

OF NEW MEXICO  
HUMAN SERVICES DEPARTMENT  
GOVERNMENTAL SERVICES AGREEMENT

This **Governmental Services Agreement (GSA)** is made and entered into by and between the State of New Mexico **Human Services Department**, hereinafter referred to as the "HSD", and the State of New Mexico **Aging and Long Term Services**, hereinafter referred to as the "ALTSD", and is effective as of the date set forth below upon which it is executed by the HSD.

**IT IS AGREED BETWEEN THE PARTIES:**

**1. Scope of Work**

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

**2. Compensation**

A. The total amount payable to the ALTSD under this GSA shall not exceed five million five hundred thousand dollars (\$5,500,000) including expenses. This amount is a maximum and not a guarantee that the work assigned to ALTSD under this GSA to be performed shall equal the amount stated herein.

The total amount payable to the ALTSD under this GSA, including expenses, shall not exceed nine hundred thousand dollars (\$900,000) in FY17.

The total amount payable to the ALTSD under this GSA, including expenses, shall not exceed one million dollars (\$1,000,000) in FY18.

The total amount payable to the ALTSD under this GSA, including expenses, shall not exceed one million one hundred thousand dollars (\$1,100,000) in FY19.

The total amount payable to the ALTSD under this GSA, including expenses, shall not exceed one million two hundred thousand dollars (\$1,200,000) in FY20.

The total amount payable to the ALTSD under this GSA, including expenses, shall not exceed one million three hundred thousand dollars (\$1,300,000) in FY21.

B. Payment in FY17, FY18, FY19, FY20, and FY21 is subject to availability of funds pursuant to the Appropriations Paragraph set forth below, and to approval by the HSD. All invoices **MUST BE** received by the HSD no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. **Invoices received after such date WILL NOT BE PAID.**

C. The ALTSD must submit a detailed statement accounting for all services performed and expenses incurred. If the Agency finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the ALTSD that payment is requested, the HSD shall provide the ALTSD a letter of exception explaining the defect or objection to the services,

and outlining steps the ALTSD may take to provide remedial action. Upon certification by the HSD that the services have been received and accepted, payment shall be tendered to the ALTSD within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the HSD shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. **Term**

This GSA shall be effective July 1, 2017 and shall terminate on **June 30, 2021**, unless amended, extended, or terminated pursuant to the terms of this GSA.

4. **Termination**

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

B. **Termination Management**. Immediately upon receipt by either the HSD or the ALTSD of notice of termination of this GSA, the ALTSD shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this GSA without written approval of the HSD; 2) comply with all directives issued by the HSD in the notice of termination as to the performance of work under this GSA; and 3) take such action as the HSD shall direct for the protection, preservation, retention or transfer of all property titled to the HSD and records generated under this GSA. Any non-expendable personal property or equipment provided to or purchased by the ALTSD with contract funds shall become property of the HSD upon termination and shall be submitted to the HSD as soon as practical.

5. **Appropriations**

The terms of this GSA are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this GSA. If sufficient appropriations and authorization are not made by the Legislature, this GSA shall terminate immediately upon written notice being given by the HSD to the ALTSD. The HSD's decision as to whether sufficient appropriations are available shall be accepted by the ALTSD and shall be final. If the HSD proposes an amendment to the GSA to unilaterally reduce funding, the ALTSD

shall have the option to terminate the GSA or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**6. Status of ALTSD**

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

**7. Assignment**

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

**8. Subcontracting**

The ALTSD shall not subcontract any portion of the services to be performed under this GSA without the prior written approval of the HSD.

**9. Release**

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

**10. Confidentiality**

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

**11. Product of Service - Copyright**

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

**12. Conflict of Interest; Governmental Conduct Act**

A. The ALTSD represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The ALTSD further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978.

Without in anyway limiting the generality of the foregoing, the ALTSD specifically represents and warrants that:

1) in accordance with Section 10-16-4.3 NMSA 1978, the ALTSD does not employ, has not employed, and will not employ during the term of this Agreement any HSD employee while such employee was or is employed by the HSD and participating directly or indirectly in the HSD's contracting process;

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

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

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

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

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

C. The ALTSD's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the HSD relied when this Agreement was entered into by the parties. The ALTSD shall provide immediate written notice to the HSD if, at any time during the term of this Agreement, the ALTSD learns that the ALTSD's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that the ALTSD's representations and warranties in Paragraphs A and B of this

Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the HSD and notwithstanding anything in the Agreement to the contrary, the HSD may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

**13. Amendment**

A. This GSA shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the HSD proposes an amendment to the GSA to unilaterally reduce funding due to budget or other considerations, the ALTSD shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the GSA, pursuant to the termination provisions contained herein, or to agree to the reduced funding.

**14. Merger**

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

**15. Penalties for violation of law**

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

**16. Equal Opportunity Compliance**

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

**17. Applicable Law**

The laws of the State of New Mexico shall govern this GSA, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G), NMSA 1978. By execution of this GSA, ALTSD acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this GSA.

**18. Records and Audit**

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

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

C. Upon completion of the audit under the applicable federal and state statutes and regulations, The ALTSD shall notify the HSD when the audit is available for review and provide online access to the HSD.

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

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

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

**19. Invalid Term or Condition**

If any term or condition of this GSA shall be held invalid or unenforceable, the remainder

of this GSA shall not be affected and shall be valid and enforceable.

**20. Enforcement of GSA**

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

**21. Notices**

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

To the HSD: Jeannette Gurule, Program Manager  
Long Term Services and Supports Bureau  
Medical Assistance Division/Human Services Department  
2025 S. Pacheco  
Santa Fe, NM 87504-2348  
[jeannette.c.gurule@state.nm.us](mailto:jeannette.c.gurule@state.nm.us)

To ALTSD: Myles Copeland, Secretary  
State of New Mexico  
Aging & Long Term Services Department  
2550 Cerrillos Road  
Santa Fe, NM 87505  
[myles.copeland@state.nm.us](mailto:myles.copeland@state.nm.us)

**22. Authority**

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

**23. Debarment and Suspension**

A. Consistent with all applicable federal and/or state laws and regulations, as applicable, and as a separate and independent requirement of this GSA the ALTSD certifies by signing this GSA, that it and its principals, to the best of its knowledge and belief: (1) are not debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency; (2) have not, within a three-year period preceding the effective date of this GSA, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; (3) have not been indicted for, or otherwise criminally or civilly

charged by a governmental entity (Federal, State or local) with, commission of any of the offenses enumerated above in this Paragraph A; (4) have not, within a three-year period preceding the effective date of this GSA, had one or more public agreements or transactions (Federal, State or local) terminated for cause or default; and (5) have not been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a-7.

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

- 1) The ALTSD shall provide immediate written notice to the HSD's Program Manager if, at any time during the term of this GSA, the ALTSD learns that its certification in Paragraph A, above, was erroneous on the effective date of this GSA or has become erroneous by reason of new or changed circumstances.
- 2) If it is later determined that the ALTSD's certification in Paragraph A, above, was erroneous on the effective date of this GSA or has become erroneous by reason of new or changed circumstances, in addition to other remedies available to the HSD, the HSD may terminate the GSA.

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

**24. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions**

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

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



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

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

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

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

**25. Findings and Sanctions**

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

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

C. If the HSD becomes aware of circumstances that might jeopardize continued federal funding, the situation shall be reviewed and reconciled by a mutually agreed upon panel of ALTSD and the HSD officials. If reconciliation is not possible, both parties shall present their

view to the Director of the Administrative Services Division who shall determine whether continued payment shall be made.

**26. Non-Discrimination.**

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

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

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

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

**27. Drug Free Workplace.**

A. *Definitions.* As used in this paragraph—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

while performing this contract.

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

**28. Miscellaneous**


A. This GSA is an internal government GSA and is not intended to confer any right upon any private person.

B. Headings used in this GSA are for reference purposes only and shall not be deemed a part of the GSA.


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IN WITNESS WHEREOF, the parties execute this GSA as set forth below:

**STATE OF NEW MEXICO:**


By:   
HSD Cabinet Secretary

Date: 3/10/16

By:   
HSD Chief Financial Officer

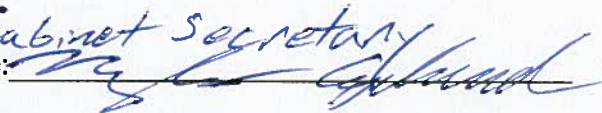
Date: 2/26/16

**Approved as to form and legal sufficiency:**

By:   
HSD Office of General Counsel

Date: 2/18/16

**Governing Contractor Official:**

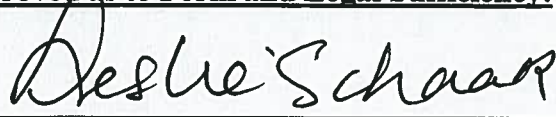
Title: Cabinet Secretary  
Signature: 

Date: 2/15/16

Designee: \_\_\_\_\_

Date: \_\_\_\_\_

**Approved as to Form and Legal Sufficiency:**

By:   
General Counsel

Date: 2/12/16

**Exhibit A**  
**Scope of Work**

The HSD and the Aging and Long-Term Services Department (ALTSD) agree to work together toward Medicaid administrative related activities detailed within this scope of work. This scope of work is separated into the following sections:

- A. General Administration;
- B. Federal Financial Participation (FFP) for Medicaid Eligible Aging and Disability Resource Center (ADRC).

**A. General Administration**

The Centers for Medicare and Medicaid Services (CMS) within the U.S. Department of Health and Human Services (HHS) is responsible for Medicaid program administration at the federal level. Medicaid is jointly financed by both federal and state governments, but New Mexico designs and administers its own program within broad federal guidelines by the HSD Medical Assistance Division (MAD).

These Scope of Work services must be delivered congruent with and supportive of furthering the goals and objectives of New Mexico's Medicaid program and services.

The following are General Administration responsibilities and apply to all Scope of Work (SOW) services:

**1. HSD Shall:**

- (a) Act as the single state agency to administer or supervise the administration of the New Mexico Medicaid program, and, as such, retain all authority and responsibility associated therewith including the following SOW related items:
  - i. Contract with other public or private entities to perform various program functions;
  - ii. Maintain control mechanisms designed to minimize improper payments resulting from unintended errors, as well as fraud and abuse; and
  - iii. Collect and report required program information to CMS.
- (b) Be fiscally and legally responsible for all its actions and responsibilities as defined within this agreement, including developing and maintaining adequate fiscal infrastructure to prevent inappropriate payments;
- (c) Serve as program and fiscal agent for the GSA and this related SOW;
- (d) Draw down Medicaid administrative federal funds to reimburse ALTSD according to grant terms and conditions or Federal Financial Participation (FFP) matching funds at the applicable matching rate, currently 50%, whichever is

applicable. HSD must reimburse ALTSD for verified approved Medicaid related activities matched by ALTSD, and transfer such federal funds to ALTSD;

- (e) Serve as primary contact for communication with CMS, and arrange for the involvement of ALTSD in such communications;
- (f) Provide ongoing training for ALTSD staff on Medicaid eligibility, benefit packages and processes;
- (g) Within reasonable agreed upon timeframes, review and approve any Medicaid specific related outreach materials developed by ALTSD to ensure that these materials are Medicaid appropriate, comprehensive and Civil Rights and Limited English Proficient (LEP) compliant;
- (h) Review quantifiable information furnished by ALTSD, in regularly scheduled quarterly data reports. In addition, HSD may monitor the quality of services provided through management evaluation reviews as deemed necessary. Notification of a review will be provided to the service provider with fifteen (15) days advance notice outlining the areas to be reviewed;
- (i) Review ALTSD's appropriations (operating budget); both agencies shall agree on the amount to be budgeted prior to the submission of the budget request on an agreed upon date each year;
- (j) Review and approve invoices and documentation ALTSD submits to HSD for each quarter's bill, requesting changes as necessary;
- (k) Request employee access to needed ALTSD data systems only for inquiry purposes, which may require approval by the HSD's Chief Information Officer (CIO). When approved by ALTSD, having been trained and certified, HSD will have reasonable access to ALTSD systems onsite at ALTSD if not available remotely. HSD may have to meet certain HSD hardware and software criteria;
- (l) Assist ALTSD with navigating the eligibility process including facilitation of interactions with eligibility determiners and identification and presentation of best practices; and
- (m) Conduct required sub-recipient monitoring procedures that entail review of the required quarterly reports submitted by ALTSD, desk audits, and at least one annual on-site audit which shall occur during each state fiscal year at ALTSD, and will consist of both a programmatic and financial review.

## **2. ALTSD Shall:**

- (a) Meet with HSD on an agreed upon regular schedule to address protocol, collaboration and relationship building between ADRC and HSD staff;

- (b) Employ adequate staff to provide SOW services in compliance with the stated service strategies and federally approved service plans;
- (c) Comply with all rules, regulations and policies governing Medicaid Programs and provide information necessary for HSD to function effectively as the single state Medicaid agency;
- (d) Subject to HSD/MAD approval, develop Medicaid specific related outreach information relative to this SOW and ensure that these materials and integrated consumer services are:
  - i. Comprehensive;
  - ii. Performance based where possible; and
  - iii. Civil Rights and Limited English Proficient (LEP) compliant;
- (e) Along with the first billing invoice, provide HSD with a staffing pattern to include job descriptions (function and service) for SOW services described;
- (f) Ensure that staff performing activities relative to this agreement are knowledgeable of current Medicaid programs, regulations, eligibility, benefit package and processes;
- (g) Operate Medicaid related activities in compliance with Health Insurance Portability and Accountability Act (HIPAA) and utilize all computer data provided by HSD regarding applicants and program participants accordingly and only for purposes specified in the GSA and SOW;
- (h) Allow any security inspections reasonably required to ensure that HSD data is adequately protected;
- (i) Be responsible for the accuracy of the information necessary to satisfy federal audits on program activities and fund use related to the services provided under this agreement;
- (j) Certify that claims have been paid prior to submittal, are the actual program costs and are in accordance with the principles established in OMB Circular A-87 and the State Plan;
- (k) Be fiscally and legally responsible for all its actions and responsibilities and ensure that individuals who receive quality services and those public funds are spent appropriately;
- (l) Utilize a financial reporting structure in which federal match, state share and grant funds are allocated to separate departmental/fund designations substantiating billed amounts;



- (m) ALTSD and HSD will establish a billing protocol at the beginning of each fiscal year that will be used to determine the necessary documentation to include:
- i. Documentation of total expenditures by account from the ALTSD accounting system designating the amounts used for billing the state and federal share which tie to the summary totals submitted for billing;
  - ii. Provide a detailed budget for each fiscal year's expense by line item, funding source and amount prior to the beginning of each fiscal year to include a description of the staff functions and qualifications for performing budgeted work.
- (n) Provide Budget Adjustment Requests (BAR) and Grant Management changes to HSD;
- (o) Bill HSD quarterly within forty five (45) days from the end of each quarter (with the exception of the final quarter of the state fiscal year, April-June, during which invoices must be received within fifteen (15) days of the end of the quarter) for the federal share of administrative costs of this agreement. With each billing invoice:
- i. Certify that the funds used as the State's share of the expenses are not federal funds, or if they are federal funds, their use is authorized by federal law to be used to match other federal funds;
  - ii. Certify that the funds used as the State's share of the expenses have not been used to match other federal funds;
  - iii. Provide HSD sufficient documentation to justify requested reimbursement for allowable expenses.
- (p) Provide an annual report to HSD no later than March 31, 2018, and no later than March 31<sup>st</sup> of each subsequent year during the life of this contract, which will enable HSD to meet federal funding and grant reporting requirements, and shall address all of the following:
- i. A description of each service that has been provided under this Scope of Work during the State Fiscal Year covered in this report;
  - ii. The number of unduplicated individuals served monthly/quarterly and year-to-date and a description of the types of services provided;
  - iii. A complete description of all staff positions, their functions and services provided under this Scope of Work and the percentages of time that each staff member devotes to these services;
  - iv. A description of the Best Practices used to provide services under this Scope of Work;
  - v. Outreach and tools developed to improve services; and
  - vi. Successes and challenges identified during this time period and the steps that have been taken to address them.

- (q) Collect, analyze, and report to HSD specific program/SOW data as are agreed upon in writing by the parties, those required by state or federal law or regulation, or others requested by state and federal authorities including those requested by the legislature or its committees;
- (r) Request employee access to needed HSD data systems only for inquiry purposes, which may require approval by the HSD's CIO. When approved by HSD, and having been trained and certified, ALTSD will have reasonable access to HSD systems onsite at HSD if not available remotely. ALTSD may have to meet certain HSD hardware and software criteria.
- (s) Perform ongoing monitoring of progress, including any services performed through the use of contractors/subcontractors, towards meeting the stated goals and objectives. Monitoring service operations is essential to improve services, reduce costs wherever possible, enhance customer satisfaction and positively influence key performance indicators. It is important the service provider develop procedures that will be used to address poor performance, or unexpected issues that may present themselves during each contract year. Monitoring activities shall include:
  - i. Data accuracy;
  - ii. Appropriateness of SOW services;
  - iii. Fiscal accounting;
  - iv. Participant satisfaction; and
  - v. Effectiveness of related partner services.
- (t) Comply with HSD's required sub-recipient monitoring procedures that entail review of the required quarterly reports submitted by ALTSD, desk audits, and at least one annual on-site audit which shall occur during each state fiscal year at ALTSD, and will consist of both a programmatic and financial review.
- (u) Submit to HSD the following deliverables:
  - i. By July 1, 2018 certification that claims paid prior to submittal are the actual program costs and are in accordance with the principles established in OMB Circular A-87 and the State Plan.
  - ii. By July 1, 2018 a billing protocol at the beginning of each fiscal year that will be used to determine the necessary documentation to include:
    - 1. Documentation of total expenditures by account from the ALTSD accounting system designating the amounts used for billing the state and federal share which tie to the summary totals submitted for billing.
    - 2. Provide a detailed budget for each fiscal year's expense by line item, funding source and amount prior to the beginning of each fiscal year to

include a description of the staff functions and qualifications for performing budgeted work.

- iii. By July 1, 2018 a report to HSD containing program specific SOW data as agreed upon in writing by the parties, those required by state or federal law or regulation, or others requested by state and federal authorities including those requested by the legislature or its committees.
- iv. By July 1, 2018 develop a monitoring report that shows ongoing monitoring of progress, including any services performed through the use of contractors/subcontractors, towards meeting the stated goals and objectives. Monitoring activities shall include:
  - 1. Data accuracy;
  - 2. Appropriateness of SOW services;
  - 3. Fiscal accounting;
  - 4. Participant satisfaction; and
  - 5. Effectiveness of related partner services.

**B. Federal Financial Participation (FFP) for Medicaid Eligible Aging and Disability Resource Center**

The federal government will match State expenditures that it deems necessary to support the “efficient and effective” administration of the Medicaid program. This administrative FFP is typically 50% of the costs.

The following are FFP responsibilities:

**1. HSD Shall:**

- (a) Provide regulatory information for ALTSD to define what administrative costs are eligible for FFP; and
- (b) Ensure that ALTSD eligible FFP services are accounted for in the HSD’s Cost Allocation Plan.

**2. ALTSD Shall:**

- (a) Provide State General Fund (SGF) 50% matching dollars (or other qualifying matching funds) in proportion to appropriate FFP received. ALTSD cannot use other federal grant funds to meet the state matching requirement for qualified Medicaid administrative activities.
- (b) Request FFP from HSD for ALTSD staff that supports the “efficient and effective” administration of the Medicaid program through ALTSD and the ADRC.

**Allowable Medicaid Activities:**

<b>ALTSD Functions</b>	<b>Eligibility to Receive Medicaid Administrative Match</b>
1. Outreach	Outreach that emphasizes access to Medicaid program.
2. Information, Referral, Choice Counselling and Central Intake	Functions that discuss Medicaid as potential service or provide to someone who is Medicaid eligible.
3. Short-term Stabilization	For individuals who are Medicaid eligible, activities that are related to connecting individuals to Medicaid funded services. May also be eligible if funded as Targeted Case Management under the Medicaid State Plan.
4. LTC Options Counseling	For individuals who are Medicaid eligible or if part of Medicaid eligibility determination process.
5. Linkage to LTC and Supportive Services	Yes, if individual is Medicaid eligible.
6. Interaction with Medicaid Eligibility Approval Process	Outreach that emphasizes access to Medicaid program.
7. Assistance in continuous improvement projects for the LTC system	When the effort impacts Medicaid services and beneficiaries.

## (c) Submit to HSD the following deliverables and reports:

- i. By March 31, 2018, provide HSD with ALTSD service delivery descriptions as they relate to the aforementioned seven (7) ADRC functions that are eligible for Medicaid FFP.
- ii. With each quarterly billing invoice of each State Fiscal Year (SFY), ALTSD shall perform and submit to HSD a time study covering one full week for ADRC staff to determine the appropriate time in activities spent for Medicaid matchable functions. ALTSD staff shall use Exhibit B's time study worksheet, attached hereto and incorporated in this Agreement by reference.

The time studies will be signed by each employee claiming FFP and reviewed, certified and signed by ALTSD program designee prior to submitting to HSD. This time study will be used to anticipate the percentage of time spent conducting Medicaid matchable functions for the entire State Fiscal Year (SFY). The time study shall include all funding sources ALTSD receives to ensure appropriate cost allocations for costs associated with this SOW. Substantial changes in activities or funding may necessitate a new study during the year.

iii. By the 15<sup>th</sup> of the month following the end of every quarter, throughout the life of this contract, the following seven (7) reports will be submitted to HSD using methodology and formatting as directed by HSD:

1. Number of nursing home residents who received transition advocacy support services with the Care Transition Bureau (CTB);
2. Number of nursing home resident intakes with CTB;
3. Number of hours of Medicaid education/outreach services with CTB;
4. Number of consumers who receive short-term assistance with CTB;
5. ALTSD Key Performance Measurement #2, Report for the Legislative Finance Council (LFC): Percent of residents requesting short-term transition assistance from a nursing facility who remained in the community during the six (6) month follow-up;
6. ALTSD Key Performance Measurements #3, Report for the LFC: Percent of calls to the ADRC that are answered by a live operator; and
7. ADRC-SAMS Call Profiler Report for Information and Referral.

Exhibit B

Aging & Disability Resource Center (ADRC) Options Counseling and Care Transitions Time Study



Employee Name -		Supervisor Signature										Week
		Employee Signature					Supervisor Signature					
Day/ Hour	Outreach	Information, Referral, Choice counseling and Central Intake	Short-term Stabilization	LTC Options Counseling	Linkage to LTC and Supportive Services	Interaction with Medicaid Eligibility Approval Process	Assistance in continuous improvement projects for the LTC system	Other Activities to Support Medicaid Programs	7-Medicaid Total	8-Non Medicaid Work	8-July Leave	10-TOTAL
Monday												
9-9am	0							0			0.0	
9-10am		0						0			0.0	
10-11am		0						0			0.0	
11-12pm		0						0			0.0	
12-1pm		0						0			0.0	
1-2pm		0		0				0			0.0	
2-3pm								0			0.0	
3-4pm								0			0.0	
4-5pm								0			0.0	
Tuesday												
9-9am								0			0.0	
9-10am								0			0.0	
10-11am								0			0.0	
11-12pm								0			0.0	
12-1pm								0			0.0	
1-2pm								0			0.0	
2-3pm								0			0.0	
3-4pm								0			0.0	
4-5pm								0			0.0	

