

**New Mexico Public Schools Insurance Authority**

**REQUEST FOR PROPOSALS (RFP)**

**Actuarial Services**



**RFP# 342-2024-06**

RFP Release Date:  
February 20, 2024

Proposal Due Date:  
March 21, 2024

**ELECTRONIC-ONLY PROPOSAL SUBMISSION**

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# **I. INTRODUCTION**

## **A. PURPOSE OF THIS REQUEST FOR PROPOSALS**

The purpose of the Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiations for the procurement of Actuarial Services with the primary purpose of the service being, to develop Estimated Outstanding Losses at Various Confidence Levels and Project Losses for the Risk Fund as well as conduct the Authority's bi-annual and yearly fiscal audit. The Contractor's report will be included and utilized in the Authority's financial audit to establish the fiscal standing of the Authority's Risk Fund for the New Mexico Public Schools Insurance Authority (NMPSIA).

## **B. BACKGROUND INFORMATION**

The New Mexico Public Schools Insurance Authority (NMPSIA) is a public entity pool created pursuant to the Public Schools Insurance Authority Act (Sect. 22-29-1 et seq. NMSA 1978). It is charged with providing comprehensive core insurance programs for participating employers and public-school districts property/liability and workers' compensation insurance (Risk) and the full range of employee benefits coverages to participating public employees and dependents (Benefits).

The purpose of the Authority is to provide comprehensive core insurance programs for all participating public schools and to maximize cost containment opportunities for required insurance coverage. The "Risk-Related" program of the Authority was legislatively mandated on July 1, 1986, for all public K-12 schools [excluding Albuquerque Public Schools (APS)] and all Charter Schools. During each four (4) year contract period, members are prohibited from withdrawing from the Pool. In addition to the K-12 School Districts, there are post-secondary educational institutions, non-educational entities, and charter schools. The geographical area exposed to the Authority is statewide.

## **C. SCOPE OF PROCUREMENT**

The Procuring Authority is issuing the RFP to procure services on an "as needed/if needed" basis to aid in meeting the Authority's obligations. Refer to the "Detailed Scope of Work" for an overview of the services being sought.

This procurement may result in a multiple-source award. The Procuring Authority reserves the right to divide the services in the Detailed Scope of Work and award multiple contracts to multiple Offerors if it is deemed advantageous to the Procuring Authority.

The resulting contract will be a single award.

This procurement will result in a contractual agreement between two parties; the procurement may ONLY be used by those two parties exclusively.

**The term will be one year with the option for three one-year renewals.** The initial term of the contract will be one (1) year with the option to renew for three (3) additional one (1) year periods for a total of four (4) years.

#### **D. PROCUREMENT MANAGER**

The New Mexico Public Schools Insurance Authority has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, telephone number and e-mail address are listed below:

Name: Maria Lugo  
Telephone: (505) 469-0470  
Email: [psia.procurement@state.nm.gov](mailto:psia.procurement@state.nm.gov)

1. **Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Procurement Manager. Offerors may contact **ONLY** the Procurement Manager regarding this procurement. Other state employees or Evaluation Committee members do not have the authority to respond on behalf of the NMPSIA.
2. **Protests of the solicitation or award must be submitted in writing to the Protest Manager identified in Section II.B.12.** As a Protest Manager has been named in this Request for Proposals, pursuant to §13-1-172, NMSA 1978 and 1.4.1.82 NMAC, **ONLY** protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. Protests submitted or delivered to the Procurement Manager will **NOT** be considered properly submitted.

#### **E. PROPOSAL SUBMISSION**

*Submissions of all proposals must be accomplished via [psia.procurement@state.nm.gov](mailto:psia.procurement@state.nm.gov). Refer to Section III.A.1 for instructions.*

*\*Include RFP name and RFP#*

#### **F. DEFINITION OF TERMINOLOGY**

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

1. **"Agency"** means the State Purchasing Division of the General Services Department or that State Agency.
2. **"Authority"** means The New Mexico Public Schools Insurance Authority sponsoring this Procurement.

3. “**Award**” means the final execution of the contract document.
4. “**Business Hours**” means 8:00 AM through 5:00 PM MST/MDT, whichever is in effect on the date given.
5. “**Close of Business**” means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.
6. “**Confidential**” means confidential financial information concerning Offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act §§57-3-A-1 through 57-3A-7, NMSA 1978. See also NMAC 1.4.1.45. The following items may **not** be labelled as confidential: Offeror’s submitted Cost response, Staff/Personnel Resumes/Bios (excluding personal information such as personal telephone numbers and/or home addresses), and other submitted data that is **not** confidential financial information or that qualifies under the Uniform Trade Secrets Act.
7. “**Contract**” means any agreement for the procurement of items of tangible personal property, services, or construction.
8. “**Contractor**” means any business having a contract with a state agency, authority, or local public body.
9. “**Determination**” means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.
10. “**Desirable**” – the terms “may,” “can,” “should,” “preferably,” or “prefers” identify a desirable or discretionary item or factor.
11. “**Electronic Submission**” means a successful submittal of Offeror’s proposal to the [psia.procurement@state.nm.gov](mailto:psia.procurement@state.nm.gov), in such cases where email submissions are accepted.
12. “**Electronic Version/Copy**” means a digital form consisting of text, images or both readable on computers or other electronic devices that includes all content that the Original and Hard Copy proposals contain. The electronic version/copy **MUST** be emailed.
13. “**Evaluation Committee**” means a body appointed to perform the evaluation of Offerors’ proposals.
14. “**Evaluation Committee Report**” means a report prepared by the Procurement Manager and the Evaluation Committee to support the Committee’s recommendation for contract award. It will contain scores and written evaluations of all responsive Offeror proposals.

15. **“Final Award”** means, in the context of this Request for Proposals and all its attendant documents, that point at which the final required signature on the contract(s) resulting from the procurement has been affixed to the contract(s) thus making it fully executed.
16. **“Finalist”** means an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.
17. **“Hourly Rate”** means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.
18. **“IT”** means Information Technology.
19. **“Mandatory”** – the terms “must,” “shall” “will,” “is required,” or “are required,” identify a mandatory item or factor. Failure to meet a mandatory item or factor may result in the rejection of the Offeror’s proposal.
20. **“Minor Irregularities”** means anything in the proposal that does not affect the price, quality and/or quantity, or any other mandatory requirement.
21. **“NMPSIA”** means The New Mexico Public Schools Insurance Authority.
22. **“Offeror”** is any person, corporation, or partnership who chooses to submit a proposal.
23. **“Procurement Manager”** means any person or designee authorized by a state agency, authority, or local public body to enter into or administer contracts and make written determinations with respect thereto.
24. **“Project”** means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved, and project acceptance is given by the project executive sponsor.
25. **“Redacted”** means a version/copy of the Offeror’s proposal with the information considered proprietary or confidential (as defined by §§57-3A-1 to 57-3A-7, NMSA 1978 and NMAC 1.4.1.45 and summarized herein and outlined in Section II.C.8 of this RFP) blacked-out BUT NOT omitted or removed.
26. **“Request for Proposals (RFP)”** means all documents, including those attached or incorporated by reference, used for soliciting proposals.
27. **“Responsible Offeror”** means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to



make satisfactory delivery of the services, or items of tangible personal property described in the proposal.

28. “**Responsive Offer**” or means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to price, quality, quantity, or delivery requirements.
29. “**SPD**” means State Purchasing Division of the New Mexico State General Services Department.
30. “**Staff**” means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.
31. “**State (the State)**” means the State of New Mexico.
32. “**State Agency**” means any department, commission, council, board, committee, institution, legislative body, agency, authority, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. “State agency” includes the Purchasing Division of the General Services Department and the State Purchasing Agent but does not include local public bodies.
33. “**State Purchasing Agent**” means the Director of the Purchasing Division of the General Services Department.
34. “**Statement of Concurrence**” means an affirmative statement from the Offeror to the required specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offerors proposal. (E.g. “We concur,” “Understands and Complies,” “Comply,” “Will Comply if Applicable,” etc.)
35. “**Unredacted**” means a version/copy of the proposal containing all complete information; including any that the Offeror would otherwise consider confidential, such copy for use only for the purposes of evaluation.
36. “**Written**” means typewritten on standard 8 ½ x 11-inch paper. Larger paper is permissible for charts, spreadsheets, etc.

## **G. PROCUREMENT LIBRARY**

A procurement library has been established. Offerors are encouraged to review the material contained in the Procurement Library by selecting the link provided in the electronic version of this document through your own internet connection. The library contains information listed below:

Electronic version of RFP, Questions & Answers, RFP Amendments, etc.  
<https://nmpsia.com/procurements.html>

## II. CONDITIONS GOVERNING THE PROCUREMENT

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

### A. SEQUENCE OF EVENTS

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

<b>Action</b>	<b>Responsible Party</b>	<b>Due Dates</b>
1. Issue RFP	NMPSIA	2/20/2024
2. Acknowledgement of Receipt Form	Potential Offerors	2/28/2024
3. **Pre-Proposal Conference	NMPSIA	3/1/2024
4. Deadline to submit Written Questions	Potential Offerors	3/4/2024
5. Response to Written Questions	Procurement Manager	3/7/2024
<b>6. Submission of Proposal</b>	<b>Potential Offerors</b>	<b>3/21/2024</b>
7.* Proposal Evaluation	Evaluation Committee	TBD
8.* Selection of Finalists	Evaluation Committee	TBD
9* Oral Presentation(s)	Finalist Offerors	TBD
10.* Best and Final Offers	Finalist Offerors	TBD
11.* Finalize Contractual Agreements	NMPSIA/Finalist Offerors	TBD
12.* Contract Awards	NMPSIA/ Finalist Offerors	TBD
13.* Protest Deadline	NMPSIA	+15 days

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

\*\*The Pre-Proposal Conference will not include questions and answers. All questions must be submitted in writing.

### B. EXPLANATION OF EVENTS

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

#### 1. Issue RFP

- a. This RFP is being issued on behalf of the State of New Mexico NMPSIA on the date indicated in Section II.A, Sequence of Events.

## 2. Acknowledgement of Receipt Form

- a. Potential Offerors may e-mail the Acknowledgement of Receipt Form (APPENDIX A), to the Procurement Manager, Maria Lugo, at [psia.procurement@state.nm.gov](mailto:psia.procurement@state.nm.gov), to have their organization placed on the procurement Distribution List. The form must be returned by 3:00 pm MST/ MDT on the date indicated in Section II.A, Sequence of Events.
- b. The procurement distribution list will be used for the distribution of written responses to questions, and/or any amendments to the RFP. Failure to return the Acknowledgement of Receipt Form does not prohibit potential Offerors from submitting a response to this RFP. However, by not returning the Acknowledgement of Receipt Form, the potential Offeror's representative shall not be included on the distribution list and will be solely responsible for obtaining from the Procurement Library (Section I.G.) responses to written questions and any amendments to the RFP.

## 3. Pre-Proposal Conference

- a. A pre-proposal conference will be held as indicated in Section II.A, Sequence of Events, beginning at 11:00 am MST/MDT via Zoom. The link will be posted on our website.

## 4. Deadline to Submit Written Questions

- a. Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP until 3:00 pm MST/MDT as indicated in Section II.A, Sequence of Events. All written questions must be addressed to the Procurement Manager as declared in Section I.D. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

## 5. Response to Written Questions

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

An electronic version of the Questions and Answers will be posted to: <https://nmpsia.com/procurements.html>

## 6. Submission of Proposal

Currently, only **electronic** proposal submission is allowed. **Do not** submit hard copies until further notice.

ALL PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 3:00 PM MST/MDT ON THE DATE INDICATED IN SECTION II.A, SEQUENCE OF EVENTS. **NO LATE PROPOSAL CAN BE ACCEPTED.**

*It is the Offeror's responsibility to ensure all documents are completely uploaded and submitted electronically via email by the deadline set forth in this RFP. Please ensure that you, as the Offeror, allow adequate time for large uploads and to fully complete your submittal by the deadline. A submission that is not both: (1) fully complete; and (2) received, via the email by the deadline, will be deemed late. Further, a submission that is not fully complete and received via email by the deadline because the response was captured, blocked, filtered, quarantined, or otherwise prevented from reaching the proper destination server by any anti-virus or other security software will be deemed late. In accordance with statute and rule, **NO LATE PROPOSAL CAN BE ACCEPTED.***

**Proposals must be addressed and delivered to the Procurement Manager at the address identified in Section I.E via email.** Proposals submitted by facsimile, or other electronic means other than via [psia.procurement@state.nm.gov](mailto:psia.procurement@state.nm.gov), will not be accepted.

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

## **7. Proposal Evaluation**

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

## **8. Selection of Finalists**

The Evaluation Committee will select, and the Procurement Manager will notify the finalist Offerors as per schedule Section II.A, Sequence of Events or as soon as possible thereafter. A schedule for Oral Presentation, if any, will be determined at this time.

## **9. Best and Final Offers**

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

## **10. Oral Presentations**

Finalist Offerors, as selected per Section II.B.8 above, may be required to conduct an oral presentation at a venue to be determined as per schedule Section II.A., Sequence of Events, or as soon as possible thereafter. If oral presentations are held, Finalist Offerors may be required to make their presentations through electronic means (GoToMeeting, Zoom, etc). The Authority will provide Finalist Offerors with applicable details. Whether or not Oral Presentations will be held is at the discretion of the Evaluation Committee and NMPSIA.

## **11. Finalize Contractual Agreements**

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

## **12. Contract Awards**

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

## **13. Protest Deadline**

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

including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. The protest must be delivered to:

New Mexico Public Schools Insurance Authority  
ATTN: Protest Manager  
RFP# 342-2024-06  
410 Old Taos Highway  
Santa Fe, New Mexico  
505-469-0470

**PROTESTS RECEIVED AFTER THE DEADLINE WILL NOT BE ACCEPTED.**

## **C. GENERAL REQUIREMENTS**

### **1. Acceptance of Conditions Governing the Procurement**

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

### **2. Incurring Cost**

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

### **3. Prime Contractor Responsibility**

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

### **4. Subcontractors/Consent**

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

### **5. Amended Proposals**

An Offeror may submit an amended proposal before the deadline for receipt of proposals via [psia.procurement@state.nm.gov](mailto:psia.procurement@state.nm.gov). Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. **Authority personnel will not merge, collate, or assemble proposal materials.**

## 6. Offeror's Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals via [psia.procurement@state.nm.gov](mailto:psia.procurement@state.nm.gov). The Offeror must submit a written withdrawal request addressed to the Procurement Manager and signed by the Offeror's duly authorized representative.

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

## 7. Proposal Offer Firm

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

## 8. Disclosure of Proposal Contents

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

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

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

If a request is received for disclosure of proprietary or confidential materials, the Authority shall examine the request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of proprietary or confidential information.

## **9. No Obligation**

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

## **10. Termination**

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

## **11. Sufficient Appropriation**

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

## **12. Legal Review**

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

## **13. Governing Law**

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

## **14. Basis for Proposal**

Only information supplied in writing by the Procurement Manager via [psia.procurement@state.nm.gov](mailto:psia.procurement@state.nm.gov), or contained in this RFP shall be used as the basis for the preparation of Offeror proposals.

## **15. Contract Terms and Conditions**

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



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

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

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

If an Offeror fails to propose any alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror), no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror) is an **explicit agreement** by the Offeror that the contractual terms and conditions contained herein are **accepted** by the Offeror.

## **16. Offeror's Terms and Conditions**

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

## **17. Contract Deviations**

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

## **18. Offeror Qualifications**

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

## **19. Right to Waive Minor Irregularities**

The Evaluation Committee reserves the right to waive minor irregularities, as defined in Section I.F. The Evaluation Committee also reserves the right to waive mandatory requirements, provided that **all** of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

## **20. Change in Contractor Representatives**

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

## **21. Notice of Penalties**

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

## **22. Authority Rights**

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

## **23. Right to Publish**

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

## **24. Ownership of Electronic Proposals**

All electronic documents submitted in response to the RFP shall become property of the State of New Mexico. If the RFP is cancelled, all electronic responses received via [psia.procurement@state.nm.gov](mailto:psia.procurement@state.nm.gov) shall be destroyed by the NMPSIA within three (3) business days of notification of the cancellation.

## **25. Confidentiality**

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

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

## **26. Electronic mail address required.**

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence. (See also Section II.B.5, Response to Written Questions).

## **27. Use of Electronic Versions of this RFP**

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the Authority, the Offeror acknowledges that the version maintained by the Authority shall govern. Please refer to: <https://nmopsia.com/procurements.html>

## **28. New Mexico Employees Health Coverage**

- A. If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- B. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- C. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information <https://bewellnm.com>.
- D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

## 29. Campaign Contribution Disclosure Form

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

## 30. Letter of Transmittal

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

Provide the following information:

1. Identify the submitting business entity; Name, Mailing Address, Phone Number, Federal Tax ID Number (TIN), and New Mexico Business Tax ID Number (BTIN, formerly CRS);
2. Identify the Name, Title, Telephone, and E-mail address of the person authorized by the Offeror's organization to (A) contractually obligate the business entity providing the Offer, (B) negotiate a contract on behalf of the organization; and/or (C) provide clarifications or answer questions regarding the Offeror's proposal content (*A response to B and/or C is only necessary if the responses differs from the individual identified in A*);
3. Identify any subcontractor/s that may be utilized in the performance of any resultant contract award.
4. Identify any other entity/-ies (such as State Agency, reseller, etc., that is not a subcontractor identified in #3) that may be used in the performance of this awarded contract; and
5. The individual identified in #2 above, must sign and date the form, attesting to the veracity of the information provided, and acknowledging (a) the organization's acceptance of the Conditions Governing the Procurement stated in Section II.C.1, (b) the organizations acceptance of the Section V Evaluation Factors, and (c) receipt of any and all amendments to the RFP.

**Failure to respond to ALL items as indicated above, will result in Offeror's disqualification.**

## 31. Disclosure Regarding Responsibility

- A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:

1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
  2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
    - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
    - b. violation of Federal or state antitrust statutes related to the submission of offers; or
    - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
  3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
  4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
    - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
    - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
    - c. Have within a three-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- C. The Contractor shall provide immediate written notice to the Authority or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
- D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.
- E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that

which is the normally possessed by a prudent person in the ordinary course of business dealings.

- F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the State Purchasing Agent or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

### **32. New Mexico/Native American Resident Preferences**

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

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

### III. RESPONSE FORMAT AND ORGANIZATION

#### A. NUMBER OF RESPONSES

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

*If you have Confidential Information then you must submit a separate electronic redacted file. If you do not submit a redacted file your proposal will be deemed unresponsive and you consent the Authority to release your submittal in the event of an Inspection of Public Records.*

##### 1. ELECTRONIC SUBMISSION ONLY

**Proposals in response to this RFP must be submitted through NMPSIA’s procurement email address ONLY: ([psia.procurement@state.nm.gov](mailto:psia.procurement@state.nm.gov))** The Offeror need only submit one single electronic copy of each portion of its proposal (Technical and Cost) as outlined below.

*EXCEPTION: Single electronic files that exceed 50mb may be submitted as multiple uploads, which must be the least number of uploads necessary to fall under the 50mb limit. Separate the proposals as described below into separate electronic files for submission.*

Proposals must be submitted in the manner outlined below. Technical and Cost portions of Offerors proposal **must** be submitted in separate uploads as indicated below in this section, and **must** be prominently identified as “Technical Proposal,” or “Cost Proposal,” on the front page of each upload.

- a) **Technical Proposals** – One (1) ELECTRONIC upload must be organized in accordance with **Section III.A.1. Proposal Format**. All information for the Technical Proposal **must be combined into a single file/document for uploading**. *EXCEPTION: Single electronic files that exceed 50mb may be submitted as multiple uploads, which must be the least number of uploads necessary to fall under the 50mb limit.* The Technical Proposals **SHALL NOT** contain any cost information.

**i. Confidential Information:** *If Offeror’s proposal contains confidential information, as defined in Section I.F.6 and detailed in Section II.C.8, Offeror **must** submit **two (2) separate ELECTRONIC technical files:***

- One (1) ELECTRONIC version of the requisite proposals identified in Section III.B.1.a above as **unredacted** (def. Section I.F.35) versions for evaluation purposes; **and**
- One (1) **redacted** (def. Section I.F.25) ELECTRONIC for the public file, in order to facilitate eventual public inspection of the non-confidential version of Offeror’s proposal. Redacted versions **must** be clearly marked as “REDACTED” or “CONFIDENTIAL” on the first page of the electronic file;

- b) **Cost Proposals** – One (1) ELECTRONIC upload of the proposal containing **ONLY** the Cost Proposal. All information for the cost proposal **must be combined into a single file/document for uploading**. *EXCEPTION: Single electronic files that exceed 50mb may be submitted as multiple uploads, which must be the least number of uploads necessary to fall under the 50mb limit*

The ELECTRONIC proposal submission **must be fully uploaded** by the submission deadline in Section II.B.6.

*It is the Offeror's responsibility to ensure all documents are completely uploaded and submitted electronically via the NMPSIA's procurement email [psia.procurement@state.nm.gov](mailto:psia.procurement@state.nm.gov) by the deadline set forth in this RFP.*

*Please ensure that you, as the Offeror, **allow adequate time for large uploads and to fully complete your submittal by the deadline**. A submission that is not both: (1) fully complete; and (2) received, will be deemed late. Further, a submission that is not fully complete and received by the deadline because the response was captured, blocked, filtered, quarantined or otherwise prevented from reaching the proper destination server by any anti-virus or other security software will be deemed late. In accordance with statute and rule, **NO LATE OFFER CAN BE ACCEPTED.***

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

## **B. PROPOSAL FORMAT AND ORGANIZATION**

All proposals must be submitted as follows:

Organization of files/envelopes for electronic copy proposals:

### **1. Proposal Content and Organization**

Direct reference to pre-prepared or promotional material may be used if referenced and clearly marked. Promotional material must be minimal. Within each section of the proposal, Offerors must organize and address the RFP requirements in the order indicated below. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of Offeror's proposal. **Any and all discussion of proposed costs, rates or expenses must occur ONLY in the Cost Proposal.**

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

- A. Signed Letter of Transmittal
- B. Signed Campaign Contribution Form
- C. Table of Contents
- D. Response to Contract Terms and Conditions (from Section II.C.15)
- E. Offeror's Additional Terms and Conditions (from Section II.C.16)



F. Response to Specifications (**except Cost information which shall be included ONLY in Cost Proposal/Binder 2**)

1. Organizational Experience
2. Organizational References
3. Oral Presentation (if applicable)
4. Mandatory Specification
5. Desirable Specification
6. Financial Stability (Financial information considered confidential, detailed in Section II.C.8, should be placed in the **Confidential Information** file, per Section III.A.1.a.i . as applicable)
7. Performance Surety Bond (if applicable)
8. New Mexico/Native American Resident Preferences (if applicable)

G. Other Supporting Material (if applicable)

**Cost Proposal:**

1. Completed Cost Response Form (APPENDIX D)

Within each section of the proposal, Offerors should address the items in the order indicated above. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of the proposal. **Any and all discussion of proposed costs, rates or expenses must occur ONLY in the Cost Proposal.**

A Proposal Summary may be included in Offeror's Technical Proposal, to provide the Evaluation Committee with an overview of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal.

**DO NOT INCLUDE COST INFORMATION IN THE TECHNICAL PROPOSAL SUMMARY.**

## IV. SPECIFICATIONS

### A. DETAILED SCOPE OF WORK

#### 1. Scope of Work

The Contractor shall perform the following Actuarial Services:

The primary purpose of the service shall be to develop Estimated Outstanding Losses at Various Confidence Levels and Project Losses for the Risk Fund maintained by the Authority. The Authority will provide the loss information to the Contractor to conduct the Authority's bi-annual and yearly fiscal audit. The Contractor's report will be included and utilized in the Authority's financial audit to establish the fiscal standing of the Authority's risk fund.

A. Property, Crime, Automobile Physical Damage, General and Automobile Liability, and Errors and Omissions Claims for public schools and other educational entities who participate in the Authority; and

B. Workers' Compensation Claims for employees of public schools and other educational entities who participate in the Authority; and

C. The following services will be provided for each coverage offered by the Authority. All General Accepted Accounting Principles (GAAP), Governmental Accounting Standards Boards (GASB), Actuarial Standards of Practice, Actuarial Code of Professional Conduct that apply to a self-insured public entity are required to be adhered to. The contractor will determine:

1. Estimated Outstanding Losses
2. Present Value of Estimated Outstanding Losses
3. Incurred But Not Reported (IBNR)
4. Frequency and Severity graphs for each coverage part
5. Loss Rates for each coverage
6. Confidence Levels
7. Allocated Loss Adjustment Expense (ALAE) and Unallocated Loss Adjustment Expenses (ULAE) liabilities
8. Loss Development including triangulation graphs for each coverage for incurred losses
9. List all large claims for each coverage
10. Providing a range of loss reserve estimates (low, central, and high)

D. The following services will be provided for each coverage offered by the Authority:

1. Forecast Loss Reserve Projections for mid-year and the following fiscal year:  
Generally, the work shall consist of, and it shall be the responsibility of the contractor to evaluate the performance of the plan to establish the adequacy of current funding needs and examine prospective loss dollars and payouts using actuarial methodology.

2. The contractor shall forecast future loss payments and estimate payments based on all available data, information, and expected changes (financially, legally, etc.) which would affect actual loss dollars. To the extent that the Authority's historical data is weak, of a small volume, or has information gaps, the contractor will supplement it with industry data (local, state, and national) as necessary. Justified assumptions will be made relative to potential interest income and payout patterns and expenses to identify the amount necessary to set aside to meet all future obligations.
  3. The work shall be completed no later than September 30, for the yearly analysis and February 28 for the mid-year analysis. ***Each analysis will include projected funding estimates for the next five upcoming fiscal years.***
  4. All final documents and reports will be delivered to the Executive Director, New Mexico Public Schools Insurance Authority, via email at [Patrick.Sandoval@psia.nm.gov](mailto:Patrick.Sandoval@psia.nm.gov) [Phillip.Gonzales@psia.nm.gov](mailto:Phillip.Gonzales@psia.nm.gov) [Charlette.Probst@psia.nm.gov](mailto:Charlette.Probst@psia.nm.gov)
  5. It shall also be the responsibility of the contractor to present in person the report to the Board of Directors at a regularly scheduled meeting of the Board at a place to be determined in New Mexico.
  6. The contractor is required to present its actuarial analysis to New Mexico Public Schools Insurance Authority Advisory Committees, staff, consultants, and other appropriate entities in person. Such work shall be subject to the prior approval of the Executive Director of the New Mexico Public Schools Insurance Authority.
- E. Statement of Actuarial Opinion (SAO) and Rate Adequacy Certification Documents:  
Provide a formal Statement of Actuarial Opinion (SAO) and Rate Adequacy Certification documents certifying that loss reserves held by NMPSIA, and rate levels charged by NMPSIA are actuarially appropriate in accordance with NMAC.
- F. Audit Reports:  
Complete Reserves for Losses and Loss Adjustment Expenses Report and Ten-Year Claims Development Information Report and any other reports that may be related to the Annual Financial Audit.

## **B. TECHNICAL SPECIFICATIONS**

### **1. Organizational Experience**

Offeror **must**:

- a) provide a description of relevant corporate experience with state government and private sector. The experience of all proposed subcontractors must be described. The narrative **must** thoroughly describe how the Offeror has supplied expertise for similar contracts and must include the extent of their experience, expertise and knowledge as a provider of
- b) provide a detailed resume/bio of all key personnel Offeror proposes to use in performance of the resulting contract, should Offeror be awarded. Key personnel are identified as personnel that will be working on the NMPSIA account. The offeror must include key personnel education, work experience, relevant/applicable certifications/licenses, and experience.
- c) indicate how many new clients have been installed in the last three years and what percentage of business revenue is derived from engagements.
- d) describe at least two project successes and failures of client implantations and the outcomes. Include how each experience improved the Offeror's services.

## 2. Organizational References

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

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

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

Offeror is required to submit APPENDIX F, Organizational Reference Questionnaire ("Questionnaire"), to the business references it lists. **The business references must submit the Questionnaire directly to the designee identified in APPENDIX F. The business references must not return the completed Questionnaire to the Offeror.** It is the Offeror's responsibility to ensure the completed forms are submitted on or before the date indicated in Section II.A, Sequence of Events, for inclusion in the evaluation process.

Organizational References that are not received or are not complete, may adversely affect the Offeror's score in the evaluation process. Offerors are encouraged to specifically request that their Organizational References provide detailed comments.

### 3. Mandatory Specifications

Contractor is qualified to provide Actuarial Services for:

- **Property, Crime, Automobile Physical Damage, General and Automobile Liability, and Errors and Omissions** Claims for public schools and other educational entities in New Mexico who participate in the Authority; and
- **Workers' Compensation** Claims for employees of public schools and other educational entities in New Mexico who participate in the Authority in the State of New Mexico as it relates to this RFP.

**Offers must agree to provide the service outlined. A statement of concurrence is required.**

- i. Provide all of the minimum services detailed in: **IV SPECIFICATIONS, A. DETAILED SCOPE OF WORK (MINIMUM SERVICES).**

**Offers must agree to provide the service outlined. A statement of concurrence is required.**

### 4. Desirable Specification

- i. Offeror should provide a brief history, description of your firm and state whether the firm is local, regional, or national. The description should include but not be limited to the size (number of employees and revenues), state who the parent company is, if any. Areas of specialization and other relevant information. Provide the same information for the office which would handle the Agency's account. If multiple offices are involved, describe the communications and coordination procedures involving multiple offices. The response should provide information to make sure your Firm is capable of managing this engagement.
- ii. Project Manager and Staff experience: Offeror should submit a detailed narrative describing the relevant experience of their proposed Project Manager and the rest of the staff. The narrative should include a thorough description of the education, knowledge and relevant experience as well as certification(s) or other professional credentials for each person which clearly shows the individuals are qualified to perform the required work. The narrative should thoroughly describe how and by whom the Project Team is managed and provide an organizational chart. Provide what office each person is physically located in. The Offeror should submit a current resume for each "major" staff person. Any additional services, or services outlined in the scope of work that the Firm cannot perform, must be outlined in the written proposal.
- iii. Proposed Additional Support Services: Offeror must describe, in detail any other support services, in addition to 5.ii. above, which is deemed necessary to enhance services and/or provide communication access for the Agency. Provide who the additional support services staff is and what office they are located in. Describe the Offeror's Information

Management System and Ad hoc reporting. Please provide copies of your standard reports in your written proposal. In addition, provide samples of reports demonstrating “ad hoc” capabilities.

## C. BUSINESS SPECIFICATIONS

### 1. Financial Stability

Offerors must submit copies of the most recent years independently audited financial statements and the most current 10K, as well as financial statements for the preceding three years, if they exist. The submission must include the audit opinion, the balance sheet, and statements of income, retained earnings, cash flows, and the notes to the financial statements. If independently audited financial statements do not exist, Offeror must state the reason and, instead, submit sufficient information (e.g. D & B report) to enable the Evaluation Committee to assess the financial stability of the Offeror. Failure to respond with supporting documentation will result in Offerors disqualification.

**Failure to respond with supporting documentation will result in Offerors disqualification.**

### 2. Performance Surety Bond.

Surety Bond **will not** be required for this RFP.

If required, Offeror(s) must have the ability to secure a Performance Surety Bond in favor of the Authority to insure the Contractor’s performance upon any subsequent contract award. Each engagement will be different but the option to require a Performance Surety Bond must be available to the Authority at time of contract award. **A Statement of Concurrence, as defined in Section I.F.34, must be submitted in the Offeror’s proposal.**

### 3. Letter of Transmittal Form

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

### 4. Campaign Contribution Disclosure Form

The Offeror must complete an unaltered Campaign Contribution Disclosure Form and submit a signed copy with the Offeror’s proposal. This must be accomplished whether or not an applicable contribution has been made. (See APPENDIX B). **Failure to complete and return the signed, unaltered form will result in Offeror’s disqualification.**

## **5. Oral Presentation**

If oral presentations are held, finalist Offeror(s) may be required to explain, demonstrate, detail, and/or clarify any aspect of its submitted proposal, to which the Evaluation Committee may ask questions and/or seek clarifications. Pursuant to Section II.B.10, Oral Presentations may held at the sole discretion of the Evaluation Committee.

## **6. Cost**

Offerors must complete the Cost Response Form in APPENDIX D.

## **7. New Mexico/Native American Resident Preferences**

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

## V. EVALUATION

### A. EVALUATION POINT SUMMARY

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

<b>Evaluation Factors</b> <i>(Correspond to Sections IV.B and IV.C)</i>	<b>Points Available</b>
<b>B. Technical Specifications (## Total Points)</b>	
B. 1. Organizational Experience	240
B. 2. Organizational References	60
B. 3. Mandatory Specification	180
B. 4. Desirable Specification	220
<b>C. Business Specifications (## Total Points)</b>	
C.1. Financial Stability	Pass/Fail
C.2. Performance Surety Bond	
C.3. Letter Of Transmittal	Pass/Fail
C.4. Campaign Contribution Disclosure Form	Pass/Fail
C. 5. Oral Presentations	100
C.6. Cost	200
<b>TOTAL POINTS AVAILABLE</b>	<b>1,000</b>
C.7. New Mexico / Native American Resident Preference	<b>80</b>
C.7. New Mexico / Native American Resident Veteran Preference Points per Section IV C.7	<b>100</b>

Table 1: Evaluation Point Summary

### B. EVALUATION FACTORS

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

Points will be awarded based on the thoroughness and clarity of Offeror’s response in this Section.

- a) This section may be given a maximum of **60 points** based on the following: provide a description of relevant corporate experience with state government and private sector. The experience of all proposed subcontractors must be described. The narrative **must** thoroughly describe how the Offeror has supplied expertise for similar contracts and must include the extent of their experience, expertise and knowledge as a provider of
- b) This section may be given a maximum of **60 points** based on the following:



provide a detailed resume/bio of all key personnel Offeror proposes to use in performance of the resulting contract, should Offeror be awarded. Key personnel are identified as personnel that will be working on the NMPSIA account. The offeror must include key personnel education, work experience, relevant/applicable certifications/licenses, and experience.

- c) This section may be given a maximum of **60 points** based on the following: indicate how many new clients have been installed in the last three years and what percentage of business revenue is derived from engagements.
- d) This section may be given a maximum of **60 points** based on the following: describe at least two project successes and failures of client implantations and the outcomes. Include how each experience improved the Offeror's services.

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

Each reference may be given a maximum of **20 points**, lack of a response will receive **zero (0) points**.

Points will be awarded based upon an evaluation of the responses to a series of questions on the Organizational Reference Questionnaire (Appendix F). Offeror will be evaluated on references that show positive service history, successful execution of services and evidence of satisfaction by each reference. References indicating significantly similar services/scopes of work and comments provided by a submitted reference will add weight and value to a recommendation during the evaluation process.

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

## 3. B.3 Mandatory Specifications

This section is worth **180 points** based on the following, if the following cannot be met with a statement of concurrent will result in Offeror's **disqualification**.

**Contractor is qualified to provide Actuarial Services for:**

- **Property, Crime, Automobile Physical Damage, General and Automobile Liability, and Errors and Omissions** Claims for public schools and other educational entities in New Mexico who participate in the Authority; and

- **Workers' Compensation** Claims for employees of public schools and other educational entities in New Mexico who participate in the Authority in the State of New Mexico as it relates to this RFP.
- Provide all of the minimum services detailed in: **IV SPECIFICATIONS, A. DETAILED SCOPE OF WORK (MINIMUM SERVICES).**

**Offers must agree to provide the service outlined. A statement of concurrence is required.**

#### **4. B.4 Desirable Specifications**

- i. This section may be given a maximum of **73.33 points** based on the following: Offeror should provide a brief history, description of your firm and state whether the firm is local, regional or national. The description should include but not be limited to the size (number of employees and revenues), state who the parent company is, if any. Areas of specialization and other relevant information. Provide the same information for the office which would handle the Agency's account. If multiple offices are involved, describe the communications and coordination procedures involving multiple offices. The response should provide information to make sure your Firm is capable of managing this engagement.
- ii. This section may be given a maximum of **73.33 points** based on the following: Project Manager and Staff experience: Offeror should submit a detailed narrative describing the relevant experience of their proposed Project Manager and the rest of the staff. The narrative should include a thorough description of the education, knowledge and relevant experience as well as certification(s) or other professional credentials for each person which clearly shows the individuals are qualified to perform the required work. The narrative should thoroughly describe how and by whom the Project Team is managed and provide an organizational chart. Provide what office each person is physically located in. The Offeror should submit a current resume for each "major" staff person. Any additional services, or services outlined in the scope of work that the Firm cannot perform, must be outlined in the written proposal.
- iii. This section may be given a maximum of **73.34 points** based on the following: Proposed Additional Support Services: Offeror must describe, in detail any other support services, in addition to 5.ii. above, which is deemed necessary to enhance services and/or provide communication access for the Agency. Provide who the additional support services staff is and what office they are located in. Describe the Offeror's Information Management System and Ad hoc reporting. Please provide copies of your standard reports in your written proposal. In addition, provide samples of reports demonstrating "ad hoc" capabilities.

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

Pass/Fail only. No points assigned.

**6. C.2 Performance Bond (See Table 1)**

Pass/Fail only. No points assigned.

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

Pass/Fail only. No points assigned.

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

Pass/Fail only. No points assigned.

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

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

**10. C.6. Cost (See Table 1)**

The evaluation of each Offeror’s cost proposal will be conducted using the following formula:

$$\frac{\text{Lowest Responsive Offeror’s Cost (avg of 4 years)}}{\text{Each Offeror’s Cost (avg of 4 years)}} \times \text{Available Award Points (200)}$$

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

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

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

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

**B. New Mexico/Native American Resident Veteran Preference**

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

**C. EVALUATION PROCESS**

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

## **APPENDIX A**

### **Acknowledgement of Receipt Form**

# REQUEST FOR PROPOSAL

Actuarial Services  
342-2024-06

## ACKNOWLEDGEMENT OF RECEIPT FORM

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

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

ORGANIZATION: \_\_\_\_\_

CONTACT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_ PHONE NO.: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

**Submit Acknowledgement of Receipt Form to:**

To: Maria Lugo, Procurement Manager

E-mail: [psia.procurement@state.nm.gov](mailto:psia.procurement@state.nm.gov)

Subject Line: Actuarial Services RFP# 342-2024-06

**APPENDIX B**  
**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

# CAMPAIGN CONTRIBUTION DISCLOSURE FORM

RFP#342-2024-06

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

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

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

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

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

The following definitions apply:

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



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

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

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

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

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

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

**Name(s) of Applicable Public Official(s) if any:** \_\_\_\_\_  
**(This field must be completed by the issuing State Agency. In most cases, the official identified will be the current Governor of New Mexico and Lieutenant Governor. If a local public body is using this template for their RFPs, it must complete this field with the applicable elected official(s).)**

**DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:**

Contribution Made By: \_\_\_\_\_

Relation to Prospective Contractor: \_\_\_\_\_

Date Contribution(s) Made: \_\_\_\_\_  
\_\_\_\_\_

Amount(s) of Contribution(s) \_\_\_\_\_

Nature of Contribution(s)

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Purpose of Contribution(s)

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(Attach extra pages if necessary)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (position)

**--OR--**

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (Position)

**APPENDIX C**  
**DRAFT CONTRACT**

# DRAFT CONTRACT

## STATE OF NEW MEXICO

### NEW MEXICO PUBLIC SCHOOLS INSURANCE AUTHORITY

PROFESSIONAL SERVICES CONTRACT # \_\_\_\_\_

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **Public Schools Insurance Authority (NMPSIA)**, hereinafter referred to as the “Authority,” and **NAME OF CONTRACTOR**, hereinafter referred to as the “Contractor,” and is effective as of the date set forth below upon which it is executed by the Authority.

IT IS AGREED BETWEEN THE PARTIES:

1. **Scope of Work.**

The Contractor shall perform the following work:

2. **Compensation.**

A. The Authority shall pay to the Contractor in full payment for services satisfactorily performed at the rate of \_\_\_\_\_ dollars (\$\_\_\_\_\_) per hour (OR BASED UPON DELIVERABLES, MILESTONES, BUDGET, ETC.), such compensation not to exceed (AMOUNT), excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (AMOUNT) shall be paid by the Authority to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. The Contractor is responsible for notifying the Authority 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 the 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 Authority. All invoices MUST BE received by the Authority 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.

(—OR—)

(CHOICE – MULTI-YEAR)

A. The Authority shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) in FYXX (USE FISCAL YEAR NUMBER TO DESCRIBE YEAR; DO NOT USE FY1, FY2, ETC.). The New Mexico gross receipts tax levied on the amounts payable under this Agreement in FYXX totaling (AMOUNT) shall be paid by the Authority to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT) in FYXX.**

(REPEAT LANGUAGE FOR EACH FISCAL YEAR COVERED BY THE AGREEMENT -- USE FISCAL YEAR NUMBER TO DESCRIBE EACH YEAR; DO NOT USE FY1, FY2, ETC.).

B. Payment in FYXX, FYXX, FYXX, and FYXX is subject to the 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 Authority. All invoices MUST BE received by the Authority 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. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Authority 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 Authority 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 Authority 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 AUTHORITY with a start date of **(DATE)**. This agreement shall terminate on **(DATE)** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with NMSA 1978, § 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, § 13-1-150.

**4. Termination.**

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

B. Notice; Authority Opportunity to Cure.

1. Except as otherwise provided in Paragraph (4)(B)(3), the Authority shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Authority written notice of termination at one hundred and eighty (180) days prior to the intended date of termination, which notice shall (i) identify all the Authority's material breaches of this Agreement upon which the termination is based and (ii) state what the Authority must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Authority does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Authority 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 Authority; (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 Authority'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 AUTHORITY'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 Authority 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 Authority; 2) comply with all directives issued by the Authority in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Authority shall direct for the protection, preservation, retention or transfer of all property titled to the Authority 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 Authority upon termination and shall be submitted to the Authority 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 Authority to the Contractor. The Authority's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Authority 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 Authority 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 Authority.

**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 Authority. 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 Authority.

**9. Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the Authority, 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 Authority.

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

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

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

1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Authority employee while such employee was or is employed by the Authority and participating directly or indirectly in the Authority's contracting process;

2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Authority's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Authority.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the Authority relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Authority 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 Authority and notwithstanding anything in the Agreement to the contrary, the Authority 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 Authority 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, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

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

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 Authority.

19. **Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Authority, the General Services Department/State Purchasing Division and the State Auditor. The Authority shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Authority to recover excessive or illegal payments.

20. **Indemnification.**

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

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.

**22. 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.

**23. 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.

**24. Notices.**

Any notice required to be given to either party by this Agreement shall be in writing via electronic mail as follows:

To the Authority:

[insert name, address and email].

To the Contractor:

[insert name, address and email].

**25. 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.

**26. Incorporation by Reference and Precedence.**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any Authority response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

27. **Succession.**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

28. **Contractor Personnel.**

A. **Key Personnel.** The Contractor’s key personnel shall not be diverted from this Agreement without the prior written approval of the Authority. Key personnel are those individuals considered by the Authority to be mandatory to the work to be performed under this Agreement. Key personnel shall be agreed upon by both the Authority and the Contractor.

B. **Personnel Changes.** Replacement of any personnel shall be made with personnel of equal ability, qualifications and experience. If the number of Contractor’s personnel assigned to the Authority is reduced for any reason, Contractor shall, replace with the same or greater number of personnel with equal ability, experience, and qualifications.

29. **Arbitration.**

Any controversy or claim arising between the parties shall be settled by arbitration pursuant to NMSA 1978 § 44-7A-1 et seq, in Santa Fe, New Mexico.

30. **Non-Collusion**

In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the Authority.

**IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the Authority below.**

New Mexico Public Schools Insurance Authority

By: \_\_\_\_\_  
NMPSIA, Board President

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

**(CONTRACTOR)**

By: \_\_\_\_\_  
Contractor

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

**APPENDIX D**  
**Cost Response Form**

## COST RESPONSE FORM

Description	Type	Quantity	Cost per Item

All amounts provided must include all labor, materials, equipment, transportation, configuration, installation, training and profit to provide the goods and/or services described in Section IV.A, (as amended by any current RFP amendments for the period specified).

\*\*\* Please state whether this includes GRT

Option Year 1: (xx/xx/xxxx thru xx/xx/xxxx) Price:\$ \_\_\_\_\_

Option Year 2: (xx/xx/xxxx thru xx/xx/xxxx) Price:\$ \_\_\_\_\_

Option Year 3: (xx/xx/xxxx thru xx/xx/xxxx) Price:\$ \_\_\_\_\_

Option Year 4: (xx/xx/xxxx thru xx/xx/xxxx) Price:\$ \_\_\_\_\_

**APPENDIX E**  
**Letter of Transmittal Form**

# Letter of Transmittal Form

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

RFP#: 342-2024-06

**1. Identify the following information for the submitting organization:**

<b>Offeror Name</b>	
<b>Mailing Address</b>	
<b>Telephone</b>	
<b>FED TIN#</b>	
<b>NM BTIN#</b>	

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

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

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

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

No.  
 Yes. Identify subcontractor/s: \_\_\_\_\_

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

No.  
 Yes. Identify entity/-ies: \_\_\_\_\_

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

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

Sign: \_\_\_\_\_ Date: \_\_\_\_\_

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



## **APPENDIX F**

### **ORGANIZATIONAL REFERENCE QUESTIONNAIRE**

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

Offeror is required to send the following Organizational Reference Questionnaire to each business reference listed in its proposal, as per Section IV.B.2. The business reference, if it chooses to respond, is required to submit its response to the Organizational Reference Questionnaire directly to: Maria Lugo, Procurement Manager, at [psia.procurement@state.nm.us](mailto:psia.procurement@state.nm.us) by the due date for the Request for Proposals for inclusion in the evaluation process. The Questionnaire and information provided will become a part of the submitted proposal. Businesses/Organizations providing references may be contacted for validation of content provided therein.

**RFP # 342-2024-06**  
**ORGANIZATIONAL REFERENCE QUESTIONNAIRE**  
**FOR:**

\_\_\_\_\_  
(Name of Offeror)

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

Name: Maria Lugo, Procurement Manager  
Email: [psia.procurement@state.nm.us](mailto:psia.procurement@state.nm.us)

Forms must be submitted no later than the due date of the Request for Proposals **and must not** be returned to the organization requesting the reference. References are **strongly encouraged** to provide comments in response to organizational ratings.

**For questions or concerns regarding this form**, please contact the Authority’s **Procurement Manager** at 505-469-0407 or [psia.procurement@state.nm.us](mailto:psia.procurement@state.nm.us) . When contacting the Procurement Manager, include the Request for Proposal number provided at the top of this page.

<b>Organization providing reference</b>	
<b>Contact name and title/position</b>	
<b>Contact telephone number(s)</b>	
<b>Contact e-mail address</b>	
<b>Project description</b>	
<b>Project dates (start and end dates)</b>	
<b>Technical environment for the project your providing a reference (i.e., Software applications, Internet capabilities, Data communications, Network, Hardware);</b>	

QUESTIONS:

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

COMMENTS:

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

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

COMMENTS:

1. How would you rate the vendor's flexibility relative to changes in the project scope and timelines?

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

COMMENTS:

4. What is your level of satisfaction with hard-copy materials produced by the vendor?

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

COMMENTS:

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

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

COMMENTS:

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

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

Name: \_\_\_\_\_ Rating: \_\_\_\_\_

Name: \_\_\_\_\_ Rating: \_\_\_\_\_

Name: \_\_\_\_\_ Rating: \_\_\_\_\_

Name: \_\_\_\_\_ Rating: \_\_\_\_\_

COMMENTS:

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

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

COMMENTS:

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

COMMENTS:

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

COMMENTS:

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

COMMENTS:

**Appendix G**  
**Sample Business Associate Agreement**

## Business Associate Agreement

This Business Associate Agreement (“Agreement”) is entered into by and between the New Mexico Public Schools Insurance Authority (NMPSIA), hereinafter referred to as the “Authority” or “Covered Entity”, and “Vendor Name” hereinafter referred to as the “Contractor” or “Business Associate” and is effective as of “Effective Date”.

WHEREAS, Covered Entity is either a “covered entity” or “business associate” of a covered entity as each are defined under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended by the HITECH Act (as defined below) and the related regulations promulgated by HHS (as defined below) (collectively, “HIPAA”) and, as such, is required to comply with HIPAA’s provisions regarding the confidentiality and privacy of Protected Health Information (as defined below);

WHEREAS, the Parties have entered into or will enter into one or more agreements under which Business Associate provides or will provide certain specified services to Covered Entity (collectively, the “Agreement”);

WHEREAS, in providing services pursuant to the Agreement, Business Associate will have access to Protected Health Information;

WHEREAS, by providing the services pursuant to the Agreement, Business Associate will become a “business associate” of the Covered Entity as such term is defined under HIPAA;

WHEREAS, both Parties are committed to complying with all federal and state laws governing the confidentiality and privacy of health information, including, but not limited to, the Standards for Privacy of Individually Identifiable Health Information found at 45 CFR Part 160 and Part 164, Subparts A and E (collectively, the “Privacy Rule”); and

WHEREAS, both Parties intend to protect the privacy and provide for the security of Protected Health Information disclosed to Business Associate pursuant to the terms of this Agreement, HIPAA and other applicable laws.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and the continued provision of PHI by the Covered Entity to the Business Associate under the Agreement in reliance on this Business Associate Agreement (BAA), the Parties agree as follows:

1. **Definitions.** For purposes of this BAA, the Parties give the following meaning to each of the terms in the definitions. Any capitalized term used in this BAA, but not otherwise defined, has the meaning given to that term in the Privacy Rule or pertinent law.
  - A. “**Affiliate**” means a subsidiary or affiliate of a Covered Entity or of a Business Associate.
  - B. “**Breach**” means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the Privacy Rule which compromises the security or privacy of the PHI, as defined in 45 CFR §164.402.
  - C. “**Breach Notification Rule**” means the portion of HIPAA set forth in Subpart D of 45 CFR Part 164.
  - D. “**Business Associate**” means the Contractor.

- E. **“Business Associate Agreement”** means a legally-binding relationship between HIPAA-covered entities and business associates to ensure complete protection of PHI.
- F. **“Covered Entity”** means the Authority.
- G. **“Data Aggregation”** means, with respect to PHI created or received by Business Associate in its capacity as the “business associate” under HIPAA of Covered Entity, the combining of such PHI by the Business Associate with the PHI received by Business Associate in its capacity as a business associate of one or more other “covered entity” under HIPAA, to permit data analyses that relate to the Health Care Operations (defined below) of the respective covered entities. The meaning of “data aggregation” in this BAA shall be consistent with the meaning given to that term in the Privacy Rule.
- H. **“De-Identify”** means to alter the PHI such that the resulting information meets the requirements described in 45 CFR §§164.514(a) and (b).
- I. **“Effective Date”** shall mean the earliest date by which the Contractor and the Authority must enter into a business associate agreement under 45 CFR Part 164.
- J. **“Electronic PHI”** means any PHI maintained in or transmitted by electronic media as defined in 45 CFR §160.103.
- K. **“Health Care Operations”** has the meaning given to that term in 45 CFR §164.501.
- L. **“HHS”** means the U.S. Department of Health and Human Services.
- M. **“HIPAA Rules”** shall mean the requirements of the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164, implementing HIPAA and the HITECH Act, in each case only as of the applicable compliance date for such requirements.
- N. **“HITECH Act”** means the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009, Public Law 111-005.
- O. **“Limited Data Set”** shall have the same meaning as the term “limited data set” as set forth in 45 CFR §164.514(e) (2).
- P. **“Privacy Rule”** means that portion of HIPAA set forth in 45 CFR Part 160 and Part 164, Subparts A and E.
- Q. **“Protected Health Information”** or **“PHI”** has the meaning given to the term “protected health information” in 45 CFR §§164.501 and 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- R. **“Required by law”** means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information,



including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

- S. **“Secretary”** shall mean the Secretary of the United States Department of Health and Human Services.
- T. **“Security Incident”** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- U. **“Security Rule”** means the Security Standards for the Protection of Electronic Health Information provided in 45 CFR Part 160 & Part 164, Subparts A and C.
- V. **“Unsecured Protected Health Information”** or **“Unsecured PHI”** means any “protected health information” as defined in 45 CFR §§164.501 and 160.103 that is not rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the HHS Secretary in the guidance issued pursuant to the HITECH Act and codified at 42 USC §17932(h).

## 2. General Provisions.

- A. **Effect.** As of the Effective Date, the terms and provisions of this Agreement are incorporated in and shall supersede any conflicting or inconsistent terms and provisions of the (“Agreement”) including all exhibits or other attachments to, and all documents incorporated by reference in, any such applicable agreements (individually and collectively any such applicable agreements are referred to herein as the (“Agreement”). This Agreement sets out terms and provisions relating to the use and disclosure of Protected Health Information (“PHI”) without written authorization from the Individual. To the extent there is a conflict between the Agreement and this Agreement, this Agreement shall control.
- B. **Amendment to Comply with Law.** The Contractor, on behalf of itself and its affiliates and subsidiaries that perform services for the Authority under the Agreement are (collectively referred to as “the Contractor”), the Authority (also referred to as “Plan Sponsor”), and the group health plan that is the subject of the Agreement (also referred to as the “Plan”) agree to amend this Agreement to the extent necessary to allow either the Authority or the Contractor to comply with applicable laws and regulations including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 CFR Parts 160 to 164) (“HIPAA Privacy and Security Rules”).
- C. **Relationship of Parties.** The parties intend that the Contractor is an independent Contractor and not an agent of the Authority or the Plan Sponsor.

## 3. Use and Disclosure of PHI.

- A. Except as otherwise provided in this BAA, Business Associate may use or disclose PHI as reasonably necessary to provide the services described in the Agreement to Covered Entity, and to undertake other activities of Business Associate permitted or required of Business Associate by this BAA or as required by law.
- B. Except as otherwise limited by this BAA or federal or state law, Covered Entity authorizes Business Associate to use the PHI in its possession for the proper management and administration of Business Associate’s business and to carry out its legal responsibilities. Business Associate may disclose PHI for its proper management and administration, provided that;
  - 1. The disclosures are required by law; or

2. **Business Associate obtains, in writing, prior to making any disclosure to a third party:**
  - a. **reasonable assurances from this third party that the PHI will be held confidential as provided under this BAA and used or further disclosed only as required by law or for the purpose for which it was disclosed to this third party and**
  - b. **an agreement from this third party to notify Business Associate immediately of any breaches of the confidentiality of the PHI, to the extent it has knowledge of the breach.**
3. **The disclosures are required to provide Data Aggregation services relating to the Health Care Operations of the Authority, or to de-identify PHI. Once information is de-identified, this Agreement shall not apply.**
- C. **Business Associate will not use or disclose PHI in a manner other than as provided in this BAA, as permitted under the Privacy Rule, or as required by law. Business Associate will use or disclose PHI, to the extent practicable, as a limited data set or limited to the minimum necessary amount of PHI to carry out the intended purpose of the use or disclosure, in accordance with Section 13405(b) of the HITECH Act (codified at 42 USC §17935(b)) and any of the act's implementing regulations adopted by HHS, for each use or disclosure of PHI.**
- D. **Upon request, Business Associate will make available to Covered Entity any of the Covered Entity's PHI that the Business Associate or any of its agents or subcontractors have in their possession.**
- E. **Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1).**
- F. **Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual unless authorization is obtained from the Individual, in accordance with 45 CFR. §164.508, which specifies whether PHI can be exchanged for remuneration by the entity receiving PHI of that individual unless otherwise permitted under the HIPAA Privacy Rule.**
4. **Safeguards Against Misuse of PHI. Business Associate will use appropriate safeguards to prevent the use or disclosure of PHI other than as provided by the Agreement or this BAA and Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate agrees to take reasonable steps, including providing adequate training to its employees to ensure compliance with this BAA and to ensure that the actions or omissions of its employees or agents do not cause Business Associate to breach the terms of this BAA.**
5. **Protection of Electronic PHI.**
  - A. **The Contractor will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that the Contractor creates, receives, maintains, or transmits on behalf of the Authority as required by the Security Standards;**
  - B. **Ensure that any agent or subcontractor to whom the Contractor provides Electronic PHI agrees to implement reasonable and appropriate safeguards to protect such information; and,**
  - C. **Promptly report to the Authority any Security Incident with respect to Electronic PHI of which it becomes aware and which has compromised the protections set forth in**

the HIPAA Security Rule. In the event of a Security Incident, the Contractor shall report to the Authority in writing.

6. **Reporting Disclosures of PHI and Security Incidents.** Business Associate will report to Covered Entity in writing any use or disclosure of PHI not provided for by this BAA of which it becomes aware. Business Associate agrees to report to Covered Entity any Security Incident affecting PHI of Covered Entity of which it becomes aware. Business Associate agrees to;
  - A. report any actual, successful Security Incident within five (5) business days of the date on which the Contractor first becomes aware of such actual, successful Security Incident and;
  - B. to the extent commercially reasonable, the Authority may request the Contractor to report in writing attempted but unsuccessful Security Incidents involving PHI of which the Contractor becomes aware, provided however that such reports are not required for trivial and routine incidents such as port scans, attempts to log in with an invalid password or user name, denial of service attacks that do not result in a server being taken off-line, malware and pings or other similar types of events.
7. **Reporting Breaches of Unsecured PHI.**
  - A. Business Associate will notify Covered Entity in writing promptly upon the discovery of any Breach of Unsecured PHI in accordance with the requirements set forth in 45 CFR §164.410, but in no case later than 30 calendar days after discovery of a Breach. This notification will include, to the extent known:
    1. the names of the individuals whose PHI was involved in the Breach;
    2. the circumstances surrounding the Breach;
    3. the date of the Breach and the date of its discovery;
    4. the information Breached;
    5. any steps the impacted individuals should take to protect themselves;
    6. the steps the Contractor is taking to investigate the Breach, mitigate losses, and protect against future Breaches; and,
    7. a contact person who can provide additional information about the Breach.
  - B. Business Associate will reimburse Covered Entity for any costs incurred by it in complying with the requirements of Subpart D of 45 CFR §164 that are imposed on Covered Entity as a result of a Breach committed by Business Associate.
8. **Mitigation of Disclosures of PHI.** Business Associate will take reasonable measures to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of any use or disclosure of PHI by Business Associate or its agents or subcontractors in violation of the requirements of this BAA.
9. **Agreements with Agents or Subcontractors.** Business Associate will ensure that any of its agents or subcontractors that have access to, or to which Business Associate provides PHI agree in writing to the restrictions and conditions concerning uses and disclosures of PHI contained in this BAA and agree to implement reasonable and appropriate safeguards to protect any Electronic PHI that it creates, receives, maintains or transmits on behalf of the Contractor or, through the Contractor's Business Associate, Covered Entity. The Contractor shall notify the Covered Entity, and the upstream Business Associate, of all subcontracts and agreements relating to the Agreement, where the subcontractor or agent receives PHI as described in section 1.Q. of this BAA. Such notification shall occur within 30 (thirty) calendar days of the execution of the subcontract by placement of such notice on the Business Associate's primary website. Business

Associate shall ensure that all subcontracts and agreements provide the same level of privacy and security as this BAA.

10. **Audit Report.** Upon request, Business Associate will provide Covered Entity, and upstream Business Associate, with a copy of its most recent independent HIPAA compliance report (AT-C 315), HITRUST certification or other mutually agreed upon independent standards-based third-party audit report. The covered entity agrees not to re-disclose Business Associate's audit report.
11. **Access to PHI by Individuals.**
  - A. Upon request, Business Associate agrees to furnish Covered Entity with copies of the PHI maintained by Business Associate in a Designated Record Set in the time and manner designated by Covered Entity to enable Covered Entity to respond to an Individual's request for access to PHI under 45 CFR §164.524.
  - B. In the event any Individual or personal representative requests access to the Individual's PHI directly from Business Associate, Business Associate within ten (10) business days, will forward that request to Covered Entity. Any disclosure of, or decision not to disclose, the PHI requested by an Individual or a personal representative and compliance with the requirements applicable to an Individual's right to obtain access to PHI shall be the sole responsibility of the Covered Entity.
12. **Amendment of PHI.** Upon request and instruction from the Authority, Business Associate will amend PHI or a record about an Individual in a Designated Record Set that is maintained by, or otherwise within the possession of, the Business Associate as directed by the Authority in accordance with procedures established by 45 CFR §164.526. Any request by Covered Entity to amend such information will be completed by Business Associate within 15 business days of the Covered Entity's request.
13. **Accounting of Disclosures.**
  - A. Business Associate will document any disclosures of PHI made by it to account for such disclosures as required by 45 CFR §164.528(a). Business Associate also will make available information related to such disclosures as would be required for Covered Entity to respond to a request for an accounting of disclosures in accordance with 45 CFR §164.528. At a minimum, Business Associate will furnish Covered Entity the following with respect to any covered disclosures by Business Associate:
    1. the date of disclosure of PHI;
    2. the name of the entity or person who received PHI, and, if known, the address of such entity or person;
    3. a brief description of the PHI disclosed; and
    4. a brief statement of the purpose of the disclosure which includes the basis for such disclosure.
  - B. Business Associate will furnish to Covered Entity information collected in accordance with this Section 10, within ten business days after written request by Covered Entity, to permit Covered Entity to make an accounting of disclosures as required by 45 CFR §164.528, or in the event that Covered Entity elects to provide an Individual with a list of its business associates, Business Associate will provide an accounting of its disclosures of PHI upon request of the Individual, if and to the extent that such accounting is required under the HITECH Act or under HHS regulations adopted in connection with the HITECH Act.

- C. In the event an Individual delivers the initial request for an accounting directly to Business Associate, Business Associate will within ten business days forward such request to Covered Entity.

14. **Availability of Books and Records.** Business Associate will make available its internal practices, books, agreements, records, and policies and procedures relating to the use and disclosure of PHI, upon request, to the Secretary of HHS for purposes of determining Covered Entity's and Business Associate's compliance with HIPAA, and this BAA.
15. **Responsibilities of Covered Entity.** With regard to the use and/or disclosure of Protected Health Information by the Business Associate, Covered Entity agrees to:
  - A. Notify Business Associate of any limitation(s) in its notice of privacy practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
  - B. Notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
  - C. Notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity 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. Except for data aggregation or management and administrative activities of the Business Associate, the Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if done by Covered Entity.
16. **Data Ownership.** Business Associate's data stewardship does not confer data ownership rights on Business Associate with respect to any data shared with it under the Agreement, including any and all forms thereof.
17. **Term and Termination.**
  - A. This BAA will become effective on the date first written above and will continue in effect until all obligations of the Parties have been met under the Agreement and under this BAA.
  - B. Covered Entity may terminate immediately this BAA, the Agreement, and any other related agreements if the Covered Entity makes a determination that the Business Associate has breached a material term of this BAA and the Business Associate has failed to cure that material breach, to Covered Entity's reasonable satisfaction, within 30 days after written notice from Covered Entity. The covered Entity may report the problem to the Secretary of HHS if termination is not feasible.
  - C. If Business Associate determines that Covered Entity has breached a material term of this BAA, then Business Associate will provide Covered Entity with written notice of the existence of the breach and shall provide Covered Entity with 30 days to cure the breach. Covered Entity's failure to cure the breach within the 30-day period will be grounds for immediate termination of the Agreement and this BAA by Business Associate. Business Associate may report the breach to HHS.
  - D. Upon termination of the Agreement or this BAA for any reason, all PHI maintained by Business Associate will be returned to Covered Entity or destroyed by Business

Associate. Business Associate will not retain any copies of such information. This provision will apply to PHI in the possession of Business Associate's agents and subcontractors. If return or destruction of the PHI is not feasible, in Business Associate's reasonable judgment, Business Associate will furnish Covered Entity with notification, in writing, of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of the PHI is infeasible, Business Associate will extend the protections of this BAA to such information for as long as Business Associate retains such information and will limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible. The Parties understand that this Section 17.D. will survive any termination of this BAA.

18. **Effect of BAA.**

- A. This BAA is a part of and subject to the terms of the Agreement, except that to the extent any terms of this BAA conflict with any term of the Agreement, the terms of this BAA will govern.
- B. Except as expressly stated in this BAA or as provided by law, this BAA will not create any rights in favor of any third party.

19. **Regulatory References.** A reference in this BAA to a section in HIPAA means the section as in effect or as amended at the time.

20. **Notices.** All notices, requests, and demands or other communications to be given under this BAA to a Party will be made via either first class mail, registered or certified or express courier, or electronic mail to the Party's address given below:

If to the Authority, to:

NMPSIA

410 Old Taos Highway

Santa Fe, NM 87501

Attention: Executive Director

Patrick Sandoval

Patrick.Sandoval@psia.nm.gov

If to Vendor, to:

21. **Amendments and Waiver.** This BAA may not be modified, nor will any provision be waived or amended, except in writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing or as a bar to, or waiver of any right or remedy as to subsequent events.

22. **HITECH Act Compliance.** The Parties acknowledge that the HITECH Act includes significant changes to the Privacy Rule and the Security Rule. The privacy subtitle of the HITECH Act sets forth provisions that significantly change the requirements for business associates and the agreements between business associates and covered entities under HIPAA and these changes may be further clarified in forthcoming regulations and guidance. Each Party agrees to comply with the applicable provisions of the HITECH Act and any HHS regulations issued with respect to the HITECH Act. The Parties also agree to negotiate in good faith to modify this BAA as reasonably necessary to comply with the HITECH Act and its regulations as they become effective but, in the event that the Parties are unable to reach an agreement on such a modification, either Party will have the right to terminate this BAA upon 30 days' prior written notice to the other Party.

In light of the mutual agreement and understanding described above, the Parties execute this BAA as of the date first written above.

By: \_\_\_\_\_  
NMPSIA  
Name:  
Title:

By: \_\_\_\_\_  
Vendor:  
Name:  
Title:

**BAA Key References**

AT-C 315 HITRUST- audit compliance ([AT-C Section 315 - Compliance Attestation \(aicpa.org\)](#))

American Recovery and Reinvestment Act of 2009, Public Law 111-005- Designates each amount in this Act as: (1) an emergency requirement, necessary to meet certain emergency needs in accordance with the FY2008-FY2009 congressional budget resolutions; and (2) an emergency for Pay-As-You-Go (PAYGO) principles.

Health Insurance Portability and Accountability Act as amended by the HITECH Act- The Health Information Technology for Economic and Clinical Health Act is a US legislation enacted in 2009 to incentivize the adoption of electronic health records (EHR) and the supporting technology by the country's healthcare industry.

45 CFR Parts 160 and 164- federal regulations that relate to the privacy, security, enforcement, and breach notification of protected health information (PHI) under the Health Insurance Portability and Accountability Act (HIPAA) and other laws.

**45 CFR § 160.103-** defines Health information as any information, including genetic information, whether oral or recorded in any form or medium, that: (1) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

**45 CFR § 164.103 Definitions.**

As used in this part, the following terms have the following meanings:

**Common control** exists if an entity has the power, directly or indirectly, significantly to influence or direct the actions or policies of another entity.

**Common ownership** exists if an entity or entities possess an ownership or equity interest of 5 percent or more in another entity.

**Covered functions** means those functions of a covered entity the performance of which makes the entity a health plan, health care provider, or health care clearinghouse.

**Health care component** means a component or combination of components of a hybrid entity designated by the hybrid entity in accordance with [§ 164.105\(a\)\(2\)\(iii\)\(D\)](#).

**Hybrid entity** means a single legal entity:

- (1) That is a covered entity;
- (2) Whose business activities include both covered and non-covered functions; and
- (3) That designates health care components in accordance with paragraph [§ 164.105\(a\)\(2\)\(iii\)\(D\)](#).

**Law enforcement official** means an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to:

- (1) Investigate or conduct an official inquiry into a potential violation of law; or
- (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

**Plan sponsor** is defined as defined at section 3(16)(B) of ERISA, [29 U.S.C. 1002\(16\)\(B\)](#).

**Required by law** means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law. **Required by law** includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

**45 C.F.R. §164.304- Security incident** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

**45 C.F.R § 164.308-** A covered entity or business associate must implement policies and procedures to prevent, detect, contain, and correct security violations.

**45 CFR 164.308(b)(2)-** A business associate may permit a business associate that is a subcontractor to create, receive, maintain, or transmit electronic protected health information on its behalf only if the business associate obtains satisfactory assurances, in accordance with [§ 164.314\(a\)](#), that the subcontractor will appropriately safeguard the information.

**45 C.F.R 164.310-** Implement policies and procedures to limit physical access to its electronic information systems and the facility or facilities in which they are housed, while ensuring that properly authorized access is allowed.



45 C.F.R 164.312- Implement technical policies and procedures for electronic information systems that maintain electronic protected health information to allow access only to those persons or software programs that have been granted access rights as specified in § 164.308(a)(4).

45 C.F.R 164.316- Implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications, or other requirements of this subpart.

45 CFR 164.402 Breach means the acquisition, access, use, or disclosure of protected health information in a manner not permitted under subpart E of this part which compromises the security or privacy of the protected health information.

45 C.F.R. §§164.404- A covered entity shall, following the discovery of a breach of unsecured protected health information, notify each individual whose unsecured protected health information has been, or is reasonably believed by the covered entity to have been, accessed, acquired, used, or disclosed as a result of such breach.

45 C.F.R. §§164.406- For a breach of unsecured protected health information involving more than 500 residents of a State or jurisdiction, a covered entity shall, following the discovery of the breach as provided in [§ 164.404\(a\)\(2\)](#), notify prominent media outlets serving the State or jurisdiction.

45 C.F.R. §§164.408- A covered entity shall, following the discovery of a breach of unsecured protected health information as provided in [§ 164.404\(a\)\(2\)](#), notify the Secretary.

45 CFR §164.410- Notification by a business associate.

(a) Standard

(1) General rule. A business associate shall, following the discovery of a breach of unsecured protected health information, notify the covered entity of such breach.

(2) Breaches treated as discovered. For purposes of paragraph (a)(1) of this section, a breach shall be treated as discovered by a business associate as of the first day on which such breach is known to the business associate or, by exercising reasonable diligence, would have been known to the business associate. A business associate shall be deemed to have knowledge of a breach if the breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the breach, who is an employee, officer, or other agent of the business associate (determined in accordance with the Federal common law of agency).

45 C.F.R 164.502 (e)(1)(ii)- A business associate may disclose protected health information to a business associate that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit protected health information on its behalf, if the business associate obtains satisfactory assurances, in accordance with § 164.504(e)(1)(i), that the subcontractor will appropriately safeguard the information.

45 CFR §164.501- *Data aggregation* means, with respect to protected health information created or received by a business associate in its capacity as the business associate of a covered entity, the combining of such protected health information by the business associate with the protected health information received by the business associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

*Designated record set* means:

(1) A group of records maintained by or for a covered entity that is:

(i) The medical records and billing records about individuals maintained by or for a covered health care provider;

(ii) The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or

(iii) Used, in whole or in part, by or for the covered entity to make decisions about individuals.

(2) For purposes of this paragraph, the term record means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.

45 C.F.R §164.502(j)( *Standard: Disclosures by whistleblowers and workforce member crime victims*

(1) *Disclosures by whistleblowers.* A covered entity is not considered to have violated the requirements of this subpart if a member of its workforce or a business associate discloses protected health information

**45 C.F.R 164.504(e)- A covered entity is not in compliance with the standards in [§ 164.502\(e\)](#) and this paragraph, if the covered entity knew of a pattern of activity or practice of the business associate or subcontractor that constituted a material breach or violation of the business associate's obligation under the contract or other arrangement unless the covered entity took reasonable steps to cure the breach or end the violation, as applicable, and, if such steps were unsuccessful, terminated the contract or arrangement, if feasible.**

**45 C.F.R 164.506(c)- A covered entity may use or disclose protected health information for its own treatment, payment, or health care operations or for treatment activities of a health care provider or for the payment activities of the entity that receives the information or for health care operations activities of the entity that receives the information, if each entity either has or had a relationship with the individual who is the subject of the protected health information being requested, the protected health information pertains to such relationship. A covered entity that participates in an organized health care arrangement may disclose protected health information about an individual to other participants in the organized health care arrangement for any health care operations activities of the organized health care arrangement.**

**45 C.F.R 164.508 *Authorization required: General rule.* Except as otherwise permitted or required by this subchapter, a covered entity may not use or disclose protected health information without an authorization that is valid under this section. When a covered entity obtains or receives a valid authorization for its use or disclosure of protected health information, such use or disclosure must be consistent with such authorization.**

**45 C.F.R. §164.512- A covered entity may use or disclose protected health information without the written authorization of the individual, or the opportunity for the individual to agree or object in the situations covered by this section, subject to the applicable requirements of this section.**

**45 C.F.R. §164.514 (a) Standard: De-identification of protected health information. Health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual is not individually identifiable health information. (b) Implementation specifications: Requirements for de-identification of protected health information. A covered entity may determine that health information is not individually identifiable health information.**

**45 C.F.R. §164.514 (e) (2)- Implementation specification: Limited data set: A limited data set is protected health information that excludes the following direct identifiers of the individual or of relatives, employers, or household members of the individual.**

**45 C.F.R.164.520- Right to notice. Except as provided by paragraph (a)(2) or (3) of this section, an individual has a right to adequate notice of the uses and disclosures of protected health information that may be made by the covered entity, and of the individual's rights and the covered entity's legal duties with respect to protected health information.**

**45 C.F.R. § 164.522- Right of an individual to request restriction of uses and disclosures.**

**45 C.F.R 164.524- Right of access. Except as otherwise provided in paragraph (a)(2) or (a)(3) of this section, an individual has a right of access to inspect and obtain a copy of protected health information about the individual in a designated record set, for as long as the protected health information is maintained in the designated record set.**

**45 C.F.R. §164.526- An individual has the right to have a covered entity amend protected health information or a record about the individual in a designated record set for as long as the protected health information is maintained in the designated record set.**

**45 C.F.R. §164.528- An individual has a right to receive an accounting of disclosures of protected health information made by a covered entity in the six years prior to the date on which the accounting is requested.**

**42 USC §17932(h)- Unsecured protected health information subject to subparagraph (B), for purposes of this section, the term "unsecured protected health information" means protected health**

**information that is not secured through the use of a technology or methodology specified by the Secretary in the guidance issued under paragraph.**

**42 USC §17935(b)- Disclosures required to be limited to the limited data set or the minimum necessary.**