

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 Deloitte Consulting LLP, hereinafter referred to as the "Contractor".

WHEREAS, HSD's General Counsel and Chief Financial Officer have made a determination that this Agreement is exempt from the provisions of the New Mexico Procurement Code (NMSA 1978, 13-1-28 et seq.) pursuant to NMSA 1978, § 13-1-98.1, because it is for the purpose of creating a network of health care providers to provide services to Medicaid-eligible Recipients that will or are likely to reduce health care costs, improve quality of care or improve access to care; and

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 two hundred eight thousand eight hundred eighty dollars (\$208,880) 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.

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the 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 HSD. This Agreement shall terminate one year from date of approval, 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 four additional (4) one year periods. In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed five 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 agency 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 Procuring Agency.

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.

A. 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.

B. Contract for an independent OMB Circular A-133 audit at the Contractor's expense, as applicable. The Contractor shall ensure that the auditor is licensed to perform audits in the State of New Mexico and shall be selected by a competitive bid process. The Contractor shall enter into a written contract with the auditor specifying the scope of the audit, the auditor's responsibility, the date by which the audit is to be completed and the fee to be paid to the auditor for this service. Single audits shall comply with procedures specified by the HSD. The audit of the contract shall cover compliance with Federal Regulations and all financial transactions hereunder for the entire term of the Agreement in accordance with procedures promulgated by OMB A-133 Circular or by Federal program officials for the conduct and report of such audits. On a yearly basis as specified in the solicitation, subrecipients must provide a copy of their OMB Circular A-133 type of audited financial statements to the Division or Office Program Manager. An official copy of the independent auditor's report shall be made available to the HSD and any other authorized entity as required by law within fifteen (15) days of receipt of the final audit report. The Contractor may request an extension to the deadline for submission of the audit report in writing to the HSD for good cause and the HSD reserves the right to approve or reject any such request. The HSD retains the right to contract for an independent financial and functional audit for funds and operations under this if it determines that such an audit is warranted or desired.

C. Upon completion of the audit under the applicable federal and state statutes and regulations, the Contractor shall notify the HSD when the audit is available for review and

provide online access to the HSD, or the Contractor shall provide the HSD with four (4) originals of the audit report. The HSD will retain two (2) and one (1) will be sent to the HSD/Office of the Inspector General and one (1) to the HSD/Administrative Services Division/Compliance Bureau.

D. Within thirty (30) days thereafter or as otherwise determined by the HSD in writing, the Contractor shall provide the HSD with a response indicating the status of each of the exceptions or findings in the said audit report. If either the exceptions or findings in the audit are not resolved within thirty (30) days, the HSD has the right to reduce funding, terminate this Agreement, and/or recommend decertification in compliance with state and/or federal regulations governing such action.

E. This audit shall contain a schedule of financial expenditures for each program to facilitate ease of reconciliation by the HSD. This audit shall also include a schedule of depreciation for all property or equipment with a purchase price of \$5,000 or more pursuant to OMB Circulars A-21, A-87, A-110, A-122 and A-133 where appropriate.

F. This audit shall include a report on compliance with requirements applicable to each major program and internal control over compliance in accordance with OMB Circulars A-21, A-87, A-110, A-122 and A-133 where appropriate.

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 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: Reina Guillen, Program Manager
 Medical Assistance Division
 Human Services Department
 P.O. Box 2348
 Santa Fe, NM 87504-2348
 Reina.Guillen@state.nm.us

To the Contractor: Deloitte Consulting LLP
 Attn: Mike Phelan, Principal
 215 Lincoln Avenue, Suite 205
 Santa Fe, NM 87501
 Mike.Phelan@deloitte.com

26. 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.

27. Debarment and Suspension

A. Consistent with either 7 C.F.R. Part 3017 or 45 C.F.R. Part 76, as applicable, and as a separate and independent requirement of this PSC 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.

28. 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 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.

29. Non-Discrimination

A. The Contractor agrees to comply fully with Title VI of the Civil Rights Act of

1964, as amended; the Rehabilitation Act of 1973, Public Law 93-112, as amended; and the Americans With Disabilities Act of 1990, Public Law 101-336; in that there shall be no discrimination against any employee who is employed in the performance of this 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."

30. Drug Free Workplace

A. *Definitions.* As used in this paragraph—

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act, 21 U.S.C 812, and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

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

1. Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

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

- (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;

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

4. Notify such employees in writing in the statement required by subparagraph (B)(1) of this clause that, as a condition of continued employment on this 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;

5. Notify the HSD Program Manager in writing within ten (10) days after receiving notice under (B)(4)(ii) of this paragraph, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

6. Within thirty (30) days after receiving notice under B(4)(ii) of this paragraph of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

- (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

7. 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.

31. 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.

32. 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 any Personally Identifiable Information (PII) made available shall be used only for the purpose of carrying out the provisions of this Agreement. PII Information 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 Agreement. Inspection by or disclosure to any person or entity other than an officer or employee of the Contractor is prohibited.

C. All PII will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all PII will be given the same level of protection as required for the source materials.

D. The Contractor certifies that the PII data 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, including 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. If immediate purging of all data storage components is not possible, the Contractor certifies that any PII data remaining in any storage components will be safeguarded to prevent unauthorized disclosures.

E. Any spoilage or any intermediate hard copy printout that may result during the processing of PII will be given to the Procuring Agency or his or her designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency 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, and portable media receiving, processing, storing, or transmitting Protected Health Information (PHI), or PII must meet the requirements defined in HIPAA Security Rule, 45 CFR 160. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls.

G. The Contractor will provide signed acknowledgments for its staff and its subcontractors and/or BA staff, to provide certification that information security awareness and training was completed. These signed certifications will be provided to the agency contract manager upon contract start and annually thereafter.

H. All incidents affecting the compliance, operation, or security of the information and systematic functionality must be reported to the Procuring Agency and remedied at the Contractor's expense. In addition to the self-certification and evaluation requirements, the Contractor shall notify the Procuring Agency of any instances of security breach issues or non-compliance promptly upon their discovery, but no later than a period of 24 hours. Notification shall include a description of the security/non-compliance issue and corrective action planned and/or taken.

I. The Contractor must provide the Procuring Agency with any necessary safeguards to protect further issues caused by security breaches or non-compliance discoveries, at the Contractor's expense. The HSD approved corrective action plan must contain a long term solution to possible future privacy or security threat of information. In addition to the corrective action, the Contractor must provide daily updates as to the progress of all corrective measures until the issue is resolved.

J. The Procuring Agency will have the right to terminate the contract if the Contractor or its subcontractors or BAs fail to provide the safeguards described above, consistent with the termination clause herein.

33. 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.

34. 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.

35. 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.

36. 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".

37. Force Majeure.

Neither party shall be liable in damages for any delay or default in performing hereunder if such delay or default is unforeseeable, caused by conditions beyond its control, and could not have been prevented by the exercise of reasonable diligence. Such conditions shall include, but not be limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

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:  _____ Date: 2/23/15
HSD Cabinet Secretary

By:  _____ Date: 2/17/15
HSD Office of General Counsel

By:  _____ Date: 2/17/15
HSD Chief Financial Officer

By:  _____ Date: 17 FEB 2015
Contractor (MIKE ANELAW, DELOITTE)

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: 03-011368-00-7

By:  _____ Date: 2/17/15
Taxation and Revenue Department

EXHIBIT A SCOPE OF WORK

The Contractor shall conduct the work detailed in this Scope of Work for FY15 and FY16, and may conduct the work through FY19, pursuant to the optional year process in RFP 14-630-8000-0006, to provide an evaluation of Centennial Care — using the CMS-approved Evaluation Design Plan as a guideline — to help determine if Centennial Care is meeting its goals.

A. Oversight

1. Evaluation Design Requirements

The Contractor shall:

- a. Develop a project plan and implementation plan with milestones within two (2) weeks of the signed contract.
- b. Follow CMS regulations required in the design plan that include the following elements (42 C.F.R. §431.424):
 - i. Discussion of the demonstration hypotheses;
 - ii. Description of the data that will be used and the baseline value for each measure;
 - iii. Description of the methods of data collection;
 - iv. Description of how the effects of the demonstration will be isolated from other changes occurring in the state;
 - v. Proposed date by which a final report on findings from activities conducted under the evaluation plan must be submitted to CMS; and
 - vi. Any other information pertinent to the state's research.
- c. The special terms and conditions of the Centennial Care waiver further specify that the design plan include descriptions of the following components:
 - i. Research questions and hypotheses;
 - ii. Study design;
 - iii. Study population;
 - iv. Outcome measures;
 - v. Data collection
 - vi. Data analysis;
 - vii. Timeline; and
 - viii. Evaluator.

2. Goals and Guiding Principles - Centennial Care is driven by the following goals, which will guide the evaluation plan.

The Contractor shall, in performing its services, take into consideration the following stated goals and guiding principles:

- a. Ensure that Medicaid recipients in the program receive the appropriate amount of care, delivered at the appropriate time, in the appropriate setting
- b. Ensure that expenditures for care and services provided are measured in terms of quality as well as quantity.
- c. Slow the growth rate of costs, or “bending the cost curve,” over time without cutting benefits or services, changing eligibility, or reducing provider rates
- d. Streamline and modernizing the Medicaid program in the State

New Mexico further articulated the following four guiding principles for the program:

- a. Develop a comprehensive service delivery system that provides the full array of benefits and services offered through the State’s Medicaid program
- b. Encourage more personal responsibility so that recipients more actively participate in their own health and use the health care system more efficiently
- c. Increase the emphasis on payment reforms that pay for performance rather than for the quantity of services delivered
- d. Simplify the administration of the program for the State, providers, and recipients where possible

B. Measures

The contractor shall provide reports as described in the Evaluation Design Plan Section IV: Research Questions and Hypotheses that include:

1. Measures largely drawn from National standards; and
2. Analytic techniques that will isolate the effects of the Centennial Care demonstration from other external influences.

C. Data Sources and Collections

1. The Contractor shall review, analyze, and organize these data, which are to be stored in a format that may be transferred to HSD as described in the Evaluation Design Plan Section IV: Data Sources and Collection. HSD will provide the Contractor with data from the following sources in a format to be agreed by the parties:
 - a. **The New Mexico Medicaid Management Information System (MMIS).** The MMIS contains information about enrollment, providers, and claims/encounters for health services. HSD will provide the Contractor with summarized data from the

MMIS to perform the measures described in the Evaluation Design Plan. The Contractor will not be expected to process raw MMIS data.

- b. **Healthcare Effectiveness Data and Information Set (HEDIS).** HEDIS is a nationally recognized system for measuring and reporting health plan performance. HSD contracts with an External Quality Review Organization (EQRO) to review results from data obtained from HEDIS and HEDIS-like measures. HSD will provide the Contractor with these results.
- c. **Consumer Assessment of Health Plans Survey (CAHPS).** CAHPS is a national, standard survey instrument that will be administered to representative samples of the Centennial Care population to measure patient access and plan satisfaction. HSD contracts with a vendor to perform the CAHPS survey. HSD will provide the Contractor with the CAHPS survey results.
- d. **CMS 416 Report.** The CMS 416 is the state's annual report to CMS on Medicaid children's utilization of Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services. This report includes the number of children who receive health screening services, referrals for corrective treatment, and dental services. These data are used to calculate the state's screening ratio by age group. HSD will provide these reports to the Contractor.
- e. **MCO-Specific Reports.** HSD's contracts with the MCOs require the plans to submit extensive reports on multiple aspects of plan operations, including but not limited to, participant and health care provider activity, specialized services, care coordination, utilization management, quality, systems availability, claims management, and financial management. Many of these reports will supply information that answers research questions and provides or supplements the measures used to test research hypotheses. HSD will provide the Contractor with the MCO reports.
- f. **Census and Other Publicly Available Data.** The Contractor may be required to analyze Census or other publicly available survey data to evaluate certain measures and analytic techniques.
- g. **Other.** HSD will consider other data sources proposed by the Contractor.

D. Reports

The Contractor shall deliver the following to HSD:

1. **Quarterly Reports for CMS.** The Contractor must report quarterly on the progress of evaluation activities, including key milestones accomplished, as well as challenges encountered and how they were addressed. The Contractor must include interim findings when available. The Contractor shall submit the first quarterly report draft to HSD for review at least one month prior to the CMS deadline. The Contractor shall submit subsequent quarterly report drafts to HSD at least two weeks prior to the CMS deadline.
2. **Annual Reports for CMS.** The Contractor must report annually on the progress of evaluation activities, including key milestones accomplished, as well as challenges encountered and how they were addressed. The Contractor must include interim findings

when available. The Contractor shall submit a draft of the annual report to HSD at least one month prior to the CMS deadline.

3. **Interim Evaluation Report for CMS.** If the state submits a request for a renewal of the Centennial Care demonstration, the Contractor must develop an interim evaluation report. The Contractor's report must follow the Evaluation Design Plan and must include an executive summary, a description of the demonstration, a discussion of the study design, a discussion of findings and conclusions, and a description of policy implications. The interim evaluation report is due to CMS at the time of the renewal application. CMS determines the deadline for the renewal application, and this deadline is typically twelve (12) months prior to the waiver expiration date. The Contractor may be required to submit a detailed outline of this report at least six months prior to the CMS deadline. The Contractor may submit the first draft of the report at least four months prior to the CMS deadline.
4. **Final Evaluation Report for CMS.** The Contractor must develop a final evaluation report that follows the Evaluation Design Plan and includes an executive summary, a description of the demonstration, a discussion of the study design, a discussion of findings and conclusions, and a description of policy implications. The final evaluation report is due to CMS on or before April 20, 2019 (or one hundred twenty (120) days following the expiration date of the demonstration). The Contractor may be required to submit a detailed outline of this report at least six months prior to the CMS deadline. The Contractor may submit the first draft of the report at least four months prior to the CMS deadline.
5. **Analytic and Summary Data Files.** The Contractor shall provide HSD with its summary and analytic data files used to conduct the evaluation upon request. These files must be organized, clearly labeled, and accompanied by a data dictionary.
6. **Monthly Progress Reports.** The Contractor shall provide written monthly progress reports to HSD during the contract period. These reports must describe the tasks, deliverables, and key milestones performed under the contract during the month. These must also indicate the staff members working on each activity

E. Standard Activities

1. The Contractor shall:
 - a. See Appendix A for the Evaluation Design Plan: This section summarizes the services that will be required of the Contractor, which may change depending on CMS requirements. Any required changes that impact the services to be performed by Contractor will be discussed by the parties and mutually agreed upon; including any impacts such change in services may have on timing and Contractor's professional fees.
 - b. Provide all administrative and programmatic support necessary for the proper and efficient administration of Contractor

F. General Provisions

The Contractor shall:

- a. Adhere to the condition that primary contact for all Medicaid programs with CMS shall be through HSD.
- b. Provide routine and ad hoc reports as requested by HSD and/or those required by state or federal law or regulation, including those requested by the legislature or its committees and those described in this Agreement.
- c. Meet quarterly, by phone or in person, with HSD Representatives to maintain communication related to the scope of work and to provide opportunities for technical assistance from MAD.

G. 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 or subtasks 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: Monthly Progress Reports

<u>Deliverable</u>	<u>Due Date</u>	<u>Compensation</u>
Twelve (12) Monthly Progress Reports	Upon completion of each month of contract period *Specific date TBD	\$840.00 per Report (Includes GRT)
Deliverable Total		\$10,080.00 (Includes GRT)

Task Item	Sub Tasks	Description
Monthly Progress Reports	Report Development and Delivery	The Contractor shall provide written monthly progress reports to HSD during the contract period. These reports must describe the tasks, deliverables and key milestones performed under the contract and the status of deliverables during the month. These must also identify the staff members working on each activity.
	Project Issues & Risk Logs	Contractor will maintain a Project Issues Log that documents project issues and the Project Risk Log that documents project risks. These logs will include open items, resolutions, dates and involved parties. Contractor will present the Project Issues Log and Risk Log to HSD in the Monthly Progress Reports.

Deliverable 2: Quarterly CMS Reports

<u>Deliverable</u>	<u>Due Date</u>	<u>Compensation</u>
Four (4) Quarterly CMS Reports	Upon completion of each Quarter of contract period *Specific date TBD	\$37,500.00 per Report, or \$150,000 for the four (4) reports. (Includes GRT)

Task Item	Sub Tasks	Description
Quarterly CMS Reports	Report Development and Delivery	The Contractor will report quarterly on the progress of evaluation activities, including key milestones accomplished, as well as challenges encountered and how they were addressed. The Contractor must include interim findings when available. The Contractor shall submit the first quarterly report draft on evaluation activities to HSD for review at least one month prior to the CMS deadline. The CMS deadline shall be communicated to the Contractor no less than thirty (30) days before the quarterly report draft is due to HSD. The Contractor shall submit subsequent quarterly report drafts to HSD at least two weeks prior to the CMS deadline.

Deliverable 3: Annual CMS Report

<u>Deliverable</u>	<u>Due Date</u>	<u>Compensation</u>
One (1) Annual CMS Report	Upon completion of contract period *Specific date TBD	\$48,800.00 per Report (Includes GRT)
Deliverable Total		\$48,800.00 (Includes GRT)

Task Item	Sub Tasks	Description
Annual CMS Report	Report Development and Delivery	The Contractor must report annually on the progress of evaluation activities, including key milestones accomplished, as well as challenges encountered and how they were addressed. The Contractor must include interim findings when available. The Contractor shall submit a draft of the annual report to HSD at least one month prior to the CMS deadline.

Deliverable 4: Executive Summary

<u>Deliverable</u>	<u>Due Date</u>	<u>Compensation</u>
Executive Summary (brief and comprehensive)	On or before May 20, 2016.	\$0

Task Item	Sub Tasks	Description
Executive Summary	Final report of development and delivery	The Contractor will provide an Executive Summary of the final evaluation report that follows the Evaluation Design Plan.

Deliverable 5: Interim CMS Evaluation Report(s) to be provided within the option years of this Agreement.

<u>Deliverable</u>	<u>Due Date</u>	<u>Compensation</u>
Interim CMS Evaluation Report(s)	TBD, at the time of Renewal Application(s)	\$0

Task Item	Sub Tasks	Description
Interim CMS Evaluation Report(s)	Report Development and Delivery	If the state submits a request for a renewal of the Centennial Care demonstration while the contractor is under contract, the Contractor must develop an interim evaluation report. The Contractor's report must follow the Evaluation Design Plan and must include an executive summary, a description of the demonstration, a discussion of the study design, a discussion of findings and conclusions, and a description of policy implications. The discussion of conclusions and policy implications should support the request for the demonstration renewal. The interim evaluation report is due to CMS at the time of the renewal application. CMS determines the deadline for the renewal application, and this deadline is typically twelve (12) months prior to the waiver expiration date. The Contractor will be required to submit a detailed outline of this report to HSD at least six (6) months prior to the CMS deadline. The Contractor shall submit the first draft of the report to HSD at least four months prior to the CMS deadline.

Deliverable 6: Analytic & Summary Data Files

<u>Deliverable</u>	<u>Due Date</u>	<u>Compensation</u>
Analytic & Summary Data Files	As required and mutually agreed upon by HSD and the Contractor	\$0

Task Item	Sub Tasks	Description
Analytic & Summary Data Files	File Organization and Delivery	The Contractor shall provide HSD with its summary and analytic data files used to conduct the evaluation upon request. These files must be organized, clearly labeled, and accompanied by a data dictionary.

EXHIBIT B
HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into between the New Mexico Human Services Department (“Department”) and Deloitte Consulting LLP, hereinafter referred to as “Business Associate” in order to comply with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) as amended by Subtitle D of the 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 (Subparts A, C, and E).

BUSINESS ASSOCIATE, by a related agreement identified by number as PSC 15-630-8000-0016 (the “Related Agreement”), has agreed to provide services under the SOW under the Related Agreements (the “Services”) to, or on behalf of, Department (referred to in such Related Agreement as Department or the “Procuring Agency”) which may involve the disclosure by Department to Business Associate (referred to in such Related Agreement as “Contractor”) of Protected Health Information (as defined below). This Business Associate Agreement is intended to supplement the obligations of the Department and the Contractor as set forth in the Related Agreement, and is hereby incorporated therein.

THE PARTIES acknowledge HIPAA, as amended by the HITECH Act, requires that Department and Business Associate to enter into a written agreement that provides for the safeguarding and protection of all Protected Health Information (as defined below) 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 the Related Agreement, shall have the same meaning as defined under the HIPAA Standards as defined below, including without limitation, Contractor acting in the capacity of a Business Associate as defined in 45 CFR § 160.103.
- 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:
 - A. Security Standards. "Security Standards" hereinafter shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.306.
 - B. Administrative Safeguards. "Administrative Safeguards" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.308.
 - C. Physical Safeguards. "Physical Safeguards" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.310.
 - D. Technical Safeguards. "Technical Safeguards" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.312.
 - E. 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.
- f. 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 pursuant to performance of the Services.
- g. Required By Law. "Required By Law" shall have the same meaning as in 45 CFR §164.103.
- h. Secretary. "Secretary" shall mean the Secretary of the U. S. Department of Health and Human Services, or his or her designee.
- i. 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 agreement, shall mean the State of New Mexico Human Services Department.
- j. Terms used, but not otherwise defined, in this Agreement 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 Agreement, or the Related Agreement; 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 regarding PHI that are applicable to Business Associate in performance of the Services.
 - ii. Except as permitted 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 the Related Agreement(s), except where a “limited data set” is not practicable in order to accomplish those activities.
 - iv. 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. 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 De-Identify PHI, as permitted by 45 CFR § 164.514(a) – (c) or to provide Data Aggregation services to the Department as permitted by the HIPAA Standards, if applicable.
- b. **Safeguards.** The Business Associate agrees to implement and use appropriate Security, Administrative, Physical and Technical Safeguards to: (i) prevent use or disclosure of PHI other than as permitted or required by this Agreement, and (ii) comply where applicable with subpart C of 45 C.F.R. Part 164, to protect the confidentiality, integrity, and availability of Electronic PHI other than as Required by Law or as provided for by this Agreement or the Related Agreement. Business Associate shall provide information in writing upon reasonable request from the Department, relating to all of those Safeguards that it uses to prevent impermissible uses or disclosures of such PHI.
- c. **Restricted Uses and Disclosures.** The Business Associate shall not use or further disclose PHI other than as permitted or required by this Agreement, the Related Agreement, 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.
 - 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). At Department's request, Business Associate shall provide written assurance that it has complied with this Section 2(d), 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. In the event that Business Associate maintains PHI in a Designated Record Set, Business Associate shall provide, at the Department's written 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 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 to the Department in electronic format as required by the HIPAA Standards.
- f. Amendment of PHI. In accordance with 45 CFR § 164.526, Business Associate agrees to make any amendment(s) to PHI maintained in a Designated Record Set by Business Associate that the Department directs or agrees to, at the written request of the Department 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 and procedures, relating to the use and disclosure of PHI, available 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 to permit the Department to

respond to an accounting request. Business Associate shall provide such information in the reasonable 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 within seven (7) days of receipt of a written 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 for any Electronic PHI that Business Associate receives, maintains, or transmits on behalf of the Department: 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 and actually does 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). At Department's request, Business Associate shall provide written assurance that it has complied with this Section 2(m), 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 Agreement and Related Agreement, 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

Agreement, the Related Agreements 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 of Business Associate, other than the person committing the Breach) 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 reasonably requested by the Department, provide relevant 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 cooperate in providing further information as is reasonably requested by the Department.
- c. Business Associate shall provide to the Department all information required to be in the notice to affected Individuals, which 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 stepladders Individuals can take to protect themselves from potential harm resulting from the Breach, 4) a brief description of what the Business Associate is doing to investigate the Breach, to mitigate harm to Individuals and to protect against further Breaches.

Risk Assessment

- d. 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 may 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 and to the extent Required by Law, Business Associate shall, in a reasonable time and manner, its risk assessments available to the Department as is necessary for the Department to assess Business Associate’s compliance with this Section 3(d).
- e. 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

- f. In addition to the above duties in this section, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI, by Business Associate in violation of the requirements of this Agreement, the Related Agreements 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.

Notification to Clients

- g. Business Associate 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, and 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 HIPAA Standards, including the Privacy Rule, if done by the Department. The Department will also not make any disclosure of PHI to Business Associate if such disclosure would violate the HIPAA Standards, or any applicable federal or state law or regulation.

5. Term and Termination

- a. Term. This Agreement shall be effective concurrently with the effective date of PSC 15-630-8000-0016 between Business Associate and the Department (the Related

Agreement). This Agreement shall also terminate concurrently with the Related Agreement, except that obligations of Business Associate under this Agreement 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 Agreement for any reason, Business Associate shall return or destroy all PHI in its possession, and shall retain no copies of the PHI. Notwithstanding the foregoing, in the event that Business Associate determines that returning or destroying the PHI is not feasible (such as in the event that the retention of PHI is required for archival purposes to evidence the Services), Business Associate may retain such PHI and 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 Agreement, the Department may either:
 - i. provide an opportunity for Business Associate to cure the Breach, and the Department may terminate this Contract without liability or penalty if Business Associate does not cure the breach within the time specified by the Department; or,
 - ii. immediately terminate this Agreement without liability or penalty if cure is not possible; or,
 - iii. if neither termination nor cure are feasible, the Department may report the breach to the Secretary.

The Department has the right to seek to cure any such 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 Agreement, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

- o **Penalties and Training.** Business Associate understands and acknowledges that violations of this Agreement may result in notification by the Department to applicable 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 Agreement, or any inconsistency between the provisions of this Agreement and the Related Agreement, shall be resolved to permit the Department and Business Associate 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 Agreement 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 in its possession and control.

- c. Change in Law. In the event there are subsequent changes or clarifications of statutes, regulations or governmental rules relating to the treatment of PHI under this Agreement, the Department shall notify Business Associate of any actions it reasonably deems necessary to comply with such changes, and Business Associate and the Department shall reasonably cooperate in amending this Agreement to comply with any such changes. 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 Agreement unlawful or unenforceable, or which materially affects any financial arrangement contained in this Agreement, the parties shall attempt amendment of this Agreement to accommodate such changes or interpretations. If the parties are unable to agree to an amendment pursuant to this Section 7.c. within a reasonable timeframe, or if amendment is not possible, the parties may terminate this Agreement for convenience without incurring liability, penalty or recourse related thereto upon thirty (30) days prior written notice.
- d. No Third Party Beneficiaries. Nothing express or implied in this Agreement 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, and no person shall be deemed a third-party beneficiary under or by reason of this Agreement.
- 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 Agreement in the event that litigation or an administrative proceeding is commenced against the Department or its employees based upon a claimed violation of the HIPAA standards or other laws relating to security and privacy of PHI, where such claimed violation is alleged to arise from Business Associate's performance under this Agreement or the Related Agreement, 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 this Agreement between them, other requirements applicable to either or both that are required to be included in business associate agreements by the HIPAA Standards are incorporated herein by reference.