REGION 9 EDUCATION COOPERATIVE
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**REQUEST FOR PROPOSALS (RFP)**

**Region 9 Education Cooperative**

**RFP 27008**
Kindergarten-3rd Grade Screening, Diagnostic, and Progress Monitoring Assessment Tools

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## i. INTRODUCTION

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

Region 9 Education Cooperative (REC 9), on behalf of the New Mexico Public Education Department, seeks proposals for the development, administration, scoring, and reporting of a culturally and linguistically responsive assessment suite in grades Kindergarten through 3rd with related training and implementation support.

All information regarding this RFP can be found at https://www.rec9nm.org/rfps-bids under the Requests for Proposals section.

*Note:Offerors are not required to submit proposals for all Components A–C and may submit proposals for any combination of these components for which they are qualified to provide services. All proposals must include Component D. Offerors shall clearly identify the component(s) addressed in their proposals. This RFP seeks to maximize service coverage and coordination; therefore, offerors capable of providing services for all four components (A–D) are encouraged to submit a comprehensive proposal.*

### *B. SCOPE OF WORK*

**Background Information:**

The New Mexico Public Education Department (NMPED) serves a diverse student population across urban, rural, and tribal communities, including significant populations of Native American students, English learners, students with disabilities, and students from economically disadvantaged backgrounds. Ensuring equitable access to high-quality instruction and supports remains central to the state's educational mission.

In response to the *Martinez/Yazzie* court rulings and the State's commitments under the Martinez-Yazzie Action Plan, NMPED continues to prioritize early literacy and numeracy as foundational to long-term student success. These efforts emphasize culturally and linguistically relevant practices, early identification of student needs, and the provision of timely, evidence-based interventions.

Recent legislative action during the 2026 New Mexico Legislative Session further strengthens and codifies these priorities. The High-Quality Literacy Instruction Act (SB 37) establishes a statewide framework for early literacy grounded in the science of reading and structured literacy. The law requires:

- Adoption and administration of grade-specific K-3 literacy assessments that identify students with reading difficulties, including characteristics of dyslexia[1];
- Early literacy diagnostic and progress monitoring assessments for all students in K-3;

[1] Section 22-13-32 NMSA 1978 requires dyslexia screening. SB 37 provides that the grade 1 literacy assessment may be administered in lieu of that screening.

- Provision of targeted and intensive early literacy interventions within a multilayered system of supports;
- Timely reporting of results to educators and families, including the development of individualized reading improvement and read-at-home plans.

Complementing this work, SB 29 (Mathematics and Science Education Act updates) expands statewide expectations for early mathematics. The legislation requires:

- Implementation of Kindergarten through Grade 3 mathematics screening assessments to identify students with dyscalculia and other mathematics difficulties;
- Early mathematics diagnostic and progress monitoring assessments for all students in K-3;
- Provision of targeted and intensive early mathematics interventions within a multilayered system of supports; and
- Timely reporting of results to educators and families, including the development of individualized mathematics support plans and family-facing guidance for supporting mathematics at home.

Together, these legislative actions signal a clear statewide shift toward early, systematic identification of student needs and aligned instructional response systems in both literacy and mathematics.

New Mexico's statewide accountability system, approved under the Every Student Succeeds Act (ESSA) and publicly reported through NMVistas.org, emphasizes student outcomes, growth, and subgroup performance. To support schools in meeting these expectations—and to operationalize new statutory requirements—NMPED is strengthening its statewide approach to assessment in the early grades.

Currently, variability exists across local education agencies (LEAs) in the tools and practices used for early screening, diagnosis, progress monitoring, and intervention. This variability can limit consistency in identifying student needs, tracking progress over time, and aligning instructional supports to state priorities, including those established in statute.

Through this procurement, NMPED seeks comprehensive, research-based solutions for Kindergarten through grade 3, with required components concentrated in K-3, that include:

ii. Screening tools in literacy and mathematics for grades K-3 that meet statutory requirements and identify students at risk; and a gifted screener at grade 3;
iii. Diagnostic and progress monitoring assessments in mathematics and literacy for grades K-3, with diagnostic assessments available for administration at the beginning, middle and end of the school year (BOY, MOY, EOY);
iv. Skill-level results sufficient to identify individual students' specific instructional needs;
v. Aligned instructional resources and intervention supports that integrate with assessment results and support a multilayered system of supports;
vi. Assessment content, accommodations, and reporting designed for New Mexico's diverse student populations, including Spanish-language supports; and
vii. Statewide training, implementation planning, and ongoing support services for NMPED, districts and charters, schools, and educators, and customizable communication resources for families and communities.

In this procurement, diagnostic assessments include what many vendors call interim or benchmark assessments. Diagnostic assessments must be available for administration to all students at BOY, MOY and EOY. Progress-monitoring assessments must be available on demand for students receiving intervention.

The selected solution(s) will support educators in delivering timely, actionable data; strengthen alignment with state standards, accountability expectations, and legislative requirements; and contribute to improved outcomes for all students—particularly those identified in the Martinez-Yazzie findings as historically underserved.

### Student Population / Response Volume:

New Mexico serves a diverse student population, including a high proportion of Native American students, English Learners, students with disabilities, and students from economically disadvantaged backgrounds. The specific breakdown of this student population for grades K-3 is shown below.

Breakdown of Student Population across K-3

| Population | K | 1 | 2 | 3 |
|---|---|---|---|---|
| **Overall** | 19,694 | 20,604 | 20,817 | 21,761 |
| **Hispanic** | 13,094 | 13,438 | 13,425 | 14,219 |
| **English Learners** | 3,463 | 3,830 | 3,860 | 4,756 |
| **Native American** | 2,129 | 2,321 | 2,302 | 2,452 |
| **Students with Disabilities** | 3,637 | 4,245 | 4,378 | 4,994 |
| **Economically Disadvantaged** | 11,487 | 12,169 | 12,420 | 13,229 |

Successful proposals must reflect an understanding of New Mexico's K-3 population and policy requirements and demonstrate how they will provide reliable and valid assessments that are equally fair and accessible for all student groups.

The Offeror's solution must reliably support the administration windows as established by NMPED for these components throughout the school year, at this student volume. It must do so without operational bottlenecks or errors that can compromise score quality and delay results needed for instruction.

### Legal and Policy Context:

Offerors' proposed assessment solutions and resources must comply with all applicable federal and state requirements, including:

- the Individuals with Disabilities Education Act (IDEA);

- the Family Educational Rights and Privacy Act (FERPA);
- the Children's Online Privacy Protection Act (COPPA), given this procurement's collection of student information, and in some cases audio, from students under age 13;
- New Mexico Senate Bill 37 (SB 37), requiring universal dyslexia screening, directly relevant to Component A;
- New Mexico Senate Bill 29 (SB 29), requiring universal mathematics screening, directly relevant to Component B;
- New Mexico Statute 22-2C-4 governing academic assessments; and
- NMAC 6.29.1, NMAC 6.10.7, and NMAC 6.31.3 governing gifted identification, relevant to Component C.

The selected vendors must help NMPED maintain and update any evidentiary record required for federal peer review, to the extent it applies to this procurement. The vendor must also be ready to respond to changes in applicable law or regulation over the life of the contract(s).

**Martinez-Yazzie Ruling:**

In Martinez-Yazzie v. State of New Mexico, the First Judicial District Court held that the State has not met its constitutional obligation to provide a sufficient and uniform system of education that prepares all students to be college and career ready, with particular concern for economically disadvantaged students, Native American students, English learners, and students with disabilities.

The Court found that New Mexico's low graduation rates, low proficiency rates in reading and mathematics, and high remediation rates in college reflect systemic failures, and that these failures are compounded by noncompliance with state and federal requirements for Native American and English learner students and by insufficient oversight to ensure students receive necessary programs and services.

The Court's orders make clear that access to effective programs and services — including high-quality PreK, extended learning time, dual language programs, culturally and linguistically relevant education, small class sizes, social services, and robust support for educator recruitment, retention, and training — is integral to the State's constitutional duty and cannot be denied on the basis of funding limitations.

Early-grades screening, diagnosis, and progress-monitoring tools are not stand-alone instruments. They are an early-warning system that targets intervention within the State's broader strategy for college and career readiness, particularly for the student groups named in the lawsuit. Early identification of literacy and mathematics needs is foundational to timely intervention. For that reason, the tools developed under this contract bear directly on the State's ability to show progress toward the Court's orders.

In response to a recent Court order, NMPED has developed the Martinez-Yazzie Action Plan, a sequenced, multi-year remedial plan that centers four critical needs: equitable access to high-quality instruction, equitable access to high-quality educators, equitable access to academic and social-emotional/behavioral services, and effective funding, support, and accountability for continuous improvement. The plan sets explicit outcome goals (e.g., increased proficiency rates and graduation rates and reduced achievement gaps, chronic absenteeism, and disparities in sense of belonging) for students with disabilities, English learners, Native American students, and economically disadvantaged students,

and positions early identification and progress-monitoring systems as key mechanisms for enabling timely intervention and monitoring these outcomes.

Therefore, the K-3 assessment system to be developed under this procurement must be designed and documented to help the State demonstrate progress in addressing Court findings for specifically identified student subgroups, particularly by enabling earlier and more accurate identification of students needing literacy and mathematics intervention. Furthermore, it must operationalize key Action Plan commitments, particularly those under Goal 1.1 related to culturally and linguistically relevant education and access to high-quality, culturally relevant assessment and intervention tools.

Offerors should assume that screener and progress-monitoring design decisions, cut-score/threshold setting, reporting, accommodations, and validation activities will be scrutinized in relation to the State's ongoing obligations under Martinez-Yazzie, given the direct role these tools play in triggering access to intervention services.

Accordingly, the successful Offeror(s) will be expected to:

- Design and implement culturally relevant screening, diagnostic and progress-monitoring assessment tools that reliably and validly identify students needing intervention, with particular attention to Native American students, English learners, students with disabilities, and economically disadvantaged students, and that avoid systematically over- or under-identifying any student group;
- Provide technical documentation and evidence supporting the State's Martinez-Yazzie evidentiary record. This includes documentation of item/task development processes, bias and sensitivity review, accessibility and accommodations policies, and classification-accuracy and fairness analyses disaggregated for the student groups named in the lawsuit; and
- Collaborate with NMPED on stakeholder engagement activities, such as involving educators, tribal partners, and communities in item/task development and in developing interpretive guidance. The goal is to ensure that results are both technically defensible and instructionally actionable within a larger culturally and linguistically relevant assessment system.

For more information on the action plan see
https://web.ped.nm.gov/wp-content/uploads/2025/11/NM-Martinez-Yazzie-Action-Plan_11.3.25.pdf

**Scope of Work:**

This request for proposals (RFP) solicits proposals for the development, administration, scoring, and reporting of a culturally and linguistically responsive assessment and support suite, together with related training and implementation support, comprising the following four components:

- **Component A**:

An early literacy screener to identify students with reading difficulties, including characteristics of dyslexia, along with early reading diagnostic and progress-monitoring assessments and intervention resources to support a multi-tiered system of support (MTSS).

- The Offeror must provide early literacy screeners for students in grades K-3, consistent with the High-Quality Literacy Instruction Act (Senate Bill 37, 2026 Regular Session; Section 22-15G-4 NMSA 1978) and Section 22-13-32 NMSA 1978. The screeners must be administered in English, with Spanish-language accommodations for Spanish-speaking students. As specified by NMPED, first-grade screening is required statewide within the first 40 days of the LEA school year under Section 22-13-32 NMSA 1978, and kindergarten, grade 2, and grade 3 screening is required for 2027-28 student administration.
- The screeners are intended to identify students in grades K-3 who display characteristics associated with dyslexia and may need further evaluation, and to communicate screening results to families in English and Spanish so they can participate meaningfully in decisions about their child's support. The Offeror must describe:
    - the constructs and indicators screened at each grade,
    - the evidence supporting the screener's classification accuracy (e.g., sensitivity, specificity, and predictive value at proposed cut points),
    - the predictive evidence linking screener results to downstream literacy proficiency,
    - the recommended administration windows, and
    - how results connect to next steps, including the early-literacy diagnostic and progress-monitoring assessments and intervention resources.
- The Offeror must provide early literacy diagnostic assessments, on-demand progress-monitoring assessments and instructional intervention resources for students in grades K-3. Diagnostic assessments must be available for administration to all students at the beginning, middle and end of the school year (BOY, MOY and EOY). Local use of these administrations will be determined by districts and charter schools unless NMPED specifies otherwise. The assessments and resources must be administered in English, with Spanish-language accommodations for Spanish-speaking students. These assessments and intervention resources must be available statewide beginning the 2027-28 school year. Progress monitoring assessments should support administration up to monthly for general progress monitoring and at least every two weeks as part of intervention cycles.
- The assessments and intervention resources are intended to:
    - Diagnose students who need Tier 2 or Tier 3 instruction and the specific literacy skills requiring intervention;
    - monitor whether interventions are supporting student learning over time;
    - identify when students are ready to exit intervention support;
    - inform classroom-level instructional grouping and differentiation; and

        - communicate progress to families in a meaningful and accessible way.

- The Offeror must describe:
    - the recommended BOY, MOY and EOY administration windows and how results show growth across the year;
    - the literacy skills measured;
    - the structure, cadence, and equivalence of probes or forms across administrations;
    - the decision rules and data displays that support intervention decisions; and
    - the accompanying intervention resources.
- The proposed design must align with New Mexico's early-literacy priorities and grade-level content standards. Intervention resources must be high-quality instructional materials (HQIMs), consistent with the science of reading and structured literacy. They must not employ the three-cueing model, consistent with Section 22-15G-3 NMSA 1978. The Offeror must attest to this requirement and describe how its intervention materials meet it.

- **Component B**:

  An early mathematics screener to identify students with mathematics difficulties, including characteristics of dyscalculia, along with early math diagnostic and progress-monitoring assessments and intervention resources to support a MTSS.

    - The Offeror must provide a single, nondiagnostic early-years mathematics screener for students in grades K-3, administered at the beginning of the school year. The screener is required by Senate Bill 29 (2026 Regular Session), amending the Mathematics and Science Education Act (Section 22-15E NMSA 1978). The screener must be administered in English, with Spanish-transadapted items delivered as an accommodation for Spanish-speaking students. Senate Bill 29 also specifies the early-year mathematics screener must be administered with minimal impact on instructional time and provide for timely reporting of results that can be integrated with instructional support for teachers and students.
    - The screener is intended to identify students who display early indicators of mathematics difficulty, including characteristics associated with dyscalculia, and may need further evaluation or support. Early identification is intended to ensure access to Tier 2 and Tier 3 intervention before difficulties compound across grades, and to support communication of results to families in English and Spanish. The screener is intended to be delivered either individually, in a small group setting (1:3, teacher to student ratio) or electronically.
    - The Offeror must describe
        - the constructs and indicators screened,

        - the evidence supporting the screener's classification accuracy (e.g., sensitivity, specificity, reliability, and predictive value at proposed cut points),
        - predictive evidence linking screener results to downstream mathematics proficiency,
        - the recommended administration windows that minimally impact instruction, and
        - how results connect to next steps, including mathematics diagnostic testing, progress-monitoring and intervention support.
    - The Offeror must provide early mathematics diagnostic assessments, on-demand progress-monitoring assessments and instructional intervention resources for students in grades K-3. Diagnostic assessments must be available for administration to all students at the beginning, middle and end of the school year (BOY, MOY and EOY). Local use of these administrations will be determined by districts and charter schools unless NMPED specifies otherwise. The assessments and resources must be administered in English, with Spanish-language accommodations for Spanish-speaking students. These assessments and intervention resources must be available statewide beginning the 2027-28 school year. Progress monitoring assessments should support administration up to monthly for general progress monitoring and at least every two weeks as part of intervention cycles.
    - The assessments and intervention resources are intended to:
        - Diagnose students who need Tier 2 or Tier 3 instruction and the specific numeracy skills requiring intervention;
        - monitor whether interventions are supporting student learning over time;
        - identify when students are ready to exit intervention support;
        - inform classroom-level instructional grouping and differentiation; and
        - communicate progress to families in a meaningful and accessible way.
    - The Offeror must describe:
        - the recommended BOY, MOY and EOY administration windows and how results show growth across the year;
        - the number-sense skills measured;
        - the structure, cadence, and equivalence of probes or forms across administrations;
        - the decision rules and data displays that support intervention decisions; and
        - the accompanying intervention resources.
    - The proposed design must align with New Mexico's early mathematics priorities and grade-level content standards. Intervention resources must be high-quality instructional materials (HQIMs), consistent with New Mexico’s mathematics priorities, as well as the latest research in early numeracy and mathematics.

- **Component C**:

A gifted screener to identify and further evaluate students eligible for gifted programs and services.

- The Offeror must provide a gifted screener that can be administered to selected grade 3 students before the end of grade 3 as one of several measures used to recommend students for gifted programming. Districts and charters are required to screen students for gifted eligibility consistent with 6.31.3 of the New Mexico Administrative Code (NMAC).
- The screener is intended to identify students who display potential for gifted identification in one or more areas, including general intellectual ability, specific academic aptitude, creativity, problem-solving, leadership, and/or artistic ability. NMPED expects the Offeror to provide the screener and to propose a recommended cut score based on the purpose of the screener.
- If NMPED does not see coherence between the proposed cut score and the intended use, the Offeror must be open to modifying the cut score. The Offeror must describe how the screener functions as one of several measures within a broader identification process and must provide validity and classification-accuracy evidence appropriate to this use.
- In addition, NMPED is interested in using K-3 BOY, MOY or EOY diagnostic results to flag students for gifted screening. The Offeror should describe how a flagging cut score could be established from those results, in coordination with the awarded literacy and mathematics providers, and how it would cohere with the gifted screener's own cut score. This work is not contingent on the Offeror also providing Components A and/or B. If the Offeror does propose assessments to address Components A and B, NMPED expects an integrated approach.

Cross-Cutting Assessment Design Guardrails:

This section describes high-level design guardrails that apply across the components above. NMPED reserves the right to require approval of development, administration, scoring, and reporting components and to observe critical phases of work that involve New Mexico constituents (e.g., item-writer training, item-review panels, cognitive laboratories).

Content Standards Coverage, Cognitive Complexity, and Alignment:

All instruments must be aligned to New Mexico's academic content standards in language arts and mathematics (https://web.ped.nm.gov/bureaus/instructional-materials/new-mexico-adopted-content-standards/), with early-grades design reflecting New Mexico's structured-literacy and early-numeracy expectations and the foundational skills appropriate to grades K-3. The Offeror must describe how each design is grounded in, and faithful to, the depth and breadth of the standards, including both content and cognitive-complexity dimensions. The Offeror must propose and obtain NMPED approval of any cognitive-complexity framework used.

The Offeror must conduct an initial alignment study via an independent organization prior to first operational administration to validate that proposed instruments align to New Mexico's content standards and, for screeners and progress-monitoring tools, to the foundational skills appropriate to grades K-3. An additional alignment study is required if material changes to a blueprint or cognitive-complexity framework are proposed at any point during the contract. In each case, the Offeror must describe the proposed methodology, timeline, and personnel responsible for conducting the study.

The Offeror must identify the proposed organization responsible for conducting the independent alignment study and include a letter of commitment from that organization as part of the proposal submission, confirming the organization's availability, qualifications, and agreement to conduct the study in accordance with the timeline and methodology described in the proposal.

Claims, Reporting Categories, and Performance/Proficiency Descriptors:

For each instrument, the Offeror must define the assessment claims and reporting categories and describe how they support the intended uses (screening, diagnosis, progress monitoring). Reporting must articulate, in terms meaningful to educators and accessible to families, what results indicate about a student's current standing, risk status, and/or development over time. Where a component reports against proficiency expectations, descriptors must align to the NM-MSSA and NM PLDs. Any revision to claims, reporting categories, or descriptors requires NMPED approval and must involve input from New Mexico educators.

If NMPED revises the NM-MSSA claims, reporting categories, or PLDs through future standard-setting, instruments under this RFP must provide continued predictive and concurrent validity evidence supporting alignment to the revised anchor.

Design Specifications, Blueprints, and Item Types:

The Offeror must develop and submit for NMPED approval design specifications or blueprints for each instrument, grade, and content area, demonstrating appropriate alignment with claims, reporting categories, descriptors, content standards, cognitive-complexity specifications, and item-type requirements.

Where empirical item information is available, it should be used in conjunction with the blueprint to characterize and evaluate the resulting instrument's measurement properties, with attention to precision at decision points (e.g., screening cut points) and to avoiding floor and ceiling effects for the youngest students.

Instruments should contain a mixture of item types that reflect those used in commonly adopted HQIMs (see the NM Materials Matter Dashboard), NAEP, and the NM-MSSA, adapted to be developmentally appropriate for the early grades. Such item types include, but are not limited to:

- *technology-enhanced items* (TEIs);
- *multiple-choice* (MC) items;
- *multi-part* (MP) items;
- *evidence-based selected-response* (EBSR) items;
- *short constructed-response* (SCR) items; and
- *extended constructed-response* (ECR) items, as appropriate to grade and purpose.

Aligning item types and characteristics to those students encounter in instruction minimizes construct-irrelevant variance due to unfamiliarity. Offerors are encouraged to propose innovative item types and formats provided all technical-quality requirements are met. If GenAI is incorporated in these processes, the Offeror must describe all relevant details to allow NMPED to properly assess benefits and risks of this use.

The early-grades screeners, diagnostic and progress-monitoring assessments are built primarily from foundational-skills tasks that differ in form, administration, and scoring. For these components, NMPED is less concerned with a fixed list of item formats than with full coverage of the foundational constructs, assessed through developmentally appropriate tasks, and the Offeror must describe the task types proposed for each construct and grade.

For early literacy, the Offeror must cover these foundational reading skills: phonological and phonemic awareness, alphabet knowledge, decoding and word recognition, reading fluency, vocabulary, and listening and reading comprehension. Additionally, the Offeror must cover oral language and, where appropriate, spelling and written expression. Representative task types include:

- phonological and phonemic awareness tasks (e.g., rhyming and syllable segmentation for the youngest students, progressing to first-sound identification, phoneme segmentation, blending, and manipulation);
- alphabet knowledge tasks, including letter naming and letter-sound identification;
- *rapid automatized naming* (RAN) tasks, in which a student names letters, objects, or colors as quickly as possible;
- decoding and word-reading tasks, including pseudoword (nonsense-word) reading and real-word reading;
- *oral reading fluency* (ORF) tasks, in which a student reads connected text aloud while the administrator records accuracy and rate (i.e., read-aloud tasks);
- spelling or encoding tasks and brief written-expression tasks; and
- vocabulary, listening comprehension, and reading comprehension tasks (e.g., maze or cloze).

For the early literacy screener (including screening for dyslexia), the Offeror should emphasize the skills most predictive of later reading difficulty in the earliest grades: phonological awareness, letter-sound knowledge, rapid automatized naming, and pseudoword decoding. This emphasis is

consistent with the expectation that early screening targets reading precursors rather than connected-text reading, and identifies risk rather than diagnosis of dyslexia.

For early numeracy, the Offeror must cover the core number-sense skills through developmentally appropriate tasks. Representative task types include:

- number identification and numeral naming;
- magnitude comparison, or quantity discrimination (identifying the larger of a pair or set of numbers);
- strategic counting and missing-number tasks (e.g., identifying the missing number in a sequence; counting by 1s, 5s, and 10s);
- counting, subitizing, and one-to-one correspondence and cardinality;
- number-fact and computation fluency;
- geometry;
- measurement/data; and
- mathematics concepts and applications, including applied word problems, in the later grades.

For the early mathematics screener, the Offeror should emphasize the number-sense skills most predictive of later mathematics difficulty, including characteristics associated with dyscalculia, such as magnitude comparison, number-fact fluency, and strategic counting. The screener's priority is to identify risk, not diagnose dyscalculia or related numeracy disabilities.

For the gifted screener, the relevant item types may differ. A gifted screener is generally an ability or aptitude measure rather than a foundational-skills measure, and may combine figural or nonverbal reasoning, verbal reasoning, and quantitative reasoning items with behavioral rating scales and, where appropriate, performance or portfolio evidence. Consistent with the screener's role as one of several measures, the Offeror should describe the item types proposed and the construct each addresses, with attention to nonverbal and preferred-language options that support the identification of students from populations historically underrepresented in gifted programs.

In all cases, NMPED expects construct coverage to be anchored to New Mexico's content standards and to the science of reading and early-numeracy research base, rather than to a closed list of item formats. The Offeror should propose the developmentally appropriate task types best suited to each construct, grade, and purpose, and describe the evidence that those tasks measure the intended skills and constructs.

Testing Design and Administration Model:

NMPED leaves the testing design for each component to the Offeror (e.g., fixed-form, multistage adaptive, item-level adaptive, or on-demand banks), provided the design is consistent with the component's purpose and with the alignment and concordance requirements in this RFP. The

Offeror must describe the proposed approach for each grade and content area, with a clear rationale addressing measurement quality, cost, feasibility, age-appropriateness, and burden.

For young learners, the Offeror must address developmentally appropriate administration (e.g., one-to-one or small-group administration, audio support, and limited session length) and provide estimated administration times, describing how these balance measurement quality against burden on students and educators, including instructional time required to familiarize students with item types and formats.

Where computer-based administration is proposed, paper-based or alternative administration must be available as an accessibility accommodation for students unable to participate in computer-based testing; such alternatives may not be used as a workaround to meeting digital accessibility requirements.

Because many early-grades tasks differ from the on-screen item formats used in later grades, the Offeror must address the administration and response modes these tasks require. The proposed approach must accommodate, as applicable:

- one-to-one administration with orally presented stimuli and directions, since pre-readers cannot independently read prompts;
- spoken or verbal responses, including, where proposed, automated speech-recognition scoring of read-aloud and oral-response tasks, with appropriate human oversight;
- for any audio captured to support speech-recognition scoring, the Offeror must describe data minimization and retention practices (e.g., whether raw audio is retained after scoring, retention duration, and deletion schedule), and confirm such audio is not used for any purpose beyond scoring the assessed skill without separate written parental/guardian notice and NMPED approval;
- timed, rate-based (fluency) scoring (e.g., items or words correct per minute), which differs from the rule-based and rubric-based scoring used elsewhere in this RFP;
- manipulatives, touch or drag interactions, and audio-supported selected response for non-readers; and
- for adaptive designs, safeguards ensuring foundational skills are still assessed even when adaptive routing would otherwise skip them.

The progress-monitoring assessments must support administration up to monthly, at the district's discretion, for general progress monitoring, and at least every two weeks for students in an intervention cycle. The Offeror must provide enough equivalent alternate forms to support this repeated administration without practice effects. The Offeror must also document form equivalence and the reliability and validity of the resulting growth estimates.

<u>Spanish-Language Assessments, Supports, and Accommodations:</u>

NMPED requires Spanish mathematics and language-arts support across grades K-3. The Offeror must provide Spanish-language accommodations (including, where applicable, Spanish-transadapted mathematics items and Spanish-language accessibility supports) rather than a separate Spanish-language arts assessment.

For each component, the Offeror must describe the Spanish-language supports and accommodations provided, how they preserve the intended construct and score interpretation, and the evidence that they do not introduce construct-irrelevant variance or alter the intended cognitive demand. Spanish-language accommodations, including transadapted mathematics items where applicable, must be available for all early literacy and early mathematics assessments described in this procurement.

Component C (Gifted Screener) addresses language accessibility through nonverbal and preferred-language options rather than Spanish-language accommodations, as described herein.

Exemplars and Practice Materials:

The Offeror must develop and maintain publicly releasable exemplars and practice materials for each component. These materials must be appropriate to the component's purpose, stakes, and administration frequency. Exemplars and practice materials must support educator, student, and family familiarity with item types and performance expectations, and must advance assessment literacy. For BOY, MOY and EOY diagnostic assessments, the Offeror must provide at least one practice experience per grade and content area on a schedule agreed upon with NMPED. Each practice experience must reflect the operational interface and a representative range of item types and accessibility features. The Offeror must describe its proposed ownership model for exemplars and practice materials, including the rights NMPED retains during and after the contract and any pricing implications.

Item Ownership and Interoperability:

The Offeror may propose the use of existing item banks (owned or licensed) for the relevant component. Offerors must describe their proposed approach to item and stimulus ownership during and after the contract, including:

- how ownership and temporary-use licenses for items from existing banks are handled,
- how NMPED may use proprietary or licensed items after the contract ends, with ongoing access at no cost or a cost-effective rate, and
- how NMPED may use newly developed items, stimuli, and rubrics after the contract ends.

The Offeror must deliver all operationally used items and associated metadata in the Question and Test Interoperability (QTI) format, consistent with current IMS Global standards, on a schedule agreed upon with NMPED, to enable ingestion into a state-administered platform. NMPED reserves the right to deploy NMPED-owned items through a state-developed or state-administered

platform, and the Offeror must cooperate with any designated platform provider to support transfer, ingestion, and rendering at no additional cost. The cost proposal must price new item development and the use of purchased or licensed items as separate line items, distinguishing costs during the contract from costs after the contract ends.

- **Component D**:

  Statewide training and implementation support for NMPED, as well as training, data literacy, and implementation support for district and charter administrators and educators. Training should also include services to support communication and interpretation of assessment results and student progress for NMPED, district and school educators, families, and students.

  - NMPED intends the contracts resulting from this RFP during the 2026-27 school year to be a planning and training year so that educators are prepared before the first student-facing administration for the 2027-28 school year.
  - Component D addresses training and support for three groups at different levels of New Mexico's educational system.
    - Provides training for NMPED staff and co-develops the statewide implementation, administration, and reporting plan with NMPED.
    - Provides training for district and charter staff to administer each instrument correctly.
    - Provides training on data literacy and on interpreting results for school-based educators, including how to use those results for instructional decisions, interventions, and support plans. This training is delivered in coordination with NMPED's literacy and mathematics coaches and district curriculum teams.
    - Develop customizable communication resources that NMPED, districts, and schools can use to inform and engage families and communities about the K-3 assessment system. These resources are for schools and NMPED to distribute; the Offeror is not expected to communicate directly with parents or guardians.
  - NMPED Training and Statewide Implementation Plan: The Offeror must train NMPED staff on the administration, scoring, and reporting of each purchased component. Separately, the Offeror must develop, with NMPED, a statewide implementation, administration, and reporting plan for the components NMPED elects to purchase. NMPED has a team of instructional literacy and mathematics coaches who support districts and schools; the Offeror must coordinate with this team so that training and implementation are coherent with existing state support. The implementation plan must sequence the activities, roles, milestones, and communications necessary to move from contract execution through first student-facing administration (2027-28 school year) and into steady-state operation, including administration windows and reporting/data-delivery

timelines, and must address how districts and schools transitioning from a current early-grades provider will be supported.

- District and Charter Administrator and Educator Training: The Offeror must train district and charter administrators and educators to properly administer, interpret, and use each purchased component. NMPED expects an in-person, regional training model during the planning and early-implementation period. As a planning assumption, the Offeror should propose approximately twenty (20) regional trainings across the state during the first two years of the contract, with a proposed approach to coverage, scheduling, and regional distribution; Offerors may propose refinements with justification.
    - Training must address proper administration, accessibility and accommodations, score and report interpretation, and the connection between screening, diagnostic testing, progress monitoring, and MTSS intervention. Administration training must include developmentally appropriate practices for the early grades.
- Continued Training, Data Literacy, and School Support: Following initial implementation, the Offeror must provide continued training and embedded support focused on data literacy and the instructional use of results, including how to use reports to inform Tier 2 and Tier 3 instruction, group and differentiate, monitor intervention effectiveness, determine readiness to exit support, and communicate with families.
    - The Offeror must develop customizable communication tools and resources, in English and Spanish, for each component. These materials are for schools, NMPED, and districts to distribute to educators, students, and families; the Offeror is not expected to provide support directly to families. The Offeror must also describe how continued support to educators is delivered (e.g., a mix of virtual and in-person support, office hours, help-desk resources, and asynchronous materials), and how its effectiveness is evaluated and improved over time.

**Overarching Considerations**

This section describes technical-quality considerations that cut across the components and across phases of development, implementation, and maintenance.

**Transition and Implementation Planning**

The selected Offeror(s) must engage in active transition and implementation planning with NMPED beginning at contract execution. Because several components may replace tools currently in use in New Mexico schools, the 2026-27 school year is dedicated to planning and training so that the first student-facing administration in 2027-28 is smooth and minimally disruptive. At a minimum, transition and implementation planning activities must include:

➔ Development, with NMPED and its instructional literacy and mathematics coaches, of a statewide implementation plan that sequences administrator and educator training (Component D) ahead of student-facing administration;

- ➔ Coordination of a systematic handoff from any current early-grades assessment provider, including identification of data, rostering, and reporting-continuity needs and a plan for preserving historical results where feasible;
- ➔ Establishment of the data-interoperability approach (e.g., Ed-Fi) and the API development plan required for integration with NMPED's systems and the ILIAD environment (NMPED's Integrated Learning and Intervention Analytics Dashboard) as it evolves;
- ➔ Delivery of a written transition and implementation plan to NMPED within 90 days of contract execution, identifying key milestones, risks, dependencies, and NMPED review and approval deadlines; and
- ➔ Participation in transition and planning meetings with NMPED on a schedule established at contract execution, and presentation of strategic plans and methods to NMPED's technical advisors [e.g., the New Mexico Technical Advisory Committee (NM TAC), Center for Assessment], including at least one in-person meeting in Albuquerque or Santa Fe and periodic webinars per year.

**Technical Quality Standards**

The work proposed by the Offeror must meet the highest standards of technical quality articulated in core documents in the field. The primary guiding document is the Standards for Educational and Psychological Testing (AERA, APA, & NCME, 2014), available at https://www.testingstandards.net/. The Offeror is expected to obtain publicly pre-released versions of the revised Standards currently in development (targeted for release in 2028) and to adhere to the new version upon release, adapting internal practices, including the properly vetted use of modern computational tools described in the next section.

Other technical standards relevant to this work provide important guidance the Offeror is expected to adopt whenever appropriate. For example, various International Test Commission (ITC) Guidelines (https://www.intestcom.org/page/28) are updated more frequently than the main Standards. The Buros Center for Testing maintains a curated list of professional standards, codes, and guidelines (https://buros.org/standards-codes-guidelines/). For screening and progress-monitoring components specifically, the Offeror should also articulate how classification accuracy and decision-consistency evidence (e.g., sensitivity, specificity, and predictive value at proposed cut points) is established and monitored, consistent with professional expectations for screeners.

Beyond adherence to the Standards, NMPED does not prescribe which other documents the Offeror must use to implement best practices, and the Offeror may leverage internally developed guidelines that represent meaningful adaptations matched to its operations. Most importantly, the Offeror should articulate clearly how particular standards and guidelines influence the design, implementation, and evaluation of each component for operational purposes.

**Constituent Engagement for Culturally and Linguistically Relevant Assessments**

NMPED expects the Offeror(s) to engage constituents representing the student communities most directly affected—including Native American students, Hispanic and Latino students, English Learners, students with disabilities, and economically disadvantaged students—throughout development, implementation, and evaluation. For example, this can include:

- ➔ Establishing standing advisory groups (e.g., Pueblos, Tribes, Hispanic and Latino community organizations, English Learner (EL) advocacy groups, and professionals serving special education and economically disadvantaged students) that meet regularly with the Offeror and NMPED to provide input on construct definitions, blueprints/specifications, item development, and reporting priorities;
- ➔ Including content experts, language and culture bearers, and scholars as full members of item-writing, review, and bias/fairness committees, with structured roles in cultural and linguistic relevance review;
- ➔ Conducting item validation activities (e.g., cognitive labs or focus groups) with students and educators from these populations to evaluate item functioning across cultural, linguistic, and ability contexts and reduce construct-irrelevant variance;
- ➔ Engaging community constituents in the interpretation and use of results, including co-developing reporting materials and data-inquiry protocols that guard against deficit-based interpretations; and
- ➔ Documenting how input shapes development and reporting back so constituents can see the impact of their contributions.

As part of the response, the Offeror must describe available in-house expertise on culturally and linguistically relevant assessment, provide examples of practices adapted in recent years to strengthen culturally and linguistically relevant assessment grounding, and describe experience partnering with other organizations to shore up necessary expertise. In short, the Offeror must demonstrate an authentic, comprehensive, and integrated commitment to culturally and linguistically relevant assessment practices for the benefit of New Mexico's students.

**Generative Artificial Intelligence (GenAI)**

When responding throughout this RFP, the Offeror must describe how tools from GenAI, along with other modern computational tools from machine learning, computational psychometrics, data science, and predictive artificial intelligence (AI), are leveraged across development, administration, scoring, reporting, and support, whenever such tools are used.

Because the field is advancing rapidly, the Offeror must describe how it stays current with developments in the field and how it evaluates whether new methods are appropriate for use under this contract. The Offeror must inform NMPED of developments that are material to the services

under this contract, along with any resulting recommendations. The Offeror must describe how its GenAI applications perform equitably across the cultural, linguistic, and dialectal diversity of New Mexico's students. Where GenAI supports speech recognition, automated scoring of oral responses, or oral reading fluency measurement, the Offeror must provide evidence that its models accurately recognize and score student speech across regional accents, dialects, and the speech patterns of English Learners, Spanish-speaking students, and Native American students, and must report model performance disaggregated by these groups. Where evidence indicates differential performance across groups, the Offeror must describe its remediation plan and the human-oversight safeguards applied until the disparity is resolved.

The following subsections describe example uses and representative safeguards NMPED expects. The term GenAI is used throughout but all such computational tools are included in the scope of requirements.

**Potential Uses of GenAI**

NMPED does not expect immediate use of GenAI across all phases. However, NMPED expects the Offeror to propose new applications of GenAI as the field develops. Each proposal must be supported by evidence of the method's technical quality. Any operational use requires NMPED approval and discussion with NMPED's technical advisors. For example, the Offeror might use GenAI to support:

- Stimulus sourcing and development, including drafting or adapting passages, graphics, and scenarios, with readability analysis, content-alignment checks, and preliminary culturally-relevant screening prior to human review;
- Item and task generation, including draft items, variants, distractors, scoring rubrics, and technology-enhanced interactions from human-designed templates, with systematic tagging for psychometric review and field testing;
- Automated quality checks and triage, such as flagging potential item flaws, accessibility issues, bias indicators, or misalignment, and prioritizing content for committee review;
- Computational psychometrics and model exploration, including simulation studies, sensitivity analyses, anomaly detection, or exploratory item-selection strategies; and
- Drafting technical and interpretive materials (e.g., report sections, item rationales, exemplar responses, educator-facing narratives and FAQs) for subsequent human editing and approval.

For any use of GenAI that affects the operational production of *scores-of-record* (SOR) and associated interpretation and decision-making, the Offeror must describe the critical safeguards in place (see, e.g., https://www.nciea.org/library/artificial-intelligence-and-state-assessment-contracts/). These

safeguards generally focus on: transparency and explainability; model testing, evaluation, and monitoring (including bias and fairness investigations); human oversight; privacy and security; and system maintenance and governance.

**Human Oversight**

Human oversight (also known as *human-in-the-loop* (HITL) workflows) concerns how human *subject-matter experts* (SMEs) are included during model development, performance reviews, and operational deployment. Whenever GenAI models are used, the Offeror should describe, at a minimum: how SMEs are embedded in end-to-end workflows and their decision rights; activation triggers and boundaries for SME involvement; the quantitative and qualitative metrics used to monitor GenAI and SME performance; and documented procedures for reconciling disagreements between GenAI outputs and SME judgments and for refining future GenAI behavior.

**Model Development and Deployment Requirements**

NMPED expects annual, comprehensive documentation of all key facets of the Offeror's GenAI work, including: a complete, annually updated inventory of all GenAI components; a comprehensive empirical testing, evaluation, and monitoring plan for all lifecycle phases in which GenAI is used; traceability of GenAI-assisted outputs back to human-approved sources, prompts, and decision rules; and lifecycle governance procedures, including version histories, rationale for changes, validation evidence, and impact analyses on comparability and subgroup fairness.

**Other Risk Mitigation Strategies**

NMPED expected the Offeror to put in place additional risk mitigation strategies that include, but are not limited to:

- Establishing and maintaining a general GenAI risk-management plan that identifies key risks, safeguards, monitoring procedures, incident-response processes, and decommissioning/rollback procedures for all material GenAI components.

- Implementing security-by-design and privacy-by-design practices for any GenAI workflows, including prohibitions on transmitting student data or secure content to unapproved public GenAI services, and requiring that all training, fine-tuning, and inference occur in secure, access-controlled environments.

- Ensuring that any subcontractor or third-party service provider involved in GenAI-related work is contractually bound to the same data-use, security, and non-training restrictions that apply to the Offeror under this Section, and that the Offeror remains responsible for such parties' compliance.

- Maintaining GenAI-specific incident-response procedures (detection, escalation, remediation, communication) for events such as scoring anomalies, hallucinated or misleading reporting content, problematic security flags, or regressions introduced by model updates.

- Periodically reviewing and aligning GenAI practices with updated versions of the Standards for Educational and Psychological Testing, Association of Test Publishers and ITC guidelines, and emerging GenAI risk-management frameworks, such as the National Institute of Standards and Technology (NIST), AI Risk Management Framework (AI RMF), and documenting how such developments are reflected in the Offeror's systems and processes.

- Other strategies not listed here may be proposed by the Offeror.

Importantly, NMPED expects the Offeror to affirm that NMPED retains ownership and control of all assessment data and secure content and that the LEAs retains ownership and control of all assessment data of their respective students. The Offeror must describe how NMPED data are used to train or improve any GenAI model or product. NMPED's prior written approval is required before the Offeror puts NMPED data to any new use, materially changes its data-development or data-privacy practices or transfers NMPED data to a third party. Student data arising from services under the resulting agreement may not be sold or licensed to a third party for any purpose without expressed consent from parents of each individual student or the adult student themselves.

**Professional Support**

To help NMPED and its technical advisors make informed decisions, the Offeror must support NMPED staff in understanding the functioning and downstream implications of GenAI use.

This includes technical documentation within a secure digital environment and either providing, or supporting NMPED in developing, plain-language communications for constituents on how GenAI tools are used, the associated benefits and risks, and the impact on score interpretations.

Upon reasonable notice, NMPED and its technical advisors retain the right to request direct inspection, testing, or independent evaluation of any GenAI component used in assessment-related processes, in addition to the documentation described above.

**Vendor Transition**

The 2026-27 school year is dedicated to planning and training rather than student-facing administration, given that one or more components of this procurement may replace assessment tools and/or services currently in use in New Mexico schools. The first student-facing administration under this contract is targeted for the 2027-28 school year.

During the 2026-27 school year, the successful Offeror(s) is expected to:

- Coordinate a systematic handoff from any current early-grades assessment provider(s), including identification of data, rostering, and reporting-continuity needs and a plan for preserving historical results where feasible; and
- Sequence administrator and educator training ahead of the first student-facing administration.

**Foundational Commitments**

NMPED's vision for this procurement is organized around three core commitments that should be evident throughout an Offeror's proposal.

- ***Equity and cultural relevance:*** every component of the system must be designed and accompanied by implementation guidance to maximize valid, fair, and equitable system outcomes for all students, with particular attention to culturally and linguistically relevant assessment development practices required under the Martinez-Yazzie Action Plan.

- ***Technical rigor appropriate to purpose:*** because this procurement covers screening, diagnosis, and progress-monitoring, rather than a single annual summative measure, technical rigor here means reliability of growth and change estimates across repeated administrations, classification accuracy of risk/proficiency flags, predictive validity to the New Mexico Measures of Student Success and Achievement (NM-MSSA) where applicable, and instructional sensitivity. It does not necessarily require the same scale continuity and equating framework used for the summative assessment.

- ***Innovation and actionability****:* NMPED seeks vendors committed to continuous improvement and innovation. This may include the effective and policy-compliant use of continually evolving technologies such as *generative artificial intelligence* (GenAI) across development, administration, scoring, reporting, and support. Whenever such technologies are used, this should be done in ways that enhance the quality, efficiency, and utility of results for all key stakeholder groups. Moreover, the Offeror must describe all relevant details to allow NMPED to properly assess benefits and risks of this use.

**Student Information**

The student population served by the K-3 Assessment System is described herein, and anticipated response volumes are provided herein. Offerors should reflect an understanding of this population throughout their response, with particular attention to the developmental needs of the earliest learners (grades K-3), and must demonstrate capacity to accommodate NMPED test administration schedule across components without compromising score quality or the timeliness of results.

**State Standards**

The K-3 Assessment System must align to the New Mexico-adopted content standards for English language arts and mathematics, available at:

https://web.ped.nm.gov/bureaus/instructional-materials/new-mexico-adopted-content-standards/

**Compliance with Laws and Policies**

***Federal and State Laws.*** The K-3 Assessment System must comply with all applicable federal and state requirements, including IDEA, FERPA, COPPA, New Mexico Senate Bills 37 and 29, New Mexico Statute 22-2C-4, and NMAC 6.29.1, 6.10.7, and 6.31.3. The selected vendor(s) must also support NMPED in maintaining and updating any evidentiary record required for federal peer review to the extent

applicable to components of this procurement, and must be prepared to respond to changes in applicable law or regulation over the life of the contract.

***Martinez-Yazzie Ruling.*** The requirements of Martinez-Yazzie v. State of New Mexico, and their implications for assessment design, reporting, accommodations, and validation under this procurement, are described herein. Offerors should assume that design decisions and validation activities will be evaluated in relation to the State's ongoing obligations under that ruling.

**Item Development**

The Offeror must describe all aspects of item development across the components, from initial design specifications to release for operational use.

**Item Development Needs Analysis**

The Offeror must conduct periodic item-development needs analyses to inform each development cycle, addressing the English-language item pools and any Spanish-transadapted items or Spanish-language accessibility supports NMPED approves. The analyses should be grounded in:

- the content standards and PLDs,
- cognitive-complexity specifications
- item-type specifications;
- the proposed designs;
- the empirical properties of items in available banks and newly developed items;
- the quality of cultural and linguistic relevance;
- the quality of alignment to New Mexico’s content standards;,
- systemic risk-mitigation strategies such as exposure control; and
- any other factors affecting pool sufficiency.

The analyses should determine development requirements per blueprint cell, specify pool-size targets sufficient for operational, progress-monitoring frequency, and security needs, and produce a prioritized development queue. Results must be documented in a report delivered to NMPED for approval and must drive the development plan for the following cycle.

**Item Writer Qualifications and Training**

The Offeror must describe item-writer qualifications, training, and workshop logistics, including embedded quality-control procedures, formative feedback, and ongoing monitoring. Training must address alignment to content standards and NM-MSSA performance level descriptors, cognitive-complexity specifications, and required item types; minimization of construct-irrelevant variance; accessibility for students with disabilities and English Learners; and cultural appropriateness and linguistic accessibility.

**Cognitive Laboratories and Item Validation Studies**

Newly developed items, and items adapted or trans adapted for use in New Mexico, must undergo cognitive-laboratory or comparable validation studies (e.g., cognitive interviews, embedded response-process probes, expert evaluations) on a representative sample, prioritizing new item types, accommodated or accessibility-supported items, and items addressing constructs of particular concern. For items drawn from existing or licensed item banks that are not modified for New Mexico, the Offeror must provide documentation of comparable cognitive validation work already conducted. These studies must evaluate whether items elicit the intended cognitive processes and response behaviors for the targeted student populations, and must identify construct-irrelevant variance for subsequent revision. The Offeror must describe the proposed methodology, timing, participant selection, data collection and analysis, and criteria for classifying items as acceptable, in need of revision, or unsuitable. For the earliest grades, the Offeror must address developmentally appropriate study designs.

**Item Review**

Newly developed items must be reviewed before operational use. Items adapted or transadapted for New Mexico use must also receive supplemental review focused on the adaptation or transadaptation. For items drawn from existing or licensed item banks that are not modified for New Mexico, the Offeror must provide documentation of the review process those items already underwent. NMPED may require supplemental review of a representative sample of those items. The Offeror will propose a review process, including panel composition where applicable, recruitment strategy, and selection criteria, for NMPED approval. The Offeror is responsible for outreach, scheduling, logistics, and facilitation. NMPED retains final approval over the review process and all resulting items.

***Review Panel Composition***

Item-review panels must include representation across: grade levels and content areas served; geographic regions (rural, small town, suburban, urban); school types (public, charter, tribal); student populations served (including educators who teach and/or are members of Native American communities, educators from schools serving high proportions of English Learners, special educators, and educators in schools serving high proportions of economically disadvantaged students); and gender and racial/ethnic background. For fairness, bias, and sensitivity review, members should, where feasible, both work with and be members of the relevant population groups. Panels for any Spanish-language accommodations or Spanish-transadapted items must include reviewers with bilingual and Spanish-language content expertise.

***Reviewer Training, Content, Fairness, and Accommodations Review***

The Offeror must provide comprehensive training before each review session covering content review; fairness, bias, sensitivity review, and cultural and linguistic relevance, and accessibility and accommodations review. Content review must evaluate alignment with

NM content standards, descriptors, cognitive-complexity specifications, and required item types, and identify construct-irrelevance to be minimized.

Fairness review must ensure items are free from systematic bias, stereotyping, and culturally inappropriate language or depictions, and consistent with the New Mexico Content Standards. Accommodations review must address compliance with the *Web Content Accessibility Guidelines* (WCAG 2.2 Level AA), Universal Design for Learning (UDL) principles, compatibility with assistive technologies, and the construct-preservation of Spanish-language supports and any Spanish-trans adapted items. The Offeror must develop and submit content, fairness, and accommodations checklists for NMPED approval.

***Reconciliation***

Following each review session, the Offeror must facilitate reconciliation to incorporate feedback, resolve conflicts, and document all revisions, and must provide NMPED with detailed revision reports. Final reconciliation decisions must be approved by NMPED content specialists before items advance.

**Test Administration**

The Offeror must provide a secure, reliable, and accessible administration platform capable of supporting all proposed components for all grades and content areas, including frequent progress-monitoring and intervention cycles. The platform must support fully virtual administration for New Mexico's virtual schools, the proposed designs, all required accessibility features and accommodations, and any NMPED-approved Spanish-language supports. The Offeror must demonstrate capacity to support parallel administration at statewide volumes across grades K-3. The platform must also scale to fluctuations in enrollment and participation. The Offeror must provide empirical evidence of the platform's ability to handle these response volumes.

***Technology Integration and Interoperability***

The platform must meet industry-standard REST APIs and interoperability frameworks, and the Offeror must support the Ed-Fi Data Standard. The Offeror must describe its current or planned approach to Ed-Fi compliance and application programming interface (API) development, including a proposed timeline. The Offeror must also affirm willingness to develop APIs as needed with NMPED as future innovations emerge, including integration with the ILIAD reporting dashboard environment as it develops. The Offeror must describe how the platform supports data exchange with NMPED's student information systems and data repositories, including the state's unique student identifier (UID) system.

NMPED requires delivery of assessment data files (e.g., scale scores, performance/risk levels, subskill results). The Offeror must propose a turnaround standard for delivering this data

following each administration, for NMPED approval. Turnaround should be as rapid as feasible to support timely instructional use.

***Test Security and Integrity***

The Offeror must maintain comprehensive security protocols appropriate to each assessment component across development, administration, scoring, and reporting, addressing materials handling, digital content security, proctor and administrator training, irregularity detection and reporting, and data forensics.

If GenAI is incorporated in these processes, the Offeror must describe all relevant details to allow NMPED to properly assess benefits and risks of this use.

Because progress-monitoring and intervention materials are intended for frequent classroom use, the Offeror should distinguish security expectations for secure screening and diagnostic content from those for non-secure instructional materials.

***Accessibility and Accommodations***

The platform must support management of paper-based and alternative accommodation forms for students unable to participate in computer-based testing, and must comply with WCAG 2.2 Level AA, implementing accessibility features and accommodations consistent with the applicable New Mexico accessibility and accommodations manuals. At minimum, the platform must support the full range of universal tools, pre-identified supports, and accommodations currently available to New Mexico students, adapted as developmentally appropriate for the early grades (Appendix G lists the categories and features). The Offeror must confirm, for each feature, whether it is currently available, available with development, or not available, with notes on any differences or proposed innovations, and must not reduce the range of accessibility features currently available.

**Testing Operations**

The Offeror must work with NMPED to identify suitable administration windows for each component on an annual basis, minimizing overlap with other state assessment programs and reducing burden, while supporting the required progress-monitoring (monthly) and intervention (at least every two weeks) cadences.

The Offeror must provide NMPED with a real-time or near-real-time monitoring dashboard during administration windows, enabling NMPED to monitor completion rates at the state, district, school, grade, and content-area levels and to identify and respond to operational issues.

The Offeror must develop and maintain administration materials (manuals, quick-start guides, and training materials) available in advance of each window, and must provide a help desk to address district and school questions before and during administration, tracking issues and resolutions for continuous improvement. The Offeror must describe its solution for administering to students in New Mexico's virtual schools, including proctoring, technology, and security.

## Response Evaluation / Scoring

### Considerations for Spanish-Language Accommodations and Supports

The Offeror must describe how scoring processes address any NMPED-approved Spanish-language accommodations or supports, including Spanish-transadapted mathematics items developed or adapted for New Mexico. The Offeror must describe the quality-assurance procedures ensuring these supports do not alter the intended construct or score interpretation, including how responses are routed, condition-coded, scored, or excluded, and how scoring consistency is monitored across relevant student groups. For Spanish-language accommodations or scoring approaches drawn from an existing, unmodified product, the Offeror may instead provide documentation of comparable quality-assurance evidence already established. The Offeror must describe how scoring concerns are documented, escalated to NMPED, and addressed in future cycles.

### Machine Scoring of Selected-Response Items

All selected-response items, including TEIs requiring rule-based evaluation of equation input or multi-step interactions, must be scored using deterministic, rule-based machine scoring. This includes any NMPED-approved Spanish-transadapted items or items delivered with Spanish-language supports. The Offeror must embed processes for verifying scoring accuracy prior to each operational administration.

### Automated and Human Scoring of Constructed-Response Items

Where constructed-response items are used to produce scores-of-record (SOR), responses must be scored using automated approaches with human-in-the-loop review for ongoing quality control. The Offeror must describe how human raters are selected, trained, qualified, and monitored (e.g., via random double-scoring and validity papers), how rescoring is handled for raters not performing to expectations, and the routing logic for cases with condition codes and for adjudicating discrepant scores. For lower-stakes progress-monitoring components, the Offeror may propose appropriately streamlined scoring and review processes, provided instructional usefulness and quality are protected and clearly described.

## Scale Construction, and Classification Accuracy

### Scale Construction, Growth, and Comparability

For the BOY, MOY and EOY diagnostic assessments, the Offeror must describe the proposed approach to constructing and maintaining score scales, including any vertical scale used to support growth interpretations across grades, the linking and equating designs and statistical methods used across forms and administrations, and how the approach will be evaluated and validated. The Offeror must distinguish among item-level, form-level, scoring, scale-score, classification, and

longitudinal comparability. For each intended use, the Offeror must identify the minimum evidence needed, including:

- analyses of differential item and test functioning;
- subgroup performance
- response-language effects;
- rater agreement;
- automated-scoring performance;
- conditional standard errors; and
- classification consistency.

The Offeror must also describe how findings that do not support comparability would be documented, escalated to NMPED, and addressed.

The Offeror must describe how scores or classifications are placed in concordance with the reference assessment or common linking items described herein.

**Cut Scores and Classification Accuracy for Screeners**

For the screening assessments in early literacy and early mathematics (Components A and B), the Offeror must describe the methodology and evidence used to establish, verify, and revise cut scores, including classification-accuracy evidence (e.g., sensitivity, specificity, predictive value, and decision consistency) and the empirical and judgmental criteria used. For the gifted screener (Component C), the Offeror must propose a recommended cut score based on the screener's purpose and must be open to modifying it if NMPED does not see coherence with intended use, including with the recommended K-3 diagnostic cut score used to flag students for gifted screening. Proposed cut-score revisions must be submitted to NMPED for review and approval, with implications for interpretation and use clearly documented.

**Cross-Vendor Comparability and Linking Studies**

Because this RFP may result in multiple approved vendors, NMPED intends to report comparable results across the K-3 literacy and mathematics assessments that districts and charter schools select. Each awarded Offeror for Components A and B must agree to fund and pay for comparability studies in cooperation with other awarded Offerors and as directed by NMPED and the NM TAC. These requirements begin with the first operational administration in 2027-28 and apply to the Component A and B assessments that NMPED specifies.

NMPED will determine the linking design with input from the NM TAC. Acceptable designs currently under consideration include:

- **Reference assessment.** NMPED designates a reference assessment and holds it stable for a set number of years. Each Offeror conducts annual linking studies to the reference

assessment using a full year of data, with at least 1,500 students per grade per administration window (3,000 preferred). This design typically requires a sample of students in districts and charter schools using the Offeror's assessment to also take the reference assessment in the same window.

- **Embedded common items.** Each Offeror embeds a common set of linking items, provided or approved by NMPED, in its assessments for each grade and content area. The Offeror administers these items under the same conditions as its own items, without affecting students' reported scores.

Linking methods that assume the students taking different assessments are equivalent will not meet this requirement. An example is matching score distributions from different districts without common students or common items.

Under any design, each Offeror must:

- complete a construct and content alignment analysis between its assessment and the reference assessment or linking items;
- provide NMPED or its designee with student-level and item-level data, scale scores and classifications, under data-sharing terms and timelines NMPED specifies and consistent with Section: Data Privacy and Security;
- cooperate with NMPED, its designee, the NM TAC and other awarded Offerors on study design, data exchange and review of results; and
- provide the technical documentation needed to evaluate the results.

NMPED will determine, with NM TAC input, the purposes and reporting levels the linking evidence can support. Linked results are not intended to make scores from different assessments interchangeable.

All costs of the Offeror's participation, including additional test administration, item embedding, data delivery and coordination with other Offerors, must be included in the Offeror's component pricing.

## Reporting

### NMPED Data Systems Integration

The Offeror shall deliver all required data files, metadata, and reporting outputs to NMPED-designated data systems, repositories, and longitudinal data warehouse(including ILIAD and other future integrated state education data platforms) in the correct formats and schedules specified by NMPED.

**Public-Facing Reports and Family Communication**

The Offeror must develop reports appropriate to each component at the student, classroom, school, and district levels, accessible through a secure reporting platform, with the ability to view and compare results across schools, grades, subjects, and student subgroups and to download relevant data.

Student-level reports must be available in English and Spanish, written in plain language accessible to families, and must clearly communicate the student's current standing, risk status, and/or growth, and what it means. For the screeners, the Offeror must provide family-facing communication in English and Spanish so families can participate meaningfully in decisions about their child's support.

The Offeror must provide empirical evidence that reports are accurately understood by constituents and describe how constituent input is used to refine them over time. Communication tools and resources must be provided for each component as described in the training section.

**Internal Reports, Data Files, and Technical Documentation**

The Offeror must produce periodic item-analysis and student-performance reports. The Offeror must also provide item- and student-level data files in common formats (e.g., CSV, text-delimited TXT) compatible with NMPED's systems, each with a comprehensive data dictionary. The Offeror must maintain a secure, accurate, auditable data-transfer protocol, with appropriate field-level permissions for local education agencies. Where applicable, the Offeror must implement modern data-forensic procedures and produce associated reports and files.

The Offeror must produce technical documentation for each cycle that allows NMPED and its technical advisors to evaluate the technical quality of all components, organized around an overarching validity argument that connects claims, evidence, and the trustworthiness of that evidence, rather than merely listing actions and outputs. The Offeror should leverage secure digital delivery for documentation in addition to PDFs.

**Data Privacy and Security**

Offerors shall agree to comply with all student privacy laws, regulations, and provisions identified in the resulting contract including:

- Offeror shall not use Student data obtained pursuant to the resulting contract for any purpose other than performing the services outlined in the scope of work of the resulting contract.
- Offeror must ensure that all employees or subcontractors who have access to student data must comply with all privacy laws, regulations and provisions of the resulting contract.

- Offeror must agree that it shall not sell or disclose any student data or any portion thereof including, but not limited to, student education records and information as well as personally identifiable information of student.
- Offeror may not use covered information to engage in targeted advertising directed at students or their parents.
- Offeror may not use covered information to create a profile about a student except in furtherance of K-12 school purposes approved by the NMPED. The term "profile" includes any systematic collection, analysis, or scoring of student attributes, behaviors, or performance data beyond what is necessary to deliver the contracted educational service.
- Offeror may not retain student data beyond the term of the contract with the school or district, unless NMPED specifically requests otherwise in writing.
- Offeror must delete student data within 30 days of NMPED's written request for deletion.
- Offeror must implement and maintain reasonable security procedures and practices appropriate to the sensitivity of the student data, and no less protective than the standards Offeror applies to its own confidential business information. The standards utilized shall be no less protective than nationally recognized standards.
- All student data obtained pursuant to the resulting contract and held in a cloud based storage system shall be held in accordance with general FedRAMP standards, when applicable.
- Offeror must ensure that student records remain the property of and under the control of the Department and respective LEA. Execution of the state contract serves as full authorization for the Offeror to transmit all student assessment data directly to NMPED data systems without requiring separate district-level paperwork or release forms.
- Ensure that parents or legal guardians have the ability to review and request correction of their child's personally identifiable information held by the Offeror.

Disclosure of student records, information and data without parental consent is limited to disclosure provided for in the Family Education Rights and Privacy Act and its governing regulations.

**Data Breach**

Offeror shall agree to adhere to all applicable federal and state laws relevant to data breaches and shall provide notification of a data breach to NMPED within 72 hours of confirmation of the breach. If notification would disrupt investigation of the breach by law enforcement, offeror will notify NMPED within a reasonable time after the breach. Offeror shall assist NMPED in notification to affected LEAs. Offeror shall maintain a written data breach response plan that is consistent with industry standards and federal and state laws.

### *C. PROCUREMENT AND CONTRACT CONTACT*

This RFP may result in multiple contractual award(s) between the two parties (awarded Offeror and the Agency). This procurement may be used by other parties, the New Mexico Public Education Department, New Mexico school districts, and state charter schools. The contract may be implemented for a term of one (1) year, and may be extended on an annual basis for up to three (3) years in one-year increments for a total of four (4) years, contingent upon sufficient funding and satisfactory work performance provided by the selected vendor. The Agency may award contracts to one or more Offerors whose proposals are determined to be most advantageous to the State of New Mexico, considering technical qualifications, experience, geographic coverage, capacity, and cost. The Agency reserves the right to award multiple contracts for the same scope of work to ensure adequate statewide coverage and program capacity.

In no case will the contract, including all renewals thereof, exceed a total of four (4) years in duration, as set forth in NMSA 1978, § 13-1-150. A contract awarded as a result of this RFP is contingent upon appropriation by the New Mexico Legislature or other funding sources for the period of this procurement, satisfactory contract compliance, and the Contractor's ability to successfully provide services. Should contract non-compliance be determined, the contract may be terminated or amended. A potential offeror or the offeror agrees to comply with state laws and rules pertaining to workers' compensation insurance coverage for its employees. If the offeror fails to comply with the Workers' Compensation Act and applicable rules when required to do so, the contract may be canceled effective immediately.

Region 9 Education Cooperative will manage all aspects of procurement whose name, address, telephone number, and email address are listed below:

Procurement Coordinator:

| | |
|---|---|
| Name: | Region 9 Education Cooperative<br>Veronica Wadley |
| Address: | 2002 Sudderth Dr., Ruidoso, NM 88345 |
| Telephone: | (469) 726-8349 |
| Fax: | (575) 257-2141 |
| Email: | veronica.wadley@regionix.org |

**Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Region 9 Education Cooperative, Procurement Coordinator listed above. Offerors may contact ONLY Region 9 Education Cooperative, Procurement Coordinator regarding this procurement. Other state employees or Evaluation Committee members do not have the authority to respond.

**Protests of the solicitation or award must be delivered by mail to the Region 9 Protest Manager.** ONLY protests delivered directly to the Protest Manager in writing in the 15 calendar day protest period will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. Emailed protests will not be considered as properly submitted, nor will protests delivered to Region 9 Education Cooperative, Procurement Coordinator be considered properly submitted.

Protest Manager:
Name: Bryan Dooley
Executive Director
Region 9 Education Cooperative
Address: 2002 Sudderth Dr., Ruidoso, NM 88345
Telephone: (575) 257-2368
Fax: (575) 257-2141
Email: bryan.dooley@regionix.org

### *D. DEFINITION OF TERMINOLOGY*

This section contains definitions that are used throughout this procurement document, including appropriate abbreviations.

1. **"Agency"** is the issuing agency of procurement, contracts, purchase orders and all aspects associated with contract/procurement management. Agency shall be used, unless otherwise written specifically identifying the entity.

2. **"Close of Business"** means 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

3. **"Contract"** means any agreement for the procurement of items of tangible personal property, services or construction.

4. **"Contract Manager"** means the individual selected by the Agency to monitor and manage all aspects of the contract resulting from this RFP.

5. **"Contractor"** means any business having a contract with a state agency or local public body.

6. **"Deliverable"** means any measurable, tangible, verifiable outcome, result, or item that must be produced to complete a project or part of a project.

7. **"Department of Information Technology"** means the New Mexico Department of Information Technology which is responsible for operating the data center and all communications related items.

8. **"Desirable"** the terms "may," "can," "should," "preferably," or "prefers" identify a desirable or discretionary item or factor (as opposed to "mandatory").

9. **"Determination"** means the written documentation of a decision of a procurement manager including findings of fact supporting a decision. A determination becomes part of the procurement file to which it pertains.

10. **"DFA"** means the Department of Finance and Administration for the State of New Mexico.

11. **"DFA/CRB"** means the Contracts Review Board of the Department of Finance and Administration for the State of New Mexico.

12. **"Evaluation Committee"** means a body appointed by the Agency management to perform the evaluation of offeror proposals.

13. **"Evaluation Committee Report"** means a report prepared by the Procurement Manager and the Evaluation Committee for submission for contract award that contains all written determinations resulting from the conduct of a procurement requiring the evaluation of competitive sealed proposals.

14. **"Finalist"** is defined as an offeror who meets all the mandatory specifications of the Request for Proposal and whose score on evaluation factors is sufficiently high to qualify that offeror for further consideration by the Evaluation Committee.

15. "**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.

16. **"Mandatory"** The terms "must," "shall," "will," "is required," identify a mandatory item or factor (as opposed to "desirable"). Failure to meet a mandatory item or factor will result in the rejection of the offeror's proposal.

17. "**Minor Irregularities**" means anything in the proposal that does not affect the price, quality and/or quantity, or any other mandatory requirement.

18. **"New Mexico Employee"** means any resident of the State of New Mexico, performing the majority of their work within the State of New Mexico, for any employer regardless of the location of the employer's office or offices.

19. **"Offeror(s)"** is any person, corporation, or partnership who chooses to submit a proposal.

20. **"Procurement Manager"** means the person or designee authorized by the Agency to manage or administer a procurement requiring the evaluation of competitive proposals.

21. "**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.

22. "**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 iii. H. of this RFP) blacked-out BUT NOT omitted or removed.

23. **"Request for Proposals"** or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals.

24. **"Requirements"** are obligatory and mean the system functions that are related to the organization's goals and business opportunities. Requirements are defined by the project team and are usually prioritized.

25. **"Responsive Offer or Responsive Proposal"** means an offer or proposal that 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.

26. **"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.

27. **"Solicitations"** means ITBs and RFPs.

28. **"State (the State)"** means the State of New Mexico.

29. **"State Purchasing Agent"** or "SPA" means the purchasing agent for the State of New Mexico or a designated representative.

### *E. ELIGIBLE APPLICANTS*

Eligible applicants include public or private organizations with documented and demonstrated ability to provide Services as described in this RFP.

### ii. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule for the procurement and describes the major procurement events as well as the conditions governing the procurement. Region 9 Education Cooperative reserves

the right to alter or update the schedule. Region 9 Education Cooperative will make every effort to adhere to the schedule.

### *A. SEQUENCE OF EVENTS*

The Procurement Manager will make every effort to adhere to the following Sequence of Events Schedule. *Each Action shall be submitted* ***no later than 3:00 p.m. Mountain Standard Time/Daylight Time on the Due Date listed.***

| Item Number | Action | Responsible Party | Due Dates |
|---|---|---|---|
| 1 | Issue RFP | Region 9 Education Cooperative | **10/23/2026** |
| 2 | Distribution List | Potential Offerors | **11/3/2026** |
| 3 | Deadline to Submit Questions | Potential Offerors | **11/3/2026** |
| 4 | Response to Written Questions | REC 9 | **11/9/2026** |
| ***5*** | ***Submission of Proposal*** | ***Potential Offerors*** | **11/20/2026** |
| 6 | Proposal Evaluation | Evaluation Committee | **11/23/2026-12/8/2026** |
| 7 | Selection of Finalists | Evaluation Committee | **11/23/2026-12/8/2026** |
| 8 | Oral Presentations by Finalists (At Region 9 and PED's Discretion) | Offerors/Evaluation Committee | **11/23/2026-12/8/2026** |
| 9 | Notice of Award(s) | Agency/ Finalist Offerors | **12/10/2026** |
| 10 | Protest Deadline | REC 9 | **15 days after award** |
| 11 | Finalize Contractual Agreements | Agency/Awarded Offeror(s) | **TBD** |

*Dates indicated in Events 7 through 11 are estimates only, and may be subject to change without necessitating an amendment to the RFP.

### *B. EXPLANATION OF EVENTS*

The following paragraphs describe the activities listed in the sequence of events shown in **Section II –A SEQUENCE OF EVENTS** above.

**Issuance of RFP**

This RFP is being issued by Region 9 Education Cooperative on **10/23/2026**. The RFP may be viewed and downloaded at https://www.rec9nm.org/rfps-bids.

**Distribution List**

Potential Offerors should complete the on-line *Distribution Form* to have their organization placed on the procurement distribution list. The form should be submitted by an authorized representative of the organization..

The procurement Distribution List will be used for the distribution of written responses to questions, and/or any amendments to the RFP. Failure to submit the on-line *Distribution Form* does not prohibit potential Offerors from submitting a response to this RFP. However, by not completing the Distribution Form by the time and date indicated, the potential Offeror's representative shall not be included on the Distribution List communications, and will be solely responsible for obtaining responses to written questions and any amendments to the RFP.

LINK TO ACCESS THE DISTRIBUTION LIST: **https://forms.gle/os2fdaScafuZE6uf8**

**Deadline to Submit Written Questions**

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP. All written questions must be e-mailed to contracts.procurement@regionix.org. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

**Response to Written Questions**

Written responses to written questions will be provided via email and posted as an Addendum to the RFP on https://www.rec9nm.org/rfps-bids. by the Procurement Manager on or before the time and date indicated in the Sequence of Events.

**Submission of Proposal**

At this time, only electronic proposal submission is allowed. Do not submit hard copies until further notice.

Proposals must be submitted electronically through R9's electronic procurement system. A link to the Submission Portal can be found in Section *IV., B. Method of Submission*.

ALL PROPOSALS MUST BE RECEIVED BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN THE DATE OUTLINED IN THE SEQUENCE OF EVENTS SCHEDULE SET FORTH ABOVE. NO LATE PROPOSALS CAN BE ACCEPTED. The date and time of receipt will be recorded on each proposal. Proposals will be time-stamped in the system when the Offeror clicks "Submit." Such electronic submissions will be considered sealed in accordance with statute.

*It is the Offeror's responsibility to ensure all documents are completely uploaded and submitted electronically. The proposal submission system will automatically cease uploading data at the date and time of the deadline. 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 online proposal submission system:*

***https://www.formpl.us/form/6218795086053376*** *will be deemed late. Further, a submission that is not fully complete and received via the proposal submission system 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 submitted by facsimile, or other electronic means other than through the proposal submission system, 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.

**Proposal Evaluation**

An Evaluation Committee will perform the evaluation of proposals. This process will take place as indicated in the **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.

**Selection of Finalists**

The Evaluation Committee will select and the Procurement Manager will notify the finalist Offerors in accordance with the schedule set forth above. Only finalists will be invited to participate in the subsequent steps of the procurement. The schedule for the oral presentations/demonstrations will be determined at this time.

**Best and Final Offers**

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers. Best and final offers may also be clarified and amended at finalist Offeror's oral presentation and demonstration.

**Oral Presentation and/or Product Demonstrations by Finalists**

Finalist Offerors, as selected per above, may be required to conduct an oral presentation at a venue to be determined as per the 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 Agency will provide Finalist Offerors with applicable details. Whether or not Oral Presentations will be held is at the discretion of the Agency.

**Finalize Contractual Agreements**

Any Contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror in accordance with the Sequence of Events, or as soon thereafter. . This date is subject to change .

In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, the Agency reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

**Contract Awards**

After review by the Evaluation Committee the Agency will make an award(s) in accordance with the Sequence of Events, or as soon as possible thereafter. This date is subject to change at the discretion of the Agency.

The contract shall be awarded to the Offeror (or Offerors) whose proposals are most advantageous to support the Scope of Work. The most advantageous proposal may or may not have received the most points.

**Protest Deadline**

Any protest by an Offeror must be timely and in conformance with NMSA 1978, § 13-1-172 and applicable procurement regulations. ONLY protests delivered directly to the Protest Manager in writing within the protest period will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals.Emailed protests will not be considered as properly submitted nor will protests delivered to Region 9 Education Cooperative, Procurement Coordinator be considered properly submitted.

The 15 calendar day protest period shall begin on the day following the actual date of Contract Awards and will end at 5:00 pm Mountain Standard Time/Daylight Time on the 15th 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.

PROTESTS RECEIVED AFTER THE DEADLINE WILL NOT BE ACCEPTED.
The protest must be delivered to:

Name: Region 9 Education Cooperative
Bryan Dooley, Executive Director
Address: 2002 Sudderth Dr., Ruidoso, NM 88345
Telephone: (575) 257-2368
Fax: (575) 257-2141
Email: bryan.dooley@regionix.org
Protests received after the deadline will not be accepted.

## iii. GENERAL REQUIREMENTS

### *A. ACCEPTANCE OF CONDITIONS GOVERNING THE PROCUREMENT*

Potential Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the electronic submission form. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in *Section IV., G. Evaluation* of this RFP.

### *B. 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.

### *C. 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 a state agency which may derive from this RFP. The state agency entering into a contractual agreement with a vendor will make payments to only the prime contractor.

### *D. SUBCONTRACTORS/CONSENT*

The use of subcontractors is 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 Agency awarding any resultant contract, before any subcontractor is used during the term of this agreement.

### *E. AMENDED PROPOSALS*

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. Region 9 Education Cooperative personnel will not merge, collate, or assemble proposal materials.

### *F. OFFEROR'S RIGHTS TO WITHDRAW PROPOSAL*

1) Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request electronically and signed by the Offeror's duly authorized representative.

2) The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

### *G. 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.

## *H. DISCLOSURE OF PROPOSAL CONTENTS*

The contents of all submitted proposals will be kept confidential until the final award has been completed by the Agency. 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. If the offeror chooses to redact Proprietary and Confidential information, an additional but separate redacted version of Offeror's proposal, as outlined and defined in this RFP shall be submitted, on or before the Proposal Submission date as indicated in the Sequence of Events. A redacted proposal, in accordance with state law, containing the blacked-out proprietary or confidential information, shall be used in order to facilitate eventual public inspection (IPRA) 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 Agency shall examine the request and make a written determination that specifies which portions of the proposal should be disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of proprietary or confidential information.

## *I. NO OBLIGATION*

This RFP in no manner obligates Region 9 Education Cooperative to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate authorities.

## *J. TERMINATION OF RFP*

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the agency determines such action to be in the best interest of Region 9 Education Cooperative.

## *K. 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 effected by sending written notice to the contractor. The Agency's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

### *L. LEGAL REVIEW*

Region 9 Education Cooperative 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.

### *M. 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.

### *N. BASIS FOR PROPOSAL*

Only information supplied, in writing, by the Agency through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

### *O. CONTRACT TERMS AND CONDITIONS*

1. The contract may follow the format specified and contain the terms and conditions set forth in the Sample Contract Appendix F. However, the Agency reserves the right to negotiate provisions in addition to those contained in this RFP (Sample 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.

2. Exceptions from the contract terms and conditions as set forth in the RFP Sample Contract are discouraged. Such exceptions may cause a proposal to be rejected as non responsive when, in the sole judgment of the Agency (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.

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

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

5. If an Offeror fails to propose any alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror), proposed alternate terms and conditions may not 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 considered an explicit agreement by the Offeror that the contractual terms and conditions contained herein are accepted by the Offeror.

6. The initial contract resulting from this RFP will be for a period of one year. The contract may be extended beyond the original contract period by one-year or multi-year renewal options for a maximum of three additional years, at the Agency's sole discretion and by mutual agreement. The contract term will not exceed a total of four (4) years.

### *P. 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 and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's proposal.

### *Q. 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 NMSA 1978, § 13-1-83 and 13-1-85.

### *R. RIGHT TO WAIVE MINOR IRREGULARITIES*

The Evaluation Committee reserves the right to waive minor irregularities. 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.

### *S. CHANGE IN CONTRACTOR REPRESENTATIVES*

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

### *T. NOTICE OF PENALTIES*

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

### *U. AGENCY RIGHTS*

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

### *V. RIGHT TO PUBLISH*

Throughout the duration of this procurement process and contract term, Offerors and contractors must secure from Region 9 Education Cooperative and or written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or agency 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.

### *W. OWNERSHIP OF PROPOSALS*

All documents submitted in response to the RFP shall become property of the Region 9 Education Cooperative.

### *X. 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 Region 9 Education Cooperative.

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 procuring the Agency's written permission.

### *Y. 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.

### *Z. 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 agency, the Offeror acknowledges that the version maintained by the agency shall govern.

### *AA. NEW MEXICO EMPLOYEES HEALTH COVERAGE - Appendix A*

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.

### *BB. CAMPAIGN CONTRIBUTION DISCLOSURE FORM- Appendix B*

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form, Appendix B, as a part of their proposal. This requirement applies regardless 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 disqualification.

### *CC. CONFLICT OF INTEREST - Appendix C*

Offers must complete, sign and return the Conflict of Interest Form, Appendix C as a part of their proposal. Failure to complete and return the signed unaltered form will result in disqualification.

### *DD. SUSPENSION STATUS FORM - Appendix D*

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: 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; violation of Federal or state antitrust statutes related to the submission of offers; or 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.
        i. 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.
        ii. 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.
5. 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.) 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. The Contractor shall provide immediate written notice to the State Purchasing Agent 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. 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.
6. 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. 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.

***EE. New Mexico Preferences (if applicable)***

To ensure adequate consideration and application of §13-1-21, NMSA 1978 (as amended), Offerors **must** include a copy of their preference certificate with their 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.

A. **New Mexico Business Preference**

A copy of the certification must accompany Offeror's proposal**.**

B. **New Mexico Resident Veterans Business Preference**

A copy of the certification must accompany Offeror's proposal.

**An agency shall not award a business both a resident business preference and a resident veteran business preference.**

**The New Mexico Preferences shall not apply if/because the expenditures for this RFP includes federal funds.**

### iv. RESPONSE FORMAT AND ORGANIZATION

Any proposal that does not adhere to the requirements of this Section may be deemed non-responsive and rejected on that basis.

#### *A. NUMBER OF RESPONSES*

Offerors shall submit only one (1) proposal.

#### *B. METHOD OF SUBMISSION*

All proposals must be submitted electronically.

LINK TO ACCESS THE PROPOSAL SUBMISSION SYSTEM ---> **https://www.formpl.us/form/6218795086053376**

The Offeror need only submit a single electronic copy of the proposal, outlined below.

#### *C. SUBMISSION FORMAT*

All information for the technical proposal must be combined into a single pdf file/document for uploading. File naming convention <COMPANY NAME_RFP 27008>

#### *D. TECHNICAL ISSUES*

For technical support issues contact Veronica Wadley (469) 726-8349

#### *E. PROPOSAL FORMAT*

All proposals must be submitted as follows:

- Typeface must be easily readable such as Ariel, Courier, or Times Roman and type size must be 12-point.
- The proposal may be no longer than 100 single-spaced pages as a whole. Supplemental information may be appended to the proposal.
- All pages shall be numbered.

### *F. RESPONSE ORGANIZATION*

The proposal must be organized in the following format and must contain, at a minimum, all listed items in the sequence indicated. Offerors should respond in the form of a thorough narrative to each specification in correlation unless otherwise instructed. The narratives, including required supporting materials will be evaluated and awarded points accordingly.

1. **Technical Proposal**
   Offeror shall provide a ***Technical Proposal*** (a. - d. detailed below)

   a. **General Technical Scope of Work Response**: (75 points)
      i. **Responsiveness and Completeness -** Fully address all parts of the requirement and relevant sub-requirements.
      ii. **Technical Soundness -** Approach shall be highly defensible, aligned with professional standards, and clearly suited to the intended use.
      iii. **Operational Specificity and Feasibility -** Provide clear procedures, roles, timelines, deliverables, and decision points; highly feasible.
      iv. **Evidence, Quality Control, and Risk Management -** Clearly describe evidence, documentation, Quality Control processes, and risk mitigation; uses findings to monitor and address quality issues.
      v. **New Mexico Fit and Continuous Improvement -** Clearly tailor to New Mexico's context and shows how evidence, feedback, and implementation lessons will improve future cycles.
         - The response shall be tailored to New Mexico's assessment and policy context, student populations, cultural and linguistic priorities, operational constraints, existing score scale, reporting needs, and long-term improvement goals.

   b. **Corporate Capacity**: (50 points)
      i. **Relevant Organizational Experience -**
         - Demonstrate extensive, directly relevant experience delivering comparable statewide assessment programs with evidence of successful performance.
         - Offerors shall provide a minimum of three (3) professional reference letters for projects of similar size, scope, and complexity completed within the past 5 years. References should include the organization

name, contact person, title, telephone number, email address, and a brief description of the services provided.

- References may be contacted to verify the Offeror's past performance, including but not limited to quality of work, adherence to schedules, responsiveness, professionalism, and overall satisfaction.The Evaluation Committee reserves the right to consider information obtained from references, prior experience with the Offeror, and any other reliable sources in assessing past performance.

ii. **Organizational Staffing Capacity and Continuity -** Demonstrate a well-defined staffing model with clear role coverage, sufficient staffing capacity, strong bench strength, backup coverage for key functions, and credible continuity planning across the full contract period.

iii. **Program Management and Governance -** Provide a clear, integrated governance model with strong communication routines, decision rights, escalation paths, schedule control, and subcontractor oversight.

iv. **Quality, Security, Risk, and Continuity Capacity -** Demonstrate mature organizational systems for quality assurance, risk management, security, incident response, business continuity, transition planning, and technical maintenance.

v. **New Mexico Fit and Partnership Capacity -** Clearly demonstrate capacity to partner with NMPED and adapt to New Mexico's assessment and policy context, student populations, cultural and linguistic priorities, accessibility needs, local implementation realities, and continuous improvement goals.

**c. Personnel Capacity:** (25 points)

i. **Relevant Expertise and Qualifications -** Key personnel demonstrate extensive, directly relevant expertise for their assigned roles, including experience with comparable statewide assessment programs, technical requirements, accessibility, psychometrics, scoring, reporting, operations, and/or project management as applicable.

ii. **Role Alignment and Coverage -** Clearly defined personnel roles for all key personnel, well-aligned with the scope of work, and collectively cover all major functions without unclear ownership, duplication, or gaps.

iii. **Availability, Commitment, and Continuity -** Provide credible evidence that key personnel demonstrate an exceptional fit and experience for the program. Personnel will be available, appropriately committed to the work, and positioned to provide continuity across the full contract period.

iv. **Leadership, Coordination, and Communication Capacity -** Demonstrate key personnel's strong capacity to lead complex assessment work, coordinate across technical and operational teams, communicate with NMPED and partners, manage issues, and support timely decision-making.

v. **New Mexico Fit and Partnership Orientation -** Demonstrate key personnel's strong readiness to work effectively with NMPED and New Mexico partners,

including attention to New Mexico's assessment and policy context, student populations, cultural and linguistic priorities, accessibility needs, and continuous improvement goals.

**d. Cost Proposal:** (25 points)

Offerors shall submit a cost proposal that describes and justifies the project budget and clearly ties the scope of work to the determination of the amounts shown in the project budget. Cost proposal should include all fees, including gross receipt tax. Salaries and benefits incorporated in the cost proposal should include the percentage of a full time employee (FTE) allocated to the project (if applicable).

Each assessment component is to be offered as a cost option that NMPED may elect to purchase, in whole or in part. The Offeror must price each component separately based on a cost per student and break out training costs by component separately, so that NMPED can evaluate and select components independently. Accordingly, NMPED reserves the right to Award the successful Offeror(s) for all services or for partial services and options.

Reasonableness and allowability will be evaluated and lowest cost will not be a factor.

**2. Mandatory Requirements** (Completed forms must be submitted with proposal)
Proposals that do not meet the mandatory requirements may be deemed non-responsive and rejected**.**

a. Appendix A - New Mexico Employees Health Coverage Form (Pass/Fail)
b. Appendix B - Signed Campaign Contribution Form (Pass/Fail)
c. Appendix C - Conflict of Interest Form(Pass/Fail)
d. Appendix D - Suspension Status Form (Pass/Fail)
e. Appendix E - Response to Contract Terms and Conditions (Pass/Fail)

**3. Supplemental Information**

a. Offeror's Additional Terms and Conditions (Optional)
b. Other supporting documentation to support the Technical Proposal.
c. New Mexico Preferences

This procurement could result in contractual agreements between two parties; the procurement may be used by other parties (agency).

## G. EVALUATION

**A. Evaluation Point Summary and Factors**

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.

3. The Evaluation Committee may use other sources to perform the evaluation.

4. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value. The responsible Offerors with the highest scores may be selected as finalist Offerors, based upon the proposals submitted. Awards shall be made to the most responsible Offeror(s) whose proposals are most advantageous to the State taking into consideration the evaluation factors. The most responsible Offeror(s) is not determined by the highest score. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

| **Evaluation Factors** | **Available Points** |
|---|---|
| The proposal is organized as described in **Section IV. Response Format and Organization** and contains all listed items in the sequence indicated. | Pass/Fail |
| **General Technical Scope of Work Response** | 75 |
| **Corporate Capacity** | 50 |
| **Personnel Capacity** | 25 |
| **Cost Proposal** | 25 |
| New Mexico Employees Health Coverage Form - Appendix A | Pass/Fail |
| Signed Campaign Contribution Form - Appendix B | Pass/Fail |
| Conflict of Interest Form - Appendix C | Pass/Fail |
| Suspension Status Form - Appendix D | Pass/Fail |
| Response to Contract Terms and Conditions - Appendix E | Pass/Fail |
| Offeror's Additional Terms and Conditions | **Optional** |
| New Mexico Resident Business Preference | **Optional** |
| New Mexico Resident Veterans Business Preference | **Optional** |

### v. ADMINISTRATIVE REQUIREMENTS

Awarded Offerors will be required to provide the following documents before or within 30 days of contract execution date:

- Proof of insurance as required in the SAMPLE CONTRACT Appendix F
- Contractor must be a registered business in the State of New Mexico with a CRS number
- Tax Identification: The Offeror must possess a tax identification number
- Offeror must provide background checks, as directed by Agency, for all persons within the organization that will be providing on-site services within New Mexico schools.
- Federal W-9
- Contract after award is contingent upon receipt of an authorized NMERB Return to Work as a Contractor approval letter. (If applicable)

## APPENDIX A

## NEW MEXICO EMPLOYEES HEALTH COVERAGE FORM
## R9 RFP 27008

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.

Signature of Offeror: _____

Date: _____

## APPENDIX B

## CAMPAIGN CONTRIBUTION DISCLOSURE FORM
## R9 RFP 27008

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:**_____

**(Completed by State Agency or Local Public Body)**

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) _____

_____

Purpose of Contribution(s) _____

_____

(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**

**CONFLICT OF INTEREST FORM**
**R9 RFP 27008**

As utilized herein, the term "Vendor" shall mean that entity submitting a proposal to The Agency in response to the above referenced request for proposals.
The authorized Person, Firm and/or Corporation states that to the best of his/her belief and knowledge:
No employee or Coordinating Council member of the Agency or New Mexico Public Education Department (or close relative), with the exception of the person(s) identified below, has a direct or indirect financial interest in the Vendor or in the proposed transaction. Vendor neither employs, nor is negotiating to employ, any Agency employee, council member or close relative, with the exception of the person(s) identified below.

Vendor did not participate, directly or indirectly, in the preparation of specifications upon which the quote or offer is made. If the Vendor is a New Mexico State Legislator or if a New Mexico State Legislator holds a controlling interest in Vendor, please identify the Legislator:

_____

List below the names(s) of any New Mexico Public Education Department or Agency employee, board member or close relative who now or within the preceding 12 months (1) works for the Vendor; (2) has an ownership interest in the Vendor (other than as an owner of less than 1% of Vendor's stock, if Vendor is a publicly traded corporation); (3) is a partner, officer, director, trustee or consultant to the Vendor; (4) has received grant, travel, honoraria or other similar support from Vendor; or (5) has a right to receive royalties from the vendor.

_____

_____

_____

_____

**CERTIFICATION**

The undersigned hereby certifies that he/she has read the above CONFLICT OF INTEREST Status requirements and that he/she understands and will comply with these requirements. The undersigned

further certifies that they have the authority to certify compliance for the vendor named and that the information contained in this document is true and accurate to the best of their knowledge.

Signature of Offeror: _____

Date: _____

**APPENDIX D**
**SUSPENSION STATUS FORM**
**R9 RFP 27008**

The Vendor certifies that it is not suspended, debarred or ineligible from entering into contracts with the Federal Government, or any State agency or local public body, or in receipt of a notice or proposed debarment from any Federal or State agency or local public body. The Vendor agrees to provide immediate notice to the Agency Procurement Department in the event of being suspended, debarred or declared ineligible by any department or agency of the Federal government, or any agency of local public body of the State of New Mexico, or upon receipt of a notice or proposed debarment that is received after the submission of the quote or offer but prior to the award of the purchase order or contract.

**CERTIFICATION**

The undersigned hereby certifies that he/she has read the above CONFLICT OF INTEREST Status requirements and that he/she understands and will comply with these requirements. The undersigned further certifies that they have the authority to certify compliance for the vendor named and that the information contained in this document is true and accurate to the best of their knowledge.

Signature of Offeror: _____

Date: _____

**APPENDIX E**

**RESPONSE TO NMPED CONTRACT TERMS AND CONDITIONS**
**R9 RFP 27008**

**Select one of the following:**

⬜ Offeror does **NOT** take any exceptions to the Contract Terms and Conditions as outlined in *Appendix F Sample Contract*

Offeror Signature:_____ Date: _____

⬜ Offeror DOES take exceptions to the Contract terms and Conditions as outlined in *Appendix F Sample Contract*

Offeror Signature:_____ Date: _____

**APPENDIX F**
**SAMPLE CONTRACT**

*** Contract subject to change based upon contract negotiations and needs.**

**STATE OF NEW MEXICO**

**New Mexico Public Education Department**

INFORMATION TECHNOLOGY AGREEMENT
Agreement No._____

THIS INFORMATION TECHNOLOGY AGREEMENT (this "Agreement") is made by and between the State of New Mexico (the "State"), **New Mexico Public Education Department**, hereinafter referred to as "Procuring Agency" and **[Insert Contractor Name]**, hereinafter referred to as "Contractor" and collectively the parties are hereinafter referred to as the "Parties." This Agreement must be approved by the Department of Information Technology ("DoIT").

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 *et seq.*; and Procurement Code, NMAC 1.4.1 *et seq.*; Contractor has held itself out as an expert in implementing the Scope of Work attached hereto and Procuring Agency has selected Contractor as the offeror most advantageous to the State; and

WHEREAS, all terms and conditions of the **[RFP Number and Name]** and Contractor's response to such document(s) are incorporated herein by reference; and

**THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:**

## ARTICLE 1 – DEFINITIONS

A. "Acceptance," "Accept" or "Accepted" means the approval, following Quality Assurance, of all the Deliverables by Procuring Agency's ELR ("ELR").
B. "Agency CIO" means Procuring Agency's Chief Information Officer.
C. "Application Deployment Package" or "ADP" means Contractor's centralized and systematic delivery of business critical applications, including the source code (for custom software), documentation, executable code and the deployment tools necessary to successfully install application software fixes, including Contractor's Software related additions, modifications, or deletions.
D. "Business Days" means Monday through Friday, 7:30 a.m. (MST or MDT) to 5:30 p.m. except for Federal and State holidays.
E. "Change Request" means a written document utilized by either Party to request changes or revisions in the Scope of Work – Exhibit A, attached hereto.

F. "Confidential Information" means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) that consists of: (1) confidential Procuring Agency or client information as the term is defined in State and/or Federal statutes or regulations; (2) all non-public State budget, expense, payment and other financial information; (3) all attorney-client privileged work product; (4) all information designated by Procuring Agency or any other State office or agency as confidential, including all information designated as confidential under Federal and State statutes or regulations; (5) unless publicly disclosed by Procuring Agency or the State, the pricing, payments, and terms and conditions of this Agreement, and (6) State information that has not been publicly disclosed and that is utilized, received, or maintained by Procuring Agency, Contractor, or other participating State agencies for the purpose of fulfilling a duty or obligation hereunder.

G. "Contract Manager" means a Qualified Person designated by Procuring Agency who is responsible for all aspects of the administration of this Agreement. Under the terms of this Agreement, the Contract Manager will be **[Insert Name]** or his/her Representative.

H. "Data" means a compilation, body, set or sets, of discrete information gathered by Procuring Agency and/or Contractor which Procuring Agency owns and/or controls and which concerns, and may be utilized or manipulated by Procuring Agency and/or Contractor, to further Procuring Agency's governmental interests, role and mission ("Mission"). Data includes, but is not limited to, Procuring Agency's information, whether or not stored in one or more databases, Confidential Information and other internal information which affects or may affect Procuring Agency's ability to further its Mission.

I. "Default" means a violation or breach of this Agreement by a Party's either: (1) failing to perform one's own contractual obligations hereunder, or (2) by interfering with the other Party's performance of its obligations hereunder.

J. "Deliverable" means the verifiable outcomes, results, the Services or products that Contractor will develop, perform, and/or produce and deliver to Procuring Agency according to the Scope of Work.

K. "DoIT" means the New Mexico State Department of Information Technology.

L. "DoIT CIO" means DoIT's Cabinet Secretary or Chief Information Officer, who also serves as the State's Chief Information Officer.

M. "Employees" means stockholders, directors, officers, employees and agents.

N. "Escrow" means a legal document (such as Source Code) delivered by Contractor to a third party escrow agent ("Escrow Agent"), and held by Escrow Agent until Procuring Agency Accepts one or more the Deliverables; in the event Contractor Defaults this Agreement, Procuring Agency will receive the legal document, *e.g.*, Source Code, from Escrow Agent.

O. "Enhancement" means any modification including addition(s), modification(s), or deletion(s) that, when Contractor makes or adds to a Deliverable, materially improves the Deliverable's utility, efficiency, functional capability, or application ("Utility"). An error correction is not an Enhancement unless the Deliverable's Utility is improved in Contractor's process of making the error correction.

P. "Executive Level Representative" or "ELR" means the individual designated and empowered with the authority to represent and make decisions on behalf of Procuring Agency or the Representative of the Executive Level Representative.

Q. "GRT" means New Mexico gross receipts tax.

R. "GSD" means the General Services Department; "GSD/CRB" means the General Services Department, Contracts Review Bureau.

S. "Intellectual Property (IP)" means any and all proprietary information or material, whether tangible or intangible, whether derived, embodied, composed or comprised of any hard copy, soft copy, electronic format, hardware, firmware, software or manifested in any other form, whether solid, liquid or vapor, that consists of, or is directly or indirectly related to, Know How, trade secrets, copyrightable material, patent protected or protectable inventions and/or information, U.S. and foreign patent applications and patents, service marks, trademarks, and trade names, any of which is conceptualized, created or developed by either one or both of the Parties. For the purposes of this Agreement each Party will have exclusive ownership rights and control over Intellectual Property that the Party owns or controls prior to the commencement of this Agreement ("Pre-Owned IP"). Intellectual Property that Contractor creates during the course of Contractor's performance of work hereunder will be deemed work made for hire ("Work Made for Hire"). Procuring Agency will be considered to be the creator and sole and exclusive owner of all Work Made for Hire. Contractor agrees that Contractor will not make any application for nor any other claim of ownership regarding any Work Made For Hire or any of the Procuring Agency's Pre-Owned IP. Together, any and all combinations of Procuring Agency's Pre-Owned IP and Work Made for Hire will comprise "Agency IP."

T. "Independent Verification and Validation ("IV&V")" means the process whereby Procuring Agency retains an independent expert to evaluate, verify and issue a written validation opinion concerning Contractor's performance of the Project and to determine Contractor's compliance with the requirements stated in the Scope of Work, whether with respect to evaluating certain stages of the Deliverables, or to evaluating the body of the Deliverables as a whole, or both.

U. "Know How" means the idea(s), technical information and knowledge including, but not limited to, documents, computer storage devices, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating to, or causing the enablement of the Work Made for Hire and the Intellectual Property developed hereunder.

V. "Payment Invoice" means each of Contractor's detailed, certified and written requests for payment concerning the Deliverables that Contractor renders to Procuring Agency. Each Payment Invoice must identify each Deliverable for which the Payment Invoice is submitted and must include the price stated in the Scope of Work (Deliverables section), and in Article 3, below, as well as Contractor's actual charge, for each Deliverable.

W. "Performance Bond" means a surety bond which guarantees against Contractor's Default as well as Contractor's full performance of its obligations hereunder.

X. "Project" means the sum of Contractor's efforts necessary to produce and deliver the Deliverables to Procuring Agency according to the Scope of Work.

Y. "Project Manager" means a Qualified Person appointed by Procuring Agency who oversees and manages Contractor's efforts to produce and deliver the Deliverables to Procuring Agency. The Project Manager for this Project is **[Insert Name]** or his/her Representative.

Z. "Qualified Person" means a person who has demonstrated experience performing and completing activities and tasks similar to the Project.

AA. "Quality Assurance" or "Quality Assurance Review" means the planned and systematic pattern of rules, measures, procedures and process established by Procuring Agency to ensure that each Deliverable conforms to the requirements stated in the Scope of Work.

BB. "Representative" means one or more substitute person(s) for a title or role, e.g. Project Manager or Contract Manager, when the Party's primary contact person is unavailable.
CC. "Scope of Work" or "SOW" means the statements of Purpose and the Deliverables attached to this Agreement as Exhibit "A."
DD. "Service" or "the Services" means the task(s), function(s), and responsibility(ies) assigned to, and performed by Contractor according to the SOW.
EE. "State" means the State of New Mexico.
FF. "State Purchasing Agent (NMSPA)" means the New Mexico State Purchasing Agent or his/her Representative.
GG. "State Purchasing Division (SPD)" means the State Purchasing Division of the New Mexico General Services Department.
HH. "Software" means the operating system and/or application software used by Contractor to provide the Deliverables hereunder. Software may include, but is not limited to, Third Party Software. "Third Party Software" means software owned by third parties which is utilized by Contractor and/or Procuring Agency hereunder.
II. "Software Maintenance" means the set of activities that result in changes to the Accepted (baseline) product set of Software. These activities consist of corrections, insertions, deletions, extensions, and Enhancements to the baseline Software and operating system.
JJ. "Source Code" means the human-readable programming instructions organized into sets of files that represent the business logic for the Project application. Source Code may be read as text and subsequently edited, requiring compilation or interpretation by a Qualified Person into binary or machine-readable form before being directly useable by a computer.
KK. "Turnover Plan" means the written plan developed by Contractor and approved by Procuring Agency to continue the Project in the event the Deliverables stated in the SOW are transferred, either directly to Procuring Agency or to a third party.

## ARTICLE 2 – SCOPE OF WORK

A. The Scope of Work. The Scope of Work, or "SOW" attached hereto as "Exhibit A," is incorporated into this Agreement as if fully set forth herein. The SOW governs Contractor's production and delivery of the Deliverables to Procuring Agency. The Parties may amend the SOW by executing one or more mutually agreed upon written amendments. In the event a conflict of terms exists between this Agreement and the SOW, the terms of this Agreement will govern.
B. Contractor Default. Contractor will deliver the Deliverables as stated in the SOW. In the event Contractor fails to deliver the Deliverables according to the SOW, Procuring Agency may declare Contractor to be in Default hereunder. In the event Procuring Agency declares Contractor to be in Default, Procuring Agency will give written notice to Contractor describing the Default and will specify a reasonable period of time during which Contractor will remediate the Default. Contractor will then give Procuring Agency a written response that advises Procuring Agency concerning the measures Contractor will take to cure the Default as well as Contractor's proposed timetable for implementing those measures. Nothing in this Section will be construed to prevent Procuring Agency from exercising Procuring Agency's rights pursuant to Article 6 or Article 16, below.

C. Schedule. Contractor will deliver the final Deliverables to Procuring Agency on or before the due dates stated in the SOW. The due dates will not be altered or waived by Contractor absent Procuring Agency's prior written consent, according to the Amendment process stated in Article 25, below.

D. License. **[If a software license is required, use the following language:]** Contractor hereby grants Procuring Agency a **[CHOICE #1- If a perpetual license is required, use the following language:]** non-exclusive, irrevocable, perpetual license to use, modify, and copy the following Software: [Insert name of the software and the patent number if applicable] **[CHOICE #2- If a Software license is required for the term of this Agreement, use the following language:]** non-exclusive, irrevocable, license to use, modify, and copy the [Insert name of Software and patent number if applicable] Software and any and all updates, corrections and revisions as stated in Article 2 and the SOW for the term of this Agreement.

Procuring Agency's right to copy the Software is limited to Procuring Agency's archival, backup and training purposes only. All of Procuring Agency's archival and backup copies of the Software are subject to the provisions of this Agreement, and Procuring Agency will reproduce all Software related titles, patent numbers, trademarks, copyright and other restricted rights notices on Procuring Agency's Software copies.

1. Contractor will maintain, at Contractor's sole expense, a copy of the Software Source Code to be kept by Escrow Agent and will identify Procuring Agency as an authorized recipient of the Software Source Code from Escrow Agent. Contractor will store the Software Source Code in magnetic form on media specified by Procuring Agency. Escrow Agent will be responsible for storing and safekeeping the Software Source Code magnetic media. Contractor will replace the escrowed Software Source Code magnetic media at least every six (6) months to ensure readability and to preserve the Software at the then current revision level. Contractor will include all associated Software documentation with the magnetic media, which will allow Procuring Agency to "top load," compile and maintain the Software in the event of Contractor's Default(s).

2. In the event Contractor (a) ceases to do business or ceases to support the Project, or (b) fails to make adequate provision for continued support of the Software that Contractor develops or provides to Procuring Agency, or (c) if Contractor Defaults hereunder, or (d) if this Agreement is terminated, Contractor will, within a twenty-four (24) hour period, make all of the following items available to Procuring Agency: (i) the latest available Source Code and documentation related to the Software that Contractor develops or provides according to the SOW; (ii) the Source Code and compiler/utilities necessary to maintain Procuring Agency's system; and, (iii) Contractor's related documentation for Software developed by third parties to the extent Contractor is authorized to disclose such Software to Procuring Agency. In any of the above circumstances (a), (b), (c) or (d), Contractor will, by virtue of this Section, grant Procuring Agency an automatic, uncontested and unlimited right to use, modify and copy the Software, the Source Code and all of their related documentation.

**[CHOICE #3 –** Not Applicable. The Parties agree there is no License.]

E. Source Code. **[CHOICE #1 – If this is a new development and/or a maintenance and operations agreement, use the following language:]** Contractor will deliver any and all Software and Source Code that Contractor develops as a result of Contractor's new development and/or maintenance Software releases. Each of Contractor's Application Deployment Packages ("ADP") must be able to reproduce fully operational applications that include all base application functionalities, all cumulative release functionalities and include the functionalities, as documented, verified and supported by Contractor, which comprise each new application release.

**[CHOICE #2 – If Contractor will hold Software and Source Code in escrow, use the following language:]** For each maintenance release, at Contractor's sole expense, Contractor will update Contractor's Application Deployment Packages ("ADP") and place the updated ADP for escrow with Escrow Agent. The ADP will be in magnetic or digital form on media specified by Procuring Agency. Escrow Agent will be responsible for storage and safekeeping of the ADP storage media. Contractor will identify Procuring Agency to Escrow Agent as an authorized recipient of the ADP storage media, which will contain the most recent application release.

**[CHOICE #3 – If Contractor will not hold Software and/or Source Code in escrow, use the following language:]** For each maintenance release, at Contractor's sole expense, Contractor will update Contractor's Application Deployment Packages ("ADP") and deliver the updated ADP to Procuring Agency in magnetic or digital form on media specified by Procuring Agency.

**[CHOICE #4 –** Not Applicable. The Parties agree there is no Source Code.]

F. Procuring Agency's Rights.

1. Rights to Software. **[CHOICE #1 – If Procuring Agency has right to own the Software, use the following language:]** Procuring Agency will own all right, title, and interest in and to Procuring Agency's Confidential Information, the Software, the Source Code and other Deliverables, including without limitation, the specifications, the work plan, and the Custom Software, except that the Deliverables will not include third party software and its associated documentation for the purposes of this Section. Contractor will take all actions necessary and transfer ownership of the Confidential Information, the Software, the Source Code and the other Deliverables to Procuring Agency, without limitation, as well as the Custom Software and associated Documentation on Final Acceptance or as otherwise provided hereunder.] **[CHOICE #2 –**Procuring Agency will have rights to the software as stated in Article 2. D., above.] **[CHOICE #3 –** Not Applicable. The Parties agree that this is an agreement pertaining only to professional services and does not involve the provision or use of Software.]

2. Protection of Proprietary Rights. Contractor will reproduce and attach the State's copyright, product identifications and other proprietary notices on the copies Contractor makes and delivers of the Software, the Source Code and other Deliverables for Procuring Agency, in whole or in part, or on any electronic, hard copy or other tangible form of the Deliverables.

3. Protection of Data. Contractor will protect and safekeep all of Procuring Agency's Data to the same or a higher degree of care that Contractor takes with respect to its own

information and data. Contractor will implement all measures necessary to protect Procuring Agency's Data from any and all harm, including but not limited to, breach, intrusion, contamination, corruption, loss, leak, theft, disintegration, viral attack, denial-of-service, malware, worms, trojans, ransomware, hacking, phishing, skimming and other damage of any kind (collectively "Data Damage"), whether caused by Contractor, Contractor's Employees or one or more third parties. In the event a Data Damage incident occurs while Procuring Agency's Data is within Contractor's purview and/or control, within one (1) hour of Contractor's discovery of a Data Damage incident, Contractor will notify the Project Manager concerning the Data Damage incident, including sufficient information for the Project Manager to determine, in conjunction with Contractor, which measures, if any, Contractor must implement to mitigate the Data Damage.

4. Rights to Data. **[CHOICE #1 – If the Data belongs to Procuring Agency, use the following language:]** Any and all of Procuring Agency's Data that is stored upon Contractor's servers or lies within Contractor's custody hereunder, is Procuring Agency's sole and separate property and inures to Procuring Agency's exclusive benefit. None of Contractor or Contractor's Employees, subcontractor(s), affiliates and/or assigns will make use of, disclose, sell, copy, license or reproduce Procuring Agency's Data in any manner, or provide of Procuring Agency's Data to any third party absent Procuring Agency's prior written authorization. **[CHOICE #2 –** Not Applicable. The Parties agree Procuring Agency has no rights to the Data.**]**

## ARTICLE 3 - COMPENSATION

A. Compensation Schedule. Procuring Agency will pay Contractor according to the fixed price set for each Deliverable, per the schedule stated in the SOW, less retainage, if any, as identified in Paragraph D.

B. Payment. The total compensation hereunder will not exceed **[Insert Dollar Amount]** **[CHOICE #1** - excluding New Mexico gross receipts tax. **CHOICE #2** - including New Mexico gross receipts tax.**]** This amount is the maximum total amount; it is not a guarantee that the work to be performed by Contractor, and the total of the corresponding payments that Procuring Agency pays to Contractor, will equal the maximum total amount. However, the Parties do not intend for Contractor to continue to deliver the Deliverables without compensation once the total compensation amount has been reached. Therefore, Contractor must notify Procuring Agency before the price of a Deliverable reaches the compensation amount for that Deliverable stated in the SOW. In no event will Procuring Agency pay Contractor for any Deliverables in an amount that exceeds the maximum total amount without this Agreement being amended in writing prior to Contractor's continued delivery of the Deliverables.

Procuring Agency will pay Contractor upon Procuring Agency's Acceptance of each Deliverable according to Article 4, below, and upon the receipt and Acceptance of Contractor's detailed and certified Payment Invoice(s). Procuring Agency will forward its payments to Contractor's designated mailing address, stated in Article 28, below. In accordance with Section 13-1-158 NMSA 1978, Procuring Agency will tender payment to Contractor within thirty (30) days of the date of Procuring Agency's written certification of Acceptance. All Payment Invoices MUST BE received by Procuring Agency no later than fifteen (15) days after the termination of this

Agreement. Contractor's Payment Invoices received by Procuring Agency later than fifteen (15) days after the termination of this Agreement WILL NOT BE PAID.

C. Taxes. [**CHOICE #1- Use if Agreement is between two public entities:** - Not Applicable - This Agreement is between two public entities.]

[**CHOICE #2 –** Contractor [**Use either:** - will **OR** will not] be reimbursed by Procuring Agency for applicable New Mexico gross receipts taxes ("GRT"), excluding interest or penalties assessed on Contractor by the New Mexico Taxation and Revenue Department. Contractor is solely responsible for the payment of GRT for any money Contractor receives hereunder. Contractor must report its GRT, income tax and other tax obligations under Contractor's Federal and State tax identification number(s).

Contractor and its subcontractors, if any, will pay all Federal, State and local income and other taxes and government fees applicable to its operation(s) as well as the taxes and fees associated with Contractor's employment of its Employees. Contractor will require its subcontractors, if any, to hold Procuring Agency harmless from any responsibility for taxes, damages, fees and interest, if applicable, as well as any and all contributions required under Federal and/or state and local laws and regulations, including any other costs, transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

D. Retainage. [**CHOICE #1 -** Procuring Agency will retain [**INSERT percentage (which is recommended at - twenty percent (20%))**] of the fixed-price cost of each stated Deliverable as security for Contractor's full performance of this Agreement. Procuring Agency will release all retained amounts to Contractor upon Procuring Agency's Acceptance of the final Deliverable.] [**CHOICE #2 –** Not Applicable. The Parties agree there is no retainage.]

E. Performance Bond. [**CHOICE #1- If the amount of this Agreement exceeds $1Million OR, if this Agreement is intended for custom developed software/application, OR Commercial Off the Shelf (COTS) software with greater than 20% Enhancement, OR for any other critical project execution concerns, use the following language:**] Contractor will execute and deliver to Procuring Agency, contemporaneously with the execution of this Agreement, a performance bond in the amount of [**Insert Total Amount of the agreed upon Performance Bond**] (the "Performance Bond") in Procuring Agency's name. The Performance Bond will be in effect for the duration of this Agreement and any renewals hereof. Procuring Agency will condition its release of the Performance Bond upon Procuring Agency's Acceptance of Contractor's full performance and fulfillment of each and every of its Deliverables, terms, conditions, provisions, and obligations hereunder. Procuring Agency's right to recoup monies against the Performance Bond will include all of Procuring Agency's costs and damages associated with the transfer of the Deliverables to a third party or to the State as a result of Contractor's performance failure(s).

[**CHOICE #2 –** Not Applicable. The Parties agree there is no Performance Bond.]

## ARTICLE 4 – ACCEPTANCE

A. Submission. Upon Contractor's completion and delivery of each Deliverable stated in the SOW, Contractor will submit a Payment Invoice, together with an accurate description of the Deliverable, to Procuring Agency. Contractor will submit its Payment Invoices to Procuring Agency according to, or lower than, the Deliverable price stated in the SOW, less the retainage, if any, stated in Article 3(D), above. Contractor will not submit Payment Invoices to Procuring Agency for any amount(s) that exceed the amount(s) stated in the SOW absent Procuring Agency's prior written permission.

B. Acceptance. According to Section 13-1-158 NMSA 1978, the ELR will determine whether the Deliverable(s) meet(s) the specifications stated in the SOW. Procuring Agency will not pay for any Deliverable until the ELR Accepts the Deliverable in writing. In order to Accept a Deliverable, the ELR, in conjunction with the Project Manager, will perform a Quality Assurance Review of the Deliverable to determine, at a minimum, whether the Deliverable:

1. Meets or exceeds the Deliverable requirements stated in the SOW; and
2. Complies with the terms and conditions of [**CHOICE #1**- RFP or Sole Source Agreement] [**CHOICE #2** – statewide or agency price agreement] [**CHOICE #3 – specify any other procurement method (please specify)**]; and
3. Meets or exceeds the generally accepted industry standards and procedures applicable to the Deliverable(s); and
4. Complies with all other of Contractor's requirements, duties and obligations hereunder.

In the event the ELR Accepts a Deliverable according to the ELR's Quality Assurance Review, the ELR will send Contractor the ELR's written Acceptance within [**INSERT # of days - recommend at not less than fifteen (15)] Business Days**] (the "Acceptance/Rejection Period") from the date the ELR receives each of Contractor's Payment Invoice(s).

C. Rejection. If the ELR fails to give Contractor notice of Procuring Agency's rejection of a Payment Invoice within the Acceptance/Rejection Period, the Deliverable, together with its corresponding Payment Invoice will be deemed to be Accepted by Procuring Agency. In the event the ELR rejects the Deliverable following the ELR's Quality Assurance Review within the Acceptance/Rejection Period, the ELR will send Contractor a rejection notice together with a consolidated set of comments ("Comments") indicating the issues, unacceptable items, and/or requested revisions that Contractor should make or perform with respect to the rejected Deliverable. Upon Contractor's receipt of the ELR's rejection and Comments, Contractor will have ten (10) Business Days to resubmit the rejected Deliverable to Procuring Agency together with Contractor's revisions, corrections and/or modifications made according to the ELR's Comments. Upon receipt of Contractor's revised, corrected or modified ("Revised") Deliverable, the ELR will determine whether the Revised Deliverable is Acceptable by conducting a second Quality Assurance Review. The ELR will then issue a written determination of Procuring Agency's acceptance or rejection of the Revised Deliverable within fifteen (15) Business Days of Procuring Agency's receipt of the Revised Deliverable. In the event the ELR rejects the Revised

Deliverable according to the second Quality Assurance Review, Contractor will be then required to provide a remediation plan that will include a list of Contractor's planned corrective measures and an associated timeline for Contractor to complete its remediation of the Deliverable. Contractor's remediation plan must be accepted by the ELR prior to Contractor's implementation of its Deliverable remediation plan. At the same time, Contractor will also be subject to pay Procuring Agency all of Procuring Agency's monetary damages associated with Contractor's failure to timely deliver an Acceptable Deliverable and must complete all remedies attributable to Contractor's late delivery of the Deliverable. In the event ELR rejects a Deliverable three times, Procuring Agency may declare Contractor to be in Default and may immediately terminate this Agreement. Procuring Agency may then seek to recover from Contractor any and all damages and remedies available hereunder and otherwise available in law or equity.

## ARTICLE 5 – TERM

THIS AGREEMENT WILL BECOME EFFECTIVE AND BINDING ONLY UPON THE SIGNATURE OF THE STATE PURCHASING DIVISION.

This Agreement will terminate on [**Insert Termination Date**], unless terminated pursuant to Article 6, below. The term of this Agreement, including extensions and renewals, will not exceed four years, except as may otherwise be allowed by Section 13-1-150 NMSA 1978.

## ARTICLE 6 – TERMINATION

A. Grounds. Procuring Agency may terminate this Agreement at any time for convenience or cause. Contractor may only terminate this Agreement in the event Procuring Agency materially Defaults hereunder and subsequently fails to cure its Default within ninety (90) days from the date Contractor first declares Procuring Agency to be in Default.

B. Appropriations. Procuring Agency may terminate this Agreement if required by changes in State or federal law, or so ordered by a court of competent jurisdiction, or due to insufficient appropriations made available by the United States Congress and/or the State Legislature concerning the Parties' performance hereunder. Procuring Agency's determination concerning whether sufficient appropriations are available will be deemed fully accepted by Contractor and will be final. In the event Procuring Agency terminates this Agreement pursuant to this subparagraph B, Procuring Agency will provide Contractor written notice of such termination at least fifteen (15) Business Days prior to the effective date of the termination.

C. Notice; Opportunity to Cure.

1. Except as otherwise provided in Paragraph (B), immediately above, Procuring Agency will give Contractor written notice of Procuring Agency's intended termination at least thirty (30) days prior to the effective termination date.

2. Contractor will give Procuring Agency written notice of Contractor's termination at least thirty (30) days prior to Contractor's effective termination date, which notice will (i) identify Procuring Agency's material Default(s) upon which Contractor bases its termination, and (ii) state the measures Procuring Agency should implement to cure such

material Default(s). Contractor's termination notice to Procuring Agency will only take effect: (i) if Procuring Agency fails to commence curing Procuring Agency's material Default(s) within Contractor's thirty (30) day notice period, or (ii) in the event Procuring Agency cannot commence to cure its material Default(s) within Contractor's thirty (30) day notice period, Procuring Agency will issue a written notice to Contractor concerning: (a) Procuring Agency's intent to cure, and (b) Procuring Agency's commencement of the due diligence necessary to cure its material Default.

3. Notwithstanding the foregoing, Procuring Agency may terminate this Agreement immediately upon its written notice sent to Contractor: (i) in the event Contractor becomes patently unable to deliver the Deliverables, as Procuring Agency may, in its sole and exclusive discretion, determine; (ii) if, during the term of this Agreement, Contractor is suspended or debarred by the State Purchasing Agent; or (iii) this Agreement is terminated pursuant to Article 5, above.

D. Liability. Except as otherwise expressly allowed or provided hereunder, Procuring Agency's sole liability upon termination by either Party will be to compensate Contractor for Contractor's Acceptable work performed prior to Contractor's receipt or issuance of a written termination notice; provided, however, that a notice of termination issued by either Party will not nullify or otherwise affect either Party's liability for pre-termination defaults hereunder. Contractor will submit a Payment Invoice to Procuring Agency for Contractor's Acceptable work within thirty (30) days of receiving or issuing a notice of termination.

*THE PROVISIONS CONTAINED WITHIN THIS ARTICLE 6 ARE NOT EXCLUSIVE AND DO NOT ACT TO WAIVE PROCURING AGENCY'S OTHER LEGAL RIGHTS AND EQUITABLE REMEDIES ENGENDERED BY CONTRACTOR'S DEFAULT HEREUNDER.*

## ARTICLE 7 – TERMINATION MANAGEMENT

A. Contractor's Duties. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all of Procuring Agency's other rights to receive Deliverables and other property hereunder, Contractor will:

1. Transfer, deliver, and/or make readily available to Procuring Agency every Deliverable, partially completed Deliverable, and any and all other property in which Procuring Agency has a financial interest, including but not limited to, any and all Procuring Agency Data and/or Procuring Agency Intellectual Property;
2. Not incur any further financial obligations for materials, services, or facilities hereunder absent Procuring Agency's prior written approval;
3. Terminate all of Contractor's purchase orders, procurements and subcontractors and will cease all work, except as Procuring Agency may direct, for the orderly completion of the Deliverables and the transition, if any, to a third party;
4. Take and effect all actions as Procuring Agency may direct, for the protection and preservation of the Deliverables, the Data, Procuring Agency's Intellectual Property and all other all Procuring Agency property as well as any and all records pertaining to, related to and/or required hereunder;

5. Agree in writing that Procuring Agency is not liable for any costs arising out of the termination other than the costs related to the Deliverables Accepted by Procuring Agency prior to the termination;
6. Cooperate fully in the closeout or transition of Contractor's activities to facilitate Procuring Agency's administration continuity with respect to Procuring Agency's ongoing projects and programs;
7. In the event this Agreement is terminated due to Contractor's Default, lack of performance and/or negligence or willful misconduct, which result(s) in funding reduction(s) to Procuring Agency from any governmental or other source, Contractor will remit the full amount of the funding reduction(s) to Procuring Agency within thirty (30) days of the date of Procuring Agency's request to Contractor for remittance of the funding reduction(s);
8. Should this Agreement terminate due to Contractor's Default, Contractor will reimburse Procuring Agency for all costs arising from retaining one or more third party(ies) at potentially higher rates as well as for all other direct and indirect costs incurred by Procuring Agency following Contractor's Default up to the full amount of the total compensation stated in Article 3. B. above;
9. In the event this Agreement is terminated for any reason, or upon its expiration, Contractor will develop and submit for Procuring Agency's Acceptance a turnover plan ("Turnover Plan") at least ten (10) Business Days prior to the effective date of termination or expiration of this Agreement. Contractor's Turnover Plan will state Contractor's policies, procedures, and measures necessary to ensure: (1) the least disruption in the delivery of the Deliverables during Procuring Agency's transition of the Project to a third party; and (2) Contractor's cooperation with Procuring Agency and the third party with respect to Contractor's orderly transfer of all partial or completed Deliverables to Procuring Agency and the third party.

Contractor's Turnover Plan will consist of Contractor's orderly and timely transfer or return to Procuring Agency of any and all documents, files, Procuring Agency Data, the Software, the Source code, all other related software, documentation, the system turnover plan, IP Procuring Agency IP and other materials. Upon receipt of Procuring Agency's written request for such transfer or return, Contractor will, within five (5) Business Days, provide to Procuring Agency a copy of Contractor's most recent versions of all pertinent documents, files, Procuring Agency's Data, the Software, the Source Code, all other related software, documentation, the system turnover plan, IP Procuring Agency IP and other materials, whether provided by Procuring Agency or created by Contractor hereunder.

B. Procuring Agency. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, Procuring Agency will:

1. Retain ownership of all Deliverables, Procuring Agency's Intellectual Property, Contractor's other work products hereunder, and all related documentation created by Contractor hereunder; and
2. Pay Contractor all amounts due for the Deliverables Accepted by Procuring Agency prior to the effective date of such termination or expiration.

## ARTICLE 8 – INDEMNIFICATION

A. General. [**Delete if this Agreement is between two public entities -** Contractor will defend, indemnify and hold harmless Procuring Agency, the State and their Employees free 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 Contractor's performance of this Agreement, which is caused by Contractor's or Contractor's Employees' negligent act(s) or failure(s) to act, during the time when Contractor, and/or any of Contractor's Employees, has delivered or is delivering the Deliverables hereunder. In the event that any action, suit or proceeding related to the Deliverables is brought against Contractor and/or any of Contractor's Employees, Contractor will, as soon as practicable, but no later than two (2) Business Days after Contractor receives notice thereof, will notify, by certified mail, the legal counsel of Procuring Agency, the Risk Management Division of GSD, and DoIT.]

[**Use if this Agreement is between two public entities -** Neither Party will be responsible for liability incurred as a result of the other Party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq.]

B. [**Delete if this Agreement is between two public entities -** The indemnification obligation hereunder will not be limited by the existence of any insurance policy or by any limitation concerning the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor, and will survive the termination of this Agreement. Money due or to become due to Contractor hereunder may be retained by Procuring Agency, as necessary, to satisfy any outstanding claim that Procuring Agency may have against Contractor.]

## ARTICLE 9 – INTELLECTUAL PROPERTY

[**CHOICE #1 - Use this provision if Procuring Agency is to own the Intellectual Property:**]
Ownership. Procuring Agency IP will solely belong and inure to Procuring Agency for Procuring Agency's sole and exclusive use and benefit. Procuring Agency will own and control all right, title and interest to Procuring Agency IP on a worldwide basis. None of Contractor or Contractor's Employees, subcontractor(s), affiliates and assigns will utilize, copy, re-compile, re-engineer, reverse engineer, create derivative works, or otherwise utilize Procuring Agency IP for Contractor's benefit or the benefit of any third party or for any purpose other than to fulfill Contractor's obligations hereunder. Contractor will not disclose Procuring Agency IP to any entity or person outside of Procuring Agency absent Procuring Agency's prior written permission.

Contractor will notify Procuring Agency, within ten (10) Business Days, of any IP created hereunder by Contractor, Contractor's Employees or Contractor's subcontractor(s), all of which IP will be considered Work For Hire and a part of Agency IP. Contractor, on behalf of itself and its Employees and subcontractor(s), will execute or will cause to have executed any and all written assignments and other

document(s) necessary to ensure that ownership of such IP vests solely in Procuring Agency. Contractor will take no affirmative action(s) that might have the effect of vesting all or any portion of Procuring Agency IP in any person or entity other than Procuring Agency.

In the event, by judgment of a court of competent jurisdiction, Procuring Agency IP is deemed not to have been created or owned by Procuring Agency, Contractor will grant to Procuring Agency and the State, a perpetual, non-exclusive, royalty free license to reproduce, publish, use, copy and modify all or any portion of the disputed IP for Procuring Agency's and/or the State's continued use. Procuring Agency, together with DoIT, may extend to Contractor the privilege of utilizing all or any portion(s) of Procuring Agency IP through one or more intellectual property use license agreements that may be created separate and apart from this Agreement.

**[CHOICE #2 - If the Parties agree that Procuring Agency will grant Contractor the right to own and/or use any Procuring Agency IP, delete the above language and insert the following language:]**
In the event Procuring Agency grants Contractor the right to own and/or use any Procuring Agency IP, Contractor hereby acknowledges and grants to Procuring Agency and the State, a perpetual, non-exclusive, royalty free license to reproduce, publish, sell, trade, transfer, transmit, use, copy and modify any and all Procuring Agency IP.

## ARTICLE 10 – INTELLECTUAL PROPERTY LICENSE AND INDEMNIFICATION

A. Intellectual Property License.. For the purpose of this Agreement, Contractor hereby grants Procuring Agency a full, complete and non-transferable right and license to utilize any and all of Contractor's Related Pre-Owned IP for so long as Procuring Agency utilizes the Software, Source Code and other Deliverables. Contractor does not grant Procuring Agency any right or license to utilize Contractor's Unrelated Pre-Owned IP. If Contractor expects that any of Contractor's Pre-Owned IP will be used by Contractor to fulfill the scope of work under this Agreement, it is Contractor's responsibility to make the Procuring Agency aware of such Pre-Owned IP in order to eliminate questions of ownership of such IP. If Contractor does use Pre-Owned IP to fulfill the scope of work under this Agreement and identifies such, Contractor, at Procuring Agency's request, hereby grants Procuring Agency a permanent, full, complete, non-sublicensable, and non-transferable right and license to utilize any and all such IP.

B. Intellectual Property Indemnification. At Contractor's sole expense, Contractor will defend Procuring Agency, the State and/or any other State entity against any claim brought or made by a third party alleging that any product, Service or Deliverable that Contractor provides hereunder infringes the third party's Intellectual Property (an "Infringement Claim"). Contractor will pay all costs, damages and attorney's fees and monetary damages that may be awarded as a result of such Infringement Claim(s) in addition to the amount of the judgment award(s). To qualify to receive Contractor's defense cost(s) and/or other payment(s) related to any Infringement Claim(s), Procuring Agency will:

1. Give Contractor written notice, within forty-eight (48) hours, of Procuring Agency's receipt of an Infringement Claim;

2. Work with Contractor to control the defense and settlement of the Infringement Claim(s); and

3. Cooperate with Contractor, in a reasonable manner, to facilitate Contractor's defense or settlement of the Infringement Claim(s).

C. Procuring Agency's Rights. In the event any product, Service or Deliverable that Contractor provides to Procuring Agency hereunder becomes, or in Contractor's opinion is likely to become, the subject of an Infringement Claim, Contractor will, at its sole cost and expense:

1. Provide Procuring Agency the right to continue using the product, Service or Deliverable and fully indemnify Procuring Agency against any and all third Infringement Claim(s) that may arise from Procuring Agency's use of the product, Service or Deliverable;

2. Replace or modify the product, Service or Deliverable so that such product, Service or Deliverable becomes non-infringing; or

3. Accept the return of the product, Service or Deliverable and refund an amount equal to the value of the returned product, Service or Deliverable, less the unpaid portion of the purchase price and any other amounts, which Procuring Agency owes to Contractor. Contractor's obligation will be void with respect to any product, Service or Deliverable modified by Procuring Agency to the extent the modification is the direct cause of the Infringement Claim.

## ARTICLE 11 - WARRANTIES

A. General. Contractor hereby expressly warrants the Deliverable(s) will be correct in all aspects according to the specifications stated in the SOW and all generally accepted industry standards (the combination of which comprise the "Applicable Specifications"). Contractor's warranty includes, but is not limited to, Contractor's making correction(s) of defective Deliverable(s) and revision(s) of those defective Deliverables, as necessary, including Contractor's repair of deficiencies in the Deliverables that are discovered during testing, implementation, or post-implementation phases.

B. Software. **[CHOICE #1- Use only if the Parties intend to purchase or develop software.]** Contractor warrants that Software will be correct in all aspects according to the Applicable Specifications. Contractor further warrants that Software will meet the Applicable Specifications for **[INSERT # of years - recommend 6mo.-2yrs.]** years following Acceptance by the ELR and implementation by Procuring Agency. In the event Software fails to meet the Applicable Specifications during the warranty period, Contractor will correct the deficiencies, at no additional cost to Procuring Agency, so that the Software meets the Applicable Specifications. [**CHOICE #2 –** Not Applicable. The Parties agree there is no Software.]

## ARTICLE 12 – CONTRACTOR PERSONNEL

A. Key Personnel. Contractor's key personnel ("Key Personnel") will not be diverted from this Agreement absent Procuring Agency's prior written approval. Key Personnel are those individuals Procuring Agency considers to be mandatory to the work to be performed hereunder. Contractor's Key Personnel hereunder will be:

[**Insert Contractor and/or Subcontractor Key Personnel name(s) and title(s), as listed in their statewide price agreement or procurement method.**]

B. Personnel Changes. In the event Contractor replaces any of its personnel, Contractor will make such replacement(s), with Contractor's other personnel of equal or superior ability, experience, and qualifications. Contractor's personnel replacements must be pre-approved in writing by Procuring Agency's Project Manager. For all of Contractor's personnel, Procuring Agency reserves the right to require submission of their resumes prior to receiving Procuring Agency's approval. In the event Contractor reduces the number of its personnel assigned to the Project for any reason, Contractor will, within ten (10) Business Days of its personnel reduction, replace those persons with the same or a greater number of persons with equal or superior ability, experience, and qualifications, subject to Procuring Agency's prior written approval. Procuring Agency, in its sole and exclusive determination, may extend the time Contractor is allowed beyond the required ten (10) Business Day period concerning Contractor's replacement of its personnel. Contractor will include status reports to Procuring Agency concerning Contractor's personnel replacement efforts as well as the impact upon the progress of the Project due to the absence of Contractor's personnel. In addition, Contractor will make interim arrangements to assure that the progress of the Project remains unimpeded by the loss of any of Contractor's personnel. Procuring Agency reserves the right to require a change in Contractor's personnel in the event Contractor's personnel are not, in Procuring Agency's sole and exclusive determination, meeting Procuring Agency's standards and/or expectations.

## ARTICLE 13 – INDEPENDENT CONTRACTOR STATUS

A. Independent Contractor. For the purposes of this Agreement, Contractor and Contractor's Employees are independent Contractors who produce and deliver the Deliverables to Procuring Agency. Contractor's Employees are neither employees nor agents of the State ("State Employees"). None of Contractor and Contractor's Employees will accrue State benefits, including but not limited to, leave, retirement, insurance, bonding, use of state vehicles, or any other benefits that may be afforded to State Employees as a result of Contractor's entering this Agreement. Contractor acknowledges and agrees that all sums received hereunder are either reportable as a separate business entity or are, in the event Contractor operates as a sole proprietorship, personally reportable by Contractor for income and GRT tax purposes as self-employment or business income and are reportable for self-employment tax.

B. Subject of Proceedings. Contractor warrants that neither Contractor nor any of Contractor's Employees are presently subject to any litigation or administrative proceeding before any court or administrative body which could adversely affect Contractor's ability to perform hereunder; nor, to the best of Contractor's knowledge, information or belief, is any such litigation or proceeding

presently threatened against Contractor or any of Contractor's Employees. In the event any such proceeding is initiated or threatened during the term of this Agreement, Contractor will immediately disclose such initiation or threat to Procuring Agency.

## ARTICLE 14 - CHANGE MANAGEMENT

Change Request Process. In the event circumstances warrant Contractor making a Change to accomplish the SOW, Contractor will submit a Change Request to Procuring Agency. Each Change Request must meet the following criteria:

1. The Project Manager will draft a written Change Request for the ELR's review and approval, including:

(a) the name of the person requesting the Change;
(b) a summary of the requested Change;
(c) the start date for the requested Change;
(d) the reason and necessity for the requested Change;
(e) the elements in the Deliverable(s) and/or the SOW that must be altered in order for Contractor to produce and deliver the Change; and
(f) the impact of the Change upon the Project.

2. The ELR will provide a written decision concerning each Change Request to Contractor within ten (10) Business Days of the ELR's receipt of each Change Request. All decisions made by the ELR concerning a Change Request will be deemed final. Each Change Request, once approved by the ELR, will be integrated into the SOW through an Amendment executed by the Parties if required by Article 25, Section 2.

## ARTICLE 15 – INDEPENDENT VERIFICATION AND VALIDATION

A. In the event IV&V Professional Services are used for the Project associated with this Agreement, Contractor will fully comply and cooperate with the IV&V vendor. Contractor's cooperation includes, but is not limited to:

1. Providing the Project documentation;
2. Allowing the IV&V vendor to attend Project related meetings; and
3. Supplying the IV&V vendor with any/all other information and/or material(s) as may be directed by the Project Manager.

B. In the event the purpose of this Agreement is for Contractor to provide IV&V Professional Services, then Contractor will:

1. Submit its IV&V reports directly to DoIT's Project Oversight and Compliance Division (EPMO@state.nm.us) according to DoIT's IV&V Reporting Template and Guidelines located on DoIT's webpage: http://www.doit.state.nm.us/project_templates.html, with a copy to Procuring Agency.

2. Use a report format consistent with DoIT's IV&V Reporting Template and Guidelines located on the same DoIT website.

## ARTICLE 16 – DEFAULT

In case of Contactor's Default, for any reason whatsoever, Procuring Agency and/or the State may procure the Deliverables from another source and hold Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages and special damages. Procuring Agency and/or the State may also seek all other available remedies against Contractor hereunder or which may be otherwise available under law or equity.

## ARTICLE 17 – EQUITABLE REMEDIES

Contractor acknowledges that its failure to comply with any provision hereunder may cause Procuring Agency irrevocable harm and that a remedy at law for such a failure would constitute an inadequate remedy for Procuring Agency. Contractor consents to Procuring Agency's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency's right to obtain equitable relief pursuant to this Agreement will be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

## ARTICLE 18 - LIABILITY

Contractor will be liable for damages arising out of injury to persons and/or damage to real, tangible or intangible property at any time, in any way, if and to the extent that the injury or damage was caused by or due to Contractor's fault or negligence or to a defect in Contractor's production or delivery of any Deliverable hereunder, whether Contractor produces or delivers the Deliverable in whole or part. Contractor will not be liable for damages arising out of, or caused by, alterations made by Procuring Agency to any equipment or its installation or for losses caused by Procuring Agency's fault or negligence. In the event Contractor's negligent or omitted production or delivery of any Deliverable results in a defect which is the direct or indirect cause of injury to any third party and/or employee of Procuring Agency or the State, nothing hereunder will act to limit Contractor's, or Contractor's Employees' liability to such third party and/or employee, or will act to limit any remedy that may exist under law or equity with respect to Contractor's and/or Contractor's Employees' negligent act or omission.

## ARTICLE 19 – ASSIGNMENT

Contractor will not assign or transfer any of Contractor's interests, rights, responsibilities, duties, obligations and/or liabilities hereunder or assign any of Contractor's claims for money due or that might become due hereunder absent Procuring Agency's prior written approval.

## ARTICLE 20 – SUBCONTRACTING

A. General Provision. Contractor will not subcontract or assign any portion of this Agreement or the SOW to any subcontractor absent Procuring Agency's prior written approval. No such subcontracting or assignment will relieve Contractor of its direct and indirect responsibilities, duties, obligations and/or liabilities hereunder, nor will any such subcontracting trigger or obligate Procuring Agency to make a payment, either directly or indirectly, to any subcontractor.

B. Responsibility for Subcontractors to Maintain Confidentiality. Contractor will not disclose any of Procuring Agency's or State's Confidential Information to a subcontractor absent Procuring Agency's prior written consent. Each subcontractor will agree in a written form pre-approved by Procuring Agency to protect and keep confidential any and all Confidential Information in the same manner required of Contractor stated in Article 22, below.

## ARTICLE 21 – RELEASE

Contractor's Acceptance of Procuring Agency's final payment made hereunder will operate as Contractor's full release of Procuring Agency, the State, and their officers, employees and agents from any and all liabilities, claims and obligations whatsoever arising hereunder.

## ARTICLE 22 – CONFIDENTIALITY

Contractor will protect and keep confidential any and all Confidential Information that Procuring Agency provides to Contractor as well as any and all Confidential Information that Contractor develops based upon information provided by Procuring Agency during Contractor's performance hereunder. Contractor will not make available or provide Confidential Information to any third party absent Procuring Agency's prior written approval. Upon termination of this Agreement, Contractor will: (a) deliver all Confidential Information in its possession to Procuring Agency within thirty (30) Business Days of the termination, and (b) Contractor will protect and will not make available or provide Confidential Information to any third party absent Procuring Agency's prior written approval for a period of five (5) years commencing on the termination or expiration date. Contractor acknowledges that Contractor's failure: (a) to deliver such Confidential Information to Procuring Agency, or (b) to protect and keep Confidential Information secret may result in Procuring Agency's seeking to obtain direct, special and/or incidental damages from Contractor.

## ARTICLE 23 –CONFLICT OF INTEREST

Contractor warrants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with Contractor's delivery of the Deliverables required

hereunder. Contractor certifies that it has followed the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer, state employee or former state employee.

## ARTICLE 24 - RECORDS AND AUDIT

Contractor will maintain detailed time and expenditure records, which indicate the date, time, nature and cost of the Deliverables rendered during this Agreement's term and will retain those records for a period of [**Insert # of years, minimum is three (3) years**] from the date of Procuring Agency's final payment to Contractor hereunder. Contractor's records will be subject to inspection by Procuring Agency, DoIT's CIO, NMSPA, GSD, Department of Finance Authority and the New Mexico State Auditor's Office. Procuring Agency will have the right to audit Contractor's billings prior and subsequent to each of Procuring Agency's payments made to Contractor. Procuring Agency's payment for the Deliverables hereunder will not foreclose Procuring Agency's right to recover Procuring Agency's payments made to Contractor or its affiliates against Contractor's excessive or illegal Payment Invoices, if any.

## ARTICLE 25 - AMENDMENT

This Agreement will not be altered, changed, or amended except by an instrument in writing executed by the Parties. No amendment will be effective or binding unless approved by all of the State's and Contractor's approval authorities. Amendments are required for the following:

1. Deliverable requirements stated in the SOW;
2. Due Date of any Deliverable stated in the SOW only if due date change requires extension of Article 5 termination date;
3. Compensation for any Deliverable stated in the SOW;
4. Agreement Compensation, pursuant to Article 3; or
5. Agreement termination, pursuant to Article 5.

## ARTICLE 26 – NEW MEXICO EMPLOYEES HEALTH COVERAGE

A. In the event 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 on the Project during the term of this Agreement, Contractor certifies, by signing this Agreement, to have in place, and agree to maintain for the term of this Agreement, health insurance for those employees and offer that health insurance to those employees in the event the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $250,000 dollars.

B. Contractor will 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. Contractor's records are subject to review and audit by a representative of the State.

C. Contractor will advise Contractor's Employees concerning the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: https://www.bewellnm.com.

D. For Indefinite Quantity, Indefinite Delivery contracts (statewide or agency price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against them); Contractor agrees those requirements will become applicable on the first day of the second month after Contractor reports its combined sales (to the State and, if applicable, to local public bodies in the event those sales are made pursuant to a statewide or agency price agreement) in the aggregated amount of $250,000 or more.

## ARTICLE 27 – SEVERABILITY, MERGER, SCOPE, ORDER OF PRECEDENCE

A. Severability. The provisions of this Agreement are severable, and in the event for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court, agency or commission having jurisdiction over the subject matter hereof, such invalidity will not affect the other provisions of this Agreement, which will be given effect absent the invalid provision.

B. Merger/Scope/Order. This Agreement incorporates any and all agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants and understanding have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents or assignees will be valid or enforceable unless stated in this Agreement.

## ARTICLE 28 – NOTICES

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement will be in writing and will be deemed to have been given when sent by registered or certified mail (return receipt requested), when sent by overnight carrier, or by email addressed to the other Party's Representative.

Notices will be addressed as follows:

**For PROCURING AGENCY**
[Insert: Name of Individual, Position
Procuring Agency Name
E-mail Address
Telephone Number
Mailing Address]

**For CONTRACTOR**
[Insert Name of Individual, Position
Company Name
E-mail Address
Telephone Number
Mailing Address]

Any change made concerning either a change of address or a replacement of a Party's Representative must be made in an email or a hard copy letter addressed to the other Party's Representative.

## ARTICLE 29 – GENERAL PROVISIONS

A. Contractor will abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State, including but not limited to:

1. Civil and Criminal Penalties. 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.
2. Equal Opportunity Compliance. Contractor will abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State, pertaining to equal employment opportunity. In accordance with all such laws of the State, Contractor will assure that no person in the United States will, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, 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 hereunder. In the event Contractor is found to be out of compliance with these requirements during the life of this Agreement, Contractor will take appropriate measures to correct its deficiencies.
3. Nondiscrimination. Contractor, and all deliverables under this Agreement, shall comply, as applicable, with the Federal Civil Rights Act of 1964, the American with Disabilities Act of 1990 (Public Law 101-336), and every other federal and state law that prohibits discrimination or mandates accommodation for disability, injury, sickness, disease or specified hardship. Any deliverable constituting an interactive or informational system or display solely for use or consumption by a public employee shall comply with accessibility standards for a comparable system or display used or consumed by a member of the public.
4. Workers Compensation. Contractor will comply with state laws and rules applicable to workers compensation benefits for its employees. In the event Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by Procuring Agency.

B. Applicable Law. The laws of the State will govern this Agreement. Venue will be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G)

NMSA 1978. By executing this Agreement, Contractor acknowledges and will submit to the jurisdiction of the courts of the State over any and all such lawsuits arising hereunder.

C. Waiver. A Party's failure to require strict performance of any provision of this Agreement will 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 hereunder will be effective unless made in writing, and no effective waiver by a Party of any of its rights will be effective to waive any of its other rights, duties or obligations hereunder.

D. Headings. Any and all headings within this Agreement are inserted for convenience and ease of reference and will not be considered in the construction or interpretation of any article, section or provision of this Agreement or the SOW. Numbered or lettered provisions, sections and subsections contained herein refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

E. Dispute Resolution. In the event dispute arises between the Parties, either Party may send a letter to the other Party requesting the other Party to enter into a dispute resolution process, such as mediation or arbitration, in accordance with NMSA 1978
12-8A-1 through 12-8A-3.

## ARTICLE 30 - SURVIVAL

The Articles titled Intellectual Property, Intellectual Property Ownership, Confidentiality, and Warranties will survive the expiration or termination of this Agreement. Software License and Software Escrow agreements entered into by the Parties in conjunction with this Agreement will survive the expiration or termination of this Agreement. [**Choice #1** – Other unexpired agreements, promises, or warranties that will survive the termination of this Agreement are: (list here.)]

## ARTICLE 31 - TIME

Calculation of Time. Any time period herein calculated by reference to a "day" or "days" means a calendar day or calendar days, unless Business Days are used; provided, however, that in the event the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State, the day for such given act will be the first day following that is not a Saturday, Sunday, or a State observed holiday.

## ARTICLE 32 – FORCE MAJEURE

Neither Party will be liable for damages or have any right to terminate this Agreement for any delay or Default in performing hereunder in the event such delay or Default is caused by conditions beyond the Party's control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), war, insurrection and/or any other cause beyond the reasonable control of the Party whose performance is affected thereby.

**[IF APPLICABLE, ADD ANY PROCURING AGENCY'S GRANT SPECIFIC OR AGREEMENT SPECIFIC ARTICLES STARTING AT THIS POINT.]**

IN WITNESS WHEREOF, the Parties hereby execute this Agreement, which will take effect on the last signature date of the required approval authorities below. Each of the signatories, below, may execute this Agreement by hard copy original, facsimile, digital or electronic signature, any of which will be deemed to be a true and original signature hereunder.

By:_____ Date:_____
[Insert Procuring Agency Cabinet Secretary Name], Cabinet Secretary
[Insert Agency Name]

By: _____ Date:_____
[Insert Contractor Name, Title]
[Company Name]

By: _____ Date:_____
[Insert Procuring Agency CIO Name], Chief Information Officer
[Insert Procuring Agency Name]

Approved for legal sufficiency:

By: _____ Date:_____
[Insert Procuring Agency General Counsel Name], General Counsel
[Insert Procuring Agency Name]

Approved for financial sufficiency:

By: _____ Date:_____
[Insert Procuring Agency Chief Financial Officer Name], Chief Financial Officer
[Insert Procuring Agency Name]

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/or compensating taxes:

BTIN ID Number: Enter this number before uploading to DocuSign

By: _____ Date:_____
Taxation & Revenue Department

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

Approved for compliance with the Department of Information Technology Act, Chapter 9, Article 27 NMSA 1978 and Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico.

By: _____ Date:_____
Manny Barreras, Cabinet Secretary & State Chief Information Officer
Department of Information Technology

This Agreement has been approved by the General Services Department, State Purchasing Division:

By: _____ Date:_____
State of New Mexico, State Purchasing Division

## EXHIBIT A – SCOPE OF WORK

I. Purpose:

The Purpose of this Agreement, including its goals and objectives are:

[Include a brief narrative that describes the work to be conducted by the Contractor and include the project's goals and objectives. Performance measures and activities are not required, but if being included, do so in this section.]

[If applicable, insert **Certified Project Name: Name**]

II. The Deliverables:

The following sections describe the required tasks and subtasks to be performed by Contractor concerning each service or product delivered by Contractor to Procuring Agency (a "Deliverable") pursuant to this Agreement. Contractor will deliver each Deliverable, but Contractor is not limited to delivering only the identified Deliverables in a given area of the Project. The Parties agree that the Deliverables are the controlling items and that Contractor's primary obligation is to deliver the Deliverables to Procuring Agency according to the following sections.
**[ Procuring Agency may identify as many Deliverables, with as many associated tasks and subtasks, as may be needed for Contractor to accomplish the Scope of Work.]**

**A. Sample Deliverable Number 1 – [Insert name of deliverable. Name of deliverable here should be the same as the deliverable name in the table.]**

| Deliverable Name | Due Date | Compensation |
|---|---|---|
| [Insert name of deliverable. Deliverable name here should be the same as the name used in the title line above the table.] | [Due dates must be stated to facilitate Procuring Agency and Contractor's efforts to monitor project progress. Insert actual date this deliverable is due. If an actual date is not available, enter a no later than date.] | · [Total Compensation not to exceed $ amount, including __% GRT of $ amount or excluding GRT;<br>To be Paid (include frequency of payment, Monthly, Quarterly, Upon Review and Acceptance or if one payment, indicate Fixed Cost to Be Paid in Full Upon Invoice) at<br>$ amount rate per hour, hours not to exceed XX. If retainage, include: Less __% retainage of $ amount.] Amount Payable on Acceptance Not to Exceed $ amount including or excluding GRT. |

| Task Item | Sub Tasks | Description |
|---|---|---|
| **[Insert Name of Task 1 or tasks to be performed for each Deliverable.]** | **Sub 1 through however many subtasks are needed to accomplish Task 1, which leads to the number of Tasks needed to accomplish Deliverable 1.** | · [Insert Description. Use active verbs to describe the tasks and subtasks to be completed. Begin the statement by assigning responsibility for the party completing the task, for example, The Contractor will. Contractor name should not be used, only the term Contractor, as stated in the first sentence of this template. Also, references to the agency name should not be used, instead use Procuring Agency. Note that Contractor and Procuring Agency are capitalized.]<br>· [Include the expected deliverable and the agreed upon format. For example, weekly reports to be delivered in Word format, schedule to be delivered in Microsoft Project format. If there is a designated repository the Contractor should use for storing files, include here.]<br>· [Conclude with review and acceptance of the deliverable by the Procuring Agency.] |

**B. Deliverable Number 2 – Project Management Services**

| Deliverable Name | Due Date | Compensation |
|---|---|---|
| Project Management Services | To Begin Upon Contract Execution Through June 30, 2022 | · Total Compensation Not to Exceed $259,200 including 5.125% GRT of $13,284; To be Paid Monthly at a Rate of $135 per Hour including GRT, Not to Exceed 480 hours. |

| Task Item | Sub Tasks | Description |
|---|---|---|
| **2.0 Stakeholder Management** | | · Contractor will initiate stakeholders and develop and maintain a current stakeholder registry.<br>· Contract will schedule interviews with stakeholders. |
| **2.1 Gather and Develop Requirements** | | · Contractor will schedule meetings with subject matter experts and stakeholders to gather and develop requirements to be delivered in a Requirements Traceability Matrix.<br>· Contractor will develop and deliver a work breakdown structure. |

| | | |
|---|---|---|
| **2.2 Project Management Plan** | | · Contractor will develop and maintain an updated Project Management Plan to include integration, scope, schedule, cost, quality, resources, communication, risk, procurement and stakeholder plans in Microsoft Word format.<br>· Contractor Project Management Plan shall clearly identify process, procedures and plans for completion of project activities. Project Management Plan shall be reviewed and approved by the Procuring Agency. |
| **2.3 Establish Project Governance** | | · Facilitate the development of an Executive Steering Committee (ESC) and Project Steering Committee in collaboration with the Procuring Agency. Provide organizational charts to include participants and illustrate reporting responsibilities.<br>· Provide project team member management. |
| **2.4 Manage Risks and Issues** | | · Develop risk and issues logs, mitigate risks and manage identified issues through communications with ESC and Project Steering Committee. |
| **2.5 Project Documentation** | | · Develop materials required for Project Certification Committee to include certification request form, presentation, project charter, project management plan and any additionally requested information.<br>· Develop materials required for Technical Architecture Review Committee (TARC) to include TARC request form, system design document, security questionnaire, business continuity plan, operations and support plan, any additionally requested information.<br>· Develop monthly project status reports and deliver to Procuring Agency and epmo@state.nm.us. |
| **2.6 Review and Acceptance** | | · All materials developed for this deliverable will be presented to the Procuring Agency for review and acceptance. |

### C. Deliverable Number 3 – IV&V Initial Assessment

| Deliverable Name | Due Date | Compensation |
|---|---|---|

| | | |
|---|---|---|
| IV&V Initial Assessment | To Begin Upon Contract Execution Through June 30, 2022 | · Total Compensation Not to Exceed $15,181.25 including 5.125% GRT of $778.03; Fixed Cost to be Paid in Full Upon Procuring Agency Review and Acceptance. |

| Task Item | Sub Tasks | Description |
|---|---|---|
| **3.0 Initial Assessment** | 3.1 | The Contractor shall provide an initial review of the activities required early in the project, particularly as it relates to planning. This will include a high-level review of previous activities conducted since project inception. |
| | 3.2 | The Contractor shall assess the project management processes and project organization and verify that lines of reporting and responsibility provide solid managerial/sponsor oversight of the project. |
| | 3.3 | The Contractor shall verify that project team roles and responsibilities of key project personnel are well-defined both for business and technical ownership of the project's tasks and activities. |
| | 3.4 | The Contractor shall evaluate risk and issue management including processes for monitoring and tracking risks and issues. |
| | 3.5 | The Contractor shall evaluate and make recommendations on the estimating and scheduling process of the project to ensure that the project planning assumptions, budget and resources are adequate for the work-breakdown structure and schedule. |
| | 3.6 | The Contractor shall assess coordination, communication and management to verify that the Procuring Agency is communicating appropriately and not working independent of one another. |
| Review and Acceptance | 3.8 | The Contractor shall deliver the report to the Department of Information Technology (DoIT), Project Oversight and Compliance Division at epmo@state.nm.us), the Procuring Agency Chief Information Officer (CIO) and any other designated Procuring Agency recipients for review and acceptance. |

**D. Deliverable Number 4 – Retainage Release [Include for fixed price deliverable contracts over $500,000 or other instances when retainage is held]**

| Deliverable Name | Due Date | Compensation |
|---|---|---|

| | | |
|---|---|---|
| Retainage Release | [Insert date payment is due. | · Total Compensation not to exceed $ Amount, including/excluding GRT.] |

| Task Item | Sub Tasks | Description |
|---|---|---|
| **4.0 Retainage Release** | **Notice of Acceptance of All Deliverables** | Procuring Agency shall release payment for the retainage invoice, representing retainage held against this contract, upon review and acceptance of the Deliverables specified in this scope of work. |

**APPENDIX G**

# Accessibility Features

The categories and features below are carried over from the NM-MSSA summative and should be adapted as developmentally appropriate for grades K-3. At minimum, the platform must support the full range of universal tools, pre-identified supports, and accommodations currently available to New Mexico students.

**Table G1**. Categories Defining Accessibility Features

| Category | Nomenclature | Description |
|---|---|---|
| Level of Restriction | Universal Tool | Available to every student without pre-specification. |
| Level of Restriction | Pre-Identified | Available to every student only upon pre-specification by an educator with a legitimate educational interest. |
| Level of Restriction | Accommodation | Available only upon pre-designation (e.g., for a student with disabilities with an IEP or 504 plan, or for an English Learner upon educator pre-designation). |
| Degree of Integration | Embedded | Built into the digital delivery engine (e.g., pop-up glossary, customizable screen colors). |
| Degree of Integration | Add-On | Not built into the engine but deployed on the same device (e.g., a preferred screen reader installed on the device). |

| Category | Nomenclature | Description |
|---|---|---|
| Degree of Integration | External | Deployed separately from the test device (e.g., speech-to-text on a student's own device, or a paper large-print version). |
| Target Population | All / ELs / SWDs | All students; English Learners; students with disabilities, respectively. |

**Table G2**. Universal Tools, Accessibility Features, and Accommodations (current NM-MSSA set, to be adapted for K-3)

- Answer Eliminator; Answer Masking; ASL Videos; Assistive Technology (presentation and responses); Basic/Scientific Calculator (as grade-appropriate); Bookmark; Braille Notetaker/Writer; Co-Writer; Color Contrast; Commercial Word-to-Word Dictionary; Custom Masking; Customized Dual Language Glossary;
- Directions in Native Language; Expand Passage; Headphones as Noise Buffer; Human Reader; Human Scribe; Human Signer (and for directions); Line Reader; Notepad; Paper Form (and Braille / Large Print); Picture Dictionary; Pocket Word-to-Word Translator; Pop-up Glossary; Protractor; Read Aloud to Self;
- Refreshable Braille Display with Screen Reader; Reverse Contrast; Rich Text Response Tools; Ruler; Screen Reader; Sketch Tool; Spanish Form with Text-to-Speech; Speech-to-Text; Tactile Graphics; Text Highlighter; Text-to-Speech (English or Spanish); Word Prediction; Zoom/Magnifier.

## APPENDIX H

# Acronyms

| Acronym | Full Expression |
|---|---|
| AERA | American Educational Research Association |
| AI / AI RMF | Artificial Intelligence / AI Risk Management Framework |
| APA | American Psychological Association |
| API | Application Programming Interface |
| ASL | American Sign Language |
| ATP | Association of Test Publishers |
| BOY / MOY / EOY | Beginning-, Middle-, and End-of-Year |
| CR | Constructed Response |
| CSV | Comma-Separated Values |

| Acronym | Full Expression |
|---|---|
| DOK | Depth of Knowledge |
| EBSR | Evidence-Based Selected Response |
| ECR | Extended Constructed Response |
| Ed-Fi | Ed-Fi Data Standard |
| EL | English Learner |
| ELA | English Language Arts |
| EOY | End-of-Year |
| ESSA | Every Student Succeeds Act |
| FERPA | Family Educational Rights and Privacy Act |
| GenAI | Generative Artificial Intelligence |
| GSD | General Services Division |
| HITL | Human-in-the-Loop |
| HQIM | High-Quality Instructional Material |
| IDEA | Individuals with Disabilities Education Act |
| IEP | Individualized Education Program |
| ILIAD | Integrated Learning and Intervention Analytics Dashboard |
| IRT | Item Response Theory |
| ISR | Individual Student Report |
| ITC | International Test Commission |
| MC / MP | Multiple Choice / Multi-Part |
| MTSS | Multi-Tiered System of Supports |
| NAEP | National Assessment of Educational Progress |
| NCME | National Council on Measurement in Education |
| NIST | National Institute of Standards and Technology |
| NM / NMAC | New Mexico / New Mexico Administrative Code |
| NM-MSSA | New Mexico Measures of Student Success and Achievement |
| NMPED / PED | New Mexico Public Education Department |
| NM TAC | New Mexico Technical Advisory Committee |
| PLD | Performance Level Descriptor |
| QTI | Question and Test Interoperability |
| REST | Representational State Transfer |
| RFP | Request for Proposals |

| Acronym | Full Expression |
|---|---|
| SB | Senate Bill |
| SCR | Short Constructed Response |
| SIS | Student Information System |
| SME | Subject-Matter Expert |
| SOR | Score of Record |
| SR | Selected Response |
| SWD | Student with Disabilities |
| SY | School Year |
| TEI | Technology-Enhanced Item |
| Tier 2 / Tier 3 | Levels of intervention within an MTSS framework |
| UDL | Universal Design for Learning |
| UID | Unique Identifier |
| WCAG | Web Content Accessibility Guidelines |