

## STATE OF NEW MEXICO

**HUMAN SERVICES DEPARTMENT  
PROFESSIONAL SERVICES CONTRACT**

THIS AGREEMENT (the "Agreement" or "PSC") is made and entered into by and between the State of New Mexico **Human Services Department**, hereinafter referred to as the "HSD," and **McKinsey & Company Inc. Washington D.C.**, hereinafter referred to as the "Contractor".

IT IS AGREED BETWEEN THE PARTIES:

1. **Scope of Work.**

The Contractor shall perform all services detailed in Exhibit A, Scope of Work, attached to this Agreement (the "Scope of Work" or "SOW").

2. **Compensation.**

A. The HSD shall pay to the Contractor in full payment compensation (fixed fees) not to exceed five million five hundred thousand dollars (\$5,500,000) including gross receipts tax, if applicable, for services satisfactorily performed as set forth in Exhibit A, SOW. 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 New Mexico gross receipts tax, if applicable, levied on the amounts payable under this PSC shall be paid by the Contractor. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. The 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 for services satisfactorily performed shall not exceed two million eight hundred thousand dollars (\$2,800,000) including gross receipts tax in FY19.

The total amount payable to the Contractor under this Agreement for services satisfactorily performed shall not exceed seven hundred fifty thousand dollars (\$750,000) including gross receipts tax in FY20.

The total amount payable to the Contractor under this Agreement for services satisfactorily performed shall not exceed one million nine hundred fifty thousand dollars (\$1,950,000) including gross receipts tax in FY21.

B. Payment in FY19, FY20, and FY21 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 DFA. All invoices **MUST BE** received by the HSD no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. **Invoices received after such date WILL NOT BE PAID.**

C. Payment shall be made upon acceptance of each Deliverable and upon the receipt and acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) calendar days of the date of written certification of acceptance.

D. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Agency finds that the services are not acceptable, within thirty 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 Agency that the services have been received and accepted, payment shall be tendered to the Contractor within thirty 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 agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. **Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DFA. This Agreement shall terminate June 30, 2021, except for the requirement to provide a final evaluation report pursuant to Exhibit A, Scope of Work; unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). This Agreement may be extended for one additional (1) one-year period. In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. **Termination.**

A. **Grounds.** The HSD may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the HSD's uncured, material breach of this Agreement.

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 (iii) if the HSD does not cure all material breaches within the thirty (30) day notice period or (iv) 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 AGENCY'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.

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, 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.

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the HSD and are not employees of the State of New Mexico. The Contractor and its 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 reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. 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.

7. **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 HSD.

8. **Subcontracting.**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the HSD. 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 HSD.

9. **Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the HSD, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

10. **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. This provision shall not preclude the Parties from disclosing any information required to be disclosed by applicable law or regulation or legal or governmental process (e.g. subpoena).

11. **Product of Service - Copyright.**

Except for any Contractor Materials contained therein, and upon full payment by HSD therefor, all deliverables developed by the Contractor or its permitted subcontractors under this Agreement ("Deliverables") shall become the property of the State of New Mexico and shall be delivered to the HSD no later than the termination date of this Agreement. Except for any Contractor Materials contained therein, no Deliverable 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. For purposes of this Agreement (i) "Materials" means works of authorship, materials, information, and other intellectual property; (ii) "Contractor Materials" means all Materials created by Contractor or its subcontractors prior to or independently of the performance of the Services, or created by Contractor or its subcontractors as a tool for their use in performing the services, plus any modifications or enhancements thereto and derivative works based thereon. Upon full payment to by HSD to Contractor for the applicable Deliverable, and subject to the terms and conditions contained herein, Contractor hereby grants to Client the right to use any Contractor Materials included in the Deliverables in connection with its use of the Deliverables. Except for the foregoing license grant, Consultant or its licensors retain all rights in and to all Contractor Materials.

12. **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, and Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1. in accordance with Section 10-16-4.3 NMSA 1978, 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 Section 10-16-7(A) NMSA 1978 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 Section 10-16-7(A) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3. in accordance with Section 10-16-8(A) NMSA 1978, (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 Section 10-16-9(A) NMSA 1978 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 Section 10-16-9(A) NMSA 1978, 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 Section 10-16-13 NMSA 1978, 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 Section 10-16-3 and Section 10-16-13.3 NMSA 1978, 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 12 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 12 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 12 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 12(B).

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

**16. Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

**17. 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 Section 38-3-1 (G) NMSA 1978. 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.

**18. 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.

**19. Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the 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 HSD, the Department of Finance and Administration and the State Auditor. The HSD shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the HSD to recover excessive or illegal payments.

**20. Indemnification and Limitation of Liability.**

A) 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, in each case for bodily injury or damage to real or tangible personal property to the extent caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or any other client of the Contractor resulting in bodily injury to persons or damage to real or tangible personal 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. The indemnified party shall notify the Contractor promptly of any such claim for which indemnification is sought hereunder. The indemnified party shall notify Contractor promptly of any such claim for which indemnification is sought hereunder. 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.

B) Contractor shall not be liable, irrespective of the form of action or theory of liability (whether in contract, tort or otherwise), for damages in excess of, with respect to a particular contract term year, an aggregate amount of two times the fees paid by HSD to Contractor for the contract term year in which the cause of action accrued, but in no event in excess of five million dollars (\$5,000,000) over the entire term of this Agreement. In no event shall Contractor be liable for any consequential or punitive loss, damage, or expense relating to this Agreement or the services hereunder. Nothing in this Paragraph 20(B) or elsewhere in this Agreement shall limit the Contractor's indemnification obligations under Paragraph 20(A) or Contractor's liability for damages finally judicially determined to have resulted from the bad faith or willful misconduct of Contractor.

**21. 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: <http://insurenemexico.state.nm.us/>.

**22. Employee Pay Equity Reporting.**

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more New Mexico employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more employees, contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even when contractor itself does not meet the size requirement for reporting and therefore is not required to report itself.



Notwithstanding the foregoing, if this Contract was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

**23. 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.

**24. 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 party of any of its rights shall be effective to waive any other rights.

**25. 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 the HSD: Linda Gonzales, Deputy Director and Program Manager  
Medical Assistance Division  
Human Services Department  
P.O. Box 2348  
Santa Fe, NM 87504-2348  
[Linda.Gonzales@state.nm.us](mailto:Linda.Gonzales@state.nm.us)

To the Contractor: Nina Maddux  
McKinsey & Company, Inc. Washington D.C.  
1200 19th Street, NW Suite 1100  
Washington, DC 20036  
[Nina\\_Maddux@mckinsey.com](mailto:Nina_Maddux@mckinsey.com)

**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 PSC, 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 PSC, 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 PSC, 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 PSC was entered into by the parties. The Contractor's certification in Paragraph A, above, shall be a continuing term or condition of this PSC. As such at all times during the performance of this PSC, 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 PSC 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 PSC, the Contractor learns that its certification in Paragraph A, above, was erroneous on the effective date of this PSC 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 PSC 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 PSC.

C. As required by statute, regulation or requirement of this PSC, 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.

**26. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions**

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 or Subparts B and C of 7 C.F.R. Part 3018, as applicable, are hereby incorporated by reference in subparagraph (B) of this certification.

B. The Contractor, by executing this PSC, certifies to the best of its knowledge and belief that:

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

2. If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the 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 subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

D. This certification is a material representation of fact upon which reliance is placed when this PSC is made and entered into. Submission of this certification is a prerequisite for making and entering into this PSC 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 PSC. 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 PSC.

**27. 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 PSC, 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 PSC 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."

## 29. **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;

Establish an ongoing drug-free awareness program to inform such employees about:

- (i) The dangers of drug abuse in the workplace;
- (ii) The Contractor's policy of maintaining a drug-free workplace;
- (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

2. Provide all employees engaged in performance of the PSC with a copy of the statement required by subparagraph B(1);

3. 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 PSC, the employee will:

- (i) Abide by the terms of the statement; and
- (ii) 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;

4. 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;

5. 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:

- (i) Taking appropriate personnel action against such employee, up to and including termination; or
- (ii) 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

6. Make a good faith effort to maintain a drug-free workplace through implementation of B (1) through B (6) of this paragraph.

C. The Contractor, if an individual, agrees by entering into this PSC 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 PSC and subject the Contractor to suspension of payments under the PSC and/or termination of the PSC in accordance with paragraph 4, above.

### **30. Findings and Sanctions**

A. The Contractor agrees that it may be subject to the findings and sanctions assessed by a Federal or state governmental agency with jurisdiction and/or authority as a result of the audit of the services provided pursuant to Section 19 above (if applicable), subject to Contractor's right to dispute such findings and sanctions assessed as defined in Section 19(D), above.

B. The Contractor will make repayment of any funds expended by the HSD that an auditor with the jurisdiction and/or authority finds were illegally expended, or to which appropriate federal funding agencies take exception and so request reimbursement through a disallowance or deferral, in each case solely to the extent caused by Contractor's violation of applicable federal statutes and/or regulations.

C. If the HSD becomes aware of circumstances that might jeopardize continued federal funding related to this Agreement, 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.

### **31. Performance**

In performance of this Agreement, the Contractor agrees to comply with and assume responsibility for compliance by its employees and its subcontractors and/or Business Associates (BA) with the following requirements:

A. All work will be performed under the supervision of the Contractor or the Contractor's responsible employees, and the Contractor's staff.

B. Contractor agrees that, if Federal Tax Information (FTI) is introduced into Contractor's information systems, work documents, and/or other media by written agreement, any FTI as described in 26 U.S.C. § 6103, limited to FTI received from, or created on behalf of, HSD by Contractor; Protected Health Information (PHI) as defined in 45 C.F.R. § 160.103, limited to PHI received from, or created on behalf of, HSD by Contractor; or Personally Identifiable Information (PII) as defined by the National Institute of Standards of Technology, limited to PII received from, or created on behalf of, HSD by Contractor pursuant to the Services; all together referred to hereafter in Article 10 as Confidential Information, made available to Contractor shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and will not be divulged or made known in any manner to any person or entity except as may be necessary in the performance of this contract. Inspection by, or disclosure to, any person or entity other than an officer, employee, or subcontractor of the Contractor is prohibited.

C. Contractor agrees that it will account for all Confidential Information upon receipt and store such Confidential Information in a secure manner before, during, and after processing. In addition, all related output will be given the same level of protection by the Contractor as required for the source material.

D. The Contractor certifies that the Confidential Information processed during the performance of this Agreement will be deleted from, or otherwise wiped, removed, or rendered unreadable or incapable of reconstitution by known means on all electronic data storage components in Contractor's facilities, including paper files, recordings, video, written records, printers, copiers, scanners and all magnetic and flash memory components of all systems and portable media, and no output will be retained by the Contractor at the time the work is completed or when this Contract is terminated. If immediate purging of all electronic data storage components is not possible, the Contractor certifies that any Confidential Information remaining in any storage component will be safeguarded, using IRS Pub 1075 information storage safeguarding controls for FTI to prevent unauthorized disclosures beyond the term of this Agreement as long as Contractor is in possession of such Confidential Information.

E. Any spoilage or any intermediate hard copy printout that may result during the processing of Confidential Information will be given to the HSD or his or her designee. When this is not possible, the Contractor will be responsible for the destruction (in a manner approved by the

HSD) of the spoilage or any intermediate hard copy printouts, and will provide the HSD or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.

F. All of Contractor's computer systems, office equipment, written records, and portable media receiving, processing, storing, or transmitting Confidential Information must meet the requirements defined in relevant federal regulations such as IRS Publication 1075, HIPAA Privacy Rule (45 CFR Part 160 and Subparts A and E of Part 164), HIPAA Security Rule (45 CFR Part 160 and Subparts A and C of Part 164), and/or any other Federal requirements that may apply to this contract. To meet functional and assurance requirements, the security features of the Contractor's environment must provide for security across relevant managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Confidential Information.

G. No work involving Confidential Information furnished under this Agreement will be subcontracted without prior written approval of the HSD.

H. The Contractor will maintain a list of its personnel, subcontractors, and/or business related entities with authorized access (electronic or physical) to HSD Confidential Information. Such list will be provided to the HSD and, upon request, to the federal agencies as required.

I. The Contractor will provide copies of signed acknowledgments for its staff and its subcontractors and/or Business Associates, to provide certification that relevant information security awareness and training was completed. These certifications will be provided to the HSD upon contract start and, at a minimum, annually thereafter during the term of this Agreement.

J. Upon request, the Contractor will provide the HSD copies of current policies and/or summaries of its current plans that document Contractor's privacy and security controls as they relate to HSD Confidential Information. This includes, at a minimum, any System Security Plans which describe the administrative, physical, technical, and system controls to be implemented for the security of the Department's Confidential Information. The plan shall include the requirement for a Contractor notification to the Department Security Officer or Privacy Officer of breaches or potential breaches of information within 24 hours of their discovery.

K. All incidents affecting the compliance, operation, or security of the HSD's Confidential Information must be reported to the HSD. The Contractor shall notify the HSD of any instances of security or privacy breach issues or non-compliance promptly upon their discovery, but no later than a period of 24 hours (as stated above). Notification shall include a description of the privacy and security non-compliance issue and corrective action planned and/or taken.

L. The Contractor must provide the HSD with a summary of a corrective action plan (if any) to provide any necessary safeguards to protect PII from security breaches or non-compliance discoveries. The corrective action plan must contain a long term solution to possible future privacy and security threats to PII. In addition to the corrective action, the Contractor must provide daily updates as to the progress of all corrective measures taken until the issue is resolved. The Contractor shall be responsible for all costs of implementing the corrective action plan.

M. The HSD will have the right to seek remedies consistent with the liability terms of this contract Agreement and/or terminate the Agreement if the Contractor or its Subcontractors or Business Associates fail to provide the safeguards or to meet the security and privacy requirements to safeguard Confidential Information as described above, consistent with the liability and/or termination clauses herein.

N. All client files and patient records created or used to provide services under this Agreement, as between the parties, are at all times property of HSD. Upon HSD's request, all such client files and patient records shall be returned to HSD upon HSD's request or no later than the final agreed upon termination date of this contract.

### **32. Criminal/Civil Sanctions**

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

A. Contractor agrees that granting access to PII must be preceded by certifying that each individual understands the Procuring Agency's applicable security policy and procedures for safeguarding PII.

### **33. Inspection**

The Procuring Agency shall have the right to send its officers and/or employees into the offices and plants of the contractor where services are primarily performed hereunder for guided inspection of the facilities provided for the performance of any work for which PHI and/or PII is attained and used by Contractor under this contract. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with this Contract's safeguard obligation.

### **34. Contractor's Responsibility for Compliance With Laws and Regulations**

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

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



C. If the Contractor's performance of its obligations under the terms of this Agreement makes it a business associate of the Procuring Agency as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and regulations promulgated thereunder, the Contractor agrees to the terms of the HSD HIPAA Business Associate Agreement ("Agreement") attached hereto and referenced herein as Exhibit B.

**35. Contractor's Responsibility for Compliance With Laws and Regulations Relating to Information Security**

A. The Contractor and all its employees subcontractors consultants, or agents performing the services under this Agreement must comply with the following insofar as they apply to Contractor's processing or storage of Procuring Agency's data:

1. The Federal Information Security Management Act of 2002 (FISMA);
2. The Health Insurance Portability and Accountability Act of 1996 (HIPAA);
3. The Health Information Technology for Economic and Clinical Health Act (HITECH Act);
4. NMAC 1.12.20, *et seq.*: "INFORMATION SECURITY OPERATION MANAGEMENT".

**36. 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 agreement has been intentionally left blank.**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the HSD below:

By: [Signature] Date: 6/11/18  
HSD Cabinet Secretary

By: [Signature] Date: 5/25/18  
HSD Office of General Counsel

By: [Signature] Date: 5/24/18  
HSD Chief Financial Officer

By: [Signature] Date: 5/19/18  
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.

ID Number: 03-405436-00-7 Taxation and Revenue is only verifying the registration and will not confirm or deny taxability statements contained in this contract.

By: [Signature] Date: 6/13/18  
Taxation and Revenue Department

This Agreement has been approved by the DFA Contracts Review Bureau:

By: [Signature] Date: 8/23/18

## EXHIBIT A SCOPE OF WORK

The Contractor will support and assist The New Mexico Human Services' Medical Assistance Division (HSD/MAD) with implementing the department's program transformation agenda of slowing the growth of health care costs, improving health outcomes, implementing person centric service models, and pursuing administrative effectiveness. The Contractor shall be required to conduct activities that must include, but are not limited to, the following:

### I. Set the Foundation

The Contractor shall ensure program objectives of "Medicaid Agency of the Future" are in alignment with the Medicaid Management Information System Replacement project (MMISR) plans, determine and align the critical success factors, develop and set up program architecture for change management, and improve upon and implement the communication plan. This work includes, but is not limited to the following:

- A. Analyze work products that pertain to change management and HSD's communication plan for the MMISR project and refine as needed.
- B. Provide analysis by reviewing and ensuring that the MMISR plans are fully aligned with program aspirations for the "Medicaid Agency of the Future", e.g., better understand the social determinants of health and behavior patterns to improve health outcomes, transform the organization from transactional to outcomes-based, and enhanced capacity for programmatic and performance monitoring.
- C. Develop and conduct change readiness assessment to understand scale of program transformation.
- D. Develop a "change story" to include, but not be limited to, internal stakeholder buy-in for the need for change.  
Ensure and tailor the "change story" to addresses all stakeholders.
- E. Develop a plan to communicate the "change story" to all identified stakeholders-- ensure frequent communication through a wide range of channels, develop consistent messaging through different channels over time, and focus the communication to galvanize key points/issues.
- F. Design and implement a Transformation Office (TO) or align it with the MMISR Business Transformation Council to complete tasks, including, but not limited to:
  - 1. Identify dynamics and linkages among the TO, MMISR vendors, and other parts of HSD and Health and Human Services (HHS) agencies, stakeholders, and partners;
  - 2. Design and establish metrics for measuring progress of organizational health; and
  - 3. Steer and track of information.

## **II. Assess Overall Organizational Health**

The Contractor shall assess the overall organizational health and performance utilizing key linkages across HHS and HSD, and identify the key design implications for MMISR implementation. This work includes, but is not limited to the following:

- A. Develop and implement the Organizational Health Index (OHI).
  - 1. The OHI must be surveyed across all staff.
  - 2. The OHI must include the measure of the division's capacity to perform.
- B. Report to HSD each component of the updated MMISR plan, catalog changes required in talent, organization, structure, processes, and capabilities to inform change management plan.
- C. Facilitate a series of interviews with division leaders and stakeholders to identify potential pain points and areas of focus against each of the MMIS modules.
- D. Identify and report to HSD three (3) priorities most critical for each MMIS module and provide a list of priorities sequencing of interventions based on the module rollout timeline.
- E. Develop a Change Management plan including, but not limited to, a communication plan for 3 MMIS modules. Provide input to plans created by HSD staff for remaining modules.
- F. Facilitate planning sessions with the Transformation Office or MMISR Business Transformation Council and strategy leaders to refine strategies and embed organizational health priorities.

## **III. Support Business Process Redesign**

The Contractor shall perform the following work, including, but not limited to:

- A. Review HSD's existing documentation of processes to identify the most important processes associated with each module.
- B. Identify and/or review HSD's processes associated with each module, with greater focus on the most important processes
  - 1. Provide description of the process, a list of stakeholders and organizations involved, and the roles and activities each stakeholder plays in the overall process.
- C. For each component of the updated MMISR plan, provide to HSD, catalog changes required in talent, organization, structure, processes, and capabilities to inform change management plan.

**IV. Catalog and Support of Implementation Changes**

- A. Provide report findings of a review of current FTE, organization, governance, and talent baseline.
- B. Develop a vision going forwards and a set of requirements for the future organization by identifying four (4) potential design options and iterating jointly to define chosen option.
- C. Identify key changes required to internal capabilities and priorities, including, but not limited to, roles that will no longer be required, what new roles will be needed.
- D. Outline and provide skills and timeline regarding key changes required for internal capabilities, current employee's ability to fill gaps, and retraining needs.

**V. Support Implementation of One (1) Module**

The Contractor shall perform the following work, including, but not limited to:

- A. Support staff and vendors as they design the implementation plan which includes process changes, talent changes, migration sequencing, change management, governance and organization structure, legal setup, and IT enablement.
- B. Define and deliver soft skills training to operate in new environment.
- C. Before launching the module, collaborate with staff and vendors in testing business processes and technology functions.
- D. Document lessons learned, conduct additional training, and facilitate meetings based on pre- launch testing and roll-out issues.
- E. Assist HSD in monitoring performance and customer service, collect real-time customer feedback, and develop real-time fixes as issues arise.
- F. Develop and provide templates to the "control tower" to collect real-time feedback and develop fixes as issues arise.
- G. Work with HSD staff to ensure that the performance management practices are mature and providing real clarity on performance to all levels.

**VI. Facilitate the Change and Measure the Progress**

The Contractor shall perform the following work, including, but not limited to:

- A. Identify Change Leaders across the division
- B. Develop scaling the TO or MMISR Business Transformation Council. Develop

Transformation Scorecards with both processes and outcomes metrics, for three (3) modules.

- C. Develop the performance management and governance framework for the TO or MMISR Business Transformation Council.
- D. Establish the performance management and governance framework, and track and measure the improvement of the organizational health of the agency as the MMISR implementation gets underway.

**VII. Deliverables:**

The following sections describe the required tasks and subtasks to be performed by the Contractor for each Deliverable under the terms of this Agreement. The Contractor must perform each task and/or subtask, but is not limited to performing only the identified task(s) or sub tasks in a given project area. The Parties hereby agree that the Deliverable(s) are the controlling items and that the Contractor’s obligation is to perform and provide the Deliverables as described in the following sections.

**Deliverable 1: A Set Foundation**

<b><u>Deliverable Name</u></b>		<b><u>Due Date</u></b>	<b><u>Compensation</u></b>
<b>A Set Foundation</b>		<b>No Later Than 60 Days After Contract Execution</b>	<b>\$800,000 (Includes Gross Receipts Tax)</b>
<b>Task Item</b>	<b>Sub Tasks</b>	<b>Description</b>	
<b>Setting the Foundation</b>	<b>Analysis, Research, and Planning</b>	<ol style="list-style-type: none"> <li>1. Affirm overall program aspirations through review of relevant planning documents, discussions with key HSD leaders and other stakeholders (e.g., MCOs), and comparison with other states. Review and ensure that the MMISR plans are fully aligned with program aspirations for the “Medicaid Agency of the Future”, e.g., better understand the social determinants of health and behavior patterns to improve health outcomes, transform the organization from transactional to outcomes-based, and enhanced capacity for programmatic and performance monitoring.</li> <li>2. Answer key strategic questions with most significant implications on the MMISR effort. For example: Is the Interagency governance robust and health to</li> </ol>	

		<p>support this transformation? Is there program/IT goal, timing, and resource alignment? What are the precursor steps around organizational change that are necessary to facilitate buy-in of key staff during development, creation of training materials and system role out? What are the vendor value assurance KPIs to ensure optimal state value for the investment? Does the proposed plan result in increased capacity to leverage data for program/policy oversight? What are the early lessons learnt and feedback from procurement of initial modules?</p> <ol style="list-style-type: none"> <li>3. Foster alignment on findings and path forward within HSD and select other stakeholders (e.g., other agencies such as DoIT and Governor’s office, MCOs)</li> <li>4. Conduct change readiness assessment to understand scale of change (e.g. organizational health improvements as described in Section B, workflow, process, culture, staff skills, job descriptions) that will be required and relative preparedness of the organization for these changes to inform the change story and the design of the change management program</li> <li>5. Work with Medicaid leadership to create a compelling “change story” to generate internal stakeholder buy-in for a need for change. The change story should communicate why HSD is undertaking this transformation, what it hopes to accomplish, and how the various components enable the changes</li> <li>6. Outline all key stakeholders and tailor the “change story” as needed to address different groups</li> <li>7. Develop a plan to communicate and cascade the change story to all identified stakeholders (e.g., communicate frequently through a wide range of channels, keep messaging consistent through different channels over time, focus communication to galvanize key points/issues).</li> <li>8. Design a Transformation Office and/or reorganize the Business Transformation Council with responsibility for steering and tracking information – including dynamics and linkage among the TO, MMISR vendors, and other parts of HSD and HHS</li> </ol>
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<p><b>Setting the Foundation</b></p>	<p><b>Plan and Report Development and Delivery</b></p>	<ol style="list-style-type: none"> <li>1. Verify business objectives and their alignment with the MMISR plans to date, highlighting any gaps and plan to address them</li> <li>2. Produce change readiness assessment results including key focus areas for transformation (e.g., significant upskilling and change management may be needed with call center employees to address needs coming into unified system)</li> <li>3. Create a transformation change story and high-level communication plan (e.g., internal campaign including email, posters, town halls)</li> <li>4. Launch the Transformation Office (including job descriptions for key roles) and/or organize the Business Transformation Council to serve as the TO</li> </ol>
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**Deliverable 2: Assessment of Organizational Health**

<u>Deliverable Name</u>	<u>Due Date</u>	<u>Compensation</u>
<p><b>Assessment of Organizational Health and Define Change Management Plan</b></p>	<p><b>No Later Than 120 Days After Contract Execution</b></p>	<p><b>\$1,000,000 (Includes Gross Receipts Tax)</b></p>
<u>Task Item</u>	<u>Sub Tasks</u>	<u>Description</u>
<p><b>Assess Overall Organizational Health and Define Change Management Plan</b></p>	<p><b>Analysis, Research, and Planning</b></p>	<ol style="list-style-type: none"> <li>1. Launch the Organizational Health Index (OHI) diagnostic across the division</li> <li>2. For each component of the updated MMISR plan, catalog changes required in talent, organization, structure, processes, and capabilities to inform change management plan</li> <li>3. Hold a series of interviews with division leaders and stakeholders to identify potential pain points and areas of focus against each of the MMIS modules. Assess the current position and path forward</li> <li>4. Identify organizational health priorities to focus on across the division.</li> </ol>



		<ol style="list-style-type: none"> <li>5. Identify 2-3 priorities most critical for each MMIS module (e.g., which parts of the division are most impacted, which leadership practices are most critical for that particular module) and priorities sequencing of interventions based on module rollout timeline</li> <li>6. Based on learnings from the OHI and interviews, develop a Change Management plan including communication plan for 3 MMIS modules. Provide input into plans created by HSD staff on remaining modules.</li> <li>7. Facilitate planning sessions with the Transformation Office and strategy leaders to refine strategies and embed organizational health priorities. These sessions will also inform the initial performance metrics that the TO will need to track against each of the modules. These would be refined over the following phases as the performance management and governance structure is built out to measure and report the progress</li> </ol>
	<p><b>Survey and Plans</b></p>	<ol style="list-style-type: none"> <li>1. Highlight areas of greatest strengths and organizational health priorities (overall transformation as well as specific to each MMIS module) OHI survey.</li> <li>2. Include a Clear articulation of performance and organizational health aspirations, across all modules Change management and high-level communication plan for 3 MMIS modules.</li> </ol>

**Deliverable 3: Business Process Redesign**

<b><u>Deliverable Name</u></b>	<b><u>Due Date</u></b>	<b><u>Compensation</u></b>
<b>Business Process Redesign, Supported by Staff Across Each Module</b>	<b>No Later Than 150 Days After Contract Execution</b>	<b>\$1,000,000 (Includes Gross Receipts Tax)</b>

<b>Task Item</b>	<b>Sub Tasks</b>	<b>Description</b>
<b>Support Business Process Redesign</b>	<b>Interviews, Analysis, Document Reviews, and Planning</b>	<ol style="list-style-type: none"> <li>1. Use a combination of review of existing documentation of processes by HSD and various MMIS vendors, interviews with agency staff, focus groups with staff, and in-person observation to identify the most important processes associated with each module (i.e., a description of the process, a list of the stakeholders and organizations involved, and the roles and activities they each play in the overall process).</li> <li>2. Work hand-in-hand with HSD leaders and vendors to define changes that address low-hanging fruit (e.g., identify process bottlenecks and inefficiencies around key areas like provider enrollment, MCO management, etc.)</li> <li>3. Syndicate and refine modifications as needed within key personnel and beyond HSD</li> <li>4. Articulate a compelling vision and business case for proposed changes, describing rationale and expected benefits (including relevant operational and financial information)</li> <li>5. Provide necessary inputs from this workstream into other workstreams (e.g., the technology migration plans being defined by SI and other module vendors, the change management plan being defined by McKinsey)</li> <li>6. Catalog changes required in talent, organization, structure, processes, and capabilities to inform change management plan for each component of the updated MMISR plan</li> </ol>
	<b>Catalog, Vision, and Business Case</b>	Develop a catalog, vision, and business case for highest priority business process changes

**Deliverable 4: Report, Catalog and Support Implementation of Changes**

<u>Deliverable Name</u>	<u>Due Date</u>	<u>Compensation</u>
<b>Report, Cataloging and Supporting Implementation of Changes</b>	<b>No Later Than 180 Days After Contract Execution</b>	<b>\$750,000 (Includes Gross Receipts Tax)</b>

<b>Task Item</b>	<b>Sub Tasks</b>	<b>Description</b>
<b>Report, Catalog and Support Implementation of Changes</b>	<b>Interviews, Analysis, Document Reviews, and Planning</b>	<ol style="list-style-type: none"> <li>1. Review current FTE, organization, governance, and talent baseline.</li> <li>2. Building on the process mapping and change recommendations from the business process redesign effort, and through discussions with HSD leadership, create a vision going forward and a set of requirements for the future organization (by identifying 2-4 potential design options and iterating jointly to define chosen option).</li> <li>3. Identify key changes that will be required for all stakeholders and prioritize changes to be addressed through the change management plan.</li> <li>4. Outline key changes required to internal capabilities (e.g., which roles will no longer be required, what new roles will be needed), assess current employees for ability to fill gaps and identify retraining needs (skills and timeline).</li> <li>5. Communicate progress and reiterate change story to all key stakeholders through change champions, staff meetings, revised job roles, internal social media, etc. (with the goal of reinforcing with employees how the MMISR will enable them to do their jobs more efficiently and have greater impact by giving examples of “quick wins”, for example, employees who are spending less time with paperwork and able to reach more members)</li> </ol>
	<b>Report</b>	Provide a written report of recommendations for future organization, governance, and talent based on business process redesign and other foundational work. For each component of the updated MMISR plan, provide a catalog of changes required in talent, organization, structure, processes, and capabilities to inform the change management plan.

**Deliverable 5: Support Implementation of One MMISR Module**

<u>Deliverable Name</u>	<u>Due Date</u>	<u>Compensation</u>
<b>Support Implementation of One MMISR Module</b>	<b>No Later Than September 30, 2020</b>	<b>\$1,200,000 (Includes Gross Receipts Tax)</b>

<b>Task Item</b>	<b>Sub Tasks</b>	<b>Description</b>
<b>Support Implementation of One Module</b>	<b>Implementation Support</b>	<ol style="list-style-type: none"> <li>1. Support staff and vendors as they design the implementation plan which includes process changes, talent changes, migration sequencing, change management, governance and organization structure, legal setup, IT enablement, vendor/staff/consultant roles and responsibilities, risk mitigation and management, resource management, migration management, and ongoing performance management. Work closely with key personnel to refine the plan and create agreement and excitement.</li> <li>2. Define and deliver soft skills training to operate in new environment (focused on transition management, future “service delivery”, and performance management throughout)</li> <li>3. Before launching the module, collaborate with staff and vendors in testing business processes and technology functions to ensure they are operational and make necessary modifications.</li> <li>4. Document lessons learned, conduct additional training, and facilitate meetings based on prelaunch testing and roll-out issues.</li> <li>5. Monitor performance and customer service, collect real-time customer feedback, and develop real-time fixes as issues arise.</li> <li>6. Provide tools and templates to collect real-time feedback and develop fixes as issues arise.</li> <li>7. Work with HSD staff and vendors to ensure that the performance management practices are mature and providing real clarity on performance to all levels of the organization.</li> </ol>
		<ol style="list-style-type: none"> <li>a) Provide support to develop a comprehensive implementation plan</li> </ol>

Task Item	Sub Tasks	Description
		b) Provide support in pre-launch testing
		c) Provide support in performance management before, during, and after go-live
		d) Document lessons learned and changes needed (e.g., both future performance of the module and for rollout of other modules)
		e) Develop and deliver soft skills training modules

**Deliverable 6: Facilitate the Change and Measure the Progress**

Deliverable Name	Due Date	Compensation
Measurement of Progress From the Facilitated Change	No Later Than September 30, 2020	\$750,000 (Includes Gross Receipts Tax)

Task Item	Sub Tasks	Description
Facilitate the Change and Measure the Progress	Facilitate Change Measure the Progress	<ol style="list-style-type: none"> <li>1. Identify Change Leaders across the division i.e., those most relevant to successful implementation of each MMISR module.</li> <li>2. Scaling the TO or Business Transformation Council, including Transformation Scorecards with both process and outcomes metrics, for each of the modules. These scorecards will incorporate relevant process metrics and corresponding outcomes metrics, related to both performance and organizational health</li> <li>3. Design the performance management and governance framework for the TO or Business Transformation Council. Design a robust framework that puts TO or Business Transformation Council staff, Change Leaders, and other accountable parties in the room together on a regular basis, with real data and metrics to review progress, and time for meaningful problem solving to push the strategy and remove bottlenecks</li> <li>4. Establish the performance management governance framework, and beginning to track and measure the improvement on organizational health as the MMISR implementation gets underway.</li> </ol>

		<p>5. Identify previously unknown “informal influencers” to serve as Change Leaders across the division and support ongoing roll-out of modules</p> <p>6. Develop Transformation Scorecards for 3 modules.</p>
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**EXHIBIT B**  
**HIPAA BUSINESS ASSOCIATE AGREEMENT**

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

**BUSINESS ASSOCIATE**, by this PSC 19-630-8000-0003 has agreed to provide services to, or on behalf of the HSD which may involve the disclosure by the Department to the Business Associate (referred to in PSC 19-630-8000-0003 as “Contractor”) of Protected Health Information. This Business Associate Agreement is intended to supplement the obligations of the Department and the Contractor as set forth in PSC 19-630-8000-0003, and is hereby incorporated therein.

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

**1. Definition of Terms**

- a. Breach. “Breach” has the meaning assigned to the term breach under 42 U.S.C. § 17921(1) [HITECH Act § 13400 (1)] and 45 CFR § 164.402.
- b. Business Associate. “Business Associate”, herein being the same entity as the Contractor in PSC 19-630-8000-0003, shall have the same meaning as defined under the HIPAA standards as defined below, including without limitation Contractor acting in the capacity of a Business Associate as defined in 45 CFR § 160.103.
- c. Department. “Department” shall mean in this agreement the State of New Mexico Human Services Department.
- d. Individual. “Individual” shall have the same meaning as in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502 (g).
- e. HIPAA Standards. “HIPAA Standards” shall mean the legal requirements as set forth in the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act of 2009, and the regulations and policy guidance, as each may be amended over time, including without limitation:
  - i. Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information in 45 CFR Part 160 and Part 164, Subparts A and E.

- ii. Breach Notification Rule. "Breach Notification" shall mean the Notification in the case of Breach of Unsecured Protected Health Information, 45 CFR Part 164, Subparts A and D
- iii. Security Rule. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, Subparts A and C, including the following:
  - f. Security Standards. "Security Standards" hereinafter shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.306.
  - g. Administrative Safeguards. "Administrative Safeguards" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.308.
  - h. Physical Safeguards. "Physical Safeguards" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.310.
  - i. Technical Safeguards. "Technical Safeguards" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.312.
  - j. Policies and Procedures and Documentation Requirements. "Policies and Procedures and Documentation Requirements" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.316.
  - k. Protected Health Information. "Protected Health Information" or "PHI" shall have the same meaning as in 45 CFR §160.103, limited to the information created, maintained, transmitted or received by Business Associate, its agents or subcontractors from or on behalf of Department.
  - l. Required By Law. "Required By Law" shall have the same meaning as in 45 CFR §164.103.
  - m. Secretary. "Secretary" shall mean the Secretary of the U. S. Department of Health and Human Services, or his or her designee.
  - n. Covered Entity. "Covered Entity" shall have the meaning as the term "covered entity" defined at 45 CFR §160.103, and in reference to the party to this BAA, shall mean the State of New Mexico Human Services Department.

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

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

- a. General Rule of PHI Use and Disclosure. The Business Associate may use or disclose PHI it creates for, receives from or on behalf of, the Department to perform functions, activities or services for, or on behalf of, the Department in accordance with the specifications set forth in this BAA and in this PSC 19-630-8000-0003; provided that such use or disclosure would not violate the HIPAA Standards if done by the Department; or as Required By Law.
  - i. Any disclosures made by the Business Associate of PHI must be made in accordance with HIPAA Standards and other applicable laws.



- ii. Notwithstanding any other provision herein to the contrary, the Business Associate shall limit uses and disclosures of PHI to the “minimum necessary,” as set forth in the HIPAA Standards.
  - iii. The Business Associate agrees to use or disclose only a “limited data set” of PHI as defined in the HIPAA Standards while conducting the authorized activities herein and as delineated in PSC 19-630-8000-0003, except where a “limited data set” is not practicable in order to accomplish those activities.
  - iv. Except as otherwise limited by this BAA or PSC 19-630-8000-0003, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
  - v. Except as otherwise limited by this BAA or PSC 19-630-8000-0003, Business Associate may disclose PHI for the proper management and administration of the Business Associate provided that the disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
  - vi. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR § 164.502(j).
  - vii. Business Associate may use PHI to provide Data Aggregation services to the Department as permitted by the HIPAA Standards.
- b. Safeguards. The Business Associate agrees to implement and use appropriate Security, Administrative, Physical and Technical Safeguards, and comply where applicable with subpart C of 45 C.F.R. Part 164, to prevent use or disclosure of PHI other than as required by law or as provided for by this BAA or PSC 19-630-8000-0003. Business Associate shall identify in writing upon request from the Department all of those Safeguards that it uses to prevent impermissible uses or disclosures of PHI.
- c. Restricted Uses and Disclosures. The Business Associate shall not use or further disclose PHI other than as permitted or required by this BAA or PSC 19-630-8000-0003, the HIPAA Standards, or otherwise as permitted or required by law. The Business Associate shall not disclose PHI in a manner that would violate any restriction which has been communicated to the Business Associate.
- i) The Business Associate shall not directly or indirectly receive remuneration in exchange for any of the PHI unless a valid authorization has been provided to the Business Associate that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving the PHI of that individual, except as provided for under the exceptions listed in 45 C.F.R. §164.502 (a)(5)(ii)(B)(2).
  - ii) Unless approved by the Department, Business Associate shall not directly or indirectly perform marketing to individuals using PHI.
- d. Agents. The Business Associate shall ensure that any agents that create, receive, maintain or transmit PHI on behalf of Business Associate, agree in writing to the same restrictions and conditions that apply to the Business Associate with respect to PHI, in accordance with

45 C.F.R. § 164.502(e)(1)(ii), and shall make that agreement available to the Department upon request. Upon the Business Associate's contracting with an agent for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement.

- e. Availability of Information to Individuals and the Department. Business Associate shall provide, at the Department's request, and in a reasonable time and manner, access to PHI in a Designated Record Set (including an electronic version if required) to the Department or, as directed by the Department, to an Individual in order to meet the requirements under 45 CFR § 164.524. Within three (3) business days, Business Associate shall forward to the Department for handling any request for access to PHI that Business Associate receives directly from an Individual. If requested by the Department, the Business Associate shall make such information available in electronic format as required by the HIPAA Standards to a requestor of such information and shall confirm to the Department in writing that the request has been fulfilled.
- f. Amendment of PHI. In accordance with 45 CFR § 164.526, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Department directs or agrees to, at the request of the Department or an Individual, to fulfill the Department's obligations to amend PHI pursuant to the HIPAA Standards. Within three (3) business days, Business Associate shall forward to the Department for handling any request for amendment to PHI that Business Associate receives directly from an Individual.
- g. Internal Practices. Business Associate agrees to make internal practices, books and records, including policies, procedures and PHI, relating to the use and disclosure of PHI, available to the Department or to the Secretary within seven (7) days of receiving a request from the Department or receiving notice of a request from the Secretary, for purposes of the Secretary's determining the Department's compliance with the Privacy Rule.
- h. PHI Disclosures Recordkeeping. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for the Department to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with the HIPAA Standards and 45 CFR § 164.528. Business Associate shall provide such information to the Department or as directed by the Department to an Individual, to permit the Department to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by the Department. Within three (3) business days, Business Associate shall forward to the Department for handling any accounting request that Business Associate directly receives from an individual.
- i. PHI Disclosures Accounting. Business Associate agrees to provide to the Department or an Individual, within seven (7) days of receipt of a request, information collected in accordance with Section 2 (h) of this Agreement, to permit the Department to respond to a request for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- j. Security Rule Provisions. As required by 42 U.S.C. § 17931 (a) [HITECH Act Section 13401(a)], the following sections as they are made applicable to business associates under the HIPAA Standards, shall also apply to the Business Associate: 1) Administrative Safeguards; 2) Physical Safeguards; 3) Technical Safeguards; 4) Policies and Procedures and Documentation Requirements; and 5) Security Standards. Additionally, the Business

Associate shall either implement or properly document the reasons for non-implementation of all safeguards in the above cited sections that are designated as "addressable" as such are made applicable to Business Associates pursuant to the HIPAA Standards.

- k. Civil and Criminal Penalties. Business Associate agrees that it will comply with the HIPAA Standards as applicable to Business Associates, and acknowledges that it may be subject to civil and criminal penalties for its failure to do so.
- l. Performance of Covered Entity's Obligations. To the extent the Business Associate is to carry out the Department 's obligations under the HIPAA Standards, Business Associate shall comply with the requirements of the HIPAA Standards that apply to the Department in the performance of such obligations.
- m. Subcontractors. The Business Associate shall ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate, agree in writing to the same restrictions and conditions that apply to the Business Associate with respect to PHI, with 45 C.F.R. § 164.502(e)(1)(ii), and shall make such information available to the Department upon request. Upon the Business Associate's contracting with an agent for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement. Upon the Business Associate's contracting with a subcontractor for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement.

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

During the term of this BAA or PSC 19-630-8000-0003, the Business Associate shall be required to perform the following pursuant to the Breach Notification Rule regarding Breach Notification, Risk Assessment and Mitigation:

#### Notification

- a. Business Associate agrees to report to the Department Contract Manager or HIPAA Privacy and Security Officer any use or disclosure of PHI not provided for by this BAA or PSC 19-630-8000-0003, and HIPAA Standards, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, as soon as it (or any employee or agent) becomes aware of the Breach, and in no case later than three (3) business days after it (or any employee or agent) becomes aware of the Breach, except when a government official determines that a notification would impede a criminal investigation or cause damage to national security.
- b. Business Associate shall provide the Department with the names of the individuals whose unsecured PHI has been, or is reasonably believed to have been, the subject of the Breach and any other available information that is required to be given to the affected individuals, as set forth in 45 CFR §164.404(c), and, if requested by the Department, provide information necessary for the Department to investigate promptly the impermissible use or disclosure. Business Associate shall continue to provide to the Department information concerning the Breach as it becomes available to it, and shall also provide such assistance and further information as is reasonably requested by the Department.

#### Risk Assessment

- c. When Business Associate determines whether an impermissible acquisition, use or disclosure of PHI by an employee or agent poses a low probability of the PHI being compromised, it shall document its assessment of risk in accordance with 45 C.F.R. §

164.402 (in definition of "Breach", ¶ 2) based on at least the following factors: (i) the nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used the protected health information or to whom the disclosure was made; (iii) whether the protected health information was actually acquired or viewed; and (iv) the extent to which the risk to the protected health information has been mitigated. Such assessment shall include: 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons documenting the determination of risk of the PHI being compromised. When requested by the Department, Business Associate shall make its risk assessments available to the Department.

- d. If the Department determines that an impermissible acquisition, access, use or disclosure of PHI, for which one of Business Associate's employees or agents was responsible, constitutes a Breach, and if requested by the Department, Business Associate shall provide notice to the individuals whose PHI was the subject of the Breach. When requested to provide notice, Business Associate shall consult with the Department about the timeliness, content and method of notice, and shall receive the Department's approval concerning these elements. The cost of notice and related remedies shall be borne by Business Associate. The notice to affected individuals shall be provided as soon as reasonably possible and in no case later than 60 calendar days after Business Associate reported the Breach to the Department.

#### Mitigation

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

#### Notification to Clients

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

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

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

**5. Term and Termination**

- a. Term. This BAA terminates concurrently with PSC 19-630-8000-0003, except that obligations of Business Associate under this BAA related to final disposition of PHI in this Section 5 shall survive until resolved as set forth immediately below.
- b. Disposition of PHI upon Termination. Upon termination of this PSC 19-630-8000-0003 and BAA for any reason, Business Associate shall return or destroy all PHI in its possession, and shall retain no copies of the PHI. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to the Department notification of the conditions that make return or destruction of PHI not feasible. Upon mutual agreement of the Parties that return or destruction of the PHI is infeasible, Business Associate shall agree, and require that its agents, affiliates, subsidiaries and subcontractors agree, to the extension of all protections, limitations and restrictions required of Business Associate hereunder, for so long as the Business Associate maintains the PHI.
- c. If Business Associate breaches any material term of this BAA, the Department may either:
  - i. provide an opportunity for Business Associate to cure the Breach and the Department may terminate this PSC 19-630-8000-0003 and BAA without liability or penalty in accordance with Article 4, Termination, of PSC 19-630-8000-0003, if Business Associate does not cure the breach within the time specified by the Department; or,
  - ii. immediately terminate this PSC 19-630-8000-0003 without liability or penalty if the Department determines that cure is not reasonably possible; or,
  - iii. if neither termination nor cure are feasible, the Department shall report the breach to the Secretary.

The Department has the right to seek to cure any breach by Business Associate and this right, regardless of whether the Department cures such breach, does not lessen any right or remedy available to the Department at law, in equity, or under this BAA or PSC 19-630-

8000-0003, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

## 6. Penalties and Training.

Business Associate understands and acknowledges that violations of this BAA or PSC 19-630-8000-0003 may result in notification by the Department to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by the Department, Business Associate shall participate in training regarding use, confidentiality, and security of PHI.

## 7. Miscellaneous

- a. Interpretation. Any ambiguity in this BAA, or any inconsistency between the provisions of this BAA or PSC 19-630-8000-0003, shall be resolved to permit the Department to comply with the HIPAA Standards.
- b. Business Associate's Compliance with HIPAA. The Department makes no warranty or representation that compliance by Business Associate with this BAA or the HIPAA Standards will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- c. Change in Law. In the event there are subsequent changes or clarifications of statutes, regulations or rules relating to this BAA or PSC 19-630-8000-0003, the Department shall notify Business Associate of any actions it reasonably deems necessary to comply with such changes, and Business Associate shall promptly take such actions. In the event there is a change in federal or state laws, rules or regulations, or in the interpretation of any such laws, rules, regulations or general instructions, which may render any of the material terms of this BAA unlawful or unenforceable, or which materially affects any financial arrangement contained in this BAA, the parties shall attempt amendment of this BAA to accommodate such changes or interpretations. If the parties are unable to agree, or if amendment is not possible, the parties may terminate the BAA and PSC 19-630-8000-0003 pursuant to its termination provisions.
- d. No Third Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Department, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- e. Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any agents, affiliates, subsidiaries, subcontractors or workforce members assisting Business Associate in the fulfillment of its obligations under this BAA and PSC 19-630-8000-0003 available to the Department, at no cost to the Department, to testify as witnesses or otherwise in the event that litigation or an administrative proceeding is commenced against the Department or its employees based upon claimed violation of the

HIPAA standards or other laws relating to security and privacy, where such claimed violation is alleged to arise from Business Associate's performance under this BAA or PSC 19-630-8000-0003, except where Business Associate or its agents, affiliates, subsidiaries, subcontractors or employees are named adverse parties.

- f. Additional Obligations. Department and Business Associate agree that to the extent not incorporated or referenced in any Business Associate Agreement between them, other requirements applicable to either or both that are required by the HIPAA Standards, those requirements are incorporated herein by reference.