security Standards” hereinafter shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.306.
2. Administrative Safeguards. “Administrative Safeguards” shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.308.
3. Physical Safeguards. “Physical Safeguards” shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.310.
4. Technical Safeguards. “Technical Safeguards” shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.312.
5. Policies and Procedures and Documentation Requirements. “Policies and Procedures and Documentation Requirements” shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.316.
6. Protected Health Information. "Protected Health Information" or “PHI” shall have the same meaning as in 45 CFR §160.103, limited to the information created, maintained, transmitted, or received by Business Associate, its agents, or subcontractors from or on behalf of Department.
7. Required by Law. "Required by Law" shall have the same meaning as in 45 CFR §164.103.
8. Secretary. "Secretary" shall mean the Secretary of the U. S. Department of Health and Human Services, or his or her designee.
9. Covered Entity. "Covered Entity " shall have the meaning as the term “covered entity” defined at 45 CFR §160.103, and in reference to the party to this BAA, shall mean the State of New Mexico Human Services Department.

Terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms in the HIPAA Standards. All terms used and all statutory and regulatory references shall be as currently in effect or as subsequently amended.

**2. Obligations and Activities of Business Associate**

1. General Rule of PHI Use and Disclosure. TheBusiness Associate may use or disclose PHI it creates for, receives from or on behalf of, the Department to perform functions, activities or services for, or on behalf of, the Department in accordance with the specifications set forth in this BAA and in this PSC 21-630-4000-00xx; provided that such use or disclosure would not violate the HIPAA Standards if done by the Department; or as Required By Law.

i. Any disclosures made by the Business Associate of PHI must be made in accordance with HIPAA Standards and other applicable laws.

ii. Notwithstanding any other provision herein to the contrary, the Business Associate shall limit uses and disclosures of PHI to the “minimum necessary,” as set forth in the HIPAA Standards.

1. The Business Associate agrees to use or disclose only a “limited data set” of PHI as defined in the HIPAA Standards while conducting the authorized activities herein and as delineated in PSC 21-630-4000-00xx, except where a “limited data set” is not practicable in order to accomplish those activities.
2. Except as otherwise limited by this BAA or PSC21-630-4000-00xx**,** Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
3. Except as otherwise limited by this BAA or PSC 21-630-4000-00xx, Business Associate may disclose PHI for the proper management and administration of the Business Associate provided that the disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
4. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR § 164.502(j).
5. Business Associate may use PHI to provide Data Aggregation services to the Department as permitted by the HIPAA Standards.
6. Safeguards. The Business Associate agrees to implement and use appropriate Security, Administrative, Physical and Technical Safeguards, and comply where applicable with subpart C of 45 C.F.R. Part 164, to prevent use or disclosure of PHI other than as required by law or as provided for by this BAA or PSC 21-630-4000-00xx. Business Associate shall identify in writing upon request from the Department all of those Safeguards that it uses to prevent impermissible uses or disclosures of PHI.
7. Restricted Uses and Disclosures. The Business Associate shall not use or further disclose PHI other than as permitted or required by this BAA or PSC 21-630-4000-00xx, the HIPAA Standards, or otherwise as permitted or required by law. The Business Associate shall not disclose PHI in a manner that would violate any restriction which has been communicated to the Business Associate.
8. The Business Associate shall not directly or indirectly receive remuneration in exchange for any of the PHI unless a valid authorization has been provided to the Business Associate that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving the PHI of that individual, except as provided for under the exceptions listed in 45 C.F.R. §164.502 (a)(5)(ii)(B)(2).
9. Unless approved by the Department, Business Associate shall not directly or indirectly perform marketing to individuals using PHI.
10. Agents. The Business Associate shall ensure that any agents that create, receive, maintain or transmit PHI on behalf of Business Associate, agree in writing to the same restrictions and conditions that apply to the Business Associate with respect to PHI, in accordance with 45 C.F.R. § 164.502(e)(1)(ii), and shall make that agreement available to the Department upon request. Upon the Business Associate’s contracting with an agent for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement.
11. Availability of Information to Individuals and the Department. Business Associate shall provide, at the Department’s request, and in a reasonable time and manner, access to PHI in a Designated Record Set (including an electronic version if required) to the Department or, as directed by the Department, to an Individual in order to meet the requirements under 45 CFR § 164.524. Within three (3) business days, Business Associate shall forward to the Department for handling any request for access to PHI that Business Associate receives directly from an Individual. If requested by the Department, the Business Associate shall make such information available in electronic format as required by the HIPAA Standards to a requestor of such information and shall confirm to the Department in writing that the request has been fulfilled.
12. Amendment of PHI. In accordance with 45 CFR § 164.526, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Department directs or agrees to, at the request of the Department or an Individual, to fulfill the Department’s obligations to amend PHI pursuant to the HIPAA Standards. Within three (3) business days, Business Associate shall forward to the Department for handling any request for amendment to PHI that Business Associate receives directly from an Individual.
13. Internal Practices. Business Associate agrees to make internal practices, books and records, including policies, procedures and PHI, relating to the use and disclosure of PHI, available to the Department or to the Secretary within seven (7) days of receiving a request from the Department or receiving notice of a request from the Secretary, for purposes of the Secretary’s determining the Department’s compliance with the Privacy Rule.
14. PHI Disclosures Recordkeeping. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for the Department to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with the HIPAA Standards and 45 CFR § 164.528. Business Associate shall provide such information to the Department or as directed by the Department to an Individual, to permit the Department to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by the Department. Within three (3) business days, Business Associate shall forward to the Department for handling any accounting request that Business Associate directly receives from an individual.
15. PHI Disclosures Accounting. Business Associate agrees to provide to the Department or an Individual, within seven (7) days of receipt of a request, information collected in accordance with Section 2 (h) of this Agreement, to permit the Department to respond to a request for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
16. Security Rule Provisions. As required by 42 U.S.C. § 17931 (a) [HITECH Act Section 13401(a)] , the following sections as they are made applicable to business associates under the HIPAA Standards, shall also apply to the Business Associate: 1) Administrative Safeguards; 2) Physical Safeguards; 3) Technical Safeguards; 4) Policies and Procedures and Documentation Requirements; and 5) Security Standards. Additionally, the Business Associate shall either implement or properly document the reasons for non-implementation of all safeguards in the above cited sections that are designated as “addressable” as such are made applicable to Business Associates pursuant to the HIPAA Standards.
17. Civil and Criminal Penalties. Business Associate agrees that it will comply with the HIPAA Standards as applicable to Business Associates and acknowledges that it may be subject to civil and criminal penalties for its failure to do so.
18. Performance of Covered Entity's Obligations. To the extent the Business Associate is to carry out the Department 's obligations under the HIPAA Standards, Business Associate shall comply with the requirements of the HIPAA Standards that apply to the Department in the performance of such obligations.
19. Subcontractors. The Business Associate shall ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate, agree in writing to the same restrictions and conditions that apply to the Business Associate with respect to PHI, with 45 C.F.R. § 164.502(e)(1)(ii), and shall make such information available to the Department upon request. Upon the Business Associate’s contracting with an agent for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement. Upon the Business Associate’s contracting with a subcontractor for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement.

**3. Business Associate Obligations for Notification, Risk Assessment, and Mitigation**

During the term of this BAA or PSC 21-630-4000-00xx, the Business Associate shall be required to perform the following pursuant to the Breach Notification Rule regarding Breach Notification, Risk Assessment and Mitigation:

Notification

1. Business Associate agrees to report to the Department Contract Manager orHIPAA Privacy and Security Officer any use or disclosure of PHI not provided for by this BAA or PSC 21-630-4000-00xx, and HIPAA Standards, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, as soon as it (or any employee or agent) becomes aware of the Breach, and in no case later than three (3) business days after it (or any employee or agent) becomes aware of the Breach, except when a government official determines that a notification would impede a criminal investigation or cause damage to national security.
2. Business Associate shall provide the Department with the names of the individuals whose unsecured PHI has been, or is reasonably believed to have been, the subject of the Breach and any other available information that is required to be given to the affected individuals, as set forth in 45 CFR §164.404(c), and, if requested by the Department, provide information necessary for the Department to investigate promptly the impermissible use or disclosure. Business Associate shall continue to provide to the Department information concerning the Breach as it becomes available to it and shall also provide such assistance and further information as is reasonably requested by the Department.

Risk Assessment

1. When Business Associate determines whether an impermissible acquisition, use or disclosure of PHI by an employee or agent poses a low probability of the PHI being compromised, it shall document its assessment of risk in accordance with 45 C.F.R. § 164.402 (in definition of “Breach”, ¶ 2) based on at least the following factors: (i) the nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used the protected health information or to whom the disclosure was made; (iii) whether the protected health information was actually acquired or viewed; and (iv) the extent to which the risk to the protected health information has been mitigated. Such assessment shall include: 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons documenting the determination of risk of the PHI being compromised. When requested by the Department, Business Associate shall make its risk assessments available to the Department.
2. If the Department determines that an impermissible acquisition, access, use or disclosure of PHI, for which one of Business Associate’s employees or agents was responsible, constitutes a Breach, and if requested by the Department, Business Associate shall provide notice to the individuals whose PHI was the subject of the Breach. When requested to provide notice, Business Associate shall consult with the Department about the timeliness, content, and method of notice, and shall receive the Department’s approval concerning these elements. The cost of notice and related remedies shall be borne by Business Associate. The notice to affected individuals shall be provided as soon as reasonably possible and in no case later than 60 calendar days after Business Associate reported the Breach to the Department.

Mitigation

1. In addition to the above duties in this section, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI, by Business Associate in violation of the requirements of this Agreement, the Related Agreement or the HIPAA Standards. Business Associate shall draft and carry out a plan of corrective action to address any incident of impermissible use or disclosure of PHI. If requested by the Department, Business Associate shall make its mitigation and corrective action plans available to the Department.
2. The notice to affected individuals shall be written in plain language and shall include, to the extent possible, 1) a brief description of the Breach, 2) a description of the types of Unsecured PHI that were involved in the Breach, 3) any steps individuals can take to protect themselves from potential harm resulting from the Breach, 4) a brief description of what the Business Associate and the Department are doing to investigate the Breach, to mitigate harm to individuals and to protect against further Breaches, and 5) contact procedures for individuals to ask questions or obtain additional information, as set forth in 45 CFR §164.404(c).

Notification to Clients

1. Business Associates shall notify individuals of Breaches as specified in 45 CFR §164.404(d) (methods of individual notice). In addition, when a Breach involves more than 500 residents of a State or jurisdiction, Business Associate shall, if requested by the Department, notify prominent media outlets serving such location(s), following the requirements set forth in 45 CFR §164.406.

**4. Obligations of the Department** **to Inform Business Associate of Privacy Practices and Restrictions**

1. The Department shall notify Business Associate of any limitation(s) in the Department’s Notice of Privacy Practices, implemented in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
2. The Department shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
3. The Department shall notify Business Associate of any restriction in the use or disclosure of PHI that the Department has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
4. The Department shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Department.
   1. **Term and Termination**

a. Term. This BAA terminates concurrently with PSC 21-630-4000-00xx, except that obligations of Business Associate under this BAA related to final disposition of PHI in this Section 5 shall survive until resolved as set forth immediately below.

b. Disposition of PHI upon Termination. Upon termination of this PSC 21-630-4000-00xx and BAA for any reason, Business Associate shall return or destroy all PHI in its possession and shall retain no copies of the PHI. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to the Department notification of the conditions that make return or destruction of PHI not feasible. Upon mutual agreement of the Parties that return or destruction of the PHI is infeasible, Business Associate shall agree, and require that its agents, affiliates, subsidiaries and subcontractors agree, to the extension of all protections, limitations and restrictions required of Business Associate hereunder, for so long as the Business Associate maintains the PHI.

c. If Business Associate breaches any material term of this BAA, the Department may either:

i. provide an opportunity for Business Associate to cure the Breach and the Department may terminate this PSC 21-630-4000-00xx and BAA without liability or penalty in accordance with Article 4, Termination, of PSC 21-630-4000-00xx, if Business Associate does not cure the breach within the time specified by the Department; or,

ii. immediately terminate this PSC 21-630-4000-00xx without liability or penalty if the Department determines that cure is not reasonably possible; or,

iii. if neither termination nor cure are feasible, the Department shall report the breach to the Secretary.

The Department has the right to seek to cure any breach by Business Associate and this right, regardless of whether the Department cures such breach, does not lessen any right or remedy available to the Department at law, in equity, or under this BAA or PSC 21-630-4000-00xx, nor does it lessen Business Associate’s responsibility for such breach or its duty to cure such breach.

**6. Penalties and Training.**

Business Associate understands and acknowledges that violations of this BAA or PSC 21-630-4000-00xx may result in notification by the Department to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by the Department, Business Associate shall participate in training regarding use, confidentiality, and security of PHI.

**7. Miscellaneous**

1. Interpretation. Any ambiguity in this BAA, or any inconsistency between the provisions of this BAA or PSC 21-630-4000-00xx, shall be resolved to permit the Department to comply with the HIPAA Standards.
2. Business Associate’s Compliance with HIPAA. The Department makes no warranty or representation that compliance by Business Associate with this BAA or the HIPAA Standards will be adequate or satisfactory for Business Associate’s own purposes or that any information in Business Associate’s possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

c. Change in Law. In the event there are subsequent changes or clarifications of statutes, regulations or rules relating to this BAA or PSC 21-630-4000-00xx, the Department shall notify Business Associate of any actions it reasonably deems necessary to comply with such changes, and Business Associate shall promptly take such actions. In the event there is a change in federal or state laws, rules or regulations, or in the interpretation of any such laws, rules, regulations or general instructions, which may render any of the material terms of this BAA unlawful or unenforceable, or which materially affects any financial arrangement contained in this BAA, the parties shall attempt amendment of this BAA to accommodate such changes or interpretations. If the parties are unable to agree, or if amendment is not possible, the parties may terminate the BAA and PSC 21-630-4000-00xx pursuant to its termination provisions.

d. No Third Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Department, Business Associate and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

1. Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any agents, affiliates, subsidiaries, subcontractors or workforce members assisting Business Associate in the fulfillment of its obligations under this BAA and PSC 21-630-4000-00xx available to the Department, at no cost to the Department, to testify as witnesses or otherwise in the event that litigation or an administrative proceeding is commenced against the Department or its employees based upon claimed violation of the HIPAA standards or other laws relating to security and privacy, where such claimed violation is alleged to arise from Business Associate’s performance under this BAA or PSC 21-630-4000-00xx, except where Business Associate or its agents, affiliates, subsidiaries, subcontractors or employees are named adverse parties.
2. Additional Obligations. Department and Business Associate agree that to the extent not incorporated or referenced in any Business Associate Agreement between them, other requirements applicable to either or both that are required by the HIPAA Standards, those requirements are incorporated herein by reference.

**Exhibit C**

**Key Personnel**

The following table, per Article 12 – CONTRACTOR PERSONNEL, lists key personnel:

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| --- | --- |
| **Position** | **Name** |
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**Exhibit D**

**Service Level Agreements and Liquidated Damages**

The Procuring agency will provide the Contractor with a cure period of 10 business days prior to assessing LDs. Any damages will be leveraged by reducing the Contractor’s invoiced amount for the specific task by the amount of the LD for the month in which the failure(s) occurred or in the next invoicing period. Written notification of failure to meet a Service-Level Agreement (SLA) identified below related to this contract will be given by Procuring Agency’s Contract Manager when a failure resulting in a potential LD occurs.

| **SLA Name** | **SLA Description** | **Potential LD** |
| --- | --- | --- |
| Key Personnel | Key personnel commitments contained in the SOW for all phases of the contract shall not be changed without a 14-business day advanced notice and prior written approval of the Procuring Agency Contract Manager, unless the changes are due to the death, disability, resignation, termination, promotion, or military recall of any key individual.  If an individual listed in the Contractor’s quote becomes unavailable prior to award, the Procuring Agency shall be notified immediately and a replacement of equal or greater qualifications “shall be in place prior to Day One of the contract start date, and/or within thirty (30) calendar days of notifying the Government, whichever is less.  The replacement individual shall be approved by the Procuring agency, or designee, prior to placement on the project by the Contractor. Such approval will not be unreasonably withheld. | The Procuring Agency may assess up to one thousand ($1,000.00) in reduction in compensation, per business day, for each key personnel after the initial thirty (30) calendar days allowed for Contractor to identify an acceptable replacement for the key personnel and an acceptable replacement has not been provided. |
| Project Management Deliverables | The Contractor shall provide the Deliverables, per DED requirements, by the due dates as set forth in the then approved project schedule or as otherwise mutually agreed upon. | HSD may assess one thousand dollars ($1,000) per business day thereafter until the date that Deliverable is delivered to and approved by HSD. |