

STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT
PROFESSIONAL SERVICES CONTRACT

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

IT IS AGREED BETWEEN THE PARTIES:

1. **Scope of Work**

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

B. **Performance Measures**

The Contractor shall substantially perform the Performance Measures described in Exhibit A, Scope of Work, attached to this PSC and incorporated herein by reference.

2. **Compensation**

A. A. The total amount payable to the Contractor under this PSC shall not exceed **\$30,000**. This amount is a maximum and not a guarantee that the work assigned to Contractor under this PSC to be performed shall equal the amount stated herein. . The New Mexico gross receipts tax, if applicable, levied on the amounts payable under this PSC shall be paid by the Contractor. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. The contractor is responsible for notifying the HSD when the services provided under this PSC 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 PSC being amended in writing prior to those services in excess of the total compensation amount being provided.

B. The HSD shall pay the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work, including gross receipts tax, if applicable, and expenses, an amount not to exceed \$30,000 as set forth in Paragraph A. Payment is subject to availability of funds pursuant to the Appropriations Section set forth below and to approval by the HSD. All invoices **MUST BE** received by the HSD no later than ten (10) days after the termination of the Fiscal Year in which the services were delivered. **Invoices received after such date WILL NOT BE PAID.**

C. The Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the HSD finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, the HSD shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the HSD that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the HSD

shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. **Term**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY HSD. This Agreement shall terminate on **September 30, 2016** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four (4) years, except as set forth in Section 13-1-150 NMSA 1978.

4. **Termination**

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

B. **Notice: HSD Opportunity to Cure.**

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

2. Contractor shall give HSD written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the HSD's material breaches of this Agreement upon which the termination is based and (ii) state what the HSD must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the HSD does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the HSD does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the HSD; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, "Appropriations", of this Agreement.

C. **Liability.** Except as otherwise expressly allowed or provided under this Agreement, the HSD's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE HSD'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

D. **Termination Management.** Immediately upon receipt by either the HSD or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the HSD; 2) comply with all directives issued by the HSD in the

notice of termination as to the performance of work under this Agreement; and 3) take such action as the HSD shall direct for the protection, preservation, retention or transfer of all property titled to the HSD and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the HSD upon termination and shall be submitted to the HSD as soon as practicable.

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 Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency 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 the Contractor**

The Contractor and its agents and employees are independent contractors performing professional services for the Agency 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 Agency.

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 Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Agency.

9. **Release**

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

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 Agency.

11. Product of Service -- Copyright

Except as specifically hereinafter provided, 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 Agency 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.

HSD acknowledges that services provided by Contractor under this Agreement are not subject to the Product of Service – Copyright provision above. For clarification purposes, the Parties agree as follows:

A. All examination items and other materials provided by HSD to Contractor for use in New Mexico exams will remain the property of HSD.

B. All New Mexico-unique items developed specifically by Contractor for the HSD as part of this Contract that uses information or materials provided by the HSD for the State of New Mexico pursuant to the Contract between the parties or derived from New Mexico law, regulation or statute and applicable only for examinations in New Mexico will be retained by the HSD.

C. All proprietary Contractor examination items, examinations and computer software developed by Contractor and used to deliver the examinations and/or maintain Registry data, including examination items from its national item bank, will be retained solely by Contractor. At no time will Contractor's proprietary intellectual property be transferred to the HSD under the Contract.

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 Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement

any Agency employee while such employee was or is employed by the Agency and participating directly or indirectly in the Agency's contracting process;

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

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

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

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

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

C. The Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the Agency relied when this Agreement was entered into by the parties. The Contractor shall provide immediate written notice to the Agency if, at any time during the term of this Agreement, the Contractor learns that the 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 the 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 Agency and notwithstanding anything in the Agreement to the contrary, the Agency 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 Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

14. Merger

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

15. Penalties for Violation of Law

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

16. Equal Opportunity Compliance

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

17. Applicable Law

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, the 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 Agency.

19. Records and Financial Audit

A. The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of five (5) years from the date of final payment under this Agreement. The records shall be subject to inspection by the HSD, the Department of Finance and Administration and the State Auditor. The HSD shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the HSD to recover excessive or illegal payments.

B. Contract for an independent audit in accordance with 2 CFR 200 at the Contractor's expense, as applicable. The Contractor shall ensure that the auditor is licensed to perform audits in the State of New Mexico and shall be selected by a competitive bid process. The Contractor shall enter into a written contract with the auditor specifying the scope of the audit, the auditor's responsibility, the date by which the audit is to be completed and the fee to be paid to the auditor for this service. Single audits shall comply with procedures specified by the HSD. The audit of the contract shall cover compliance with Federal Regulations and all financial transactions hereunder for the entire term of the Agreement in accordance with procedures promulgated by 2 CFR 200 or by Federal program officials for the conduct and report of such audits. An official copy of the independent auditor's report shall be made available to the HSD and any other authorized entity as required by law within fifteen (15) days of receipt of the final audit report. The Contractor may request an extension to the deadline for submission of the audit report in writing to the HSD for good cause and the HSD reserves the right to approve or reject any such request. The HSD retains the right to contract for an independent financial and functional audit for funds and operations under this if it determines that such an audit is warranted or desired.

C. Upon completion of the audit under the applicable federal and state statutes and regulations, the Contractor shall notify the HSD when the audit is available for review and provide online access to the HSD, or the Contractor shall provide the HSD with four (4) originals of the audit report. The HSD will retain two (2) and one (1) will be sent to the HSD/Office of the Inspector General and one (1) to the HSD/Administrative Services Division/Compliance Bureau.

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

E. This audit shall contain a schedule of financial expenditures for each program to facilitate ease of reconciliation by the HSD. This audit shall also include a schedule of depreciation for all property or equipment with a purchase price of \$5,000 or more pursuant to 2 CFR 200, specifically subpart F, and appendices where appropriate.

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

20. Indemnification

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

21. New Mexico Employees Health Coverage

A. If the Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least twenty (20) hours per week over a six (6) month period during the term of the contract, the 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 the Contractor and the State exceed \$250,000 dollars.

B. The 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. The Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <https://www.healthinsurance.org/new-mexico>.

22. Employee Pay Equity Reporting

The Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If the contractor has two hundred fifty (250) or more

employees the contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, the contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than one hundred eighty (180) days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should the contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, the contractor agrees to provide the required report within ninety (90) days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. The Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, the contractor will submit the required report, for each such subcontractor, within ninety (90) days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. The Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. The Contractor acknowledges that this sub requirement applies even though the contractor itself may not meet the size requirement for reporting and be required to report itself. Notwithstanding the foregoing, if this Contract was procured pursuant to a solicitation, and if the Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

23. Invalid Term or Condition

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

24. Enforcement of Agreement

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

25. Notices

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

To the Agency: Cindy Brown, Program Manager

Medical Assistance Division
Human Services Department
2025 S. Pacheco
PO Box 2348
Santa Fe, NM 87504-2348
cynthiay.brown@state.nm.us

To the Contractor: Heather Alexander
Prometric Inc.
100 Princeton South Corp Center
Lawrenceville, NJ 08468
heather.alexander@prometric.com

26. Debarment and Suspension

A. Consistent with all applicable federal and/or state laws and regulations as applicable, and as a separate and independent requirement of this PSC the Contractor certifies by signing this PSC, that it and its principals, to the best of its knowledge and belief: (1) are not debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency; (2) have not, within a three-year period preceding the effective date of this PSC, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; (3) have not been indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with, commission of any of the offenses enumerated above in this Paragraph A; (4) have not, within a three-year period preceding the effective date of this PSC, had one or more public agreements or transactions (Federal, State or local) terminated for cause or default; and (5) have not been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a-7.

B. The Contractor's certification in Paragraph A, above, is a material representation of fact upon which the HSD relied when this PSC was entered into by the parties. The Contractor's certification in Paragraph A, above, shall be a continuing term or condition of this PSC. As such at all times during the performance of this PSC, the Contractor must be capable of making the certification required in Paragraph A, above, as if on the date of making such new certification the Contractor was then executing this PSC for the first time. Accordingly, the following requirements shall be read so as to apply to the original certification of the Contractor in Paragraph A, above, or to any new certification the Contractor is required to be capable of making as stated in the preceding sentence:

(1) The Contractor shall provide immediate written notice to the HSD's Program Manager if, at any time during the term of this PSC, the Contractor learns that its certification in Paragraph A, above, was erroneous on the effective date of this PSC or has become erroneous by reason of new or changed circumstances.

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

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

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

A. The applicable definitions and exceptions to prohibited conduct and disclosures contained in 31 U.S.C. § 1352 and 45 C.F.R. Part 93, as applicable, are hereby incorporated by reference in subparagraph (B) of this certification.

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

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

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

C. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

D. This certification is a material representation of fact upon which reliance is placed when this PSC is made and entered into. Submission of this certification is a prerequisite for making and entering into this PSC imposed under 31 U.S.C. § 1352. It shall be a material obligation of the Contractor to keep this certification current as to any and all individuals or activities of anyone associated with the Contractor during the pendency of this PSC. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to: (1) a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure; and/or (2) at the discretion of the HSD, termination of the PSC.

28. Non-Discrimination

A. The Contractor agrees to comply fully with Title IV of the Civil Rights Act of 1964, as amended; the Rehabilitation Act of 1973, Public Law 93-112, as amended; and the Americans With Disabilities Act of 1990, Public Law 101-336; in that there shall be no discrimination against any employee who is employed in the performance of this PSC, or against any applicant for such employment, because of age, color, national origin, ancestry, race, religion, creed, disability, sex, or marital status.

B. This provision shall include, but not be limited to, the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

C. The Contractor agrees that no qualified handicapped person shall, on the basis of handicap, be excluded from participation or be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the Contractor. The Contractor further agrees to insert similar provisions in all subcontracts for services allowed under this PSC under any program or activity.

D. The Contractor agrees to provide meaningful access to services for individuals with Limited English Proficiency (LEP) in accordance with Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency."

29. Drug Free Workplace

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

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

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

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

"Employee" means an employee of a contractor directly engaged in the performance of work

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

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

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

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

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

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

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

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

- (i) Abide by the terms of the statement; and
- (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction;

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

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

- (i) Taking appropriate personnel action against such employee, up to and including termination; or
- (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate

agency; and

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

C. The Contractor, if an individual, agrees by entering into this PSC not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

D. In addition to other remedies available to the HSD, the Contractor's failure to comply with the requirements of subparagraph B or C of this paragraph will render the Contractor in default of this PSC and subject the Contractor to suspension of payments under the PSC and/or termination of the PSC in accordance with paragraph 4, above.

30. Findings and Sanctions

A. The Contractor agrees to be subject to the findings and sanctions assessed as a result of the HSD audits, federal audits, and disallowances of the services provided pursuant to this PSC and the administration thereof.

B. The Contractor will make repayment of any funds expended by the HSD, subject to which an auditor with the jurisdiction and authority finds were expended, or to which appropriate federal funding agencies take exception and so request reimbursement through a disallowance or deferral based upon the acts or omissions of the Contractor that violate applicable federal statutes and/or regulations, subject to sufficient appropriations of the New Mexico Legislature.

C. If the HSD becomes aware of circumstances that might jeopardize continued federal funding, the situation shall be reviewed and reconciled by a mutually agreed upon panel of Contractor and the HSD officials. If reconciliation is not possible, both parties shall present their view to the Director of the Administrative Services Division who shall determine whether continued payment shall be made.

31. Authority

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

The remainder of this page intentionally left blank.

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

By: Brent Earnest by Michael Nelson Date: 7/7/16
HSD Cabinet Secretary

By: [Signature] Date: 7/6/2016
HSD General Counsel Certifying Legal Sufficiency

By: [Signature] Date: 7/1/2016
HSD Chief Financial Officer

By: [Signature] Date: 6/30/16
Contractor Michael P. Sawicki
SVP/General Counsel

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

ID Number: 03-120264-00-0

By: [Signature] Date: 7-7-16
Taxation and Revenue Department

Exhibit A
Scope of Work

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

A. **Summary**

1. Development or utilization of standardized written, skills and oral performance-based examinations;
2. Managing nurse aide candidate applications;
3. Screening nurse aide candidate eligibility;
4. Scheduling and administering examinations;
5. Scoring, certifying and reporting examination results;
6. Managing computer-based test data;
7. Reporting test data to Department of Health (DOH), which is the agency responsible for the New Mexico Nurse Aide Registry;
8. Maintaining employment and in-service verification for biennial nurse aide recertification and for the New Mexico Nurse Aide Registry;
9. Developing all necessary forms and procedures for use in verifying the employment for nurse aides on the New Mexico Nurse Aide Registry;
10. Developing and implementing appropriate procedures for verifying in-service training and education for nurse aides.

B. **Summary Details**

1. Instrument Development Requirements:

The competency evaluation instrument must be designed to be valid, reliable, job-related and legally defensible. Content must cover the required curriculum in 42 C.F.R. § 483.152. All aspects of competency evaluation must meet the requirements of federal law and the federal regulations of the Centers for Medicare and Medicaid Services (CMS) pertaining to Nurse Aide Training and Competency Evaluation Programs (NATCEP), including but not limited to 42 U.S.C. §§ 1396b and 1396r and 42 C.F.R. §§ 431.120, 433.15, 483.75, and 483.150 to 483.160. The competency evaluations must also conform to state regulations on NATCEP in MAD 731. The Contractor shall take into consideration the literacy level, educational background and testing experience of the candidate population. Successful performance on the evaluation should not be dependent on the advanced reading skills of the candidate.

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

The Contractor must offer an alternate method of examination for those nursing assistants with limited literacy skills. The oral examination shall include all content that is in the written examination, and there must also be a written portion on reading comprehension to determine competency to read job related information. For example, the aide must be able to read material such as a resident's name band, the contents of a bottle sitting on a bedside stand or a physician's orders.

The skills demonstration portion of the competency evaluation must consist of a minimum performance of five (5) tasks for each nursing assistant from a pool of evaluation items ranked according to degree of difficulty. The tester will make a random selection of tasks with at least one task from each degree of difficulty.

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

The Contractor must provide assistance to HSD in the event of a legal challenge related to Contractor's administration of the competency evaluation program. The Contractor shall be legally responsible for any and all lawsuits related to the evaluation process, the oral and written examinations identified herein, and the instruments in connection with the services performed under this Contract, as well as any debts incurred from such lawsuits.

2. Eligibility for Competency Evaluation:

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

A competency evaluation program must be made available to persons who have received nurse aide training in state approved nursing facility based nurse aide training programs, as well as non-nursing facility based training programs, i.e., as community colleges, vocational technical programs, and training programs.

Although CMS allows the state to approve both non-state training programs and non-state competency evaluation programs, HSD has decided to establish one competency evaluation program for reasons of testing consistency and reimbursement efficiency. The Contractor must screen any nurse aide candidate for eligibility as follows:

- a. Proof of employment or commitment of employment in a certified nursing facility in order to be eligible for evaluation under this contract; or

- b. Documentation of completed, seventy five (75) hours of nurse aide training from a program approved by the state survey agency as meeting requirements for training programs; or
- c. Documentation by the training agency for nurse aide training completion or original state survey agency letter of approval to take the competency evaluation.

All test candidates will be allowed three (3) opportunities to successfully complete the examination. Failure after three attempts will require retraining to qualify for further testing opportunities.

3. Application for Competency Evaluation

The Contractor must print and distribute candidate study guides, information bulletins and test application material for prospective nurse aide candidates. The application materials will contain application forms, fee information, application and registration procedures, examination content outlines, and sample questions. Application materials will be subject to the approval of HSD and DOH.

The Contractor must establish a toll-free number to answer applicant questions and schedule evaluations.

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

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

In advance of the competency evaluation, the Contractor shall give notice to each applicant that a record of his/her successful completion will be entered into the New Mexico Nurse Aide Registry.

The Contractor must provide plans to accommodate the special testing needs of physically challenged persons or any religious obligations which may preclude weekend test dates.

4. Test Schedules and Test Sites

The Contractor must organize and administer competency evaluations as often as necessary to meet the nursing facilities' competency evaluation needs, but not more frequently than required. The Contractor's test scheduling plan shall be designed to minimize as much as possible the number of "no shows" for scheduled test dates and test sites. The Contractor is responsible for obtaining updated lists of certified nursing facilities qualified for nurse aide training. These lists may be obtained from the DOH.

5. Regional Test Sites and Staffing

The Contractor shall establish a minimum of ten (10) regional testing sites throughout the state based on need, pre-register nurse aide candidates, and conduct competency evaluations for the written, oral and skills demonstration components of the evaluation, including:

- a. Provision of testing staff including examiners, proctors and scoring capabilities.
- b. Provision of testing space that will include work surface for written tests, a computer terminal area for computer based testing, private space for oral evaluation and clinical settings for skills demonstration.
- c. Provision of testing equipment and supplies.

The Contractor must provide security measures to be followed at test sites, including procedures for handling suspected breaches of security.

6. Test Scoring

The Contractor must insure that test standardization and scoring of proctored exams is performed only by Contractor authorized staff. The Contractor shall notify HSD, the nursing facility and the applicant of competency evaluation results and shall notify unsuccessful candidates of their areas of test weakness to assist them in preparing for re-examination. The Agency would prefer testing results be made available to applicants as soon after the exam as possible. Offerors should propose how they would accomplish this, including possible electronic scoring and response.

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

7. Documentation and Reporting of Test Outcome Data

The Contractor must provide HSD and DOH with the following reports for each test date:

- a. Test registration rosters and results for each test date.
- b. Pass rates and pass/fail ratios by first time nurse aide candidates and other nurse aide candidates for each test date.
- c. Pass/fail performance by training site, by examiner and by skills demonstration item.

With the approval of HSD and DOH, the Contractor must develop and implement a data file for the storage and maintenance of candidate and examination data. The data

will be used to monitor testing activities and support management decisions regarding test delivery and training needs.

8. Registry Data Reporting

The Contractor must establish, maintain, continuously update and make available for DOH access on an ongoing basis information required for DOH's NM Nurse Aide Registry including competency evaluation outcome data and copies of nurse aide certificates that DOH can print or download. Test data must be made available by the Contractor for DOH access within ten (10) working days of the examination.

The Contractor must provide database read access to the items listed in a. through o. to the DOH and/or other suitable means of transmission of the competency outcome data to the New Mexico Nurse Aide Registry.

The Contractor shall establish nurse aide registry data for each successfully certified nurse aide to include the following data:

- a. Individual's full name
- b. Home address
- c. Home phone number
- d. Date of birth
- e. Social Security Number
- f. Current employer and employer's Medicaid provider number
- g. Date of hire
- h. Date of employment termination
- i. Date competency evaluation successfully completed (dates for both written and skills tests)
- j. Certification number
- k. Most recent recertification data
- l. Nurse aide status on the registry
- m. Date of last update, and who updated it
- n. An active/inactive record designation
- o. Reciprocity/Endorsement from State of _____ (name of State from which reciprocity was granted)

To support registry services, the Contractor must provide database read and write access and data change capability to DOH to support reciprocity actions and training program maintenance.

The Contractor shall maintain daily back-ups for all information. The Contractor shall also make this information available for DOH access on an ongoing basis.

9. Services Related To Employment Verification

Current job verification information must be maintained on the Nurse Aide Registry

database.

The Contractor must develop all necessary forms for use in verifying the employment for nurse aides on the Registry. Appropriate employment verification forms shall be included in the New Mexico Nurse Aide Handbook.

The Contractor must mail appropriate employment verification forms to all nursing facilities. The Contractor must also make the appropriate forms available via the Contractor's website. The Contractor must mail individual job verification forms to all nurse aides, for the purposes of recertification, which are currently on the New Mexico Nurse Aide Registry. The Contractor must issue documentation of job verification with an updated expiration date for those nurse aides who provide proof of employment.

The Contractor shall flag all nurse aides on the Nurse Aide Registry database who do not provide proof of employment during the prior twenty four (24) months. Certification notices will be mailed to all nurse aides sixty (60) days prior to his/her twenty four (24) months employment period expiration date.

The Contractor shall provide an adequate supply of change of address forms to all qualified nursing facilities for use by their nurse aide employees, and will add address changes received to the Nurse Aide Registry database

The Contractor shall provide on an ongoing basis DOH access to updated employment verification, testing and reciprocity actions for addition to the DOH maintained New Mexico Nurse Aide Registry.

10. Services Related to In-Service Education Verification

The Contractor shall collect information regarding nurse aide in-service hours offered in the past twenty four (24) months from nursing facilities. The Contractor will also provide a supply of two part forms for tracking in-service hours to each of these facilities. Representatives of nursing facilities will be instructed to submit a copy of this form to the Contractor each time an in-service program is offered to the nurse aide.

The Contractor shall enter information from these returned forms to the Nurse Aide Registry database record of each individual nurse aide. The Contractor shall provide the following information on an ongoing basis and in alphabetical order by nurse aide to DOH:

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

The Contractor will provide an alphabetical listing by facility of the total number of in-service education hours offered by each qualified nursing facility for nurse aides during the previous six (6) months. This information will be provided on an ongoing basis to DOH. In-service hours will be calculated by multiplying the hours offered times the number of aides attending.

C. Deliverables

The Contractor shall provide the following deliverables to HSD or DOH, as applicable, in accordance with the schedule agreed upon between the Contractor and HSD.

1. A pool of written and oral test questions and a system for maintaining integrity of the questions.
2. Skills demonstration portion of the competency evaluation from a pool of evaluation tasks ranked according to difficulty and a system for maintaining integrity.
3. Explanation of how oral and written examinations and the skills demonstration are reliable and valid.
4. Eligibility criteria for competency evaluation.
5. Packet of study guides and application materials.
6. Proposed test schedules with test dates and locations.
7. Plan to mitigate as much as possible the number of monthly "no shows" on the part of candidates scheduled for test dates and sites.
8. Coordination and agreement with DOH to establish data file of certified facilities approved for examination site and exam proctoring.
9. Test site security policy and procedures.
10. Certification notice that includes, at a minimum, a letter describing the renewal process and employment verification form sent to the nurse aide at least sixty (60) days before the nurse aide lapses from the registry.
11. Test reporting format by test site and test date.
12. Registry data format.
13. Packet of registry support material.
14. Recertification plan.

D. Compensation

Service	Volume Estimated	Unit Price	Extended Price
Written Exam	134	\$37	\$4,958
Oral Exam	9	\$47	\$423
Clinical Exam	143	\$63	\$9009
No Show – Written Exam	21	\$37	\$777
No Show – Oral Exam	1	\$47	\$47
No Show – Clinical Exam	22	\$63	\$1,386
Recertification	544	\$22	\$11,968
Total Service Fees			\$28,568
State Gross Tax (5%)			\$1,428.40
Total State Expenditures			\$29,996.40