



State of New Mexico
General Services Department
Purchasing Division

Contract Amendment Cover Page

Awarded Vendor: 0000070748 Prometric, LLC 1501 South Clinton Street Baltimore, MD 21224 Email: <u>Daniel.Samila@prometric.com</u> Telephone No. <u>(609) 954-4172</u>
Ship To: NM Human Services Department 1474 Rodeo Road Santa Fe NM 87505
Invoice: Same as Ship To
For questions regarding this agreement please contact: Andrea McNeilley (505) 827-3195

Contract Number: 00-63000-20-38174

Amendment No.: One

Term: July 8, 2020 - June 30, 2024

Procurement Specialist: Yuliasuti Wulandari

Telephone No.: (505) 469-2248

Email: Yuliasuti.Wulandari@gsd.nm.gov

Title: Long Term Care Nurse Aide Competency Evaluation Program

This amendment is to be attached to the respective Contract and become a part thereof.

This amendment is issued to reflect the following effective immediately:

Amend Section 1. Scope of Work as attached.

Except as modified by this amendment, the provisions of the Contract shall remain in full force and effect.

MS *MU*

**State of New Mexico
Human Services Department**

General Services Contract Amendment
SPD# 00-63000-20-38174
Amendment No.: One

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **Human Services Department** hereinafter referred to as the "HSD," and **Prometric, LLC**, hereinafter referred to as the "Contractor".

The purpose of this Amendment is to allow Nurse Aide Registry data for each successfully certified nurse aide to include a Social Security Number (SSN) OR Individual Taxpayer Identification Number (ITIN),

Unless otherwise set out below, all other provisions of the above referenced agreement remain in full effect and it is mutually agreed between the parties that the following provisions of that agreement are amended as follows:

Section1, Scope of Work, is amended to read as follows:

1. Scope of Work

The Contractor shall perform all services detailed in Exhibit A, Amended Scope of Work, attached to this Agreement, and incorporated herein by reference.

All other sections of SA 00-63000-20-38174, as amended, remain the same.

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 shall be deemed to be a true and original signature hereunder.

By: *Kari Armijo* Date: 9/28/2023
Kari Armijo, Acting Cabinet Secretary
Human Services Department

By: *Natalie Fisher* Date: 9/14/2023
Natalie Fisher, Corporate Counsel
Prometric, LLC

By: *Carolee A. Graham* Date: 9/20/2023
Carolee Graham, CFO
Human Services Department

Approved for legal sufficiency:

By: *John Emery* Date: 9/27/2023
John Emery, General Counsel
Human Services Department

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

BTIN: 03-120264-00-0

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

By: *Ann Marie Lucero* Date: 9/14/2023
Taxation & Revenue Department

This Agreement has been approved by the State Purchasing Agent:

By: *Dorothy Mendoca* Date: 9/28/2023
Dorothy Mendoca
State Purchasing Agent
State of New Mexico

Exhibit A

Amended Scope of Work

B. Details

6. Test Data Reporting

The Contractor shall establish Nurse Aide Registry data for each successfully certified nurse aide, to include the following data:

- a) Individual's full name
- b) Home address
- c) Home phone number
- d) Date of birth
- e) Social Security Number (SSN) or **Individual Taxpayer Identification Number (ITIN)**
- f) Current employer and employer's Medicaid provider number
- g) Date of hire
- h) Date of employment termination, if applicable
- i) Date competency evaluation completed, and outcome (pass/fail) of the evaluation (dates for both written and clinical skills tests)
- j) Certification number established by the contractor
- k) Most recent recertification data, if applicable
- l) Nurse aide status on the registry (active, inactive)
- m) Date of last data update, and a log of the user responsible for that action
- n) An active/inactive record designation
- o) Reciprocity/endorsement from State of (name of State from which reciprocity was granted)
- p) In-service education hours

Certificate Of Completion

Envelope Id: 23FFAD4F232941B4B6E9C4501599CFF1
 Subject: 00-63000-20-38174 Long Term Care Nurse Aide Competency Evaluation Program
 Source Envelope:
 Document Pages: 4 Signatures: 6
 Certificate Pages: 6 Initials: 2
 AutoNav: Enabled
 EnvelopeId Stamping: Enabled
 Time Zone: (UTC-07:00) Mountain Time (US & Canada)

Status: Completed

 Envelope Originator:
 Natalie Martinez
 1100 S Saint Francis Dr
 Santa Fe, NM 87502
 Natalie.Martinez1@gsd.nm.gov
 IP Address: 164.64.62.10

Record Tracking

Status: Original
 9/14/2023 11:06:42 AM
 Security Appliance Status: Connected
 Storage Appliance Status: Connected
 Holder: Natalie Martinez
 Natalie.Martinez1@gsd.nm.gov
 Pool: StateLocal
 Pool: GSD

Location: DocuSign

 Location: DocuSign

Signer Events

Michael Saavedra
 michael.saavedra@gsd.nm.gov
 New Mexico General Services
 Security Level: Email, Account Authentication (None), Login with SSO

Signature

MS

 Signature Adoption: Pre-selected Style
 Using IP Address: 164.64.62.10

Timestamp

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 Viewed: 9/14/2023 11:37:26 AM
 Signed: 9/14/2023 11:38:09 AM

Electronic Record and Signature Disclosure:
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Natalie Fisher
 Natalie.Fisher@prometric.com
 Security Level: Email, Account Authentication (None)

Natalie Fisher

 Signature Adoption: Drawn on Device
 Using IP Address: 163.116.157.98

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 Signed: 9/14/2023 12:41:46 PM

Electronic Record and Signature Disclosure:
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 ID: 425f2f06-ba18-4ce0-aa3a-58e5268e083f

Ann Marie Lucero
 annmarie.lucero@tax.nm.gov
 District Mgr.
 State of New Mexico Taxation and Revenue
 Signing Group: 33300 - CRS Verification
 Security Level: Email, Account Authentication (None)

Ann Marie Lucero

 Signature Adoption: Pre-selected Style
 Using IP Address: 164.64.133.192

Sent: 9/14/2023 12:41:47 PM
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Electronic Record and Signature Disclosure:
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 ID: 4e14c1ed-cee7-47c4-9f77-dc41a9cef910





Carolee A. Graham
 Carolee.Graham@hsd.nm.gov
 State of New Mexico, Dept of Information Technology
 Security Level: Email, Account Authentication (None)

Carolee A. Graham

 Signature Adoption: Pre-selected Style
 Using IP Address: 174.240.23.199
 Signed using mobile

Sent: 9/14/2023 1:19:34 PM
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 Signed: 9/20/2023 3:00:29 PM

Electronic Record and Signature Disclosure:

Signer Events	Signature	Timestamp
<p>Accepted: 7/6/2022 9:28:45 AM ID: b5f04dcc-a430-41e5-a506-fb8229a2ae44</p> <p>John Emery johnr.emery@hds.nm.gov State of New Mexico, Dept of Information Technology Signing Group: 63000 - General Counsel Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 9/29/2020 11:37:52 AM ID: 5ef04f2e-e3e8-4ad7-9305-df252380c92b</p>	 <p>Signature Adoption: Drawn on Device Using IP Address: 164.64.236.225</p>	<p>Sent: 9/20/2023 3:00:31 PM Viewed: 9/27/2023 10:51:21 AM Signed: 9/27/2023 10:51:46 AM</p>
<p>Kari Armijo kari.armijo@hds.nm.gov Acting Secretary State of New Mexico, Dept of Information Technology Signing Group: 63000 - Cabinet Secretary Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 2/3/2023 9:10:10 AM ID: 4566b634-525c-4a69-9a3d-cbcd2a9477f8</p>	 <p>Signature Adoption: Pre-selected Style Using IP Address: 164.64.236.225</p>	<p>Sent: 9/27/2023 10:51:48 AM Viewed: 9/28/2023 1:36:47 PM Signed: 9/28/2023 1:36:52 PM</p>
<p>Dorothy Mendonca dorothy.mendonca@gsd.nm.gov SPD Division Director / State Purchasing Agent General Services Department Signing Group: 35000 - State Purchasing Agent Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 4/14/2023 7:24:59 AM ID: 51f6380f-50f7-4227-afb5-572b373dfb7c</p>	 <p>Signature Adoption: Pre-selected Style Using IP Address: 164.64.62.10</p>	<p>Sent: 9/28/2023 1:36:54 PM Viewed: 9/28/2023 1:42:41 PM Signed: 9/28/2023 1:43:19 PM</p>
<p>Natalie Martinez natalie.martinez1@gsd.nm.gov New Mexico General Services Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	 <p>Signature Adoption: Pre-selected Style Using IP Address: 164.64.62.10</p>	<p>Sent: 9/28/2023 1:43:21 PM Viewed: 10/2/2023 1:18:01 PM Signed: 10/2/2023 1:18:09 PM</p>

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	9/14/2023 11:36:43 AM
Envelope Updated	Security Checked	9/14/2023 11:51:35 AM
Envelope Updated	Security Checked	9/15/2023 4:34:48 PM
Envelope Updated	Security Checked	9/15/2023 4:34:48 PM
Certified Delivered	Security Checked	10/2/2023 1:18:01 PM
Signing Complete	Security Checked	10/2/2023 1:18:09 PM
Completed	Security Checked	10/2/2023 1:18:09 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

A. ELECTRONIC RECORD AND SIGNATURE DISCLOSURE (ERSD)

From time to time, New Mexico General Services Department (GSD), on behalf of the State of New Mexico (SONM), may be required by law to provide you with certain written notices or disclosures. Stated below are the terms and conditions for GSD's providing you such notices and disclosures electronically through the DocuSign system. Please read this information carefully. If you are able to access this information electronically and agree to **this Electronic Record and Signature Disclosure (ERSD)**, please confirm your agreement by selecting the check-box next to "I agree to use electronic records and signatures" before clicking "CONTINUE" within the DocuSign system.

B. Obtaining paper copies

At any time up to twenty (20) calendar days following your use of DocuSign to electronically sign a document, you may request a paper copy of any record provided or made available electronically to you by GSD. You will have the ability to download and print documents SONM sends you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a twenty (20) calendar day period after such documents are first sent to you. Following the twenty (20) day period, if you want GSD to send you paper copies of any such documents from GSD's office, you will be charged a \$1.00 per-page fee plus postage. You may request delivery of such paper copies from GSD by following the procedure stated in Section H, below.

C. Withdrawing your consent

If you decide to receive notices and disclosures from GSD electronically, you may at any time change your mind and inform GSD you want to receive required notices and disclosures only in paper format. The procedure concerning how you may inform GSD of your decision to receive future notices and disclosures in paper format as well as withdraw your consent to receive notices and disclosures electronically is stated in Section D, immediately below.

D. Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed with which GSD will be able to complete certain steps in specific transactions and deliver paper copies to you. GSD will need: (1) to send the required notices or disclosures to you in paper format; and (2) wait until GSD receives your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from SONM or to electronically sign documents generated and sent to you from SONM.

E. All notices and disclosures will be sent to you electronically

Unless you inform GSD otherwise according to these procedures, GSD will electronically provide you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements and other documents that are required to be provided or made available to you during the course of your electronic signature relationship with SONM. To reduce the possibility of inadvertent non-receipt, GSD prefers to provide all required notices and disclosures by the same method and to the same email or physical address that you furnish to GSD. Thus, you may receive the disclosures and notices electronically or in paper form. If you do not agree with this procedure, please inform GSD according to the procedures stated in Section I, below. Please also refer to Section D, immediately above, which states the consequences resulting from your declination of electronic delivery of notices and disclosures.

F. How to contact GSD:

You may inform General Services Department (GSD) of any changes you select regarding State Purchasing Division's (SPD) electronic communications with you, to request paper copies of certain information from SPD, and to withdraw your prior consent to receive notices and disclosures electronically by emailing your request(s) to SPD at: GSD.SPInfo@state.nm.us

G. To advise SPD of your new email address

To inform SPD of a change in the email address to which SPD sends you notices and disclosures electronically, you must send an email to SPD at GSD.SPInfo@state.nm.us and in the body of such request you must include your previous and new email addresses.

H. To request paper copies from SPD

To request delivery of paper copies of electronic notices and disclosures that DocuSign and/or SPD have previously provided to you, you must send an email to SPD at GSD.SPInfo@state.nm.us and in the body of your email request state your email address, full name, mailing address, and telephone number. SPD will charge you a \$1.00 per page copy fee plus postage.

I. To withdraw your consent with SPD

To inform SPD that you no longer wish to receive notices and disclosures in electronic format you may:

(1) Decline to sign a document from within a signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may:

(2) Send SPD an email to GSD.SPInfo@state.nm.us and in the body of your request state your email address, full name, mailing address, and telephone number.

J. Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current DocuSign system requirements may be found at:

<https://support.docusign.com/guides/signer-guide-signing-system-requirements>

K. Acknowledging your access and consent to receive and sign documents electronically

To confirm that you are able to electronically access the information contained in this Electronic Record and Signature Disclosure (ERSD), please confirm that you have: (1) read this ERSD, and either: (2) you are able to print on paper or electronically save this ERSD for your future reference and access; or (3) you are able to email this ERSD to an email address where you will be able to print this ERSD on paper and/or save this ERSD for your future reference and access. Further, if you consent to receiving notices and disclosures from DocuSign and/or SPD exclusively in electronic format, then select the check-box next to “I agree to use electronic records and signatures,” before you click “CONTINUE” within the DocuSign system.

By selecting the check-box next to “I agree to use electronic records and signatures,” you confirm that:

- You have read this Electronic Record and Signature Disclosure (ERSD); and
- You can print this ERSD on paper, or you can save and/ or send this ERSD to a location where you can print this ERSD, for your future reference and access; and
- Until or unless you notify SPD as stated in this ERSD, you consent to exclusively receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SPD during the course of your electronic signature relationship with SPD.



**State of New Mexico
General Services Department
State Purchasing Division**

Contract Cover Page

Awarded Vendor:
0000070748
Prometric, LLC
1501 South Clinton Street
Baltimore, MD 21224

Email: Daniel.samila@prometric.com
Telephone No.: (609) 954-4172

Contract Number: **00-63000-20-38174**

Payment Terms: **See Contract**

F.O.B.: **See Contract**

Delivery: **See Contract**

Ship To:
New Mexico Human Services Department
1474 Rodeo Road
Santa Fe, NM 87505

Procurement Specialist: **Theresa Mendibles** *TM*

Telephone No.: **(505) 827-0499**

Email: **theresa.mendibles@state.nm.us**

Invoice:
Same as Ship To

For questions regarding this contract please contact:
Andrea McNeilley (505)827-3195

Title: Long Term Care Nurse Aide Competency Evaluation Program

Term: July 8, 2020 thru June 30, 2024

The attached Contract is made subject to the “terms and conditions” as indicated.

STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT
SERVICES AGREEMENT

SPD# 00-63000-20-38174

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **Human Services Department**, hereinafter referred to as the "HSD" or the "Agency", and **Prometric, LLC**, hereinafter referred to as the "Contractor", and is effective as of the date set forth below upon which it is executed by the State Purchasing Department (SPD).

IT IS AGREED BETWEEN THE PARTIES:

Definitions

- A. "Agreement Administrator" means the individual appointed by the SPA to administer the Price Agreement.
- B. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.
- C. "Local public body" means every political subdivision of the state and the agencies, instrumentalities and institutions thereof.
- D. "New Mexico State Purchasing Agent" or "NMSPA" means the purchasing agent for the State of New Mexico or a designated representative. May be used interchangeably with "State Purchasing Agent" or "SPA".
- E. "Procuring agency" means any state agency or local public body that chooses to procure products or services under this Agreement. Other units of government, including cities, counties, school districts, institutions of higher education and other jurisdictions not subject to the procurement authority of the SPA, are authorized to buy from this Agreement.
- F. "You" and "your" refers to Prometric, LLC. "We," "us" or "our" refers to the State of New Mexico, agencies, commissions institutions, political sub-divisions and local public bodies allowed by law to participate in the Agreement and whose accounts are created under this Agreement.

1. Scope of Work.

The Contractor shall perform all services detailed in Exhibit A, Scope of Work, attached to this Agreement and incorporated herein by reference.

2. Compensation.

- A. The HSD shall pay to the Contractor in full payment for services satisfactorily performed such compensation not to exceed five hundred twenty five thousand eight hundred eighty

seven dollars and twenty five cents (\$525,887.25) including gross receipts tax, in accordance with Exhibit B. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the HSD when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

The total amount payable to the Contractor under this Agreement shall not exceed one hundred fifteen thousand forty eight dollars and fifty cents (\$115,048.50) including gross receipts tax, in FY21.

The total amount payable to the Contractor under this Agreement shall not exceed one hundred thirty four thousand one hundred fifty three dollars and twenty five cents (\$134,153.25) including gross receipts tax, in FY22.

The total amount payable to the Contractor under this Agreement shall not exceed one hundred thirty six thousand nine hundred forty six dollars and twenty five cents (\$136,946.25) including gross receipts tax, in FY23.

The total amount payable to the Contractor under this Agreement shall not exceed one hundred thirty nine thousand seven hundred thirty nine dollars and twenty five cents (\$139,739.25) including gross receipts tax, in FY24.

- B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the HSD. All invoices **MUST BE** received by the HSD no later than ten (10) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date **WILL NOT BE PAID**.
- C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the HSD finds that the services are not acceptable, within thirty (30) days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services and outlining steps the Contractor may take to provide remedial action. Upon certification by the HSD that the services have been received and accepted, payment shall be tendered to the Contractor within thirty (33) days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the HSD shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

D. All payments under this Agreement are subject to the following:

Acceptance - In accordance with Section 13-1-158 NMSA 1978, the agency shall determine if the product or services provided meet specifications. No payment shall be made for any products or services until the products or services have been accepted in writing by the procuring agency. Unless otherwise agreed upon between the procuring agency and the Contractor, within fifteen (15) days from the date the procuring agency receives written notice from the Contractor that payment is requested for services or within thirty (30) days from the receipt of products, the procuring agency shall issue a written certification of complete or partial acceptance or rejection of the products or services. Unless the procuring agency gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.

Late Charges: If the State fails to pay as required above, the Contractor may assess a late fee on the unpaid balance of more than sixty (60) days. Late fees will be assessed at a rate based upon the billing address of each State or Procuring Agency account; therefore, the periodic (monthly) late fee rate shall be 1.5% and the corresponding Annual Percentage Rate for the State of New Mexico will be 18%. No late fee on new purchases will be assessed during the billing cycle when the purchase was made.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE STATE PURCHASING AGENT. This Agreement shall begin on the date approved by the State Purchasing Agent and terminate on 6/30/2024, unless terminated pursuant to paragraph 5 (Termination), or paragraph 6 (Appropriations). In accordance with NMSA 1978, § 13-1-150, no contract term for a general services contract, including extensions and renewals, shall exceed four (4) years, except as set forth in NMSA 1978, § 13-1-150.

4. Default and Force Majeure.

The State reserves the right to cancel all or any part of any orders placed under this contract without cost to the State, if the Vendor fails to meet the provisions of this contract and, except as otherwise provided herein, to hold the Vendor liable for any excess cost occasioned by the State due to the Vendor's default. The Vendor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Vendor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery scheduled. The rights and remedies of the State provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this contract.

5. Termination.

- A. Either HSD or the Contractor, may terminate this Agreement upon a thirty (30) day written notice to the other party, in accordance with 7 CFR 247.4.
- B. Notice: HSD Opportunity to Cure.
- 1) Except as otherwise provided in Paragraph (4)(B)(3), the HSD shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.
 - 2) Contractor shall give HSD written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the HSD's material breaches of this Agreement upon which the termination is based and (ii) state what the HSD must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the HSD does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the HSD does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.
 - 3) Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the HSD; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, "Appropriations", of this Agreement.
- C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the HSD's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE HSD'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*
- D. Termination Management. Immediately upon receipt by either the HSD or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the HSD; 2) comply with all directives issued by the HSD in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the HSD shall direct for the protection, preservation, retention or transfer of all property titled to the HSD and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor

with contract funds shall become property of the HSD upon termination and shall be submitted to the HSD as soon as practicable.

6. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico or the United States Congress for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature or the United States Congress, this Agreement shall terminate immediately upon written notice being given by the HSD to the Contractor. The HSD's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the HSD proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

7. Status of Contractor.

The Contractor, and Contractor's agents and employees, are independent Contractors for the HSD and are not employees of the State of New Mexico. The Contractor, and Contractor's agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by the Contractor for income tax purposes, including without limitation, self-employment tax and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has written authority to do so, and then only within the strict limits of that authority.

8. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Agency.

9. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

10. Records and Financial Audit.

- A. The Contractor shall maintain detailed time and expenditure records that indicate the nature and price of services rendered during this Agreement's term and effect and retain them for a period of five (5) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Procuring Agency, the

Department of Finance and Administration and the State Auditor. The Procuring Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments. The Contractor agrees to comply with and adhere to 7 CFR 247.29 (a) Reports and recordkeeping and 7 CFR 247.31 Audits and investigations incorporated herein can be found at: <https://www.fns.usda.gov/csfp/commodity-supplemental-food-program-csfp>.

- B. Contract for an independent audit in accordance with 2 CFR 200 at the Contractor's expense, as applicable or upon HSD request, submit its most recent 2 CFR 200 audit. The Contractor shall ensure that the auditor is licensed to perform audits in the State of New Mexico and shall be selected by a competitive bid process. The Contractor shall enter into a written contract with the auditor specifying the scope of the audit, the auditor's responsibility, the date by which the audit is to be completed and the fee to be paid to the auditor for this service. Single audits shall comply with procedures specified by the HSD. The audit of the contract shall cover compliance with Federal Regulations and all financial transactions hereunder for the entire term of the Agreement in accordance with procedures promulgated by 2 CFR 200 or by Federal program officials for the conduct and report of such audits. An official copy of the independent auditor's report shall be available to the HSD and any other authorized entity as required by law within (fifteen) 15 days of receipt of the final audit report. The Contractor may request an extension to the deadline for submission of the audit report in writing to the HSD for good cause and the HSD reserves the right to approve or reject any such request. The HSD retains the right to contract for an independent financial and functional audit for funds and operations under this Agreement if it determines that such an audit is warranted or desired.
- C. Upon completion of the audit under the applicable federal and state statutes and regulations, the Contractor shall notify the HSD when the audit is available for review and provide online access to the HSD, or the Contractor shall provide the HSD with four (4) originals of the audit report. The HSD will retain two (2) and one (1) will be sent to the HSD/Office of the Inspector General and one (1) to the HSD/Administrative Services Division/Compliance Bureau.
- D. Within thirty (30) days thereafter or as otherwise determined by the HSD in writing, the Contractor shall provide the HSD with a response indicating the status of each of the exceptions or findings in the said audit report. If either the exceptions or findings in the audit are not resolved within thirty (30) days, the HSD has the right to reduce funding, terminate this Agreement, and/or recommend decertification in compliance with state and/or federal regulations governing such action.
- E. This audit shall contain the Schedule of Expenditures of Federal Awards for each program to facilitate ease of reconciliation by the HSD. This audit shall also include a review of the schedule of depreciation for all property or equipment with a purchase price of \$5,000 or more pursuant to 2 CFR 200, specifically subpart F, and appendices where appropriate.

- F. This audit shall include a report on compliance with requirements applicable to each major program and internal control over compliance in accordance with 2 CFR 200, specifically subpart F and appendices.

11. Release.

The Contractor, upon final payment of the amount due under this Agreement, releases the agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the State of New Mexico, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the HSD.

- A. "Confidential Information" shall mean information, data, or materials of a party (the "Disclosing Party") disclosed to the other party (the "Receiving Party") which are to the Disclosing Party secret, proprietary and/or confidential. Confidential Information of a Disclosing Party shall also expressly include all data, information, materials and subject matter, methods, processes, techniques, systems and know-how. All of the foregoing shall be Confidential Information hereunder irrespective of its field of use and whether it is:
- 1) Owned by the Disclosing Party, leased or licensed from third parties held for the benefit of or on connection with its clients, customers, business partners or inventors.
 - 2) Intangible or tangible, but if tangible, regardless of form, medium or physical format including paper documents or graphic or machine-readable media; and (i) actually disclosed to a party, but if actually disclosed, whether in whole or in part or orally or in writing.
- B. Notwithstanding the foregoing, the Receiving Party shall have no obligation under Section 10 (A) with respect to any Confidential Information which the Receiving Party can demonstrate by reasonable written evidence contemporaneous with the event of the exclusion sought to be used hereunder; (i) was already known to it at the time of its receipt hereunder or under any predecessor to this Agreement; (ii) is or becomes generally available to the public other than by means of breach of this Agreement or any predecessor to this Agreement; (iii) is independently obtained from a third party (other than any authorized recipient) whose disclosure to the Receiving Party does not violate a duty of confidentiality; (iv) is independently developed by or on behalf of the Receiving Party without use of, reference to or reliance on any Confidential Information. If the Receiving Party is required by a court or other body of competent jurisdiction to disclose Confidential Information, the Receiving Party may disclose only so much Confidential Information as is legally required, provided the Receiving Party has given notice of such compelled

disclosure to the Disclosing Party and has given the Disclosing Party a reasonable opportunity, at its own expense, to object to such disclosure and has provided reasonable assistance in obtaining and enforcing a protective order or other appropriate means of safeguarding any Confidential Information so required to be disclosed.

- C. Receiving Party will not publish or otherwise disclose to third parties outside its employ, or acting as legal counsel to the Receiving Party any information acquired by the Receiving Party from the Disclosing Party as a result of this Agreement and not to use such proprietary or confidential information for any reason other than to perform its obligations hereunder. A Receiving Party will advise all of its employees and independent contractors who receive information relating to the Disclosing Party under this Agreement that such information is confidential and must not be disclosed to anyone without the other Party's permission. The Receiving Party will use at least the same care and discretion to avoid disclosure of the Disclosing Party's proprietary or confidential information as it uses to protect its own similar information, but not less reasonable care.

13. Amendment.

- A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.
- B. If the HSD proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

14. Merger.

This Agreement, including any and all attachments, exhibits and/or appendices, incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Penalties for Violation of Law.

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

16. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent

jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

17. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the HSD.

18. Conflict of Interest: Governmental Conduct Act.

- A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.
- B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:
- 1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any HSD employee while such employee was or is employed by the HSD and participating directly or indirectly in the HSD's contracting process;
 - 2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;
 - 3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the HSD's making this Agreement;

- 4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;
 - 5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and
 - 6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the HSD.
- C. Contractor's representations and warranties in Paragraphs A and B of this Article 18 are material representations of fact upon which the HSD relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the HSD if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 18 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 18 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the HSD and notwithstanding anything in the Agreement to the contrary, the HSD may immediately terminate the Agreement.
- D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 18(B).

19. Indemnification.

The Contractor shall defend, indemnify and hold harmless the HSD and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the HSD and the Risk Management Division of the New Mexico General

Services Department by certified mail.

20. New Mexico Employees Health Coverage.

- A. If 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 during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- B. Contractor agrees to 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. These records are subject to review and audit by a representative of the state.
- C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <https://www.bewellnm.com>.

21. Invalid Term or Condition.

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

22. Enforcement of Agreement.

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 part of any of its rights shall be effective to waive any other rights.

23. Product of Service-Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the HSD as required under the SOW. In any event, property of the State of New Mexico shall be delivered to the HSD no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

24. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return

receipt requested, postage prepaid, as follows:

To HSD via mail:

Name: Andrea McNeilley, Program Manager
Agency: Human Services Department
Medical Assistance Division
Office Address: P.O. Box 2348
Santa Fe, NM 87504-2348
Telephone: (505) 827-7232
Fax: (505) 827-3195
Email: andrea.mcneilley@state.nm.us

To Contractor:

Name: Daniel Samila, Account Executive
Agency: Prometric, LLC
Office Address: 1501 South Clinton Street
Baltimore, MD 21224
Telephone: (609) 954-4172
Email: daniel.samila@prometric.com

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph 45. The carrier for mail delivery and notices shall be the agent of the sender.

25. Drug Free Workplace.

A. Definitions. As used in this paragraph—
“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.
“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.
“Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.
“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.
“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.
“Individual” means an offeror/contractor that has no more than one employee including the offeror/contractor.

B. The Contractor, if other than an individual, shall:

- 1) 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;
- 2) Establish an ongoing drug-free awareness program to inform such employees about:
 - a) The dangers of drug abuse in the workplace;
 - b) The Contractor's policy of maintaining a drug-free workplace;
 - c) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- 3) Provide all employees engaged in performance of the SA with a copy of the required by subparagraph B(1);
- 4) 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 SA, the employee will:
 - a) Abide by the terms of the statement; and
 - b) 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 five (5) days after such conviction;
- 5) Notify the HSD Program Manager in writing within ten (10) days after receiving notice under (B)(4)(ii) of this paragraph, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- 6) Within thirty (30) days after receiving notice under B(4)(ii) 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:
 - a) Taking appropriate personnel action against such employee, up to and including termination; or
 - b) 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
- 7) Make a good faith effort to maintain a drug-free workplace through implementation of B(1) through B(6) of this Section.

C. The Contractor, if an individual, agrees by entering into this SA not to engage in

the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

D. In addition to other remedies available to the HSD, 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 SA and subject the Contractor to suspension of payments under the SA and/or termination of the SA in accordance with paragraph 4, above.

27. Debarment and Suspension.

- A. 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.
- B. The Contractor's certification in Paragraph A, above, is a material representation of fact upon which the HSD 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 HSD's Program 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 HSD, the HSD may terminate the Agreement.

- C. 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 HSD when it requests subcontractor approval from the HSD. If the subcontractor, or its principals, is debarred, suspended, or proposed for debarment by any Federal, state or local department or agency, the HSD may refuse to approve the use of the subcontractor.

28. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Anti-Lobbying).

- A. 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.
- B. The Contractor, by executing this Agreement, 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 offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer.
- C. 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.

- D. 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 HSD, termination of the Agreement.

29. Non-Discrimination.

- A. 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.
- B. 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.
- C. 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.
- D. 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."
- E. The Contractor must comply with Civil Rights requirements as defined in 7 CFR 247.9 and 7 CFR 247.37.
- F. The Contractor agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*), Section 504 of the Rehabilitation Act of 1972 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*); all provisions required by implementing regulations of the Department of Agriculture, Department of Justice Enforcement Guidelines, 28 CFR Part SO.3 and 42; and FNS directives and guidelines, to the effect that, no person shall, on the grounds of race, color, national origin, sex, age or disability be excluded from participation in, be denied benefits of, or otherwise be

subject to discrimination under any program or activity for which the applicant receives Federal financial assistance from FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this agreement.

30. Findings and Sanctions.

- A. The Contractor agrees to be subject to the findings, sanctions and disallowances assessed or required as a result of audits pursuant to this agreement.
- B. The Contractor will make repayment of any funds expended by the HSD, subject to which an auditor acting pursuant to this agreement finds were expended, or to which appropriate federal funding agencies take exception and so request reimbursement through a disallowance or deferral based upon the acts or omissions of the Contractor that violate applicable federal statues and/or regulations, subject to sufficient appropriations of the New Mexico Legislature.
- C. If the HSD 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 HSD 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.

31. 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.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the State Purchasing Agent below.

DocuSigned by:
 By: Kari Armijo Date: 6/29/2020
 HSD Cabinet Secretary
 Kari Armijo, Deputy Cabinet Secretary
 Signing for D.S.

DocuSigned by:
 By: [Signature] Date: 6/16/2020
 HSD Office of General Counsel

DocuSigned by:
By: Danny Sandoval Date: 6/16/2020
HSD Chief Financial Officer

DocuSigned by:
By: Allison M. Mulford Date: 6/15/2020
Allison M. Mulford
Vice President of Legal Affairs
Contractor

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.

CRS ID Number: 03-120264-00-0

DocuSigned by:
By: Aun Marie Lucero Date: 6/30/2020
Taxation and Revenue Department

This Agreement has been approved by the State Purchasing Agent:

By: Valerie Paulk Date: 7/8/2020
State Purchasing Agent
 This amendment was signed on behalf of the State Purchasing Agent

Exhibit A
Scope of Work

The Contractor, which shall be the sole testing agency for nurse aides employed in certified nursing facilities in New Mexico, shall be responsible for providing the following:

A. Summary

1. Eligibility for Competency Evaluation: Screening nurse aide candidate eligibility for testing

2. Test Development and Delivery: Developing or using standardized, written, skills and oral performance-based examinations; Scheduling and administering examinations
3. Application for Competency Evaluation: Developing registration procedures, application forms and materials; Managing nurse aide candidate application materials
4. Regional Test Sites and Staffing: Establishing test sites; Providing test examiners, equipment, and supplies
5. Test Scoring: Certifying and reporting examination results
6. Test Data Reporting: Reporting test data to the Department of Health (DOH) and the Nurse Aide Registry; Managing computer-based test data
7. Employment Verification: Developing forms and procedures for use in verifying the employment for nurse aides on the Nurse Aide Registry; Maintaining employment verification for biennial nurse aide recertification and for the Nurse Aide Registry
8. In-Service Education Verification: Developing and implementing appropriate procedures for verifying in-service training and education for nurse aides; Maintaining in-service verification for biennial nurse aide recertification and for the Nurse Aide Registry
9. Invoicing: Submitting monthly invoices to HSD
10. Contact Center: The Contractor's global network of centers that provide candidate support functions, including registration and scheduling, testing accommodations and candidate care
11. Per-Test Delivery Fee: Fee specified by the Contractor for test delivery and retained by the Contractor for each delivered test
12. Remote Proctor Testing (RPT) Services: The activities and work performed by the Contractor to provide test registration and scheduling, test delivery, and test results processing for a computer-based test proctored remotely via webcam and audio by the Contractor and delivered online to candidates enabling candidates to use their own personal computer equipment
13. Remote Proctoring Centers: The Contractor's Remote Proctoring Center locations in the U.S. and internationally having proctoring resources and system infrastructure to enable test administration to candidates in a remote setting
14. ProProctor: The Contractor's proprietary software application and infrastructure designed and developed by the Contractor for delivering examination content remotely to a candidate who is using their own personal computer equipment
15. Seat Time: The duration programmed for tests and includes the full test introduction, tutorial, content, post-exam survey and closing screens with report

B. Details

1. Eligibility for Competency Evaluation

Within four (4) months of employment, all persons working as nurse aides in New Mexico nursing facilities must successfully complete a state-approved classroom-based nurse aide training program and then be scheduled for a competency evaluation that shall consist of both a written or oral examination and skills demonstration.

For reasons of testing consistency and reimbursement efficiency, the HSD will establish a single competency evaluation program. The Contractor must screen all nurse aide candidates for eligibility as follows:

- a) proof of employment or offer of employment in a certified nursing facility; and/or
- b) documentation of seventy-five (75) completed hours of nurse aide training from a program approved by the state survey agency; and/or
- c) documentation by the training agency for nurse aide training completion or original state survey agency letter of approval to take the competency evaluation.

A competency evaluation program must be made available to persons who have received nurse aide training in state-approved nursing facility-based nurse aide training programs, as well as in non-nursing facility-based training programs, such as community colleges, vocational technical programs, and training programs (Appendix H to the RFP lists nursing facility based and non-nursing facility based qualified training programs for nurse aides.)

In accordance with 42 CFR 483.156, all test candidates will be allowed three (3) opportunities to successfully complete the examination without re-submitting an application. Failure after three (3) attempts will require retraining and submission of a new application to be eligible for further testing opportunities.

The Contractor must have an established procedure to accommodate the special testing needs of persons with physical challenges or with any religious obligations that may preclude weekend test dates.

2. Test Development and Delivery:

The competency evaluation test must be valid, reliable, job-related and legally defensible. Content must cover the required curricula in 42 C.F.R. § 483.152. All aspects of competency evaluation and recertification must meet the requirements of federal law and the federal regulations of the Centers for Medicare and Medicaid Services (CMS) pertaining to Nurse Aide Training and Competency Evaluation Programs (NATCEP), including but not limited to 42 U.S.C. §§ 1396b and 1396r and 42 C.F.R. §§ 431.120, 433.15, 483.75, and 483.150 to 483.160.

The competency evaluations must also conform to state regulations on NATCEP in MAD 731 (8.312.2 New Mexico Administrative Code). The Contractor shall take into consideration the literacy level, educational background and testing experience of the candidate population.

The Contractor must offer an oral examination option instead of the written examination. All candidates may choose to take an oral examination instead of the written examination.

The oral examination will have an additional section of exam questions on reading comprehension to determine competency to read job related information. For example, the aide must be able to read materials such as a resident's name band, the contents of a prescription bottle sitting on a bedside stand or a physician's orders. Candidates must pass the reading comprehension section in order to pass the oral test.

The written and oral examinations shall be developed from a randomized pool of test questions suitable for entry level nurse aides, a portion of which will be used in any one examination. The Contractor shall develop a system that will maintain the integrity of the pool of questions and the individual examinations. The written and oral examinations must be offered, at a minimum, in English and Spanish.

For each nurse aide candidate, the clinical skills demonstration portion of the competency evaluation must consist of a minimum performance of five (5) tasks from a randomized pool of evaluation items ranked according to degree of difficulty. The test examiner will make random selections of tasks with at least one task from each degree of difficulty.

The clinical skills demonstration portion of the competency evaluation must also evaluate the non-task-oriented competency of the trainee in communication, safety and resident's rights. The clinical skills demonstration portion of the competency evaluation will be held at the regional testing sites (see APPENDIX J for current regional testing sites) and must be administered by a registered nurse that meets the Center for Medicare and Medicaid Services (CMS) requirements for a test examiner.

With the input and approval of the DOH, the Contractor must organize and administer competency evaluations as often as necessary to meet all nursing facilities' competency evaluation needs. The Contractor is responsible for obtaining updated lists of certified nursing facilities at least quarterly qualified for nurse aide training. These lists may be obtained from the DOH.

3. Application for Competency Evaluation

All nurse aide candidates must submit an application prior to taking the evaluation. The Contractor must provide candidate study guides, information bulletins and test application materials for prospective nurse aide candidates. The application materials will contain application forms, fee information, application and registration procedures, examination content outlines, and sample questions. Application forms and materials shall be made

available on the Contractor's website. Application materials will be subject to the approval of the HSD and the DOH.

The Contractor must establish a toll-free number to answer applicants' questions and to schedule evaluations. This number shall be available Monday-Friday 9:00 am - 5:00 pm, MST.

The Contractor must certify that all requested evaluations and re-evaluations will be performed as required.

The Contractor must inform each applicant of the right to request on the application form an alternative method of evaluation in lieu of the written test.

Prior to the competency evaluation, the Contractor shall notify each applicant in writing that a record of his/her successful completion will be entered into the Nurse Aide Registry.

4. Regional Test Sites and Staffing

The Contractor shall establish a minimum of ten (10) regional testing sites throughout the state based on need, shall preregister nurse aide candidates, and shall conduct competency evaluations for the written, oral and clinical skills demonstration components of the evaluation, including but not limited to:

- a) Providing testing staff, including examiners, proctors and scoring capabilities
- b) Providing testing space, including work surface for written tests, a computer terminal area consisting of at least four (4) computers for computer-based testing, private space for oral evaluation and clinical settings for clinical skills demonstration
- c) Providing testing equipment and supplies (including, but not limited to hospital bed, stethoscope, mannequin, height and weight measuring scale) and any and all patient assessment tools) required to meet the needs of the clinical skills evaluation
- d) Remote Proctor Testing (RPT) Services – written examination

With respect to the written examination portion only of the New Mexico Nurse Aide Competency Evaluation Program, the Contractor shall provide the written examination through the RPT program as described below:

- i. RPT Services Territory/Network:
 - a. The Contractor will provide RPT Services to the DOH for candidates located in the United States unless otherwise approved.
 - b. RPT Services will be provided only in the ProProctor environment.

- c. The Contractor will provide support for a sufficient number of proctoring resources from both inside and outside the U.S. to meet the volume of tests projected by the DOH, as determined by the Contractor according to its capacity planning experience.

- ii. Account Management Services

- a. The Contractor's implementation team member(s) will work with the DOH to integrate the tests outlined in Section B.4.d. for live delivery, provide the HSD and the DOH with instructions for accessing any reports outlined herein and shall set up the HSD and the DOH information and contract/program information in the Contractor's scheduling, registration and accounting systems. The Contractor, in consultation with the HSD and the DOH, will develop a program implementation schedule. This schedule will address such items as the milestones for test preparation and publishing, registration/scheduling commencement, and test delivery commencement.
- b. The Contractor will provide the HSD and the DOH account support through the length of the Term. Depending upon the size of the program, ongoing account support may be one (1) or more individuals or a group of individuals. The Contractor may, at its sole discretion, add, remove or reassign Contractor staff assisting the program. Account support staff may perform support services for any other Contractor-client testing program.
- c. The account support services herein do not include services in support of third-party accreditation(s) or certification(s). Such services are a separate and additional service.
- d. The DOH will define the registration and retake policies within the constraints of the Contractor's standard registration system as set forth in Section v below.

- iii. Standard Package Preparation and Distribution

- a. The Contractor will explain and provide file layouts for eligibility records (where the HSD and the DOH has elected to maintain an eligibility program), test files, and result files. The Contractor will provide a standard template for content handoff and will import a single DOH-supplied item bank file received in that same Contractor standard template. Other formats may be accommodated upon request but will require validation and an additional fee for the time and cost associated with such validation and non-standard formatting.

- b. The following are test characteristics of the standard test package (the “Standard Package”) for each test:
- 1) Items provided by the DOH in Excel (schema provided) format. Item types include, but are not limited to, single and multiple response multiple choice, free response with 253 characters and essay with 20,000 characters.
 - 2) Test package size of up to 200 MB for deployment of each test within the Contractor’s network.
 - 3) Formats of tutorial, delivery mode (linear or random) timers, navigation, survey, score report and results. Formats will be provided to the HSD and the DOH.
 - 4) Tests delivered in a single language. Translations are the responsibility of the DOH unless the HSD and the DOH contract with the Contractor for such services in a separate Amendment.
 - 5) The Contractor will provide review packages to the DOH for review until it is found to be “error free,” and approved mutually by the Contractor and the DOH. The mutually agreed upon project plan and milestones, including test launch dates, may be impacted by an extension of the review cycle; provided if errors are the fault or responsibility of the Contractor, the Contractor shall take all action necessary and appropriate to assure that the launch date is not adversely impacted.
- d. Quotations for additions or changes to the Standard Package above will be provided by the Contractor upon the HSD and the DOH’s request. Such additions or changes may result in a revised implementation process or schedule and/or additional fees.
- e. The DOH shall not use non-Contractor test delivery software for the services herein without a mutually agreeable Amendment for such use.

iv. Eligibility

No Eligibility

The Contractor shall be solely responsible for registering and scheduling individuals to take a test as defined by this Contract, assigning to each individual a candidate Eligibility Number, and providing to the DOH as agreed upon by the Parties, via File Transfer Protocol (FTP) on web services, candidate information such as:

- a. Candidate's full name

- b. Test candidate has been approved to take
- c. Candidate's Eligibility Number
- d. Candidate's email address
- e. Candidate's country of residence
- v. Registration and Scheduling

Registration provisions, available options:

- a. Contact Center
The Contractor must establish a toll-free number to answer applicants' questions and to schedule evaluations. This number shall be available Monday-Friday 9:00 am - 5:00 pm, MST; after-hours will be provided via the Interactive Voice System (IVR).
- b. Website
Candidates are encouraged to schedule via the Contractor's online registration and scheduling system to the maximum extent possible, where available. Online registration and scheduling are available 24/7 with the exception of routine maintenance or an event of Force Majeure.
- vi. Scheduling Process, Available Options

Candidates may use the website to schedule or reschedule a testing appointment, or the contact center during periods of routine maintenance to the website according to the business hours stated above. When a candidate makes an appointment, the Contractor will provide a confirmation email. The Contractor will only schedule appointments for paid tests. Globally, the Contractor will make commercially reasonable efforts to provide each candidate a testing timeslot within thirty (30) days of his/her requested date.

- vii. Information to Candidate

The Contractor will supply candidates with the following information via the confirmation email:

- a. Identification requirements
- b. Appointment length
- c. Test Confirmation Number
- d. Cancellation/rescheduling information and fees

- e. Remote proctoring test regulations and a ProProctor user guide (when applicable)

viii. Questions from Candidates

The Contractor will answer general questions from candidates who call concerning the program, but the Contractor will refer program-specific questions to the DOH as directed by the DOH.

ix. Other Candidate Services

The Contractor will provide the following additional candidate services:

- a. Rescheduling due to Remote Proctoring Center schedule changes;
- b. Referring candidates to additional sources of information: the DOH's specified phone number or web address; and
- c. Providing candidates with test information, fees and rescheduling fees, if appropriate.

x. Cancellation, Rescheduling, No Show or Late Arrival for Scheduled Test

Candidates must make and confirm all cancellations/changes through the Website or direct contact with the Contact Center. Leaving a message via voicemail is not sufficient to confirm cancellations/changes. For each candidate who reschedules, cancels, is a late arrival or does not appear for a scheduled test, the Contractor shall be entitled to its Per Test Delivery Fee and the Cancellation/Rescheduling Fees for such candidate as specified in this Agreement.

ii. Test(s), Geographic Coverage, Seat Time & Estimated Tests Per Year

The Contractor will provide the services outlined in this Agreement for the administration of ProProctor computer-based tests on behalf of the HSD and the DOH as outlined in this Agreement.

iii. Test Delivery

- a. The Contractor shall administer tests over the internet to candidates through ProProctor operated by the Contractor. Tests will be available in the Territory or Territories chosen by the DOH.

- b. Remote Proctor Testing will be available on a 24/7 basis according to the registered/scheduled appointment time selected by the candidate.
- c. The Contractor will implement security measures for Remote Proctor Testing and system levels to ensure the integrity of the items, item bank and tests. These measures will include encryption of items and answers, use of a sign-on and access privilege system, proctoring of the test delivery process, and other measures, as the Contractor deems necessary. Standard policies and procedures will be provided to each remote proctor.
- d. Remote Proctoring Centers will have consistent operational practices for remote proctoring. RPT check-in procedures will include candidate identification verification through verification of one unexpired government-issued photo and one signature ID. The photo and signature may be on the same ID. ProProctor will require all candidates to consent to being proctored remotely over the internet capturing both live and recorded video and audio of the test event. Remote Proctoring staff will re-verify candidate entry into the ProProctor exam after break periods and supervise any test restarts. If a candidate has no valid acceptable ID, the candidate must, prior to a testing appointment, arrange with the DOH for approval of an alternate form of ID. The DOH must contact the Contractor no later than seventy-two (72) hours before the candidate's scheduled testing appointment date specifying exactly what ID is acceptable. Candidates who do not produce a valid acceptable ID at the scheduled appointment will not be allowed to take the test. If the candidate arrives more than thirty (30) minutes late for a scheduled appointment, the Remote Proctoring staff may choose not to seat the candidate, if doing so disrupts other scheduled appointments. If the Remote Proctoring staff does not seat the candidate due to insufficient ID or late arrival, the Contractor will be entitled to its Per-Test Delivery Fee from HSD.
- e. All tests will be monitored by one (1) proctor at all times using any of the following methods:
 - 1) Remote viewing of testing area,
 - 2) Live video monitoring, with or without audio,
 - 3) Other methods sufficient to visually ensure testing area security, including proctor visual inspection using the remote camera located in the candidate's testing workspace.

- f. Candidates may not use or have access to any materials while taking a remotely proctored exam, unless specifically permitted by the DOH, agreed to by the Contractor, and outlined in the DOH Practices. Test materials permitted for the candidate taking a remote test and at the specific request of the DOH include:
 - 1) A pocket calculator, if it has an independent power source, no print device, and no alpha character set, confirmed by visual observation only through a webcam;
 - 2) Printed material supplied to the candidate by the DOH and approved by the Contractor.
 - g. The Contractor will not supply or handle any materials or exhibits and will not collect and return materials or exhibits on behalf of the DOH (unless specifically listed as an optional service in this Agreement).
 - h. Candidates will be required to remove all of their personal belongings prior to testing. Candidates will be required to comply with all security regulations in the ProProctor Test Regulations Guide, such as panning the room using their webcam and turning their pockets inside out.
 - i. If a candidate violates this policy or attempts to bring unauthorized materials into the remotely proctored testing session, the Contractor reserves the right to refuse the candidate access to the exam or to discontinue the candidate's testing. In this event, the Contractor shall be entitled to its full Per-Test Delivery Fee.
- iv. Candidate Result Reporting
- a. Test results and standard candidate demographics must be passed to the DOH daily in the Contractor's standard electronic format.
 - b. The Contractor will process candidate test results and make the results available to the HSD and the DOH in accordance with the terms of this Agreement.
 - c. The results will be retained on the FTP server for thirty (30) calendar days after completion of the testing session and will be archived thereafter.
 - d. Results files will contain optional DOH survey results, where applicable.

- e. The Contractor will have the ability to produce a score report or test completion notice for candidates upon completion of the test. The HSD and the DOH will select their preferred option of either a score or test completion notice for candidates.

- v. Program Reports

The Contractor will make available to the HSD and the DOH the following standard reports through the Contractor's online reporting system:

- a. Registration history
- b. No-shows
- c. Cancellations

- vi. Compliance with Remote Proctor Testing Rules

Candidates must comply with the rules, regulations, and security requirements of the Remote Proctor Testing. The Contractor and its Remote Proctor Testing staff have the right to exclude candidates who fail to follow test rules, procedures, and security requirements. Any candidate who is excluded from the remote testing appointment for failing to follow rules, procedures, or security requirements the Contractor will be entitled to its full Per-Test Delivery Fee.

- vi. Testing Accommodations

The DOH will make information available to its candidates regarding testing accommodations and its process for handling requests.

Candidates requesting testing accommodations shall continue to follow the same process as outlined in this Agreement, and the Contractor shall maintain responsibility for registering and scheduling such candidates into a test center location, either physical or remote, at the Contractor's sole discretion, which supports the provision of the accommodation being requested.

- vii. Remedies for Test Delivery Failure/Disruptive Conditions and Rescheduling/Re-Performing

- a. Test Delivery Failure or Disruptive Conditions

If the DOH or a candidate requests a review of the fairness or accuracy of a test due to the Contractor equipment or software failure, or disruptive conditions in a remotely proctored test, the Contractor shall furnish the DOH with relevant discrepancy reports, technical data and analyses within

24 hours of the DOH's request. The DOH may, based on this information: (i) allow the test score to stand; (ii) adjust the test score; or (iii) allow the candidate to retake the test. Charges for the repeat test shall be waived or adjusted as mutually agreed by the DOH and the Contractor.

b. Rescheduling or Re-performing

If the Contractor does not perform the services in accordance with the terms and conditions of this Agreement, the Contractor shall use reasonable efforts to furnish the service by: (i) rescheduling the remotely proctored test session which was deemed unavailable due to the Contractor's failure; or (ii) re-performing any service which was inadequately performed for any reason. If the Contractor is unable to reschedule the remotely proctored test session or re-perform the service after a reasonable number of attempts, the HSD shall be entitled to a refund or equitable credit of any Per-Test Delivery Fee paid.

The Contractor must provide security measures to be followed at test sites, including but not limited to verification of candidate identity, maintaining test integrity, and procedures for handling suspected breaches of security.

5. Test Scoring

The Contractor must ensure that test standardization and scoring of proctored exams is performed only by Contractor staff. The Contractor shall notify the candidate, the HSD, and the nursing facility of competency evaluation results, and shall assist unsuccessful candidates in preparing for re-examination by outlining their areas of test weakness. Testing results will be made available to candidates no later than ten (10) business days following exam completion.

The Contractor must issue certificates of completion to each successful candidate of nurse aide competency evaluation within 14 calendar days of completion.

6. Test Data Reporting

On a monthly basis, the Contractor must provide the HSD and the DOH with the following reports for each test date within forty-five (45) days after the end of the month:

- a) Test registration rosters and results
- b) Pass rates and pass/fail ratios by first time nurse aide candidates
- c) Pass rates and pass/fail ratios by all nurse aide candidates
- d) Pass/fail performance by training site

- e) Pass/fail performance by examiner
- f) Pass/fail performance by clinical skills demonstration item

With the input and approval of the HSD and the DOH, the Contractor must develop and implement an electronic data file for the storage and maintenance of candidate and examination data. The data will be used to monitor testing activities and support DOH and HSD management decisions regarding test delivery and training needs.

The Contractor must establish, maintain, continuously update and make available for the DOH via internal database, access information required for the DOH's Nurse Aide Registry including competency evaluation outcome data and copies of nurse aide certificates that the DOH can print or download. The Contractor must ensure the accuracy of all information on the certificates, including the name of the current Medical Assistance Division Director. Nurse aide certificates will be subject to the approval of the HSD and the DOH. Test data must be updated in the Nurse Aide Registry within ten (10) business days of the examination.

The Contractor shall establish Nurse Aide Registry data for each successfully certified nurse aide, to include the following data:

- a) Individual's full name
- b) Home address
- c) Home phone number
- d) Date of birth
- e) Social Security Number
- f) Current employer and employer's Medicaid provider number
- g) Date of hire
- h) Date of employment termination, if applicable
- i) Date competency evaluation completed, and outcome (pass/fail) of the evaluation
(dates for both written and clinical skills tests)
- j) Certification number established by the contractor
- k) Most recent recertification data, if applicable
- l) Nurse aide status on the registry (active, inactive)

- m) Date of last data update, and a log of the user responsible for that action
- n) An active/inactive record designation
- o) Reciprocity/endorsement from State of _____ (name of State from which reciprocity was granted)
- p) In-service education hours

The Contractor must provide to the DOH a minimum of three (3) secure logins and read and write access to the Contractor's applicant database. The DOH must be provided with the data change capability that supports the DOH Nurse Aide Registry services of, including but not limited to, changing, personal identification information of nurse aides, updating nurse aide employers, updating training programs, employment verification, and reciprocity to New Mexico, in accordance with 42 CFR 483.156, from other states. The Contractor shall maintain daily back-ups for all data and shall make this information available for the DOH upon request.

7. Employment Verification

Current employment verification information must be maintained by the DOH on the Nurse Aide Registry for the purpose of recertification of Nurse Aides.

The Contractor must develop all necessary forms for use in verifying the employment for nurse aides on the Registry. Employment verification forms will be subject to the approval of the HSD and the DOH.

The Contractor must make the employment verification forms available on the Contractor's public-facing website. For the purposes of recertification, the Contractor must provide individual employment verification forms to all nurse aides currently on the New Mexico Nurse Aide Registry. For those nurse aides who provide proof of employment, the Contractor must issue documentation of job verification with an updated expiration date of the nurse aide's certification.

The Contractor shall track all nurse aides on the Nurse Aide Registry that do not provide proof of employment during the prior twenty-four (24) months in order to notify the candidate in writing. Recertification notices will be provided to all nurse aides sixty (60) days prior to his/her twenty-four (24) months employment period expiration date.

The Contractor shall provide an adequate supply of change of address forms to meet the needs of all qualified nursing facilities (APPENDIX H) for use by their nurse aide employees and will add address changes received to the Nurse Aide Registry.

The Contractor shall provide the DOH access to updated employment verification, testing and actions for addition to the DOH maintained Nurse Aide Registry.

8. In-Service Education Verification

The Contractor shall collect and maintain information regarding nurse aide in-service hours offered in the past twelve (12) months from nursing facilities. The Contractor will also provide a supply of two-part forms (in-service hours by nurse aide, and in-service hours by nursing facility) subject to the approval of the HSD and the DOH for tracking in-service hours. Representatives of nursing facilities will be instructed to submit a copy of this form to the Contractor each time an in-service program is offered to a nurse aide.

The Contractor shall enter information from the returned two-part forms (in-service hours by nurse aide, and in-service hours by nursing facility) to the Nurse Aide Registry record of each individual nurse aide. The Contractor shall provide the following information electronically in alphabetical order by nurse aide to the DOH:

- a) Name
- b) Social Security Number
- c) Name of facility offering the in-service
- d) Total number of in-service education hours for the previous twelve (12) months

The Contractor will provide quarterly to the DOH an alphabetical listing by facility of the total number of in-service education hours offered by each qualified nursing facility for nurse aides during the previous twelve (12) months.

9. Invoicing

Invoices are to be submitted monthly, no later than forty-five (45) days after the end of the month for which services are being billed. Invoices must include supporting documentation of the number of clinical skills exams, oral exams, written exams, and recertifications.

In the case of invoices for services rendered during the last month of the state fiscal year (June), the HSD may require by written notice that the Contractor submit the invoice within a shorter period of time in order to comply with accounting and payment deadlines issued by the New Mexico Department of Finance and Administration.

C. Deliverables

The Contractor shall provide the following deliverables to the HSD or the DOH:

1. A pool of written and oral test questions and a system for maintaining integrity of the questions
2. A clinical skills demonstration portion of the competency evaluation from a pool of evaluation tasks ranked according to difficulty and a system for maintaining integrity
3. An explanation of how oral and written examinations and the clinical skills demonstration is reliable and valid

4. The eligibility criteria for competency evaluation
5. A packet of study materials and application materials
6. A schedule of proposed tests with test dates and locations
7. A plan to mitigate the number of monthly “no shows” on the part of candidates scheduled for test dates and sites
8. Coordination and agreement with the DOH to establish a data file of certified facilities approved for examination site and exam proctoring
9. Physical and system test site security policy and procedures
10. A certification notice that includes, at a minimum, a letter describing the renewal process and an employment verification form sent to the nurse aide at least sixty (60) days before the nurse aide lapses from the registry
11. Test reporting format by test site and test date
12. Registry data format
13. A file of registry support material to include nurse aide candidate information, general information documents, registry services, and Contractor’s contact information
14. Recertification plan
15. All forms required, including but not limited to Application Form, Employment Verification Form, In-service Training Form, Change of Address Form
16. Established reports as stated in subpart B number 6. Test Data Reporting of the Scope of Work
17. Ad hoc reports necessary

Exhibit B
Compensation Schedule

Total Compensation Amount: \$525,887.25

Includes agreed upon rates for services during these fiscal years.					
	Unit Price*	FY21	FY22	FY23	FY24
Clinical skills test	\$65.00	\$32,500	\$40,950	\$41,600	\$42,250
No show-clinical	\$65.00	\$4,875	\$8,450	\$9,100	\$9,750
Written test	\$37.00	\$18,500	\$22,570	\$22,940	\$23,310
No show-written	\$37.00	\$3,145	\$4,440	\$4,810	\$5,180
Oral test	\$37.00	\$740	\$1,110	\$1,295	\$1,480
No show – oral	\$37.00	\$185	\$370	\$555	\$740
Recertification	\$25.00	\$49,625	\$49,875	\$50,125	\$50,375
Total service fees		\$109,570	\$127,765	\$133,545	\$133,085
State ORT (5%)		\$5,478.50	\$6,388.25	\$6,521.25	\$6,654.25
Total expenditure		\$115,048.50	\$134,153.25	\$136,946.25	\$139,739.25

*Unit Price applies to all contract years.

Certificate Of Completion

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Source Envelope:	
Document Pages: 37	Signatures: 1
Certificate Pages: 5	Initials: 3
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Travis Dutton-Leyda
Time Zone: (UTC-07:00) Mountain Time (US & Canada)	13 Bataan Blvd
	Santa Fe, NM 87508
	travis.dutton-leyda@state.nm.us
	IP Address: 164.64.62.10

Record Tracking

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Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: Carahsoft OBO State of New Mexico GSD-SPD	Location: DocuSign

Signer Events

Signer Events	Signature	Timestamp
Valerie Paulk valerie.paulk@state.nm.us State of New Mexico, Dept of Information Technology Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 174.237.1.193 Signed using mobile	Sent: 7/8/2020 1:27:30 PM Resent: 7/8/2020 4:34:27 PM Viewed: 7/8/2020 1:28:26 PM Signed: 7/8/2020 5:38:12 PM

Electronic Record and Signature Disclosure:
Accepted: 5/29/2020 9:40:59 AM
ID: f12ca6d0-7cba-4de4-b58f-8180244887ff

Travis Dutton-Leyda travis.dutton-leyda@state.nm.us IT & Construction Bureau Chief New Mexico General Services, State Purchasing Division Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 164.64.62.10	Sent: 7/8/2020 1:27:31 PM Viewed: 7/8/2020 1:27:54 PM Signed: 7/8/2020 1:27:58 PM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Theresa Medibles Theresa.Mendibles@state.nm.us State of New Mexico, Dept of Information Technology Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 174.237.14.204	Sent: 7/8/2020 1:27:31 PM Resent: 7/8/2020 4:34:26 PM Viewed: 7/8/2020 4:54:16 PM Signed: 7/8/2020 4:54:22 PM
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In Person Signer Events

Signature

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Editor Delivery Events

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Agent Delivery Events

Status

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Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	7/8/2020 4:34:27 PM
Certified Delivered	Security Checked	7/8/2020 4:54:17 PM
Signing Complete	Security Checked	7/8/2020 5:38:12 PM
Completed	Security Checked	7/8/2020 5:38:12 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

A. ELECTRONIC RECORD AND SIGNATURE DISCLOSURE (ERSD)

From time to time, New Mexico General Services Department (GSD), on behalf of the State of New Mexico (SONM), may be required by law to provide you with certain written notices or disclosures. Stated below are the terms and conditions for GSD's providing you such notices and disclosures electronically through the DocuSign system. Please read this information carefully. If you are able to access this information electronically and agree to **this Electronic Record and Signature Disclosure (ERSD)**, please confirm your agreement by selecting the check-box next to "I agree to use electronic records and signatures" before clicking "CONTINUE" within the DocuSign system.

B. Obtaining paper copies

At any time up to twenty (20) calendar days following your use of DocuSign to electronically sign a document, you may request a paper copy of any record provided or made available electronically to you by GSD. You will have the ability to download and print documents SONM sends you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a twenty (20) calendar day period after such documents are first sent to you. Following the twenty (20) day period, if you want GSD to send you paper copies of any such documents from GSD's office, you will be charged a \$1.00 per-page fee plus postage. You may request delivery of such paper copies from GSD by following the procedure stated in Section H, below.

C. Withdrawing your consent

If you decide to receive notices and disclosures from GSD electronically, you may at any time change your mind and inform GSD you want to receive required notices and disclosures only in paper format. The procedure concerning how you may inform GSD of your decision to receive future notices and disclosures in paper format as well as withdraw your consent to receive notices and disclosures electronically is stated in Section D, immediately below.

D. Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed with which GSD will be able to complete certain steps in specific transactions and deliver paper copies to you. GSD will need: (1) to send the required notices or disclosures to you in paper format; and (2) wait until GSD receives your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from SONM or to electronically sign documents generated and sent to you from SONM.

E. All notices and disclosures will be sent to you electronically

Unless you inform GSD otherwise according to these procedures, GSD will electronically provide you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements and other documents that are required to be provided or made available to you during the course of your electronic signature relationship with SONM. To reduce the possibility of inadvertent non-receipt, GSD prefers to provide all required notices and disclosures by the same method and to the same email or physical address that you furnish to GSD. Thus, you may receive the disclosures and notices electronically or in paper form. If you do not agree with this procedure, please inform GSD according to the procedures stated in Section I, below. Please also refer to Section D, immediately above, which states the consequences resulting from your declination of electronic delivery of notices and disclosures.

F. How to contact GSD:

You may inform General Services Department (GSD) of any changes you select regarding State Purchasing Division's (SPD) electronic communications with you, to request paper copies of certain information from SPD, and to withdraw your prior consent to receive notices and disclosures electronically by emailing your request(s) to SPD at: GSD.SPInfo@state.nm.us

G. To advise SPD of your new email address

To inform SPD of a change in the email address to which SPD sends you notices and disclosures electronically, you must send an email to SPD at GSD.SPInfo@state.nm.us and in the body of such request you must include your previous and new email addresses.

H. To request paper copies from SPD

To request delivery of paper copies of electronic notices and disclosures that DocuSign and/or SPD have previously provided to you, you must send an email to SPD at GSD.SPInfo@state.nm.us and in the body of your email request state your email address, full name, mailing address, and telephone number. SPD will charge you a \$1.00 per page copy fee plus postage.

I. To withdraw your consent with SPD

To inform SPD that you no longer wish to receive notices and disclosures in electronic format you may:

(1) Decline to sign a document from within a signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may:

(2) Send SPD an email to GSD.SPInfo@state.nm.us and in the body of your request state your email address, full name, mailing address, and telephone number.

J. Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current DocuSign system requirements may be found at:

<https://support.docusign.com/guides/signer-guide-signing-system-requirements>

K. Acknowledging your access and consent to receive and sign documents electronically

To confirm that you are able to electronically access the information contained in this Electronic Record and Signature Disclosure (ERSD), please confirm that you have: (1) read this ERSD, and either: (2) you are able to print on paper or electronically save this ERSD for your future reference and access; or (3) you are able to email this ERSD to an email address where you will be able to print this ERSD on paper and/or save this ERSD for your future reference and access. Further, if you consent to receiving notices and disclosures from DocuSign and/or SPD exclusively in electronic format, then select the check-box next to “I agree to use electronic records and signatures,” before you click “CONTINUE” within the DocuSign system.

By selecting the check-box next to “I agree to use electronic records and signatures,” you confirm that:

- You have read this Electronic Record and Signature Disclosure (ERSD); and
- You can print this ERSD on paper, or you can save and/ or send this ERSD to a location where you can print this ERSD, for your future reference and access; and
- Until or unless you notify SPD as stated in this ERSD, you consent to exclusively receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SPD during the course of your electronic signature relationship with SPD.