

GENERAL PROVISIONS APPLICABLE TO ALL SOCIAL SERVICE CONTRACTS

1. PRECEDENCE OF THIS AGREEMENT

This agreement, including its exhibits cited herein, incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter described herein, and supercedes all prior written and oral agreements, covenants, and understandings between the parties hereto concerning the subject matter described herein.

2. REGULATIONS

All contracts are subject to, and shall be performed in accordance with, the provisions of any appropriate federal and Department Regulations issued pursuant thereto.

3. CONDITIONS CONCERNING PAYMENT

- a. Payments made by the Department utilizing federal and state funds are contingent upon receipt by the Department of currently anticipated funds. In the event of future reductions of such funds the Department reserves the right to reduce payments and services provided for herein, or in the alternative, to exercise the right of termination.
- b. Payments under cost reimbursable contracts will be made upon receipt from the Contractor of certified and documented vouchers for actual expenditures allowable under the terms of the contract.
- c. Payment under unit cost contracts shall be made upon receipt from the Contractor of a certified and documented voucher showing the number of units of service provided during the billing period.
- d. Under unit cost or cost reimbursable contracts it is anticipated that costs will be incurred at an approximate level rate; therefore, if at the end of any quarter the Department determines that the Contractor is underspending or overspending by 5% or more, then the Department may reduce the budget and/or exercise such other budgetary/fiscal controls deemed appropriate.
- e. Vouchers shall not be submitted more often than once a month, but failure to submit vouchers within twenty work days of the close of the month for which payment is sought may result in the non availability of federal funds for reimbursement.
- f. The Contractor certifies and guarantees that any direct or indirect costs claimed pursuant to this agreement will not be allocable to or included as a cost of any other Contractor-operated program, project, contract, or activity.
- g. If applicable, the Contractor shall clearly identify and distribute all costs incurred pertaining to this agreement by a methodology and cost allocation plan at times and in a manner prescribed by, or acceptable to, the Department and to the United States Department of Health and Human Services (HHS).
- h. For the purpose of verifying that the cost of pricing data submitted in conjunction with the negotiation of this contract or any contract change is accurate, complete and current, HHS, the State or its authorized representative shall, for three years from the date of final payment under this contract, have the right to examine the books, records, documents, papers, and other supporting data which directly involve transactions related to this contract, or which are reasonably necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein. Contractor shall retain all such books, records, documents, papers, and other supporting data pertaining to, and reasonably necessary for, the

purpose of this contract for a period of three years following the termination of this contract, or until any pending audits are completed, whichever is later. The State, HHS, the Comptroller General of the United States or any of their duly authorized representatives shall for three years from the date of final payment under this contract or until any pending audits are completed, whichever is later, have access to any books, documents, papers and records of Contractor which are pertinent to this contract and reasonably necessary for the purpose of making audit examination, excerpts and transcripts.

- i. Any purchase discounts, rebates, allowances, recoveries, receipts from sales of publications or property or cash receipts from any other source related to the Contractor's operations in providing services under this agreement shall be deducted from the total cost of the agreement.
- j. Subject to other provisions of this agreement and/or current or subsequent laws, the Department may require the Contractor to develop and implement a fee schedule in the manner, to the extent and at the time that the Department specifies.
- k. Payment for travel expenses shall in no event exceed the legal rates prescribed for State Personnel in the per diem and mileage provisions of Section 10-8-4, NMSA, 1978 (1984 Suppl.).

4. AUDIT

- a. The Department, shall contract for an independent financial and functional audit to be conducted of the Contractor by an auditor licensed in the State of New Mexico. This independent audit of the previous year's contract shall cover compliance with Federal Regulations and all financial transactions hereunder for the entire term of the agreement in accordance with procedures promulgated by the State Auditor of New Mexico for the conduct and report of such audits. In addition, the auditor will include an examination of the eligibility criteria and procedures in use by the Contractor if the Contractor is determining client eligibility.
- b. The audit of the previous year's contract shall be performed and completed six months prior to the expiration of this agreement.
- c. Upon completion of the audit, the Department shall provide the Contractor with a copy of the audit report. Within one month thereafter the Contractor shall provide the Department with a statement indicating the status of each of the exceptions contained in the said audit report.

5. MATTERS AFFECTING CLIENTS

- a. No service shall be rendered to clients by the Contractor, nor shall reimbursement from the Department to the Contractor be forthcoming, prior to certification of client eligibility.
- b. The Contractor shall establish and maintain a system, acceptable to the Department, through which a client may present grievances about the operation of the Contractor services program, as the operation pertains to and affects him. The Contractor will advise clients of this right and of the Department's fair hearings procedures for appeal of the Contractor's denial, exclusion from, or termination of services. The Contractor shall so certify the above, in writing, on the client application form.

- c. The use or disclosure by any person of any information concerning a client for any purpose not directly connected with the administration of the Department's or the Contractor's responsibilities with respect to purchased services hereunder is prohibited, except on written consent of the client, his attorney or his responsible parent or guardian.
- d. The Contractor shall expeditiously furnish the Department with individual client information at the times, to the extent, and in the manner prescribed by the Department.

6. EQUAL OPPORTUNITY

The parties agree that Title VI of the Civil Rights Act of 1964 (42 USC 2000d) and Section 504 of the Rehabilitation Act of 1973, as amended, shall govern the performance of this contract.

The parties agree that Title VII of the Civil Rights Act of 1964 (42 USC 2000e) and Section 503 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against any employee or applicant for employment because of race, religion, color, national origin, age, sex, or handicap shall govern the performance of this contract.

The Contractor agrees to include these requirements in all approved sub-contracts and assignments.

7. CODE OF CONDUCT

Contractors shall maintain a written code or standards of conduct which shall govern the performance of their officers, board members, employees or agents engaged in the award and administration of contracts supported by Department funds. No employee, officer, board member, or agent of the Contractor shall participate in the selection, the award, or the administration of a contract supported by Department funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when;

- a. the employee, officer, board member or agent;
- b. any member of his immediate family;
- c. his or her partner, or;
- d. an organization which employs, or is about to employ, any of the above has a financial or other interest in the firm selected for award.

The Contractor's officers, board members, employees or agents shall not engage in any conflict of interest activities such as offer, solicitation or acceptance of gratuities, favors or anything of monetary value from contractors, potential contractors, or parties in subagreements.

Contractor may set rules of conduct which allow for the acceptance of awards or gifts intended to recognize community or professional service and which are unsolicited and of nominal value.

8. PROGRAM RECORDS AND REPORTS

- a. The Contractor will maintain program records required by the Department including, but not limited to, individual eligibility determination, service plans and narrative and statistical data at times, to the extent, and in the manner prescribed by the Department.
- b. The Contractor agrees that a program and facilities review — including, but not limited to, meetings with consumers, review of service records and plans, review of service policy and procedural issuances, review of staffing ratios and job descriptions and meetings with any staff directly or indirectly involved in the provision of services hereunder — may be conducted at any reasonable time by the Department, the State of New Mexico and the United States of America.

- c. The Contractor shall assure free and unrestricted access to Contractor program documents, program operational and policy making activities and all meetings pertaining to the program by the authorized officials of the Department and the United States of America (i.e. liaison, evaluation, the Department's contract services staff and audit staff), to insure compliance with the terms and conditions of this agreement.

9. RIGHT TO DATA

- a. The Department and persons authorized by the Department may duplicate, use and disclose, in any matter and for any purpose whatsoever, all data delivered or furnished by the Contractor to the Department under this agreement.
- b. The Contractor hereby grants to the Department and persons authorized by the Department a royalty free, non-exclusive and irrevocable license to publish, translate, reproduce, deliver, perform and dispose of all data or inventions now or hereafter covered by copyright or patent; provided, however, that with respect to data not originated in the performance of this agreement, such license shall be granted only to the extent that the Contractor has the right to grant such license without becoming liable to pay compensation to others because of such grant.
- c. The Contractor shall exert all reasonable effort to advise the Department at the time of delivery of data furnished under this agreement of all invasions of the right of privacy contained therein and of all portions of such data copied from work not composed or produced in the performance of this agreement and not licensed under this clause.
- d. All materials developed or acquired by Contractor under this agreement shall become the property of the State of New Mexico and shall be delivered to the Department not later than the termination date of this agreement. Nothing produced in whole or in part by the Contractor under this agreement shall be the subject of an application for copyright by or on behalf of the Contractor without the prior written approval of the Department.
- e. The Contractor shall not affix any restrictive markings upon data, and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such markings.
- f. Items provided by the Department to the Contractor for free public distribution shall be distributed at no cost.

10. LICENSING

The Contractor shall comply with all state and Federal licensing standards, all applicable accrediting standards and any other standard or criteria established or ordered by the Department to assure quality of services.

11. INDEMNIFICATION

- a. The Contractor shall, at all times during the term of this agreement, indemnify and hold harmless the Department against any and all liability, loss, damage, costs or expenses which the Department may sustain, incur or be required to pay (1) by reason of any client suffering personal injury, death or property loss or damage either while participating with or receiving care or services from, the Contractor under this agreement; or while on premises owned, leased, or operated by the Contractor; or while being transported to or from said premises in any vehicle owned, operated, leased, chartered, or otherwise contracted for by the Contractor or any officer, agent, subcontractor or

- employee thereof; or (2) by reason of any client causing injury to, or damage to the property of, another person during any time when the Contractor or any officer, agent, employee or subcontractor thereof has undertaken or is furnishing the care and services called for under this agreement; *provided*, however, that the provisions of this clause shall not apply to liabilities, losses, charges, costs or expenses caused by, or resulting from, the acts or omissions of the Department or any of its officers, employees, agents, or representatives.
- b. In the event that any action, suit or proceeding is brought against either party to this agreement, said party shall, as soon as practicable, but within ten (10) days of such action, suit or proceeding, cause notice in writing thereof to be given to the other party by certified mail addressed to its post office address.

12. INSURANCE

- a. The Contractor shall obtain and maintain at all times during the term of this agreement a liability insurance policy issued by an insurance company licensed to do business in the State of New Mexico, which policy shall include the area(s) covered by this agreement with adequate liability insurance coverage provided for therein of at least \$100,000 for property damage sustained by any one person, and \$300,000 for injuries and/or damages to any one person, and \$500,000 for total injuries and/or damages arising from any one accident. The Contractor shall furnish the Department with written evidence of such insurance coverage.
- b. The Contractor shall secure adequate fire and extended hazard insurance on all property in the custody of the Contractor which is furnished or owned by the Department or in which the Department has a financial interest.

13. BONDING

- a. The Contractor shall obtain and maintain at all times during the term of this agreement a blanket Fidelity Bond covering the activities of the Contractor in an amount of at least 25% of the total dollar amount of the current budget incorporated herein. The Contractor shall furnish the Department with a copy of the Bond certificate within thirty (30) days of the effective date of this contract.
- b. The Department will require the Bonding company to notify the Department in writing of any change in the Contractor's Bond status within 24 hours of such change.

14. POLITICAL ACTIVITY

No funds received hereunder shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

15. PROPERTY

- a. Title to all property furnished to the Contractor by the Department shall remain in the Department. Title to all property acquired by the Contractor in part or whole (including purchase by lease-purchase agreement for the cost of which the Contractor is to be reimbursed under this agreement) shall immediately vest in the Department upon reimbursement of the cost thereof by the Department.

- b. The Contractor shall maintain a current property inventory record and shall establish and administer, in accordance with sound business practices, a program for the maintenance, repair, protection and preservation of the Department property so as to assure its full availability and usefulness for the performance of this agreement.
- c. Department property shall, unless otherwise provided herein or approved in writing by the Department, be used only for the performance of this agreement.
- d. In the event that the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of, or damages to, Department property, the Contractor shall use the proceeds to repair, renovate or replace the Department property involved, or shall credit such proceeds against the cost of the work, or shall otherwise reimburse the Department as directed by the Department.

16. ASSIGNMENT

The Contractor shall not assign this agreement without prior written approval of the Department and, if assigned, the assignment will be subject to all terms, conditions and provisions of this agreement. No such approval by the Department of any assignment shall be deemed to provide for the incurrence of obligation of the Department in addition to the total dollar amount of the current budget incorporated herein.

17. SUBCONTRACTING

The Contractor shall use the Department's guidelines, regulations, directives and format for all subcontracts. The Contractor is solely responsible for the performance of any subcontractor under such subcontract(s).

18. FORGIVENESS FOR NONPERFORMANCE

Neither party hereto shall be held responsible for delay or failure to perform hereunder when such delay or failure to perform hereunder when such delay or failure is due to fire, flood, epidemic, strikes, acts of God or the public enemy, unusually severe weather, legal acts of the public authorities or delays or default caused by public carriers, which cannot reasonably be forecast or provided for.

19. DISPUTES

Subject to any other provisions under this agreement, the means, ordered steps and time frames for handling disputes between the two parties to this agreement are set forth as follows:

- a. **First Step:** A dispute arises. If, in their dealings with one another, the Contractor and the Department's Contract Manager cannot, between themselves, resolve a question of fact arising under this agreement and have not disposed of such a question by ordinary negotiations, compromise, communication or agreement, then a dispute has been constituted. The Contractor or the Department shall furnish to the other a written statement of the dispute including proposed provisions for relief. If the dispute remains unresolved, the Department's Contract Manager shall promptly make and reduce to writing his written decision and reasons thereof, and cause it to be delivered via certified mail, to the Contractor within ten (10) working days of such decision. The decision of the Department's Contract Manager shall be final and conclusive unless, within ten (10) working days from the date of said decision, the Department receives from the Contractor a written request for appeal of said decision and the reasons therefor.

b. **Second Step: Appeal to the Social Services Director.** The Contractor's written request for appeal shall be addressed to the Director of the Social Services Division. The Social Services Director or her designee shall inquire into the facts concerning the dispute and render a written decision to the Contractor within ten (10) working days of receipt of the appeal. The decision of the Social Services Director shall be final and conclusive unless, within ten (10) working days from the date of said decision, the Department receives from the Contractor a written request for appeal of said decision and the reasons therefor.

c. **Third Step: Appeal to the SECRETARY.** The Contractor's appeal shall be addressed to the Department's SECRETARY. Upon receipt of such an appeal the SECRETARY or his authorized representative shall make prompt arrangements to meet with the Contractor to review the material considered by the Division Director in reaching the second step decision. Within ten (10) working days of such meeting, the SECRETARY shall reduce to writing and cause to be delivered to the Contractor, via certified mail, his decision and reasons therefor. The decision of the SECRETARY shall be final.

The disputes and procedures as outlined in this clause do not preclude the alternative of either party hereto appealing to a court of competent jurisdiction; provided, however, the parties hereto shall mutually abide by the procedures provided for in this section.

20. TERMINATION

- a. **Termination at will without cause:** This agreement may be terminated by either party at any time without cause upon sixty (60) days notice in writing delivered by certified mail or in person to the other party.
- b. **Termination because of lack of funds:** It is further agreed that in the event payment or reimbursement to the Department from the State of New Mexico or Federal sources is not obtained and continued at an aggregate level sufficient to allow for the purchase of the indicated quantity and quality of services hereunder, the obligations of each party shall thereupon be terminated; provided, however, that any termination of this agreement shall be without prejudice to any obligation or liability incurred by either party prior to such termination.
- c. **Termination for default:** In the event of Contractor default the Department may, by written notice to the Contractor, terminate the whole or any part of this agreement in any of the following circumstances:
- (1) If the Contractor fails to provide the quantity and quality of client services called for under this agreement, the contract may be terminated immediately.
 - (2) If the Contractor fails to comply with any other of the terms, conditions or provisions of this agreement, the Department shall so notify the Contractor in writing, and should the Contractor not remedy such failure within a period of ten (10) working days for such longer period as the Department may authorize in writing, the contract may then be terminated.

21. TERMINATION AGREEMENT

- a. If this agreement is terminated, the Department, in addition to other rights provided in this clause, may require the Contractor to deliver and/or make readily available to the Department property in which the Department has a financial interest and any and all data, inventions or property specifically produced or acquired under this agreement.

- b. The Department shall reduce to writing and cause to be delivered, via certified mail, notice of termination and the reasons therefor, to the Contractor.
- c. In the event this agreement is terminated by the Department, immediately as of the date of Contractor's receipt of such notice of termination, the Contractor shall:
- (1) incur no further financial obligations for materials, services or facilities without prior written approval of the Department.
 - (2) terminate all purchase (procurement) orders and subcontracts and stop all work to the extent specified in the notice of termination, except as the Department may direct for orderly completion of termination.
 - (3) settle all outstanding liabilities and all claims arising out of such termination.
 - (4) take such action as the Department may direct, for the protection and preservation of all property and all records related to and required by this agreement.
 - (5) notify all current Contractor clients (applicants for and recipients of services) in writing of said termination within five (5) working days of the date of Contractor receipt of such notice of termination.
 - (6) deliver to the Department's representative all program and fiscal records then in the possession of the Contractor.

22. STATUS OF PROVIDER

The Contractor, his officers, agents, employees and subcontractors are independent contractors and by virtue of provision of services under this agreement are not employees of the State of New Mexico and therefore shall not accrue any State benefits, nor rights and privileges afforded only to State of New Mexico employees.

23. RELEASE

Upon final payment of the amounts due under this agreement, the Contractor shall release the Department, its officers and employees from all liabilities and obligations whatsoever under, or arising from, this agreement. The Contractor shall not purport to bind the Department to any obligation not assumed herein by the Department unless the Contractor has express written authority from the Social Services Division Director to do so, and then only within the strict limits of that authority.

24. PUBLICITY

Notices, informational pamphlets, press releases, research reports and similar public notices related to services under this agreement, prepared and released by the Contractor, shall include the statement:

"This project is funded (in part) under an agreement with the State of New Mexico Human Services Department."

25. AMENDMENTS

Any changes, alterations, additions or deletions to this agreement shall be valid only when reduced to writing and executed by the parties hereto. Amendments which increase the total dollar value of the contract must also be approved by the Department of Finance and Administration.

26. EXPIRATION OF CONTRACT

This contract shall expire on the date specified in Article I, Period Of Contract, of this agreement unless amended pursuant to General Provision 25, Amendments.