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**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**DIVISION OF COMMUNITY BASED CARE SERVICES**

Nicholas A. Toumpas  
 Commissioner

Kathleen A. Dunn  
 Associate Commissioner

**BUREAU OF BEHAVIORAL HEALTH**  
 105 PLEASANT STREET, CONCORD, NH 03301  
 603-271-5000 1-800-852-3345 Ext. 5000  
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May 27, 2015

Her Excellency, Governor Margaret Wood Hassan  
 and the Honorable Council  
 State House  
 Concord, New Hampshire 03301

**REQUESTED ACTION**

1. Authorize the Department of Health and Human Services, Division of Community Based Care Services, to amend an agreement, with the Office of Public Guardian (Vendor #166528), 2 Pillsbury Street, Suite 400, Concord, New Hampshire 03301, to provide public guardianship services by increasing the price limitation by \$1,103,319.00 from \$4,936,607.00 to an amount not to exceed \$6,039,926.00 and extending the completion date from June 30, 2015 to June 30, 2016, effective July 1, 2015, or date of Governor and Council approval, whichever is later. This agreement was originally approved by Governor and Council on June 9, 2010 (Item #106), and subsequently amended on June 8, 2011 (Item #126), June 20, 2012 (Item #80), June 19, 2013 (Item #112) and June 18, 2014 (Item #96). 9% Federal Funds, 91% General Funds.

05-95-92-920010-7002 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS DEPT OF, HHS:BEHAVIORAL HEALTH DIV OF, DIV OF BEHAVIORAL HEALTH, LEGAL-GUARDIANSHIP SVCS

<u>Fiscal Year</u>	<u>Class/Object</u>	<u>Class Title</u>	<u>Current Modified Budget</u>	<u>Increase (Decrease) Amount</u>	<u>Revised Modified Budget</u>
2011	102-500731	Contracts for Program Services	\$ 878,656.80	\$ 0.00	\$ 878,656.80
2012	102-500731	Contracts for Program Services	\$ 912,797.29	\$ 0.00	\$ 912,797.29
2013	102-500731	Contracts for Program Services	\$ 951,472.18	\$ 0.00	\$ 951,472.18
2014	102-500731	Contracts for Program Services	\$ 990,361.73	\$ 0.00	\$ 990,361.73
2015	102-500731	Contracts for Program Services	\$1,003,319.00	\$ 0.00	\$1,003,319.00
2016	102-500731	Contracts for Program Services	\$ <u>0</u>	\$ <u>1,003,319.00</u>	\$ <u>1,003,319.00</u>
		Sub-total	\$4,736,607.00	\$1,003,319.00	\$5,739,926.00

05-95-48-481010-9255 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS DEPT OF,  
 HHS:ELDERLY - ADULT SERVICES, GRANTS TO LOCALS, SOCIAL SERVICES BLOCK GRANT

<u>Fiscal Year</u>	<u>Class/Object</u>	<u>Class Title</u>	<u>Current Modified Budget</u>	<u>Increase (Decrease) Amount</u>	<u>Revised Modified Budget</u>
2014	102-500734	Contracts for Program Services	\$ 100,000.00	\$ 0.00	\$ 100,000.00
2015	102-500734	Contracts for Program Services	\$ 100,000.00	\$ 0.00	\$ 100,000.00
2016	102-500734	Contracts for Program Services	\$ 0.00	\$ 100,000.00	\$ 100,000.00
		Sub-total	\$ 200,000.00	\$ 100,000.00	\$ 300,000.00
		<b>Total</b>	<b>\$4,936,607.00</b>	<b>\$1,103,319.00</b>	<b>\$6,039,926.00</b>

- Contingent upon the approval of Requested Action #1, further authorize the Department of Health and Human Services, Division of Community Based Care Services, to make an advanced payment of \$160,112.99 to the vendor from the available State Fiscal Year 2016 funding for this agreement, effective July 1, 2015, or the date of Governor and Executive Council approval, whichever is later, through June 30, 2016.

**EXPLANATION**

The purpose of Requested Action #1 is to extend an agreement with the Office of Public Guardian to provide guardianship and protection services, on a statewide basis, to persons with mental illness or developmental impairments, and to also provide those services to incapacitated adults who are abused, neglected or exploited, whose incapacities leave them at risk of substantial harm because of their inability to provide for their own food, shelter, health care, safety, or to manage their personal affairs. These services are needed to meet the State's statutory obligations to safeguard incapacitated persons who are abused, neglected or exploited, in state institutions as well as in community mental health and developmental service programs. The agreement also carries out the requirements of RSA 135-C: 60, RSA 171-A: 10, II and RSA 161-F:52.

The Office of Public Guardian pursuant to RSA 547-B: 6 has been designated by the New Hampshire Supreme Court as an approved organization for the purpose of providing guardianship and protection services pursuant to RSA 464-A. This agreement will provide for guardianship services for up to 752 cases during the agreement period. The emphasis in providing such services will be to ensure that the guardianships maintained and sought will be limited in accordance with the standards embodied in RSA 464-A. This agreement also includes a line item for mentoring services and training. Mentoring services are provided to family members who are willing to serve as guardian but who require a period of support. Providing this support will obviate need for a public guardian in these cases and will thereby save the State from paying the cost of a permanent public guardianship.

The purpose of Requested Action #2 is to provide the advanced payment that allows the Office of Public Guardian to meet its operating obligations while providing services during the initial two months of this agreement period (State Fiscal Year 2016).

Should Governor and Executive Council determine not to approve this request, the Division of Community Based Care Services would be out of compliance with the requirements of RSA 135-C: 60, RSA 171-A: 10, II, and RSA 161-F:52 and persons with mental illness, developmental impairments and incapacitated adults who are abused, neglected or exploited, whose incapacities leave them at risk of substantial harm because of their inability to provide for their own food, shelter, health care, safety, or to manage their personal affairs would be harmed.

This agreement was competitively bid using a public notice posted on the Department of Health and Human Services website on February 22, 2010, as RFP Number 11-DCBCS-GPS-01, the Division of Community Based Care Services requested proposals for providing public guardianship services to persons with mental illness or developmental impairments. A further application for funding was issued to the Office of Public Guardian on March 22, 2013, to incorporate services for incapacitated adults who are abused, neglected or exploited.

As referenced in the Governor and Executive Council letter that originally approved this agreement, both the Request for Proposal and original agreement included the option for five (5) renewals of one year each at the Department's discretion. Each subsequent amendment and Governor and Executive Council letter also included the renewal provision. This Request represents the fifth and final year to renew the original agreement. Because the Office of Public Guardian has continually well-performed its contractual responsibilities, the Department is exercising this option.

Area served: Statewide.

Source of funds: 9% Federal Funds from the Administration of Families, Department of Health and Human Services, Social Services Block Grant, CFDA #93.667, Federal Award Identification Number 1601NHSOSR75, and 91% General Funds.

In the event that the Federal Funds become no longer available, General Funds shall not be requested to support these programs.

Respectfully submitted,

  
Kathleen A. Dunn  
Associate Commissioner

Approved by:   
Nicholas A. Toumpas  
Commissioner



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**State of New Hampshire  
Department of Health and Human Services  
Amendment #5 to Public Guardianship Services Contract**

This 5<sup>th</sup> Amendment to the Public Guardianship Services contract (hereinafter referred to as "Amendment 5") dated this 19th day of May, 2015, is by and between the State of New Hampshire, Department of Health and Human Services (hereinafter referred to as the "State" or "Department") and Office of Public Guardian (hereinafter referred to as "the Contractor"), a non-profit corporation with a place of business at 10 White Street, Concord, NH 03101.

WHEREAS, pursuant to an agreement (the "Contract") approved by the Governor and Executive Council on June 9, 2010 (Item #106), and amended and approved on June 8, 2011 (Item #126), June 20, 2012 (Item #80), June 19, 2013 (Item #112), and on June 18, 2014 (Item #96), the Contractor agreed to perform certain services based upon the terms and conditions specified in the Contract as amended and in consideration of certain sums specified; and

WHEREAS, the State and the Contractor have agreed to make changes to the scope of work, payment schedules and terms and conditions of the contract; and

WHEREAS, pursuant to the General Provisions, Paragraph 18 of the Agreement, the State may amend the Contract by written agreement of the parties; and

WHEREAS, the State and the Contractor have agreed to extend the term of the agreement and increase the price limitation to support continued delivery of these services;

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and conditions contained in the Contract and set forth herein, the parties hereto agree as follows to:

1. Amend Form P-37, Block 1.7 to read June 30, 2016
2. Amend Form P-37, Block 1.8 to read \$6,039,926
3. Amend Form P-37, Block 1.9 to read Eric Borrin
4. Amend Form P-37, Block 1.10 to read 603-271-9558
5. Delete Exhibit A and replace with Exhibit A Amendment #1
6. Delete Exhibit B and replace with Exhibit B Amendment #1
7. Delete Exhibit C and replace with Exhibit C Amendment #1
8. Delete Exhibit C-1 and replace with Exhibit C-1 Amendment #1
9. Delete Exhibit G and replace with Exhibit G Amendment #1
10. Delete Exhibit I and replace with Exhibit I Amendment #1



This amendment shall be effective upon the date of Governor and Executive Council approval.

IN WITNESS WHEREOF, the parties have set their hands as of the date written below,

State of New Hampshire  
Department of Health and Human Services

6/2/15  
Date

Kathleen A. Dunn  
Kathleen A. Dunn  
Associate Commissioner

Office of Public Guardian

5.22.2015  
Date

Roger P. Jobin  
NAME) ROGER P. JOBIN  
TITLE) TREASURER

Acknowledgement:

State of New Hampshire, County of Merrimack on May 22, 2015, before the undersigned officer, personally appeared the person identified above, or satisfactorily proven to be the person whose name is signed above, and acknowledged that s/he executed this document in the capacity indicated above.

Signature of Notary Public or Justice of the Peace

Mary K. Raulston  
Name and Title of Notary or Justice of the Peace

MARY K. RAULSTON, Notary Public  
My Commission Expires July 13, 2016

New Hampshire Department of Health and Human Services  
Public Guardianship Services



The preceding Amendment, having been reviewed by this office, is approved as to form, substance, and execution.

OFFICE OF THE ATTORNEY GENERAL

6/4/15  
Date

[Signature]  
Name: Megan A. York  
Title: Attorney

I hereby certify that the foregoing Amendment was approved by the Governor and Executive Council of the State of New Hampshire at the Meeting on: \_\_\_\_\_ (date of meeting)

OFFICE OF THE SECRETARY OF STATE

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name:  
Title:



## Exhibit A – Amendment 1

### SCOPE OF SERVICES

#### 1. Provisions Applicable to All Services

- 1.1. The purpose of this Agreement is to provide guardianship and protection services to safeguard the liberty and well-being of persons who because of functional limitations, have suffered, are suffering, or are likely to suffer substantial harm due to an inability to provide for personal needs for food, clothing, shelter, health care, safety or an inability to manage their property or financial affairs. Guardianship and protection services under this Agreement are to be provided to persons at risk of harm to person or estate whom the state has a responsibility to safeguard pursuant to RSA 135-C: 60, RSA 161-F:52 and RSA 171-A: 10, II.
- 1.2. The Contractor agrees to provide guardianship and protection services to the persons enumerated in paragraph 1.4. of Exhibit A. Guardianship services shall include those actions that are necessary to carry out the duties prescribed by RSA 464-A and RSA 547-B, including appointments as guardian, co-guardian, conservator, or temporary guardian of the person and/or estate of a ward. Protection services shall include those actions that are necessary to carry out the duties as duly designated representative or protective payee, client representative, attorney in fact, or other similar agent, as prescribed by applicable law, rule, or agreement.
  - 1.2.1. The program shall have a sufficient number of staff to adequately carry out, for all clients, all the duties required by statute, the letters of authority, and the standards set forth in this document.
  - 1.2.2. Upon employment professional program staff shall attend and successfully complete 20 or more hours of orientation training and, complete 10 or more hours of annual continuing education for each subsequent year of employment. The Contractor shall report the number of professional continuing education hours obtained by each guardian by August 1, 2015.
- 1.3. The Contractor may provide technical assistance to private guardians or training to agency staff providing direct services whose wards are clients of the Department of Health and Human Services ("the Department"). In order to receive such technical assistance from the Contractor private guardians must receive prior approval from the Office of Client and Legal Services for a specified number of consultation hours.
- 1.4. The Contractor shall not accept or agree to provide services to any person under this Agreement without the prior approval of the State through the Office of Client and Legal Services or the Bureau of Elderly & Adult Services Adult Protective Services Administrator or designee of the Department. The Contractor may provide services to all persons approved for services by the State and shall not deny services to such persons. If the Contractor believes guardianship and protection services to be inappropriate, the Contractor shall refer the client to the New Hampshire Disabilities Rights Center, Inc., the New Hampshire Legal Assistance or other attorney so that an administrative appeal or other appropriate legal action can be taken on behalf of the client. Referrals of persons for guardianship and protection services from the Glenclyff Home for the Elderly, the New Hampshire



## Exhibit A – Amendment 1

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Hospital, and community agencies in the mental health system, developmental services system, and the adult and elderly system shall be made by the Contractor through the Office of Client and Legal Services, which shall review each referral to ensure compliance with the principles contained in RSA 464-A and paragraph 1.5. below.

1.4.1. If the Contractor provides services to persons who have not been screened and approved by the Office of Client and Legal Services or Bureau of Elderly & Adult Services, reimbursement for such services will not be provided for under this Agreement.

1.4.1.1. In instances not within the control of the Contractor where guardianship appointments are made without approval granted from the Office of Client and Legal Services or Bureau of Elderly & Adult Services, the Contractor may receive reimbursement for guardianship services when the Contractor can provide documentation satisfactory to the Department that such circumstances occurred and the Contractor made reasonable efforts to decline such appointments. The Contractor shall include documentation of reasonable efforts made to decline such appointments with its Quarterly Payment Computation and Authorization reports. If the documentation provided by the Contractor is satisfactory to the Department, the Department may make payments to the Contractor for appointments made without approval as long as the wards appointed to the Contractor are persons for whom the State has responsibility to safeguard pursuant to RSA 135-C: 60, RSA 171-A:10, II and RSA 161-F:52.

1.5. In providing guardianship and protection services to persons under this Agreement, the Contractor shall adhere to the "Ethics and Standards for Guardians" as developed by the National Guardianship Association and shown in Exhibit D The Department acknowledges that the Standards on monthly visits with wards is a guideline and that quarterly visits or more frequently as required in individual circumstances is the accepted practice of the Contractor.

1.5.1. In the instance of a ward who is out of the State of New Hampshire for an extended period of time and it would not be feasible for the guardian to see the ward face to face on the basis outline in sub-paragraph 1.5 above, guardian shall attempt to have a video conference with the ward on the above-noted basis. If the technology for a video conference is not available, the guardian shall at least have telephone contact with the ward on the above-noted basis.

1.5.2. In the instance of a ward who is aggressive to the point of physical harm to the guardian, the face to face visits required in sub-paragraph 1.5 above may be suspended until an alternative plan can be developed for the guardian to meet with the ward while maintaining personal safety.

1.6. In any action brought in Circuit Court-Probate Division to limit or otherwise reduce the scope of a guardianship over a person served under this Agreement, the State agrees to appear with the Contractor where the State agrees that it is necessary to present the State's position on the action proposed.



## Exhibit A – Amendment 1

- 1.7. The Contractor agrees that no "direct services" shall be provided to persons under this Agreement. Direct services include psychotherapy, case management, transportation, financial aid, or other social services available through state or other governmental or nonprofit agencies.
- 1.8. The State agrees that the case management function regarding all referrals involving Bureau of Elderly & Adult Services clients will be supported by the BEAS Adult Protection Social Workers and the Contractor agrees to work closely with the BEAS APS Social Workers for a period of months, to be determined by the level of need following a referral.
- 1.9. The State recognizes that the Contractor has responsibilities as an independent decision-maker acting in a fiduciary capacity with respect to the persons to be served under this Agreement and the decisions to be made on behalf of such persons shall not be directed or influenced by the State by any action taken under this Agreement.
- 1.10. The Contractor may elect to subcontract for such services as may be necessary to carry out guardianship and protection services under this Agreement with prior notification and approval of the State through the Office of Client and Legal Services or Bureau of Elderly & Adult Services of the Department.
- 1.11. Nothing in this Agreement shall prevent the Contractor from providing guardianship and protection services to persons other than those who are referred pursuant to this Agreement. However, the Contractor agrees that pursuant to RSA 547-B:7, no funds provided under this Agreement shall be expended for such persons. Furthermore, the Contractor agrees to maintain sufficient records, which shall be subject to the Department's examination and be included as part of the Audit of Records required in paragraph 1.2. of the Special Provisions, to document that the funds received under this Agreement are expended in accordance with this paragraph.
- 1.12. If staff at any institution or developmental services or mental health or elderly and adult agency within the jurisdiction of the Department brings a complaint to the Department in reference to the services provided by the Contractor under this Agreement, the Department may refer the complaint to the Contractor and the Contractor shall investigate the circumstances pertaining to the complaint and shall respond in writing within thirty (30) days to the Division concerning the results of the investigation. The Contractor shall provide on a quarterly basis, a report of all written complaints filed against the Contractor and shall explain how each such complaint was resolved.
- 1.13. The Contractor recognizes the inherent value of the opinions of the wards they serve. If staff at any institution or developmental services or mental health or elderly and adult agency within the jurisdiction of the Department or any entity providing funding to the Department distributes a survey, questionnaire or similar instrument designed to gauge consumer satisfaction of wards in reference to the services received by the ward including the services provided by the Contractor under this Agreement, the Contractor agrees to allow their wards to participate in such measures of consumer satisfaction unless the Contractor indicates in writing to the Department the reasons why a particular ward should not be allowed to so participate.



## Exhibit A – Amendment 1

### 2. Description of Guardianship Services

- 2.1. The following is a general listing of functions to be provided by the Contractor for individuals so named by the Circuit Court Probate Division as wards of the Contractor. This listing and description is not intended to restate existing rules and regulations already in place, but rather its purpose is to clarify the relationship of the Contractor with respect to its wards who need and are receiving services in the developmental services, mental health, and/or elderly and adult systems. The functions to be performed include:
  - 2.1.1. Making decisions regarding the residential and day placement of the ward, utilizing the standards of least restrictive environment and the best interests of the individual ward.
  - 2.1.2. Insuring that all legally necessary steps are taken to enable the individual ward to receive comprehensive evaluations and comprehensive treatment and services.
  - 2.1.3. Advocating for and requesting appropriate services for the individual ward utilizing the individual service/treatment planning process following established Department standards and law.
  - 2.1.4. Being available to give or withhold consent to proposed medical care.
  - 2.1.5. Being available to give or withhold consent, where such is legally necessary, to proposed professional care, counsel, treatment or service including, but not limited to behavioral programs, significant changes in individual service/treatment plans, and other clinically or legally significant treatment or services.
  - 2.1.6. Insuring that the ward's civil rights are protected within the context of the decision the guardian is making on behalf of the ward and refraining from unwarranted intrusion into the life of the ward.
  - 2.1.7. Assuming responsibility for any and all other duties as are stated in RSA 464-A or as are required by the Circuit Court Probate Division.
  - 2.1.8. If guardian of the estate, being available to make all decisions as required by RSA 464-A:26
- 2.2. All of the responsibilities referenced in 2.1. above are contingent upon the actual authority granted in each individual court order specifying the extent and scope of guardianship for each individual.
- 2.3. In order to perform the functions specified in 2.1., a guardian must be kept aware of the facts or circumstances which may impact upon the decision. In order to make informed decisions on behalf of their wards, the public guardians should continually maintain significant and appropriate contact with each ward so to assure that their efforts best reflect the personal preferences, values, and desires of the ward to the fullest extent possible. The guardians must seek out information so that they are fully aware of all risks and benefits of any proposed course of action, as well as any alternatives that may exist. Guardians of the person shall maintain regular contact with their wards in order to comply with the "Ethics and Standards for Guardians" shown in Exhibit D.



## Exhibit A – Amendment 1

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- 2.4. Each public guardian has an obligation to become as familiar as possible with his or her ward. Beyond the personal visits with the ward and other important and significant people in the ward's life, this obligation can also be met through close interaction with the ward's case manager and others who share a responsibility for providing for the needs of the individual.

### 3. Guardianship and Protection Services

- 3.1. The Contractor hereby covenants and agrees that during the term of this Agreement, it will provide guardianship services as prescribed in sections 1.1., 1.2., 2., and Exhibit D.
- 3.2. The Contractor is obligated to accept all protection services cases referred to the Contractor by the Office of Client and Legal Services or Bureau of Elderly & Adult Services. The Department shall make every attempt to obtain a Release of Information from the proposed client with the Contractor except where prohibited from doing so by law. Also, to the extent possible, the Contractor shall be involved in the screening process for protection cases. If the Contractor believes that the appointment of a protective payee or representative payee is inappropriate, the Contractor may refer the client to the New Hampshire Disabilities Rights Center, Inc., New Hampshire Legal Assistance or other attorney so that an administrative appeal or other appropriate legal action can be taken on behalf of the client.
- 3.3. For persons referred to Contractor by the Office of Client and Legal Services pursuant to RSA 136-C:60 and RSA 171-A:10, If the Contractor agrees to serve the current total of 689 persons receiving guardianship and protection services, plus 6 pending cases, plus any new persons referred in accordance with paragraph 1.4. above. However, the Contractor shall not be obligated to accept more than 710 cases during the period of July 1, 2015 through June 30, 2016. The Department shall provide the Contractor with letters of approval for each new case assigned to the Contractor by the Office of Client and Legal Services.
- 3.4. For persons referred to Contractor by the Bureau of Elderly & Adult Services pursuant to RSA 161-F:52, the Contractor agrees to provide guardianship and protection services for no more than forty-two (42) individuals at any point in time during the contract period. While the Department shall provide the Contractor with letters of approval for each new case assigned to the Contractor by the Bureau of Elderly & Adult Services, the Contractor may not bill for services until the Contractor is actually appointed as guardian by the Circuit Court-Probate Division.
- 3.5. The commencement date of this Agreement, as amended by Amendment #5, shall be the Effective Date, that is, July 1, 2015, or date of Governor and Executive Council approval, whichever is later. The Contractor shall not be paid for any services, which may be provided prior to the Effective Date.



**Method and Conditions Precedent to Payment**

1. Subject to the availability of State funds, and in consideration for the satisfactory completion of the services to be performed under this Agreement, the State shall pay the Contractor a per diem per case rate approved by the Office of Client and Legal Services for all BBH & BDS clients and the Bureau of Elderly & Adult Services for all BEAS clients. However, regardless of the number of persons served by the Contractor during the period of July 1, 2010 through June 30, 2016, the State shall pay the Contractor a minimum amount of \$5,783,229.15. The total of all payments authorized or actually made hereunder shall not exceed the amount of \$6,039,926.00, the price limitation set forth in block 1.8. of the General Provisions.
  - 1.1. For the period of July 1, 2015 through June 30, 2016, funding is available as follows:  
\$100,000 – 9% Federal Funds from the Administration of Families, Department of Health and Human Services, Social Services Block Grant, CFDA #93.667, Federal Award Identification Number 1601NHSOSR75; and \$1,003,319.00 – 91% General Funds.
  - 1.2. The per diem reimbursement rate for the provision of services to persons served under this Agreement shall be \$3.86 for up to 710 clients whose guardianship services are requested by the Bureaus of Behavioral Health and Developmental Services. The State shall reimburse Contractor separately for services provided as guardian over the person and guardian over the estate.
  - 1.3. The hourly reimbursement rate for the provision of technical assistance to private guardians shall be \$60.00, not to exceed the amount of \$1,500.00.
  - 1.4. The hourly reimbursement rate for the provision of training to area agency, mental health and elderly and adult agency staff and probate court personnel shall be \$60.00, not to exceed the amount of \$1,500.00.
  - 1.5. The per diem reimbursement rate for the provision of guardianship over the person services or the provision of guardianship over the estate services to persons served under this Agreement shall be \$6.29 for up to 42 clients whose guardianship services are requested by the Bureau of Elderly & Adult Services. The State shall reimburse Contractor separately for services provided as guardian over the person and guardian over the estate.
  - 1.6. For clients referred for guardianship services by the Bureau of Elderly and Adult Services, the actual cost paid by Contractor for expenses incurred in the performance of Contractors duties under this Agreement, including, but not limited, to filing fees, bond costs and appraisal fees where no other source of reimbursement exists, not to exceed \$5,000.00.
2. Payment to the Contractor for the provision of services to clients whose guardianship services are requested by the Bureaus of Behavioral Health and Developmental Services will be made on a monthly basis subject to the following conditions:
  - 2.1. The State shall at the beginning of the agreement period make a payment of \$160,112.99 the estimated fee for service payment due to the Contractor for providing services for a period of two months. Adjustments for underpayments or overpayments will be made at the end of the first quarter of the program period. This initial payment is the amount the State has determined is necessary to initiate the services.
  - 2.2. A monthly payment equal to \$80,056.50 will be made to the Contractor at the beginning of September and continuing through the end of the Agreement or until the maximum



Exhibit B Amendment #1

amount of the contract has been reached. The per diem rate will be extended to the last day of the month following the month in which the client dies or for whom the guardianship/protection service is terminated.

- 2.3. The fee for quarterly adjustments shall be calculated by:
- 2.3.1. multiplying the per diem rate times the total number of days of service provided during the quarter to each eligible client under this Agreement, and by
  - 2.3.2. adding to this amount any reimbursement due for the quarter to the Contractor for clients referenced in paragraph 2.2. and the reimbursement due for the provision of technical assistance to private guardians referenced in paragraph 1.3. of Exhibit A.
- 2.4. Beginning in October, 2010, and at the end of each quarter thereafter, the Contractor agrees to submit, by the fifth day of the following month, to the Division a standard form entitled "Quarterly Payment Computation and Authorization, Office of Public Guardian". At the end of each month there shall be a list of clients or an updated list of clients for whom the Contractor is providing for services. The list of clients shall indicate the name, address and date of death for those clients who have died during the month.
- 2.4.1. The "Quarterly Payment Computation and Authorization, Office of Public Guardian" form shall serve as a voucher detailing how reimbursement due for the quarter in which services were performed was calculated. The form shall contain:
- 2.4.1.1. Identification of the service period;
  - 2.4.1.2. Contract number and period;
  - 2.4.1.3. Statistics which document the number of clients on the Contractor's caseload during the service period. The statistics shall be recorded and shall specify the number of persons served by type of services, the names of cases added or closed during the quarter. Orders for new guardianship appointments shall be attached to the statistics as soon as they become available. Persons added during the service period for whom prior approval has not been obtained, but for whom the Contractor is seeking reimbursement, must be formally authorized to receive services before they are calculated into the authorized payment due for the service period. A brief explanation shall be provided for any client for whom services have been terminated;
  - 2.4.1.4. Cumulative to date revenues received; and
  - 2.4.1.5. Calculation of the total authorized payment due for the service quarter in accordance with 2.3. above;
- 2.4.2. The first "Quarterly Payment Computation and Authorization, Office of Public Guardian" report shall be submitted by no later than October 5, 2015 and the final report by July 10, 2016. Failure to submit such reports shall constitute an Event of Default.
- 2.5. On a quarterly basis, the State shall ensure that the total payments for services under this Agreement are not less than the prorated minimum contract amounts. The State shall make any payments necessary under this provision by the 15th day of the month



Exhibit B Amendment #1

following the end of the quarter and specifically as provided in subparagraphs 2.5.1-2.5.3. below.

- 2.5.1. The Contractor shall notify the State in its October 2015 "Quarterly Payment and Computation Report, Office of Public Guardian" in the event that payment for services for the months of July 2010 through September 2015 is less than \$5,008,271.00, whereupon the State shall issue a supplemental check for the difference between the amount paid to the Contractor and \$5,008,271.00.
- 2.5.2. The Contractor shall notify the State in its January 2016 "Quarterly Payment and Computation Report, Office of Public Guardian" in the event that payment for services for the months of July 2010 through December 2015 is less than \$5,272,378.00, whereupon the State shall issue a supplemental check for the difference between the amount paid to the Contractor and \$5,272,378.00.
- 2.5.3. The Contractor shall notify the State in its April 2016 "Quarterly Payment and Computation Report, Office of Public Guardian" in the event that payment for services for the months of July 2010 through March 2016 is less than \$5,536,485.00, whereupon the State shall issue a supplemental check for the difference between the amount paid to the Contractor and \$5,536,485.00.
- 2.6. By August 15, 2010, the Contractor shall submit an annual Quality Assurance Plan for the approval of the Office of Client and Legal Services. The Contractor shall in a timely fashion modify or amend the plan based on the Department's response to the plan. The Contractor shall submit a plan acceptable to the Office of Client and Legal Services by no later than October 31, 2010. Failure to submit an acceptable Quality Assurance Plan shall constitute an Event of Default. Payments will not continue until receipt of the plan.
  - 2.6.1. The Contractor agrees to include a representative, to be named by the Office of Client and Legal Services, to participate in the design and implementation of the Contractors Quality Assurance Plan.
  - 2.6.2. The Contractor will submit, on a monthly basis a report on Quality Assurance activities no later than the 5th day of the following month.
- 2.7. The quarterly service payment due shall not be made until and unless the "Quarterly Computation and Authorization, Office of Public Guardian" form for the service quarter has been received by the Department.
- 2.8. The Contractor also agrees that full payment for the final quarter of the program period shall not be made by the Department until and unless the Contractor submits the "Quarterly Payment Computation and Authorization, Office of Public Guardian" form for the final quarter of the program period and "Summary Report of Quality Assurance Activities" of activities for the agreement period.
- 3. Payment to the Contractor for the provision of services to clients whose guardianship services are requested by the Bureau of Elderly & Adult Services will be made on a monthly basis subject to the following conditions:
  - 3.1. The Contractor shall submit invoices on a monthly basis in accordance with procedures and instructions established by the Bureau of Elderly & Adult Services and provided to the Contractor. The Contractor shall submit with the monthly invoice a list of clients served during the month for which the invoice is being submitted. The Bureau of Elderly & Adult Services shall pay the Contractor by multiplying the per diem rate times the total



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number of days for each service provided during the month to each eligible client under this Agreement.

- 3.2. Invoices shall be due by the 15th of the month following the month in which services are provided.
- 3.3. The Contractor shall review the BEAS cases monthly and move individuals to a different funding mechanism, if possible, to allow more openings for additional referrals. In all cases where alternate funding becomes available, the Contractor shall transfer the ward from BEAS funded slot within sixty (60) days.
4. Notwithstanding anything to the contrary herein, the Contractor agrees that funding under this Agreement may be withheld, in whole or in part, in the event of noncompliance with any federal or state law, rule, or regulation applicable to the services provided, or if the said services have not been satisfactorily completed in accordance with the terms and conditions of this Agreement.



Exhibit C Amendment #1

**Special Provisions**

Contractors Obligations: The Contractor covenants and agrees that all funds received by the Contractor under the Contract shall be used only as payment to the Contractor for services provided to eligible individuals and, in the furtherance of the aforesaid covenants, the Contractor hereby covenants and agrees as follows:

1. **Compliance with Federal and State Laws:** If the Contractor is permitted to determine the eligibility of individuals such eligibility determination shall be made in accordance with applicable federal and state laws, regulations, orders, guidelines, policies and procedures.
2. **Documentation:** In addition to the determination forms required by the Department, the Contractor shall maintain a data file on each recipient of services hereunder, which file shall include all information necessary to support an eligibility determination and such other information as the Department requests. The Contractor shall furnish the Department with all forms and documentation regarding eligibility determinations that the Department may request or require.
3. **Conditions of Purchase:** Notwithstanding anything to the contrary contained in the Contract, nothing herein contained shall be deemed to obligate or require the Department to purchase services hereunder at a rate which reimburses the Contractor in excess of the Contractors costs, at a rate which exceeds the amounts reasonable and necessary to assure the quality of such service, or at a rate which exceeds the rate charged by the Contractor to ineligible individuals or other third party funders for such service. If at any time during the term of this Contract or after receipt of the Final Expenditure Report hereunder, the Department shall determine that the Contractor has used payments hereunder to reimburse items of expense other than such costs, or has received payment in excess of such costs or in excess of such rates charged by the Contractor to ineligible individuals or other third party funders, the Department may elect to:
  - 3.1. Renegotiate the rates for payment hereunder, in which event new rates shall be established;
  - 3.2. Deduct from any future payment to the Contractor the amount of any prior reimbursement in excess of costs;
  - 3.3. Demand repayment of the excess payment by the Contractor in which event failure to make such repayment shall constitute an Event of Default hereunder. When the Contractor is permitted to determine the eligibility of individuals for services, the Contractor agrees to reimburse the Department for all funds paid by the Department to the Contractor for services provided to any individual who is found by the Department to be ineligible for such services at any time during the period of retention of records established herein.
4. **Maintenance of Records:** In addition to the eligibility records specified above, the Contractor covenants and agrees to maintain the following records during the Contract Period, or for a longer period where noted below:
  - 4.1. **Fiscal Records:** books, records, documents and other data evidencing and reflecting all costs and other expenses incurred by the Contractor in the performance of the Contract, and all income received or collected by the Contractor during the Contract Period. Said records to be maintained in accordance with accounting procedures and practices which sufficiently and properly reflect all such costs and expenses, and which are acceptable to the Department, between the Effective Date and a date six years after the Completion Date of this Agreement, and to include, without limitation, all ledgers, books, records, and original evidence of costs such as purchase requisitions and orders, vouchers, requisitions for materials, inventories, valuations of in-kind contributions, labor time cards, payrolls, and other records requested or required by the Department.
    - 4.1.1. **Access to Records.** Between the Effective Date and a date six years after the Completion Date, at any time during the Contractor's normal business hours, and as often as the State shall reasonably demand, the Contractor shall make available to the State its fiscal records



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related to this Agreement and any books, records, documents, papers or reports maintained by the Contractor which relate to such fiscal matters. The term "Contractor" includes all persons, natural or fictional, which are controlled by, under common ownership with, or an affiliate of, the entity identified as the Contractor in block 1.3 of the General Provisions of this Agreement.

- 4.2. **Statistical Records:** Statistical, enrollment, attendance or visit records for each recipient of services during the Contract Period, which records shall include all records of application and eligibility (including all forms required to determine eligibility for each such recipient), records regarding the provision of services and all invoices submitted to the Department to obtain payment for such services.
- 4.3. **Medical Records:** Where appropriate and as prescribed by the Department regulations, the Contractor shall retain medical records on each patient/recipient of services.
- 5. **Audit:** Contractor shall submit an annual audit to the Department within 90 days after the close of the agency fiscal year. It is recommended that the report be prepared in accordance with the provision of Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non Profit Organizations" and the provisions of Standards for Audit of Governmental Organizations, Programs, Activities and Functions, issued by the US General Accounting Office (GAO standards) as they pertain to financial compliance audits.
  - 5.1. **Audit and Review:** During the term of this Contract and the period for retention hereunder, the Department, the United States Department of Health and Human Services, and any of their designated representatives shall have access to all reports and records maintained pursuant to the Contract for purposes of audit, examination, excerpts and transcripts.
  - 5.2. **Audit Liabilities:** In addition to and not in any way in limitation of obligations of the Contract, it is understood and agreed by the Contractor that the Contractor shall be held liable for any state or federal audit exceptions and shall return to the Department, all payments made under the Contract to which exception has been taken or which have been disallowed because of such an exception.
- 6. **Confidentiality of Records:** All information, reports, and records maintained hereunder or collected in connection with the performance of the services and the Contract shall be confidential and shall not be disclosed by the Contractor, provided however, that pursuant to state laws and the regulations of the Department regarding the use and disclosure of such information, disclosure may be made to public officials requiring such information in connection with their official duties and for purposes directly connected to the administration of the services and the Contract; and provided further, that the use or disclosure by any party of any information concerning a recipient for any purpose not directly connected with the administration of the Department or the Contractor's responsibilities with respect to purchased services hereunder is prohibited except on written consent of the recipient, his attorney or guardian. Notwithstanding anything to the contrary contained herein the covenants contained in the Paragraph shall survive the termination of the Contract for any reason whatsoever.
- 7. **Reports: Fiscal and Statistical:** The Contractor agrees to submit the following reports at the following times if requested by the Department.
  - 7.1. **Interim Financial Reports:** Written interim financial reports containing a detailed description of all costs and non-allowable expenses incurred by the Contractor to the date of the report and containing such other information as shall be deemed satisfactory by the Department to justify the rate of payment hereunder. Such Financial Reports shall be submitted on the form designated by the Department or deemed satisfactory by the Department.
  - 7.2. **Final Report:** A final report shall be submitted within thirty (30) days after the end of the term of this Contract. The Final Report shall be in a form satisfactory to the Department and shall contain a summary statement of progress toward goals and objectives stated in the Proposal and other information required by the Department.
- 8. **Completion of Services: Disallowance of Costs:** Upon the purchase by the Department of the maximum number of units provided for in the Contract and upon payment of the price limitation



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hereunder, the Contract and all the obligations of the parties hereunder (except such obligations as, by the terms of the Contract are to be performed after the end of the term of this Contract and/or survive the termination of the Contract) shall terminate, provided however, that if, upon review of the Final Expenditure Report the Department shall disallow any expenses claimed by the Contractor as costs hereunder the Department shall retain the right, at its discretion, to deduct the amount of such expenses as are disallowed or to recover such sums from the Contractor.

9. **Prior Approval and Copyright Ownership:** All materials (written, video, audio) produced or purchased under the contract shall have prior approval from DHHS before printing, production, distribution or use. The DHHS will retain copyright ownership for any and all original materials produced, including, but not limited to, brochures, resource directories, protocols or guidelines, posters, or reports. Contractor shall not reproduce any materials produced under the contract without prior written approval from DHHS.
10. **Operation of Facilities: Compliance with Laws and Regulations:** In the operation of any facilities for providing services, the Contractor shall comply with all laws, orders and regulations of federal, state, county and municipal authorities and with any direction of any Public Officer or officers pursuant to laws which shall impose an order or duty upon the contractor with respect to the operation of the facility or the provision of the services at such facility. If any governmental license or permit shall be required for the operation of the said facility or the performance of the said services, the Contractor will procure said license or permit, and will at all times comply with the terms and conditions of each such license or permit. In connection with the foregoing requirements, the Contractor hereby covenants and agrees that, during the term of this Contract the facilities shall comply with all rules, orders, regulations, and requirements of the State Office of the Fire Marshal and the local fire protection agency, and shall be in conformance with local building and zoning codes, bylaws and regulations.
11. **Equal Employment Opportunity Plan (EEOP):** The Contractor will provide an Equal Employment Opportunity Plan (EEOP) to the Office for Civil Rights, Office of Justice Programs (OCR), if it has received a single award of \$500,000 or more. If the recipient receives \$25,000 or more and has 50 or more employees, it will maintain a current EEOP on file and submit an EEOP Certification Form to the OCR, certifying that its EEOP is on file. For recipients receiving less than \$25,000, or public grantees with fewer than 50 employees, regardless of the amount of the award, the recipient will provide an EEOP Certification Form to the OCR certifying it is not required to submit or maintain an EEOP. Nonprofit organizations, Indian Tribes, and medical and educational institutions are exempt from the EEOP requirement, but are required to submit a certification form to the OCR to claim the exemption. EEOP Certification Forms are available at: <http://www.ojp.usdoj/about/ocr/pdfs/cert.pdf>.
12. **Limited English Proficiency (LEP):** As clarified by Executive Order 13166, Improving Access to Services for persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with the Omnibus Crime Control and Safe Streets Act of 1968 and Title VI of the Civil Rights Act of 1964, Contractors must take reasonable steps to ensure that LEP persons have meaningful access to its programs.
13. **Pilot Program for Enhancement of Contractor Employee Whistleblower Protections:** The following shall apply to all contracts that exceed the Simplified Acquisition Threshold as defined in 48 CFR 2.101 (currently, \$150,000)

CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)

- (a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L.112-239) and FAR 3.908.



Exhibit C Amendment #1

- (b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.
- (c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

14. **Subcontractors:** DHHS recognizes that the Contractor may choose to use subcontractors with greater expertise to perform certain health care services or functions for efficiency or convenience, but the Contractor shall retain the responsibility and accountability for the function(s). Prior to subcontracting, the Contractor shall evaluate the subcontractor's ability to perform the delegated function(s). This is accomplished through a written agreement that specifies activities and reporting responsibilities of the subcontractor and provides for revoking the delegation or imposing sanctions if the subcontractor's performance is not adequate. Subcontractors are subject to the same contractual conditions as the Contractor and the Contractor is responsible to ensure subcontractor compliance with those conditions. When the Contractor delegates a function to a subcontractor, the Contractor shall do the following:
- 14.1. Evaluate the prospective subcontractor's ability to perform the activities, before delegating the function
  - 14.2. Have a written agreement with the subcontractor that specifies activities and reporting responsibilities and how sanctions/revocation will be managed if the subcontractor's performance is not adequate
  - 14.3. Monitor the subcontractor's performance on an ongoing basis
  - 14.4. Provide to DHHS an annual schedule identifying all subcontractors, delegated functions and responsibilities, and when the subcontractor's performance will be reviewed.
  - 14.5. DHHS shall, at its discretion, review and approve all subcontracts.

If the Contractor identifies deficiencies or areas for improvement are identified, the Contractor shall take corrective action.

15. **Data -- Access by State:** Between the Effective Date and a date six years after the Completion Date, at any time during the Contractor's normal business hours, and as often as the State shall reasonably demand, the Contractor shall make available to the State all data for examination, duplication, publication, translation, or for any other purpose. Nothing in this subparagraph shall require the Contractor to make available data which would violate any statute, other provisions of this Agreement, or agreements with unrelated third parties. The term "Contractor" includes all persons, natural or fictional, affiliated with, controlled by, or under common ownership with, or an affiliate of, the entity identified as the Contractor in block 1.3. of the General Provisions of this Agreement.
16. **Time Study:** The parties agree to pilot different reporting indicators. The Contractor agrees to perform a time study for all State funded clients. The time study shall be performed in accordance with procedures established by the State. The Contractor shall provide the State with "Quarterly Statistical Reporting" forms within thirty days after the end of each quarter. The parties further acknowledge that said forms may undergo changes to refine the data collected and may be modified by mutual agreement.
17. **Gratuities or Kickbacks:** The Contractor agrees that it is a breach of this Agreement to accept or make a payment, gratuity or offer of employment on behalf of the Contractor, any Sub-Contractor or the State in order to influence the performance of the Scope of Work detailed in Exhibit A of this Agreement. The State may terminate this Agreement and any sub-contract or sub-agreement if it is determined that payments, gratuities or offers of employment of any kind were offered or received by any officials, officers, employees or agents of the Contractor or Sub-Contractor.
18. **Retroactive Payments-Individual Services:** Notwithstanding anything to the contrary contained in this Agreement or in any other document, agreement or understanding, it is expressly understood and agreed by the parties hereto, that no payments will be made hereunder to reimburse the Contractor for any services provided to any individual prior to the Effective Date of this Agreement and no payments shall be made for expenses incurred by the Contractor for any services provided prior to



Exhibit C Amendment #1

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the date on which the individual applies for services or (except as otherwise provided by the federal regulations) prior to a determination that the individual is eligible for such services.

19. **Retroactive Payments-Contractor Services:** Notwithstanding anything to the contrary contained in this Agreement or in any other document, agreement or understanding, it is expressly understood and agreed by the parties hereto, that no payments will be made hereunder to reimburse the Contractor for any costs incurred for any purposes prior to the Effective Date of the Agreement.
20. **Credits:** All documents, notices, press releases, research reports, and other materials prepared during or resulting from the performance of the services or the Agreement shall include the following statement: "The preparation of this (report, document, etc.) was financed under an Agreement with the State of New Hampshire, Department of Health and Human Services, with funds provided in part or in whole by the (State of New Hampshire and/or United States Department of Health and Human Services.)"
21. **Criminal Background Check:** The Contractor shall conduct criminal background checks if a potential applicant for employment or volunteer, funded under this contract, may have client contact in the client's place of residence.
22. **Adult Protective Service Registry:** The Contractor shall meet the requirements of RSA 161-F: 49 Registry, VII, which requires the submission of the name of a prospective employee who may have client contact, for review against the State Adult Protective Service Registry, effective July 1, 2007.
23. **Complaint Resolution Policy:** The Contractor shall develop a written policy with regard to the intake, investigation, resolution, and reporting of complaints received from wards, families of wards, or providers of services to wards. Said policy shall be available for distribution to interested parties as needed.



**Additional Special Provisions**

1. Subparagraph 4 of the General Provisions of this contract, Conditional Nature of Agreement, is replaced as follows:

**4. CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including without limitation, the continuance of payments, in whole or in part, under this Agreement are contingent upon continued appropriation or availability of funds, including any subsequent changes to the appropriation or availability of funds affected by any state or federal legislative or executive action that reduces, eliminates, or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope of Services provided in Exhibit A, Scope of Services, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of appropriated or available funds. In the event of a reduction, termination or modification of appropriated or available funds, the State shall have the right to withhold payment until such funds become available, if ever. The State shall have the right to reduce, terminate or modify services under this Agreement immediately upon giving the Contractor notice of such reduction, termination or modification. The State shall not be required to transfer funds from any other source or account into the Account(s) identified in block 1.6 of the General Provisions, Account Number, or any other account, in the event funds are reduced or unavailable.

2. Subparagraph 10 of the General Provisions of this contract, Termination, is amended by adding the following language:

- 10.1 The State may terminate the Agreement at any time for any reason, at the sole discretion of the State, 30 days after giving the Contractor written notice that the State is exercising its option to terminate the Agreement.
- 10.2 In the event of early termination, the Contractor shall, within 15 days of notice of early termination, develop and submit to the State a Transition Plan for services under the Agreement, including but not limited to, identifying the present and future needs of clients receiving services under the Agreement and establishes a process to meet those needs.
- 10.3 The Contractor shall fully cooperate with the State and shall promptly provide detailed information to support the Transition Plan including, but not limited to, any information or data requested by the State related to the termination of the Agreement and Transition Plan and shall provide ongoing communication and revisions of the Transition Plan to the State as requested.
- 10.4 In the event that services under the Agreement, including but not limited to clients receiving services under the Agreement are transitioned to having services delivered by another entity including contracted providers or the State, the Contractor shall provide a process for uninterrupted delivery of services in the Transition Plan.
- 10.5 The Contractor shall establish a method of notifying clients and other affected individuals about the transition. The Contractor shall include the proposed communications in its Transition Plan submitted to the State as described above.
- 10.6 In the event of termination under paragraph 10. of the General Provisions, the approval of such a Termination Report by the State shall entitle the Contractor to receive that portion of the Contract Price earned to and including the date of termination. The Contractor's obligation to continue to provide services under this Agreement shall cease upon termination by the State.
- 10.7 In the event of termination under paragraph 10. of the General Provisions, the approval of a Termination Report by the State shall in no event relieve the Contractor from any and all liability for damages sustained or incurred by the State as a result of the Contractor's breach of its obligations hereunder.



Exhibit C-1 Amendment #1

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3. Subparagraph 14.1.1 of the General Provisions of this contract, is deleted and the following subparagraph is added:
    - 14.1.1 comprehensive general liability against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$1,000,000 per occurrence with additional general liability umbrella coverage of not less than \$1,000,000, and professional malpractice insurance covering all professional and/or licensed personnel engaged in the performance of the services hereunder.
  4. Subparagraph 14.1. of the General Provisions of this contract, is amended by adding the following subparagraph 14.1.3:
    - 14.1.3 During the term of this Agreement, the Contractor shall maintain a fidelity bond, covering the activities of all employees or agents with authority to control or have access to any funds provided under this Agreement in an amount equal to at least twenty-five (25) percent of the minimum contract amount specified in paragraph 1 of Exhibit B.
  5. The Division reserves the right to annually renew the Contract up to five times, subject to the continued availability of funds, satisfactory performance of services and approval by the Governor and Executive Council.



**CERTIFICATION OF COMPLIANCE WITH REQUIREMENTS PERTAINING TO  
FEDERAL NONDISCRIMINATION, EQUAL TREATMENT OF FAITH-BASED ORGANIZATIONS AND  
WHISTLEBLOWER PROTECTIONS**

The Contractor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

Contractor will comply, and will require any subgrantees or subcontractors to comply, with any applicable federal nondiscrimination requirements, which may include:

- the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. Section 3789d) which prohibits recipients of federal funding under this statute from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act requires certain recipients to produce an Equal Employment Opportunity Plan;
- the Juvenile Justice Delinquency Prevention Act of 2002 (42 U.S.C. Section 5672(b)) which adopts by reference, the civil rights obligations of the Safe Streets Act. Recipients of federal funding under this statute are prohibited from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act includes Equal Employment Opportunity Plan requirements;
- the Civil Rights Act of 1964 (42 U.S.C. Section 2000d, which prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in any program or activity);
- the Rehabilitation Act of 1973 (29 U.S.C. Section 794), which prohibits recipients of Federal financial assistance from discriminating on the basis of disability, in regard to employment and the delivery of services or benefits, in any program or activity;
- the Americans with Disabilities Act of 1990 (42 U.S.C. Sections 12131-34), which prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation;
- the Education Amendments of 1972 (20 U.S.C. Sections 1681, 1683, 1685-86), which prohibits discrimination on the basis of sex in federally assisted education programs;
- the Age Discrimination Act of 1975 (42 U.S.C. Sections 6106-07), which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. It does not include employment discrimination;
- 28 C.F.R. pt. 31 (U.S. Department of Justice Regulations – OJJDP Grant Programs); 28 C.F.R. pt. 42 (U.S. Department of Justice Regulations – Nondiscrimination; Equal Employment Opportunity; Policies and Procedures); Executive Order No. 13279 (equal protection of the laws for faith-based and community organizations); Executive Order No. 13559, which provide fundamental principles and policy-making criteria for partnerships with faith-based and neighborhood organizations;
- 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations – Equal Treatment for Faith-Based Organizations); and Whistleblower protections 41 U.S.C. §4712 and The National Defense Authorization Act (NDAA) for Fiscal Year 2013 (Pub. L. 112-239, enacted January 2, 2013) the Pilot Program for Enhancement of Contract Employee Whistleblower Protections, which protects employees against reprisal for certain whistle blowing activities in connection with federal grants and contracts.

The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment.

Exhibit G- Amendment #1

Contractor Initials RPJ

Certification of Compliance with requirements pertaining to Federal Nondiscrimination, Equal Treatment of Faith-Based Organizations and Whistleblower protections

New Hampshire Department of Health and Human Services  
Exhibit G – Amendment #1



In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, to the applicable contracting agency or division within the Department of Health and Human Services, and to the Department of Health and Human Services Office of the Ombudsman.

The Contractor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this proposal (contract) the Contractor agrees to comply with the provisions indicated above.

Contractor Name: Office of Public Guardian

5.22.2015  
Date

Roger P. Jobina  
Name: ROGER P. JOBINA  
Title: TREASURER

Exhibit G- Amendment #1

Certification of Compliance with requirements pertaining to Federal Nondiscrimination, Equal Treatment of Faith-Based Organizations and Whistleblower protections

Contractor Initials RPJ



**HEALTH INSURANCE PORTABILITY ACT**  
**BUSINESS ASSOCIATE AGREEMENT**

The Contractor identified in Section 1.3 of the General Provisions of the Agreement agrees to comply with the Health Insurance Portability and Accountability Act, Public Law 104-191 and with the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160 and 164 applicable to business associates. As defined herein, "Business Associate" shall mean the Contractor and subcontractors and agents of the Contractor that receive, use or have access to protected health information under this Agreement and "Covered Entity" shall mean the State of New Hampshire, Department of Health and Human Services.

(1) **Definitions.**

- a. "Breach" shall have the same meaning as the term "Breach" in section 164.402 of Title 45, Code of Federal Regulations.
- b. "Business Associate" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- c. "Covered Entity" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- d. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR Section 164.501.
- e. "Data Aggregation" shall have the same meaning as the term "data aggregation" in 45 CFR Section 164.501.
- f. "Health Care Operations" shall have the same meaning as the term "health care operations" in 45 CFR Section 164.501.
- g. "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act, Title XIII, Subtitle D, Part 1 & 2 of the American Recovery and Reinvestment Act of 2009.
- h. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160, 162 and 164 and amendments thereto.
- i. "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.501(g).
- j. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.
- k. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR Section 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.



Exhibit I Amendment #1

- i. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR Section 164.103.
- m. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- n. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C, and amendments thereto.
- o. "Unsecured Protected Health Information" means protected health information that is not secured by a technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.
- p. Other Definitions - All terms not otherwise defined herein shall have the meaning established under 45 C.F.R. Parts 160, 162 and 164, as amended from time to time, and the HITECH Act.

(2) **Business Associate Use and Disclosure of Protected Health Information.**

- a. Business Associate shall not use, disclose, maintain or transmit Protected Health Information (PHI) except as reasonably necessary to provide the services outlined under Exhibit A of the Agreement. Further, Business Associate, including but not limited to all its directors, officers, employees and agents, shall not use, disclose, maintain or transmit PHI in any manner that would constitute a violation of the Privacy and Security Rule.
- b. Business Associate may use or disclose PHI:
  - I. For the proper management and administration of the Business Associate;
  - II. As required by law, pursuant to the terms set forth in paragraph d. below; or
  - III. For data aggregation purposes for the health care operations of Covered Entity.
- c. To the extent Business Associate is permitted under the Agreement to disclose PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from the third party that such PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and (ii) an agreement from such third party to notify Business Associate, in accordance with the HIPAA Privacy, Security, and Breach Notification Rules of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.
- d. The Business Associate shall not, unless such disclosure is reasonably necessary to provide services under Exhibit A of the Agreement, disclose any PHI in response to a request for disclosure on the basis that it is required by law, without first notifying Covered Entity so that Covered Entity has an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, the Business



Exhibit I Amendment #1

Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all remedies.

- e. If the Covered Entity notifies the Business Associate that Covered Entity has agreed to be bound by additional restrictions over and above those uses or disclosures or security safeguards of PHI pursuant to the Privacy and Security Rule, the Business Associate shall be bound by such additional restrictions and shall not disclose PHI in violation of such additional restrictions and shall abide by any additional security safeguards.

**(3) Obligations and Activities of Business Associate.**

- a. The Business Associate shall notify the Covered Entity's Privacy Officer immediately after the Business Associate becomes aware of any use or disclosure of protected health information not provided for by the Agreement including breaches of unsecured protected health information and/or any security incident that may have an impact on the protected health information of the Covered Entity.
- b. The Business Associate shall immediately perform a risk assessment when it becomes aware of any of the above situations. The risk assessment shall include, but not be limited to:
  - o The nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
  - o The unauthorized person used the protected health information or to whom the disclosure was made;
  - o Whether the protected health information was actually acquired or viewed
  - o The extent to which the risk to the protected health information has been mitigated.

The Business Associate shall complete the risk assessment within 48 hours of the breach and immediately report the findings of the risk assessment in writing to the Covered Entity.

- c. The Business Associate shall comply with all sections of the Privacy, Security, and Breach Notification Rule.
- d. Business Associate shall make available all of its internal policies and procedures, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of Covered Entity to the Secretary for purposes of determining Covered Entity's compliance with HIPAA and the Privacy and Security Rule.
- e. Business Associate shall require all of its business associates that receive, use or have access to PHI under the Agreement, to agree in writing to adhere to the same restrictions and conditions on the use and disclosure of PHI contained herein, including the duty to return or destroy the PHI as provided under Section 3 (I). The Covered Entity shall be considered a direct third party beneficiary of the Contractor's business associate agreements with Contractor's intended business associates, who will be receiving PHI



Exhibit I Amendment #1

pursuant to this Agreement, with rights of enforcement and indemnification from such business associates who shall be governed by standard Paragraph #13 of the standard contract provisions (P-37) of this Agreement for the purpose of use and disclosure of protected health information.

- f. Within five (5) business days of receipt of a written request from Covered Entity, Business Associate shall make available during normal business hours at its offices all records, books, agreements, policies and procedures relating to the use and disclosure of PHI to the Covered Entity, for purposes of enabling Covered Entity to determine Business Associate's compliance with the terms of the Agreement.
- g. Within ten (10) business days of receiving a written request from Covered Entity, Business Associate shall provide access to PHI in a Designated Record Set to the Covered Entity, or as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR Section 164.524.
- h. Within ten (10) business days of receiving a written request from Covered Entity for an amendment of PHI or a record about an individual contained in a Designated Record Set, the Business Associate shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under 45 CFR Section 164.526.
- i. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.
- j. Within ten (10) business days of receiving a written request from Covered Entity for a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill its obligations to provide an accounting of disclosures with respect to PHI in accordance with 45 CFR Section 164.528.
- k. In the event any individual requests access to, amendment of, or accounting of PHI directly from the Business Associate, the Business Associate shall within two (2) business days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or the Business Associate to violate HIPAA and the Privacy and Security Rule, the Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.
- l. Within ten (10) business days of termination of the Agreement, for any reason, the Business Associate shall return or destroy, as specified by Covered Entity, all PHI received from, or created or received by the Business Associate in connection with the Agreement, and shall not retain any copies or back-up tapes of such PHI. If return or destruction is not feasible, or the disposition of the PHI has been otherwise agreed to in the Agreement, Business Associate shall continue to extend the protections of the Agreement, to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business



Exhibit I Amendment #1

Associate maintains such PHI. If Covered Entity, in its sole discretion, requires that the Business Associate destroy any or all PHI, the Business Associate shall certify to Covered Entity that the PHI has been destroyed.

**(4) Obligations of Covered Entity**

- a. Covered Entity shall notify Business Associate of any changes or limitation(s) in its Notice of Privacy Practices provided to individuals in accordance with 45 CFR Section 164.520, to the extent that such change or limitation may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall promptly notify Business Associate of any changes in, or revocation of permission provided to Covered Entity by individuals whose PHI may be used or disclosed by Business Associate under this Agreement, pursuant to 45 CFR Section 164.506 or 45 CFR Section 164.508.
- c. Covered entity shall promptly notify Business Associate of any restrictions on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

**(5) Termination for Cause**

In addition to Paragraph 10 of the standard terms and conditions (P-37) of this Agreement the Covered Entity may immediately terminate the Agreement upon Covered Entity's knowledge of a breach by Business Associate of the Business Associate Agreement set forth herein as Exhibit I. The Covered Entity may either immediately terminate the Agreement or provide an opportunity for Business Associate to cure the alleged breach within a timeframe specified by Covered Entity. If Covered Entity determines that neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

**(6) Miscellaneous**

- a. Definitions and Regulatory References. All terms used, but not otherwise defined herein, shall have the same meaning as those terms in the Privacy and Security Rule, amended from time to time. A reference in the Agreement, as amended to include this Exhibit I, to a Section in the Privacy and Security Rule means the Section as in effect or as amended.
- b. Amendment. Covered Entity and Business Associate agree to take such action as is necessary to amend the Agreement, from time to time as is necessary for Covered Entity to comply with the changes in the requirements of HIPAA, the Privacy and Security Rule, and applicable federal and state law.
- c. Data Ownership. The Business Associate acknowledges that it has no ownership rights with respect to the PHI provided by or created on behalf of Covered Entity.
- d. Interpretation. The parties agree that any ambiguity in the Agreement shall be resolved to permit Covered Entity to comply with HIPAA, the Privacy and Security Rule.



Exhibit I Amendment #1

- e. Segregation. If any term or condition of this Exhibit I or the application thereof to any person(s) or circumstance is held invalid, such invalidity shall not affect other terms or conditions which can be given effect without the invalid term or condition; to this end the terms and conditions of this Exhibit I are declared severable.
- f. Survival. Provisions in this Exhibit I regarding the use and disclosure of PHI, return or destruction of PHI, extensions of the protections of the Agreement in section (3) I, the defense and indemnification provisions of section (3) e and Paragraph 13 of the standard terms and conditions (P-37), shall survive the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Exhibit I.

NH Dept. of Health & Human Svcs.  
The State

Office of Public Guardian  
Name of the Contractor

Kathleen A. Dunn  
Signature of Authorized Representative

Roger P. Jobin  
Signature of Authorized Representative

Kathleen A. Dunn  
Name of Authorized Representative

ROGER P. JOBIN  
Name of Authorized Representative

Associate Commissioner  
Title of Authorized Representative

TREASURER  
Title of Authorized Representative

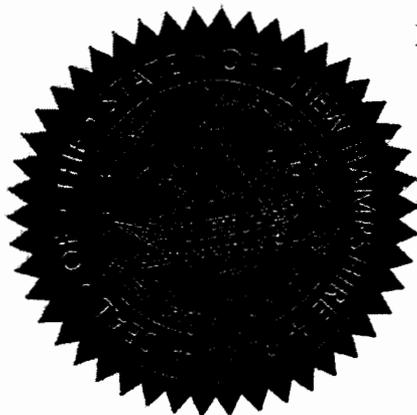
6/2/15  
Date

5-22-2015  
Date

# State of New Hampshire Department of State

## CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that OFFICE OF PUBLIC GUARDIAN is a New Hampshire nonprofit corporation formed July 14, 1983. I further certify that it is in good standing as far as this office is concerned, having filed the return(s) and paid the fees required by law.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 28<sup>th</sup> day of April, A.D. 2015

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State

**CERTIFICATE OF VOTE**

I, Susan Fox, do hereby certify that:

1. I am a duly elected Officer of Office of Public Guardian

2. The following is a true copy of the resolution duly adopted at a meeting of the Board of Directors of the Agency duly held on May 14, 2015:

**RESOLVED:** That the Treasurer

is hereby authorized on behalf of this Agency to enter into the said contract with the State and to execute any and all documents, agreements and other instruments, and any amendments, revisions, or modifications thereto, as he/she may deem necessary, desirable or appropriate.

3. The forgoing resolutions have not been amended or revoked, and remain in full force and effect as of the 22<sup>nd</sup> day of May, 2015.

4. Boyer Jobin is the duly elected Treasurer

of the Agency.

Susan Fox  
Susan Fox, OPG Board of Directors President

STATE OF New Hampshire  
County of Merrimack

The forgoing instrument was acknowledged before me this 22 day of May, 2015.

By Susan Fox  
(Name of Elected Officer of the Agency)

Mary K. Raulston  
(Notary Public Justice of the Peace)

(NOTARY SEAL)

MARY K. RAULSTON, Notary Public  
My Commission Expires July 13, 2016

Commission Expires: \_\_\_\_\_

**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)  
04/24/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Davis Towle Morrill & Everett 115 Airport Road P O Box 1260 Concord, NH 03302-1260	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): 603 225-6611      FAX (A/C, No): 603-225-7935 E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE      NAIC # INSURER A : Covington Specialty Insurance I INSURER B : Torus Specialty Insurance Co. INSURER C : Wesco Insurance Company INSURER D : INSURER E : INSURER F :	
<b>INSURED</b> Office of Public Guardian, Inc. 2 Pillsbury Street, Suite #400 Concord, NH 03301		

**COVERAGES      CERTIFICATE NUMBER:      REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			VBA31626800	01/05/2015	01/05/2016	EACH OCCURRENCE	\$1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$50,000
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						MED EXP (Any one person)	\$
	<input checked="" type="checkbox"/> BI/PD Ded:250						PERSONAL & ADV INJURY	\$
GEN'L AGGREGATE LIMIT APPLIES PER:							GENERAL AGGREGATE	\$1,000,000
<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC							PRODUCTS - COMP/OP AGG	\$
AUTOMOBILE LIABILITY							COMBINED SINGLE LIMIT (Ea accident)	\$
<input type="checkbox"/> ANY AUTO <input type="checkbox"/> SCHEDULED AUTOS							BODILY INJURY (Per person)	\$
<input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> NON-OWNED AUTOS							BODILY INJURY (Per accident)	\$
<input type="checkbox"/> HIRED AUTOS							PROPERTY DAMAGE (Per accident)	\$
								\$
B	UMBRELLA LIAB			83731E52ALI	01/05/2015	01/05/2016	EACH OCCURRENCE	\$1,000,000
	EXCESS LIAB						AGGREGATE	\$1,000,000
	DED    RETENTION \$							\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			WWC3096299	08/30/2014	08/30/2015	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A				E.L. EACH ACCIDENT	\$500,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	\$500,000
							E.L. DISEASE - POLICY LIMIT	\$500,000

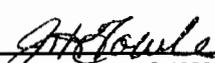
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

**\*\* Workers Comp Information \*\***

Voluntary Compensation ; Other States Coverage

Proprietors/Partners/Executive Officers/Members Excluded: Robert Wells, Roger Jobin, Michael Furot

3A States: NH

<b>CERTIFICATE HOLDER</b> DHHS - Bureau of Community Based Care Services BBH, DEAS, BDAS, 105 Pleasant St Concord, NH 03301	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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# OFFICE OF PUBLIC GUARDIAN

## MISSION / PURPOSE

### OUR PURPOSE

The *Office of Public Guardian* is a private non-profit corporation organized in 1979 to provide guardianship and advocacy services to citizens of New Hampshire.

The *Office of Public Guardian* provides services throughout the state to approximately 950 legally incapacitated adults, including those with developmental disabilities, mental illness, dementia and traumatic brain injury. Our professional staff provides depth of experience and a wide array of services to clients on a fee for services basis and to qualified indigent clients through a contract with the State of New Hampshire.

### OUR MISSION

Our goal is to protect the legal and human rights and civil liberties of each individual we serve. Our professional guardians exercise the highest ethical standards in decision-making on behalf of our clients.

**OFFICE OF PUBLIC GUARDIAN, INC.**

**Financial Statements**

**June 30, 2014 and 2013**

**and**

**Independent Auditor's Report**

**OFFICE OF PUBLIC GUARDIAN, INC.**  
**FINANCIAL STATEMENTS**  
June 30, 2014 and 2013

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## **INDEPENDENT AUDITOR'S REPORT**

To the Board of Directors  
Office of Public Guardian, Inc.

We have audited the accompanying financial statements of the Office of Public Guardian, Inc. (a non-profit entity) which comprise the statements of financial position as of June 30, 2014 and 2013, and the related statements of activities and cash flows for the years then ended, and the related notes to the financial statements.

### ***Management's Responsibility for the Financial Statements***

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error.

### ***Auditor's Responsibility***

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### ***Opinion***

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Office of Public Guardian, Inc. as of June 30, 2014 and 2013, and the changes in its net assets and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

***Other Matters***

We were not engaged to audit the statement of financial position of the agency funds of the Office of Public Guardian, Inc. Those funds, which are more fully described in Note 8 to the financial statements, were approximately \$17,454,858 at June 30, 2014 and \$16,889,980 at June 30, 2013, as represented by management.

*Vachon Clukey & Company PC*

Manchester, New Hampshire  
November 26, 2014

**OFFICE OF PUBLIC GUARDIAN, INC.**  
**STATEMENTS OF FINANCIAL POSITION**  
June 30, 2014 and 2013

<b>ASSETS</b>	<u>2014</u>	<u>2013</u>
<b>CURRENT ASSETS:</b>		
Cash	\$ 337,384	\$ 304,344
Accounts receivable, net of allowance for uncollectible receivables of \$20,000 and \$12,000 in 2014 and 2013, respectively	82,342	76,156
Contracts receivable	25,433	35,117
Prepaid expenses	19,406	15,752
<b>TOTAL CURRENT ASSETS</b>	<u>464,565</u>	<u>431,369</u>
<b>PROPERTY AND EQUIPMENT:</b>		
Condominium Unit	1,094,479	1,046,034
Office furniture and equipment	110,910	71,410
Computer equipment	81,486	58,019
	<u>1,286,875</u>	<u>1,175,463</u>
Less accumulated depreciation	296,846	254,128
<b>PROPERTY AND EQUIPMENT - NET</b>	<u>990,029</u>	<u>921,335</u>
<b>OTHER ASSETS:</b>		
Restricted cash	5,199	5,117
Investments-restricted	121,300	108,125
Software, net of accumulated amortization of \$135,393 in 2014 and \$130,477 in 2013	6,374	11,290
<b>TOTAL OTHER ASSETS - NET</b>	<u>132,873</u>	<u>124,532</u>
<b>TOTAL ASSETS</b>	<u>\$1,587,467</u>	<u>\$1,477,236</u>
<b>LIABILITIES AND NET ASSETS</b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable	\$ 26,063	\$ 26,393
Accrued liabilities:		
Accrued payroll	37,345	27,694
Accrued vacation	122,482	134,015
Other	24,889	18,524
Current portion of long-term debt	22,729	21,478
<b>TOTAL CURRENT LIABILITIES</b>	<u>233,508</u>	<u>228,104</u>
<b>LONG-TERM LIABILITIES:</b>		
Mortgage notes payable, less current portion of \$22,729 in 2014 and \$21,478 in 2013	628,046	650,169
<b>TOTAL LONG-TERM LIABILITIES</b>	<u>628,046</u>	<u>650,169</u>
<b>NET ASSETS</b>		
Unrestricted	599,414	485,721
Temporarily restricted	26,499	13,242
Permanently restricted	100,000	100,000
<b>TOTAL NET ASSETS</b>	<u>725,913</u>	<u>598,963</u>
<b>TOTAL LIABILITIES AND NET ASSETS</b>	<u>\$1,587,467</u>	<u>\$1,477,236</u>

See notes to financial statements

**OFFICE OF PUBLIC GUARDIAN**  
**STATEMENTS OF ACTIVITIES**  
For the Years Ended June 30, 2014 and 2013

	<u>2014</u>	<u>2013</u>
<b>CHANGES IN UNRESTRICTED NET ASSETS:</b>		
<b>REVENUES:</b>		
Fees and grants from governmental agencies	\$ 1,260,679	\$ 1,221,964
Other fees	1,346,711	1,149,068
Interest income	167	199
Other income	7,663	
Gain or loss on disposal of assets		(1,412)
<b>TOTAL UNRESTRICTED REVENUES</b>	<u>2,615,220</u>	<u>2,369,819</u>
<b>NET ASSETS RELEASED FROM RESTRICTIONS:</b>	<u>5,850</u>	<u>5,791</u>
<b>TOTAL UNRESTRICTED REVENUES, GAINS AND OTHER SUPPORT</b>	<u>2,621,070</u>	<u>2,375,610</u>
<b>EXPENSES:</b>		
Salaries, wages and temporary labor	1,632,462	1,464,332
Employee benefits	307,131	337,051
Payroll taxes	130,573	121,585
Travel	51,021	50,597
Depreciation	42,718	36,685
Interest expense	40,285	41,514
Office expense	41,599	42,254
Condominium fees	37,756	37,414
Telephone	32,784	33,029
Other	25,070	14,932
Computer support and maintenance	31,003	32,341
Professional fees	23,665	15,561
Postage	19,087	17,883
Repairs and maintenance	31,035	15,822
Bad debt	11,550	11,142
Staff development	21,806	11,804
General insurance	7,816	9,677
Journals and publications	7,502	5,884
Settlements	-	5,000
Utilities	4,890	4,427
Printing	2,508	1,596
Amortization	5,116	3,390
<b>TOTAL EXPENSES</b>	<u>2,507,377</u>	<u>2,313,920</u>
<b>INCREASE IN UNRESTRICTED NET ASSETS</b>	<u>113,693</u>	<u>61,690</u>
<b>CHANGES IN TEMPORARILY RESTRICTED NET ASSETS:</b>		
Realized and unrealized gains on investments	17,115	10,972
Dividend income	1,992	1,832
Net assets released from temporary restrictions	(5,850)	(5,791)
<b>INCREASE IN TEMPORARILY RESTRICTED NET ASSETS</b>	<u>13,257</u>	<u>7,013</u>
<b>INCREASE IN NET ASSETS</b>	126,950	68,703
<b>NET ASSETS, July 1</b>	<u>598,963</u>	<u>530,260</u>
<b>NET ASSETS, June 30</b>	<u>\$ 725,913</u>	<u>\$ 598,963</u>

*See notes to financial statements*

**OFFICE OF PUBLIC GUARDIAN, INC.**  
**STATEMENTS OF CASH FLOWS**  
For the Years Ended June 30, 2014 and 2013

	<u>2014</u>	<u>2013</u>
<b>Cash Flows From Operating Activities:</b>		
Cash received from clients and third party payers	\$ 1,328,975	\$ 1,188,504
Cash received from governmental agencies	1,278,026	1,221,119
Interest income from operations	167	199
Cash paid to employees	(1,634,344)	(1,435,663)
Cash paid to suppliers	<u>(813,350)</u>	<u>(800,686)</u>
Net Cash Provided (Used) by Operating Activities	<u>159,474</u>	<u>173,473</u>
<b>Cash Flows From Investing Activities:</b>		
Purchase of property, plant and equipment	(114,412)	(33,577)
Purchase of software	-	(8,481)
Cash paid for investments	(20,217)	(22,128)
Realized gains on investments	4,997	1,036
Cash received from dividends	1,992	1,832
Proceeds from sale of investments	<u>22,160</u>	<u>18,611</u>
Net Cash Provided (Used) by Investing Activities	<u>(105,480)</u>	<u>(42,707)</u>
<b>Cash Flows From Financing Activities:</b>		
Payments on mortgage debt	<u>(20,872)</u>	<u>(44,644)</u>
Net Cash Used for Financing Activities	<u>(20,872)</u>	<u>(44,644)</u>
Net Increase in Cash	33,122	86,122
Cash, Beginning of Year	<u>309,461</u>	<u>223,339</u>
Cash, End of Year	<u>\$ 342,583</u>	<u>\$ 309,461</u>
<b>Reconciliation of Increase in Net Assets to Net Cash Provided by Operating Activities:</b>		
Increase in net assets	\$ 126,950	\$ 68,703
<b>Adjustments to Reconcile Increase in Net Assets to Net Cash Provided by Operating Activities:</b>		
Depreciation	42,718	36,685
Amortization	5,116	3,390
Realized gains on sales of investments	(4,997)	(1,036)
Unrealized gains on investments	(12,118)	(9,936)
Investment related income	(1,992)	(1,832)
Loss on disposal of assets	-	1,412
Bad debts	11,550	11,142
<b>Changes in assets and liabilities:</b>		
Accounts receivable	(17,736)	39,436
Contracts receivable	9,684	(844)
Prepaid expenses	(3,854)	(391)
Accounts payable	(330)	14,999
Accrued liabilities	<u>4,483</u>	<u>11,745</u>
Net Cash Provided by Operating Activities	<u>\$ 159,474</u>	<u>\$ 173,473</u>
<b>Supplemental Data:</b>		
Book value of assets scrapped	<u>\$ -</u>	<u>\$ 1,412</u>
Interest paid	<u>\$ 40,285</u>	<u>\$ 41,514</u>

See notes to financial statements

**OFFICE OF PUBLIC GUARDIAN, INC.**  
**NOTES TO FINANCIAL STATEMENTS**  
For the Years Ended June 30, 2014 and 2013

**NOTE 1--SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

*Entity and Purpose*

The Office of Public Guardian, Inc. (the Entity) was incorporated as a non-profit organization on July 14, 1983. The Entity was established to provide guardianship, co-guardianship and conservatorship services for individuals found to be legally incapacitated pursuant to New Hampshire State law (RSA 464-A) and other applicable statutes. Protective services other than guardianship may include but are not limited to, power of attorney, client representative, or services as a representative or protective payee.

The accounting policies of the Office of Public Guardian, Inc. conform to accounting principles generally accepted in the United States of America as applicable to non-profit organizations, except as indicated hereafter. The following is a summary of significant accounting policies.

*Basis of Presentation*

The financial statements have been prepared in accordance with the reporting pronouncements pertaining to Not-for-Profit Entities included within the FASB Accounting Standards Codification. The Entity is required to report information regarding its financial position and activities according to three classes of net assets: unrestricted, temporarily restricted, and permanently restricted.

*Contributions*

Contributions received by the Entity are recorded as unrestricted, temporarily restricted, or permanently restricted support depending on the existence or nature of any donor restrictions.

*Basis of Accounting*

The financial statements have been prepared using the accrual basis of accounting.

Revenues from program services are recorded when earned. Other miscellaneous revenues are recorded upon receipt.

*Pervasiveness of Estimates*

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates. Significant estimates include depreciation expense and the allowance for doubtful accounts.

*Recognition of Donor Restrictions*

Contributions are recognized when the donor makes a promise to give to the Entity that is, in substance, unconditional. Contributions that are restricted by the donor are reported as an increase in unrestricted net assets if the restriction expires in the reporting period in which the support is recognized. All other time and donor restricted support is reported as an increase in temporarily or permanently restricted net

**OFFICE OF PUBLIC GUARDIAN, INC.**  
**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**  
For the Years Ended June 30, 2014 and 2013

assets depending on the nature of the restriction. When a restriction expires, temporarily restricted net assets are reclassified to unrestricted net assets.

***Property, Equipment, and Intangibles***

Property and equipment are stated at cost. The Entity's policy is to capitalize expenditures for major improvements and to charge operations currently for expenditures which do not extend the lives of related assets. The provision for depreciation is determined by the straight line method at rates intended to depreciate or amortize the cost of related assets over their estimated useful lives as follows:

	<u>Years</u>
Intangibles	3
Equipment	5 - 10
Furniture	5 - 10
Buildings	40

***Bad Debts***

The Entity uses the reserve method for accounting for bad debts. For the year ended June 30, 2014 and 2013, the Entity reserved \$20,000 and \$12,000, respectively, as an allowance for uncollectible receivables. Management estimated these allowances by evaluating the probability of collection on a per account basis.

***Accrued Vacation***

Full time employees accrue Paid Time Off (PTO) during their first year of employment at a rate of 9.38 hours per completed month of service. After the first year of service employees are credited with 150 to 262.5 hours of PTO for that year on January 1st, based on each employee's years of service. Employees may carry over 37.5 to 150 hours of unused PTO into each calendar year based on their years of service. Any accrued, but unused PTO is payable to the employee upon separation from employment and has been recorded as a liability at year end.

***Income Taxes***

The Entity has received a determination letter from the Internal Revenue Service stating that it qualifies for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code for its exempt function income. In addition, the Entity is not subject to state income taxes.

The Financial Accounting Standards Board issued an interpretation on Income Taxes which fundamentally changes the way that the Entity will be required to treat its uncertain tax positions for financial accounting purposes. It prescribes rules regarding how the Entity should recognize, measure and disclose in its financial statements tax positions that were taken or will be taken on the Entity's tax return that are reflected in measuring current or deferred income tax assets and liabilities. Differences between tax positions taken in a tax return and amounts recognized in the financial statements will generally result in an increase in a liability for income taxes payable, or a reduction in a deferred tax asset or an increase in a deferred tax liability. The Entity did not have any unrecognized tax benefits and determined the impact of this new interpretation was not material to the financial statements. During the

**OFFICE OF PUBLIC GUARDIAN, INC.**  
**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**  
For the Years Ended June 30, 2014 and 2013

years ended June 30, 2014 and 2013, no new additional unrecognized tax benefits were identified. Tax years ended June 30, 2012, 2013 and 2014 are open for possible examination by the Internal Revenue Service.

*Cash and Cash Equivalents*

For the purposes of reporting cash flows, the Entity considers all highly liquid investments with an initial maturity of 90 days or less as cash equivalents.

*Investments*

The Board of Directors of the Entity has interpreted the State Prudent Management of Institutional Funds Act (SPMIFA) as requiring the preservation of the fair value of the original gift as of the gift date of the donor-restricted endowment funds absent explicit donor stipulations to the contrary. As a result of this interpretation, the Entity classifies the original value of the gift as permanently restricted net assets. The remaining portion of the donor-restricted endowment fund is classified as temporarily restricted net assets until approved for expenditure when it is reclassified to unrestricted net assets. The Entity appropriates amounts for expenditure in a manner consistent with the standard of prudence prescribed by SPMIFA. In accordance with SPMIFA, the Entity considers the following factors in making a determination to appropriate or accumulate donor-restricted endowment funds: (1) duration and preservation of the endowment funds; (2) the purposes of the Entity and the endowment fund; (3) general economic conditions; (4) effect of inflation and deflation; (5) the expected total return from income and the appreciation of investments; (6) other resources of the Entity; and (7) the investment policy of the Entity.

The Entity has adopted investment and spending policies for endowment assets that attempt to provide a predictable stream of income of funding to programs supported by its endowment while seeking to maintain the purchasing power of those endowment assets over the long term. Endowment assets include those assets of donor-restricted funds that the Entity must hold in perpetuity or for donor-specified periods. Under this policy, as approved by the Board of Directors, the endowment assets are invested in a manner that is intended to achieve an after-cost total real rate of return, including investment income as well as capital appreciation, which exceeds the annual distribution with acceptable levels of risk. The Entity expects its endowment assets, over time, to produce an average return of approximately 10% annually. Actual returns in any given year may vary from this amount.

To satisfy its long-term rate of return objectives, the Entity relies on a total return strategy in which investment returns are achieved through both capital appreciation and current yield. The Entity targets a diversified asset allocation which includes equity and debt securities. This is intended to result in a consistent inflation-protection rate of return that has sufficient liquidity to make an annual distribution of approximately \$5,000, while growing the fund if possible.

From time to time, the fair value of assets associated with individual donor-restricted endowment funds may fall below the level that the donor or SPMIFA requires the Entity to retain as a fund of perpetual duration.

The following tabulation summarizes the relationship between carrying values and market values of investment assets for the years ending June 30, 2014 and 2013:

**OFFICE OF PUBLIC GUARDIAN, INC.**  
**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**  
For the Years Ended June 30, 2014 and 2013

	<u>For the Year Ended June 30, 2014</u>		
	<u>Temporarily Restricted</u>	<u>Permanently Restricted</u>	<u>Total</u>
Endowment net assets, as of July 1, 2013	\$ 13,242	\$ 100,000	\$ 113,242
Investment return:			
Investment income	6,989		6,989
Net appreciation	<u>12,118</u>		<u>12,118</u>
Total investment return	32,349	100,000	132,349
Appropriation of endowment assets for expenditure	<u>(5,850)</u>		<u>(5,850)</u>
Endowment net assets, as of June 30, 2014	<u>\$ 26,499</u>	<u>\$ 100,000</u>	<u>\$ 126,499</u>

	<u>For the Year Ended June 30, 2013</u>		
	<u>Temporarily Restricted</u>	<u>Permanently Restricted</u>	<u>Total</u>
Endowment net assets, as of July 1, 2012	\$ 6,229	\$ 100,000	\$ 106,229
Investment return:			
Investment income	2,868		2,868
Net appreciation	<u>9,936</u>		<u>9,936</u>
Total investment return	19,033	100,000	119,033
Appropriation of endowment assets for expenditure	<u>(5,791)</u>		<u>(5,791)</u>
Endowment net assets, as of June 30, 2013	<u>\$ 13,242</u>	<u>\$ 100,000</u>	<u>\$ 113,242</u>

***Fair Value Measurements***

The Entity has adopted the FASB Accounting Standards Codification standard, *Fair Value Measurements*, which establishes a framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1 measurement) and the lowest priority to unobservable inputs (level 3 measurements). The three levels of the fair value hierarchy under the *Fair Value Measurements* are described below.

**Level 1** - Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets that the Plan has the ability to access.

**Level 2** - Inputs to the valuation include:

- Quoted prices for similar assets or liabilities in active markets;
- Quoted prices for identical or similar assets or liabilities in active markets;
- Inputs other than quoted prices that are observable for the asset or liability;

**OFFICE OF PUBLIC GUARDIAN, INC.**  
**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**  
For the Years Ended June 30, 2014 and 2013

- Inputs that are derived principally from or corroborated by observable market data by correlation or other means.

If the asset or liability has a specified (contractual) term, the Level 2 input must be observable for substantially the full term of the asset or liability.

**Level 3** - Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

The asset's or liability's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques used need to maximize the use of observable inputs and minimize the use of unobservable inputs at the closing price reported on the active market on which the individual securities are traded.

Following is a description of the valuation methodologies used for assets measured at fair value.

*Bond and Equity Mutual Funds:* Valued at the net asset value ("NAV") of shares held by the plan at year end.

The methods described above may produce a fair value calculation that may not be indicative of net realizable value or reflective of future fair values. Furthermore, while the Entity believes its valuation methods are appropriate and consistent with other market participants, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a different fair value measurement at the reporting date.

The Entity's investments, comprised of mutual funds, were reported at fair value by Level 1 inputs in the amounts of \$121,300 and \$108,125 for the years ended June 30, 2014 and 2013, respectively.

***Investment Valuation and Income Recognition***

The Entity's investments as of June 30, 2014 and 2013 are stated at fair value. Shares of the separate investment accounts are valued at quoted market prices, which represent the net value of shares held by the Entity at year-end.

Purchases and sales of securities are recorded on a trade-date basis. Interest income is recorded on the accrual basis. Dividends are recorded on the ex-dividend date.

At June 30, 2014 and 2013, investments have a market value of \$121,300 and \$108,125, cost basis of \$97,489 and \$96,432, realized gains of \$4,997 and \$1,036, unrealized gains of \$12,118 and \$9,936, investment returns of \$1,992 and \$1,832, and endowment expenditures of \$5,850 and \$5,791, respectively.

**NOTE 2--ECONOMIC DEPENDENCE**

The Entity's primary source of support are fees and grants received from the State of New Hampshire and were \$1,094,677 and \$1,021,530 for the years ended June 30, 2014 and 2013, respectively. The grant agreements have been renewed for the next fiscal year. Revenue is recognized as earned under the terms

**OFFICE OF PUBLIC GUARDIAN, INC.**  
**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**  
For the Years Ended June 30, 2014 and 2013

of the contract and is received on a cost reimbursement basis. Other support originates as charges for private services, fees from regional non-profit agencies, interest, and other income. The Contract has been renewed for the year ended June 20, 2015.

**NOTE 3--DONOR-DESIGNATED ENDOWMENTS**

As of June 30, 2014 and 2013, the Entity held \$100,000 and \$100,000 in permanently restricted funds, respectively as a result of a prior endowment gift.

**NOTE 4--LINE OF CREDIT**

The Entity has a demand line of credit of \$50,000 at the bank's variable interest rate (3.25% at June 30, 2014). As of June 30, 2014 and 2013, the outstanding balance of the line of credit is \$-0-.

**NOTE 5--MORTGAGE NOTE PAYABLE**

At June 30, 2014 and 2013, mortgage notes payable consist of the following:

	<u>2014</u>	<u>2013</u>
\$786,000 mortgage note payable, bank, secured by property, payable in monthly installments of interest and principal reduction of \$5,096 through October 14, 2015 with interest at 6% per annum. A final balloon payment of \$625,258 is due October 12, 2015.	\$ 650,775	\$ 671,647
Less current portion	<u>22,729</u>	<u>21,478</u>
	<u>\$ 628,046</u>	<u>\$ 650,169</u>

Debt service requirements are as follows:

<u>Year</u>	<u>Amount</u>
2015	\$ 22,729
2016	628,046

It is the intention of the Entity to re-finance its mortgage before the final payment due date.

**NOTE 6--RETIREMENT PLAN**

The Entity has a tax deferred annuity plan under Section 403(b) of the Internal Revenue Code for all full-time employees. An employee becomes eligible to participate at the commencement of employment and is vested when an initial contribution is made. Employer contributions are made on each participant's behalf at 5% of gross wages each year. For the years ended June 30, 2014 and 2013, the Entity contributed \$62,752 and \$57,033 respectively, to the plan.

**OFFICE OF PUBLIC GUARDIAN, INC.**  
**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**  
For the Years Ended June 30, 2014 and 2013

**NOTE 7--FUNCTIONAL EXPENSES**

The Organization generally reports on the natural classification of expenses. Functional expense allocations are based on the estimated allocation to direct programming costs to specific programs and supporting services (Management and General Expenses). The summary of functional expenses is reported as follows based on direct and allocated costs for the years ended June 30, 2014 and 2013.

<u>Functional Expenses</u>	<u>2014</u>	<u>2013</u>
Program expenses	\$ 1,856,851	\$ 1,847,811
Management and General Expenses	650,526	466,109
	<u>\$ 2,507,377</u>	<u>\$ 2,313,920</u>

**NOTE 8--AGENCY FUNDS**

The Entity maintains guardian accounts on behalf of the wards of the State. These funds amounted to approximately \$17,454,858 and \$16,889,980 as of June 30, 2014 and 2013, respectively. The assets and related obligation have not been reflected on the Statements of Financial Position at June 30, 2014 and 2013.

**NOTE 9--SUBSEQUENT EVENTS**

Subsequent events have been evaluated through November 26, 2014, which is the date the financial statements were available to be issued.

**OFFICE OF PUBLIC GUARDIAN  
BOARD OF DIRECTORS**

**President/Clerk**

Susan W. Fox  
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Nina Gardner  
[REDACTED]  
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**Treasurer**

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(Northwestern Mutual Life)  
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**Secretary**

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Raymond F. Bower  
Riverside Rest Home  
276 County Farm Road  
Dover, NH 03820

**LINDA MALLON, ESQUIRE**

**EDUCATION:** Franklin Pierce Law Center, Concord, New Hampshire  
Juris Doctor, 1982  
Admission to New Hampshire Bar, 1982

Trinity College, Hartford, Connecticut  
B.A., American Studies, 1977

**PROFESSIONAL  
EXPERIENCE:**

**OFFICE OF PUBLIC GUARDIAN**

Concord, New Hampshire

**Executive Director**, 1998-Present

**Deputy Director**, 1985-1998

**Public Guardian**, 1984-1985

- Responsible for directing a non-profit organization certified by the NH Supreme Court to provide public guardianship throughout the State of NH to qualified indigent citizens receiving services through the Department of Health and Human Services and Department of Corrections
- Responsible for overseeing the provision of private guardianship and other fiduciary services to individuals statewide
- Provide supervision, consultation and training to twenty-six staff members including attorneys, medical professionals and social workers
- Develop organizational policies and procedures
- Provide education, training and other consultative services on a state, regional and national basis

**NEW ENGLAND NON-PROFIT  
HOUSING CORPORATION**

Concord, New Hampshire

**Staff Attorney**, 1982-1984

**NEW HAMPSHIRE LEGAL ASSISTANCE  
INSTITUTIONAL LAW PROJECT**

Concord, New Hampshire

**Law Clerk**, 1981-1982

- Statewide program concerned with matters affecting the rights of institutionalized and disabled persons in the areas of mental health, developmental disabilities, juvenile and prison law.
- Focus on pursuing remedies which enabled these individuals to live in the least restrictive, most integrated community setting possible.

**CERTIFICATIONS:** **Center for Guardianship Certification**

- Certified Master Guardian
- Certified Proctor for CGC exams

**MEMBERSHIPS:** **National Guardianship Association**

- Ethics Committee; First Responder
- Nominating Committee

**New Hampshire Bar Association**

- Elder Law, Estate Planning and Probate Section

**Probate Court Task Force on Professional Guardians**

**Long Term Care Ombudsman Advisory Committee**

**Incapacitated Adult Fatality Review Committee**

**Foundation for Healthy Communities**

**Healthcare Decisions Coalition**

**Darcy G. Johnson**  
**Office of Public Guardian**  
**2 Pillsbury Street, Suite 400**  
**Concord, NH 03301**  
**[djohnson@opgnh.org](mailto:djohnson@opgnh.org)**  
**(603) 224-8041**

**Education:**

Syracuse University  
Syracuse, NY  
B.S. Business Administration

Chaplaincy Institute of Maine  
Portland, ME  
Ordained Interfaith Chaplain:

Andover Newton Theological School  
Newton Center, MA  
Currently enrolled: CAGS Ethics and Social Justice

**Professional  
Experience:**  
7/09 – Present:

Associate Director  
Office of Public Guardian  
2 Pillsbury Street  
Suite 400  
Concord, NH 03301

Responsibilities include assisting with policies and procedures; assessing and streamlining documentation requirements; supporting effective use of resources; assessing and supporting technology; assist with contract compliance.

2/01 – Present

Public Guardian

Responsibilities include advocacy, strong documentation and communication skills, working with service providers, medical professionals, families, NH State benefit providers, NH Probate Courts.

2000 – 2001

Associate Director  
Chesco, Inc.  
12 Wilson Street  
Keene, NH 03431

Provided residential services to individuals with developmental disabilities. Supervised staff providing care to individuals in their homes

**Darcy G. Johnson**  
**Office of Public Guardian**  
**2 Pillsbury Street, Suite 400**  
**Concord, NH 03301**  
**[djohnson@opgnh.org](mailto:djohnson@opgnh.org)**  
**(603) 224-8041**

1997 – 2000

Community Network Coordinator  
Monadnock Partnership  
Monadnock Developmental Services  
121 Railroad Street  
Keene, NH 03431

Coordinated a pilot project to join individuals representing a variety of social services in the Monadnock Region. Held trainings to assist in serving individuals with multiple needs.

1995 – 1997

Executive Director  
Spring Hill of Ashby, Inc.  
Ashby, MA

Hired to reorganize organization after bankruptcy. Restructured services, debt and income. Supervised one hundred volunteers. Managed workshop schedule and trainings. Directed database conversion.

**Trainings  
and Certifications:**

National Certified Guardian  
Center for Guardianship Certification  
October, 2002 to Present

Attendance at the National Guardianship Conference including topics on eldercare, ethics, Probate court issues, and guardianship best practices.  
2001 to Present

Antioch New England, Keene, NH  
Post graduate coursework in Psychology

Smith College, Northampton, MA  
Post graduate coursework in Social Work

Cambridge College, Springfield, MA  
Post Graduate course in Psychopharmacology

Spring Hill Institute  
Two year certification: Body-centered Psychotherapy

The Four Winds Society  
Certification in Energy Medicine

Hospice Volunteer Training  
Women's Crisis Domestic Violence Crisis Volunteer Training

**ANDREA L. SISSON, CPA**  
**Office of Public Guardian**  
**2 Pillsbury St., Suite 400**  
**Concord, NH 03301**  
**(603) 224-8041**

**SUMMARY:**

- 18 years of experience with local CPA firms working with a wide range of clients including small service businesses, non-profit organizations and multi-million dollar manufacturing companies.
- Co-founded and managed local payroll service bureau.
- Proficient in various types of tax return preparation, all areas of accounting, bookkeeping and payroll.
- Designed and implemented customized bookkeeping systems for clients.
- Hired, trained and supervised staff at various levels.

**PROFESSIONAL EXPERIENCE:**

**Office of Public Guardian Concord, New Hampshire**

**Business Manager**

**10/2007-Present**

- Responsible for all financial aspects of the organization including daily accounting work, preparation of financial statements, preparation of payroll for 27 person staff, creation of budgets
- Responsible for supervision of all administrative staff and oversight of all administrative functions of the entity
- Assist in the development of organizational policies and procedures as a member of the management team

**Peter C. Brankman and Company, P.C. Concord, New Hampshire**

**Senior Staff Accountant/Manager**

**10/2004 – 10/2007**

- Managed individual tax portion of practice (400-500 returns); controlled work flow, supervised staff, prepared returns in a fast-paced deadline driven environment.
- Designed and implemented paperless individual tax processing system.
- Perform compilations, reviews and audits of various for profit and non-profit client financial statements.
- Designed and implemented bookkeeping systems for clients.
- Trained and supervised staff on all types of engagements.

**D'Agnese, Robinson and Company/Stephen C. Robinson and Company, /McLarney and Company (Same firm various owners) Concord, New Hampshire**

**Staff Accountant/Senior Staff Accountant/Manager 9/1989 – 6/2004**

- Assisted and advised clients with various accounting and management functions.
- Installed and set up accounting software packages; train client personnel.
- Managed all bookkeeping clients.
- Designed and implemented accounting and internal control procedures.
- Managed work flow through busy tax seasons
- Hired, trained and supervised staff.

**EDUCATION:**

- BS in Accounting, Bentley College May 1989

**CYNTHIA ANN FLANAGAN**  
*Office of Public Guardian*  
*2 Pillsbury Street, Suite 400*  
*Concord, NH 03301*  
*(603) 224-8041*

**PROFESSIONAL  
EXPERIENCE:**

2/08 to present

**OFFICE OF PUBLIC GUARDIAN**  
2 Pillsbury Street, Suite 400, Concord, NH 03301

**Director of Estate Services**

Responsible for overseeing the daily operations of a 6 person estate department which manages the finances of OPG clients; this includes serving in the capacity of guardian of the estate, Social Security Representative Payee, and Trustee to include Special Needs Trusts. Duties include: Supervises 5 full time staff, participates in intake review, assigns new cases, monitors all court submissions from the Estate Department including inventories, accountings and petitions, coordinates annual review of ward's investment assets, maintains knowledge of current public benefit rules and keeps abreast of changes as they arise, maintains caseload which results in continued interactions with wards, guardians and multiple benefit agencies.

8/04 to 2/08

**THE MENTAL HEALTH CENTER OF GREATER MANCHESTER**  
CSS, 1555 Elm Street, Manchester, NH 03101

**Client Benefit Specialist/Practice Assistant**

Assesses and assists clients without benefits in applying for appropriate financial/medical assistance. Liaison to both the Manchester District Office and the Medicaid Disability Determination Unit. Assists clients in completing Medicaid applications and redeterminations. Well versed in all aspects of Medicaid including the In/Out program. Complete working knowledge of Medicare Part D, able to assist clients in enrollment. Completes fee assessments according to the agency's policy for clients who are over income or denied benefits. Monitors client accounts receivable and initiates collections. Supervises two full time employees.

10/01 to 8/04

Business Office, 401 Cypress Street, Manchester, NH 03103

**Billing Specialist**

Performs the following tasks in relation to client billing: Supports the front desk with all billing related issues, collects client copays/fees, balances cash drawer, obtains third party verification/authorizations and sets client self-pay fees (according to Center policy). Sends out claims, posts payments and works denials for assigned third party payor. Monitors aging of this fund source and takes action on past due claims (seeks payment, write-off, etc.). Provides customer service to clients with questions regarding their bill.

8/94 to 10/01

Gemini Program, 9 Blodget Street, Manchester, NH 03104

**Administrative Secretary**

Performs a wide range of administrative and clerical duties to support the administration and clinical services of the The Gemini Program and The Center's Substance Abuse Services. Tasks include but are not limited to: Meeting coordination, taking and transcribing meeting minutes, quality assurance (including participation on two QI Teams), calculation of resident rents, spreadsheets, committee membership, staff scheduling, development of policies and procedures and purchasing.

Emergency Services, 401 Cypress Street, Manchester, NH 03103

**Secretary**

Provided secretarial support to a busy emergency services department including word processing, transcription, customer service, maintaining clinical records, scheduling appointments and all other clerical tasks.

**EDUCATION:**

Attended, New Hampshire College, Manchester, NH

Attended, UNH Manchester, Manchester, NH

E-Mail:  
Phone:

## Tracy M. Culberson, Esq.

### **Experience**

2015 – Current      *Office of Public Guardian*

#### **Staff Attorney / National Certified Guardian**

- Provide legal counsel as necessary to assist in the provision of guardianship services to incapacitated clients throughout New Hampshire.
- Provide guardianship services to incapacitated adults

2011 – Current      *Culberson Legal Services of New Hampshire, PLLC*

#### **Owner / Solo Practitioner**

- Legal services to include probate litigation, elder law and estate planning, and Nursing Home Abuse Litigation

2006-2011      *Office of the New Hampshire Attorney General, Concord NH*

#### **Assistant Attorney General**

- Head of the Elder Abuse and Financial Exploitation Unit
- Prosecuted cases of homicide, abuse, neglect, and financial exploitation of elderly and incapacitated adults in Superior, District, and Probate Courts throughout the State of New Hampshire. Notable prosecutions include:
- Trained medical professionals, first responders, judges, court personnel, emergency service providers, and adult protection workers in identifying signs and symptoms of elder abuse, neglect, self-neglect and exploitation, mandatory reporting, investigation techniques and evidence preservation.
- Drafted and filed State's response to defendant's appeal to Supreme Court.
- Chairman of the Incapacitated Adult Fatality Review Committee.

2005-2006      *Office of the Hillsborough County Attorney, Manchester NH*

#### **Assistant County Attorney**

- Represented the State and Hillsborough County in Juvenile, District and Superior Courts.
- Prosecution of misdemeanor and felony-level crimes.
- Presentation of felony cases to the grand jury for indictment.

Co-Director of Communities Against Senior Exploitation (CASE) Partnership.

1992-2005      *Goffstown Police Department, Goffstown NH*

#### **Police Officer / Prosecutor**

- Certified New Hampshire Police Officer
- Instructed and trained police officers in the areas of juvenile law, criminal and motor vehicle law enforcement and adjudication, search and seizure, use of force, constitutional law, and the laws of arrest.
- Drafted, reviewed, and executed search and arrest warrants.
- Training and experience in the investigation of felonies and serious misdemeanors to include homicide, sexual assault, child neglect and abuse, robbery, burglary, arson, fraud, internet crimes and financial exploitation.

2005-2007 Plymouth State University, Plymouth, NH

**Adjunct Faculty**

- Instructor within the Department of Criminal Justice.  
Specific instruction in courses to include "Criminal Adjudication", "The Constitution and the Criminal Justice Protocol" and "Domestic Violence and Juvenile Justice".

2005-Current New Hampshire Police Standards and Training Council, Concord NH

**Guest Lecturer**

- Instructor for in-service training of police officers attending "Basic Police Prosecutor" Course.
- Lectured on topics to include "The Rules of Evidence", "Case Preparation and Analysis" and "Elder Abuse and Financial Exploitation Investigation".
- Facilitator of mock DWI trials.
- 

**Education**

2004 Massachusetts School of Law North Andover, MA

- Juris Doctor Degree

1992 Saint Anselm College Goffstown, NH

- Bachelor of Arts Degree
- Completion of requirements for Criminal Justice in 1992

Completion of requirements for English in 1998

**Certifications and Professional Organization Memberships**

2008-Current – Chair of Incapacitated Adult Fatality Review Committee

2006-Current – Co-Chairperson of Law Enforcement Sub-Committee of the Elder Abuse Advisory Council

2006-Current – Panel Member of Long-Term Care Safety Net Committee

2004 – Member of the Massachusetts Bar Association BA-159542

2004 – Member of the New Hampshire Bar Association BA-16430

2005 – Justice of the Peace – New Hampshire

- 1992 – Certified New Hampshire Police Officer

**Continuing Legal Education**

- Trial Advocacy I – *National District Attorney's Association*: Trial Advocacy II – *National District Attorney's Association*: Prosecuting Cases of Elder Abuse – *National District Attorney's Association*: Advanced Cross Examination: Nuts and Bolts of Criminal Law: Access to Public Records: New Hampshire Bar Association Practical Skills Course: Communities Against Senior Exploitation (CASE) Partnership: NH Attorney General's Child Abuse and Domestic Violence Conference.

**Other**

- Board of Directors: Honor Flight New England
- Board of Directors for Suncook Youth Soccer
- Conversational French; Percussionist.

Adm Svcs  
5-25-10



STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF COMMUNITY BASED CARE SERVICES

BUREAU OF BEHAVIORAL HEALTH

Nicholas A. Toumpas  
Commissioner

Nancy L. Rollins  
Associate Commissioner

105 PLEASANT STREET, CONCORD, NH 03301  
603-271-5000 1-800-852-3345 Ext. 5000  
Fax: 603-271-5058 TDD Access: 1-800-785-2964

May 17, 2010

His Excellency, Governor John H. Lynch  
and the Honorable Executive Council  
State House  
Concord, New Hampshire 03301

APPROVED BY \_\_\_\_\_  
DATE 6/9/10  
PAGE 13  
ITEM # 106

Requested Action

1. Authorize the Department of Health and Human Services, Division of Community Based Care Services (DCBCS) to enter into a agreement with the Office of Public Guardian, 10 White St., Concord, NH 03301, vendor code 166528, to provide public guardianship services in an amount not to exceed \$878,656.80 for the period effective July 1, 2010, or date of Governor and Executive Council approval, whichever is later, through June 30, 2011. Funds are available in the following account in fiscal year 2011:

095-92-920010-7002 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVCS,  
HHS-BEHAVIORAL HEALTH-DIV OF, DIV OF BEHAVIORAL HEALTH, LEGAL-GUARDIANSHIP SVCS

<u>Class/Object</u>	<u>Class Title</u>	<u>Activity Code</u>	<u>FY 2011</u>
10-0731	Contracts for Program Services	92107002	<u>\$878,656.80</u>
Total			\$878,656.80

2. Authorize an advance payment up to a maximum of \$140,218.98 of the contract price limitation.

Explanation

The Office of Public Guardian shall provide guardianship and protection, on a statewide basis, to mentally ill and developmentally impaired persons whose incapacities leave them at risk of substantial harm because of their inability to provide for their own food, shelter, health care, safety, or to manage their personal affairs. These services are needed to meet the State's statutory obligations to safeguard incapacitated persons in the state institutions as well as in community mental health and developmental service programs. It also carries out the requirements of RSA 135-C: 60, and RSA 171-A: 10, II. The Office of Public Guardian pursuant to RSA 547-B: 6 has been designated as an approved organization for the purpose of providing guardianship and protection services pursuant to RSA 464-A. This contract will provide for guardianship services for up to 688 cases during the contract period.

The emphasis in providing such services will be to ensure that the guardianships maintained and sought will be limited in accordance with the standards embodied in RSA 464-A.

The advance payment will allow the Office of Public Guardian to meet its operating obligations while providing services during the initial two months of this contract.

His Excellency, Governor John H. Lynch  
and the Honorable Executive Council  
Page 2

Using a public notice posted on the Department of Health and Human Services (DHHS) website on February 22, 2010, as RFP Number 11-DCBCS-GPS-01, DCBCS requested proposals for providing public guardianship services in the State. Five renewals of one year each are possible at the Department's discretion. The Office of Public Guardian responded by submitting a proposal to provide public guardianship services to people with a mental illness, or a developmental disability who are eligible for State-funded services. The Office of Public Guardian was one of two agencies to apply to provide public guardianship services.

A competitive review process was utilized to evaluate all proposals submitted by the deadline. Participants in the review process included DHHS staff from the Bureau of Behavioral Health, the Bureau of Developmental Services, and the Office of Client and Legal Services. This process involved an assessment of the proposal submitted including an evaluation of scope of work, bidder background and experience, and the cost proposal. Both proposals submitted for fiscal year 2011 scored over the required minimum.

Based on a favorable review of the above by the review team and because the Office of Public Guardian has in previous contracts amply demonstrated its ability to provide high-level public guardianship services to clients and the community served, DCBCS requests this contract be funded to allow the Office of Public Guardian to continue providing services.

The contract for fiscal year 2010 was in the amount of \$823,275.57 and served up to 669 cases. This proposed contract will serve up to 688 cases, which includes the current caseload of 655, plus 14 current pending cases, plus an additional 19 cases. Based upon previous experience, it is anticipated that there will be a need for this agency to assume these additional cases from the Bureau of Behavioral Health, or the Bureau of Developmental Services this fiscal year. These additional slots will be filled over the course of the year. Hence, over the year there will always be a certain number of vacant slots. The maximum contract amount includes a one and one-half (1 ½) percent reduction to reflect this vacancy rate.

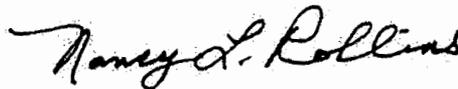
This contract includes a line item for mentoring services and training. Mentoring services are provided to family members who are willing to serve as guardian but who require a period of support. Providing this support will obviate need for a public guardian in these cases and will thereby save the State from paying the cost of a permanent public guardianship.

Area served: statewide.

Source of funds: 100% General Funds.

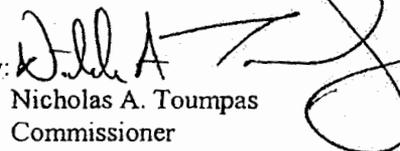
Your favorable consideration of this request will be greatly appreciated.

Respectfully submitted,



Nancy L. Rollins  
Associate Commissioner

Approved by:



Nicholas A. Toumpas  
Commissioner

KRN

Contracts FY11/Guardianship/Office of Public Guardian

Enclosures

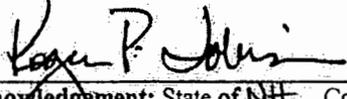
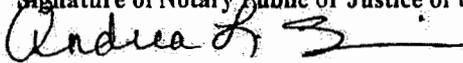
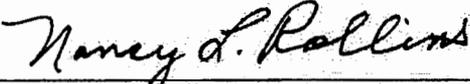
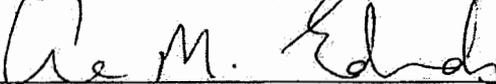
Subject: public guardianship services

**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name Department of Health and Human Services		1.2 State Agency Address 105 Pleasant St Concord, NH 03301	
1.3 Contractor Name Office of Public Guardian		1.4 Contractor Address 2 Pillsbury St., Suite 400, Concord, NH 03301	
1.5 Contractor Phone Number 224-8041	1.6 Account Number 010-092-7002-096-0415	1.7 Completion Date 6/30/11	1.8 Price Limitation \$878,656.80
1.9 Contracting Officer for State Agency Nancy L. Rollins		1.10 State Agency Telephone Number 271-5144	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Roger P. Jobin, Treasurer	
1.13 Acknowledgement: State of <u>NH</u> , County of <u>Merrimack</u> On <u>5/11/10</u> before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace  [Seal]			
1.13.2 Name and Title of Notary or Justice of the Peace Andrea L. Sisson, CPA			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Nancy L. Rollins, Associate Commissioner	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: <u>WIA</u> Director, On:			
1.17 Approval by the Attorney General (Form, Substance and Execution) By:  On: <u>5/21/10</u>			
1.18 Approval by the Governor and Executive Council By: On:			



**2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**  
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").  
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.**  
Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.**  
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.  
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.  
5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.  
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.  
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.  
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.  
7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

## 8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

## 9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

**10. TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination

Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

**11. CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

**13. INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

## 14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each

certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

**15. WORKERS' COMPENSATION.**

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("Workers' Compensation").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

**16. WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

**17. NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

**18. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

**19. CONSTRUCTION OF AGREEMENT AND TERMS.** This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

**20. THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

**21. HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**22. SPECIAL PROVISIONS.** Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

**23. SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

**24. ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

CERTIFICATE OF VOTE

I, Robert A. Wells, do hereby certify that:

- 1. I am the duly elected Clerk of the Office of Public Guardian, Inc. (the "Corporation")
- 2. The following are true copies of two resolutions duly adopted at a meeting of the Board of Directors of the Corporation duly held on March 23, 2010.

RESOLVED: That this corporation enter into a contract with the State of New Hampshire, acting through the Department of Health and Human Services, concerning the following matter:

Guardianship Program

RESOLVED: That the Treasurer hereby is authorized on behalf of this corporation to enter into said contract with the State of New Hampshire and to execute any and all documents, agreements and other instruments, and any amendments, revisions, or modifications hereto as may be necessary, desirable or appropriate.

- 3. The foregoing resolutions have not been amended or revoked and remain in full force and effect as of May 3, 2010.
- 4. Roger Jobin is the duly elected Treasurer of this Corporation.

Robert A. Wells  
Clerk

State of New Hampshire  
County of Merrimack

The foregoing instrument was acknowledged before me on this 3rd day of

May, 2010.



Andrea A. Z...  
Notary Public/Justice of the Peace

My Commission Expires: 12/11/12

## Exhibit A

### Scope of Work

#### 1. Provisions Applicable to All Services:

1.1. The purpose of this Agreement is to provide guardianship and protection services to safeguard the liberty and well-being of persons who because of functional limitations, have suffered, are suffering, or are likely to suffer substantial harm due to an inability to provide for personal needs for food, clothing, shelter, health care, safety or an inability to manage their property or financial affairs. Guardianship and protection services under this Agreement are to be provided to persons at risk of harm to person or estate whom the state has a responsibility to safeguard pursuant to RSA 135-C: 60, and RSA 171-A: 10, II.

1.2. The Contractor agrees to provide guardianship and protection services to the persons enumerated in paragraph 1.4. of Exhibit A. Guardianship services shall include those actions that are necessary to carry out the duties prescribed by RSA 464-A and RSA 547-B, including appointments as guardian, co-guardian, conservator, or temporary guardian of the person and/or estate of a ward. Protection services shall include those actions that are necessary to carry out the duties as duly designated representative or protective payee, client representative, attorney in fact, or other similar agent, as prescribed by applicable law, rule, or agreement.

1.2.1. The program shall have a sufficient number of staff to adequately carry out, for all clients, all the duties required by statute, the letters of authority, and the standards set forth in this document.

1.2.2. Upon employment professional program staff shall attend and successfully complete 20 or more hours of orientation training and, complete 10 or more hours of annual continuing education for each subsequent year of employment. The Contractor shall report the number of professional continuing education hours obtained by each guardian by August 1, 2011.

1.3. The Contractor may provide technical assistance to private guardians or training to agency staff providing direct services whose wards are clients of the Department of Health and Human Services ("the Department"). In order to receive such technical assistance from the Contractor private guardians must receive prior approval from the Office of Client and Legal Services for a specified number of consultation hours.

1.4. The Contractor shall not accept or agree to provide services to any person under this Agreement without the prior approval of the State through the Office of Client and Legal Services of the Department. The Contractor may provide services to all persons approved for services by the State and shall not deny services to such persons. If the Contractor believes guardianship and protection services to be inappropriate, the Contractor shall refer the client to the New Hampshire Disabilities Rights Center, Inc., the New Hampshire Legal Assistance or other attorney so that an administrative appeal or other appropriate legal action can be taken on behalf of the client. Referrals of persons for guardianship and protection services from the Glencliff Home For The Elderly, the New Hampshire Hospital, and community agencies in the mental health system, developmental services system, and the adult and elderly system shall be made by the Contractor through the Office of Client and Legal Services, which shall review each referral to ensure compliance with the principles contained in RSA 464-A and paragraph 1.5. below.

1.4.1. If the Contractor provides services to persons who have not been screened and approved by the Office of Client and Legal Services, reimbursement for such services will not be provided for under this Agreement.

1.4.1.1. In instances not within the control of the Contractor where guardianship appointments are made without approval granted from the Office of Client and Legal Services, the Contractor may receive reimbursement for guardianship services when the Contractor can provide documentation satisfactory to the Department that such circumstances occurred and the Contractor made reasonable efforts to decline such appointments. The Contractor shall include documentation of reasonable efforts made to decline such appointments with its Quarterly Payment Computation and Authorization reports. If the documentation provided by the Contractor is satisfactory to the Department, the Department may make payments to the Contractor for appointments made without approval as long as the wards appointed to the Contractor are persons for whom the State has responsibility to safeguard pursuant to RSA 135-C: 60, and RSA 171-A:10, II.

1.5. In providing guardianship and protection services to persons under this Agreement, the Contractor shall adhere to the "Ethics and Standards for Guardians" as developed by the National Guardianship Association and shown in Exhibit D. The Department acknowledges that the Standards on monthly visits with wards is a guideline and that quarterly visits or more frequently as required in individual circumstances is the accepted practice of the Contractor.

1.6. In any action brought in Probate Court to limit or otherwise reduce the scope of a guardianship over a person served under this Agreement, the State agrees to appear with the Contractor where the State agrees that it is necessary to present the State's position on the action proposed.

1.7. The Contractor agrees that no "direct services" shall be provided to persons under this Agreement. Direct services include psychotherapy, case management, transportation, financial aid, or other social services available through state or other governmental or nonprofit agencies.

1.8. The State recognizes that the Contractor has responsibilities as an independent decision-maker acting in a fiduciary capacity with respect to the persons to be served under this Agreement and the decisions to be made on behalf of such persons shall not be directed or influenced by the State by any action taken under this Agreement.

1.9. The Contractor may elect to subcontract for such services as may be necessary to carry out guardianship and protection services under this Agreement with prior notification and approval of the State through the Office of Client and Legal Services of the Department.

1.10. Nothing in this Agreement shall prevent the Contractor from providing guardianship and protection services to persons other than those who are referred pursuant to this Agreement. However, the Contractor agrees that pursuant to RSA 547-B:7, no funds provided under this Agreement shall be expended for such persons. Furthermore, the Contractor agrees to maintain sufficient records, which shall be subject to the Department's examination and be included as part of the Audit of Records required in paragraph 1.2. of the Special Provisions, to document that the funds received under this Agreement are expended in accordance with this paragraph.

1.11. If staff at any institution or developmental services or mental health or elderly and adult agency within the jurisdiction of the Department brings a complaint to the Department in reference to the services provided by the Contractor under this Agreement, the Department may refer the complaint to the Contractor and the Contractor shall investigate the circumstances pertaining to the complaint and shall respond in writing within thirty (30) days to the Division concerning the results of the investigation. The Contractor shall provide on a quarterly basis, a report of all written complaints filed against the Contractor and shall explain how each such complaint was resolved.

1.12. The Contractor recognizes the inherent value of the opinions of the wards they serve. If staff at any institution or developmental services or mental health or elderly and adult agency within the jurisdiction of the Department or any entity providing funding to the Department distributes a survey, questionnaire or similar instrument designed to gauge consumer satisfaction of wards in reference to the services received by the ward including the services provided by the Contractor under this Agreement, the Contractor agrees to allow their wards to participate in such measures of consumer satisfaction unless the Contractor indicates in writing to the Department the reasons why a particular ward should not be allowed to so participate.

## 2. Description of Guardianship Services:

2.1. The following is a general listing of functions to be provided by the Contractor for individuals so named by the probate court as wards of the Contractor. This listing and description is not intended to restate existing rules and regulations already in place, but rather its purpose is to clarify the relationship of the Contractor with respect to its wards who need and are receiving services in the developmental services, mental health, and/or elderly and adult systems. The functions to be performed include:

2.1.1. Making decisions regarding the residential and day placement of the ward, utilizing the standards of least restrictive environment and the best interests of the individual ward.

2.1.2. Insuring that all legally necessary steps are taken to enable the individual ward to receive comprehensive evaluations and comprehensive treatment and services.

2.1.3. Advocating for and requesting appropriate services for the individual ward utilizing the individual service/treatment planning process following established Department standards and law.

2.1.4. Being available to give or withhold consent to proposed medical care.

2.1.5. Being available to give or withhold consent, where such is legally necessary, to proposed professional care, counsel, treatment or service including, but not limited to behavioral programs, significant changes in individual service/treatment plans, and other clinically or legally significant treatment or services.

2.1.6. Insuring that the ward's civil rights are protected within the context of the decision the guardian is making on behalf of the ward and refraining from unwarranted intrusion into the life of the ward.

2.1.7. Assuming responsibility for any and all other duties as are stated in RSA 464-A or as are required by the probate court.

2.2. All of the responsibilities referenced in 2.1. above are contingent upon the actual authority granted in each individual court order specifying the extent and scope of guardianship for each individual.

2.3. In order to perform the functions specified in 2.1., a guardian must be kept aware of the facts or circumstances which may impact upon the decision. In order to make informed decisions on behalf of their wards, the public guardians should continually maintain significant and appropriate contact with each ward so to assure that their efforts best reflect the personal preferences, values, and desires of the ward to the fullest extent possible. The guardians must seek out information so that they are fully aware of all risks and benefits of any proposed course of action, as well as any alternatives that may exist. Guardians of the person shall maintain regular contact with their wards in order to comply with the "Ethics and Standards for Guardians" shown in Exhibit D.

2.4. Each public guardian has an obligation to become as familiar as possible with his or her ward. Beyond the personal visits with the ward and other important and significant people in the ward's life, this obligation can also be met through close interaction with the ward's case manager and others who share a responsibility for providing for the needs of the individual.

## 3. Guardianship and Protection Services:

3.1. The Contractor hereby covenants and agrees that during the term of this Agreement, it will provide guardianship services as prescribed in sections 1.1., 1.2., 2., and Exhibit D.

3.2. The Contractor is obligated to accept all protection services cases referred to the Contractor by the Office of Client and Legal Services. The Department shall make every attempt to obtain a Release of Information from the proposed client with the Contractor except where prohibited from doing so by law.

Also, to the extent possible, the Contractor shall be involved in the screening process for protection cases. If the Contractor believes that the appointment of a protective payee or representative payee is inappropriate, the Contractor may refer the client to the New Hampshire Disabilities Rights Center, Inc., New Hampshire Legal Assistance or other attorney so that an administrative appeal or other appropriate legal action can be taken on behalf of the client.

3.3. The Contractor agrees to serve the current total of 655 persons receiving guardianship and protection services, plus 14 pending cases, plus any new persons referred in accordance with paragraph 1.4. above. However, the Contractor shall not be obligated to accept more than 688 cases during the contract period. While the Department shall provide the Contractor with letters of approval for each new case assigned to the Contractor, the Contractor may not bill for services until the Contractor is actually appointed as guardian by a probate court.

3.4. The commencement date of this agreement shall be the Effective Date, that is, July 1, 2010, or date of Governor and Council of the State of New Hampshire approval, whichever is later. The Contractor shall not be paid for any services, which may be provided prior to the Effective Date.

## Exhibit B

### Methods of Payment

1. Subject to the availability of State funds, and in consideration for the satisfactory completion of the services to be performed under this Agreement, the State shall pay the Contractor a per diem per case rate approved by the Office of Client and Legal Services. However, regardless of the number of persons served by the Contractor during the program period, specified in paragraphs 3.1. and 3.2. of the General Provisions of this Agreement, the State shall pay the Contractor a minimum amount of \$841,313.88 during the program period. The total of all payments authorized or actually made hereunder shall not exceed the amount of \$878,656.80, the price limitation set forth in block 1.8. of the General Provisions.

1.1. The per diem reimbursement rate for the provision of services to persons served under this Agreement shall be:

\$3.53 for up to 688 clients whose guardianship services are requested by the Bureaus of Behavioral Health and Developmental Services.

1.2. The hourly reimbursement rate for the provision of technical assistance to private guardians shall be \$60.00, not to exceed the amount of \$4,000.00.

1.3. The hourly reimbursement rate for the provision of training to area agency, mental health and elderly and adult agency staff and probate court personnel shall be \$60.00, not to exceed the amount of \$1,500.00.

2. Payment to the Contractor will be made on a monthly basis subject to the following conditions:

2.1. The State shall at the beginning of the Agreement period make a payment of \$140,218.98 the estimated fee for service payment due to the Contractor for providing services for a period of two months. Adjustments for underpayments or overpayments will be made at the end of the first quarter of the program period. This initial payment is the amount the State has determined is necessary to initiate the services.

2.2. A monthly payment equal to \$70,109.49 will be made to the Contractor at the beginning of September and continuing through the end of the agreement or until the maximum amount of the contract has been reached. Adjustments for underpayments or overpayments will be made at the end of the first quarter of the program period and continue at the end of subsequent quarters through June 30, 2011. The per diem rate will be extended to the last day of the month following the month in which the client dies or for whom the guardianship/protection service is terminated.

2.3. The fee for quarterly adjustments shall be calculated by:

- a. multiplying the per diem rate times the total number of days of service provided during the quarter to each eligible client under this Agreement, and by
- b. adding to this amount any reimbursement due for the quarter to the Contractor for clients referenced in paragraph 2.2. and the reimbursement due for the provision of technical assistance to private guardians referenced in paragraph 1.3. of Exhibit A.

2.4. Beginning in October, 2010, and at the end of each quarter thereafter, the Contractor agrees to submit, by the fifth day of the following month, to the Division a standard form entitled "Quarterly Payment Computation and Authorization, Office of Public Guardian". At the end of each month there shall be a list of clients or an updated list of clients for whom the Contractor is providing for services.

The list of clients shall indicate the name, address and date of death for those clients who have died during the month.

The "Quarterly Payment Computation and Authorization, Office of Public Guardian" form shall serve as a voucher detailing how reimbursement due for the quarter in which services were performed was calculated. The form shall contain:

- a. Identification of the service period;
- b. Contract number and period;
- c. Statistics which document the number of clients on the Contractor's caseload during the service period. The statistics shall be recorded and shall specify the number of persons served by type of services, the names of cases added or closed during the quarter. Orders for new guardianship appointments shall be attached to the statistics as soon as they become available. Persons added during the service period for whom prior approval has not been obtained, but for whom the Contractor is seeking reimbursement, must be formally authorized to receive services before they are calculated into the authorized payment due for the service period. A brief explanation shall be provided for any client for whom services have been terminated.
- d. Cumulative to date revenues received;
- e. Calculation of the total authorized payment due for the service quarter in accordance with 2.3. above;

The first "Quarterly Payment Computation and Authorization, Office of Public Guardian" report shall be submitted by no later than October 5, 2010 and the final report by July 10, 2011. Failure to submit such reports shall constitute an Event of Default.

2.5. On a quarterly basis, the State shall ensure that the total payments for services under this Agreement are not less than the prorated minimum contract amounts. The State shall make any payments necessary under this provision by the 15th day of the month following the end of the quarter and specifically as provided in subparagraphs 2.5.1-2.5.3. below.

2.5.1. The Contractor shall notify the State in its October "Quarterly Payment and Computation Report, Office of Public Guardian" in the event that payment for services for the months of July through September is less than \$210,328.47, whereupon the State shall issue a supplemental check for the difference between the amount paid to the Contractor and \$210,328.47.

2.5.2. The Contractor shall notify the State in its January "Quarterly Payment and Computation Report, Office of Public Guardian" in the event that payment for services for the months of July through December is less than \$420,656.94, whereupon the State shall issue a supplemental check for the difference between the amount paid to the Contractor and \$420,656.94.

2.5.3. The Contractor shall notify the State in its April "Quarterly Payment and Computation Report, Office of Public Guardian" in the event that payment for services for the months of July through March is less than \$630,985.41, whereupon the State shall issue a supplemental check for the difference between the amount paid to the Contractor and \$630,985.41.

2.6. By August 15, 2010, the Contractor shall submit an annual Quality Assurance Plan for the approval of the Office of Client and Legal Services. The Contractor shall in a timely fashion modify or amend the plan based on the Department's response to the plan. The Contractor shall submit a plan acceptable to the Office of Client and Legal Services by no later than October 31, 2010. Failure to submit an acceptable Quality Assurance Plan shall constitute an Event of Default. Payments will not continue until receipt of the plan.

a. The Contractor agrees to include a representative, to be named by the Office of Client and Legal Services, to participate in the design and implementation of the Contractors Quality Assurance Plan.

b. The Contractor will submit, on a monthly basis a report on Quality Assurance activities no later than the 5th day of the following month.

2.7. The quarterly service payment due shall not be made until and unless the "Quarterly Computation and Authorization, Office of Public Guardian" form for the service quarter has been received by the Department.

2.8. The Contractor also agrees that full payment for the final quarter of the program period shall not be made by the Department until and unless the Contractor submits the "Quarterly Payment Computation and Authorization, Office of Public Guardian" form for the final quarter of the program period and "Summary Report of Quality Assurance Activities" of activities for the agreement period.

3. Notwithstanding anything to the contrary herein, the Contractor agrees that funding under this Agreement may be withheld, in whole or in part, in the event of noncompliance with any federal or state law, rule, or regulation applicable to the services provided, or if the said services have not been satisfactorily completed in accordance with the terms and conditions of this Agreement.

4. This contract is funded by the New Hampshire General Fund, as follows:

NH General Fund: \$878,656.80

**Exhibit C**  
**Special Provisions**

**1. RECORDS AND ACCOUNTS**

1.1. Access to Records. Between the Effective Date and a date six years after the Completion Date, at any time during the Contractor's normal business hours, and as often as the State shall reasonably demand, the Contractor shall make available to the State its fiscal records related to this Agreement and any books, records, documents, papers or reports maintained by the Contractor which relate to such fiscal matters. The term "Contractor" includes all persons, natural or fictional, which are controlled by, under common ownership with, or an affiliate of, the entity identified as the Contractor in block 1.3 of the General Provisions of this Agreement.

1.2. Audit of Records. The Contractor agrees to submit to the Department within ninety (90) days of the end of the Contractor's fiscal year an audited financial statement following guidelines as established by the American Institute of Certified Public Accountants as published in a guidebook entitled "Audits of Voluntary Health and Welfare Organizations." The audit shall be prepared by an independent certified public accountant and provide an itemized accounting of all revenues and expenditures related to the provision of service to clients under this Agreement. All fiscal records related to this Agreement must be kept on the accrual method of accounting and in accordance with generally accepted accounting principles as promulgated by the American Institute of Certified Public Accountants.

**2. TERMINATION**

2.1. In the event of termination under paragraph 10. of the General Provisions, the approval of such a Termination Report by the State shall entitle the Contractor to receive that portion of the Contract Price earned to and including the date of termination. The Contractor's obligation to continue to provide services under this Agreement shall cease upon termination by the State.

2.2. In the event of termination under paragraph 10. of the General Provisions, the approval of a Termination Report by the State shall in no event relieve the Contractor from any and all liability for damages sustained or incurred by the State as a result of the Contractor's breach of its obligations hereunder.

2.3. Notwithstanding anything in this Agreement to the contrary, the State may terminate this Agreement without cause upon thirty (30) days written notice.

**3. INSURANCE AND BOND**

3.1. The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, both for the benefit of the State, the following insurance:

3.1.1. statutory workers' compensation and employees liability insurance for all employees engaged in the performance of the Services; and

3.1.2. comprehensive public liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than \$2,000,000 for bodily injury or death in any one incident, and \$500,000 for property damage in any one incident; and

3.1.3. professional malpractice insurance covering all professional and/or licensed personnel engaged in the performance of the services hereunder.

3.2. During the term of this Agreement, the Contractor shall maintain a fidelity bond, covering the activities of all employees or agents with authority to control or have access to any funds provided under this Agreement in an amount equal to at least twenty-five (25) percent of the minimum contract amount specified in paragraph 1 of Exhibit B.

#### 4. DATA: ACCESS BY STATE

Between the Effective Date and a date six years after the Completion Date, at any time during the Contractor's normal business hours, and as often as the State shall reasonably demand, the Contractor shall make available to the State all data for examination, duplication, publication, translation, or for any other purpose. Nothing in this subparagraph shall require the Contractor to make available data which would violate any statute, other provisions of this Agreement, or agreements with unrelated third parties. The term "Contractor" includes all persons, natural or fictional, affiliated with, controlled by, or under common ownership with, or an affiliate of, the entity identified as the Contractor in block 1.3. of the General Provisions of this Agreement.

#### 5. TIME STUDY

The parties agree to pilot different reporting indicators. The Contractor agrees to perform a time study for all State funded clients. The time study shall be performed in accordance with procedures established by the State. The Contractor shall provide the State with "Quarterly Statistical Reporting" forms within thirty days after the end of each quarter. The parties further acknowledge that said forms may undergo changes to refine the data collected and may be modified by mutual agreement.

**EXHIBIT C - 1**

**ADDITIONAL SPECIAL PROVISIONS**

**1) Gratuities or Kickbacks**

The Contractor agrees that it is a breach of this Agreement to accept or make a payment, gratuity or offer of employment on behalf of the Contractor, any Sub-Contractor or the State in order to influence the performance of the Scope of Work detailed in Exhibit A of this Agreement. The State may terminate this Agreement and any sub-contract or sub-agreement if it is determined that payments, gratuities or offers of employment of any kind were offered or received by any officials, officers, employees or agents of the Contractor or Sub-Contractor.

**2) Retroactive Payments-Individual Services**

Notwithstanding anything to the contrary contained in this Agreement or in any other document, agreement or understanding, it is expressly understood and agreed by the parties hereto, that no payments will be made hereunder to reimburse the Contractor for any services provided to any individual prior to the Effective Date of this Agreement and no payments shall be made for expenses incurred by the Contractor for any services provided prior to the date on which the individual applies for services or (except as otherwise provided by the federal regulations) prior to a determination that the individual is eligible for such services.

**3) Retroactive Payments-Contractor Services**

Notwithstanding anything to the contrary contained in this Agreement or in any other document, agreement or understanding, it is expressly understood and agreed by the parties hereto, that no payments will be made hereunder to reimburse the Contractor for any costs incurred for any purposes prior to the Effective Date of the Agreement.

**4) Audit Requirement**

On or before the date set forth in Section 1.7 of these General Provisions, the Contractor shall deliver to the State, at the address set forth in Section 1.2 of these General Provisions, an independent audit performed by a Certified Public Accountant, of the Contractor, including the funds received under this Agreement.

The following requirement shall apply if the Contractor is a State or Local Government or an Institution of Higher Education or Other Non-Profit Organization: If the federal funds expended under this or any other Agreement from any and all sources exceeds \$500,000 in the aggregate in a one year fiscal period the required audit shall be performed in accordance with the provisions of OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations for fiscal years ending on or after December 31, 2003.

**5) Credits**

All documents, notices, press releases, research reports, and other materials prepared during or resulting from the performance of the services or the Agreement shall include the following statement: "The preparation of this (report, document, etc.) was financed under an Agreement with the State of New Hampshire, Department of Health and Human Services, with funds provided in part or in whole by the (State of New Hampshire and/or United States Department of Health and Human Services.)"

**6) Debarment, Suspension and Other Responsibility Matters**

If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with the provisions of Section 319 of the Public Law 101-121, Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions; with the provisions of Executive Order 12549 and 45 CFR Subpart A, B, C, D, and E Section 76 regarding Debarment, Suspension and Other Responsibility Matters, and shall complete and submit to the State the appropriate certificates of compliance upon approval of the Agreement by the Governor and Council.

**7) Criminal Background Check**

The Contractor shall conduct criminal background checks if a potential applicant for employment or volunteer, funded under this contract, may have client contact in the client's place of residence.

**8) Adult Protective Service Registry**

The Contractor shall meet the requirements of RSA 161-F: 49 Registry, VII, which requires the submission of the name of a prospective employee who may have client contact, for review against the State Adult Protective Service Registry, effective July 1, 2007.

**9) Complaint Resolution Policy**

The Contractor shall develop a written policy with regard to the intake, investigation, resolution, and reporting of complaints received from wards, families of wards, or providers of services to wards. Said policy shall be available for distribution to interested parties as needed.

EXHIBIT D

ETHICS AND STANDARDS FOR GUARDIANS

The Model Code

Decision-making: General Principles

**RULE 1. A GUARDIAN SHALL EXERCISE EXTREME CARE AND DILIGENCE WHEN MAKING DECISIONS ON BEHALF OF A WARD. ALL DECISIONS SHALL BE MADE IN A MANNER WHICH PROTECTS THE CIVIL RIGHTS AND LIBERTIES OF THE WARD AND MAXIMIZES INDEPENDENCE AND SELF-RELIANCE.**

1.1. The guardian shall make all reasonable efforts to ascertain the preferences of the ward, both past and current, regarding all decisions which the guardian is empowered to make.

1.2. The guardian shall make decisions in accordance with the ascertainable preferences of the ward, past or current, in all instances except those in which a guardian is reasonably certain that substantial harm will result from such a decision.

1.3. When the preferences of the ward cannot be ascertained, a guardian is responsible for making decisions which are in the best interests of the ward.

1.4. The guardian shall be cognizant of his or her own limitations of knowledge, shall carefully consider the views and opinions of those involved in the treatment and care of the ward, and shall also seek independent opinions when necessary.

1.5. The guardian must recognize that his or her decisions are open to the scrutiny of other interested parties and consequently, to criticism and challenge. Nonetheless, the guardian alone is ultimately responsible for decisions made on behalf of the ward.

1.6. A guardian shall refrain from decision making in areas outside the scope of the guardianship order and, when necessary, assist the ward by ensuring such decisions are made in an autonomous fashion.

Relationship Between Guardian and Ward

**RULE 2. THE GUARDIAN SHALL EXHIBIT THE HIGHEST DEGREE OF TRUST, LOYALTY, AND FIDELITY IN RELATION TO THE WARD.**

2.1. The guardian shall protect the personal and pecuniary interests of the ward and foster the ward's growth, independence and self-reliance to the maximum degree.

2.2. The guardian shall scrupulously avoid conflict of interest and self-dealing in relations with the ward.

2.3. The guardian shall vigorously protect the rights of the ward against infringement by third parties.

2.4. The guardian shall, whenever possible, provide all pertinent information to the ward unless the guardian is reasonably certain that substantial harm will result from providing such information.

#### **Custody of the Person: Establishing a Place of Abode**

### **RULE 3. THE GUARDIAN SHALL ASSUME LEGAL CUSTODY OF THE WARD AND SHALL ENSURE THE WARD RESIDES IN THE LEAST RESTRICTIVE ENVIRONMENT AVAILABLE.**

3.1. The guardian shall be informed and aware of the options and alternatives available for establishing the ward's place of abode.

3.2. The guardian shall make decisions in conformity with the preferences of the ward in establishing the ward's place of abode unless the guardian is reasonably certain that such a decision will result in substantial harm.

3.3. When the preferences of the ward cannot be ascertained or where they will result in substantial harm, the guardian shall make decisions with respect to the ward's place of abode which are in conformity with the best interests of the ward.

3.4. The guardian shall not remove the ward from his or her home or separate the ward from family and friends unless such removal is necessary to prevent substantial harm. The guardian shall make every reasonable effort to ensure the ward resides at home or in a community setting.

3.5. The guardian shall seek professional evaluations and assessments wherever necessary to determine whether the current or proposed placement of the ward represents the least restrictive environment available to the ward. The guardian shall work cooperatively with community based organizations which may be available to assist in ensuring that the ward resides in a noninstitutional environment.

3.6. The guardian shall have a strong preference against placement of the ward in an institution or other setting which provides only custodial care.

3.7. The guardian shall monitor the placement of the ward on an ongoing basis to ensure its continued appropriateness, and shall consent to changes as they become necessary or advantageous for the ward.

3.8. In the event that the only available placement is not the most appropriate and least restrictive, the guardian shall advocate for the ward's rights and negotiate a more desirable placement with a minimum of delay, retaining legal counsel to assist if necessary.

**Custody of the Person: Consent to Care, Treatment and Services**

**RULE 4. THE GUARDIAN SHALL ASSUME RESPONSIBILITY TO PROVIDE INFORMED CONSENT ON BEHALF OF THE WARD FOR THE PROVISION OF CARE, TREATMENT AND SERVICES AND SHALL ENSURE THAT SUCH CARE, TREATMENT AND SERVICES REPRESENTS THE LEAST RESTRICTIVE FORM OF INTERVENTION AVAILABLE.**

4.1. The guardian shall make decisions in conformity with the preferences of the ward when providing consent for the provision of care, treatment and services, unless the guardian is reasonably certain that such decisions will result in substantial harm to the ward.

4.2. When the preferences of the ward cannot be ascertained or will result in substantial harm, the guardian shall make decisions with respect to care, treatment and services which are in conformity with the best interests of the ward.

4.3. In the event the only available treatment, care or services is not the most appropriate and least restrictive, the guardian shall advocate for the ward's right to a more desirable form of treatment, care or services, retaining legal counsel to assist if necessary.

4.4. The guardian shall seek professional evaluations and assessments whenever necessary to determine whether the current or proposed care, treatment and services represent the least restrictive form of intervention available.

4.5. The guardian shall work cooperatively with individuals and organizations which may be available to assist in ensuring the ward receives care, treatment and services which represent the least restrictive form of intervention available and are consistent with the wishes or best interests of the ward.

4.6. The guardian shall not consent to sterilization, electro-convulsive therapy, experimental treatment, psychosurgery or other legally suspect forms of care, treatment or service without seeking review by the court or the ward's attorney or other representative.

4.7. The guardian shall be familiar with the law of the state regarding the withholding or withdrawal of life-sustaining treatment.

4.8. The guardian shall monitor the care, treatment and services the ward is receiving to ensure its continued appropriateness, and shall consent to changes as they become necessary or advantageous to the ward.

**Management of the Estate**

**RULE 5. THE GUARDIAN OF THE ESTATE SHALL PROVIDE COMPETENT MANAGEMENT OF THE PROPERTY AND INCOME OF THE ESTATE. IN THE DISCHARGE OF THIS DUTY, THE GUARDIAN SHALL EXERCISE INTELLIGENCE, PRUDENCE AND DILIGENCE AND AVOID ANY SELF-INTEREST.**

5.1. Upon appointment, the guardian shall take steps to inform himself or herself of the statutory requirements for managing a ward's estate.

5.2. The guardian shall manage the income of the estate with the primary goal of providing for the needs of the ward, and in certain cases, the needs of the ward's dependents for support and maintenance.

5.3. The guardian has a duty to exercise prudence in the investment of surplus funds of the estate.

5.4. Where the liquid estate of the ward is sufficient, the guardian may make such gifts as are consistent with the wishes or past behavior of the ward, bearing in mind both the foreseeable requirements of the ward and the tax advantages of such gifts.

5.5. There shall be no self-interest in the management of the estate by the guardian; the guardian shall exercise caution to avoid even the appearance of self-interest.

#### **Termination and Limitation of the Guardianship**

**RULE 6. THE GUARDIAN HAS AN AFFIRMATIVE OBLIGATION TO SEEK TERMINATION OR LIMITATION OF THE GUARDIANSHIP WHENEVER INDICATED.**

6.1. The guardian shall diligently seek out information which will provide a basis for termination or limitation of the guardianship.

6.2. Upon indication that termination or limitation of the guardianship order is warranted, the guardian shall promptly request court action, retaining legal counsel if necessary.

6.3. The guardian shall assist the ward in terminating or limiting the guardianship and arrange for independent representation for the ward whenever necessary.

## STANDARDS FOR GUARDIANSHIP

### STANDARD NO. 1 - GENERAL PRINCIPLES

- A. The guardian shall at all times maintain the confidential nature of the ward's affairs.
- B. The guardian shall provide the ward with every opportunity to exercise those individual rights which the ward might be capable of exercising as relates to the care of the ward's person.
- C. The guardian shall refrain from decision making in areas outside of the guardianship order and, when necessary, assist the ward by ensuring such decisions are made in an autonomous manner.

### STANDARD NO. 2 - CONFLICT OF INTEREST

- A. A guardian shall avoid even the appearance of a conflict of interest, or impropriety when dealing with the needs of the ward. Impropriety or conflict of interest arises where the guardian has some personal or agency interest which might be perceived as self-serving or adverse to the position or the best interest of the ward. Specific situations which may create an impropriety or conflict of interest include, but are not limited to the following:

(1) A guardianship program shall not directly provide housing, medical, legal advocacy or direct services to an individual if the program is also acting as guardian for that individual. The program shall keep in mind that its duty is to coordinate and assure the provision of all necessary services to the ward or beneficiary rather than to provide those services directly. To insure that the guardian remains free to challenge inappropriate or poorly delivered services and to advocate vigorously on behalf of the ward, the guardian should be independent from all service providers. However, where a program can demonstrate unique circumstances indicating that no other entity is available to act as guardian, or to provide needed direct services, a limited waiver with regard to the provision of direct services may be granted by the funder, court, or other monitoring agency, as to individual wards. Procedures for granting such waivers shall be designed by the granting agency and shall require a showing of hardship to the ward if the waiver is not granted.

(2) A guardianship program shall be a free standing entity and shall not be subject to undue influence. When the program is a part of a larger organization or governmental entity there must be an arms length relationship with the larger organization or governmental entity, and independent decision making ability.

(3) The guardian shall not be in a position of representing both the ward and the provider of service.

(4) A professional guardian shall not be appointed as guardian in a case where he/she has served as petitioner, guardian ad litem or as court appointed visitor or investigator. Guardians should not be in a position to initiate or influence the appointment of their agencies as guardians. However, a professional guardian may act as petitioner only when no other entity is available to act, provided all other alternatives have been exhausted and the judge is advised of the appearance of a conflict of interest. This standard shall not prohibit a program from advising families and other interested petitioners, including the proposed ward, on the manner and procedure of petitioning for guardianship.

(5) A guardian shall not commingle personal or program funds with the funds of a ward or beneficiary. This standard does not prohibit a guardian from consolidating and maintaining a ward's funds in joint accounts with the funds of other wards. However, if the guardian does so, separate, accurate and complete accounting of each ward's funds shall be maintained by the guardian. Where an individual or organization serves several individuals, it may be more efficient and more cost effective to combine the individuals' funds in a single account. In this manner, banking fees and costs are distributed among the individuals, rather than being borne by each separately. The use of such joint accounts should only be permitted where the guardian or conservator has available the personnel and the expertise to keep accurate records of the exact

amount of funds in the account, including allocation of interest and charges, which are attributable to each individual ward.

(6) A guardian shall not sell, transfer, convey or encumber real or personal property any interest therein to himself, a spouse, coworker, employee, member of the Board of the agency or corporate guardian, an agent, or attorney, or any corporation or trust in which the guardian has a substantial beneficial interest unless the transaction is approved by the court after notice to interested persons and others as directed by the court.

(7) A guardian shall not borrow funds from, or lend funds to, the ward unless the transaction is approved by the court or the agency administering the client's benefits after notice to interested persons and others as directed by the court or the agency. The Guardian may advance funds to a ward provided there is no cost to the ward.

### STANDARD NO. 3 - DECISION MAKING

- A. Substituted judgment shall be the standard that guides the decision making of the guardian. Substituted judgment entails making the decision the guardian believes the ward would make based on the ward's previously expressed preferences. The doctrine of best interest of the ward shall be employed only in those instances where no evidence of the ward's preference exists. When employing the doctrine of best interest the guardian will determine what is in the best interest of the ward's health and welfare.
- B. Decisions made by the guardian on behalf of the ward shall be reached after consideration of factors in the following order:
- (1) Any preferences of the ward, expressed prior to appointment of a guardian.
  - (2) The current wishes of the ward with regard to the decision. Although a court has determined that such ward is incapable of making decisions, a ward may still be capable of expressing wishes. If a ward is capable the guardian shall weigh those wishes in making decisions.
  - (3) Substituted judgment by the guardian for what the guardian believes the ward would have wanted if able to make the decision.
  - (4) The perceived best interest of the ward. In determining the best interest of the ward the guardian shall make an informed judgment and shall not consent until the following information has been gathered:
    - (a) the reason for and nature of the proposed action;
    - (b) the benefit/necessity of the decisions;
    - (c) the possible risks and other consequences of the proposed action; and
    - (d) alternatives that are available and their respective risks, consequences and benefits.
  - (5) In making decisions the guardian shall utilize advice and information from all available sources, including familial, legal, medical, ethical, and social service professionals.

### STANDARD NO. 4 - PERSONAL NEEDS

- A. A guardian who is responsible for the person of the ward shall involve the ward, to the extent of the ward's ability, in making decisions about the ward's housing, which shall be in the least restrictive environment consistent with the ward's safety. The guardian shall ensure that the health care and daily maintenance needs of the ward are provided from every available resource. Where appropriate and available, the guardian shall apply for and secure for the benefit of the ward, medical, psychological, social services, direct services, training, education and vocational opportunities to maximize as far as possible the ward's potential for self-reliance and independence.

- B. The guardian shall file all reports on a timely basis with the court as required by law, not less than annually, and shall provide thorough documentation of the ward's needs whenever necessary for the ward's interest, carrying out any and all duties required by statute or regulation.
- C. The guardian shall attempt maximize the self-reliance, autonomy and independence of the ward. The guardian shall encourage the ward to participate to the maximum extent of his abilities, in all decisions which affect him; to act on his own behalf in all matters in which he is able to do so; and to develop or regain to the maximum extent possible, his capacity.
- D. A guardian shall authorize a placement in a more restrictive living environment only after evaluating the opinions of medical and health care providers and making an independent determination that the move is the least restrictive alternative and in the best interest of the ward.

**STANDARD NO. 5 - PERSONAL CONTACT AND ONGOING RESPONSIBILITIES**

- A. The guardian shall develop and monitor a written plan setting forth long and short term goals for the ward.
- B. Guardians of the person, or their designee, shall have meaningful visits with their wards no less than once a month. For the ward requiring medical assistances and residing in a restrictive environment, the guardian, shall visit more often in circumstances where additional attention is required.
- C. Responsible execution of a guardian's responsibility shall consist of, but not be limited to, the following:
  - (1) Communicate with the ward, making every effort to ascertain the comfort and satisfaction of the ward in the present living environment and the current needs and desires of the ward, and evaluating the present living environment in connection with the ward's needs or any change in the extent of the ward's disability or impairment which may dictate a need to change the ward's living environment.
  - (2) Maintain substantive communication with service providers, caregivers or others attending to the ward in the environment in which the ward is living. Where applicable, this may include conferences with physicians, psychologists, nurses, social workers, physical or occupational therapists, teachers and vocational rehabilitation instructors, and residence operators or managers.
  - (3) Participate in all care or planning conferences or staff briefings concerning the residential, educational or rehabilitation program of the ward. The guardian shall require that each service provider develop an appropriate service plan for the ward and shall take appropriate action to insure that the applicable service plan is being implemented. The guardian shall be knowledgeable of the ward's circumstances and shall be prepared to address any issues arising at the conference or staffing.
  - (4) Regularly examine all services, charts, notes, logs, evaluations and writings regarding the ward at the place of residence and at any program site.
  - (5) Assess the ward's physical appearance and the appropriateness of the ward's current living situation, and the continuation of existing services; taking into consideration all aspects of social, psychological, educational, direct services, and health and personal care needs as well as the need for any additional services.
  - (6) Assess the apparent state of repair, cleanliness and safety of the residence, and adequacy of the clothing and personal possessions of the ward.

**STANDARD NO. 6 - MEDICAL SERVICES AND MEDICAL TREATMENT, INCLUDING MORE RESTRICTIVE LIVING ENVIRONMENTS**

- A. The guardian has a duty to promote and monitor the ward's health and well being.

- B. Absent an emergency, a guardian having the appropriate authority shall not grant or deny authorization for medical interventions until (s)he has given careful consideration to the factors listed in Standard Number 3.
- C. In the case of emergency medical treatment, a guardian having proper authority shall grant or deny authorization of medical treatment based on a reasonable assessment of the factors required by Standard Number 3 within the time frame allotted by the emergency.
- D. In extraordinary medical situations, in addition to all other factors and resources outlined in Standard Number 3, the guardian shall utilize ethical, legal, and medical advice with particular attention to hospital ethics committees.
- E. The guardian has a responsibility to obtain a second medical opinion when a prudent person would do so. The second opinion shall be from an independent physician.
- F. The guardian shall speak directly with the treating or attending physician before authorizing or denying any medical treatment. If State law provides for the performance of additional steps prior to granting or denying authorization, the guardian shall undertake such additional steps.
- G. A guardian shall authorize a placement in a more restrictive living environment for health reasons only after evaluating the opinion's of medical and health care providers and making an independent determination that the move is the least restrictive alternative in the best interest of the ward.
- H. When a guardian considers involuntary or long term placement of a ward in a facility, the basis of the decision shall be to minimize the risk of substantial harm to the ward and obtain the most appropriate possible placement and treatment for the ward. All such placements of wards shall be subject to judicial, administrative or other independent review.

#### **STANDARD NO. 7 - MANAGEMENT OF THE ESTATE OF THE WARD**

- A. The guardian of an incapacitated person shall provide competent management of the property, and shall supervise all income and disbursements of the estate in compliance with all statutorily prescribed procedures. The guardian shall exercise intelligence, prudence and diligence, avoiding any conflict of interest or impropriety as addressed in Standard Number 2.
- B. The guardian shall employ prudent accounting procedures when managing the estate of the ward in compliance with applicable statutes, regulations and policies.
- C. The guardian shall file with the court all reports as required by law, but no less than annually, and shall thoroughly document management of the ward's estate, carrying out any and all duties required by statute or regulation.
- D. The guardian shall not dispose of property of a ward, either real or personal, unless such sale is subject to judicial, administrative, or other independent review.
- E. Upon the termination of a guardianship the guardian shall facilitate the appropriate closing of the estate.

NH Department of Health and Human Services

STANDARD EXHIBIT D

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

ALTERNATIVE I - FOR GRANTEES OTHER THAN INDIVIDUALS

- US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS
- US DEPARTMENT OF EDUCATION - CONTRACTORS
- US DEPARTMENT OF AGRICULTURE - CONTRACTORS

This certification is required by the regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.). The January 31, 1989 regulations were amended and published as Part II of the May 25, 1990 Federal Register (pages 21681-21691), and require certification by grantees (and by inference, sub-grantees and sub-contractors), prior to award, that they will maintain a drug-free workplace. Section 3017.630(c) of the regulation provides that a grantee (and by inference, sub-grantees and sub-contractors) that is a State may elect to make one certification to the Department in each federal fiscal year in lieu of certificates for each grant during the federal fiscal year covered by the certification. The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment. Contractors using this form should send it to:

Commissioner  
NH Department of Health and Human Services  
129 Pleasant Street,  
Concord, NH 03301-6505

- (A) The grantee certifies that it will or will continue to provide a drug-free workplace by:
  - (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
  - (b) Establishing an ongoing drug-free awareness program to inform employees about--
    - (1) The dangers of drug abuse in the workplace;
    - (2) The grantee's policy of maintaining a drug-free workplace;
    - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
    - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

Contractor Initials: RPT  
Date: 5/3/10

- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—
  - (1) Abide by the terms of the statement; and
  - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—
  - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - (2) Requiring such employee to participate satisfactorily 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;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant.

Place of Performance (street address, city, county, state, zip code) (list each location)

Check  if there are workplaces on file that are not identified here.

Office of Public Guardian From: 7/1/2010 To: 6/30/2011  
(Contractor Name) (Period Covered by this Certification)

Roger P. Jobin, Treasurer  
(Name & Title of Authorized Contractor Representative)

Roger P. Jobin 5/3/10  
(Contractor Representative Signature) (Date)

Contractor Initials: RPJ  
Date: 5/3/10

NH Department of Health and Human Services

STANDARD EXHIBIT E

CERTIFICATION REGARDING LOBBYING

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. 1352, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS  
US DEPARTMENT OF EDUCATION - CONTRACTORS  
US DEPARTMENT OF AGRICULTURE - CONTRACTORS

- Programs (indicate applicable program covered):
- \*Temporary Assistance to Needy Families under Title IV-A
  - \*Child Support Enforcement Program under Title IV-D
  - \*Social Services Block Grant Program under Title XX
  - \*Medicaid Program under Title XIX
  - \*Community Services Block Grant under Title VI
  - \*Child Care Development Block Grant under Title IV

Contract Period: 7/1/10 through 6/30/11

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, 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, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement (and by specific mention sub-grantee or sub-contractor).
- (2) 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 this Federal contract, grant, loan, or cooperative agreement (and by specific mention sub-grantee or sub-contractor), the undersigned shall complete and submit Standard Form LLL, (Disclosure Form to Report Lobbying, in accordance with its instructions, attached and identified as Standard Exhibit E-I.)
- (3) The undersigned shall require that the language of this certification be included in the award document for sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Roger P. Jobin  
(Contractor Representative Signature)

Roger P. Jobin, Treasurer  
(Authorized Contractor Representative Name & Title)

Office of Public Guardian  
(Contractor Name)

5/3/10  
(Date)

NH Department of Health and Human Services

STANDARD EXHIBIT F

CERTIFICATION REGARDING DEBARMENT, SUSPENSION  
AND OTHER RESPONSIBILITY MATTERS

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Executive Office of the President, Executive Order 12549 and 45 CFR Part 76 regarding Debarment, Suspension, and Other Responsibility Matters, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal (contract), the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the NH Department of Health and Human Services' (DHHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when DHHS determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, DHHS may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the DHHS agency to whom this proposal (contract) is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549; 45 CFR Part 76. See the attached definitions.
6. The prospective primary participant agrees by submitting this proposal (contract) that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by DHHS.

Contractor Initials: RFJ

Date: 5/3/10

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," provided by DHHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or involuntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (of excluded parties).
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, DHHS may terminate this transaction for cause or default.

**PRIMARY COVERED TRANSACTIONS**

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - (b) have not within a three-year period preceding this proposal (contract) 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) transaction or a contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - (d) have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal (contract).

Contractor Initials: RPS

Date: 5/3/10

**LOWER TIER COVERED TRANSACTIONS**

By signing and submitting this lower tier proposal (contract), the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

- (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
- (b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal (contract).

The prospective lower tier participant further agrees by submitting this proposal (contract) that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Roger P. Jobin  
(Contractor Representative Signature)

Roger P. Jobin, Treasurer  
(Authorized Contractor Representative Name & Title)

Office of Public Guardian  
(Contractor Name)

5/3/10  
(Date)

Contractor Initials: RPT  
Date: 5/3/10

NH Department of Health and Human Services

STANDARD EXHIBIT G

CERTIFICATION REGARDING  
THE AMERICANS WITH DISABILITIES ACT COMPLIANCE

The Contractor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this proposal (contract) the Contractor agrees to make reasonable efforts to comply with all applicable provisions of the Americans with Disabilities Act of 1990.

Roger P. Jobin  
(Contractor Representative Signature)

Roger P. Jobin, Treasurer  
(Authorized Contractor Representative Name & Title)

Office of Public Guardian  
(Contractor Name)

5/3/10  
(Date)

NH Department of Health and Human Services

STANDARD EXHIBIT H

CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, Part C - Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

The Contractor identified in Section 1.3 of the General Provisions agrees, by signature of the Contractor's representative as identified in Section 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this contract, the Contractor agrees to make reasonable efforts to comply with all applicable provisions of Public Law 103-227, Part C, known as the Pro-Children Act of 1994.

  
\_\_\_\_\_  
(Contractor Representative Signature)

Roger P. Jobin, Treasurer  
\_\_\_\_\_  
(Authorized Contractor Representative Name & Title)

Office of Public Guardian  
\_\_\_\_\_  
(Contractor Name)

5/3/10  
\_\_\_\_\_  
(Date)

## NH Department of Health and Human Services

**STANDARD EXHIBIT I**  
**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**  
**BUSINESS ASSOCIATE AGREEMENT**

The Contractor identified in Section 1.3 of the General Provisions of the Agreement agrees to comply with the Health Insurance Portability and Accountability Act, Public Law 104-191 and with the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160 and 164 and those parts of the HITECH Act applicable to business associates. As defined herein, "Business Associate" shall mean the Contractor and subcontractors and agents of the Contractor that receive, use or have access to protected health information under this Agreement and "Covered Entity" shall mean the State of New Hampshire, Department of Health and Human Services.

**BUSINESS ASSOCIATE AGREEMENT**

(1) **Definitions.**

- a. "Breach" shall have the same meaning as the term "Breach" in Title XXX, Subtitle D. Sec. 13400.
- b. "Business Associate" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- c. "Covered Entity" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- d. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR Section 164.501.
- e. "Data Aggregation" shall have the same meaning as the term "data aggregation" in 45 CFR Section 164.501.
- f. "Health Care Operations" shall have the same meaning as the term "health care operations" in 45 CFR Section 164.501.
- g. "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act, Title XIII, Subtitle D, Part 1 & 2 of the American Recovery and Reinvestment Act of 2009.
- h. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160, 162 and 164.
- i. "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.501(g).
- j. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.

- k. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR Section 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- l. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR Section 164.501.
- m. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- n. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C, and amendments thereto.
- o. "Unsecured Protected Health Information" means protected health information that is not secured by a technology standard that renders protected health information unusable, unreasonable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.
- p. Other Definitions - All terms not otherwise defined herein shall have the meaning established under 45 C.F.R. Parts 160, 162 and 164, as amended from time to time, and the HITECH Act.

(2) **Use and Disclosure of Protected Health Information.**

- a. Business Associate shall not use, disclose, maintain or transmit Protected Health Information (PHI) except as reasonably necessary to provide the services outlined under Exhibit A of the Agreement. Further, the Business Associate shall not, and shall ensure that its directors, officers, employees and agents, do not use, disclose, maintain or transmit PHI in any manner that would constitute a violation of the Privacy and Security Rule.
- b. Business Associate may use or disclose PHI:
  - I. For the proper management and administration of the Business Associate;
  - II. As required by law, pursuant to the terms set forth in paragraph d. below; or
  - III. For data aggregation purposes for the health care operations of Covered Entity.
- c. To the extent Business Associate is permitted under the Agreement to disclose PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from the third party that such PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and (ii) an agreement from such third party to notify Business Associate, in accordance with the HITECH Act, Subtitle D, Part 1, Sec. 13402 of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.
- d. The Business Associate shall not, unless such disclosure is reasonably necessary to provide services under Exhibit A of the Agreement, disclose any PHI in response to a request for disclosure on the basis that it is required by law, without first notifying Covered Entity so that Covered Entity has an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, the Business Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all remedies.

- e. If the Covered Entity notifies the Business Associate that Covered Entity has agreed to be bound by additional restrictions over and above those uses or disclosures or security safeguards of PHI pursuant to the Privacy and Security Rule, the Business Associate shall be bound by such additional restrictions and shall not disclose PHI in violation of such additional restrictions and shall abide by any additional security safeguards.

**(3) Obligations and Activities of Business Associate.**

- a. Business Associate shall report to the designated Privacy Officer of Covered Entity, in writing, any use or disclosure of PHI in violation of the Agreement, including any security incident involving Covered Entity data, in accordance with the HITECH Act, Subtitle D, Part 1, Sec. 13402.
- b. The Business Associate shall comply with all sections of the Privacy and Security Rule as set forth in, the HITECH Act, Subtitle D, Part 1, Sec. 13401 and Sec.13404.
- c. Business Associate shall make available all of its internal policies and procedures, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of Covered Entity to the Secretary for purposes of determining Covered Entity's compliance with HIPAA and the Privacy and Security Rule.
- d. Business Associate shall require all of its business associates that receive, use or have access to PHI under the Agreement, to agree in writing to adhere to the same restrictions and conditions on the use and disclosure of PHI contained herein, including the duty to return or destroy the PHI as provided under Section (3)b and (3)k herein. The Covered Entity shall be considered a direct third party beneficiary of the Contractor's business associate agreements with Contractor's intended business associates, who will be receiving PHI pursuant to this Agreement, with rights of enforcement and indemnification from such business associates who shall be governed by standard provision #13 of this Agreement for the purpose of use and disclosure of protected health information.
- e. Within five (5) business days of receipt of a written request from Covered Entity, Business Associate shall make available during normal business hours at its offices all records, books, agreements, policies and procedures relating to the use and disclosure of PHI to the Covered Entity, for purposes of enabling Covered Entity to determine Business Associate's compliance with the terms of the Agreement.
- f. Within ten (10) business days of receiving a written request from Covered Entity, Business Associate shall provide access to PHI in a Designated Record Set to the Covered Entity, or as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR Section 164.524.
- g. Within ten (10) business days of receiving a written request from Covered Entity for an amendment of PHI or a record about an individual contained in a Designated Record Set, the Business Associate shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under 45 CFR Section 164.526.

- h. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.
- i. Within ten (10) business days of receiving a written request from Covered Entity for a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill its obligations to provide an accounting of disclosures with respect to PHI in accordance with 45 CFR Section 164.528.
- j. In the event any individual requests access to, amendment of, or accounting of PHI directly from the Business Associate, the Business Associate shall within two (2) business days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or the Business Associate to violate HIPAA and the Privacy and Security Rule, the Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.
- k. Within ten (10) business days of termination of the Agreement, for any reason, the Business Associate shall return or destroy, as specified by Covered Entity, all PHI received from, or created or received by the Business Associate in connection with the Agreement, and shall not retain any copies or back-up tapes of such PHI. If return or destruction is not feasible, or the disposition of the PHI has been otherwise agreed to in the Agreement, Business Associate shall continue to extend the protections of the Agreement, to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. If Covered Entity, in its sole discretion, requires that the Business Associate destroy any or all PHI, the Business Associate shall certify to Covered Entity that the PHI has been destroyed.

**(4) Obligations of Covered Entity**

- a. Covered Entity shall notify Business Associate of any changes or limitation(s) in its Notice of Privacy Practices provided to individuals in accordance with 45 CFR Section 164.520, to the extent that such change or limitation may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall promptly notify Business Associate of any changes in, or revocation of permission provided to Covered Entity by individuals whose PHI may be used or disclosed by Business Associate under this Agreement, pursuant to 45 CFR Section 164.506 or 45 CFR Section 164.508.
- c. Covered entity shall promptly notify Business Associate of any restrictions on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(5) Termination for Cause

In addition to standard provision #10 of this Agreement the Covered Entity may immediately terminate the Agreement upon Covered Entity's knowledge of a breach by Business Associate of the Business Associate Agreement set forth herein as Exhibit I. The Covered Entity may either immediately terminate the Agreement or provide an opportunity for Business Associate to cure the alleged breach within a timeframe specified by Covered Entity. If Covered Entity determines that neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(6) Miscellaneous

- a. Definitions and Regulatory References. All terms used, but not otherwise defined herein, shall have the same meaning as those terms in the Privacy and Security Rule, and the HITECH Act as amended from time to time. A reference in the Agreement, as amended to include this Exhibit I, to a Section in the Privacy and Security Rule means the Section as in effect or as amended.
- b. Amendment. Covered Entity and Business Associate agree to take such action as is necessary to amend the Agreement, from time to time as is necessary for Covered Entity to comply with the changes in the requirements of HIPAA, the Privacy and Security Rule, and applicable federal and state law.
- c. Data Ownership. The Business Associate acknowledges that it has no ownership rights with respect to the PHI provided by or created on behalf of Covered Entity.
- d. Interpretation. The parties agree that any ambiguity in the Agreement shall be resolved to permit Covered Entity to comply with HIPAA, the Privacy and Security Rule and the HITECH Act.
- e. Segregation. If any term or condition of this Exhibit I or the application thereof to any person(s) or circumstance is held invalid, such invalidity shall not affect other terms or conditions which can be given effect without the invalid term or condition; to this end the terms and conditions of this Exhibit I are declared severable.
- f. Survival. Provisions in this Exhibit I regarding the use and disclosure of PHI, return or destruction of PHI, extensions of the protections of the Agreement in section 3 k, the defense and indemnification provisions of section 3 d and standard contract provision #13, shall survive the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Exhibit I.

Dept. of Health & Human Svs.

Office of Public Guardian

The State Agency Name

Name of the Contractor

*Nancy L. Rollins*

*Roger P. Jobin*

Nancy L. Rollins

Signature of Authorized Representative

Signature of Authorized Representative

*Roger P. Jobin*

Name of Authorized Representative

Name of Authorized Representative

Associate Commissioner

*Treasurer*

Title of Authorized Representative

Title of Authorized Representative

*5/19/10*

*5/3/10*

Date

Date

Mr



STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF COMMUNITY BASED CARE SERVICES

Nicholas A. Toumpas  
Commissioner

Nancy L. Rollins  
Associate Commissioner

BUREAU OF BEHAVIORAL HEALTH

105 PLEASANT STREET, CONCORD, NH 03301  
603-271-5000 1-800-852-3345 Ext. 5000  
Fax: 603-271-5058 TDD Access: 1-800-735-2964

May 11, 2011

His Excellency, Governor John H. Lynch  
and the Honorable Executive Council  
State House  
Concord, New Hampshire 03301

APPROVED BY \_\_\_\_\_  
DATE 6/8/11  
PAGE 14  
REQUESTED ACTION ITEM # 126

1. Authorize the Department of Health and Human Services, Division of Community Based Care Services, to amend an agreement, Purchase Order number 102749, with the Office of Public Guardian (vendor code 166528), 2 Pillsbury St., Suite 400, Concord, NH 03301, to provide public guardianship services by increasing the price limitation by an amount not to exceed \$912,797.29 from \$878,656.80 to \$1,791,454.09 and extending the completion date to June 30, 2012, effective July 1, 2011, or date of Governor and Executive Council approval, whichever is later. This agreement was originally approved by Governor and Executive Council on June 9, 2010, item number 106. Funds are anticipated to be available in the following account in State Fiscal Year 2012 upon the availability and continued appropriation of funds in the future operating budget:

05-95-92-920010-7002 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVCS,  
HHS:BEHAVIORAL HEALTH-DIV OF, DIV OF BEHAVIORAL HEALTH, LEGAL-GUARDIANSHIP  
SVCS

Fiscal Year	Class/Object	Class Title	Current Modified Amount	Increase Amount	Revised Modified Amount
2011	102-500731	Contracts for Program Services	\$878,656.80		\$ 878,656.80
2012	102-500731	Contracts for Program Services	\$ 0.00	\$912,797.29	\$ 912,797.29
			\$878,656.80	\$912,797.29	\$1,791,454.09

2. Authorize an advance payment up to a maximum of \$145,667.23 of the contract price limitation.

EXPLANATION

The purpose of this request is to extend an agreement with the Office of Public Guardian to provide guardianship and protection, on a statewide basis, to persons with mental illness and developmental impairments whose

His Excellency, Governor John H. Lynch  
and the Honorable Executive Council  
May 11, 2011  
Page 2

incapacities leave them at risk of substantial harm because of their inability to provide for their own food, shelter, health care, safety, or to manage their personal affairs. These services are needed to meet the State's statutory obligations to safeguard incapacitated persons in the state institutions as well as in community mental health and developmental service programs. It also carries out the requirements of RSA 135-C: 60, and RSA 171-A: 10, II. The Office of Public Guardian pursuant to RSA 547-B: 6 has been designated by the New Hampshire Supreme Court as an approved organization for the purpose of providing guardianship and protection services pursuant to RSA 464-A. This agreement will provide for guardianship services for up to 701 cases during the agreement period. The emphasis in providing such services will be to ensure that the guardianships maintained and sought will be limited in accordance with the standards embodied in RSA 464-A.

Using a public notice posted on the Department of Health and Human Services website on February 22, 2010, as RFP Number 11-DCBCS-GPS-01, DCBCS requested proposals for providing public guardianship services in the State. Five renewals of one year each are possible at the Department's discretion. The Office of Public Guardian responded by submitting a proposal to provide public guardianship services to people with a mental illness, or a developmental disability who are eligible for State-funded services. The Office of Public Guardian was one of two agencies to apply to provide public guardianship services.

A competitive review process was utilized to evaluate all proposals submitted by the deadline. Participants in the review process included DHHS staff from the Bureau of Behavioral Health, the Bureau of Developmental Services, and the Office of Client and Legal Services. This process involved an assessment of the proposal submitted including an evaluation of scope of work, bidder background and experience, and the cost proposal. Both proposals submitted for fiscal year 2011 scored over the required minimum.

Based on a favorable review of the above by the review team and because the Office of Public Guardian has in previous agreements amply demonstrated its ability to provide high-level public guardianship services to clients and the community served, the Division of Community Based Care Services requests this agreement be extended for one year to allow the Office of Public Guardian to continue providing services.

The agreement for State Fiscal Year 2011 served up to 688 cases. In State Fiscal Year 2012 this agreement will serve up to 701 cases, which includes the current caseload of 675, plus 13 current pending cases and an additional 13 cases. Based upon previous experience, it is anticipated that there will be a need for this agency to assume these additional cases from the Bureau of Behavioral Health, or the Bureau of Developmental Services this fiscal year. These additional slots will be filled over the course of the year. Hence, over the year there will always be a certain number of vacant slots. The maximum contract amount includes a one and one-half (1 ½) percent reduction to reflect this vacancy rate.

This agreement also includes a line item for mentoring services and training. Mentoring services are provided to family members who are willing to serve as guardian but who require a period of support. Providing this support will obviate need for a public guardian in these cases and will thereby save the State from paying the cost of a permanent public guardianship.

The total agreement price is \$1,791,454.09, which is an increase of \$912,797.12 from the contract price of \$878,656.80.

Attached is a copy of the previously approved letter to the Governor and Executive Council. Additionally the Request for Proposal contained a provision allowing for five one year extensions at the Department's discretion and approval by the Governor and Executive Council.

Should Governor and Executive Council determine not to approve this request the Division of Community Based Care Services would be out of compliance with the requirements of RSA 135-C: 60, and RSA 171-A: 10, II and

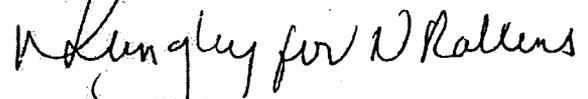
His Excellency, Governor John H. Lynch  
and the Honorable Executive Council  
May 11, 2011  
Page 2

persons with mental illness and developmental impairments whose incapacities leave them at risk of substantial harm because of their inability to provide for their own food, shelter, health care, safety, or to manage their personal affairs would be harmed.

Area served: statewide.

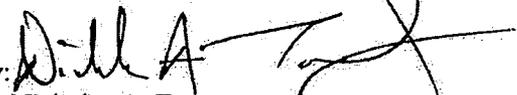
The source of funds for appropriation 7003 are 100% general funds.

Respectfully submitted,



Nancy L. Rollins  
Associate Commissioner

Approved by:



Nicholas A. Toumpas  
Commissioner

RSP/jk

Enclosures

**AMENDMENT TO AGREEMENT**

This Amendment to Agreement (hereinafter called the "Amendment"), dated this 25<sup>th</sup> day of April, 2011, between the State of New Hampshire, acting by and through the Division of Community Based Care Services, and Office of Public Guardian, a nonprofit organization organized under the laws of the State of New Hampshire with a place of business at 2 Pillsbury Street, Suite 400, Concord, New Hampshire 03301 (hereinafter referred to as the "Contractor").

**WHEREAS**, on February 22, 2010, the Division of Community Based Care Services issued a public notice for a Request For Proposal for "Guardianship and Protective Services in New Hampshire" which cited the following:

"Contracted services shall commence on July 1, 2010 or on the Governor and Executive Council approval date, whichever is later, and shall continue until June 30, 2011. Five renewals of one year each may be possible at the Department's discretion", and

**WHEREAS**, the Contractor was one of two selected contractors, and

**WHEREAS**, pursuant to an Agreement approved on June 9, 2010, the Contractor agreed to provide certain services upon the terms and conditions specified in the Agreement, in consideration of payment by the Division of Community Based Care Services of certain sums specified therein; and

**WHEREAS**, pursuant to paragraph 17 of the Agreement, the Agreement may be amended, waived, or discharged only by an instrument in writing signed by the parties thereto and only after the approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire;

**WHEREAS**, the Division of Community Based Care Services and the Contractor have agreed to extend the Agreement for one year in certain respects;

**NOW THEREFORE**, in consideration of the foregoing and of the covenants and conditions contained in the Agreement and set forth herein, the parties do hereby agree as follows:

1. Amendments and Modifications of Agreement

The contract is hereby amended as follows:

By deleting, in subparagraph 1.7. of the General Provisions the date June 30, 2011 and substituting therefore date June 30, 2012.

Contractor Initials: RPS  
Date: 7-25-2011

By deleting, in subparagraph 1.8. of the General Provisions the number \$878,656.80 and substituting therefore the number \$1,791,545.09.

2. Amendment and Modification of Exhibit A, Scope of Work

2.1 Delete in sub-paragraph 1.2.2 the date August 1, 2010 and substituting therefore date August 1, 2011.

2.2. Change Paragraph 3.3. to read as follows:

3.3 The Contractor agrees to serve the current total of 675 persons receiving guardianship and protection services, plus 13 pending cases, plus any new persons referred in accordance with paragraphs 1.4 above. However, the Contractor shall not be obligated to accept more than 701 cases during the contract period. While the Bureau shall provide the Contractor with letters of approval for each new case assigned to the Contractor, the Contractor may not bill for services until the Contractor is actually appointed as guardian by a probate court. In addition payments under this contract constitute payment in full for guardianship over the person services and the contractor shall not accept any additional payments from the ward or from other funds of the ward.

2.3. Change Paragraph 3.4. to read as follows:

3.4 The Commencement date of this agreement shall be July 1, 2011, or the date of Governor and Council approval, whichever is later.

3. Amendments and Modifications of Exhibit B, Methods of Payment

3.1. Change Paragraph 1. to read as follows:

1. Subject to the availability of State funds, and in consideration for the satisfactory completion of the services to be performed under this Agreement, the State shall pay the Contractor a per diem per case rate approved by the Office of Client and Legal Services. However, regardless of the number of persons served by the Contractor during the program period, specified in paragraphs 3.1. and 3.2. of the General Provisions of this Agreement, the State shall pay the Contractor a minimum amount of \$1,715,317.29 during the program period. The total of all payments authorized or actually made hereunder shall not exceed the amount of \$1,791,545.09, the price limitation set forth in block 1.8. of the General Provisions.

1.1. The per diem reimbursement rate for the provision of services to persons served under this Agreement shall be:

Contractor Initials: RPT  
Date: 4.25.2011

\$3.60 for up to 701 clients whose guardianship services are requested by the Bureaus of Behavioral Health and Developmental Services;

1.2. The hourly reimbursement rate for the provision of technical assistance to private guardians shall be \$60.00, not to exceed the amount of \$4,000.00.

1.3 The hourly reimbursement rate for the provision of training to area agency, mental health and elderly and adult agency staff and probate court personnel shall be \$60.00, not to exceed the amount of \$1,500.00.

3.2. Change Paragraph 2.1. to read as follows:

2.1. The State shall at the beginning of the Agreement period make a payment of \$145,667.23 the estimated fee for service payment due to the Contractor for providing services for a period of two months. Adjustments for underpayments or overpayments will be made at the end of the first quarter of the program period. This initial payment is the amount the State has determined is necessary to initiate the services.

3.3. Change Paragraph 2.2. to read as follows:

2.2. A monthly payment equal to \$72,883.62 will be made to the Contractor at the beginning of September and continuing through the end of the agreement or until the maximum amount of the contract has been reached. Adjustments for underpayments or overpayments will be made at the end of the first quarter of the program period and continue at the end of subsequent quarters through June 30, 2012. The per diem rate will be extended to the last day of the month following the month in which the client dies or for whom the guardianship/protection service is terminated.

3.4. Change Sub-paragraph 2.4 e. to read as follows:

e. Calculation of the total authorized payment due for the service quarter in accordance with 2.3. above;

The first "Quarterly Payment Computation and Authorization, Office of Public Guardian" report shall be submitted by no later than October 5, 2011 and the final report by July 10, 2012. Failure to submit such reports shall constitute an Event of Default.

3.5 Change Sub-paragraph 2.5.1. to read as follows:

2.5.1. The Contractor shall notify the State in its October "Quarterly Payment and Computation Report, Office of Public Guardian" in the event that payment for services for the months of July through September is less than \$428,829.32, whereupon the State shall issue a supplemental check for the difference between the amount paid to the Contractor and \$428,829.32.

Contractor Initials: RPS  
Date: 4-25-2011

3.6 Change Sub-paragraph 2.5.2 to read as follows:

2.5.2. The Contractor shall notify the State in its January "Quarterly Payment and Computation Report, Office of Public Guardian" in the event that payment for services for the months of July through December is less than \$857,658.64, whereupon the State shall issue a supplemental check for the difference between the amount paid to the Contractor and \$857,658.64.

3.7 Change Sub-paragraph 2.5.3. to read as follows:

2.5.3 The Contractor shall notify the State in its April "Quarterly Payment and Computation Report, Office of Public Guardian" in the event that payment for services for the months of July through March is less than \$1,286,487.96, whereupon the State shall issue a supplemental check for the difference between the amount paid to the Contractor and \$1, 286,487.96.

3.8 Change Paragraph 4. to read as follows:

4. This contract is funded by the New Hampshire General Fund as follows:

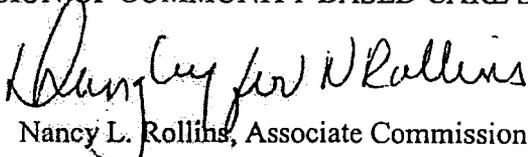
	Current Modified Budget	Increase (Decrease) Amount	Revised Modified Budget
<u>NH General Fund:</u>	\$878,656.80	\$912,797.29	\$1,791,454.09

5. Effective Date of Amendment: The effective date of this action is July 1, 2011, or the date of Governor and Council approval, whichever is later.

6. Continuance of Agreement: Except as specifically amended and modified by the terms and conditions of the Agreement, the Agreement and the obligation of the parties hereunder shall remain in full force and effect in accordance with the terms and conditions set forth therein.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year written above.

THE STATE OF NEW HAMPSHIRE  
DIVISION OF COMMUNITY BASED CARE SERVICES

By:   
Nancy L. Rollins, Associate Commissioner

Office of Public Guardian

By:   
(Type name & title of person from OPG here)

Roger P. Jobin, Treasurer

Contractor Initials: RAS  
Date: 4.25.2011

STATE OF NEW HAMPSHIRE

County of Merrimack

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of April, 2011, by Roger P. Jobin



(Seal)  
(Notary Public)

Andrea L. Sisson

Signature

Andrea L. Sisson

Name

Title: Notary Public/Justice of the Peace

Commission Expires: 12/11/12

Approved as to form, execution, and substance:

OFFICE OF THE ATTORNEY GENERAL

By: Jeanne P. Henrich  
Assistant Attorney General Jeanne P. Henrich

Date: 5/10/2011

Contractor Initials: RPJ  
Date: 4-26-2011

NH Department of Health and Human Services

STANDARD EXHIBIT D

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

ALTERNATIVE I - FOR GRANTEES OTHER THAN INDIVIDUALS

- US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS
- US DEPARTMENT OF EDUCATION - CONTRACTORS
- US DEPARTMENT OF AGRICULTURE - CONTRACTORS

This certification is required by the regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.). The January 31, 1989 regulations were amended and published as Part II of the May 25, 1990 Federal Register (pages 21681-21691), and require certification by grantees (and by inference, sub-grantees and sub-contractors), prior to award, that they will maintain a drug-free workplace. Section 3017.630(c) of the regulation provides that a grantee (and by inference, sub-grantees and sub-contractors) that is a State may elect to make one certification to the Department in each federal fiscal year in lieu of certificates for each grant during the federal fiscal year covered by the certification. The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment. Contractors using this form should send it to:

Commissioner  
NH Department of Health and Human Services  
129 Pleasant Street,  
Concord, NH 03301-6505

- (A) The grantee certifies that it will or will continue to provide a drug-free workplace by:
  - (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
  - (b) Establishing an ongoing drug-free awareness program to inform employees about—
    - (1) The dangers of drug abuse in the workplace;
    - (2) The grantee's policy of maintaining a drug-free workplace;
    - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
    - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

Contractor Initials: RRT  
Date: 4-25-2011

- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—
  - (1) Abide by the terms of the statement; and
  - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—
  - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - (2) Requiring such employee to participate satisfactorily 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;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant.

Place of Performance (street address, city, county, state, zip code) (list each location)

Check  if there are workplaces on file that are not identified here.

<u>Office of Public Guardian</u>	<u>From: 7/1/2011 To: 6/30/2012</u>	Deleted:
<small>(Contractor Name)</small>	<small>(Period Covered by this Certification)</small>	

Roger P. Jobin, Treasurer  
(Name & Title of Authorized Contractor Representative)

<u>Roger P. Jobin</u>	<u>4/25/2011</u>
<small>(Contractor Representative Signature)</small>	<small>(Date)</small>

Contractor Initials: RPJ  
 Date: 4-25-2011

NH Department of Health and Human Services

STANDARD EXHIBIT E

CERTIFICATION REGARDING LOBBYING

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. 1352, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

**US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS**  
**US DEPARTMENT OF EDUCATION - CONTRACTORS**  
**US DEPARTMENT OF AGRICULTURE - CONTRACTORS**

- Programs (indicate applicable program covered):
- \*Temporary Assistance to Needy Families under Title IV-A
  - \*Child Support Enforcement Program under Title IV-D
  - \*Social Services Block Grant Program under Title XX
  - \*Medicaid Program under Title XIX
  - \*Community Services Block Grant under Title VI
  - \*Child Care Development Block Grant under Title IV

Contract Period: 7/1/11 through 6/30/12

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, 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, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement (and by specific mention sub-grantee or sub-contractor).
- (2) 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 this Federal contract, grant, loan, or cooperative agreement (and by specific mention sub-grantee or sub-contractor), the undersigned shall complete and submit Standard Form LLL, (Disclosure Form to Report Lobbying, in accordance with its instructions, attached and identified as Standard Exhibit E-1.)
- (3) The undersigned shall require that the language of this certification be included in the award document for sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

  
(Contractor Representative Signature)

Roger P. Jobin, Treasurer  
(Authorized Contractor Representative Name & Title)

Office of Public Guardian  
(Contractor Name)

4.25.2011  
(Date)

NH DHHS, Office of Business Operations  
Standard Exhibit E – Certification Regarding Lobbying  
January 2009

Contractor Initials: RPJ  
Date: 4.25.2011

NH Department of Health and Human Services

STANDARD EXHIBIT F

CERTIFICATION REGARDING DEBARMENT, SUSPENSION  
AND OTHER RESPONSIBILITY MATTERS

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Executive Office of the President, Executive Order 12549 and 45 CFR Part 76 regarding Debarment, Suspension, and Other Responsibility Matters, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

**INSTRUCTIONS FOR CERTIFICATION**

1. By signing and submitting this proposal (contract), the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the NH Department of Health and Human Services' (DHHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when DHHS determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, DHHS may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the DHHS agency to whom this proposal (contract) is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549: 45 CFR Part 76. See the attached definitions.
6. The prospective primary participant agrees by submitting this proposal (contract) that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless \_\_\_\_\_ authorized \_\_\_\_\_ by \_\_\_\_\_ DHHS.

NH DHHS, Office of Business Operations  
Standard Exhibit F -  
Certification Regarding Debarment, Suspension and Other Responsibility Matters  
January 2009  
Page 1 of 3

Contractor Initials: RPJ  
Date: 4-25-2011

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," provided by DHHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or involuntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (of excluded parties).
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, DHHS may terminate this transaction for cause or default.

**PRIMARY COVERED TRANSACTIONS**

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - (b) have not within a three-year period preceding this proposal (contract) 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) transaction or a contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - (d) have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal (contract).

**LOWER TIER COVERED TRANSACTIONS**

By signing and submitting this lower tier proposal (contract), the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

- (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
- (b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal (contract).

The prospective lower tier participant further agrees by submitting this proposal (contract) that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

*Roger P. Jobin*  
(Contractor Representative Signature)

Roger P. Jobin, Treasurer  
(Authorized Contractor Representative Name & Title)

Office of Public Guardian  
(Contractor Name)

4-25-2011  
(Date)

Deleted: \_\_\_\_\_

Contractor Initials: RPJ  
Date: 4-25-2011

NH Department of Health and Human Services

STANDARD EXHIBIT G

CERTIFICATION REGARDING  
THE AMERICANS WITH DISABILITIES ACT COMPLIANCE

The Contractor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this proposal (contract) the Contractor agrees to make reasonable efforts to comply with all applicable provisions of the Americans with Disabilities Act of 1990.

  
\_\_\_\_\_  
(Contractor Representative Signature)

Roger P. Jobin, Treasurer  
\_\_\_\_\_  
(Authorized Contractor Representative Name & Title)

Office of Public Guardian  
\_\_\_\_\_  
(Contractor Name)

4.25.2011  
\_\_\_\_\_  
(Date)

NH Department of Health and Human Services

STANDARD EXHIBIT H

CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, Part C - Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

The Contractor identified in Section 1.3 of the General Provisions agrees, by signature of the Contractor's representative as identified in Section 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this contract, the Contractor agrees to make reasonable efforts to comply with all applicable provisions of Public Law 103-227, Part C, known as the Pro-Children Act of 1994.

  
(Contractor Representative Signature)

  
(Authorized Contractor Representative Name & Title)

Office of Public Guardian  
(Contractor Name)

4.25.2011  
(Date)

## NH Department of Health and Human Services

**STANDARD EXHIBIT I**  
**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**  
**BUSINESS ASSOCIATE AGREEMENT**

The Contractor identified in Section 1.3 of the General Provisions of the Agreement agrees to comply with the Health Insurance Portability and Accountability Act, Public Law 104-191 and with the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160 and 164 and those parts of the HITECH Act applicable to business associates. As defined herein, "Business Associate" shall mean the Contractor and subcontractors and agents of the Contractor that receive, use or have access to protected health information under this Agreement and "Covered Entity" shall mean the State of New Hampshire, Department of Health and Human Services.

**BUSINESS ASSOCIATE AGREEMENT**

**(1) Definitions.**

- a. "Breach" shall have the same meaning as the term "Breach" in Title XXX, Subtitle D. Sec. 13400.
- b. "Business Associate" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- c. "Covered Entity" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- d. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR Section 164.501.
- e. "Data Aggregation" shall have the same meaning as the term "data aggregation" in 45 CFR Section 164.501.
- f. "Health Care Operations" shall have the same meaning as the term "health care operations" in 45 CFR Section 164.501.
- g. "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act, Title XIII, Subtitle D, Part 1 & 2 of the American Recovery and Reinvestment Act of 2009.
- h. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160, 162 and 164.
- i. "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.501(g).
- j. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.

- k. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR Section 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- l. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR Section 164.501.
- m. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- n. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C, and amendments thereto.
- o. "Unsecured Protected Health Information" means protected health information that is not secured by a technology standard that renders protected health information unusable, unreasonable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.
- p. Other Definitions - All terms not otherwise defined herein shall have the meaning established under 45 C.F.R. Parts 160, 162 and 164, as amended from time to time, and the HITECH Act.

(2) **Use and Disclosure of Protected Health Information.**

- a. Business Associate shall not use, disclose, maintain or transmit Protected Health Information (PHI) except as reasonably necessary to provide the services outlined under Exhibit A of the Agreement. Further, the Business Associate shall not, and shall ensure that its directors, officers, employees and agents, do not use, disclose, maintain or transmit PHI in any manner that would constitute a violation of the Privacy and Security Rule.
- b. Business Associate may use or disclose PHI:
  - I. For the proper management and administration of the Business Associate;
  - II. As required by law, pursuant to the terms set forth in paragraph d. below; or
  - III. For data aggregation purposes for the health care operations of Covered Entity.
- c. To the extent Business Associate is permitted under the Agreement to disclose PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from the third party that such PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and (ii) an agreement from such third party to notify Business Associate, in accordance with the HITECH Act, Subtitle D, Part 1, Sec. 13402 of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.
- d. The Business Associate shall not, unless such disclosure is reasonably necessary to provide services under Exhibit A of the Agreement, disclose any PHI in response to a request for disclosure on the basis that it is required by law, without first notifying Covered Entity so that Covered Entity has an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, the Business Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all remedies.

- e. If the Covered Entity notifies the Business Associate that Covered Entity has agreed to be bound by additional restrictions over and above those uses or disclosures or security safeguards of PHI pursuant to the Privacy and Security Rule, the Business Associate shall be bound by such additional restrictions and shall not disclose PHI in violation of such additional restrictions and shall abide by any additional security safeguards.

**(3) Obligations and Activities of Business Associate.**

- a. Business Associate shall report to the designated Privacy Officer of Covered Entity, in writing, any use or disclosure of PHI in violation of the Agreement, including any security incident involving Covered Entity data, in accordance with the HITECH Act, Subtitle D, Part 1, Sec. 13402.
- b. The Business Associate shall comply with all sections of the Privacy and Security Rule as set forth in, the HITECH Act, Subtitle D, Part 1, Sec. 13401 and Sec. 13404.
- c. Business Associate shall make available all of its internal policies and procedures, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of Covered Entity to the Secretary for purposes of determining Covered Entity's compliance with HIPAA and the Privacy and Security Rule.
- d. Business Associate shall require all of its business associates that receive, use or have access to PHI under the Agreement, to agree in writing to adhere to the same restrictions and conditions on the use and disclosure of PHI contained herein, including the duty to return or destroy the PHI as provided under Section (3)b and (3)k herein. The Covered Entity shall be considered a direct third party beneficiary of the Contractor's business associate agreements with Contractor's intended business associates, who will be receiving PHI pursuant to this Agreement, with rights of enforcement and indemnification from such business associates who shall be governed by standard provision #13 of this Agreement for the purpose of use and disclosure of protected health information.
- e. Within five (5) business days of receipt of a written request from Covered Entity, Business Associate shall make available during normal business hours at its offices all records, books, agreements, policies and procedures relating to the use and disclosure of PHI to the Covered Entity, for purposes of enabling Covered Entity to determine Business Associate's compliance with the terms of the Agreement.
- f. Within ten (10) business days of receiving a written request from Covered Entity, Business Associate shall provide access to PHI in a Designated Record Set to the Covered Entity, or as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR Section 164.524.
- g. Within ten (10) business days of receiving a written request from Covered Entity for an amendment of PHI or a record about an individual contained in a Designated Record Set, the Business Associate shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under 45 CFR Section 164.526.

- h. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.
- i. Within ten (10) business days of receiving a written request from Covered Entity for a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill its obligations to provide an accounting of disclosures with respect to PHI in accordance with 45 CFR Section 164.528.
- j. In the event any individual requests access to, amendment of, or accounting of PHI directly from the Business Associate, the Business Associate shall within two (2) business days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or the Business Associate to violate HIPAA and the Privacy and Security Rule, the Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.
- k. Within ten (10) business days of termination of the Agreement, for any reason, the Business Associate shall return or destroy, as specified by Covered Entity, all PHI received from, or created or received by the Business Associate in connection with the Agreement, and shall not retain any copies or back-up tapes of such PHI. If return or destruction is not feasible, or the disposition of the PHI has been otherwise agreed to in the Agreement, Business Associate shall continue to extend the protections of the Agreement, to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. If Covered Entity, in its sole discretion, requires that the Business Associate destroy any or all PHI, the Business Associate shall certify to Covered Entity that the PHI has been destroyed.

**(4) Obligations of Covered Entity**

- a. Covered Entity shall notify Business Associate of any changes or limitation(s) in its Notice of Privacy Practices provided to individuals in accordance with 45 CFR Section 164.520, to the extent that such change or limitation may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall promptly notify Business Associate of any changes in, or revocation of permission provided to Covered Entity by individuals whose PHI may be used or disclosed by Business Associate under this Agreement, pursuant to 45 CFR Section 164.506 or 45 CFR Section 164.508.
- c. Covered entity shall promptly notify Business Associate of any restrictions on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(5) Termination for Cause

In addition to standard provision #10 of this Agreement the Covered Entity may immediately terminate the Agreement upon Covered Entity's knowledge of a breach by Business Associate of the Business Associate Agreement set forth herein as Exhibit I. The Covered Entity may either immediately terminate the Agreement or provide an opportunity for Business Associate to cure the alleged breach within a timeframe specified by Covered Entity. If Covered Entity determines that neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(6) Miscellaneous

- a. Definitions and Regulatory References. All terms used, but not otherwise defined herein, shall have the same meaning as those terms in the Privacy and Security Rule, and the HITECH Act as amended from time to time. A reference in the Agreement, as amended to include this Exhibit I, to a Section in the Privacy and Security Rule means the Section as in effect or as amended.
- b. Amendment. Covered Entity and Business Associate agree to take such action as is necessary to amend the Agreement, from time to time as is necessary for Covered Entity to comply with the changes in the requirements of HIPAA, the Privacy and Security Rule, and applicable federal and state law.
- c. Data Ownership. The Business Associate acknowledges that it has no ownership rights with respect to the PHI provided by or created on behalf of Covered Entity.
- d. Interpretation. The parties agree that any ambiguity in the Agreement shall be resolved to permit Covered Entity to comply with HIPAA, the Privacy and Security Rule and the HITECH Act.
- e. Segregation. If any term or condition of this Exhibit I or the application thereof to any person(s) or circumstance is held invalid, such invalidity shall not affect other terms or conditions which can be given effect without the invalid term or condition; to this end the terms and conditions of this Exhibit I are declared severable.
- f. Survival. Provisions in this Exhibit I regarding the use and disclosure of PHI, return or destruction of PHI, extensions of the protections of the Agreement in section 3 k, the defense and indemnification provisions of section 3 d and standard contract provision #13, shall survive the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Exhibit I.

Dept. of Health & Human Svcs.

Office of Public Guardian

The State Agency Name

Name of the Contractor

Nancy L. Rollins  
Signature of Authorized Representative

Roger P. Jobin  
Signature of Authorized Representative

Nancy L. Rollins

Roger P. Jobin

Name of Authorized Representative

Name of Authorized Representative

Associate Commissioner

Treasurer

Title of Authorized Representative

Title of Authorized Representative

Date

Date

4.25.2011

STANDARD EXHIBIT J

CERTIFICATION REGARDING THE FEDERAL FUNDING ACCOUNTABILITY AND  
TRANSPARENCY ACT (FFATA) COMPLIANCE

The Federal Funding Accountability and Transparency Act (FFATA) requires prime awardees of individual Federal grants equal to or greater than \$25,000 and awarded on or after October 1, 2010, to report on data related to executive compensation and associated first-tier sub-grants of \$25,000 or more. If the initial award is below \$25,000 but subsequent grant modifications result in a total award equal to or over \$25,000, the award is subject to the FFATA reporting requirements, as of the date of the award.

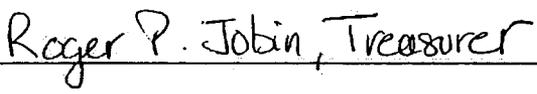
In accordance with 2 CFR Part 170 (*Reporting Subaward and Executive Compensation Information*), the Department of Health and Human Services (DHHS) must report the following information for any subaward or contract award subject to the FFATA reporting requirements:

- 1) Name of entity
- 2) Amount of award
- 3) Funding agency
- 4) NAICS code for contracts / CFDA program number for grants
- 5) Program source
- 6) Award title descriptive of the purpose of the funding action
- 7) Location of the entity
- 8) Principle place of performance
- 9) Unique identifier of the entity (DUNS #)
- 10) Total compensation and names of the top five executives if:
  - a. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25M annually and
  - b. Compensation information is not already available through reporting to the SEC.

Prime grant recipients must submit FFATA required data by the end of the month, plus 30 days, in which the award or award amendment is made.

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of The Federal Funding Accountability and Transparency Act, Public Law 109-282 and Public Law 110-252, and 2 CFR Part 170 (*Reporting Subaward and Executive Compensation Information*), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

The below named Contractor agrees to provide needed information as outlined above to the NH Department of Health and Human Services and to comply with all applicable provisions of the Federal Financial Accountability and Transparency Act.

	
(Contractor Representative Signature)	(Authorized Contractor Representative Name & Title)

<u>Office of Public Guardian</u>	<u>4.25.2011</u>
(Contractor Name)	(Date)

Contractor initials: PPJ  
 Date: 4.25.2011  
 Page # 1 of Page # 2

NH Department of Health and Human Services

STANDARD EXHIBIT J

FORM A

As the Contractor identified in Section 1.3 of the General Provisions, I certify that the responses to the below listed questions are true and accurate.

1. The DUNS number for your entity is: \_\_\_\_\_

2. In your business or organization's preceding completed fiscal year, did your business or organization receive (1) 80 percent or more of your annual gross revenue in U.S. federal contracts, subcontracts, loans, grants, sub-grants, and/or cooperative agreements; and (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements?

NO  YES

**If the answer to #2 above is NO, stop here**

**If the answer to #2 above is YES, please answer the following:**

3. Does the public have access to information about the compensation of the executives in your business or organization through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?

NO  YES

**If the answer to #3 above is YES, stop here**

**If the answer to #3 above is NO, please answer the following:**

4. The names and compensation of the five most highly compensated officers in your business or organization are as follows:

Name: _____	Amount: _____

Contractor initials: RPT  
Date: 4-25-2011  
Page # 2 of Page # 2

SAD  
[Signature]

DAS 6-7-12



STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF COMMUNITY BASED CARE SERVICES

BUREAU OF BEHAVIORAL HEALTH

Nicholas A. Toumpas  
Commissioner

Nancy L. Rollins  
Associate Commissioner

105 PLEASANT STREET, CONCORD, NH 03301  
603-271-5000 1-800-852-3345 Ext. 5000  
Fax: 603-271-5058 TDD Access: 1-800-735-2964

May 1, 2012

His Excellency, Governor John H. Lynch  
and the Honorable Executive Council  
State House  
Concord, New Hampshire 03301

APPROVED BY \_\_\_\_\_  
DATE 6/20/12  
PAGE 10  
ITEM # 80

REQUESTED ACTION

1. Authorize the Department of Health and Human Services, Division of Community Based Care Services, to amend an agreement, Purchase Order number 1009016, with the Office of Public Guardian (vendor code 166528), 2 Pillsbury St., Suite 400, Concord, NH 03301, to provide public guardianship services by increasing the price limitation by \$951,472.18 from \$1,791,454.09 to an amount not to exceed \$2,742,926.27 and extending the completion date to June 30, 2013, effective July 1, 2012, or date of Governor and Executive Council approval, whichever is later. This agreement was originally approved by Governor and Executive Council on June 9, 2010, item number 106, and subsequently amended on June 8, 2011 item number 126. Funds are available in the following account:

05-95-92-920010-7002 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVCS,  
HHS:BEHAVIORAL HEALTH-DIV OF, DIV OF BEHAVIORAL HEALTH, LEGAL-GUARDIANSHIP  
SVCS

Fiscal Year	Class/Object	Class Title	Current Modified Amount	Increase Amount	Revised Modified Amount
2011	102-500731	Contracts for Program Services	\$ 878,656.80		\$ 878,656.80
2012	102-500731	Contracts for Program Services	\$ 912,797.29		\$ 912,797.29
2013	102-500731	Contracts for Program Services	\$ 0.00	\$951,472.18	\$ 951,472.18
			\$1,791,454.09	\$951,472.18	\$2,742,926.27

2. Authorize an advance payment up to a maximum of \$151,839.10 of the contract price limitation.

## EXPLANATION

The purpose of this request is to extend an agreement with the Office of Public Guardian to provide guardianship and protection, on a statewide basis, to persons with mental illness and developmental impairments whose incapacities leave them at risk of substantial harm because of their inability to provide for their own food, shelter, health care, safety, or to manage their personal affairs. These services are needed to meet the State's statutory obligations to safeguard incapacitated persons in the state institutions as well as in community mental health and developmental service programs. It also carries out the requirements of RSA 135-C: 60, and RSA 171-A: 10, II. The Office of Public Guardian pursuant to RSA 547-B: 6 has been designated by the New Hampshire Supreme Court as an approved organization for the purpose of providing guardianship and protection services pursuant to RSA 464-A. This agreement will provide for guardianship services for up to 710 cases during the agreement period. The emphasis in providing such services will be to ensure that the guardianships maintained and sought will be limited in accordance with the standards embodied in RSA 464-A.

Using a public notice posted on the Department of Health and Human Services website on February 22, 2010, as RFP Number 11-DCBCS-GPS-01, the Division of Community Based Care Services requested proposals for providing public guardianship services in the State. Five renewals of one year each are possible at the Department's discretion. The Office of Public Guardian responded by submitting a proposal to provide public guardianship services to people with a mental illness, or a developmental disability who are eligible for State-funded services. The Office of Public Guardian was one of two agencies to apply to provide public guardianship services.

A competitive review process was utilized to evaluate all proposals submitted by the deadline. Participants in the review process included Department staff from the Bureau of Behavioral Health, the Bureau of Developmental Services, and the Office of Client and Legal Services. This process involved an assessment of the proposal submitted including an evaluation of scope of work, bidder background and experience, and the cost proposal. Both proposals submitted for fiscal year 2011 scored over the required minimum.

Based on a favorable review of the above by the review team and because the Office of Public Guardian has in previous agreements amply demonstrated its ability to provide high-level public guardianship services to clients and the community served, the Division of Community Based Care Services requests this agreement be extended for one year to allow the Office of Public Guardian to continue providing services.

The agreement for State Fiscal Year 2012 served up to 701 cases. In State Fiscal Year 2013 this agreement will serve up to 710 cases. Based upon previous experience, it is anticipated that there will be a need for this agency to assume these additional cases from the Bureau of Behavioral Health, or the Bureau of Developmental Services this fiscal year. These additional slots will be filled over the course of the year. Hence, over the year there will always be a certain number of vacant slots. The maximum contract amount includes a one and one-half (1 ½) percent reduction to reflect this vacancy rate.

This agreement also includes a line item for mentoring services and training. Mentoring services are provided to family members who are willing to serve as guardian but who require a period of support. Providing this support will obviate need for a public guardian in these cases and will thereby save the State from paying the cost of a permanent public guardianship.

Attached is a copy of the previously approved letter to the Governor and Executive Council. Additionally, the Request for Proposal contained a provision allowing for five one year extensions at the Department's discretion and approval by the Governor and Executive Council.

His Excellency, Governor John H. Lynch  
and the Honorable Executive Council  
May 1, 2012  
Page 3

Should Governor and Executive Council determine not to approve this request the Division of Community Based Care Services would be out of compliance with the requirements of RSA 135-C: 60, and RSA 171-A: 10, II and persons with mental illness and developmental impairments whose incapacities leave them at risk of substantial harm because of their inability to provide for their own food, shelter, health care, safety, or to manage their personal affairs would be harmed.

Area served: statewide.

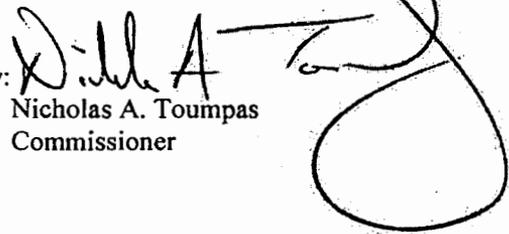
Source of funds: 100% general funds.

Respectfully submitted,



Nancy L. Rollins  
Associate Commissioner

Approved by:



Nicholas A. Toumpas  
Commissioner

RSP/pbr

Enclosures

**AMENDMENT TO AGREEMENT**

This Amendment to Agreement (hereinafter called the "Amendment"), dated this 15<sup>th</sup> day of May, 2012, between the State of New Hampshire, acting by and through the Division of Community Based Care Services, and Office of Public Guardian, a nonprofit organization organized under the laws of the State of New Hampshire with a place of business at 2 Pillsbury Street, Suite 400, Concord, New Hampshire 03301 (hereinafter referred to as the "Contractor").

**WHEREAS**, on February 22, 2010, the Division of Community Based Care Services issued a public notice for a Request For Proposal for "Guardianship and Protective Services in New Hampshire" which cited the following:

"Contracted services shall commence on July 1, 2010 or on the Governor and Executive Council approval date, whichever is later, and shall continue until June 30, 2011. Five renewals of one year each may be possible at the Department's discretion", and

**WHEREAS**, the Contractor was one of two selected contractors, and

**WHEREAS**, pursuant to an Agreement approved on June 9, 2010, the Contractor agreed to provide certain services upon the terms and conditions specified in the Agreement, in consideration of payment by the Division of Community Based Care Services of certain sums specified therein; and

**WHEREAS**, pursuant to paragraph 17 of the Agreement, the Agreement may be amended, waived, or discharged only by an instrument in writing signed by the parties thereto and only after the approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire;

**WHEREAS**, the Division of Community Based Care Services and the Contractor have agreed to extend the Agreement for one year in certain respects;

**NOW THEREFORE**, in consideration of the foregoing and of the covenants and conditions contained in the Agreement and set forth herein, the parties do hereby agree as follows:

1. Amendments and Modifications of Agreement

The contract is hereby amended as follows:

By deleting, in subparagraph 1.7. of the General Provisions the date June 30, 2012 and substituting therefore date June 30, 2013.

Contractor Initials: 205  
Date: 5.15.2012

By deleting, in subparagraph 1.8. of the General Provisions the number \$1,791,545.09 and substituting therefore the number \$2,742,926.27.

2. Amendment and Modification of Exhibit A, Scope of Work

2.1 Delete in sub-paragraph 1.2.2 the date August 1, 2011 and substituting therefore date August 1, 2012.

2.2. Change Paragraph 3.3. to read as follows:

3.3 The Contractor agrees to serve the current total of 682 persons receiving guardianship and protection services plus any new persons referred in accordance with paragraphs 1.4 above. However, the Contractor shall not be obligated to accept more than 710 cases during the contract period. While the Bureau shall provide the Contractor with letters of approval for each new case assigned to the Contractor, the Contractor may not bill for services until the Contractor is actually appointed as guardian by a probate court. In addition payments under this contract constitute payment in full for guardianship over the person services and the contractor shall not accept any additional payments from the ward or from other funds of the ward.

2.3. Change Paragraph 3.4. to read as follows:

3.4 The Commencement date of this agreement shall be July 1, 2012, or the date of Governor and Council approval, whichever is later.

3. Amendments and Modifications of Exhibit B, Methods of Payment

3.1. Change Paragraph 1. to read as follows:

1. Subject to the availability of State funds, and in consideration for the satisfactory completion of the services to be performed under this Agreement, the State shall pay the Contractor a per diem per case rate approved by the Office of Client and Legal Services. However, regardless of the number of persons served by the Contractor during the program period, specified in paragraphs 3.1. and 3.2. of the General Provisions of this Agreement, the State shall pay the Contractor a minimum amount of \$2,626,351.90 during the program period. The total of all payments authorized or actually made hereunder shall not exceed the amount of \$2,742,926.27, the price limitation set forth in block 1.8. of the General Provisions.

1.1. The per diem reimbursement rate for the provision of services to persons served under this Agreement shall be:

Contractor Initials: RPS  
Date: 5/12-2012

\$3.70 for up to 710 clients whose guardianship services are requested by the Bureaus of Behavioral Health and Developmental Services;

1.2. The hourly reimbursement rate for the provision of technical assistance to private guardians shall be \$60.00, not to exceed the amount of \$5,000.00.

1.3 The hourly reimbursement rate for the provision of training to area agency, mental health and elderly and adult agency staff and probate court personnel shall be \$60.00, not to exceed the amount of \$2,000.00.

3.2. Change Paragraph 2.1. to read as follows:

2.1. The State shall at the beginning of the Agreement period make a payment of \$151,839.10 the estimated fee for service payment due to the Contractor for providing services for a period of two months. Adjustments for underpayments or overpayments will be made at the end of the first quarter of the program period. This initial payment is the amount the State has determined is necessary to initiate the services.

3.3. Change Paragraph 2.2. to read as follows:

2.2. A monthly payment equal to \$75,919.55 will be made to the Contractor at the beginning of September and continuing through the end of the agreement or until the maximum amount of the contract has been reached. Adjustments for underpayments or overpayments will be made at the end of the first quarter of the program period and continue at the end of subsequent quarters through June 30, 2012. The per diem rate will be extended to the last day of the month following the month in which the client dies or for whom the guardianship/protection service is terminated.

3.4. Change Sub-paragraph 2.4 e. to read as follows:

e. Calculation of the total authorized payment due for the service quarter in accordance with 2.3. above;

The first "Quarterly Payment Computation and Authorization, Office of Public Guardian" report shall be submitted by no later than October 5, 2012 and the final report by July 10, 2013. Failure to submit such reports shall constitute an Event of Default.

3.5 Change Sub-paragraph 2.5.1. to read as follows:

2.5.1. The Contractor shall notify the State in its October "Quarterly Payment and Computation Report, Office of Public Guardian" in the event that payment for services for the months of July through September is less than \$656,587.97, whereupon the State shall issue a supplemental check for the difference between the amount paid to the Contractor and \$656,587.97.

Contractor Initials: 5.15.2012  
Date: RPS

3.6 Change Sub-paragraph 2.5.2 to read as follows:

2.5.2. The Contractor shall notify the State in its January "Quarterly Payment and Computation Report, Office of Public Guardian" in the event that payment for services for the months of July through December is less than \$1,313,175.94, whereupon the State shall issue a supplemental check for the difference between the amount paid to the Contractor and \$1,313,175.94.

3.7 Change Sub-paragraph 2.5.3. to read as follows:

2.5.3 The Contractor shall notify the State in its April "Quarterly Payment and Computation Report, Office of Public Guardian" in the event that payment for services for the months of July through March is less than \$1,969,763.92, whereupon the State shall issue a supplemental check for the difference between the amount paid to the Contractor and \$1,969,763.92.

3.8 Change Paragraph 4. to read as follows:

4. This contract is funded by the New Hampshire General Fund as follows:

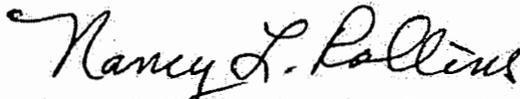
	Current Modified Budget	Increase (Decrease) Amount	Revised Modified Budget
<u>NH General Fund:</u>	\$1,791,454.09	\$951,472.18	\$2,742,926.27

5. Effective Date of Amendment: The effective date of this action is July 1, 2012, or the date of Governor and Council approval, whichever is later.

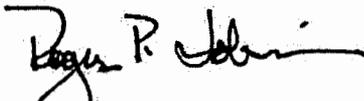
6. Continuance of Agreement: Except as specifically amended and modified by the terms and conditions of the Agreement, the Agreement and the obligation of the parties hereunder shall remain in full force and effect in accordance with the terms and conditions set forth therein.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year written above.

THE STATE OF NEW HAMPSHIRE  
DIVISION OF COMMUNITY BASED CARE SERVICES

By:   
Nancy L. Rollins, Associate Commissioner

Office of Public Guardian

By:   
(type name & title of person from OPG here)

ROGER P. JOBIN  
TREASURER 5.15.2012

Contractor Initials: RJT  
Date: 5.15.2012

STATE OF NEW HAMPSHIRE

County of Merrimack

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of May, 2012, by Roger P. Fabian

Andrea L. Sisson

Signature

Andrea L. Sisson

Name

Title: Notary Public Justice of the Peace

Commission Expires:

(Seal)  
(Notary Public)



Approved as to form, execution, and substance:

OFFICE OF THE ATTORNEY GENERAL

By:

Jeanne P. Herrick

Jeanne P. Herrick

Attorney

Date:

22 May 2012

Contractor Initials: RFB  
Date: 5.15.2012

Contractor Initials: RAJ  
Date: 5-15-2012

Page 1 of 2

CERTIFICATE OF VOTE

I, Robert Welle, do hereby certify that:

1. I am the duly elected Clerk of the Office of Public Guardian, Inc. (the "Corporation")
2. The following are true copies of two resolutions duly adopted at a meeting of the Board of Directors of the Corporation duly held on March 27, 2012.

RESOLVED: That this corporation enter into a contract with the State of New Hampshire, acting through the Division of Community Based Care Services, concerning the following matter:

Guardianship Program

RESOLVED: That the Treasurer hereby is authorized on behalf of this corporation to enter into said contract with the State of New Hampshire and to execute any and all documents, agreements and other instruments, and any amendments, revisions, or modifications hereto as may be necessary, desirable or appropriate.

3. The foregoing resolutions have not been amended or revoked and remain in full force and effect as of May 15, 2012.
4. Roger Jobin is the duly elected Treasurer of this Corporation.

Robert A. Welle  
Clerk

State of New Hampshire  
County of ~~Merrimack~~ Hillsborough

The foregoing instrument was acknowledged before me on this 15th day of May, 2012

*Brenda M Beer*

Notary Public/Justice of the Peace

My Commission Expires: \_\_\_\_\_

**BRENDA M. BEER, Notary Public**  
**My Commission Expires September 23, 2014**

Contractor Initials: RB  
Date: 6-25-12

NH Department of Health and Human Services

STANDARD EXHIBIT D

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

**ALTERNATIVE I - FOR GRANTEES OTHER THAN INDIVIDUALS**

**US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS**  
**US DEPARTMENT OF EDUCATION - CONTRACTORS**  
**US DEPARTMENT OF AGRICULTURE - CONTRACTORS**

This certification is required by the regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.). The January 31, 1989 regulations were amended and published as Part II of the May 25, 1990 Federal Register (pages 21681-21691), and require certification by grantees (and by inference, sub-grantees and sub-contractors), prior to award, that they will maintain a drug-free workplace. Section 3017.630(c) of the regulation provides that a grantee (and by inference, sub-grantees and sub-contractors) that is a State may elect to make one certification to the Department in each federal fiscal year in lieu of certificates for each grant during the federal fiscal year covered by the certification. The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment. Contractors using this form should send it to:

Commissioner  
NH Department of Health and Human Services  
129 Pleasant Street,  
Concord, NH 03301-6505

- (A) The grantee certifies that it will or will continue to provide a drug-free workplace by:
- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
  - (b) Establishing an ongoing drug-free awareness program to inform employees about
    - (1) The dangers of drug abuse in the workplace;
    - (2) The grantee's policy of maintaining a drug-free workplace;
    - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
    - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will
  - (1) Abide by the terms of the statement; and
  - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted
  - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - (2) Requiring such employee to participate satisfactorily 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;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant.

Place of Performance (street address, city, county, state, zip code) (list each location)

Check  if there are workplaces on file that are not identified here.

Office of Public Guardian From: 7/1/12 To: 6/30/13  
 (Contractor Name) (Period Covered by this Certification)

Roger P. Jobin Treasurer  
 (Name & Title of Authorized Contractor Representative)

Roger P. Jobin 5.15.2012  
 (Contractor Representative Signature) (Date)

NH Department of Health and Human Services

STANDARD EXHIBIT E

CERTIFICATION REGARDING LOBBYING

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. 1352, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

**US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS**  
**US DEPARTMENT OF EDUCATION - CONTRACTORS**  
**US DEPARTMENT OF AGRICULTURE - CONTRACTORS**

- Programs (indicate applicable program covered):
- \*Temporary Assistance to Needy Families under Title IV-A
  - \*Child Support Enforcement Program under Title IV-D
  - \*Social Services Block Grant Program under Title XX
  - \*Medicaid Program under Title XIX
  - \*Community Services Block Grant under Title VI
  - \*Child Care Development Block Grant under Title IV

Contract Period: 7/1/12 through 6/30/13

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, 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, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement (and by specific mention sub-grantee or sub-contractor).
- (2) 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 this Federal contract, grant, loan, or cooperative agreement (and by specific mention sub-grantee or sub-contractor), the undersigned shall complete and submit Standard Form LLL, (Disclosure Form to Report Lobbying, in accordance with its instructions, attached and identified as Standard Exhibit E-1.)
- (3) The undersigned shall require that the language of this certification be included in the award document for sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Roger P. Adonis  
(Contractor Representative Signature)

Roger P. Jobin Treasurer  
(Authorized Contractor Representative Name & Title)

Office of Public Guardian  
(Contractor Name)

5.15.2012  
(Date)

NH Department of Health and Human Services

STANDARD EXHIBIT F

CERTIFICATION REGARDING DEBARMENT, SUSPENSION  
AND OTHER RESPONSIBILITY MATTERS

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Executive Office of the President, Executive Order 12549 and 45 CFR Part 76 regarding Debarment, Suspension, and Other Responsibility Matters, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

**INSTRUCTIONS FOR CERTIFICATION**

1. By signing and submitting this proposal (contract), the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the NH Department of Health and Human Services' (DHHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when DHHS determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, DHHS may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the DHHS agency to whom this proposal (contract) is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549: 45 CFR Part 76. See the attached definitions.
6. The prospective primary participant agrees by submitting this proposal (contract) that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless \_\_\_\_\_ authorized \_\_\_\_\_ by \_\_\_\_\_ DHHS.

Contractor Initials: PPS

Date: 5.15.12

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," provided by DHHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or involuntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (of excluded parties).
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, DHHS may terminate this transaction for cause or default.

**PRIMARY COVERED TRANSACTIONS**

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - (b) have not within a three-year period preceding this proposal (contract) 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) transaction or a contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - (d) have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal (contract).

**LOWER TIER COVERED TRANSACTIONS**

By signing and submitting this lower tier proposal (contract), the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

- (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
- (b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal (contract).

The prospective lower tier participant further agrees by submitting this proposal (contract) that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Roger P. Jobin  
(Contractor Representative Signature)

Roger P. Jobin Treasurer  
(Authorized Contractor Representative Name & Title)

Office of Public Guardian  
(Contractor Name)

5.15.2012  
(Date)

Contractor Initials: RPS

Date: 5.15.2012

NH Department of Health and Human Services

STANDARD EXHIBIT G

CERTIFICATION REGARDING  
THE AMERICANS WITH DISABILITIES ACT COMPLIANCE

The Contractor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this proposal (contract) the Contractor agrees to make reasonable efforts to comply with all applicable provisions of the Americans with Disabilities Act of 1990.

Roger P. Jobin  
(Contractor Representative Signature)

Roger P. Jobin Treasurer  
(Authorized Contractor Representative Name & Title)

Office of Public Guardian  
(Contractor Name)

5.15.2012  
(Date)

NH Department of Health and Human Services

STANDARD EXHIBIT H

CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, Part C - Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

The Contractor identified in Section 1.3 of the General Provisions agrees, by signature of the Contractor's representative as identified in Section 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this contract, the Contractor agrees to make reasonable efforts to comply with all applicable provisions of Public Law 103-227, Part C, known as the Pro-Children Act of 1994.

Roger P. Jobin  
(Contractor Representative Signature)

Roger P. Jobin Treasurer  
(Authorized Contractor Representative Name & Title)

Office of Public Guardian  
(Contractor Name)

5.15.2012  
(Date)

## NH Department of Health and Human Services

**STANDARD EXHIBIT I**  
**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**  
**BUSINESS ASSOCIATE AGREEMENT**

The Contractor identified in Section 1.3 of the General Provisions of the Agreement agrees to comply with the Health Insurance Portability and Accountability Act, Public Law 104-191 and with the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160 and 164 and those parts of the HITECH Act applicable to business associates. As defined herein, "Business Associate" shall mean the Contractor and subcontractors and agents of the Contractor that receive, use or have access to protected health information under this Agreement and "Covered Entity" shall mean the State of New Hampshire, Department of Health and Human Services.

**BUSINESS ASSOCIATE AGREEMENT**

**(1) Definitions.**

- a. "Breach" shall have the same meaning as the term "Breach" in Title XXX, Subtitle D. Sec. 13400.
- b. "Business Associate" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- c. "Covered Entity" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- d. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR Section 164.501.
- e. "Data Aggregation" shall have the same meaning as the term "data aggregation" in 45 CFR Section 164.501.
- f. "Health Care Operations" shall have the same meaning as the term "health care operations" in 45 CFR Section 164.501.
- g. "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act, Title XIII, Subtitle D, Part 1 & 2 of the American Recovery and Reinvestment Act of 2009.
- h. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160, 162 and 164.
- i. "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.501(g).
- j. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.

- k. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR Section 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- l. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR Section 164.501.
- m. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- n. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C, and amendments thereto.
- o. "Unsecured Protected Health Information" means protected health information that is not secured by a technology standard that renders protected health information unusable, unreasonable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.
- p. Other Definitions - All terms not otherwise defined herein shall have the meaning established under 45 C.F.R. Parts 160, 162 and 164, as amended from time to time, and the HITECH Act.

**(2) Use and Disclosure of Protected Health Information.**

- a. Business Associate shall not use, disclose, maintain or transmit Protected Health Information (PHI) except as reasonably necessary to provide the services outlined under Exhibit A of the Agreement. Further, the Business Associate shall not, and shall ensure that its directors, officers, employees and agents, do not use, disclose, maintain or transmit PHI in any manner that would constitute a violation of the Privacy and Security Rule.
- b. Business Associate may use or disclose PHI:
  - I. For the proper management and administration of the Business Associate;
  - II. As required by law, pursuant to the terms set forth in paragraph d. below; or
  - III. For data aggregation purposes for the health care operations of Covered Entity.
- c. To the extent Business Associate is permitted under the Agreement to disclose PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from the third party that such PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and (ii) an agreement from such third party to notify Business Associate, in accordance with the HITECH Act, Subtitle D, Part 1, Sec. 13402 of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.
- d. The Business Associate shall not, unless such disclosure is reasonably necessary to provide services under Exhibit A of the Agreement, disclose any PHI in response to a request for disclosure on the basis that it is required by law, without first notifying Covered Entity so that Covered Entity has an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, the Business Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all remedies.

- e. If the Covered Entity notifies the Business Associate that Covered Entity has agreed to be bound by additional restrictions over and above those uses or disclosures or security safeguards of PHI pursuant to the Privacy and Security Rule, the Business Associate shall be bound by such additional restrictions and shall not disclose PHI in violation of such additional restrictions and shall abide by any additional security safeguards.

(3) **Obligations and Activities of Business Associate.**

- a. Business Associate shall report to the designated Privacy Officer of Covered Entity, in writing, any use or disclosure of PHI in violation of the Agreement, including any security incident involving Covered Entity data, in accordance with the HITECH Act, Subtitle D, Part 1, Sec. 13402.
- b. The Business Associate shall comply with all sections of the Privacy and Security Rule as set forth in, the HITECH Act, Subtitle D, Part 1, Sec. 13401 and Sec.13404.
- c. Business Associate shall make available all of its internal policies and procedures, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of Covered Entity to the Secretary for purposes of determining Covered Entity's compliance with HIPAA and the Privacy and Security Rule.
- d. Business Associate shall require all of its business associates that receive, use or have access to PHI under the Agreement, to agree in writing to adhere to the same restrictions and conditions on the use and disclosure of PHI contained herein, including the duty to return or destroy the PHI as provided under Section (3)b and (3)k herein. The Covered Entity shall be considered a direct third party beneficiary of the Contractor's business associate agreements with Contractor's intended business associates, who will be receiving PHI pursuant to this Agreement, with rights of enforcement and indemnification from such business associates who shall be governed by standard provision #13 of this Agreement for the purpose of use and disclosure of protected health information.
- e. Within five (5) business days of receipt of a written request from Covered Entity, Business Associate shall make available during normal business hours at its offices all records, books, agreements, policies and procedures relating to the use and disclosure of PHI to the Covered Entity, for purposes of enabling Covered Entity to determine Business Associate's compliance with the terms of the Agreement.
- f. Within ten (10) business days of receiving a written request from Covered Entity, Business Associate shall provide access to PHI in a Designated Record Set to the Covered Entity, or as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR Section 164.524.
- g. Within ten (10) business days of receiving a written request from Covered Entity for an amendment of PHI or a record about an individual contained in a Designated Record Set, the Business Associate shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under 45 CFR Section 164.526.

- h. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.
- i. Within ten (10) business days of receiving a written request from Covered Entity for a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill its obligations to provide an accounting of disclosures with respect to PHI in accordance with 45 CFR Section 164.528.
- j. In the event any individual requests access to, amendment of, or accounting of PHI directly from the Business Associate, the Business Associate shall within two (2) business days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or the Business Associate to violate HIPAA and the Privacy and Security Rule, the Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.
- k. Within ten (10) business days of termination of the Agreement, for any reason, the Business Associate shall return or destroy, as specified by Covered Entity, all PHI received from, or created or received by the Business Associate in connection with the Agreement, and shall not retain any copies or back-up tapes of such PHI. If return or destruction is not feasible, or the disposition of the PHI has been otherwise agreed to in the Agreement, Business Associate shall continue to extend the protections of the Agreement, to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. If Covered Entity, in its sole discretion, requires that the Business Associate destroy any or all PHI, the Business Associate shall certify to Covered Entity that the PHI has been destroyed.

(4) **Obligations of Covered Entity**

- a. Covered Entity shall notify Business Associate of any changes or limitation(s) in its Notice of Privacy Practices provided to individuals in accordance with 45 CFR Section 164.520, to the extent that such change or limitation may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall promptly notify Business Associate of any changes in, or revocation of permission provided to Covered Entity by individuals whose PHI may be used or disclosed by Business Associate under this Agreement, pursuant to 45 CFR Section 164.506 or 45 CFR Section 164.508.
- c. Covered entity shall promptly notify Business Associate of any restrictions on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(5) **Termination for Cause**

In addition to standard provision #10 of this Agreement the Covered Entity may immediately terminate the Agreement upon Covered Entity's knowledge of a breach by Business Associate of the Business Associate Agreement set forth herein as Exhibit I. The Covered Entity may either immediately terminate the Agreement or provide an opportunity for Business Associate to cure the alleged breach within a timeframe specified by Covered Entity. If Covered Entity determines that neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(6) **Miscellaneous**

- a. **Definitions and Regulatory References.** All terms used, but not otherwise defined herein, shall have the same meaning as those terms in the Privacy and Security Rule, and the HITECH Act as amended from time to time. A reference in the Agreement, as amended to include this Exhibit I, to a Section in the Privacy and Security Rule means the Section as in effect or as amended.
- b. **Amendment.** Covered Entity and Business Associate agree to take such action as is necessary to amend the Agreement, from time to time as is necessary for Covered Entity to comply with the changes in the requirements of HIPAA, the Privacy and Security Rule, and applicable federal and state law.
- c. **Data Ownership.** The Business Associate acknowledges that it has no ownership rights with respect to the PHI provided by or created on behalf of Covered Entity.
- d. **Interpretation.** The parties agree that any ambiguity in the Agreement shall be resolved to permit Covered Entity to comply with HIPAA, the Privacy and Security Rule and the HITECH Act.
- e. **Segregation.** If any term or condition of this Exhibit I or the application thereof to any person(s) or circumstance is held invalid, such invalidity shall not affect other terms or conditions which can be given effect without the invalid term or condition; to this end the terms and conditions of this Exhibit I are declared severable.
- f. **Survival.** Provisions in this Exhibit I regarding the use and disclosure of PHI, return or destruction of PHI, extensions of the protections of the Agreement in section 3 k, the defense and indemnification provisions of section 3 d and standard contract provision #13, shall survive the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Exhibit I.

Dept. of Health & Human Svs.  
The State Agency Name

Office of Public Guardian  
Name of the Contractor

Nancy L. Rollins  
Signature of Authorized Representative

Roger P. Jobin  
Signature of Authorized Representative

Nancy L. Rollins  
Name of Authorized Representative

Roger P. Jobin  
Name of Authorized Representative

Associate Commissioner  
Title of Authorized Representative

Treasurer  
Title of Authorized Representative

5/22/12  
Date

5.15.2012  
Date

NH Department of Health and Human Services

STANDARD EXHIBIT J

CERTIFICATION REGARDING THE FEDERAL FUNDING ACCOUNTABILITY AND  
TRANSPARENCY ACT (FFATA) COMPLIANCE

The Federal Funding Accountability and Transparency Act (FFATA) requires prime awardees of individual Federal grants equal to or greater than \$25,000 and awarded on or after October 1, 2010, to report on data related to executive compensation and associated first-tier sub-grants of \$25,000 or more. If the initial award is below \$25,000 but subsequent grant modifications result in a total award equal to or over \$25,000, the award is subject to the FFATA reporting requirements, as of the date of the award.

In accordance with 2 CFR Part 170 (*Reporting Subaward and Executive Compensation Information*), the Department of Health and Human Services (DHHS) must report the following information for any subaward or contract award subject to the FFATA reporting requirements:

- 1) Name of entity
- 2) Amount of award
- 3) Funding agency
- 4) NAICS code for contracts / CFDA program number for grants
- 5) Program source
- 6) Award title descriptive of the purpose of the funding action
- 7) Location of the entity
- 8) Principle place of performance
- 9) Unique identifier of the entity (DUNS #)
- 10) Total compensation and names of the top five executives if:
  - a. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25M annually and
  - b. Compensation information is not already available through reporting to the SEC.

Prime grant recipients must submit FFATA required data by the end of the month, plus 30 days, in which the award or award amendment is made.

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of The Federal Funding Accountability and Transparency Act, Public Law 109-282 and Public Law 110-252, and 2 CFR Part 170 (*Reporting Subaward and Executive Compensation Information*), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

The below named Contractor agrees to provide needed information as outlined above to the NH Department of Health and Human Services and to comply with all applicable provisions of the Federal Financial Accountability and Transparency Act.

Roger P. John

(Contractor Representative Signature)

Roger P. John Treasurer

(Authorized Contractor Representative Name & Title)

Office of Public Guardian

(Contractor Name)

5.15.2012

(Date)

Contractor initials: RPS

Date: 5.15.2012

Page # 1 of Page # 2

NH Department of Health and Human Services

STANDARD EXHIBIT J

FORM A

As the Contractor identified in Section 1.3 of the General Provisions, I certify that the responses to the below listed questions are true and accurate.

1. The DUNS number for your entity is: \_\_\_\_\_

2. In your business or organization's preceding completed fiscal year, did your business or organization receive (1) 80 percent or more of your annual gross revenue in U.S. federal contracts, subcontracts, loans, grants, sub-grants, and/or cooperative agreements; and (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements?

NO  YES

**If the answer to #2 above is NO, stop here**

**If the answer to #2 above is YES, please answer the following:**

3. Does the public have access to information about the compensation of the executives in your business or organization through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?

NO  YES

**If the answer to #3 above is YES, stop here**

**If the answer to #3 above is NO, please answer the following:**

4. The names and compensation of the five most highly compensated officers in your business or organization are as follows:

Name: _____	Amount: _____

Contractor initials: EPS  
Date: 5/15/2012  
Page # 2 of Page # 2



Nicholas A. Toumpas  
Commissioner

Nancy L. Rollins  
Associate Commissioner

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF COMMUNITY BASED CARE SERVICES

BUREAU OF BEHAVIORAL HEALTH

105 PLEASANT STREET, CONCORD, NH 03301  
603-271-5000 1-800-852-3345 Ext. 5000  
Fax: 603-271-5058 TDD Access: 1-800-735-2964

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6/19/13 # 112

May 15, 2013

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

96% General Funds  
4% Federal Funds

REQUESTED ACTION

1. Authorize the Department of Health and Human Services, Division of Community Based Care Services, to amend an agreement, Purchase Order number 1009016, with the Office of Public Guardian (vendor code 166528), 2 Pillsbury St., Suite 400, Concord, NH 03301, to provide public guardianship services by increasing the price limitation by \$1,090,361.73 from \$2,742,926.27 to an amount not to exceed \$3,833,288.00 and extending the completion date to June 30, 2014, effective July 1, 2013, or date of Governor and Council approval, whichever is later. This agreement was originally approved by Governor and Council on June 9, 2010, item number 106, and subsequently amended on June 8, 2011, item number 126, and June 20, 2012, item number 80. Funds are anticipated to be available in the following accounts in State Fiscal Year 2014 based upon the availability and continued appropriation of funds in the future operating budget:

05-95-92-920010-7002 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS DEPT OF, HHS:BEHAVIORAL HEALTH DIV OF, DIV OF BEHAVIORAL HEALTH, LEGAL-GUARDIANSHIP SVCS

<u>Fiscal Year</u>	<u>Class/Object</u>	<u>Class Title</u>	<u>Current Modified Budget</u>	<u>Increase (Decrease) Amount</u>	<u>Revised Modified Budget</u>
2011	102-500731	Contracts for Program Services	\$ 878,656.80	\$ 0.00	\$ 878,656.80
2012	102-500731	Contracts for Program Services	\$ 912,797.29	\$ 0.00	\$ 912,797.29
2013	102-500731	Contracts for Program Services	\$ 951,472.18	\$ 0.00	\$ 951,472.18
2014	102-500731	Contracts for Program Services	\$ 0.00	\$ 990,361.73	\$ 990,361.73

05-95-48-481010-9255 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS DEPT OF, HHS:ELDERLY - ADULT SERVICES, GRANTS TO LOCALS, SOCIAL SERVICES BLOCK GRANT

<u>Fiscal Year</u>	<u>Class/Object</u>	<u>Class Title</u>	<u>Current Modified Budget</u>	<u>Increase (Decrease) Amount</u>	<u>Revised Modified Budget</u>
2014	102-500734	Contracts for Program Services	\$ 0.00	\$ 100,000.00	\$ 100,000.00
<b>Total</b>			<b>\$ 2,742,926.27</b>	<b>\$ 1,090,361.73</b>	<b>\$ 3,833,288.00</b>

2. Authorize an advance payment up to a maximum of \$158,045 of the contract price limitation.

## EXPLANATION

The purpose of this request is to extend an agreement with the Office of Public Guardian to provide guardianship and protection services, on a statewide basis, to persons with mental illness, developmental impairments and incapacitated adults who are abused, neglected or exploited whose incapacities leave them at risk of substantial harm because of their inability to provide for their own food, shelter, health care, safety, or to manage their personal affairs. These services are needed to meet the State's statutory obligations to safeguard incapacitated persons who are abused, neglected or exploited, in state institutions as well as in community mental health and developmental service programs. It also carries out the requirements of RSA 135-C: 60, RSA 171-A: 10, II and RSA 161-F:52. The Office of Public Guardian pursuant to RSA 547-B: 6 has been designated by the New Hampshire Supreme Court as an approved organization for the purpose of providing guardianship and protection services pursuant to RSA 464-A. This agreement will provide for guardianship services for up to 752 cases during the agreement period. The emphasis in providing such services will be to ensure that the guardianships maintained and sought will be limited in accordance with the standards embodied in RSA 464-A.

Using a public notice posted on the Department of Health and Human Services website on February 22, 2010, as RFP Number 11-DCBCS-GPS-01, the Division of Community Based Care Services requested proposals for providing public guardianship services in the State. Five renewals of one year each are possible at the Department's discretion. The Office of Public Guardian responded by submitting a proposal to provide public guardianship services to people with a mental illness, or a developmental disability who are eligible for State-funded services. The Office of Public Guardian was one of two agencies to apply to provide public guardianship services.

A competitive review process was utilized to evaluate all proposals submitted by the deadline. Participants in the review process included Department staff from the Bureau of Behavioral Health, the Bureau of Developmental Services, and the Office of Client and Legal Services. This process involved an assessment of the proposal submitted including an evaluation of scope of work, bidder background and experience, and the cost proposal. Both proposals submitted for fiscal year 2011 scored over the required minimum.

Based on a favorable review of the above by the review team and because the Office of Public Guardian has in previous agreements amply demonstrated its ability to provide high-level public guardianship services to clients and the community served, the Division of Community Based Care Services requests this agreement be extended for one year to allow the Office of Public Guardian to continue providing services.

With respect to the Agreement to purchase guardianship and protection services for incapacitated adults who are abused, neglected or exploited, an application for funding was released to the Office of Public Guardian on March 22, 2013. The application was reviewed and the funding and number of slots were negotiated. Since there are only two public guardianship agencies that have been approved by the New Hampshire Supreme Court, there were no other agencies seeking approval, and since the Department contracts with both of these agencies, a Request for Proposals would not be productive or necessary.

The agreement for State Fiscal Year 2013 served up to 710 cases. In State Fiscal Year 2014 this agreement will serve up to 752 cases based upon previous experience, it is anticipated that there will be a need for this agency to assume these additional cases from the Bureau of Behavioral Health, or the Bureau of Developmental Services this fiscal year. These additional slots will be filled over the course of the year.

This agreement also includes a line item for mentoring services and training. Mentoring services are provided to family members who are willing to serve as guardian but who require a period of support. Providing this support will obviate need for a public guardian in these cases and will thereby save the State from paying the cost of a permanent public guardianship.

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
Page 3

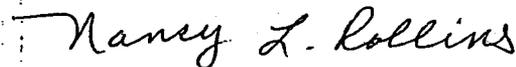
Attached is a copy of the previously approved letter to the Governor and Council. Additionally, the Request for Proposal contained a provision allowing for five one-year extensions at the Department's discretion and approval by the Governor and Council.

Should Governor and Council determine not to approve this request the Division of Community Based Care Services would be out of compliance with the requirements of RSA 135-C: 60, RSA 171-A: 10, II, and RSA 161-F:52 and persons with mental illness, developmental impairments and incapacitated adults who are abused, neglected or exploited, whose incapacities leave them at risk of substantial harm because of their inability to provide for their own food, shelter, health care, safety, or to manage their personal affairs would be harmed.

Area served: statewide.

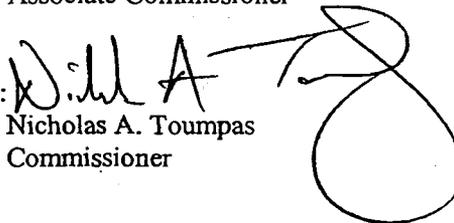
Source of funds: 96% General Funds and 4% Federal Funds.

Respectfully submitted,



Nancy L. Rollins  
Associate Commissioner

Approved by:



Nicholas A. Toumpas  
Commissioner

RSP/pbr/sl

Enclosures

# AMENDMENT TO AGREEMENT

This Amendment to Agreement (hereinafter called the "Amendment"), dated this 24<sup>th</sup> day of May, 2013, between the State of New Hampshire, acting by and through the Division of Community Based Care Services, and **Office of Public Guardian**, a nonprofit organization organized under the laws of the State of New Hampshire with a place of business at 2 Pillsbury Street, Suite 400, Concord, New Hampshire 03301 (hereinafter referred to as the "Contractor").

WHEREAS, on February 22, 2010, the Division of Community Based Care Services issued a public notice for a Request For Proposal for "Guardianship and Protective Services in New Hampshire" which cited the following:

"Contracted services shall commence on July 1, 2010, or on the Governor and Council approval date, whichever is later, and shall continue until June 30, 2011. Five renewals of one year each may be possible at the Department's discretion", and

WHEREAS, the Contractor was one of two selected contractors, and

WHEREAS, pursuant to an Agreement approved on June 9, 2010, the Contractor agreed to provide certain services upon the terms and conditions specified in the Agreement, in consideration of payment by the Division of Community Based Care Services of certain sums specified therein; and

WHEREAS, pursuant to paragraph 17 of the Agreement, the Agreement may be amended, waived, or discharged only by an instrument in writing signed by the parties thereto and only after the approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire;

WHEREAS, the Division of Community Based Care Services and the Contractor have agreed to extend the Agreement for one year in certain respects;

NOW THEREFORE, in consideration of the foregoing and of the covenants and conditions contained in the Agreement and set forth herein, the parties do hereby agree as follows:

1. Amendments and Modifications of Agreement

The contract is hereby amended as follows:

By deleting, in subparagraph 1.7. of the General Provisions the date June 30, 2013 and substituting therefore date June 30, 2014.

By deleting, in subparagraph 1.8. of the General Provisions the number \$2,742,926.27 and substituting therefore the number \$3,833,288.

2. Amendment and Modification of Exhibit A, Scope of Work, Provisions Applicable to All Services

2.1. Amend paragraph 1.1. by inserting "RSA 161-F:52" following "RSA 135-C:60."

Contractor Initials: RPS

Date: 5-24-13

- 2.2. Delete in sub-paragraph 1.2.2. the date August 1, 2011 and substituting therefore date August 1, 2014.
- 2.3. Amend paragraph 1.4. by deleting the first sentence of the paragraph and inserting:  
  
The Contractor shall not accept or agree to provide services to any person under the Agreement without the prior approval of the State through the Office of Client and Legal Services or the Bureau of Elderly & Adult Services Adult Protective Services Administrator or designee of the Department.
- 2.4. Amend paragraph 1.4.1. by inserting "or Bureau of Elderly & Adult Services" following "the Office of Client and Legal Services."
- 2.5. Amend paragraph 1.4.1.1. by inserting "or Bureau of Elderly & Adult Services" following "the Office of Client and Legal Services."
- 2.6. Amend paragraph 1.4.1.1. by deleting "and" after RSA 135-C:60 and inserting "and RSA 161-F:52." after "RSA 171-A:10, II".
- 2.7. Amend paragraph 1.6. by deleting "Probate Court" and substituting "Circuit Court-Probate Division".
- 2.8. Insert new paragraph 1.8. and renumber remaining paragraphs 1.9.-1.13. The new paragraph 1.8. to read as follows:  
  
1.8. The State agrees that the case management function regarding all referrals involving Bureau of Elderly & Adult Services clients will be supported by the BEAS Adult Protection Social Workers and the Contractor agrees to work closely with the BEAS APS Social Workers for a period of months, to be determined by the level of need following a referral.
- 2.9. In the newly renumbered paragraph 1.10., insert "or Bureau of Elderly & Adult Services" following "the Office of Client and Legal Services".

3. Amendment and Modification of Exhibit A, Scope of Work, Description of Guardianship Services

- 3.1. Amend paragraph 2.1. by deleting "Probate Court" and substituting "Circuit Court-Probate Division".
- 3.2. Amend paragraph 2.1.7. by deleting "Probate Court" and substituting "Circuit Court-Probate Division."
- 3.3. Insert new paragraph 2.1.8. to read as follows:  
  
2.1.8. If guardian of the estate, being available to make all decisions as required by RSA 464-A:26

4. Amendment and Modification of Exhibit A, Scope of Work, Guardianship and Protection Services

- 4.1. Amend paragraph 3.2. by inserting "or Bureau of Elderly & Adult Services." following "the Office of Client and Legal Services"
- 4.2. Amend paragraph 3.3. by inserting the following as an introductory phrase to the first sentence in the paragraph:

Contractor Initials: RPS  
Date: 5-24-13

- 3.3. For persons referred to Contractor by the Office of Client and Legal Services pursuant to RSA 135-C:60 and RSA 171-A:10; II.
- 4.3. Amend paragraph 3.3. by inserting "by the Office of Client and Legal Services," after "each new case assigned by the Contractor" in the third sentence of the paragraph.
- 4.4. Amend paragraph 3.3. by deleting "a probate Court" and substituting "the Circuit Court-Probate Division."
- 4.5. Amend Paragraph 3.3. to read as follows:
- 3.3. The Contractor agrees to serve the current total of 678 persons receiving guardianship and protection services plus any new persons referred in accordance with paragraphs 1.4 above. However, the Contractor shall not be obligated to accept more than 710 cases during the contract period. While the Bureau shall provide the Contractor with letters of approval for each new case assigned to the Contractor, the Contractor may not bill for services until the Contractor is actually appointed as guardian by the Circuit Court-Probate Division. In addition payments under this contract constitute payment in full for guardianship over the person services and the contractor shall not accept any additional payments from the ward or from other funds of the ward.
- 4.6. Insert new paragraph 3.4. and renumber next paragraph 3.5. The new paragraph 3.4. to read as follows:
- 3.4. For persons referred to Contractor by the Bureau of Elderly & Adult Services pursuant to RSA 161-F:52, the Contractor agrees to provide guardianship and protection services for no more than forty-two (42) individuals at any point in time during the contract period. While the Department shall provide the Contractor with letters of approval for each new case assigned to the Contractor by the Bureau of Elderly & Adult Services, the Contractor may not bill for services until the Contractor is actually appointed as guardian by the Circuit Court-Probate Division.
- 4.7. Amend Paragraph 3.5. to read as follows:
- 3.5. The Commencement date of this agreement shall be July 1, 2013, or the date of Governor and Council approval, whichever is later.

5. Amendments and Modifications of Exhibit B, Methods of Payment

5.1. Amend Paragraph 1. to read as follows:

1. Subject to the availability of State funds, and in consideration for the satisfactory completion of the services to be performed under this Agreement, the State shall pay the Contractor a per diem per case rate approved by the Office of Client and Legal Services for all BBH & BDS clients and the Bureau of Elderly and Adult Services for all BEAS clients. However, regardless of the number of persons served by the Contractor during the program period, specified in paragraphs 3.1. and 3.2. of the General Provisions of this Agreement, the State shall pay the Contractor a minimum amount of \$3,670,373 during the program period. The total of all payments authorized or actually made hereunder shall not exceed the amount of \$3,833,288, the price limitation set forth in block 1.8. of the General Provisions.

- 1.1. The per diem reimbursement rate for the provision of services to persons served under this Agreement shall be \$3.81 for up to 710 clients whose guardianship services are requested by the Bureaus of Behavioral Health and Developmental Services;

Contractor Initials: RPT  
Date: 5-24-13

- 1.2. The hourly reimbursement rate for the provision of technical assistance to private guardians shall be \$60.00, not to exceed the amount of \$1,500.
  - 1.3. The hourly reimbursement rate for the provision of training to area agency, mental health and elderly and adult agency staff and probate court personnel shall be \$60.00, not to exceed the amount of \$1,500.
  - 1.4. The per diem reimbursement rate for the provision of guardianship over the person services or the provision of guardianship over the estate services to persons served under this Agreement shall be \$6.29 for up to 42 clients whose guardianship services are requested by the Bureau of Elderly & Adult Services. The State shall reimburse Contractor separately for services provided as guardian over the person and guardian over the estate.
  - 1.5. For clients referred for guardianship services by the Bureau of Elderly and Adult Services, the actual cost paid by Contractor for expenses incurred in the performance of Contractor's duties under this Agreement including, but not limited, to filing fees, bond costs and appraisal fees where no other source of reimbursement exists, not to exceed \$5,000.00.
- 5.2. Amend paragraph 2. by inserting " for the provision of services to clients whose guardianship services are approved by the Bureaus of Behavioral Health and Developmental Services" after "Payment to the Contractor".
  - 5.3. Change Paragraph 2.1. to read as follows:
    - 2.1. The State shall at the beginning of the Agreement period make a payment of \$158,045 the estimated fee for service payment due to the Contractor for providing services for a period of two months. This initial payment is the amount the State has determined is necessary to initiate the services.
  - 5.4. Change Paragraph 2.2. to read as follows:
    - 2.2. A monthly payment equal to \$79,023 will be made to the Contractor at the beginning of September and continuing through the end of the agreement or until the maximum amount of the contract has been reached. The per diem rate will be extended to the last day of the month following the month in which the client dies or for whom the guardianship/protection service is terminated.
  - 5.5. Change Sub-paragraph 2.4 e. to read as follows:
    - 2.4 e. Calculation of the total authorized payment due for the service quarter in accordance with 2.3. above:

The first "Quarterly Payment Computation and Authorization, Office of Public Guardian" report shall be submitted by no later than October 5, 2013 and the final report by July 10, 2014. Failure to submit such reports shall constitute an Event of Default.
  - 5.6. Change Sub-paragraph 2.5.1. to read as follows:
    - 2.5.1. The Contractor shall notify the State in its October "Quarterly Payment and Computation Report, Office of Public Guardian" in the event that payment for services for the months of July through September is less than \$893,656, whereupon the State shall issue a supplemental check for the difference between the amount paid to the Contractor and \$893,656.
  - 5.7. Change Sub-paragraph 2.5.2 to read as follows:

Contractor Initials: RPS  
Date: 5-24-13

2.5.2. The Contractor shall notify the State in its January "Quarterly Payment and Computation Report, Office of Public Guardian" in the event that payment for services for the months of July through December is less than \$1,787,312, whereupon the State shall issue a supplemental check for the difference between the amount paid to the Contractor and \$1,787,312.

5.8. Change Sub-paragraph 2.5.3. to read as follows:

2.5.3. The Contractor shall notify the State in its April "Quarterly Payment and Computation Report, Office of Public Guardian" in the event that payment for services for the months of July through March is less than \$2,680,967, whereupon the State shall issue a supplemental check for the difference between the amount paid to the Contractor and \$2,680,967.

5.9. Insert new paragraphs 3. and 3.1. - 3.3. and renumber remaining paragraphs 4. - 5. The new paragraphs 3. and 3.1. - 3.3 to read as follows:

3. Payment to the Contractor for the provision of services to clients whose guardianship services are requested by the Bureau of Elderly & Adult Services will be made on a monthly basis subject to the following conditions:

3.1. The Contractor shall submit invoices on a monthly basis in accordance with procedures and instructions established by the Bureau of Elderly & Adult Services and provided to the Contractor. The Contractor shall submit with the monthly invoice a list of clients served during the month for which the invoice is being submitted. The Bureau of Elderly & Adult Services shall pay the Contractor by multiplying the per diem rate times the total number of days for each service provided during the month to each eligible client under this Agreement.

3.2. Invoices shall be due by the 15<sup>th</sup> of the month following the month in which services are provided.

3.3. The Contractor shall review the BEAS cases monthly and move individuals to a different funding mechanism, if possible, to allow more openings for additional referrals. In all cases where alternate funding becomes available, the Contractor shall transfer the ward from BEAS funded slot within sixty (60) days.

6.0. Change Paragraph 5. to read as follows:

5. This contract is funded by the New Hampshire General Fund as follows:

	<u>Current Modified Budget</u>	<u>Increase (Decrease) Amount</u>	<u>Revised Modified Budget</u>
<u>NH General Fund:</u>	\$2,742,926.27	\$1,090,361.73	\$3,833,288

4. Effective Date of Amendment: The effective date of this action is July 1, 2013, or the date of Governor and Council approval, whichever is later.

5. Continuance of Agreement: Except as specifically amended and modified by the terms and conditions of the Agreement, the Agreement and the obligation of the parties hereunder shall remain in full force and effect in accordance with the terms and conditions set forth therein.

Contractor Initials: RPS  
Date: 5.24.13

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year written above.

THE STATE OF NEW HAMPSHIRE  
DIVISION OF COMMUNITY BASED CARE SERVICES

By: Nancy L. Rollins  
Nancy L. Rollins, Associate Commissioner

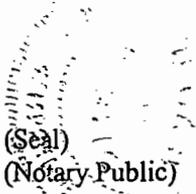
OFFICE OF PUBLIC GUARDIAN

By: Roger P. Jobin  
(type name & title of person from OPG here)  
ROGER P. JOBIN, TREASURER

STATE OF NEW HAMPSHIRE

County of Merrimack

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of May, 2013, by  
ROGER P. JOBIN



Mary K. Raulston  
Signature  
Mary K Raulston  
Print Name:  
Title: Notary Public/Justice of the Peace  
Commission Expires: \_\_\_\_\_

MARY K. RAULSTON, Notary Public  
My Commission Expires July 13, 2016

Approved as to form, execution, and substance:

OFFICE OF THE ATTORNEY GENERAL

By: Jeannie P. Herrick  
Jeannie P. Herrick  
Attorney

Date: 4 June 2013

Contractor Initials: PPJ  
Date: 5-27-13

# CERTIFICATE OF VOTE

I, SUSAN FOX, do hereby certify that:

1. I am the duly elected Clerk of the Office of Public Guardian, Inc. (the "Corporation").
2. The following are true copies of two resolutions duly adopted at a meeting of the Board of Directors of the Corporation duly held on May 23, 2013.

RESOLVED: That this corporation enter into a contract with the State of New Hampshire, acting through the Division of Community Based Care Services, concerning the following matter:

**Guardianship Program.**

RESOLVED: That the treasurer hereby is authorized on behalf of this corporation to enter into said contract with the State of New Hampshire and to execute any and all documents, agreements and other instruments, and any amendments, revisions, or modifications hereto as may be necessary, desirable or appropriate.

Contractor Initials: RJT  
Date: 5-24-13

3. The foregoing resolutions have not been amended or revoked and remain in full force and effect as of May 24, 2013

4. Roger Jobin is the duly elected Treasurer of this Corporation.

Susan Fox  
Clerk's Signature

STATE OF NEW HAMPSHIRE  
County of Merrimack

The foregoing instrument was acknowledged before me this 24th day of May, 2013, by  
Susan Fox  
Clerk

(Seal)  
(Notary Public)

Mary K. Raulston  
Signature  
Print Name: Mary K. Raulston  
Title: Notary Public/Justice of the Peace  
MARY K. RAULSTON, Notary Public  
My Commission Expires July 13, 2016  
Commission Expires: \_\_\_\_\_

Approved as to form, execution, and substance.

OFFICE OF THE ATTORNEY GENERAL

By: \_\_\_\_\_  
Jeanne P. Herrick, Attorney

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

Contractor Initials: RPS  
Date: 5-24-13

NH Department of Health and Human Services

STANDARD EXHIBIT D

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

**ALTERNATIVE I - FOR GRANTEES OTHER THAN INDIVIDUALS**

**US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS**  
**US DEPARTMENT OF EDUCATION - CONTRACTORS**  
**US DEPARTMENT OF AGRICULTURE - CONTRACTORS**

This certification is required by the regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.). The January 31, 1989 regulations were amended and published as Part II of the May 25, 1990 Federal Register (pages 21681-21691), and require certification by grantees (and by inference, sub-grantees and sub-contractors), prior to award, that they will maintain a drug-free workplace. Section 3017.630(c) of the regulation provides that a grantee (and by inference, sub-grantees and sub-contractors) that is a State may elect to make one certification to the Department in each federal fiscal year in lieu of certificates for each grant during the federal fiscal year covered by the certification. The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment. Contractors using this form should send it to:

Commissioner  
NH Department of Health and Human Services  
129 Pleasant Street,  
Concord, NH 03301-6505

- (A) The grantee certifies that it will or will continue to provide a drug-free workplace by:
- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
  - (b) Establishing an ongoing drug-free awareness program to inform employees about
    - (1) The dangers of drug abuse in the workplace;
    - (2) The grantee's policy of maintaining a drug-free workplace;
    - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
    - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

Contractor Initials: RPJ  
Date: 5.24.13

- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will
  - (1) Abide by the terms of the statement; and
  - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted
  - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - (2) Requiring such employee to participate satisfactorily 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;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant.

Place of Performance (street address, city, county, state, zip code) (list each location)

Check  if there are workplaces on file that are not identified here.

Office of Public Guardian

From: 7/1/2013 To: 6/30/2014

(Contractor Name)

(Period Covered by this Certification)

ROGER P. JOBIN, TREASURER

(Name & Title of Authorized Contractor Representative)

Roger P. Jobin

(Contractor Representative Signature)

5.24.13

(Date)

Contractor Initials: RPT

Date: 5.24.13

NH Department of Health and Human Services

STANDARD EXHIBIT E

CERTIFICATION REGARDING LOBBYING

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. 1352, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS
US DEPARTMENT OF EDUCATION - CONTRACTORS
US DEPARTMENT OF AGRICULTURE - CONTRACTORS

- Programs (indicate applicable program covered):
\*Temporary Assistance to Needy Families under Title IV-A
\*Child Support Enforcement Program under Title IV-D
\*Socail Services Block Grant Program under Title XX
\*Medicaid Program under Title XIX
\*Community Services Block Grant under Title VI
\*Child Care Development Block Grant under Title IV

Contract Period: 07-01-13 through 06-30-14

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, 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, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement (and by specific mention sub-grantee or sub-contractor).
(2) 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 this Federal contract, grant, loan, or cooperative agreement (and by specific mention sub-grantee or sub-contractor), the undersigned shall complete and submit Standard Form LLL, (Disclosure Form to Report Lobbying, in accordance with its instructions, attached and identified as Standard Exhibit E-I.)
(3) The undersigned shall require that the language of this certification be included in the award document for sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

ROGER P. JOBIN, TREASURER Roger P. Jobin
(Contractor Representative Signature) (Authorized Contractor Representative Name & Title)

Office of Public Guardian 5-24-13
(Contractor Name) (Date)

NH Department of Health and Human Services

STANDARD EXHIBIT F

CERTIFICATION REGARDING DEBARMENT, SUSPENSION  
AND OTHER RESPONSIBILITY MATTERS

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Executive Office of the President, Executive Order 12549 and 45 CFR Part 76 regarding Debarment, Suspension, and Other Responsibility Matters, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

**INSTRUCTIONS FOR CERTIFICATION**

1. By signing and submitting this proposal (contract), the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the NH Department of Health and Human Services' (DHHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when DHHS determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, DHHS may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the DHHS agency to whom this proposal (contract) is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549: 45 CFR Part 76. See the attached definitions.
6. The prospective primary participant agrees by submitting this proposal (contract) that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless \_\_\_\_\_ authorized \_\_\_\_\_ by \_\_\_\_\_ DHHS.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," provided by DHHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or involuntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (of excluded parties).
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, DHHS may terminate this transaction for cause or default.

**PRIMARY COVERED TRANSACTIONS**

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - (b) have not within a three-year period preceding this proposal (contract) 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) transaction or a contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - (d) have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal (contract).

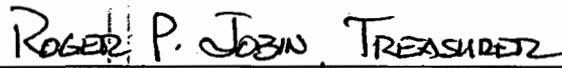
**LOWER TIER COVERED TRANSACTIONS**

By signing and submitting this lower tier proposal (contract), the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

- (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
- (b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal (contract).

The prospective lower tier participant further agrees by submitting this proposal (contract) that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

  
(Contractor Representative Signature)

  
(Authorized Contractor Representative Name & Title)

Office of Public Guardian  
(Contractor Name)

5.24.13  
(Date)

Contractor Initials: RPS  
Date: 5.24.13

NH Department of Health and Human Services

STANDARD EXHIBIT G

CERTIFICATION REGARDING  
THE AMERICANS WITH DISABILITIES ACT COMPLIANCE

The Contractor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this proposal (contract) the Contractor agrees to make reasonable efforts to comply with all applicable provisions of the Americans with Disabilities Act of 1990.

  
(Contractor Representative Signature)

ROGER P. JOSIN, TREASURER  
(Authorized Contractor Representative Name & Title)

Office of Public Guardian  
(Contractor Name)

5.24.13  
(Date)

NH Department of Health and Human Services

STANDARD EXHIBIT J

CERTIFICATION REGARDING THE FEDERAL FUNDING ACCOUNTABILITY AND  
TRANSPARENCY ACT (FFATA) COMPLIANCE

The Federal Funding Accountability and Transparency Act (FFATA) requires prime awardees of individual Federal grants equal to or greater than \$25,000 and awarded on or after October 1, 2010, to report on data related to executive compensation and associated first-tier sub-grants of \$25,000 or more. If the initial award is below \$25,000 but subsequent grant modifications result in a total award equal to or over \$25,000, the award is subject to the FFATA reporting requirements, as of the date of the award.

In accordance with 2 CFR Part 170 (*Reporting Subaward and Executive Compensation Information*), the Department of Health and Human Services (DHHS) must report the following information for any subaward or contract award subject to the FFATA reporting requirements:

- 1) Name of entity
- 2) Amount of award
- 3) Funding agency
- 4) NAICS code for contracts / CFDA program number for grants
- 5) Program source
- 6) Award title descriptive of the purpose of the funding action
- 7) Location of the entity
- 8) Principle place of performance
- 9) Unique identifier of the entity (DUNS #)
- 10) Total compensation and names of the top five executives if:
  - a. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25M annually, and
  - b. Compensation information is not already available through reporting to the SEC.

Prime grant recipients must submit FFATA required data by the end of the month, plus 30 days, in which the award or award amendment is made.

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of The Federal Funding Accountability and Transparency Act, Public Law 109-282 and Public Law 110-252, and 2 CFR Part 170 (*Reporting Subaward and Executive Compensation Information*), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

The below named Contractor agrees to provide needed information as outlined above to the NH Department of Health and Human Services and to comply with all applicable provisions of the Federal Financial Accountability and Transparency Act.

Roger P. Jobin

ROGER P. JOBIN, TREASURER

(Contractor Representative Signature)

(Authorized Contractor Representative Name & Title)

OFFICE OF PUBLIC GUARDIAN

5.24.13

(Contractor Name)

(Date)

Contractor initials: RPJ

Date: 5.24.13

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NH Department of Health and Human Services

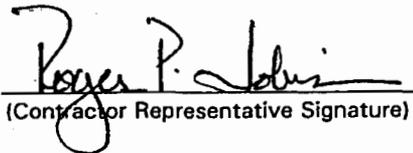
STANDARD EXHIBIT H

CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, Part C - Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

The Contractor identified in Section 1.3 of the General Provisions agrees, by signature of the Contractor's representative as identified in Section 1.11 and 1.12 of the General Provisions, to execute the following certification:

- 1. By signing and submitting this contract, the Contractor agrees to make reasonable efforts to comply with all applicable provisions of Public Law 103-227, Part C, known as the Pro-Children Act of 1994.

  
(Contractor Representative Signature)

  
(Authorized Contractor Representative Name & Title)

Office of Public Guardian  
(Contractor Name)

5.24.13  
(Date)

## NH Department of Health and Human Services

**STANDARD EXHIBIT I**  
**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**  
**BUSINESS ASSOCIATE AGREEMENT**

The Contractor identified in Section 1.3 of the General Provisions of the Agreement agrees to comply with the Health Insurance Portability and Accountability Act, Public Law 104-191 and with the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160 and 164 and those parts of the HITECH Act applicable to business associates. As defined herein, "Business Associate" shall mean the Contractor and subcontractors and agents of the Contractor that receive, use or have access to protected health information under this Agreement and "Covered Entity" shall mean the State of New Hampshire, Department of Health and Human Services.

**BUSINESS ASSOCIATE AGREEMENT**

**(1) Definitions.**

- a. "Breach" shall have the same meaning as the term "Breach" in Title XXX, Subtitle D. Sec. 13400.
- b. "Business Associate" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- c. "Covered Entity" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- d. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR Section 164.501.
- e. "Data Aggregation" shall have the same meaning as the term "data aggregation" in 45 CFR Section 164.501.
- f. "Health Care Operations" shall have the same meaning as the term "health care operations" in 45 CFR Section 164.501.
- g. "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act, Title XIII, Subtitle D, Part 1 & 2 of the American Recovery and Reinvestment Act of 2009.
- h. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160, 162 and 164.
- i. "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.501(g).
- j. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.

- k. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR Section 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- l. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR Section 164.501.
- m. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- n. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C, and amendments thereto.
- o. "Unsecured Protected Health Information" means protected health information that is not secured by a technology standard that renders protected health information unusable, unreasonable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.
- p. Other Definitions - All terms not otherwise defined herein shall have the meaning established under 45 C.F.R. Parts 160, 162 and 164, as amended from time to time, and the HITECH Act.

(2) **Use and Disclosure of Protected Health Information.**

- a. Business Associate shall not use, disclose, maintain or transmit Protected Health Information (PHI) except as reasonably necessary to provide the services outlined under Exhibit A of the Agreement. Further, the Business Associate shall not, and shall ensure that its directors, officers, employees and agents, do not use, disclose, maintain or transmit PHI in any manner that would constitute a violation of the Privacy and Security Rule.
- b. Business Associate may use or disclose PHI:
  - I. For the proper management and administration of the Business Associate;
  - II. As required by law, pursuant to the terms set forth in paragraph d. below; or
  - III. For data aggregation purposes for the health care operations of Covered Entity.
- c. To the extent Business Associate is permitted under the Agreement to disclose PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from the third party that such PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and (ii) an agreement from such third party to notify Business Associate, in accordance with the HITECH Act, Subtitle D, Part 1, Sec. 13402 of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.
- d. The Business Associate shall not, unless such disclosure is reasonably necessary to provide services under Exhibit A of the Agreement, disclose any PHI in response to a request for disclosure on the basis that it is required by law, without first notifying Covered Entity so that Covered Entity has an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, the Business Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all remedies.

- e. If the Covered Entity notifies the Business Associate that Covered Entity has agreed to be bound by additional restrictions over and above those uses or disclosures or security safeguards of PHI pursuant to the Privacy and Security Rule, the Business Associate shall be bound by such additional restrictions and shall not disclose PHI in violation of such additional restrictions and shall abide by any additional security safeguards.

**(3) Obligations and Activities of Business Associate.**

- a. Business Associate shall report to the designated Privacy Officer of Covered Entity, in writing, any use or disclosure of PHI in violation of the Agreement, including any security incident involving Covered Entity data, in accordance with the HITECH Act, Subtitle D, Part 1, Sec. 13402.
- b. The Business Associate shall comply with all sections of the Privacy and Security Rule as set forth in, the HITECH Act, Subtitle D, Part 1, Sec. 13401 and Sec.13404.
- c. Business Associate shall make available all of its internal policies and procedures, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of Covered Entity to the Secretary for purposes of determining Covered Entity's compliance with HIPAA and the Privacy and Security Rule.
- d. Business Associate shall require all of its business associates that receive, use or have access to PHI under the Agreement, to agree in writing to adhere to the same restrictions and conditions on the use and disclosure of PHI contained herein, including the duty to return or destroy the PHI as provided under Section (3)b and (3)k herein. The Covered Entity shall be considered a direct third party beneficiary of the Contractor's business associate agreements with Contractor's intended business associates, who will be receiving PHI pursuant to this Agreement, with rights of enforcement and indemnification from such business associates who shall be governed by standard provision #13 of this Agreement for the purpose of use and disclosure of protected health information.
- e. Within five (5) business days of receipt of a written request from Covered Entity, Business Associate shall make available during normal business hours at its offices all records, books, agreements, policies and procedures relating to the use and disclosure of PHI to the Covered Entity, for purposes of enabling Covered Entity to determine Business Associate's compliance with the terms of the Agreement.
- f. Within ten (10) business days of receiving a written request from Covered Entity, Business Associate shall provide access to PHI in a Designated Record Set to the Covered Entity, or as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR Section 164.524.
- g. Within ten (10) business days of receiving a written request from Covered Entity for an amendment of PHI or a record about an individual contained in a Designated Record Set, the Business Associate shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under 45 CFR Section 164.526.

- h. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.
- i. Within ten (10) business days of receiving a written request from Covered Entity for a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill its obligations to provide an accounting of disclosures with respect to PHI in accordance with 45 CFR Section 164.528.
- j. In the event any individual requests access to, amendment of, or accounting of PHI directly from the Business Associate, the Business Associate shall within two (2) business days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or the Business Associate to violate HIPAA and the Privacy and Security Rule, the Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.
- k. Within ten (10) business days of termination of the Agreement, for any reason, the Business Associate shall return or destroy, as specified by Covered Entity, all PHI received from, or created or received by the Business Associate in connection with the Agreement, and shall not retain any copies or back-up tapes of such PHI. If return or destruction is not feasible, or the disposition of the PHI has been otherwise agreed to in the Agreement, Business Associate shall continue to extend the protections of the Agreement, to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. If Covered Entity, in its sole discretion, requires that the Business Associate destroy any or all PHI, the Business Associate shall certify to Covered Entity that the PHI has been destroyed.

(4) **Obligations of Covered Entity**

- a. Covered Entity shall notify Business Associate of any changes or limitation(s) in its Notice of Privacy Practices provided to individuals in accordance with 45 CFR Section 164.520, to the extent that such change or limitation may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall promptly notify Business Associate of any changes in, or revocation of permission provided to Covered Entity by individuals whose PHI may be used or disclosed by Business Associate under this Agreement, pursuant to 45 CFR Section 164.506 or 45 CFR Section 164.508.
- c. Covered entity shall promptly notify Business Associate of any restrictions on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(5) Termination for Cause

In addition to standard provision #10 of this Agreement the Covered Entity may immediately terminate the Agreement upon Covered Entity's knowledge of a breach by Business Associate of the Business Associate Agreement set forth herein as Exhibit I. The Covered Entity may either immediately terminate the Agreement or provide an opportunity for Business Associate to cure the alleged breach within a timeframe specified by Covered Entity. If Covered Entity determines that neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(6) Miscellaneous

- a. Definitions and Regulatory References. All terms used, but not otherwise defined herein, shall have the same meaning as those terms in the Privacy and Security Rule, and the HITECH Act as amended from time to time. A reference in the Agreement, as amended to include this Exhibit I, to a Section in the Privacy and Security Rule means the Section as in effect or as amended.
- b. Amendment. Covered Entity and Business Associate agree to take such action as is necessary to amend the Agreement, from time to time as is necessary for Covered Entity to comply with the changes in the requirements of HIPAA, the Privacy and Security Rule, and applicable federal and state law.
- c. Data Ownership. The Business Associate acknowledges that it has no ownership rights with respect to the PHI provided by or created on behalf of Covered Entity.
- d. Interpretation. The parties agree that any ambiguity in the Agreement shall be resolved to permit Covered Entity to comply with HIPAA, the Privacy and Security Rule and the HITECH Act.
- e. Segregation. If any term or condition of this Exhibit I or the application thereof to any person(s) or circumstance is held invalid, such invalidity shall not affect other terms or conditions which can be given effect without the invalid term or condition; to this end the terms and conditions of this Exhibit I are declared severable.
- f. Survival. Provisions in this Exhibit I regarding the use and disclosure of PHI, return or destruction of PHI, extensions of the protections of the Agreement in section 3 k, the defense and indemnification provisions of section 3 d and standard contract provision #13, shall survive the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Exhibit I.

Department of Health and Human Services  
Division of Community Based Care Services  
The State Agency Name

Office of Public Guardian  
Name of the Contractor

*Nancy L. Rollins*  
Signature of Authorized Representative

*Roger P. Jobin*  
Signature of Authorized Representative

Nancy L. Rollins  
Name of Authorized Representative

ROGER P. JOBIN  
Name of Authorized Representative

Associate Commissioner  
Title of Authorized Representative

TREASURER  
Title of Authorized Representative

31 May 2013  
Date

5.24.13  
Date

NH Department of Health and Human Services

STANDARD EXHIBIT J

FORM A

As the Contractor identified in Section 1.3 of the General Provisions, I certify that the responses to the below listed questions are true and accurate.

1. The DUNS number for your entity is:

969885164

2. In your business or organization's preceding completed fiscal year, did your business or organization receive (1) 80 percent or more of your annual gross revenue in U.S. federal contracts, subcontracts, loans, grants, sub-grants, and/or cooperative agreements; and (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements?

NO

YES

**If the answer to #2 above is NO, stop here**

**If the answer to #2 above is YES, please answer the following:**

3. Does the public have access to information about the compensation of the executives in your business or organization through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?

NO

YES

**If the answer to #3 above is YES, stop here**

**If the answer to #3 above is NO, please answer the following:**

4. The names and compensation of the five most highly compensated officers in your business or organization are as follows:

Name: \_\_\_\_\_

Amount: \_\_\_\_\_

Contractor initials: R PJ

Date: 5-24-13

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STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF COMMUNITY BASED CARE SERVICES

Nicholas A. Toumpas  
Commissioner

Diane Langley  
Director

Sheri Rockburn  
Director

BUREAU OF BEHAVIORAL HEALTH  
105 PLEASANT STREET, CONCORD, NH 03301  
603-271-5000 1-800-852-3345 Ext. 5000  
Fax: 603-271-5058 TDD Access: 1-800-735-2964

6/18/14 #96

May 28, 2014

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

REQUESTED ACTION

- 1. Authorize the Department of Health and Human Services, Division of Community Based Care Services, to amend an agreement, Purchase Order number 1009016, with the Office of Public Guardian (vender code 166528), 2 Pillsbury Street, Suite 400, Concord, New Hampshire 03301, to provide public guardianship services by increasing the price limitation by \$1,103,319.00 from \$3,833,288.00 to an amount not to exceed \$4,936,607.00 and extending the completion date to June 30, 2015, effective July 1, 2014, or date of Governor and Council approval, whichever is later. This agreement was originally approved by Governor and Council on June 9, 2010, item number 106, and subsequently amended on June 8, 2011, item number 126, and June 20, 2012, item number 80, and on June 19, 2013, item number 112. Funds are available in the following accounts in State Fiscal Year 2015:

91% General Funds / 9% Federal Funds

05-95-92-920010-7002 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS DEPT OF, HHS:BEHAVIORAL HEALTH DIV OF, DIV OF BEHAVIORAL HEALTH, LEGAL-GUARDIANSHIP SVCS

Fiscal	Class/Object	Class Title	Current	Increase	Revised
2011	102-500731	Contracts for Program Services	\$ 878,656.80	\$ 0.00	\$ 878,656.80
2012	102-500731	Contracts for Program Services	\$ 912,797.29	\$ 0.00	\$ 912,797.29
2013	102-500731	Contracts for Program Services	\$ 951,472.18	\$ 0.00	\$ 951,472.18
2014	102-500731	Contracts for Program Services	\$ 990,361.73	\$ 0.00	\$ 990,361.73
2015	102-500731	Contracts for Program Services	\$ 0.00	\$1,003,319.00	\$1,003,319.00
		Sub-total	\$3,733,288.00	\$1,003,319.00	\$4,736,607.00

05-95-48-481010-9255 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS DEPT OF, HHS:ELDERLY - ADULT SERVICES, GRANTS TO LOCALS, SOCIAL SERVICES BLOCK GRANT

Fiscal	Class/Object	Class Title	Current	Increase	Revised
2014	102-500734	Contracts for Program Services	\$ 100,000.00	\$ 0.00	\$ 100,000.00
2015	102-500734	Contracts for Program Services	\$ 0.00	\$ 100,000.00	\$ 100,000.00
		Sub-total	\$ 100,000.00	\$ 100,000.00	\$ 200,000.00
		Total	\$3,833,288.00	\$1,103,319.00	\$4,936,607.00

- 2. Contingent upon approval of Requested Action #1, authorize an advance payment up to a maximum of \$160,112.99 of the contract price limitation.

## EXPLANATION

The purpose of this request is to extend an agreement with the Office of Public Guardian to provide guardianship and protection services, on a statewide basis, to persons with mental illness, developmental impairments and incapacitated adults who are abused, neglected or exploited whose incapacities leave them at risk of substantial harm because of their inability to provide for their own food, shelter, health care, safety, or to manage their personal affairs. These services are needed to meet the State's statutory obligations to safeguard incapacitated persons who are abused, neglected or exploited, in state institutions as well as in community mental health and developmental service programs. It also carries out the requirements of RSA 135-C: 60, RSA 171-A: 10, II and RSA 161-F:52. The Office of Public Guardian pursuant to RSA 547-B: 6 has been designated by the New Hampshire Supreme Court as an approved organization for the purpose of providing guardianship and protection services pursuant to RSA 464-A. This agreement will provide for guardianship services for up to 767 cases during the agreement period. The emphasis in providing such services will be to ensure that the guardianships maintained and sought will be limited in accordance with the standards embodied in RSA 464-A.

The advance payment shall allow the Office of Public Guardian to meet its operating obligations while providing services during the initial two months of this agreement.

Using a public notice posted on the Department of Health and Human Services website on February 22, 2010, as RFP Number 11-DCBCS-GPS-01, the Division of Community Based Care Services requested proposals for providing public guardianship services in the State. Five renewals of one year each are possible at the Department's discretion. The Office of Public Guardian responded by submitting a proposal to provide public guardianship services to people with a mental illness, or a developmental disability who are eligible for State-funded services. The Office of Public Guardian was one of two agencies to apply to provide public guardianship services.

A competitive review process was utilized to evaluate all proposals submitted by the deadline. Participants in the review process included Department staff from the Bureau of Behavioral Health, the Bureau of Developmental Services, and the Office of Client and Legal Services. This process involved an assessment of the proposal submitted including an evaluation of scope of work, bidder background and experience, and the cost proposal. Both proposals submitted for fiscal year 2011 scored over the required minimum.

Based on a favorable review of the above by the review team and because the Office of Public Guardian has in previous agreements amply demonstrated its ability to provide high-level public guardianship services to clients and the community served, the Division of Community Based Care Services requests this agreement be extended for one year to allow the Office of Public Guardian to continue providing services. This will serve as the fourth renewal allowed under this contract.

With respect to the Agreement to purchase guardianship and protection services for incapacitated adults who are abused, neglected or exploited, an application for funding was released to the Office of Public Guardian on March 22, 2013. The application was reviewed and the funding and number of slots were negotiated. Since there are only two public guardianship agencies that have been approved by the New Hampshire Supreme Court, there were no other agencies seeking approval, and since the Department contracts with both of these agencies, a Request for Proposals would not be productive or necessary.

In State Fiscal Year 2015 this agreement will serve up to 752 cases. Based upon previous experience, it is anticipated that there will be a need for this agency to assume this amount of cases from the Bureau of Behavioral Health, or the Bureau of Developmental Services this fiscal year. These additional slots will be filled over the course of the year.

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
May 28, 2014  
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This agreement also includes a line item for mentoring services and training. Mentoring services are provided to family members who are willing to serve as guardian but who require a period of support. Providing this support will obviate need for a public guardian in these cases and will thereby save the State from paying the cost of a permanent public guardianship.

Should Governor and Council determine not to approve this request the Division of Community Based Care Services would be out of compliance with the requirements of RSA 135-C: 60, RSA 171-A: 10, II, and RSA 161-F:52 and persons with mental illness, developmental impairments and incapacitated adults who are abused, neglected or exploited, whose incapacities leave them at risk of substantial harm because of their inability to provide for their own food, shelter, health care, safety, or to manage their personal affairs would be harmed.

Area served: statewide.

Source of funds: 91% General Funds and 9% Federal Funds, Social Services Block Grant.

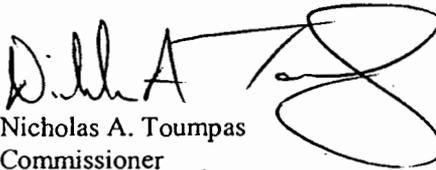
In the event that the Federal Funds become no longer available, General Funds shall not be requested to support these programs.

Respectfully submitted,



Sheri L. Rockburn  
Director

Approved by:



Nicholas A. Toumpas  
Commissioner

RSP/pbr/sl

Attachments

# AMENDMENT TO AGREEMENT

This Amendment to Agreement (hereinafter called the "Amendment"), dated this 23<sup>rd</sup> day of May, 2014, between the State of New Hampshire, acting by and through the Division of Community Based Care Services, and **Office of Public Guardian**, a nonprofit organization organized under the laws of the State of New Hampshire with a place of business at 2 Pillsbury Street, Suite 400, Concord, New Hampshire 03301 (hereinafter referred to as the "Contractor").

**WHEREAS**, on February 22, 2010, the Division of Community Based Care Services issued a public notice for a Request For Proposal for "Guardianship and Protective Services in New Hampshire" which cited the following:

"Contracted services shall commence on July 1, 2010, or on the Governor and Council approval date, whichever is later, and shall continue until June 30, 2011. Five renewals of one year each may be possible at the Department's discretion", and

**WHEREAS**, the Contractor was one of two selected contractors, and

**WHEREAS**, pursuant to an Agreement approved on June 9, 2010, the Contractor agreed to provide certain services upon the terms and conditions specified in the Agreement, in consideration of payment by the Division of Community Based Care Services of certain sums specified therein; and

**WHEREAS**, pursuant to Paragraph 17. of the Agreement, the Agreement may be amended, waived, or discharged only by an instrument in writing signed by the parties thereto and only after the approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire;

**WHEREAS**, the Division of Community Based Care Services and the Contractor have agreed to extend the Agreement for one year in certain respects;

**NOW THEREFORE**, in consideration of the foregoing and of the covenants and conditions contained in the Agreement and set forth herein, the parties do hereby agree as follows:

1. **Amendments and Modifications of Agreement**

The contract is hereby amended as follows:

- 1.1. By deleting, in subparagraph 1.7. of the General Provisions the date June 30, 2014 and substituting therefore date June 30, 2015.
- 1.2. By deleting, in subparagraph 1.8. of the General Provisions the number \$3,833,288 and substituting therefore the number \$4,936,607.00.

Contractor Initials: SWP  
Date: 5/23/14

2. Amendment and Modification of Exhibit A, Scope of Work, Provisions Applicable to All Services

2.1. Delete in sub-paragraph 1.2.2. the date August 1, 2014 and substitute the date August 1, 2015.

2.2. Insert new Paragraph 1.5.1. to read as follows:

1.5.1. In the instance of a ward who is out of the State of New Hampshire for an extended period of time and it would not be feasible for the guardian to see the ward face-to-face on the basis outline in sub-paragraph 1.5 above, guardian shall attempt to have a video conference with the ward on the above-noted basis. If the technology for a video conference is not available, the guardian shall at least have telephone contact with the ward on the above-noted basis.

2.3. Insert new Paragraph 1.5.2. to read as follows:

1.5.2. In the instance of a ward who is aggressive to the point of physical harm to the guardian, the face-to-face visits required in sub-paragraph 1.5. above may be suspended until an alternative plan can be developed for the guardian to meet with the ward while maintaining personal safety.

3. Amendment and Modification of Exhibit A, Scope of Work, Guardianship and Protection Services

3.1. Amend Paragraph 3.3. to read as follows:

3.3. For persons referred to Contractor by the Office of Client and Legal Services pursuant to RSA 136-C:60 and RSA 171-A:10, II the Contractor agrees to serve the current total of 664 persons receiving guardianship and protection services, plus 8 pending cases, plus any new persons referred in accordance with paragraph 1.4. above. However, the Contractor shall not be obligated to accept more than 710 cases during the contract period. The Department shall provide the Contractor with letters of approval for each new case assigned to the Contractor by the Office of Client and Legal Services.

3.2. Amend Paragraph 3.5. to read as follows:

3.5. The Commencement Date of this Agreement shall be July 1, 2014, or the date of Governor and Council approval, whichever is later.

4. Amendments and Modifications of Exhibit B, Methods of Payment

4.1. Amend Paragraph 1. to read as follows:

1. Subject to the availability of State funds, and in consideration for the satisfactory completion of the services to be performed under this Agreement, the State shall pay the Contractor a per diem per case rate approved by the Office of Client and Legal Services for all BBH & BDS clients and the Bureau of Elderly and Adult Services for all BEAS clients. However, regardless of the number of persons served by the Contractor during the program period, specified in paragraphs 3.1. and 3.2. of the General Provisions of this Agreement, the State shall pay the Contractor a minimum amount of \$4,726,801.20 during the program period. The total of all payments authorized or actually made hereunder shall not exceed the amount of \$4,936,607.00, the Price Limitation set forth in block 1.8. of the General Provisions.

Contractor Initials: *SWK*  
Date: *5/28/14*

- 1.1. The per diem reimbursement rate for the provision of services to persons served under this Agreement shall be \$3.86 for up to 710 clients whose guardianship services are requested by the Bureaus of Behavioral Health, and Developmental Services;
- 1.2. The hourly reimbursement rate for the provision of technical assistance to private guardians shall be \$60.00, not to exceed the amount of \$1,500.
- 1.3. The hourly reimbursement rate for the provision of training to area agency, mental health and elderly and adult agency staff and probate court personnel shall be \$60.00, not to exceed the amount of \$1,500.
- 1.4. The per diem reimbursement rate for the provision of guardianship over the person services or the provision of guardianship over the estate services to persons served under this Agreement shall be \$6.29 for up to 42 clients whose guardianship services are requested by the Bureau of Elderly & Adult Services. The State shall reimburse Contractor separately for services provided as guardian over the person and guardian over the estate.
- 1.5. For clients referred for guardianship services by the Bureau of Elderly and Adult Services, the actual cost paid by Contractor for expenses incurred in the performance of Contractors duties under this Agreement including, but not limited, to filing fees, bond costs and appraisal fees where no other source of reimbursement exists, not to exceed \$5,000.00.

4.2. Change Paragraph 2.1. to read as follows:

- 2.1. The State shall at the beginning of the Agreement period make a payment of \$160,112.99 the estimated fee for service payment due to the Contractor for providing services for a period of two months. This initial payment is the amount the State has determined is necessary to initiate the services.

4.3. Change Paragraph 2.2. to read as follows:

- 2.2. A monthly payment equal to \$80,056.50 will be made to the Contractor at the beginning of September and continuing through the end of the agreement or until the maximum amount of the contract has been reached. The per diem rate will be extended to the last day of the month following the month in which the client dies or for whom the guardianship/ protection service is terminated.

4.4. Change Sub-paragraph 2.4. e. to read as follows:

- 2.4. e. Calculation of the total authorized payment due for the service quarter in accordance with 2.3. above:

The first "Quarterly Payment Computation and Authorization, Office of Public Guardian" report shall be submitted by no later than October 5, 2014 and the final report by July 10, 2015. Failure to submit such reports shall constitute an Event of Default.

Contractor Initials: SUF  
Date: 5/22/14

4.5. Change Sub-paragraph 2.5.1. to read as follows:

2.5.1. The Contractor shall notify the State in its October "Quarterly Payment and Computation Report, Office of Public Guardian" in the event that payment for services for the months of July through September is less than \$1,133,825.49, whereupon the State shall issue a supplemental check for the difference between the amount paid to the Contractor and \$1,133,825.49.

4.6. Change Sub-paragraph 2.5.2 to read as follows:

2.5.2. The Contractor shall notify the State in its January "Quarterly Payment and Computation Report, Office of Public Guardian" in the event that payment for services for the months of July through December is less than \$2,267,650.97, whereupon the State shall issue a supplemental check for the difference between the amount paid to the Contractor and \$2,267,650.97.

4.7. Change Sub-paragraph 2.5.3. to read as follows:

2.5.3. The Contractor shall notify the State in its April "Quarterly Payment and Computation Report, Office of Public Guardian" in the event that payment for services for the months of July through March is less than \$3,401,475.46, whereupon the State shall issue a supplemental check for the difference between the amount paid to the Contractor and \$3,401,475.46.

4.8. Change Paragraph 5. to read as follows:

5. This contract is funded by the New Hampshire General Fund as follows:

	<u>Current Modified Budget</u>	<u>Increase (Decrease) Amount</u>	<u>Revised Modified Budget</u>
<u>NH General Fund:</u>	\$3,833,288.00	\$1,103,319.00	\$4,936,607.00

5. **Effective Date of Amendment:** The Effective Date of this action is July 1, 2014, or the date of Governor and Council approval, whichever is later.

6. **Continuance of Agreement:** Except as specifically amended and modified by the terms and conditions of the Agreement, the Agreement and the obligation of the parties hereunder shall remain in full force and effect in accordance with the terms and conditions set forth therein.

Contractor Initials: SWK  
Date: 5/23/14

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year written above.

THE STATE OF NEW HAMPSHIRE  
THE DEPARTMENT OF HEALTH & HUMAN SERVICES  
DIVISION OF COMMUNITY BASED CARE SERVICES

By: *Sheri L. Rockburn*  
Sheri L. Rockburn, Director

OFFICE OF PUBLIC GUARDIAN

By: *Susan Fox*  
(type name & title of person from OPG here)  
*President of the Board*

STATE OF NEW HAMPSHIRE

County of *Merrimack*

The foregoing instrument was acknowledged before me this *23<sup>rd</sup>* day of May, 2014, by  
*Susan Fox*

*Nancy C. Raynes*  
Signature

*Nancy C. Raynes*  
Print Name:

Title: Notary Public/~~Justice of the Peace~~

Commission Expires: \_\_\_\_\_  
*NANCY C. RAYNES, Notary Public*  
My Commission Expires October 26, 2016

(Seal)  
(Notary Public)

Approved as to form, execution, and substance:

OFFICE OF THE ATTORNEY GENERAL

By: *Mike. Bon*

Date: *5/28/14*

Contractor Initials: *SUF*  
Date: *5/23/14*

State of New Hampshire  
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that OFFICE OF PUBLIC GUARDIAN is a New Hampshire nonprofit corporation formed July 14, 1983. I further certify that it is in good standing as far as this office is concerned, having filed the return(s) and paid the fees required by law.



In TESTIMONY WHEREOF, I hereto  
set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 10<sup>th</sup> day of April A.D. 2014

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State

# CERTIFICATE OF VOTE

I, Roger P. Jobin, do hereby certify that:

1. I am the duly elected ~~Clerk~~ Treasurer of the Office of Public Guardian, Inc. (the "Corporation").
2. The following are true copies of two resolutions duly adopted at a meeting of the Board of Directors of the Corporation duly held on May 23, 2014.

RESOLVED: That this corporation enter into a contract with the State of New Hampshire, acting through the Division of Community Based Care Services, concerning the following matter:

## Guardianship Program.

RESOLVED: That the President of Board hereby is authorized on behalf of this corporation to enter into said contract with the State of New Hampshire and to execute any and all documents, agreements and other instruments, and any amendments, revisions, or modifications hereto as may be necessary, desirable or appropriate.

Contractor Initials: BJP  
Date: 5/29/14

3. The foregoing resolutions have not been amended or revoked and remain in full force and effect as of May 29, 2014.

4. Susan Fox is the duly elected President of Board of this Corporation.

Roger P. Jobin TREASURER  
Clerk's Signature  
Treasurer's

STATE OF NEW HAMPSHIRE  
County of Merrimack

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of May, 2014, by  
Roger P. Jobin  
Name of Clerk  
Treasurer

(Seal)  
(Notary Public)

Mary K Raulston  
Signature  
Print Name: Mary K Raulston  
Title: Notary Public/Justice of the Peace  
MARY K. RAULSTON, Notary Public  
My Commission Expires July 13, 2016  
Commission Expires: \_\_\_\_\_

Approved as to form, execution, and substance.

OFFICE OF THE ATTORNEY GENERAL

By: Mike Bern  
Date: 5/29/14

Contractor Initials: SCWF  
Date: 5/29/14



# Key Personnel List

New Hampshire Department of Health and Human Services  
Division of Community Based Care Services

OFFICE OF PUBLIC GUARDIAN  
GUARDIANSHIP AND PROTECTIVE SERVICES IN NEW HAMPSHIRE  
JULY 1, 2015 THROUGH JUNE 30, 2016

Position Title	Current Individual in Position	Current Salary
Executive Director	Linda Mallon, JD, NMG	\$ 107,579.00
Associate Director	Darcy Johnson, BS, NCG	\$ 84,150.00
Business Manager	Andrea Sisson, CPA	\$ 71,400.00
Fiduciary Services Director	Cindy Flanagan, NCG	\$ 71,400.00
Staff Attorney	Tracy Culberson, Esq, NCG	\$ 76,000.00