

**STATE OF NEW MEXICO
DEPARTMENT OF HEALTH
DEVELOPMENTAL DISABILITIES SUPPORTS DIVISION
PROVIDER AGREEMENT NO: ###.####.###.####.####**

This Provider Agreement is entered into by and between the DEPARTMENT OF HEALTH, hereinafter referred to as the "DEPARTMENT", and **Name of Provider**, hereinafter referred to as the "PROVIDER".

It is hereby agreed between the parties as follows:

TERM OF PROVIDER AGREEMENT

This Provider Agreement serves as a binding agreement between the DEPARTMENT and the PROVIDER to serve persons eligible for Medicaid reimbursed services through the Developmental Disabilities (DD), Medically Fragile (MF) and/or Supports Medicaid Waiver programs as specified in the PROVIDER'S Service Summary Report Attachment A. The term of this Provider Agreement is effective **start date**, or upon signature of all parties whichever is later, and expires on **end date**.

SCOPE OF SERVICES

1. The PROVIDER shall provide community-based services to persons with developmental disabilities or to children birth through end-of-life span with or at risk of developmental delay, or medically fragile individuals as set forth in the DD, MF and Supports Waiver Services Standards Scope of Service. Approved DD, MF and/or Supports Medicaid Waiver Services are referenced on the Service Summary Report, Attachment A.

2. The PROVIDER agrees: to provide services listed on the Service Summary Report Attachment A, to enter into an annual Community Inclusion Performance Based Contract if applicable and to complete a MAD 335, Medicaid Provider Participation form.

GENERAL PROVISIONS

PROVIDERS who are required to provide home visits or services in the home shall immediately notify the DEPARTMENT'S Incident Management Bureau of a caregiver's refusal to allow PROVIDER staff access to an individual receiving services. If there are indications of the individual being at risk or a possible subject of a criminal act, the PROVIDER shall also immediately contact local law enforcement and Adult or Children's Protective Services, as applicable.

ARTICLE 1. WAIVER OF CERTAIN GENERAL PROVISIONS

For State Agencies, Judicial Districts, and State Universities, the DEPARTMENT and the PROVIDER agree to waive the following Articles:

- a. Article 8 - Status as Independent Provider - The entire Article is hereby waived.
- b. Article 21 - Copyrights and Patents - The entire Article is hereby waived.
- c. Article 22 - Property - The entire Article is hereby waived.
- d. Article 23 - Property Insurance - The entire Article is hereby waived.
- e. Article 24 - Surety and Fidelity Bonds - The entire article is hereby waived.
- f. Article 25 - Liability Insurance - The entire Article is hereby waived.

ARTICLE 2. APPLICABLE LAWS

This Provider Agreement shall be governed by the laws of the State of New Mexico.

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ARTICLE 3. MAD 335 PROVIDER PARTICIPATION APPLICATIONS (FOR MEDICAID PROVIDERS ONLY)

a. The approved Human Services Department (HSD)/Medical Assistance Division form (MAD 335 for Waivers), which constitutes an agreement to provide Medicaid services, shall be considered an attachment to this Provider Agreement and is incorporated herein by reference.

b. In the event that there is a conflict between any terms of this Provider Agreement and an applicable Medicaid rule, the applicable Medicaid rule will control for Medicaid Waiver Services provided under this Provider Agreement.

ARTICLE 4. APPROPRIATIONS

The performance of this Provider Agreement is subject to the condition that sufficient funds are appropriated, authorized, and allocated by the Legislature of the State of New Mexico or by the Federal government. If sufficient appropriations, authorizations, and allocations are not made by the Legislature of the State of New Mexico and/or by the Federal government, necessitating a decrease in the amount of Provider Agreement funds available for expenditure by the DEPARTMENT, this Provider Agreement may be terminated or unilaterally amended to a lower amount of funds upon written notice being given by the DEPARTMENT to the PROVIDER. The decision of the DEPARTMENT as to the amount of Provider Agreement funds available for expenditure from the appropriation, authorization and/or allocation shall be final and binding on the PROVIDER.

ARTICLE 5. MEDICAID WAIVER FUNDING

If the PROVIDER is authorized under this Provider Agreement to receive reimbursement from Medicaid, the PROVIDER shall comply with all reporting requirements set forth by the DEPARTMENT, as well as the Medical Assistance Division of the HSD (as applicable to Medicaid Waiver providers) in accordance with the MAD 335. The PROVIDER is notified that Medicaid Waiver reimbursement through the HSD, or its fiscal agent is done pursuant to specific rules and regulations of the HSD and the PROVIDER will make independent inquiry into such rules, including but not limited to cost-based reporting and other fiscal and service utilization reports, as applicable.

ARTICLE 6. CONDITIONS REGARDING PAYMENT

a. Payment under this Provider Agreement will be made through the Medicaid Management Information System (MMIS) System in accordance with Medicaid Claiming requirements upon receipt of certified billing documents from the PROVIDER, in written or electronic form, documenting delivery of actual authorized services, under the service or treatment plan showing the results of services furnished and the number of units of services allowed and provided during the billing period, or as otherwise specified in the Provider Agreement by the DEPARTMENT.

b. The DEPARTMENT, HSD and the Center for Medicare and Medicaid Services (CMS) or any other authorized State and Federal agent for six (6) years from the date of final payment under this Provider Agreement, shall have the right to examine the books, records, documents, papers and other supporting data directly involving transactions related to this Provider Agreement, or which are reasonably necessary to permit adequate evaluation of the pricing or billing data submitted, along with the computations and projections used for the purposes of verifying that the cost of services submitted and billed for in conjunction with the activities of this Provider Agreement are accurate, complete and current.

c. Payment for travel expenses, except as specifically noted or authorized, is not allowable and is considered an indirect cost of the administration or performance of this Provider Agreement.

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d. The DEPARTMENT has the right to review requests for payment from the PROVIDER before and after payment has been received. Payment under this Provider Agreement shall not preclude the right of the DEPARTMENT to recover excessive or illegal payments and payments made for services, including but not limited to, payment for services not delivered or for services not delivered appropriately or in accordance with applicable standards or regulations.

e. Payment shall be based on actual services provided and reported in accordance with Article 4 and Article 5, utilizing the applicable DEPARTMENT and/or HSD payment system or as otherwise directed by the DEPARTMENT.

f. Payment shall be made only for those services as specified in the Provider Agreement and which are not funded by any other public funding source for the same service provided to the same client at the same time.

ARTICLE 7. FAILURE TO PERFORM

a. The PROVIDER agrees that Medicaid Waiver services in this Provider Agreement shall be provided during the entire term of this Provider Agreement. Exceptions to this requirement may be granted by the DEPARTMENT upon mutual agreement on “service provision” plans submitted by the PROVIDER.

b. Unless otherwise specified in the Scope of Services, the DEPARTMENT may unilaterally reduce the term of the Provider Agreement under the following terms: (1) Failure to provide services in any specified time period; or (2) Failure of a PROVIDER to provide services in accordance with applicable DEPARTMENT regulations, policies or standards.

c. Before a unilateral reduction is initiated by the DEPARTMENT, it shall give ten (10) calendar days written notice to the PROVIDER. The PROVIDER may provide a written explanation of the failure to perform within ten (10) days of the notice of reduction which shall be considered by the DEPARTMENT and to which a written response shall be given by the DEPARTMENT.

ARTICLE 8. STATUS AS AN INDEPENDENT PROVIDER

In accordance with the Developmental Disabilities Act at NMSA 1978, Section 28-16A-17, the PROVIDER is an independent PROVIDER and not an entity of State government, and shall set its own employment and corporate policies, subject to all applicable Federal, State, and local employment and corporate laws, rules, and regulations. The PROVIDER, its employees, and its agents are not to be construed as employees of the DEPARTMENT through the performance of services under this Provider Agreement and no benefits of employment by the DEPARTMENT shall accrue to the PROVIDER, its employees, or agents as a result of this Provider Agreement. The PROVIDER and its agents and employees, shall not be deemed an employee for any purpose within the meaning or application of any Federal or State law, including but not limited to, unemployment or insurance laws, worker’s compensation laws, liability, tort, or civil rights laws. The PROVIDER, its agents and employees shall not be entitled to any of the benefits afforded employees of the DEPARTMENT, including but not limited to, accruing leave, retirement, insurance, bonding, use of State property or State vehicles, or any consideration not specified in this Provider Agreement.

ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

The PROVIDER shall not assign or subcontract any of its contractual rights, liabilities, or the performance of any program component specified in the Scope of Services under this Provider Agreement without the prior written approval from the DEPARTMENT. Subcontractors are subject to the requirements of this Provider Agreement. The PROVIDER shall not attempt to bind the DEPARTMENT to any contract as its agent unless the DEPARTMENT is a signatory party to that contract.

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ARTICLE 10. TERMINATION

The provisions in this Article are not exclusive and do not constitute a waiver of other legal rights and remedies afforded the DEPARTMENT under law.

- a. Either the DEPARTMENT or the PROVIDER may terminate this Provider Agreement without cause upon at least thirty (30) days written notice to the other party.
- b. The DEPARTMENT may, by written notice to the PROVIDER immediately terminate the whole or any part of this Provider Agreement in any one of the following circumstances:
 - i. If the PROVIDER fails to comply with any terms, conditions, requirements, or provisions of this Provider Agreement, and the DEPARTMENT notifies the PROVIDER in writing, and the PROVIDER fails to remedy within a period of time specified in writing by the DEPARTMENT.
 - ii. If, during the term of this Provider Agreement, the PROVIDER or any of its officers, employees or agents commits client abuse, neglect or exploitation, malpractice, fraud, embezzlement, or other serious misuse of funds.
- c. The DEPARTMENT may terminate this Provider Agreement pursuant to the Appropriations Article.
- d. By the methods of termination provided in this subsection neither party may nullify obligations already incurred for the performance or failure to perform prior to the date of termination.
- e. The PROVIDER agrees that the provisions and procedures set forth in the Health Facility Receivership Act, NMSA 1978, Sections 24-1E-1 through 24-1E-7, apply to the PROVIDER, and further acknowledges that the DEPARTMENT may seek judicial appointment of a receiver as set forth in the Health Facility Receivership Act, NMSA 1978, Section 24-1E-3.

ARTICLE 11. EXPIRATION

The PROVIDER acknowledges that there is no expectation of renewal of the Provider Agreement and expiration of the Agreement does not entitle the PROVIDER to a hearing.

ARTICLE 12. TRANSITION MANAGEMENT

Immediately upon receipt by either the DEPARTMENT or the PROVIDER of written notice of termination or expiration of the term, the PROVIDER shall:

- a. Not incur any further obligations for salaries, services, or any other expenditure of funds under this Provider Agreement without the written approval of the DEPARTMENT;
- b. Continue to provide essential services and supports to ensure the health and safety of individual clients as directed by the DEPARTMENT during the period of termination management or upon expiration of the term of the Provider Agreement until the transition of all clients currently receiving services is completed. If necessary, the DEPARTMENT will extend the Provider Agreement until the transition of services is completed;
- c. Comply with all directives issued by the DEPARTMENT in the notice of termination or notice of expiration as to the performance of work under this Provider Agreement;

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d. Take such action as the DEPARTMENT shall direct for the protection, preservation, retention or transfer of all client records generated under this Provider Agreement in accordance with ARTICLE 13 FINANCIAL RECORDS, Paragraph a. and ARTICLE 16 DISCLOSURE OF INFORMATION, Paragraph c;

e. Within five (5) days of the receipt of notice of termination or expiration from the DEPARTMENT or immediately upon the sending of notice of termination by the PROVIDER, notify staff and each client served under this Provider Agreement in writing, to the greatest extent practicable, of the termination or expiration of the Provider Agreement and the procedure for the transfer of the clients' records in accordance with applicable legal requirements. The DEPARTMENT reserves the right to review and alter written notifications prior to their dissemination;

f. Within three (3) days of the date of the notice of termination of this Provider Agreement, the PROVIDER shall furnish to the DEPARTMENT:

- i. A final closing of the financial records and books of accounts which were required to be kept by the PROVIDER under the provision of this Provider Agreement regarding financial records.
- ii. A list of all offices/homes/facilities including their addresses and phone numbers.
- iii. A list of all individuals served by the PROVIDER at the time notice of termination or expiration is given, to include their address, phone number, social security number and the names of their guardians (if any) and their phone numbers and addresses.

ARTICLE 13. FINANCIAL RECORDS

a. The PROVIDER shall maintain detailed time and expenditure records, which indicate the date, time, nature, and cost of services rendered during the Agreement term and retains them for a period of six (6) years from the date of final payment under the Agreement. The records shall be subject to inspection by the DEPARTMENT, the Department of Finance and Administration and the State Auditor. The DEPARTMENT shall have the right to audit billings both before and after payment; payment under this Agreement shall not foreclose the right of the DEPARTMENT to recover excessive or illegal payments.

b. The PROVIDER receiving State or Federal funds from the DEPARTMENT shall comply, if applicable, with auditing requirements under the Single Audit Act (31 U.S.C. §7501 et seq.) and the New Mexico State Auditor's rules and regulations. If the Provider is determined to be a sub recipient and not a vendor under the Federal Single Audit Act, the PROVIDER shall comply with the audit requirements of the Single Audit Act.

c. If the PROVIDER receives more than \$750,000.00 under this agreement or more than \$750,000.00 in any single fiscal year, from the DEPARTMENT, the PROVIDER shall prepare annual financial statements and obtain an audit of, or an opinion on, the financial statements from an external Certified Public Accountant.

d. The PROVIDER shall maintain the financial statements for a period of no less than six (6) years and shall make the financial statements and the CPA's audit or opinion available to the DEPARTMENT upon request.

e. Applicable annual financial reports shall be submitted to the DEPARTMENT no later than six (6) months following the close of the PROVIDER'S fiscal year.

f. To ensure proper delivery and receipt, the PROVIDER shall submit their annual audit report or financial reports if no audit was required to:

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Department of Health
Financial Accounting Bureau Suite N-3150
P.O. Box 26110
Santa Fe, New Mexico 87502-6110

g. The DEPARTMENT may take corrective action as deemed necessary for PROVIDER'S failure to comply with 13-A through 13-F above. Corrective action may include, but is not limited to, termination of Agreement and preclusion from engaging PROVIDER in the future.

ARTICLE 14. STANDARDS FOR SERVICES AND LICENSING

a. The PROVIDER agrees to provide services as set forth in the Scope of Service, in accordance with all applicable regulations and standards including the current DD, MF and Supports Waiver Service Standards.

b. The PROVIDER shall comply with all applicable State and Federal laws and regulations.

c. If a PROVIDER is licensed by the New Mexico Regulation and Licensing Department or by any New Mexico licensing board or commission, or if a PROVIDER'S employees are licensed by the New Mexico Regulation and Licensing Department or by any New Mexico licensing board or commission, then the PROVIDER shall at the DEPARTMENT'S request, with respect to all proposed or final complaints made to such licensing authority regarding the PROVIDER or the PROVIDER'S employee: (1) Provide to the DEPARTMENT within five (5) days of receipt by the PROVIDER or the PROVIDER'S employee, a copy of the licensing authority's complaint or other documentation stating with specificity the factual basis for the charges against the licensed individual, together with any other notice or documentation relating to the complaint or proposed disciplinary action; and (2) provide to the DEPARTMENT within five (5) days of receipt by the PROVIDER or the PROVIDER'S employee, a copy of the licensing authority's determination and final action, or determination and final action following any hearing or appeal, including any settlement or alternative resolution. The PROVIDER shall ensure that all applicable licensure is current and maintained at the PROVIDER agency. All required licensure is subject to audit by the DEPARTMENT.

ARTICLE 15. APPLICABLE FEDERAL LAWS

a. The PROVIDER shall comply with all applicable requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act), and all associated regulations.

b. Funding provided through this Provider Agreement may include various State and Federal funding sources. Services funded in whole or in part by Federal funds are subject to applicable Federal laws, regulations, and conditions.

c. If any funds other than 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 in connection with a Federal contract, grant, loan, cooperative agreement or this Provider Agreement, the PROVIDER shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

d. The PROVIDER shall comply with the provisions of Titles II and III of the Americans with Disabilities Act of 1990, P.L. 101-336 (42 U.S.C. Section 12101 et seq.) and Section 504 of the Rehabilitation Act (29 U.S.C. Section 794).

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e. The PROVIDER shall comply with the requirements of the Pro-Children Act of 1994 (20 U.S.C. Sections 6083 et seq.) that prohibits smoking in any portion of any indoor facility used routinely or regularly for the provision of health services to children under the age of eighteen (18) funded by Federal grants. The law does not apply to children's services provided in private residences, portions of facilities used for inpatient drug or alcohol treatment, or to service providers whose sole source of Federal funding is Medicare or Medicaid or facilities where Women, Infants & Children (WIC) coupons are redeemed.

f. For PROVIDERS approved to provide services under Medicaid Programs, the PROVIDER agrees to abide by Federal regulations and State regulations concerning providers of services under Title XIX (Medicaid) of the Social Security Act (42 U.S.C. Section 1302) and regulations contained in 42 CFR Chapter IV.

ARTICLE 16. DISCLOSURE OF INFORMATION

a. Disclosure of any client information shall be made to the DEPARTMENT promptly whenever requested for the proper administration of this Provider Agreement. The DEPARTMENT shall maintain the confidentiality, privacy, and security of all client records irrespective of whether or when the client ceases to be a client in compliance with HIPAA, the HITECH Act, and other applicable legal authorities.

b. It shall be the responsibility of the PROVIDER to protect the privacy and security of the identity, directly or indirectly, of individual clients receiving services provided through this Provider Agreement. For purposes of DEPARTMENT audits, surveys, research or program evaluations, client records shall be disclosed to the DEPARTMENT.

c. The PROVIDER shall comply with the Federal Health Insurance Portability and Accountability Act (HIPAA) of 1996, the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act) and applicable regulations and all other State and Federal rules, regulations and laws protecting the confidentiality, privacy, and security of information.

d. The PROVIDER agrees to retain the client records of all clients served during the term of this Provider Agreement and for a period of at least six (6) years from the date of discharge or the last date of client services provided, whichever comes first, unless the client records are transferred to another custodian of the records pursuant to ARTICLE 12 TRANSITION MANAGEMENT of this Provider Agreement. Retention or disposal of client records following the six (6) year period remains within the discretion of the PROVIDER.

ARTICLE 17. PROGRAM EVALUATIONS

a. In order to monitor the performance of services and compliance with the provisions of this Provider Agreement by the PROVIDER, employees of the DEPARTMENT or State and Federal agencies which have provided funds under this Provider Agreement, or their duly authorized representatives, shall be allowed to visit without interference or delay the offices and service locations of the PROVIDER to examine the PROVIDER'S operations and records. Client records shall be reviewed in accordance with the ARTICLE 16 DISCLOSURE OF INFORMATION.

b. The DEPARTMENT shall conduct site visits to any service locations when appropriate. The DEPARTMENT may elect not to provide advance notice of the site visit to the PROVIDER.

c. The PROVIDER shall provide information and access to copies of records promptly upon request by the DEPARTMENT.

d. PROVIDER shall have a Quality Management and Improvement Plan in accordance with the current DD, MF and Supports Waiver Standards specified by the DEPARTMENT. The Quality Management and Improvement Plan for DD, MF and Supports

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Waiver Providers must describe how the PROVIDER will determine that each waiver assurance and requirement is met. The applicable assurances and requirements are: (1) level of care determination; (2) service plan; (3) qualified providers; (4) health and welfare; (5) administrative authority; and, (6) financial accountability. For each waiver assurance, this description must include:

- i. Activities or processes related to discovery, i.e., monitoring and recording the findings. Descriptions of monitoring/oversight activities that occur at the individual and provider level of service delivery. These monitoring activities provide a foundation for Quality Management by generating information that can be aggregated and analyzed to measure the overall system performance;
- ii. The entities or individuals responsible for conducting the discovery/monitoring processes;
- iii. The types of information used to measure performance; and,
- iv. The frequency with which performance is measured.

ARTICLE 18. INCIDENT ABUSE AND NEGLECT REPORTING AND TRAINING

The PROVIDER shall:

a. Provide training to staff on the DEPARTMENT’s Incident Management System, Adult Protective Services (APS), Child Protective Services (CPS) and identifying and reporting suspected client abuse, neglect or exploitation, suspicious injuries, environmental hazards, unexpected and natural/expected deaths, or other reportable incidents, and Medicaid Fraud regulations.

b. Develop and implement policies and procedures that require any employee knowing of or having a reasonable suspicion of client abuse, neglect or exploitation or other reportable incidents according to DEPARTMENT policy to report immediately to the APS or CPS, as appropriate and to the DEPARTMENT’s Incident Management Bureau.

c. Comply with the Abuse, Neglect, Exploitation, and Death Reporting, Training and Related Requirements for Community Providers 7.1.14 New Mexico Administrative Code (NMAC), Comply with “Employee Abuse Registry” requirements of 7.1.12 NMAC and with the Incident Management System Reporting Procedures of the DEPARTMENT.

d. Ensure that all relevant staff are trained to recognize and appropriately report incidents as stated in rule parts 7.1.14.8 and 7.1.14.9 NMAC.

ARTICLE 19. REPORTING REQUIREMENTS FOR CLIENT DEMOGRAPHIC DATA, CONSUMER INFORMATION, AND SERVICE/CLAIMS INFORMATION

PROVIDERS shall use the appropriate, applicable computerized billing information systems, including the Medicaid billing system to capture claims information in accordance with State and Federal reporting requirements.

ARTICLE 20. RIGHT TO DATA

The DEPARTMENT may duplicate, use and disclose, in accordance with law, all data and documents delivered or furnished by the PROVIDER to the DEPARTMENT under this Provider Agreement in accordance with ARTICLE 16 DISCLOSURE OF INFORMATION of this Provider Agreement.

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ARTICLE 21. COPYRIGHTS AND PATENTS

All tangible and intangible personal property created by the PROVIDER under a non-unit component of this Provider Agreement shall become the property of the State of New Mexico and shall be delivered by the PROVIDER to the DEPARTMENT no later than the termination date or expiration of the term of this Provider Agreement and shall not be the subject of an application for a copyright or a patent by or on behalf of the PROVIDER. Nothing in this Article shall prevent the sale of goods produced by the clients of a PROVIDER funded under this Provider Agreement.

ARTICLE 22. PROPERTY

The PROVIDER shall not purchase or improve land; purchase, construct or permanently improve (other than minor remodeling) any building or other facility; or purchase major medical equipment with Medicaid funding.

ARTICLE 23. PROPERTY INSURANCE

a. The PROVIDER shall purchase an insurance policy providing coverage for the perils of fire, theft, vandalism and malicious mischief, and extended coverage for at least eighty percent (80%) of the actual cash value of all personal property purchased with funds under non-unit service components. The DEPARTMENT shall be named as a loss payee on the policy, and the term of such policy or policies shall extend thirty (30) days beyond the term of this Provider Agreement.

b. The PROVIDER shall purchase comprehensive and collision coverage if vehicles were purchased with funds under non-unit service components. The DEPARTMENT shall be named as a loss payee on any such policy. Auto liability coverage is required by New Mexico law and must be provided for all automobiles. The term of this policy or policies shall extend thirty (30) days beyond the term of this Provider Agreement.

c. The PROVIDER shall immediately notify the DEPARTMENT upon the cancellation of any insurance policy required by this Article.

d. In the event that the PROVIDER is indemnified, reimbursed, or otherwise compensated for any loss, destruction of, or damage to the DEPARTMENT property, the PROVIDER shall use the proceeds to repair or replace the DEPARTMENT property involved, or shall otherwise reimburse the DEPARTMENT as directed by the Administrative Services Division of the DEPARTMENT.

e. The PROVIDER shall maintain current insurance policies as required by the DEPARTMENT at the PROVIDER agency. All required documentation maintained at the PROVIDER agency is subjected to audit by the DEPARTMENT.

ARTICLE 24. SURETY AND FIDELITY BONDS

a. The PROVIDER shall obtain a fidelity bond covering each person employed by the PROVIDER who handles funds under this Provider Agreement, including persons authorizing payment of such funds. The fidelity bond shall provide for indemnification of losses occasioned by (1) any fraudulent or dishonest act or acts committed by any of the PROVIDER'S employees or agents acting alone or in collusion with others; and (2) the failure of the PROVIDER or its employees to perform faithfully any duty or to properly account for all monies and property received or entrusted by virtue of the employee's position or employment. The fidelity bond shall be in an amount equal to twenty five percent 25% of the total Provider Agreement amount unless the Provider Agreement amount is less than one hundred thousand dollars \$100,000.00 per year. In such cases a minimum bond of ten thousand dollars \$10,000.00 will be sufficient. The PROVIDER shall submit a copy of the bond to the DEPARTMENT within thirty (30) days of the effective date of this Provider Agreement. The bond shall include Third Party coverage for property

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of clients. If the PROVIDER is a sole proprietorship or partnership, the proprietor or the partners must be considered employees under the terms of the bond. Loss payment by the bonding company shall be made to the DEPARTMENT (i.e., State of New Mexico Department of Health shall be named as Loss Payee). The PROVIDER shall provide the DEPARTMENT with a Certificate of Insurance evidencing coverage. The certificate shall allow for thirty (30) days written notice of bond cancellation. The bond shall remain in effect for the term of the Provider Agreement plus thirty (30) days. In lieu of a Third-Party Fidelity bond, the DEPARTMENT reserves the right to require a financial guarantee bond (i.e., surety bond) naming the DEPARTMENT as obligee and, in an amount, to be determined. The DEPARTMENT retains the authority to waive either of these bond requirements.

b. The PROVIDER shall maintain current insurance policies as required by the DEPARTMENT at the PROVIDER agency. All required documentation maintained at the PROVIDER agency is subject to audit by the DEPARTMENT.

ARTICLE 25. LIABILITY INSURANCE

a. The PROVIDER agrees that it shall, at all times during the term of this Provider Agreement, have and keep in force liability insurance, including coverage for general liability with personal injury endorsement, professional malpractice, auto liability (if applicable) and contractual assumption of liability covering liability assumed under this Provider Agreement. The State of New Mexico and the DEPARTMENT shall be named as insured on the policy. Such insurance shall be written by an insurance company licensed to do business in New Mexico and shall cover all liability which might arise out of the provision of services under this Provider Agreement. The certificate shall allow for thirty (30) days written notice of insurance cancellation. Such insurance shall provide the following minimum limits of coverage: One million dollars (\$1,000,000.00) per occurrence, single limit covering bodily injury and property damage. For Provider Agreements under one hundred thousand dollars (\$100,000.00), the PROVIDER'S limits may be reduced to a single limit of one hundred thousand dollars (\$100,000.00). The PROVIDER shall submit a copy of the liability insurance to the DEPARTMENT within thirty (30) days of the effective date of this Provider Agreement.

b. Pursuant to NMSA 1978, Section 15-7-3 (B), the Risk Management Division of the New Mexico General Services Department provides liability coverage for nonprofit corporations providing developmental disabilities services pursuant to this Provider Agreement for 42 U.S.C. § 1983 claims when the claim is made by or on behalf of a client.

c. The PROVIDER shall provide Worker's Compensation insurance for its employees as required by New Mexico law.

ARTICLE 26. INDEMNIFICATION

a. The PROVIDER shall defend, indemnify and hold harmless the DEPARTMENT from ALL actions, proceedings, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Provider Agreement, if caused by the tortious act or failure to act by the PROVIDER, its officers, employees, servants or agents, or if caused by the actions of any client resulting in injury or damage to the person or property of another person during any time when the PROVIDER or any officer, agent, employee, or sub-contractor thereof has undertaken or is furnishing the care and services called for under this Provider Agreement.

b. The PROVIDER shall defend, indemnify, and hold harmless the DEPARTMENT from ALL actions, including, but not limited to, civil rights claims, and any other proceedings, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source arising from any claim that the PROVIDER'S acts or omissions create liability on the part of the DEPARTMENT.

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c. In the event that any action, suit or proceeding related to the service PROVIDER is initiated, the PROVIDER as soon as practical, but no more than two (2) working days after notice of such action, suit or proceeding, shall notify the Office of General Counsel of the DEPARTMENT by certified mail.

d. The PROVIDER shall maintain current insurance policies as required by the DEPARTMENT at the provider agency. All required documentation maintained at the provider agency is subject to audit by the DEPARTMENT. The PROVIDER shall notify the DEPARTMENT if the PROVIDER fails to maintain the current insurance policies required during the term of this agreement.

ARTICLE 27. RELEASE

The PROVIDER, upon final payment of the amount due under this Provider Agreement, releases the DEPARTMENT, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations, whatsoever, arising from or under this Provider Agreement. The PROVIDER agrees not to purport to bind the State of New Mexico to any obligation not assumed herein by the State of New Mexico, unless the PROVIDER has express written authority to do so, and then only within the strict limits of that authority.

ARTICLE 28. FORGIVENESS FOR NON-PERFORMANCE

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

ARTICLE 29. CONFLICT OF INTEREST

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

ARTICLE 30. LOBBYING ACTIVITY

a. The PROVIDER shall not use any funds received under this Provider Agreement, either directly or indirectly, for purposes of conducting lobbying activities or hiring a lobbyist or lobbyists on its behalf at the Federal, State, or local government, level as defined in the Lobbyist Regulation Act, NMSA 1978, Sections 2-11-1 et seq., and applicable Federal law.

b. No appropriated Federal funds can be paid or will be paid, by or on behalf of the PROVIDER, 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 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.

ARTICLE 31. EMPLOYEES AND APPLICANTS FOR EMPLOYMENT

a. The PROVIDER, unless based on a bona fide occupational qualification, shall not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation for or against any person otherwise qualified because of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender, and identity, a physical or mental handicap, or medical condition. The PROVIDER agrees to comply with, NMSA 1978, Section 28-15-1, concerning the reemployment of persons in the armed forces.

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b. The PROVIDER is strongly encouraged, in collaboration with Temporary Assistance of Needy Families (TANF) and New Mexico Welfare to Work Providers, to train and employ TANF recipients who are seeking employment opportunities. The PROVIDER is also strongly encouraged to train and employ populations enrolled in supported employment programs.

c. If the PROVIDER is a care provider as defined in the Caregivers Criminal History Screening Act, NMSA 1978, Section 29-17-4, the PROVIDER shall comply with the requirements of the Act and the Caregivers Criminal History Screening Requirements, 7.1.9 NMAC. The PROVIDER may not employ any person who has been excluded from the Medicare or Medicaid Program.

ARTICLE 32. CIVIL RIGHTS OF CLIENTS

a. The PROVIDER shall not deny services or benefits, or deny eligibility for services or benefits, or provide different services or benefits, to any individual or family on the grounds of race, age, religion, color, sex, sexual orientation, gender identity, ancestry, national origin, physical or mental handicap, medical condition, or inability to pay.

b. The PROVIDER, in determining: (1) the types of service or other benefits to be provided under this Provider Agreement; or (2) the class of individuals or families to whom, or the situations in which such services or other benefits will be provided under this Provider Agreement; or (3) the class of individuals or family to be afforded an opportunity to participate in the program; shall not utilize criteria or methods of administration which have the effect of subjecting individuals or families to discrimination because of race, age, religion, color, sex, sexual orientation, gender identity, ancestry, national origin, physical or mental handicap, medical condition, or inability to pay, or have the effect of defeating or substantially impairing the accomplishment of the objectives of this Provider Agreement with respect to individuals or families of a particular race, age, religion, color, sex, sexual orientation, gender identity, ancestry, national origin, physical or mental handicap, or medical condition or inability to pay.

ARTICLE 33. SCOPE OF PROVIDER AGREEMENT

This Provider Agreement incorporates all the agreements, covenants, and understandings between the parties concerning the subject matter herein. No other agreement or understanding of the parties or their agents shall be valid or enforceable unless stated in this Provider Agreement.

a. Relation to Third Parties. Nothing in this Provider Agreement shall be construed as creating any right of a recipient of service, or other third party, to enforce any provision of this Provider Agreement, or to assert any claim against the DEPARTMENT, the HSD, or the PROVIDER.

b. The parties recognize this Provider Agreement is generic and applies to both State funded and Federal funded services. Accordingly, these services are governed by appropriate State law and policy and/or Federal law and policy. As such, the order of applicability is: Federal law; State law; State Medicaid policy; DEPARTMENT/DDS DD, MF and Supports Waiver Service Standards.

ARTICLE 34. AMENDMENTS

a. This Provider Agreement shall not be altered, changed, or amended except by a written document signed by the parties hereto unless a unilateral amendment is executed pursuant to the terms of this Provider Agreement.

b. If the PROVIDER seeks to change its Scope of Work and Payment Specifications, the PROVIDER must submit a formal written request to the DDS for review and approval.

c. If the PROVIDER seeks to amend its Medicaid Waiver Service Application, a complete Medicaid Waiver Application Amendment Form must be submitted to the DDS for review and approval.

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ARTICLE 35. GROSS RECEIPTS AND INCOME TAXES

The PROVIDER shall prior to the return of this Provider Agreement provide the DEPARTMENT proof of registration with the New Mexico Taxation and Revenue Department for the payment of gross receipts tax or proof of the grant of an exemption from payment of federal income tax pursuant to the Internal Revenue Code of 1954 [26 U.S.C. Section 501 (c) (3)]. Any payment of gross receipt tax shall be the obligation of the PROVIDER as appropriate.

ARTICLE 36. PROHIBITION OF BRIBES, GRATUITIES AND KICKBACKS

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

ARTICLE 37. ACCREDITATION

PROVIDER'S accreditation shall be in accordance with the policies of the DEPARTMENT.

ARTICLE 38. PROVIDER AGREEMENT ENFORCEMENT

a. In order to secure Provider Agreement compliance and to ensure the health and safety of the recipients of services under this Provider Agreement, the DEPARTMENT and the PROVIDER agree that the PROVIDER shall be subject to sanctions by the DEPARTMENT pursuant to applicable Medicaid regulations that govern the Medicaid Waiver Program and the DEPARTMENT Policies DIV.DDSD.13.01 ("Regional Office Contract Management") and DIV.DHI.DDSD.13.GENADMIN.06.21 ("Imposition of Administrative Actions, Penalties and Sanctions Against Community-Based Agency Providers"), incorporated herein by reference.

b. The PROVIDER also agrees that the imposition of sanctions by the DEPARTMENT does not limit the availability of any other remedy including but not limited to the remedy of termination of this Provider Agreement, or further sanctions under Medicaid regulations, as applicable. The PROVIDER'S failure to fully and satisfactorily perform under this Provider Agreement also may result in the DEPARTMENT'S use of more than one remedy or sanction.

c. **EVIDENCE OF FULL AND SATISFACTORY PERFORMANCE REQUIRED.** The PROVIDER agrees to accurately generate and maintain all records and reports required by this Provider Agreement, including but not limited to medical and treatment records, administrative, business, and financial records, sufficient to evidence full and satisfactory performance under this Provider Agreement. The PROVIDER further agrees to make available for inspection and copying to employees of the DEPARTMENT and other licensing, certification, monitoring or enforcement entities or employees of such entities, all medical, administrative, and financial records generated and maintained which may evidence compliance or noncompliance with the terms of this Provider Agreement. Failure by the PROVIDER to maintain such records or to allow inspection and copying of these records constitutes a failure to fully and satisfactorily perform under this Provider Agreement.

d. **MONITORING AND CORRECTIVE ACTIONS.** In addition to the Program Evaluation provisions of ARTICLE 38, the PROVIDER understands and agrees that DEPARTMENT employees, agents or monitors under contract by the DEPARTMENT may monitor the PROVIDER'S performance under this Provider Agreement. The PROVIDER also understands and agrees that evidence of Provider Agreement performance or nonperformance may be obtained by the DEPARTMENT from other governmental and private entities, including but not limited to the CMS, HSD, the New Mexico Children, Youth and Families Department, the Commission on the Accreditation of Rehabilitation Facilities (CARF), The Council on Quality and Leadership for Persons with Disabilities (The Council), The Joint Commission and the Medicaid Fraud Control Unit of the Attorney General's Office. The PROVIDER agrees that

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evidence of performance not in conformity with this Provider Agreement which the DEPARTMENT obtains through such monitoring or through information obtained by such other governmental and private entities may form the basis for a Performance Improvement Plan, a corrective action plan, or for the Provider Agreement sanctions set forth in paragraph a. and b. of this Article, or for termination of the Provider Agreement.

e. **INFORMAL RESOLUTION.** The DEPARTMENT and the PROVIDER may informally resolve any dispute arising from the DEPARTMENT'S imposition of the Provider Agreement enforcement sanctions and remedies. The PROVIDER may initiate the informal resolution process by delivering to the DEPARTMENT, within five (5) days of its receipt of the notice of the imposition of the DEPARTMENT'S sanctions, a written request for an informal resolution conference. The DEPARTMENT shall grant the request for the informal resolution conference. The DEPARTMENT shall schedule a conference in Santa Fe to be held within ten (10) business days of the DEPARTMENT'S receipt of the request for an informal conference, or on a date that exceeds ten (10) business days if mutually agreed upon. Within five (5) working days following the resolution conference, the applicable Division Director, DDSO or Division of Health Improvement (DHI) shall inform the PROVIDER in writing of the results of the informal resolution conference. The request for an informal conference does not postpone or stay any sanction. The informal resolution conference is an opportunity for the PROVIDER to present new or additional evidence or arguments concerning the DEPARTMENT'S basis for the sanctions or concerning the sanction itself. The informal conference is not recorded, the participants are not sworn, no formal procedural rules apply, and admissions or proposals made for the purpose of attempting a resolution cannot be used without consent of the party making the admission or proposal in any subsequent legal proceeding. However, any compromise or resolution reached shall be written, and shall be signed by authorized representatives of the DEPARTMENT and PROVIDER. If dissatisfied with the results of the informal conference, the PROVIDER may request in writing within ten (10) business days of the date of the written results, further discretionary review by the Secretary of the DEPARTMENT. Within five (5) days of receipt of a written request for further review by the Secretary, the Secretary, in his or her discretion, may decide upon further review or may decline further review. The Secretary will notify the PROVIDER of arrangements, if any, for further review of the results of the informal conference. The Secretary's decision as to the manner and results of any such discretionary review is final. The Secretary shall provide written notice of the resolution within five (5) business days of the completion of his or her review, if any.

f. **MEDICAID PROVIDERS.** For PROVIDERS approved to provide services under a Medicaid Program, the PROVIDER, once notified of the intent to terminate or the intent to invoke any other Medicaid sanction by the DEPARTMENT, may request an evidentiary hearing with the HSD/Medical Assistance Division. The PROVIDER must request, in writing, an evidentiary hearing within thirty (30) calendar days of the PROVIDER'S receipt of the notice of the proposed sanction.

ARTICLE 39. POLICIES AND REGULATIONS

Provider Agreements and amendments reference and incorporate laws, regulations, policies, procedures, directives, and contract provisions not only of DOH, but of HSD. Additionally, the PROVIDER agrees to abide by all the following, whenever relevant to the delivery of services specified under this Provider Agreement:

- a. DD, MF and Supports Waiver Service Standards.
- b. DEPARTMENT/DDSOD Accreditation Mandate Policies.
- c. Policies and Procedures for Centralized Admission and Discharge Process for New Mexicans with Disabilities.
- d. Policies for Behavior Support Service Provisions.

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- e. Rights of Individuals with Developmental Disabilities living in the Community, 7.26.3 NMAC.
- f. Service Plans for Individuals with Developmental Disability Community Programs, 7.26.5 NMAC.
- g. Requirement for Developmental Disability Community Programs, 7.26.6 NMAC.
- h. DEPARTMENT Client Complaint Procedures, 7.26.4 NMAC.
- i. Individual Transition Planning Process, 7.26.7 NMAC.
- j. Dispute Resolution Process, 7.26.8 NMAC.
- k. DEPARTMENT/DDS Training Policies and Procedures.
- l. Fair Labor Standards Act.
- m. New Mexico Nursing Practice Act and New Mexico Board of Nursing requirements governing certified medication aides and administration of medications, 16.12.5 NMAC.
- n. Abuse, Neglect, Exploitation, and Death Reporting, Training and Related Requirements for Community Providers, 7.1.14 NMAC, and DHI/DEPARTMENT Incident Management System Policies and Procedures.
- o. DHI/DEPARTMENT Statewide Mortality Review Policy and Procedures.
- p. Caregivers Criminal History Screening Requirements, 7.1.9 NMAC.
- q. Quality Management System and Review Requirements for Providers of Community Based Services, 7.14.2 NMAC.
- r. All Medicaid Regulations of the Medical Assistance Division of the HSD.
- s. Health Insurance Portability and Accountability Act (HIPAA).
- t. DEPARTMENT Sanctions Policy.
- u. All other regulations, standards, policies and procedures, guidelines and interpretive memoranda of the DDS and the DHI of the DEPARTMENT.

ARTICLE 40. COMPUTER OR SOFTWARE PROPERTY

Any computer or software provided by the DEPARTMENT to the PROVIDER, in order to enable the PROVIDER to perform the duties prescribed under this Provider Agreement, remains the sole property of the DEPARTMENT. The PROVIDER may not rent, lease, copy, modify or otherwise distribute, either freely or for profit, any such software without prior written consent of the DEPARTMENT.

ARTICLE 41. MULTI-YEAR PROVIDER AGREEMENTS

Multi-year Provider Agreements not to exceed four (4) years may be considered for providers in good standing with the DEPARTMENT and the Medical Assistance Division of the HSD.

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IN WITNESS WHEREOF, the parties have executed this Provider Agreement,

PROVIDER SIGNATURES: Insert Name of Provider Here

By: _____ Date: _____
(Usual Signature)

By: _____ Title: _____
(Printed Name of Signatory)

TAXATION AND REVENUE SIGNATURE:

N.M. Tax Identification # ##-#####-##-#

The PROVIDER is registered for the payment of gross receipt taxes to the State of New Mexico.

By: _____ Date: _____
(Usual Signature)

By: _____ Title: _____
(Printed Name of Signatory)

OR:

The PROVIDER is exempted from the payment of gross receipt taxes to the State of New Mexico.

By: _____ Date: _____
Taxation and Revenue Department

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____ Date: _____
(Usual Signature)

Title: _____

STATE OF NEW MEXICO DEPARTMENT OF HEALTH:

By: _____ Date: _____
(Usual Signature)
Director, Developmental Disabilities Support Division