

STATE OF NEW MEXICO

NEW MEXICO DEVELOPMENTAL DISABILITIES PLANNING COUNCIL
OFFICE OF GUARDIANSHIP
PROFESSIONAL SERVICES CONTRACT #
Corporate Guardian

THIS AGREEMENT is made and entered into by and between the State of New Mexico **Developmental Disabilities Planning Council, Office of Guardianship**, hereinafter referred to as the "Agency" and _____, hereinafter referred to as the "Contractor."

1. Scope of Work

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

A. The Contractor shall provide guardianship and limited guardianship services for disabled or incapacitated income-and resource- eligible adults. A client is income and resource eligible if his or her income does not exceed 225% of the federally established poverty level as that term is defined by the Federal HHS Poverty Guidelines and if countable resources do not exceed \$2,000.00. (For 2009-10, income level could not exceed \$24,368.00; this number may change from calendar year to calendar year and the eligibility would change accordingly.) Burial accounts up to \$1,540.00 are not included in countable resources.

B. The Contractor shall provide services to New Mexico residents who are over eighteen (18) years old with a primary diagnosis of a mental defect due to a disease process or congenital defect (for example: a developmental disability, traumatic brain injury, behavior health disorder, dementia or other related conditions) that affects the adjudicated incapacitated person's ability and capacity to care for him/herself. The Contractor shall be the "guardian of last resort" and if family members come forward later and are willing and capable of providing guardianship support, the Contractor will withdraw as the proposed guardian.

C. For a guardianship where the proposed guardian is not a contracted service provider, the proposed guardian's gross income must not exceed three hundred percent (300%) of the federally established poverty level as that term is defined by the federal HHS Poverty Guidelines. Proof of income is required and is determined in one of two ways:

(1) Providing the NMDDPC a copy of the proposed guardian's federal income tax return (first two pages of 1040 or 1041) for the year prior to the year in which application is made; or,

(2) Proof of qualification by the proposed guardian under any federal or state program with income restrictions equal to or greater than that required above.

D. Upon written and signed agreement by both parties, the contract may be amended.

E. Services shall be provided in accordance with the laws of the State of New Mexico, specifically, the NMSA 1978, 45-5-101 through 45-5-617, NMSA 1978, 28-16B-1 through 28-16B-6, the regulations promulgated under NMAC 9.4.21, the terms of this contract, and a generally recognized professional standard for guardianship services, such as the Ethics and Standards for Guardians provided by the National Guardianship Association (NGA) or other recognized standards.

F. The Contractor shall establish and implement written procedures which will allow applicants or recipients to present grievances relating to the Contractor's operations or services. The grievance procedures shall meet the requirements of the Agency's regulations. The Contractor shall ensure that client's rights are protected in the delivery of services.

G. Services shall be provided according to priority of need based upon a comprehensive assessment and date of referral and order of placement on a waiting list, if a waiting list exists. Sometimes appointments may occur out of turn because of emergencies, court priorities and the wait for scheduling of hearings that may occur in some districts.

H. The Contractor shall use competent professional staff (determined by education, experience, and skill) to be guardianship coordinators and guardianship coordinator assistants to perform the contracted services. The Contractor shall require that guardianship coordinators have successfully completed the Guardianship Examination through the National Guardianship Association and are designated as Registered Guardians within eighteen (18) months of employment. The Contractor shall document staff job descriptions and qualifications for each staff member and make such documents available to the Director of the Agency (hereafter referred to as Director), upon request. The Contractor shall implement the Caregiver's Criminal History Screening Act, and shall disclose any criminal convictions of staff lawsuits the Contractor has been involved in within the past five (5) years and the status of the lawsuits.

(1) The Contractor as guardian will be responsible for decision-making in all major life areas (except those excluded by court order on limited guardianship) including care, comfort, custody, maintenance, programming, education, training, medical and other treatment and residential placement of the adjudicated incapacitated person - in the least intrusive, least restrictive manner possible (NGA Standards of Practice #9 - Least Restrictive Alternative).

(2) Wards may be assigned to specific coordinators (where there is more than one) based upon the ward's preferences (e.g., language spoken, male or female) and the skills of the guardianship coordinator.

(3) The ward's Individual Service Plan (ISP) or Interdisciplinary Team (IDT) is the guideline for the contractor to act as guardian, to assure that the ward's realistic vision is present in the ISP, and to make sure that actual progress is being made towards that vision. During site visits with the ward, the contractor and other members of the ISP team will strive to determine an individual's satisfaction with services and/or his/her quality of life. If there is no formal plan of services, monitoring will occur in a similar fashion (but without reliance on an ISP).

(4) Participation in the Individualized Service Planning (ISP) process is a priority for the Contractor acting as a guardian as a means of assuring adequate participation of each adjudicated incapacitated person in each meeting. The Contractor, as guardian, may request an Interdisciplinary Team (IDT) meeting to revise and update the ISP whenever an adjudicated incapacitated individual demonstrates a new preference, strength or interest or if the working plan becomes unworkable.

(5) The Director of the Agency is responsible for program management activities and allocated funding is located at:

New Mexico Developmental Disabilities Planning Council
Office of Guardianship
810 W. San Mateo, Suite. C

Santa Fe, NM 87505-4144
(505) 476-7324
Fax: (505) 467-7322

I. In no event shall a guardianship coordinator carry a caseload of more than thirty (30) clients except in temporary, extraordinary circumstances. Caseloads must be limited to the extent that at least one visit per month per ward by the ward's Guardianship Coordinator is completed (NGA). The Contractor shall include in its quarterly report the caseloads of each guardianship coordinator, identified by the specific client service type (e.g. temporary, limited, plenary guardianship).

J. Case File Management

(1) The Contractor shall maintain current, complete, and comprehensive case files on each eligible client containing the following information:

- a. A client intake form and referral forms and/or other information;
- b. A regularly updated background information form;
- c. Financial eligibility information;
- d. All legal documents (Letters and Orders of Guardianship and an annual Guardianship Report for those individuals with Guardianships in place after 1989, etc. that authorize the Contractor to act on behalf of the client.
- e. A copy of the client grievance procedures form signed by the client or his/her appropriate representative.
- f. Previous comprehensive assessments conducted by physicians, psychiatrists or other evaluators that can provide critical information about past history and service;
- g. Current medical, therapeutic and other assessments;
- h. The Individualized Service Plan (ISP), Individualized Program Plan (IPP) for clients in Intermediate Care Facilities for the Mentally Retarded (ICF/MRs), or Individual Treatment or Education Plans for clients in other settings;
- i. The Plan of Care or Waiver Budget, if an individual receives these services;
- j. Personal financial information such as quarterly reconciliations of checking accounts and an inventory of personal property receipts;
- k. A detailed client budget where appropriate;
- l. Values histories form, where appropriate;
- m. Copies of consents, releases and freedom of choice selections;
- n. The client's case notes, visitation summaries and record reviews;
- o. Incident reports and record of all incident investigations with findings and outcomes;
- p. Correspondence, including requests for dispute resolution, letters and memoranda documenting concerns;

- q. All supervisory reviews, memos and notes, if applicable;
- r. Personal identification information for each individual such as birth certificates and social security information;
- s. Any other information sufficient to provide a full picture of the individual's status.

(2) In cases where limited services are provided, the file shall contain only those items on the above list that pertain to the services provided.

K. Grievance Procedures

(1) The Contractor shall include the mechanism used to initiate and implement the grievance process that meets the following standards. The purposes of the grievance procedure are to provide for an internal, informal process for swift resolution of disputed issues that affect the individual client and to document the resolution of the dispute.

(2) The Contractor shall establish and implement written procedures available to all applicants for and recipients of services to present grievances relating to the Contractor's operations or services. The written procedures shall include, at a minimum, that:

- a. The client is notified of the grievance procedure in language/communication style that he or she best understands;
- b. That a complaint may be made orally or in writing by the client or another person on behalf of the client, including but not limited to a friend, relative, advocate, or other interested person, such as a caregiver or provider;
- c. That an impartial person or representative of the Contractor, who may be an employee, shall discuss the complaint with the client and complainant, if the complainant is not the client;
- d. Make a determination about the complaint, in writing, within fifteen (15) working days of receipt of the complaint;
- e. Forward the complaint resolution, in writing, to the complainant, and maintain a copy in the client's file;
- f. Explain the complaint resolution to the client in terms that he/she may best understand and document the explanation, including date, time and person making the explanation;
- g. Forward documentation (an investigative summary) on how determination was made for all resolved complaints and the written resolution to the Agency within five (5) working days of the determination; and,
- h. All unresolved complaints/grievances must be forwarded to the Agency within two (2) working days of the 15-day deadline for grievance resolution.
- i. Full cooperation with the Agency by the Contractor for any and all unresolved grievances to allow the Agency to investigate and make a determination regarding the unresolved grievance.
- j. Guardianship appointments are to be reviewed twice a year at an individual's ISP meeting with the Interdisciplinary team (IDT). Both the individual served and any

other team members may register complaints or concerns at any time.

k. The Contractor shall mail to the Agency a copy of any complaint filed by the Contractor as guardian against a governmental entity, law enforcement officer, or public employee. The mailing of a copy of the complaint to the Agency under this contract provision is not service of process upon the State of New Mexico (use the procedure set forth under the Rules of Civil Procedure for the District Court).

l. The Contractor shall mail to the Agency a copy of any complaint filed by the Contractor as guardian against any defendant.

m. The Contractor shall send to the Agency by common, contract or private carrier a copy of any court or administrative action filed against the Contractor as guardian or against the Contractor if the action alleges conduct that would constitute a violation of the terms of the contract, for example, actions alleging employment discrimination. The Contractor shall send described documents within 48 hours of the receipt of the action by the Contractor. The documents must be received by the Agency within 72 hours of the receipt of action by the Contractor.

n. The Contractor shall notify the Agency of the death of any client in writing and to the court of jurisdiction, any life threatening injury or occurrence involving a client, and any serious injury sustained by a client.

o. Notification must occur within 24 hours of the occurrence of the event. If the event occurs at night, or during a weekend or holiday, notification shall be made by leaving a message on the voice mail of the Agency. Telephone voice mail notification shall include the name of the caller, date and time of the call, the name and location of the client, and a brief description of the event.

p. The grievance procedure is subject to amendment and approval by the Agency.

L. Geographic Scope of Services

Within the constraints of the contractor's allocated funds and ability to supply appropriate services and support, the contractor will supply professional guardianship services to primarily (but not limited to) the Bernalillo county area.

M. Civil Rights

(1) The Contractor shall ensure that clients' civil rights are protected. An incapacitated person for whom a guardian has been appointed retains all legal and civil rights except those that have been expressly limited by court order or have been specifically granted to the guardian by the court, including, with/without limitations:

- a. The right to be free from unlawful discrimination;
- b. The right to be treated humanely, with dignity and respect, and to be protected against emotional or psychological abuse, physical abuse, sexual abuse, neglect, and exploitation;
- c. The right to be served in the most integrated setting appropriate to the needs of the individual;
- d. The right to practice the religion of his or her choice, or to abstain from the

practice of religion;

- e. The right to receive visitors and communicate with others;
- f. The right to privacy;
- g. The right to participate in the political process, including the right to vote;
- h. The right to voice grievances and complaints without interference, coercion,

or reprisal;

- i. The right to counsel and access to available advocacy services;
- j. The right to have access to the courts;
- k. The right to receive services to which he or she is entitled;
- l. The right to be restored to capacity at the earliest possible time;
- m. The right to have review of the need for restriction of rights;
- n. The right to have a qualified guardian;
- o. The right to remain as independent as possible;
- p. The right to determine his or her place of residency, or to have his or her

preference honored;

q. The right to own, use, and control his or her property, or to have his or her property managed prudently and to have timely information about how his or her property is being managed;

r. The right to consent to or refuse medical treatment, unless a treatment guardian is appointed for mental health treatment purposes only (Mental Health and Developmental Disabilities Code: 43-1-15 NMSA, 1978);

- s. The right to seek or retain employment;
- t. The right to travel (if appropriate); and
- u. The right to notice of all proceedings relating to his or her capacity.

N. Records/Record Maintenance

(1) When requested, or during a visit of the ward by the Agency, the Contractor will immediately produce all records of the client. If the Contractor cannot produce the records immediately, it will produce those records at the Agency on or before the close of business the day following the request. If the Contractor fails or refuses to produce the records on or before the close of business the day following the request and does not produce those records without good cause, such failure will constitute a breach of contract and, at the discretion of the Agency, may result in no monthly payment to the Contractor for that ward or client for the month the records were not timely produced. See also the section below regarding "Corrective Action Plan."

(2) The contractor will maintain a sign in sheet for each case showing the name and date of anyone who has access to the file.

(3) The Contractor may maintain detailed records that specifically indicate the date, amount of time (in quarter (0.25) of an hour increments) and nature of all services rendered and the

identification of the person(s) providing the specific services to each client. This information is to be included in the monthly billing from the Contractor to the Agency.

(4) All billing and case file records shall be subject to immediate inspection and copying by the Agency, the New Mexico Department of Finance and Administration and the New Mexico State Auditor. The Agency shall have the right to audit all billings and monthly reports both before payment is made and for five years after payment has been made. Payment pursuant to the contract shall not foreclose the right of the Agency to recover any excessive, illegal and/or improper payments made to the Contractor.

(5) The Contractor will provide a financial and compliance audit report to the Agency covering the immediate past fiscal year as soon as it is available.

(6) The Contractor shall submit a quarterly report that includes the following data for each month:

- a. The number of clients (unduplicated count) in each type of service;
- b. The caseload of each guardianship coordinator;
- c. The total number of written internal complaints/grievances, broken down into resolved and unresolved;
- d. The number and percent of the total grievances for each month that were resolved, and the number of days required to resolve each grievance;
- e. The number and percent of the total grievances for each month that were unresolved within the 15-day window, the date the Contractor received the grievance and the date the Contractor reported the unresolved grievance to the Agency;
- f. The year to date total billable hours and total amount expended by each type of service;
- g. The average per capita monthly cost for each type of service;
- h. The year to date total contract amount expended. The quarterly report shall include a section related to services provided to new/released clients (i.e., the number of new clients for that quarter and the number of clients released from service);
- i. The quarterly report shall be submitted no later than the last day of the month following the end of the reporting quarter.

(7) Contractor's Documents Available for Program Review:

a. The Director or their designee periodically may conduct an independent comprehensive program review, which may consist of an examination of some or all of the following program requirements:

- (i) Clients are living in clean, safe, normalized conditions that are least restrictive, promote independence and autonomy, and are appropriate to their needs;
- (ii) The program establishes and implements an adequate grievance procedure, accessible to all clients;
- (iii) Clients' rights are adequately safeguarded;
- (iv) Termination of client services is appropriate under the circumstances;

(v) The staff is qualified by education, training, and experience to perform the duties of guardian under the National Guardianship Association standards;

(vi) The program adopts and implements policies and procedures that are consistent with nationally recognized standards for guardians, such as the National Guardianship Association.

(vii) The program maintains an internal quality assurance mechanism;

(viii) The program complies with contract terms and conditions, including maintenance of client files and minimum and maximum caseload limitations;

(ix) The program maintains insurance and bonding requirements; and,

(x) The program maintains adequate billing and accounting records sufficient to verify compliance with the contract.

(xi) The comprehensive program review may be conducted annually, provided, however, that a follow-up review of identified program deficiencies may be conducted if necessary in the opinion of the Director to ensure the delivery of quality services consistent with the terms of the contract. The program review and quarterly reports may be used to obtain data concerning demographic and statistical information and to analyze use of services. The data may be used to establish program priorities.

O. Outside Auditor

At the discretion of the Agency, an outside CPA may be brought in to audit the guardianship services contractors billing for cases that are funded by the Agency only. A two week advanced written notice of such an audit will be given to the contractor.

P. Evaluations for Appropriate Guardianship Levels (Comprehensive Ward Evaluations). This section is a summary of NMAC 9.4.21.18 which the Contractor should review. If there is any difference between this language and that of the regulations, the regulations will prevail.

(1) The Contractor will allow comprehensive ward evaluations of any or all of its clients that have not been evaluated in the last five years:

a. The Contractor will provide a list of clients it believes may benefit from a comprehensive ward evaluation to the Agency within thirty (30) days after the date the Contractor signs this contract. Time is of the essence.

(i) If the Contractor has clear and convincing evidence that a ward does not need an evaluation, the Contractor will provide to the NMDDPC office of guardianship a short description explaining why the ward should not be evaluated.

(ii) The Agency then may review the ward's files to determine if the Ward should undergo an evaluation, and, if the Agency feels the ward should be evaluated, will send a notice of that determination to the Contractor.

(iii) If a Contractor disagrees with the Agency determination, the Contractor will notify the Agency and set up a meeting within ten (10) business days at the Agency's office in Santa Fe to attempt to resolve this issue.

(iv) If the parties come to an agreement, the ward may or may not undergo an evaluation depending on the agreement reached by the parties

(v) The NMDDPC office of guardianship will confirm the outcome of the meeting by letter (outcome letter) within two working days of the meeting between the parties.

(vi) If there is no agreement, the NMDDPC Office of Guardianship may, within fourteen (14) working days from the date of the outcome letter, petition the court in which the guardian was appointed to have the ward evaluated.

b. The evaluations will be done by the appropriate entity designated by the Agency.

(i) The designated entity will set up the appointments.

(ii) The Contractor will provide written authorization for the individuals listed in the agreed upon list for a comprehensive ward evaluation. In addition the guardian will provide, at the time and place of the evaluation, the following documents;

(a) previous medical history;

(b) previous assessment history of the ward of which some information may come from the DD Waiver program;

(c) name of the ward, living arrangements of the ward, including contact information;

(d) the current level of guardianship; and

(e) a completed questionnaire from the home-base provider of a questionnaire provided the Contractor by the Agency.

c. Cancellation of an appointment for a comprehensive ward evaluation by the guardian will be accepted only under the circumstances where attendance is under court review, impossible or poses a grave health risk to the client. In addition to breach of contract, a “no show” by the client may, at the discretion of the Agency, result in no monthly payment for that client for the month the “no show” occurred.

Q. Treatment of Others

In accordance with the National Guardianship Association Standard of Practice Number 5 I., all guardianship service providers (and their employees) under contract with the Agency will treat all contacts with a ward’s matters with kindness and respect. The Agency will receive and investigate written complaints on the treatment of others against any contracted guardianship service provider. Hostility and aggression towards another family member, friend, professional or other service provider will NOT be tolerated. If after a thorough investigation, the incident is found to have occurred, a reprimand will be issued and documented in the file of the contractor. After any such occurrence, possible sanctions or a corrective action plan (CAP) (infra – paragraph 17 below) may be implemented by the Agency.

R. Incident Reporting

(1) The Contractor will provide the following information regarding the incidents of allegations of abuse, neglect or exploitation to the Agency:

a. On a quarterly basis, copies of all closed reports from DHI and Adult Protective Services (if received) noting whether the case was confirmed or substantiated or unsubstantiated;

b. Copies of all correspondence made to the Division of Health Improvement (DHI), Licensing and Certification at DOH, Adult Protective Services or Medicaid Fraud involving a ward or group of wards where a concern has arisen regarding abuse, neglect, exploitation or rights violations may have occurred;

c. Copies of all tort claim notices provided to the Risk Management Division of state agencies including health, human services, adult protective services and aging and long-term care.

S. Other New Mexico Agencies Appointing the Contractor to Serve as Guardian

In the event another New Mexico State Agency - such as Adult Protective Services (APS) - requests the Contractor to act as a guardian on one of their cases, before the Contractor can accept appointment, they must notify the Agency of the request and obtain approval. The Agency determines who will act as guardian and it may not be the Contractor making the request.

T. Corrective Action Plan

(1) If the guardianship services contractor fails to meet its performance or program related obligations under the negotiated contract, the Agency, at its sole discretion and depending on the circumstances, may implement a corrective action plan. The Agency shall notify the guardianship services contractor in writing of the deficiencies leading to the need for a corrective action plan.

(2) Upon receipt of the written notification, the guardianship services contractor shall develop a corrective action plan within twenty one (21) days addressing the following items:

- a. Identification of the problem and areas that need to be addressed;
- b. The “pro-active” steps to be taken to resolve the issues;
- c. The time frames necessary for completion of each step to be taken to resolve the issues; and
- d. The names of the persons responsible for each of the corrective action steps.

(3) If the identified areas are addressed and resolved within thirty (30) days from the date of written notification by the Agency, a follow-up review will be conducted by the Agency and if all is found to be in compliance, the corrective action plan will not be implemented.

(4) If a corrective action is necessary, then on the date of implementation (which would be the 31st day after the initial written notification), the guardianship services contractor shall have a maximum of ninety (90) days to achieve full compliance with the CAP.

a. The Agency shall withhold 10% of the guardianship services contractor's reimbursement for the first month of noncompliance, 15% of the guardianship services contractor's reimbursement for the second month of noncompliance and 20% of the reimbursement for the third month of noncompliance.

b. The withholding for any given month shall remain in effect, even if the guardianship services contractor comes into compliance during that given month.

c. The Agency shall proceed to terminate the guardianship services contract if

all noted deficiencies in the CAP are not corrected to the Agency's satisfaction within ninety (90) days after the implementation date of the CAP.

(5) The Agency, at its sole discretion, may reallocate monies withheld as a sanction. The guardianship services contractor shall have neither a claim upon nor opportunity to recoup monies withheld as a sanction.

(6) The Agency will remove any sanctions imposed upon the Contractor if it determines that the guardianship services contractor has met its performance or program related obligations during a subsequent month. The payment process will then resume pursuant to the requirements of the contract.

U. Resignation and Termination as Guardian under the Contract

If the professional guardianship service contractor wants to resign from or terminate their serving as a court appointed guardian (for any reason other than the death of the incapacitated person) for a ward under which payment is made through this contract, the contractor must notify the Agency of the contractor's intent to resign or terminate a guardianship and the reason for doing so 10 days prior to the filing of the petition for resignation, restoration or successor guardianship order.

V. MANDATORY CONTRACTORS MEETING

There will be MANDATORY Contractors' meetings that the Contractor or their representative must attend. The Contractor will be charged with knowing and complying with all information presented at this meeting. Prior notification of meeting date, time and location will be sent to each contractor 30 days in advance.

W. Insurance and Bond Requirements

The Contractor shall maintain professional liability insurance/contractors liability insurance in an amount no less than \$500,000.00. Within thirty (30) days of the effective date of the contract, the Contractor shall provide copies of these insurance policies to the Agency.

X. No Overspending the Contract

Professional Guardianship Service Providers will not overspend their contract. There is no statutory requirement that the Agency pay for court appointments beyond the contracted amount. Any cases taken after the contracted funds are expended will result in the professional guardianship service provider paying for such services out of its own funds. Because of the limitation on available funds, the contractor may reserve the right to limit its acceptance of new guardianships (as long as services are being provided to 30 eligible, unduplicated clients, per month) during the contract period during the fiscal year if funds are not available to support the activity.

Y. Performance Measures, default by Contractor:

Contractor shall substantially perform the Performance Measures set forth in Attachment 1. In the event the Contractor fails to obtain the results described in Attachment 1, the Agency may provide written notice to the Contractor of the default and specify a reasonable period of time in which the Contractor shall advise the Agency of specific steps that it will take to achieve these results in the future and the timetable for implementation. Nothing in this subparagraph shall be construed to prevent the Agency from exercising its rights pursuant to Paragraph 4 below.

2. Compensation

A. The Contractor shall provide services to no more than _____ eligible, unduplicated clients, per month, during the contract period. The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work rendered at the rate of \$304.16 per person per month, such compensation not to exceed \$3,650.00 per person in any one year, excluding gross receipts tax. The total amount of the monies payable to the Contractor under this Agreement shall not exceed \$_____ during the term of the contract.

(1) The Agency will reimburse the Contractor monthly upon submission of a billing report that documents the specific services rendered to eligible clients at a unit rate of \$3,650.00 per person per year or \$304.16 per month.

(2) The report format shall be approved by the Director and may require use of specific billing program and submission of the report on diskette. The Contractor shall neither bill nor collect gross receipts tax for these services.

B. The monthly billing report shall document specific services performed for each client as follows:

(1) The specific services performed (guardianship coordinator or guardianship coordinator assistant services) for each client, as identified by client number, client's initials, and client's legal status;

(2) A copy of the Letters of Guardianship issued;

(3) The total amount of time in hours expended on services for each client for the reporting period, identified by the specific service rendered. Partial hours shall be reported in one quarter (0.25) of an hour increments;

(4) The identity of the person(s) providing services for each client;

a. An unduplicated count of the number of clients served; and

b. The client waiting list, identified by geographic location and status of the proposed client (including estimated time before proposed client will receive services.)

(5) To protect confidentiality, a client number and initials must identify each client receiving services. Client names must be made available to the Agency staff designated to monitor or audit the Contractor.

C. The Contractor shall bill for allowable services rendered for eligible clients receiving court appointed guardianship or limited guardianship services at an annual unit rate of \$3,650.00 per person. This will be paid in installments over the 12-month period. When a new individual is added to the contractor's list of clients, the month that the Contractor is appointed guardian for the client is the first month that payment will be allowed. The date of death, resignation or restoration order of a client will be the last month that payment will be allowed for that client. Allowable services are described in the scope of work.

D. The Agency shall make every effort to pay the Contractor within thirty (30) days after receipt and approval of a detailed, certified monthly statement of services. Monthly statements shall be submitted within thirty (30) days after the end of the month during which the services were performed. The monthly statement shall document services rendered as described.

E. The Contractor shall notify the Agency in writing under separate cover upon completion of work that is the equivalent of eighty percent (80%) of the total contract amount. The total compensation shall not exceed the amount specified in the contract.

F. Within fifteen days after the date the Agency receives written notice from the Contractor that payment is requested for services or items of tangible personal property delivered on site and received, the Agency shall issue a written certification of complete or partial acceptance or rejection of the services or items of tangible personal property. If the Agency finds that the services or items of tangible personal property are not acceptable, it shall, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, provide to the Contractor a letter of exception explaining the defect or objection to the services or delivered tangible personal property along with details of how the Contractor may proceed to provide remedial action. Upon certification by the Agency that the services or items of tangible personal property have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. No late payment interest charges will be paid.

3. Term.

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

4. Termination.

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the Agency's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the Agency is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the Agency or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

B Termination Management. Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without

written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Agency.

8. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency.

9. Release.

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

10. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency.

11. Product of Service -- Copyright.

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

12. Conflict of Interest; Governmental Conduct Act.

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

13. Amendment.

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

14. Merger.

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

15. Penalties for violation of law.

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

16. Equal Opportunity Compliance.

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

17. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent

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

18. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

19. Records and Financial Audit.

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

20. Indemnification.

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

21. Invalid Term or Condition.

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

22. Enforcement of Agreement.

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

23. Notices.

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

To the Agency: New Mexico Developmental Disabilities Planning Council
Office of Guardianship
810 W. San Mateo Road, Suite C
Santa Fe, NM 87505

To the Contractor:

24. Authority.

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

SIGNATURE PAGE TO FOLLOW THIS PAGE OF THE CONTRACT.

DFA Contracts Review Bureau, below.

By: _____
Patrick W. Putnam, Executive Director
New Mexico Developmental Disabilities Planning Council

Date: _____

By: _____
Frank Fajardo, Guardianship Manager
New Mexico Developmental Disabilities Planning Council

Date: _____

By: _____
Attorney – Certifying legal sufficiency
Elena Moreno, Legal Counsel
NMDDPC, Office of Guardianship

Date: _____

By: _____
Contractor

Date: _____

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

ID Number: _____

By: _____
Taxation and Revenue Department

Date: _____

This Agreement has been approved by the DFA Contracts Review Bureau:

Vendor Number: _____

By: _____
DFA Contracts Review Bureau

Date: _____

Attachment One

Scope of Work

Performance Measures

Attach a copy of a page or portion from the agency's Strategic Plan that connects the professional services contract to the agency's Strategic Plan's goals, objectives, activities, outputs and outcomes.

Attachment 1. Performance Measures in Scope of Work shall contain measurable goals and objective that are linked to the performance measures of the Agency's Strategic Plan: To provide guardianship services to income and resource eligible incapacitated adults under the Agency Act 28-16B-1 et.al. and to make sure that the New Mexico Uniform Probate Code governing guardianship is complied with to the letter and intent of the law.

Goal:

To increase quality Guardianship Service (providers) in the communities where the guardianships are likely to be appointed and the ward to reside.

Objective:

Services shall be provided in accordance with the laws of the State of New Mexico, specifically, NMSA 1978, 45-5-101 through 45-5-617, NMSA 1978, 28-16B-1 through 28-16B-6, the regulations promulgated under NMAC 9.4.21, the terms of this contract, and a generally recognized professional standard for guardianship services, such as the Ethics and Standards for Guardians provided by the National Guardianship Association (NGA) or other recognized standards.

Activities:

- a. The Contractor will allow comprehensive ward examinations of any or all of its clients as detailed in Section 1,O, above. Failure to comply with this section of the contract will be considered a breach of the contract:
- b. The Contractor shall establish and implement written procedures available to all applicants for and recipients of services to present grievances relating to the Contractor's operations or services.
- c. Emergency Appointments will be allowed if:
 - i. The death of a guardian or caretaker where no one else is available to provide decisional support;
 - ii. A medical emergency involving a decisionally incapacitated individual with developmental disabilities;
 - iii. Situations where the stability of an individual or the individual's placement or services is jeopardized by the lack of a decision maker.
- d. The Contractor shall use competent staff and become a Registered Guardian under the NGA within 18 months of this contract date.
- e. The Contractor shall maintain current, complete, and comprehensive case files on each eligible client.
- f. The Contractor shall ensure that clients' civil rights are protected.

g. The contractor shall maintain detailed records that specifically indicate the date, amount of time (in the quarter (0.25) of an hour increments) and nature of all services rendered and the identification of the person(s) providing the specific services to each client.

h. The Contractor shall submit a quarterly report that includes the following data for each month no later than the last day of the month following the end of the reporting quarter.

i. In accordance with the National Guardianship Association Standard of Practice Number 5 I., all guardianship service providers (and their employees) under contract with the Agency will treat all contacts with a ward's matters with kindness and respect.

j. The Contractor will provide a financial and compliance audit report to The Agency covering the immediate past fiscal year as soon as it is available.

k. On a quarterly basis, the Contractor will provide information regarding the incidents of allegations of abuse, neglect or exploitation to the Agency including reports from DHI, HSD (Medicaid fraud), APS and tort claim actions.

l. Contractor (or designee) must attend mandatory contractor's meetings.

m. The Contractor shall maintain professional liability insurance/contractors liability insurance.

n. (The Contractor will not overspend their contract.

Evaluations:

a. The Contractor shall implement the Caregiver's Criminal History Screening Act and provides copies of DHI's letter to the Agency.

b. The following documents shall be made available to the staff of the Agency:

(i) Staff job descriptions and qualifications of each staff member

(ii) Case files

(iii) Contractor's written grievance procedures

c. The following documents will be sent to the Agency:

(i) Complaints:

1. a determination about a complaint, in writing, within fifteen (15) working days of receipt of the complaint;

2. documentation (an investigative summary) on how determination was made for all resolved complaints within five (5) working days of the determination;

3. all unresolved complaints/grievances within two (2) working days of the 15-day deadline for grievance resolution.

4. The Contractor shall mail to the Director a copy of any complaint filed by the Contractor as guardian against a governmental entity, law enforcement officer, or public employee.

5. Within 48 hours, the Contractor shall send to the Director of the Agency a copy of any court or administrative action filed against the Contractor as a guardian or against the Contractor if the action alleges conduct that would constitute a violation of the terms of the contract.

6. Within 24 hours, the Contractor shall notify the Director of the Agency the death of any client, any life threatening injury or occurrence involving a client, and any serious injury sustained by a client.

(ii) Other:

1. All billing and case file records shall be subject to immediate inspection and copying by the, the New Mexico Department of Finance and Administration and the New Mexico State Auditor;

2. The Agency shall have the right to audit all billings and monthly reports both before payment is made and for five years after payment has been made;

3. Contractor shall provide documentation necessary to ensure compliance with the terms of the contract;

4. The Agency may periodically conduct an independent comprehensive program review;

5. At the discretion of the Agency, an outside CPA may be brought in to audit the guardianship services contractors billing for cases that are funded by the Agency;

6. If the guardianship services contractor fails to meet its performance or program related obligations under the negotiated contract, the Agency, in its sole discretion and depending on the circumstances, may implement a corrective action plan.

7. Within thirty (30) days of the effective date of the contract, the Contractor shall provide copies of insurance policies and fidelity bond(s) to the Agency.

8. Ward visits and inspections of residential placements will be made by the Agency without notice.