1. The SE shall work with Collaborative staff in the development of the Plan.
2. The Plan shall be due by the end of the first month following any new fiscal/Contract year.
3. The Plan shall be presented to the Collaborative at a meeting identified by the Collaborative Co-Chairs.
4. The Plan shall include the priorities for Value Added Services as established by the Collaborative and the SE.
5. The Plan shall reflect the planned services and projects that will be Value Added Services for that Contract year, as well as the projected level of expenditure for non-entitlement services and each community reinvestment initiative in each quarter of the Contract year;
6. The Plan shall include how the SE will solicit ideas for community reinvestment and how the SE will establish the criteria by which community reinvestment projects are selected. These criteria shall include, but need not be limited to: project sustainability; coordination with Local Collaboratives and other resources; cost; and how closely the projects would help meet the priorities for community reinvestment set forth by the Collaborative and in the Plan, specifically moving services toward evidence-based practices; meeting performance targets; or moving toward support of consumer recovery and resiliency.
7. The Plan shall identify the overall annual target expenditure level for Value Added Services by category (community reinvestment and non-entitlement services).
8. The Plan shall set forth a timeline indicating how much money shall be obligated and spent by what dates by category of Value Added Services (community reinvestment and non-entitlement services).

G. In addition to, or concurrently with, the development of the Plan, the Value Added Services process shall include:

1. Consideration of input from the BHPC and its subcommittees, LCs and other stakeholders as the planned services and projects are selected by the Collaborative and the SE;
2. Quarterly accounting by the SE to the Collaborative or its designee of expenditures and accruals in Value Added Services by category (community reinvestment and non-entitlement services) indicating dollar amounts withheld and total obligations and expenditures from each funding source; and
3. Adjustment of Value Added Services if expenditures and accruals vary materially from original projections. The Collaborative CEO and the SE will mutually agree upon such adjustments, based on criteria set forth in the Value Added Services Plan.

## 6.5 SPECIAL PAYMENT REQUIREMENTS

A. Behavioral Health Planning Council. The SE shall provide an annual payment of $5,000 to support the BHPC no later than August 1, 2009 for FY 2010.

B. Local Collaboratives. The SE shall provide administrative and logistical support for the development and ongoing maintenance of the LCs as identified by Letters of Interest per the Guidelines for Local Collaboratives, including an annual payment of $3,000 per Local Collaborative no later than August 1, 2009 for FY 2010, or within thirty (30) days of the identification of additional LCs up to a maximum of eighteen (18).

C. The SE shall work with the Collaborative and LCs, and in coordination with any related capital outlay projects, to develop projects and/or provider contracts to implement any FY10 special appropriations.

D. Any amounts required by this Contract to be provided to specific providers shall apply for FY10 only and are subject to adequate provider performance.

E. At any time the SE determines that a specifically named provider is not adequately performing, the SE shall inform the Collaborative CEO and the Collaborative member agency involved, and shall propose a manner in which to improve that provider's performance or switch the funding to another provider. The Collaborative CEO and the funding member agency must approve any change during FY10.

6.6 **FUNDING AND APPROVAL**

A. The Parties to this Contract understand and agree that the compensation and payment reimbursement under this Contract is dependent upon federal and state funding and regulatory approvals and such funding and all rates of compensation and payment are to be determined and agreed to on an annual basis. Neither the SE nor the Collaborative can or will guarantee funding or rates of payment or compensation for any year beyond the current year for which the SE and Collaborative have received funding and reached agreement upon rates of compensation and payment.

B. The Parties further understand that program changes affecting compensation for covered services are likely to occur during the term of this Contract and further agree to the following if such program changes are implemented by the Collaborative during the term of this Contract:

1. In the event that the Collaborative initiates a program change affecting compensation and/or payment reimbursement for any covered services during the term of this Contract, prior to initiating any such change the Collaborative shall provide the SE with as much notice as is possible, generally at least sixty (60) days, given the circumstance of the contemplated change and the effect it will have on compensation and payment reimbursement for any covered service.

2. Upon notice of a proposed program change, the SE may request negotiations for a modification of the Contract concerning changes in compensation and/or payment reimbursement for the program change, as provided in the notice from the Collaborative. Such program changes and any resulting negotiations and modifications shall be limited to the change in compensation and/or payment reimbursement for the program changes, and shall not subject the entire Contract to being reopened.

3. If the SE does not request negotiations for a modification of the Contract concerning a change in compensation and/or payment reimbursement for a program change within thirty (30) business days of the notice from the Collaborative, then the change shall be implemented and become effective under this Contract.

4. The SE shall provide notice to the Collaborative of any service or program changes anticipated by the SE that will have a budgetary impact on any of the member agencies. This notice shall be provided on a timeline that will allow member agencies to adjust their budget requests. The SE shall submit notice of anticipated changes for FY10 to the Collaborative by August 1, 2009.

5. Any renegotiation of rates, amounts, or program change pursuant to this Section shall be memorialized in writing and signed by the SE, the Co-Chairs of the Collaborative, and the funding member agency.

6.7 **MID-YEAR FUNDS**

During the Contract year, funds may become available to the Collaborative or one of its member agencies through federal grants, state appropriations, or other sources. The Collaborative reserves the right to add new funding to this Contract for services and activities that broadly fit within the covered services for this Contract via expedited Amendment (Article 36) signed by (1) the agency from whom the funds issue, (2) the two Collaborative Co-chairs, and (3) the SE CEO or designee.

6.8 **PROVIDER FEE INCREASES**

In the event that the Collaborative obtains additional funding identified for increased reimbursement to specific providers, the SE shall pass on all such additional funding less applicable taxes following the receipt of the additional funding by the SE from the Collaborative. The SE shall make such payments only to those types of providers identified by the Collaborative in writing and who are network providers. The SE and the Collaborative agree that the SE's obligation under this Section to pass through any additional funding will require at least thirty (30) days prior written notice. The Collaborative and SE agree that no payments will be required to be made pursuant to this Section until the Collaborative has provided written approval of the payment process to be utilized by the SE to ensure that the process will meet the Collaborative's audit requirements. The Collaborative reserves the right to direct payments to providers if the SE fails to comply with the pass-through requirements. The Collaborative and the SE shall develop a mechanism to report outcomes associated with the pass-through of funds.

6.9 **EXPENDITURES INCURRED BUT NOT REPORTED (IBNR)**

The SE shall use a reliable and accepted methodology to determine IBNR or claims run-out. The SE shall share with the Collaborative the methodology that it will use no later than August 1, 2009 for FY10. The Collaborative shall review the SE's methodology and reserves the right to require revisions to the methodology in order to achieve a more acceptable and reliable IBNR methodology. The SE shall use the same methodology, as applicable, for all funding streams and in all reports requiring such information. The SE shall submit a quarterly certification attesting, based on best knowledge, information, and belief, that reported IBNR is calculated correctly based on the approved methodology. This certification shall be certified by one of the following: the SE's Chief Executive Officer; the SE's Chief Financial Officer; or a Certified Public Accountant who

has been delegated authority to sign for, and who reports directly to, the SE's CEO or CFO.

## 6.10 PAYMENT FOR SERVICES – NON-MEDICAID

A. Each member agency providing funds for services under this Contract shall pay the SE one-twelfth (1/12th) of the amount indicated in Appendix xxx (Funding Table), each month, no later than the thirtieth (30th) day of each month.

B. By the thirtieth (30th) day following the end of each quarter, the SE shall provide the Collaborative with amounts paid by the SE for direct services appropriate to each fund source, including encounter-based data. To the extent the amount spent in that quarter does not equal the amount required to be spent for direct services for any fund source, or the data have not been provided by the SE by the thirtieth (30th) day following the end of a quarter, the SE shall provide a plan for meeting that level of expenditure by the end of the following quarter. This plan shall be approved by the Collaborative CEO and the funding member agency.

C. If the amount expended by the following quarter does not meet the required amount to be expended for direct services, the Collaborative CEO and the funding member agency shall agree on and instruct the SE how to expend the necessary amount for direct services. The SE shall comply with that instruction.

D. No later than May 31 of the Contract year, the SE shall notify all providers delivering non-Medicaid funded services that all billing for those services delivered during the Contract year must be submitted within thirty (30) days of the end of the Contract year.

E. Within ninety (90) days of the end of each Contract year, the SE shall ensure that all funds appropriated by the Legislature for the delivery of covered services are paid and/or encumbered for services delivered during the Contract year.

F. The SE shall refund any and all unexpended or unencumbered funds for direct services and non-direct services to the appropriate member agency by the end of November 2009 for the Contract year ending June 30, 2009. In the event that the SE has unexpended or unencumbered funds that are to be reverted to the state, and the SE has incurred administrative expenses in excess of the applicable administrative expense percentage, the SE may submit documentation of those expenses to the Collaborative CEO for consideration of retention of these fees for that fiscal year.

## 6.11 PAYMENT FOR SERVICES – TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)

The SE shall provide a billing invoice due to HSD monthly on the 15th day of the month. The final invoice shall be due no later than July 10, 2010.

The SE shall bill 1/12th of the full budget each month as reimbursement.

## 6.12 PAYMENT FOR SERVICES – GENERAL MEDICAID REQUIREMENTS

A. Medicaid consumers shall be held harmless against any liability for debts of the SE that were incurred in providing covered services to Medicaid consumers excluding any Medicaid consumer's liability for co-payments or liability for an overpayment resulting from benefits paid pending the results of a Fair Hearing.

B. HSD shall compensate the SE for work performed under this Contract for FY10 at the rates shown on Appendix xxx.

## 6.13 PAYMENT FOR SERVICES – MEDICAID FEE-FOR-SERVICE (MEDICAID FFS)

A. HSD shall pay an administrative fee for each non-managed care-eligible Medicaid consumer (Medicaid FFS consumer). In addition, HSD will reimburse the SE for all claims paid on behalf of Medicaid FFS consumers. The negotiated administrative fee appears in Appendix xxx.

B. Any changes to the Medicaid FFS administrative fee shall be negotiated and implemented pursuant to Article 36 (Amendments) of this Contract.

C. HSD shall make payment to the SE of an administrative fee for each Medicaid FFS consumer, plus reimbursement for claims for covered services on behalf of Medicaid FFS consumers. Administrative fees will be paid for consumers determined retroactively eligible. HSD will only pay the administrative fee for the retroactive period that does not exceed two years from the payment date.

D. The administrative fee shall include payment for activities associated with the Medicaid FFS program. This includes care coordination, utilization management, provider contracting, and network maintenance, grievance and appeals, and claims processing.

E. The SE shall administer payment of all Medicaid FFS claims and shall pay these at the established Medicaid fee-for-service rate, but the SE shall not be at financial risk for Medicaid FFS claims (see Sections F through H below).

F. HSD will reimburse the SE for claims paid by the SE to providers for Medicaid FFS consumers upon validation in the Medicaid Management Information System (Omnicaid). At a minimum, the SE shall submit weekly Medicaid FFS encounter/paid claims files to HSD. HSD will adjudicate/validate these claims in Omnicaid and make payment to the SE for all valid claims within twelve (12) business days of processing the claims file.

G. HSD and the SE shall reconcile all Medicaid FFS payments on a quarterly basis.

H. The SE shall have up to two (2) years from a claim's first date of service to submit a claim. Claims not submitted within two years of the first date of service are not eligible for reimbursement. Claims may be resubmitted by the SE as many times as necessary within two years from the first date of service.

## 6.14 PAYMENT FOR SERVICES – MEDICAID MANAGED CARE

A. **Capitation Rates**. HSD will make payments to the SE for the covered services in the Medicaid managed care behavioral health benefit package that are properly delivered to eligible Medicaid managed care consumers in accordance with and subject to all applicable federal and state laws, regulations, rules, billing instructions, bulletins, as amended, and in accordance with the payment and financial provisions in this Article and the Capitation Rates contained in Appendix xxx.

1. The Collaborative shall meet with the SE annually to explain the Capitation Rates offered by the State.

2. The Capitation Rates developed, discussed and negotiated between the Collaborative and the SE are considered confidential.

3. On an annual basis, the Collaborative shall incorporate by amendment the Capitation Rates by Cohort into the Contract as provided on the attached schedule; provided, however, that the Collaborative may, subject to notification to the SE, amend the Capitation Rates by Cohort and/or add additional Cohorts at such other times as may be necessary to reflect changes in federal or state law, including but not limited to those relating to eligibility, covered services, or copayments.

B. **Financial Risk**. The SE shall assume full financial risk for all medical and administrative expenditures for all Medicaid benefits provided to the applicable Cohort Members State Fiscal Year 2010 and for any and all costs incurred by the SE in excess of the capitation payments.

C. **Capitation Rates for Future Contract Years**. The Capitation Rates awarded with the RFP shall be effective for the time period shown on the attached rate sheet. The Collaborative will establish the rate for any and all future years under this Contract based on the experience of year one (1) and other changes, including changes in the Scope of Work, new or amended federal or state laws or regulations, and adequate and sufficient funding.

D. **Failure to Agree upon Capitation Rates**. If the SE and the Collaborative fail to agree upon Capitation Rates at any time during the term of this Contract, the SE shall have the option to terminate this Contract or to agree to the final Capitation Rates proposed by the Collaborative within thirty (30) calendar days of receipt of the proposed amendment. If the SE terminates this Contract, the SE shall be obligated to continue to provide Covered Services to consumers, until such time as all consumers are disenrolled from the SE's plan but in no event longer than one hundred eighty (180) days. The Collaborative reserves the right to adjust the contracted Capitation Rate(s) in an actuarially sound manner in order to account for changes in the factors from which those rates were established. The SE shall accept the current Capitation Rates set forth in this Contract, as adjusted by the Collaborative in an actuarially sound manner as necessary to account for changes in eligibility, Benefit Package, adequate and sufficient funding, as payment in full for the Covered Services delivered to Medicaid managed care consumers during a transition.

E. **Funding by Cohort**. HSD shall pay the SE, in accordance with this Article by Cohorts for consumers for covered services according to Cohorts set forth in Appendix xxx.

F. **Capitation Rate Development**

1. Actuarial Soundness. In determining Capitation Rates for all Cohorts, as described in this Article, the Collaborative shall calculate actuarially-sound Capitation Rates in accordance with all federal laws and regulations for which the SE provides the Medicaid managed care behavioral health benefit package. Capitation Rates shall be developed in accordance with generally accepted actuarial principles and practices. Capitation Rates must be appropriate for the populations to be covered, the covered services to be furnished, and be certified as meeting the foregoing requirements by actuaries. The actuaries must meet the qualification standards established by the American Academy of Actuaries and follow the practice standards established by the Actuarial Standards Board. Accordingly, the Collaborative's offer of all Capitation

Rates referred to in the attached schedule of this Contract is contingent on both certification by the Collaborative's actuary for actuarial soundness and final approval by CMS, prior to becoming effective for payment purposes. In the event such certification of approval is not obtained for any of all Capitation Rates, the Collaborative reserves the right to renegotiate or set these rates. The Collaborative's decision to renegotiate or set the rates under this provision is binding on the SE.

2. FQHCs. In determining the Capitation Rate for each Cohort, the Collaborative shall include for the behavioral health benefit package provided by FQHCs, the amount that would be paid by HSD/MAD for such services on a fee-for-service basis.

G. **Capitation Payment Process and Terms of Services**

1. Timing of Capitation Payments. HSD shall make capitation payments to the SE on the first Friday of the enrollment month for all Medicaid managed care consumers enrolled in that month and for any retroactive enrollments being made.

2. A consumer can change from one Cohort to another due to a change in eligibility and status. Any change in the consumer's eligibility and status will occasion a change in the consumer's Cohort for which the SE is paid. The capitation payment to the SE will be based on the consumer's Cohort on the first day of the given month.

3. The Collaborative may recoup capitation payments paid previously for a consumer if it is determined that the consumer was ineligible during that period or did not receive the services in accordance with their treatment plan and assessed needs, or that the consumer moved out of the State, or expired.

4. Payment Reconciliations. HSD shall have the discretion to recoup capitation payments made by HSD pursuant to the time periods governed by this Contract. In the event of an error that causes payment(s) to the SE to be issued by HSD, HSD shall recoup the full amount of the payment. Interest shall accrue at the statutory rate on any amounts not paid and determined to be due after the thirtieth ($30^{th}$) day following the notice. Any process that automates the recoupment procedures will be discussed in advance by the Collaborative and the SE and documented in writing, prior to implementation of the new process. The SE has the right to dispute any recoupment action in accordance with this Contract. Recoupments may be made for the following circumstances:

   a. Consumers who die prior to the enrollment month for which payment was made; and

   b. Consumers whom HSD later determines were not eligible for Medicaid during the enrollment month for which payment was made.

5. Retroactive Payments for Consumers Reinstated

   a. If a consumer loses eligibility for any reason and is reinstated as eligible by HSD before the end of a six (6) month period, the SE must accept a capitation payment, made retroactively, for that

month of eligibility and assume financial responsibility for all covered services received by the consumer. The SE shall be paid a capitation rate at the appropriate cohort rate for any period of retroactive coverage. Additionally, for any period of retroactive coverage where the SE is responsible for services for which prior authorization and/or utilization management policies were unable to be enforced, payment to providers for covered services shall be made at the lesser of a negotiated rate or the Medicaid fee-for-service rate.

b. HSD must notify the SE of this retroactive capitation payment by the last day of the month.

c. If this notification if not made by the last day of the month, the SE may choose to refuse the retroactive capitation payment.

H. **Medicaid Managed Care Surplus**. Subject to the other applicable terms of this Contract: (a) the SE shall provide a detailed accounting of Medicaid managed care direct service dollars not yet expended according to the percentage required for direct service expenditures on or before February 1, 2010 and again on or before April 1, 2010; (b) the Collaborative may at its sole discretion require that the SE prepare a spending plan to bring the expenditure percentage to the appropriate level based on the accounting provided; and (c) the Collaborative retains the right to approve, suggest accounting modifications to, or deny any proposed expenditure class in the SE's spending plan.

6.15 **SPECIAL PAYMENT REQUIREMENTS**

A. **Reimbursement of Federally Qualified Health Centers (FQHCs)**

1. FQHCs are reimbursed at one hundred percent (100%) of reasonable cost, as determined by the State or federal government, under a Medicaid fee-for-service or managed care program. The FQHC can waive its right to reasonable cost and elect to receive the rate negotiated with the SE. During the course of the contract negotiations with the SE, the FQHC shall state explicitly that it elects to receive one hundred percent (100%) of reasonable costs or waive this requirement.

2. If the FQHC does not waive its right to receive reasonable costs, the SE shall be required to reimburse the FQHC at the Prospective Payment System (PPS) rates. The PPS rate meets the SE's responsibility toward the Collaborative's obligation to reimburse FQHCs at 100% of reasonable costs as determined by the Collaborative's external audit agency.

3. The FQHC shall report annually to the Collaborative's audit agent the reimbursement received from the SE. The Collaborative's audit agent will perform a reconciliation annually based upon FQHC revenue and encounters. The Collaborative's audit agent will submit an Accounting Transaction Request (ATR) to HSD to initiate additional funding required to meet the 100% threshold or request recoupment of payments in excess of the 100% threshold.

B. **Compensation for UM Activities**. The SE shall ensure that, consistent with 42 CFR §438.6(h) and §422.08, compensation to individuals or entities that conduct

UM activities is not structured so as to provide incentives for the individual or entity to deny, limit, or discontinue services to any consumer.

C. **Special Circumstances for Pharmacy Reimbursement**

1. The SE may determine its formula for estimating acquisition cost and establishing pharmacy reimbursement. The SE shall comply with the provisions of NMSA 1978, §27-2-16(B).

2. HSD reserves the right to review for reasonableness the SE's formula for pharmacy reimbursement and its reimbursement rates for pharmacy services for Medicaid consumers. Upon review, HSD reserves the right, to require the SE to adjust its formula and rates.

D. **Reimbursement for Emergency Service**

The SE shall reimburse non-network providers of emergency services as follows:

Any provider of emergency services that does not have in effect a contract with the SE that establishes payment amounts for services furnished to a consumer shall accept as payment in full no more than the amounts (less any payments for indirect costs of medical education and direct costs of graduate medical education) that it could collect if the consumer received medical assistance under Title XIX of the Social Security Act other than through enrollment in the SE. In a State where rates paid to hospitals under the State Plan are negotiated by contract and not publicly released, the payment amount shall be the average contract rate that would apply under the State Plan for hospitals or the average contract rate that would apply under such plan for tertiary hospitals.

E. **Third Party Liability/Coordination of Benefits**

1. On a periodic basis, the Collaborative shall provide the SE with third party liability (TPL)/coordination of benefits (COB) information for consumers.

2. The SE shall:

   a. Notify the Collaborative as set forth below when the SE learns that a consumer has TPL (Third Party Liability) for behavioral health or physical health services (when it was not identified on the enrollment roster):

      i. Within fifteen (15) business days when a consumer is verified as having both Medicare and Medicaid (dual coverage); and

      ii. Within sixty (60) calendar days when a consumer is verified as having coverage with any other health carrier.

   b. Provide the Collaborative a quarterly report identifying TPL recoveries made in the previous quarter. The report shall include:

      i. Relevant consumer demographic data;

      ii. Services paid for;

      iii. Amount recovered; and

      iv. Carrier and coverage information.

c. Jointly develop with the Collaborative and agree upon a reporting format to carry out the requirements in Sections a and b above. However, if the agreed upon format cannot be developed, the Collaborative retains the right to make a final determination of the reporting format.

F. Except as otherwise provided in this Contract, in those instances where a duplicate payment is identified either by the SE or the Collaborative, the Collaborative retains the ability to recoup these payments within the time periods allowed by law.

G. For payments to the SE that are based on data submitted by the SE, the SE shall certify the data pursuant to 42 CFR §438.606. The data that shall be certified includes, but is not limited to, all documents specified by the Collaborative, enrollment information, encounter data, and other information contained in this Contract or the RFP. The certification shall attest, based on best knowledge, information and belief, as to the accuracy, completeness and truthfulness of the documentation and data. The SE shall submit the certification concurrently with the certified data and documents. The data and documents the SE submits to the Collaborative, shall be certified by one of the following: the SE's Chief Executive Officer; the SE's Chief Financial Officer; or an individual who has been delegated authority to sign for, and who reports directly to, the SE's Chief Executive Officer or Chief Financial Officer.

## ARTICLE 7 – CONTRACT ADMINISTRATOR

The Contract Administrator is, and his/her successor shall be, designated by the Collaborative CEO. The State shall notify the SE of any changes in the identity of the Contract Administrator. The Contract Administrator is empowered and authorized as the agent of the Collaborative to represent the Collaborative in all matters related to this Contract except those reserved to other State personnel by this Contract. Notwithstanding the above, the Contract Administrator does not have the authority to amend the terms and conditions of this Contract. All events, problems, concerns or requests affecting this Contract shall be reported by the SE to the Contract Administrator.

## ARTICLE 8 – ENFORCEMENT

8.1 The parties acknowledge and agree that efficient operation of the New Mexico behavioral system is enhanced through a cooperative relationship between the parties. The Collaborative and the SE agree to first attempt to resolve any dispute involving the parties' respective performance through good faith informal negotiations. To that end, the Collaborative shall stress communication, notice and corrective action as the preferred method for initiating action related to the SE's performance hereunto; provided that nothing in this Section shall preclude the Collaborative from initiating the sanctions set forth in this Article 8 at the discretion of the Collaborative.

## 8.2 PROCESS

A. When the Collaborative determines that the SE is not in compliance with any requirement of this Contract, the Collaborative shall notify the SE in writing. The written notice will include the basis and nature of the remedy (corrective action plan or directed corrective action plan) or sanction, as well as any other due process protections the Collaborative elects to provide. Any notice that imposes civil monetary penalties will be signed by the Collaborative Co-Chairs.

B. Unless otherwise required by law, the level or extent of remedies or sanctions shall be based on the frequency or pattern of conduct, and/or the severity or degree of harm posed to (or incurred by) consumers.

C. Civil monetary penalties imposed by the Collaborative may, at the option of the Collaborative, be collected by deducting the amount of the civil monetary penalty from any payments due to the SE or by demanding immediate payment by the SE.

D. Unless otherwise agreed by the parties, notwithstanding any remedy or sanction imposed upon the SE, the SE shall continue to provide all covered service and administrative services required by this Contract.

E. The SE may dispute a sanction in accordance with Article 15.

## 8.3 ARRAY OF REMEDIES AND SANCTION OPTIONS

In addition to any other administrative, contractual, or legal remedies available to the Collaborative under federal or state law, in the event that the SE fails to comply with this Contract, the Collaborative may impose the following types of remedies and sanctions:

A. **Corrective Action Plan (CAP).** The Collaborative may require the SE to develop and submit a CAP within the timeframe specified by the Collaborative. If the SE does not effectively implement the CAP within the timeframe specified in the CAP, the Collaborative may impose additional remedies or sanctions.

B. **Directed Corrective Action Plan (DCAP).** The Collaborative may develop a directed and very specific DCAP that the SE shall implement. If the SE does not effectively implement the DCAP, the Collaborative may impose sanctions.

C. **Civil Monetary Penalties (CMP).** The Collaborative may impose upon the SE civil monetary penalties to the extent authorized by federal or state law. The Collaborative may impose progressively higher amounts for continuing deficiencies. Civil monetary penalties include the following, which may be imposed alone or in combination:

1. Imposition of a lump sum fee upon the SE for failure to comply with a requirement of this Contract;
2. Imposition of a daily fee upon the SE until the deficiency is corrected;
3. Withhold of payment, as indicated in the written notice to the SE; and/or
4. Calculated lump sum per consumer impacted by the deficiency.

D. **Suspension of New Enrollment.** The State may suspend new enrollment to the SE.

E. **Appointment of a State Monitor**. Should the Collaborative be required to appoint a State Monitor to assure the SE's performance, the SE shall bear the reasonable cost of the Collaborative intervention.

F. **Payment Denials**. The State may deny payment for all consumers or deny payment for new consumers.

G. **Actual Damages**. The State may assess to the SE actual damages to the Collaborative or consumers resulting from the SE's non-performance of its obligations.

H. **Liquidated Damages**. The State may pursue liquidated damages in an amount equal to the costs of obtaining alternative behavioral health services to the consumer in the event of the SE's non-performance. The damages shall include the difference in the payments that would have been paid to the SE and the payments the replacement contractor. The State may withhold payment to the SE for liquidated damages until such damages are paid in full.

I. **Temporary Management**

1. The State may impose temporary management to oversee the operations of the SE upon a finding by the Collaborative that there is continued egregious behavior by the SE, including but not limited to behavior that is described in 42 CFR §438.700, or that is contrary to any requirements of 42 USC §§1396b(m) or 1396u-2; there is substantial risk to consumers' health or safety; or the sanction is necessary to ensure the health of consumers while improvements are made to remedy violations under 42 CFR §438.700 or until there is an orderly termination or reorganization of the SE.

2. The State shall impose temporary management (regardless of any other sanction that may be imposed) if it finds that the SE has repeatedly failed to meet substantive requirements in 42 USC §§1396b(m) or 1396u-2 or 42 CFR 438, Subpart I (Sanctions).

3. The State shall not delay imposition of temporary management to provide a hearing before imposing this sanction.

4. The State shall not terminate temporary management until it determines that the SE can ensure that the sanctioned behavior will not recur.

5. The SE shall pay the costs associated with imposition of temporary management.

6. The State shall grant Medicaid consumers the right to terminate enrollment without cause as described in 42 CFR §438.702 (a) (3), and shall notify the affected consumers of their right to terminate enrollment.

J. **Termination of Contract**. The Collaborative has the authority to terminate this Contract and enroll consumers with another contractor(s), or provide covered services through other options (e.g., through the Collaborative plan for Medicaid consumers), if the Collaborative determines that the SE has failed to:

1. Carry out the substantive terms of this Contract;

2. Meet all applicable federal requirements, including those listed in Sections 1932, 1903(m), and 1905(t); or

3. Meet all applicable State requirements.

8.4 **PRE-TERMINATION HEARING**

Before terminating this Contract, the Collaborative shall provide the SE a pre-termination hearing within thirty (30) calendar days after written notice, which consist of the following procedures:

A. The State shall give the SE written notice of its intent to terminate, the reason for the termination, and the time and place of the hearing;

B. After the hearing, the Collaborative shall give the SE written notice of the decision affirming or reversing the proposed-termination of the contract and, for an affirming decision, the effective date of termination;

C. For an affirming decision, give consumers notice of the termination and information, consistent with their options for receiving covered services following the effective date of termination; and

D. The pre-termination hearing procedures shall proceed according to Article 10.3 (Dispute Procedures Involving Contract Termination Proceedings).

8.5 **NOTICE TO CMS**

The State must give the CMS Regional Office written notice whenever it imposes or lifts a sanction for one of the violations listed in the 42 CFR §438.700. The notice must be given no later than thirty (30) days after the Collaborative imposes or lifts a sanction and must specify the affected contractor, the kind of sanction, and the reason for the Collaborative's decision to impose or lift a sanction.

## ARTICLE 9 – TERMINATION

9.1 All terminations shall be effective at the end of a month, unless otherwise specified in this Article.

9.2 This Contract may be terminated under the following circumstances:

A. By mutual written agreement of the Collaborative, and the SE upon such terms and conditions as they may agree;

B. By the Collaborative for convenience, upon not less than 180 days written notice to the SE;

C. By the Collaborative as a sanction pursuant to Article 8;

D. On the Contract termination date. The SE shall be paid solely for services provided prior to the termination date. The SE is obligated to pay all claims for all dates of service prior to the termination date if such claims are filed within one year after the termination date. In the event of the Contract termination date or if the SE terminates this Contract prior to the Contract termination date, and, if a consumer is in any facility at the time of termination, the SE shall be responsible for payment of all covered inpatient facility, non-State-operated residential facility, and the associated professional services for such inpatient or residential facility from the date of admission to the date of discharge. In the case of residential facility coverage, the SE shall not be responsible for payment for services for any period in excess of thirty (30) days' post-termination. Payment to the SE based upon termination of this Contract is set forth in Article 11.5.

E. By the Collaborative for cause upon failure of the SE to materially comply with the terms and conditions of this Contract. The Collaborative shall give the SE written notice specifying the SE's failure to comply. The SE shall correct the failure within thirty (30) days or begin in good faith to correct the failure and thereafter proceed diligently to complete or cure the failure. If within thirty (30) days the SE has not initiated or completed corrective action, the Collaborative may serve written notice stating the date of termination and work stoppage arrangements.

F. By the Collaborative, if required by modification, change, or interpretation in state or federal law or CMS waiver terms, because of court order, or because of insufficient funding from the federal or state government(s), if federal or state appropriations for Medicaid managed care are not obtained, or are withdrawn, reduced, or limited, or if Medicaid managed care expenditures are greater than anticipated such that funds are insufficient to allow for the purchase of services as required by this Contract. The Collaborative's decision as to whether sufficient funds are available shall be accepted by the SE and shall be final. If the Collaborative proposes an amendment to the Contract to unilaterally reduce funding, the SE shall have the option to terminate this Contract or to agree to the reduced funding, within thirty (30) calendar days of receipt of the proposed amendment;

G. By the Collaborative, in the event of default by the SE, which is defined as the inability of the SE to provide services described in this Contract or the SE's insolvency. With the exception of termination due to insolvency, the SE shall be given thirty (30) calendar days to cure any such default, unless such opportunity would result in immediate harm to consumers or the improper diversion of Medicaid or other public funds;

H. By the Collaborative, in the event of notification by the Public Regulation Commission or other applicable regulatory body that the certificate of authority under which the SE operates has been revoked, or that it has expired and shall not be renewed;

I. By the Collaborative, in the event of notification that the owners or managers of the SE, or other entities with substantial contractual relationships with the SE, have been convicted of Medicare or Medicaid fraud or abuse or received certain sanctions as specified in §1128 of the Social Security Act;

J. By the Collaborative, in the event it determines that the health or welfare of consumers is in jeopardy should the Contract continue. For purposes of this paragraph, termination of the Contract requires a finding by the Collaborative that a substantial number of consumers face the threat of immediate and serious harm;

K. By the Collaborative in the event a petition for bankruptcy is filed by or against the SE;

L. By the Collaborative if the SE fails substantially to provide medically or clinically necessary services that are required under this Contract;

M. By the Collaborative, if the SE discriminates among consumers on the basis of their behavioral health or disability status or requirements for covered services, including expulsion or refusal to reenroll a consumer, except as permitted by this Contract and federal law or regulation, or the SE engages in any practice that

would reasonably be expected to have the effect of denying or discouraging enrollment with the SE by consumers or by consumers whose condition or history indicates a need for substantial future behavioral health services;

N. By the Collaborative, if the SE intentionally misrepresents or falsifies information that is furnished to the Secretary of Health and Human Services, the Collaborative, or consumers, potential consumers or providers under the Social Security Act or pursuant to this Contract;

O. By the Collaborative, if the SE fails to comply with applicable physician incentive prohibitions of §1903(m)(2)(A)(x) of the Social Security Act;

P. By the SE, on at least sixty (60) calendar days prior written notice, in the event the Collaborative fails to pay any amount due the SE hereunder within thirty (30) calendar days of the date such payments are due;

Q. By the SE, on at least sixty (60) calendar days prior written notice, in the event that the Collaborative is unable to make future payments of undisputed capitation or other payments due to a lack of a state budget or legislative appropriation;

R. By the SE, on sixty (60) days' written notice with cause, or one hundred eighty (180) days' written notice without cause ; and

S. By either party, upon ninety (90) calendar days written notice, in the event of a material change in the Medicaid managed care program, regardless of the cause of or reason for such change, if the parties after negotiating in good faith are unable to agree on the terms of an amendment to incorporate such change.

9.3 If the Collaborative terminates this Contract pursuant to this Article and unless otherwise specified in this Article, the Collaborative shall provide the SE written notice of such termination at least sixty (60) calendar days prior to the effective date of the termination. If the Collaborative determines a reduction in the scope of work is necessary, it shall notify the SE and proceed to amend this Contract pursuant to its provisions.

9.4 By termination pursuant to this Article, no party may nullify obligations already incurred for performance of services prior to the date of notice or, unless specifically stated in the notice, required to be performed through the effective date of termination. Any agreement or notice of termination shall incorporate necessary transition arrangements.

## ARTICLE 10 – TERMINATION AGREEMENT

10.1 When the Collaborative has reduced to writing and delivered to the SE a notice of termination, the effective date, and reasons therefore, if any, the Collaborative, in addition to other rights provided in this Contract, may require the SE to transfer, deliver, and/or make readily available to the Collaborative, property in which the Collaborative has a financial interest. Prior to invoking the provisions of this paragraph, the Collaborative shall identify that property in which it has a financial interest, provided that, subject to the Collaborative's recoupment rights herein, property acquired with capitation or other payments made for consumers properly enrolled shall not be considered property in which the Collaborative has a financial interest.

10.2 In the event this Contract is terminated by the Collaborative, immediately as of the notice date, the SE shall:

A. Incur no additional financial obligations for materials, services, or facilities under this Contract, without prior written approval of the Collaborative.

B. Comply with all directives issued by the Collaborative in the notice of termination as to the performance of work under this Contract.

C. Terminate all purchase orders or procurements and subcontracts and stop all work to the extent specified in the notice of termination, except as the Collaborative may direct for orderly completion and transition or as required to prevent the SE from being in breach of its existing contractual obligations.

D. Agree that the Collaborative is not liable for any costs of the SE arising out of termination unless the SE establishes that the Contract was terminated due to the Collaborative's negligence, wrongful act, or breach of the Contract.

E. Take such action as the Collaborative may reasonably direct, for protection and preservation of all property and all records related to and required by this Contract.

F. Cooperate fully in the closeout or transition of any activities so as to permit continuity in the administration of the Collaborative programs.

G. Allow the Collaborative, its agents and representatives full access, upon reasonable notice and during normal business hours, to the SE's facilities and records to arrange the orderly transfer of the contracted activities. These records include the information necessary for the reimbursement of any outstanding claims and any consumer records necessary to effectuate the orderly transition of consumers' care.

## 10.3 DISPUTE PROCEDURE INVOLVING CONTRACT TERMINATION PROCEEDINGS

In the event the Collaborative seeks to terminate this Contract with the SE, the SE may appeal the termination directly to the Collaborative Co-Chairs or designee within ten (10) business days of receiving the Collaborative's termination notice and proceed as follows:

A. The Collaborative Co-Chairs shall acknowledge receipt of the SE's appeal request within three (3) calendar days of the date the appeal request is received;

B. The Collaborative Co-Chairs will conduct a formal hearing on the termination issues raised by the SE within thirty (30) calendar days after receipt of the written appeal;

C. The SE, the Collaborative, or its successor, shall be allowed to present evidence in the form of documents and testimony;

D. The parties to the hearing are the SE, the Collaborative, or its successor;

E. The hearing shall be recorded by a court reporter paid for equally by the Collaborative and the SE. Copies of transcripts of the hearing shall be paid by the party requesting the copies;

F. The court reporter shall swear witnesses under oath;

G. The Collaborative Co-Chairs shall determine which party presents its issues first and shall allow both sides to question each other's witnesses in the order determined by the Co-Chairs;

H. The Collaborative Co-Chairs may, but are not required to, allow opening statements from the parties before taking evidence;

I. The Collaborative Co-Chairs may, but are not required to, request written findings of fact, conclusions of law and closing arguments or any combination thereof. The Collaborative Co-Chairs may, but are not required to, allow oral closing argument only;

J. The Collaborative Co-Chairs shall render a written decision and mail the decision to the SE within sixty (60) calendar days of the date the request for a hearing is received;

K. The Collaborative, or their successors, and the SE may be represented by counsel or another representative of choice at the hearing. The legal or other representatives shall submit a written request for an appearance with the Collaborative Co-Chairs within fifteen (15) calendar days of the date of the hearing request;

L. The civil rules of procedure and rules of evidence for the District Courts for the District of New Mexico shall not apply, but the Collaborative Co-Chairs may limit evidence that is redundant or not relevant to the contract termination issues presented for review; and

M. The Collaborative Co-Chairs' written decision shall be mailed by certified mail, postage prepaid, to the SE. Another copy of the decision shall be sent to the Collaborative CEO.

## ARTICLE 11 – RIGHTS UPON TERMINATION OR EXPIRATION

11.1 Upon termination or expiration of this Contract, the SE shall, upon request of the Collaborative, make available to the Collaborative, or to a person authorized by the Collaborative, all records and equipment that are the property of the Collaborative.

11.2 Upon termination or expiration, the Collaborative shall pay the SE all amounts due for service through the effective date of such termination. The State may deduct from amounts otherwise payable to the SE monies determined to be due to the Collaborative from the SE. Any amounts in dispute at the time of termination shall be placed by the Collaborative in an interest-bearing escrow account with an escrow agent mutually agreed to by the Collaborative and the SE.

11.3 In the event that the Collaborative terminates the Contract for cause in full or in part, the Collaborative may procure services similar to those terminated and the SE shall be liable to the Collaborative for any excess costs for such similar services for any calendar month for which the SE has been paid for providing services to consumers. In addition, the SE shall be liable to the Collaborative for administrative costs incurred by the Collaborative in procuring such similar services. The rights and remedies of the Collaborative provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

11.4 The SE is responsible for any claims from subcontractors or other providers, including emergency service providers, for services provided prior to the termination date. The SE shall promptly notify the Collaborative of any outstanding claims which the Collaborative may owe, or be liable for fee-for-service payment, which are known to the SE prior to termination.

11.5 Any payments advanced to the SE for coverage of consumers for periods after the date of termination shall be promptly returned to the Collaborative. For termination of that occurs mid-month, the capitation payments (for Medicaid managed care consumers) for

that month shall be apportioned on a daily basis. The SE shall be entitled to Medicaid capitation payments for the period of time prior to the date of termination, and the Collaborative shall be entitled to a refund for the balance of the month. All terminations shall include a final accounting of capitation payment received and number of Medicaid consumers during the month in which termination is effective. The State shall pay the SE for each consumer continuing to receive services after the effective date of termination as required in Article 9.2.D.

11.6 The SE shall ensure the orderly and reasonable transfer of consumer's care in progress, whether or not those consumers are hospitalized or in long-term treatment.

11.7 The SE shall be responsible to the Collaborative for liquidated damages arising out of the SE's breach of this Contract.

11.8 In the event the Collaborative proves that the SE's course of performance has resulted in reductions in the Collaborative's receipt of federal program funds, as a federal sanction, the SE shall remit to the Collaborative, as liquidated damages, such funds as are necessary to make the Collaborative whole, but only to the extent such damages are caused by the actions of the SE. This provision is subject to Article 15 (Disputes).

## ARTICLE 12 – CONTRACT MODIFICATION

12.1 In the event that changes in federal or state statute, regulation, rules, policy, or changes in federal or state appropriation(s) or other circumstances require a change in the way the Collaborative manages the Medicaid program or any other funding covered by this Contract, this Contract shall be subject to substantial modification by amendment. Such election shall be effected by the Collaborative sending written notice to the SE. The Collaborative's decision as to the requirement for change in the scope of the program shall be final and binding.

12.2 The amendment(s) shall be implemented by Contract renegotiation in accordance with Article 36 (Amendments). In addition, in the event that approval of the Collaborative's 1915(b) waiver is contingent upon amendment of this Contract, the SE agrees to make any necessary amendments to obtain such waiver approval, provided that the SE shall not be required to agree if the modification is a substantial change to the business arrangement anticipated by the SE in executing this Contract. For the purposes of this Section, failure of the parties to agree upon capitation payment rates to be incorporated by amendment will be deemed a substantial change to the business arrangement anticipated by the parties. Notwithstanding the foregoing, any material change in the cost to the SE of providing the covered services herein that is caused by CMS in granting the waiver or by any other amendment necessary due to statutory, regulatory or programmatic change(s) shall be negotiated and mutually agreed to between the Collaborative and the SE. The results of the negotiations shall be placed in writing in compliance with Article 36 of this Contract.

12.3 Minor modifications of the Scope of Work under Article 3 may be accomplished by a Management Letter between the two parties without formal amendment. All other modifications shall be subject to the provisions of this Article and Article 36.

## ARTICLE 13 – INTELLECTUAL PROPERTY AND COPYRIGHT

13.1 In the event that the SE shall elect to use or incorporate in the materials to be produced any components of a system already existing, the SE shall first notify the Collaborative, who after investigation may direct the SE not to incorporate such components. If the Collaborative fails to object, and after the SE obtains written consent of the party owning the same, and furnishes a copy to the Collaborative, the SE may incorporate such components.

13.2 The SE warrants that all materials produced hereunder shall not infringe upon or violate any patent, copyright, trade secret or other property right of any third party, and the SE shall indemnify and hold the Collaborative and member agencies harmless from and against any loss, cost, liability, or expense arising out of breach or claimed breach of this warranty.

13.3 All materials developed or acquired by the SE under this Contract shall become the property of the Collaborative and shall be delivered to the Collaborative no later than the termination date of this Contract. Nothing developed or produced, in whole or in part, by the SE under this Contract shall be the subject of an application for copyright or other claim of ownership by or on behalf of the SE. Notwithstanding such requirement, if any material of any type used by SE for the performance of this Contract is a derivative of or otherwise uses preexisting SE-owned intellectual property, the SE shall be entitled to its preexisting rights in all such intellectual property.

## ARTICLE 14 – APPROPRIATIONS

14.1 The performance of this Contract is contingent upon sufficient appropriations or authorizations being made by either the Legislature of New Mexico (the Legislature) or the federal government. If sufficient appropriations and authorizations are not made by either the Legislature or the federal government, this Contract shall be subject to termination or amendment. The Collaborative's decision as to whether sufficient appropriations or authorizations exist shall be accepted by the SE and shall be final and binding. Any changes to the Scope of Work and compensation to the SE affected pursuant to this Article 14.1 shall be negotiated, reduced to writing and signed by the parties in accordance with Article 36 (Amendments) of this Contract and any other applicable state or federal statutes, rules or regulations.

14.2 To the extent action by the federal government impacts the amount of funding available for performance under this Contract, the Collaborative has the right to amend the Scope of Work, in its discretion, which shall be effected by the Collaborative sending written notice to the SE. Any changes to the Scope of Work and compensation to the SE affected pursuant to this Article 14.2 shall be negotiated, reduced to writing and signed by the parties in accordance with Article 36 (Amendments) of this Contract and any other applicable state or federal statutes, rules or regulations.

## ARTICLE 15 – DISPUTES

15.1 The entire agreement shall consist of: (1) this Contract, including all Appendices and any amendments; (2) the Request for Proposals, the Collaborative's written clarifications to the Request for Proposals, and the SE's responses to RFP questions where not inconsistent with the terms of this Contract or its amendments; (3) The SE's Best and Final Offer; and (4) the SE's additional responses to the Request for Proposals where not inconsistent with the terms of this Contract or its amendments, all of which are incorporated herein or by reference.

15.2 In the event of a dispute under this Contract, the various documents shall be referred to for the purpose of clarification or for additional detail in the order of priority and significance, specified below:

A. Amendments to the Contract in reverse chronological order followed by;

B. The Contract, including any management letters, items incorporated by reference, and all Appendices followed by;

C. The SE's Best and Final Offer followed by;

D. The Request for Proposals, including Appendices thereto and the Collaborative's written responses to written questions and the Collaborative's written clarifications, and the SE's response to the Request for Proposals, including both technical and cost portions of the response (but only those portions of the SE's response including both technical and cost portions of the response that do not conflict with the terms of this Contract and its amendments).

15.3 **DISPUTE PROCEDURES FOR OTHER THAN CONTRACT TERMINATION PROCEEDINGS**

A. Except for termination of this Contract, any dispute concerning sanctions imposed under this Contract shall be reported in writing to the Collaborative within fifteen (15) calendar days of the date the reporting party receives notice of the sanctions. The decision of the Collaborative regarding the dispute shall be delivered to the parties in writing within thirty (30) calendar days of the date the Director receives the written dispute. The decision shall be final and conclusive unless, within fifteen (15) calendar days from the date of the decision, either party files with the Collaborative Co-Chairs a written appeal of the decision of the Collaborative.

B. Any other dispute concerning performance of the Contract shall be reported in writing to the Collaborative within thirty (30) calendar days of the date the reporting party knew of the activity or incident giving rise to the dispute. The decision of the Collaborative shall be delivered to the parties in writing within thirty (30) calendar days and shall be final and conclusive unless, within fifteen (15) calendar days from the date of the decision, either party files with the Collaborative Co-Chairs a written appeal of the decision of the Collaborative.

C. Failure to file a timely appeal shall be deemed acceptance of the Collaborative's decision and waiver of any further claim.

D. In any appeal under this Article, the SE and the Collaborative shall be afforded an opportunity to be heard and to offer evidence and argument in support of their position to the Collaborative Co-Chairs or designee. The appeal is an informal hearing which shall not be recorded or transcribed, and is not subject to formal rules of evidence or procedure.

E. The Collaborative Co-Chairs shall review the issues and evidence presented and issue a determination in writing within thirty (30) calendar days of the of the informal hearing which shall conclude the administrative process available to the parties. The Collaborative Co-Chairs shall notify the parties of the decision within thirty (30) calendar days of the notice of the appeal, unless otherwise agreed to by the parties in writing or extended by the Collaborative Co-Chairs for good cause.

F. Pending decision by the Collaborative Co-Chairs, both parties shall proceed diligently with performance of the Contract, in accordance with the Contract.

G. Failure to initiate or participate in any part of this process shall be deemed waiver of any claim.

## ARTICLE 16 – APPLICABLE LAW

16.1 This Contract shall be governed by the laws of the State of New Mexico. All legal proceedings arising from unresolved disputes under this Contract shall be brought before the First Judicial District Court in Santa Fe, New Mexico.

16.2 Each party agrees that it shall perform its obligations hereunder in accordance with all applicable federal and state laws, rules and regulations now or hereafter in effect including the Deficit Reduction Act, the Clean Air Act and the federal Water Pollution Act.

16.3 If any provision of this Contract is determined to be invalid, unenforceable, illegal or void, the remaining provisions of this Contract shall not be affected, and providing the remainder of the Contract is capable of performance, and does not as so modified materially impact the underlying business arrangement between the parties, the remaining provisions shall be binding upon the parties hereto, and shall be enforceable, as though said invalid, unenforceable, illegal, or void provision were not contained herein.

## ARTICLE 17 – STATUS OF SE

17.1 The SE is an independent contractor performing professional services for the Collaborative and is not an employee of the Collaborative or the State of New Mexico. The SE 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 Contract. The SE acknowledges that all sums received hereunder are reportable by the SE for tax purposes.

17.2 The SE shall be solely responsible for all applicable taxes, insurance, licensing and other costs of doing business. Should the SE default in these or other responsibilities, jeopardizing the SE's ability to perform services, this Contract may be terminated for cause in accordance with Article 9.

17.3 The SE shall not purport to bind the Collaborative, member agencies, the State of New Mexico or any of their officers or employees to any obligation not expressly authorized herein unless the Collaborative has expressly given the SE the authority to so do in writing.

## ARTICLE 18 – ASSIGNMENT

With the exception of provider agreements or other subcontracts expressly permitted under this Contract, the SE shall not assign, transfer or delegate any rights, obligations, duties or other interest in this Contract or assign any claim for money due or to become due under this Contract except with the prior written consent of the Collaborative.

## ARTICLE 19 – SUBCONTRACTS

19.1 The SE is solely responsible for fulfillment of this Contract. The Collaborative shall make Contract payments only to the SE.

19.2 The SE shall remain solely responsible for performance by any subcontractor, including providers. In the event that any subcontractor is incapable of performing the service contracted for by the SE, the SE shall, upon the Collaborative's request, assume responsibility for providing the services that the subcontractor is incapable of performing. Upon the Collaborative's request, the SE shall provide any covered services directly until the SE identifies and contracts with a provider to provide such services.

19.3 The Collaborative may undertake or award other agreements for work related to the tasks described in this Contract or any portion therein if the SE's available time and/or priorities do not allow for such work to be provided by the SE. The SE shall fully cooperate with such other contractors and with the Collaborative in all such cases.

19.4 **SUBCONTRACTING REQUIREMENTS**

A. Except as otherwise provided in this Contract, the SE may subcontract to a qualified individual or organization for the provision of any covered service or for any other required SE function. The SE remains legally responsible for all work performed by any subcontractor.

B. The SE shall submit to the Collaborative for prior approval boilerplate contract language and/or sample contracts for each types of subcontract/provider agreement. Any changes to contract templates/sample contracts shall be approved by the Collaborative prior to execution by any subcontractor.

C. The State will review and approve or disapprove all subcontracts and/or any changes to previously approved subcontracts to ensure compliance with requirements set forth in 42 CFR §§434.6 and 438.230 or this Contract.

D. The SE shall give the Collaborative prior notice with regard to its intent to subcontract certain significant contract requirements as specified herein or in writing by the Collaborative, including, but not limited to, credentialing, utilization review, and claims processing. The State reserves the right to disallow a proposed subcontracting arrangement if the proposed subcontractor has been formally restricted from participating in a federal health care program (e.g., Medicare, Medicaid) for good cause.

E. The SE shall not contract with an individual provider, an entity, or an entity with an individual who is an officer, director, agent, manager or person with more than five percent (5%) of beneficial ownership of an entity's equity, that has been convicted of crimes specified in Section 1128 of the Social Security Act, or who has a contractual relationship with an entity convicted of a crime specified in Section 1128.

F. The SE shall include a provision in its subcontracts requiring subcontractors to perform criminal background checks for all required individuals providing services under this Contract, as specified in 7.1.9 NMAC, Caregivers Criminal History Screening Requirements.

G. Pursuant to 42 CFR §§422.08 and 422.210, if the SE operates a physician incentive plan (PIP), it shall provide assurance satisfactory to the Collaborative that the requirements of 42 CFR §422.208 are met.

H. In its subcontracts, the SE shall ensure that subcontractors agree to hold harmless the Collaborative, member agencies, and the SE's consumers in the event that the SE cannot or shall not pay for services performed by the subcontractor pursuant to the subcontract. The hold harmless provision shall survive the effective termination of the subcontract, regardless of the cause giving rise to termination. A subcontract termination shall be construed to be for the benefit of consumers.

I. The SE shall have a written document (agreement/contract/subcontract), signed by both parties, that describes the responsibilities of the SE and the subcontractor; the subcontracted activities; the frequency of reporting (if applicable) to the SE; the process by which the SE evaluates the subcontractor; and the remedies, including the revocation of the delegation, available to the SE if the subcontractor does not fulfill its obligations.

J. The SE shall have and implement policies and procedures to ensure that the subcontractor meets all standards of performance mandated by the Collaborative or member agency. These include, but are not limited to, use of appropriately qualified staff, and application of clinical practice guidelines and utilization management, reporting capability, and ensuring consumers' access to care.

K. The SE shall have and implement policies and procedures for the oversight of the subcontractor's performance of the delegated functions.

L. The SE shall have and implement policies and procedures to ensure consistent statewide application of all UM (Utilization Management) criteria when UM is delegated.

M. Credentialing Requirements: The SE shall have and implement policies and procedures for verifying that the credentials of all its providers and subcontractors meet applicable standards as stated in this Contract.

N. Review Requirements: The SE shall maintain fully executed originals of all subcontracts, including provider agreements, which shall be accessible to the Collaborative, upon request.

O. Minimum Requirements: Subcontracts, including subcontracts with providers, shall meet the following requirements:

1. Subcontracts shall be executed in accordance with all applicable federal and state laws, regulations, policies, procedures and rules;

2. Subcontracts shall identify the parties of the subcontract and their legal basis of operation in the State of New Mexico;

3. Subcontracts shall include the procedures and specific criteria for terminating the subcontract;

4. Subcontracts shall identify the services to be performed by the subcontractor and those services performed under any other subcontract(s). Subcontracts shall include provision(s) describing how services provided under the terms of the subcontract are accessed by consumers;

5. Subcontracts shall include the reimbursement rates and risk assumption, if applicable;

6. Subcontracts shall require subcontractors to maintain all records relating to services provided to consumers for a ten (10) year period and shall make all consumer medical records or other service records available for the purpose of quality review conducted by the Collaborative, or their designated agents both during and after the contract period;

7. Subcontracts shall require that consumer information be kept confidential, as defined by federal and state law;

8. Subcontracts shall include a provision that authorized representatives of the Collaborative have reasonable access to the subcontractor's facilities and records for financial and medical audit purposes both during and after the contract period;

9. Subcontracts shall include a provision for the subcontractor to release to the SE any information necessary for the SE to perform any of its obligations and that the SE shall be monitoring the subcontractor's performance on an ongoing basis and subjecting the subcontractor to formal periodic review;

10. Subcontracts shall state that the subcontractor shall accept payment from the SE as payment for any services included in the benefit package, and cannot request payment from the Collaborative for services performed under the subcontract;

11. Subcontracts shall require the subcontractor shall comply with all applicable state and federal statutes, rules, and regulations;

12. Subcontracts shall include provisions for termination for any violation of applicable state or federal statutes, rules, or regulations;

13. Subcontracts may not prohibit a provider or other subcontractor (with the exception of third-party administrators) from entering into a contractual relationship with another contractor;

14. Subcontracts may not include any incentive or disincentive that encourages a provider or other subcontractor not to enter into another contractual relationship;

15. Subcontracts shall not contain any gag order provisions that prohibit or otherwise restrict covered health professionals from advising patients about their health status or medical care or treatment as provided in Section 1932(b)(3) of the Social Security Act or in contravention of NMSA 1978, §59A-57-1 to 57-11, the Patient Protection Act;

16. Subcontracts for pharmacy providers shall include a payment provision consistent with NMSA 1978, §27-2-16B, unless there is a change in law or regulation;

17. Subcontracts with providers shall contain a provision requiring at least thirty (30) days' notice of any intent to diminish, materially change, or substantially reduce services provided pursuant to the subcontract and shall require continuation of services as is during that thirty (30) days and shall require negotiations with the SE and, to the extent the Collaborative desires, with the Collaborative regarding continuation or transition of said services; and

18. As applicable, the subcontract shall identify the OMB Circular A-133 requirements, including:

    a. Identifying the Catalog of Federal Domestic Assistance (CFDA number 93.958 for the CMHS Block Grant and CFDA number 93.959 for the SAPT Block Grant) and stating that subcontractor shall conduct an A-133 audit if it meets the $500,000 of federal funds threshold, and

    b. Including the language regarding allowable and unallowable cost/activities as specified by this Contract or regulation.

## ARTICLE 20 – RELEASE

20.1 Upon final payment of the amounts due under this Contract, unless the SE objects in writing to such payment within 180 calendar days, the SE shall release the Collaborative, its officers and employees and the State of New Mexico from all such payment obligations whatsoever under this Contract. The SE agrees not to purport to bind the State of New Mexico. If the SE timely objects to such payment, such objection shall be addressed in accordance with the Dispute provisions provided for in this Contract.

20.2 Payment to the SE by the Collaborative or any member agency shall not constitute final release of the SE. Should audit or inspection of the SE's records or the SE's consumer complaints subsequently reveal outstanding SE liabilities or obligations, the SE shall remain liable to the Collaborative for such obligations. Any payments by the Collaborative to the SE shall be subject to any appropriate recoupment by the Collaborative.

20.3 Notice of any post-termination audit or investigation of complaint by the Collaborative shall be provided to the SE, and such audit or investigation shall be initiated in accordance with CMS or other applicable requirements. The State shall notify the SE of any claim or demand within thirty (30) calendar days after completion of the audit or investigation or as otherwise authorized by CMS or applicable regulations. Any payments by the Collaborative to the SE shall be subject to any appropriate recoupment by the Collaborative in accordance with the provisions of Article 6 of this Contract.

## ARTICLE 21 – RECORDS AND AUDIT

21.1 **COMPENSATION RECORDS**

After final payment under this Contract or ten (10) years after a pending audit is completed and resolved, whichever is later, the Collaborative or its designee shall have the right to audit billings both before and after payment. The SE shall maintain all necessary records to substantiate the services it rendered under this Contract. These

records shall be subject to inspection by the Collaborative, the Department of Finance and Administration, the State Auditor and/or any authorized State or Federal entity and shall be retained for ten (10) years. Payment under this Contract shall not foreclose the right of the Collaborative to recover excessive or illegal payments as well as interest, attorney fees and costs incurred in such recovery.

21.2 **OTHER RECORDS**

In addition, the SE shall retain all consumer medical records, social service records, collected data, and other information subject to the Collaborative, state or federal reporting or monitoring requirements for ten (10) years after the contract is terminated under any provisions of Article 9 of this Contract or ten (10) years after any pending audit is completed and resolved, whichever is later. These records shall be subject to inspection by the Collaborative, the Department of Finance and Administration and/or any authorized State or Federal entity. The Department of Health and Human Services (HHS), the U.S. Comptroller General, or any representatives, shall have access to any books, documents, papers and records of the SE which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions. This right also includes timely and reasonable access to SE's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period but shall last as long as records are retained. Payment under this Contract shall not foreclose the right of the Collaborative to recover excessive or illegal payments and if such excessive or illegal payments are recovered then the Collaborative shall also be entitled to interest, attorney fees and costs incurred in such recovery.

21.3 **STANDARDS FOR MEDICAL RECORDS**

A. The SE shall require medical records to be maintained on paper and/or in electronic format in a manner that is timely, legible, current, and organized, and that permits effective and confidential consumer care and quality review.

B. The SE shall have and implement medical record confidentiality policies and procedures that implement the requirements of state and federal law and policy and of this Contract. These policies and procedures shall be consistent with confidentiality requirements in 45 CFR parts 160 and 164 for all medical records and any other health and enrollment information that identifies a particular consumer. Medical record contents shall be consistent with the utilization control required in 42 CFR Part 456.

C. The SE shall establish, and shall require its providers to have, an organized medical record keeping system and standards for the availability of medical records appropriate to the practice site.

D. The SE shall include provisions in its contracts with providers requiring appropriate access to the medical records of the SE's consumers for purposes of quality reviews to be conducted by the Collaborative, or agents thereof, and requiring that the medical records be available to providers for each clinical encounter.

21.4 The SE shall comply with the Collaborative's reasonable requests for records and documents as necessary to verify that the SE is meeting its obligations under this Contract, or for data reporting legally required of the Collaborative. However, nothing in this Contract shall require the SE to provide the Collaborative with information, records, and/or documents which are protected from disclosure by any law, including, but not

limited to, laws protecting proprietary information as a trade secret, confidentiality laws, and any applicable legal privileges (including but not limited to, attorney/client, physician/patient, quality assurance and peer review), except as may otherwise be required by law or pursuant to a legally adequate release from the affected consumer(s).

21.5 The SE shall provide the State of New Mexico, the Collaborative, and any other legally authorized governmental entity, or their authorized representatives, the right to enter at all reasonable times the SE's premises or other places where work under this Contract is performed to inspect, monitor or otherwise evaluate the quality, appropriateness, and timeliness of services performed under this contract. The SE shall provide reasonable facilities and assistance for the safety and convenience of the persons performing those duties (e.g. assistance from the SE's staff to retrieve and/or copy materials). The State and its authorized agents shall schedule access with the SE in advance within a reasonable period of time except in the case of suspected fraud and abuse. All inspection, monitoring and evaluation shall be performed in such a manner as not to unduly interfere with the work being performed under this Contract.

21.6 In the event right of access is requested under this Section, the SE or subcontractor shall upon request provide and make available staff to assist in the audit or inspection effort, and shall provide adequate space on the premises to reasonably accommodate the Collaborative, State, or Federal representatives conducting the audit or inspection effort.

21.7 All inspections or audits shall be conducted in a manner as shall not unduly interfere with the performance of the SE's or any subcontractor's activities. The SE shall be given ten (10) business days to respond to any findings of an audit before the Collaborative shall finalize its findings. All information so obtained shall be accorded confidential treatment as provided in applicable law.

21.8 **RETENTION REQUIREMENTS FOR RECORDS**

Financial records, supporting documents, statistical records, and all other records pertinent to this Contract shall be retained for a period of three (3) years from the date of submission of the final expenditure report. The only exceptions are the following:

A. If any litigation, claim, financial management review or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken;

B. Records for real property and equipment acquired with federal funds shall be retained for three (3) years after final disposition;

C. When records are transferred to or retained by the HHS awarding agency, the three (3) year retention requirement is not applicable; and

D. Indirect cost rate proposals, cost allocations plan, etc., as specified in 45 CFR §74.53(g).

## ARTICLE 22 – INDEMNIFICATION

22.1 The SE agrees to indemnify, defend and hold harmless the State of New Mexico, its officers, agents and employees from any and all claims and losses accruing or resulting from any and all SE employees, agents, or subcontractors, in connection with the breach or failure to perform or erroneous or negligent acts or omissions in the performance of

this Contract, and from any and all claims and losses accruing or resulting to any person, association, partnership, entity or corporation who may be injured or damaged by the SE in the performance or failure in performance of this Contract resulting from such acts of omissions. The provisions of this Article 22.1 shall not apply to any liabilities, losses, charges, costs or expenses caused by, or resulting from, in whole or in part the acts of omissions of the State of New Mexico, the Collaborative, member agencies, or any of its officers, employees or agents.

22.2 The SE shall at all times during the term of this Contract, indemnify and hold harmless the Collaborative against any and all liability, loss, damage, costs or expenses which the Collaborative may sustain, incur or be required to pay (1) by reason of any consumer suffering personal injury, death or property loss or damage of any kind as a result of the erroneous or negligent acts or omissions of the SE either while participating with or receiving care or services from the SE under this Contract, or (2) while on premises owned, leased, or operated by the SE or while being transported to or from said premises in any vehicle owned, operated, leased, chartered, or otherwise contracted for or in the control of the SE or any officer, agent, subcontractor or employee thereof. The provisions of this Section shall not apply to any liabilities, losses, charges, costs or expenses caused by, or resulting from, the acts or omissions of the State of New Mexico, the Collaborative, or any of its officers, employees, or agents. In the event that any action, suit or proceeding related to the services performed by the SE or any officer, agent, employee, servant or subcontractor under this Contract is brought against the SE, the SE shall, as soon as practicable but no later than two (2) business days after it receives notice thereof, notify the legal counsel of the Collaborative and the Risk Management Division of the New Mexico General Services Department by certified mail.

22.3 The SE shall agree to indemnify and hold harmless the Collaborative, the State of New Mexico, its agents, and its employees from any and all claims, lawsuits, administrative proceedings, judgments, losses, or damages, including court costs and attorney fees, or causes of action, caused by reason of the SE's erroneous or negligent acts or omissions, including the following:

A. Any claims or losses attributable to any persons or firm injured or damaged by erroneous or negligent acts, including without limitation, disregard of federal or state Medicaid regulations or statutes by the SE, its officers, its employees, or subcontractors in the performance of the Contract, regardless of whether the Collaborative knew or should have known of such erroneous or negligent acts; unless the Collaborative or the State, or any of its officers, employees or agents directed in writing to the performance of such acts; and

B. Any claims or losses attributable to any person or firm injured or damaged by the SE's publication, translation, reproduction, delivery, performance, use, or disposition of any data processed under the Contract in a manner not authorized by the Contract or by federal or state regulations or statutes, regardless of whether the Collaborative knew or should have known of such publication, translation, reproduction, delivery, performance, use, or disposition unless the Collaborative, the State, or any of its officers, employees or agents directed or affirmatively consented in writing to such publication, translation, reproduction, delivery, performance, use or disposition.

The provisions of this Article 22.3 shall not apply to any liabilities, losses, charges, costs or expenses caused by, or resulting from, the acts or omissions of the Collaborative, the State, or any of its officers, employees, or agents.

22.4 The SE, including its subcontractors, agrees that in no event, including but not limited to nonpayment by the SE, insolvency of the SE or breach of this Contract, shall the SE or its subcontractor bill, charge, collect a deposit from, seek compensation, remuneration, or reimbursement from or have any recourse against a consumer or a person (other than the SE) acting on a consumer's behalf for services provided pursuant to this Contract except for any population required to make co-payments under Collaborative policy. In no case shall the Collaborative and/or any consumer be liable for any debts of the SE.

22.5 The SE agrees that the above indemnification provisions shall survive the termination of this Contract, regardless of the cause giving rise to termination. This provision is not intended to apply to services provided after this Contract has been terminated.

22.6 The State shall notify the SE of any claim, loss, damage, suit or action as soon as the Collaborative reasonably believes that such claim, loss, damage, suit or action may give rise to a right to indemnification under this Article. The failure of the Collaborative, however, to deliver such notice shall not relieve the SE of its obligation to indemnify the Collaborative under this Article. Prior to entering into any settlement for which it may seek indemnification under this Article, the Collaborative shall consult with the SE, but the SE need not approve the settlement. Nothing in this provision shall be interpreted as a waiver of the Collaborative's right to indemnification. The State shall permit the SE, at the SE's option and expense, to assume the defense of such asserted claim(s) using counsel acceptable to the Collaborative and to settle or otherwise dispose of the same, by and with the consent of the Collaborative. Failure to give prompt notice as provided herein shall not relieve the SE of its obligations hereunder, except to the extent that the defense of any claim for loss is prejudiced by such failure to give notice.

## ARTICLE 23 – LIABILITY

23.1 The SE shall be wholly at risk for those covered services specified in this Contract and shall administer all other covered services on an administrative services only (ASO) basis as specified in this Contract. No additional payment shall be made by the Collaborative other than that specified in this Contract, nor shall any payment be collected from a consumer, except for co-payments authorized by the Collaborative or State laws or regulations.

23.2 The SE is solely responsible for ensuring that it issues no payments for services for which it is not liable under this Contract. The Collaborative shall accept no responsibility for refunding to the SE any such excess payments unless the Collaborative or Collaborative CEO directed such services to be rendered or payment made.

23.3 The SE, its successors and assignees shall procure and maintain such insurance and other forms of financial protections as are identified in this Contract.

## ARTICLE 24 – EQUAL OPPORTUNITY COMPLIANCE

The SE agrees to abide by all federal and state laws, rules, regulations and executive orders of the Governor of the State of New Mexico and the President of the United States pertaining to equal opportunity including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 (regarding education programs and activities), the Age Discrimination Act of 1975, the Rehabilitation Act of 1973 and the Americans with Disabilities Act. In accordance with all such laws, rules, and regulations,

and executive orders, the SE agrees to ensure that no person in the United States shall, on the grounds of race, color, national origin, sex, sexual preference, age, trans-gender, handicap or religion be excluded from employment with, or participation in, be denied the benefit of, or otherwise be subjected to discrimination under any program or activity performed under this Contract. If the Collaborative finds that the SE is not in compliance with this requirement at any time during the term of this Contract, the Collaborative reserves the right to terminate this Contract pursuant to Article 9 or take such other steps it deems appropriate to correct said problem.

## ARTICLE 25 – RIGHTS TO PROPERTY

All equipment and other property provided or reimbursed to the SE by the Collaborative is the property of the Collaborative and shall be turned over to the Collaborative at the time of termination or expiration of this Contract, unless otherwise agreed to in writing. In addition, in regard to the performance of experimental, developmental or research done by the SE, the Collaborative shall determine the rights of the federal government and the parties to this Contract in any resulting invention.

## ARTICLE 26 – ERRONEOUS ISSUANCE OF PAYMENT OR BENEFITS

In the event of an error which causes payment(s) to the SE to be issued in error, the SE shall reimburse the Collaborative within thirty (30) calendar days of written notice of such error for the full amount of the payment, subject to the provisions of Article 6 of this Contract. Interest shall accrue at the statutory rate on any amounts not paid and determined to be due after the thirtieth (30th) day following the notice.

## ARTICLE 27 – EXCUSABLE DELAYS

27.1 The SE shall be excused from performance hereunder for any period that it is prevented from performing any services hereunder in whole or in part as a result of an act of nature, war, civil disturbance, epidemic, court order, or other cause beyond its reasonable control, and such nonperformance shall not be a default hereunder or ground for termination of the Contract.

27.2 Suspensions under Force Majeure shall require the Party seeking suspension to give notification to the other Party at least five (5) business days before the imposition of the suspension. The receiving Party will be deemed to have agreed to such suspension unless having posted to mail such objection or non-consent within five (5) business days of receipt of request for suspension. The performance of either Party's obligations under the Contract shall be suspended during the period that any circumstances of Force Majeure persists, or for a consecutive period of ninety (90) calendar days, whichever is shorter, and such Party shall be granted an extension of time for performance equal to the period of suspension. For the purposes of this Section, "Force Majeure" means any event or occurrence which is outside of the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventive action by the Party concerned.

27.3 The SE shall be excused from performance hereunder during any period for which the federal government or the State of New Mexico has failed to enact a budget or appropriate monies to fund covered services, provided that the SE notifies the Collaborative, in writing, of its intent to suspend performance and the Collaborative is unable to resolve the budget or appropriation deficiencies within forty-five (45) calendar days.

27.4 In addition, the SE shall be excused from performance hereunder for insufficient payment by the Collaborative, provided that the SE notifies the Collaborative in writing of its intent to suspend performance and the Collaborative is unable to remedy the monetary shortfall within forty-five (45) calendar days.

## ARTICLE 28 – MARKETING

28.1 The SE shall have and implement policies and procedures governing the development and distribution of marketing materials for consumers.

28.2 The Collaborative shall review and approve the content, comprehension level, and language(s) of all marketing materials directed at consumers (their families, legal guardians, and/or designated representatives) before use.

A. The SE shall distribute its marketing materials to its entire service area.

B. The SE shall not seek to influence enrollment in conjunction with the sale or offering of any private insurance, not including public/private partnerships.

C. The SE shall specify the methods by which it assures the Collaborative that marketing materials are accurate and do not mislead, confuse, or defraud consumers or the Collaborative. Marketing materials will be considered inaccurate, false, or misleading if they contain statements or assertions, written or oral, including but not limited to:

1. Statements that the consumer must enroll with the SE in order to obtain Medicaid services or in order not to lose benefits; or

2. Statements that the SE is endorsed by CMS, the federal government, the State, or a similar entity.

### 28.3 MINIMUM MARKETING AND OUTREACH REQUIREMENTS

The marketing and outreach material shall meet the following minimum requirements:

A. Marketing and/or outreach materials shall meet requirements for all communication with consumers, as set forth in the Medicaid Program Manual; and

B. All marketing and/or outreach materials produced by the SE describing services to consumers shall state that such services are funded pursuant to a Contract with the State of New Mexico.

### 28.4 MARKETING AND OUTREACH ACTIVITIES NOT PERMITTED UNDER THIS CONTRACT

The following marketing and outreach activities are prohibited, regardless of the method of communication (oral, written) or whether the activity is performed by the SE directly, or by its network providers, its subcontractors, or any other party affiliated with the SE:

A. Asserting or implying that a consumer shall lose Medicaid benefits if he/she does not enroll with the SE or inaccurately depicting the consequences of choosing a different SE;

B. Designing a marketing or outreach plan that discourages or encourages SE selection based on health status or risk;

C. Initiating an enrollment request on behalf of a consumer;

D. Making inaccurate, false, materially misleading or exaggerated statements;

E. Asserting or implying that the SE offers unique covered services when another entity provides the same or similar service;

F. Using gifts or other incentives to entice people to enroll with the SE;

G. Directly or indirectly conducting door-to-door, telephonic or other "Cold Call" marketing. "Cold Call" marketing is defined as any unsolicited personal contact by the SE with a potential consumer for the purpose of marketing. Marketing means any communication from an SE to a consumer who is not enrolled in the SE that can reasonably be interpreted as intended to influence the consumer to enroll in that SE and not to enroll in or to disenroll from, another SE. The SE may send informational material regarding its benefit package to potential consumers; and

H. Conducting any other marketing activity prohibited by the Collaborative during the course of this Contract.

28.5 The SE shall take reasonable steps to prevent subcontractors and network providers from committing the acts described herein. The SE shall be held liable only if it knew or should have known that its subcontractors or network providers were committing the acts described herein and did not take timely corrective actions. The Collaborative reserves the right to prohibit additional marketing activities at its discretion.

28.6 **MARKETING TIMEFRAMES**

The SE may initiate marketing and outreach activities at any time.

28.7 The Collaborative's Marketing Guidelines are incorporated into this Contract by reference. This Contract shall incorporate all revisions to the Guidelines produced during the course of the Contract.

28.8 Behavioral Health Education and Outreach Materials may be distributed to the SE's consumers by mail or in connection with exhibits or other organized events, including but not limited to, health fair booths at community events and SE-hosted behavioral health improvement events. Behavioral Health Education means programs, services or promotions that are designed or intended to inform the SE's actual or potential consumers upon request about the issues related to behavioral health lifestyles, situations that affect or influence behavioral health status or methods or modes of behavioral health treatment. Outreach is the means of educating or informing the SE's actual or potential consumers about behavioral health issues. The State shall not approve health education materials. The SE shall work with the Collaborative to develop and implement outreach programs consistent with the policies of the Collaborative and the Comprehensive Behavioral Health Plan and to meet the goals of the Collaborative.