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

**BUREAU OF BEHAVIORAL HEALTH**

**Nicholas A. Toumpas  
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**

**Diane Langley,  
Director  
Sheri Rockburn,  
Director**

April 7, 2014

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

**REQUESTED ACTION**

*100% General funds*

Authorize the Department of Health and Human Services, Division of Community Based Care Services, Bureau of Behavioral Health to amend an agreement, Purchase Order number 1030503, with Attorney John P. LeBrun, (vendor code 174196-R001), to provide legal services by increasing the price limitation \$6,510, from \$78,988 to an amount not to exceed \$85,498 effective April 23, 2014, or date of Governor and Executive Council approval, whichever is later, through June 30, 2015. This agreement was originally approved by Governor and Executive Council on June 19, 2013, item number 117. Funds to support this request are available in the following account.

**05-95-92-920010-7003 HEALTH AND SOCIAL SERVICES, DEPT. OF HEALTH AND HUMAN SVCS, HHS: BEHAVIORAL HEALTH – DIV OF, DIV OF BEHAVIORAL HEALTH, COMMITMENT COSTS**

<u>Fiscal Year</u>	<u>Class/Object</u>	<u>Class Title</u>	<u>Current Modified Amount</u>	<u>Increase Amount</u>	<u>Revised Modified Amount</u>
2014	102-500732	Contracts for Program Services	39,494	6,510	46,004
2015	102-500732	Contracts for Program Services	<u>39,494</u>	<u>0</u>	<u>39,494</u>
			\$78,988	\$6,510	\$85,498

**EXPLANATION**

The purpose of this request is to pay Attorney LeBrun for the legal services he provides to persons who are subject to Involuntary Emergency Admission to New Hampshire Hospital in SFY 2014. In accordance with RSA 135-C:30, I, such individuals are entitled to representation by legal counsel.

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
April 1, 2014  
Page 2

Attorney LeBrun is under contract to the State for SFY 2014 and SFY 2015 to provide the above legal services at the rate of \$62.00 per case up to a total of \$78,988. There has been a greater number of involuntary emergency admission hearings than anticipated during SFY 2014, requiring Attorney LeBrun to represent more individuals than originally projected. The State does not have sufficient funds within the contract to reimburse him for the additional services provided. This contractor has provided excellent service in past contracts and is a valuable resource to the State.

Attorney LeBrun was one of four respondents to a notice posted on the Division of Community Based Care Services website on April 18, 2013 for a week, requesting letters of interest in providing this service.

Should Governor and Executive Council determine not to approve this request the State will not be able to commit people who are mentally ill and dangerous to New Hampshire Hospital. The state and federal constitutions require representation by an attorney before the State can deprive a person of their liberty.

Area served: statewide.

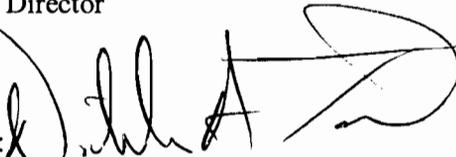
Source of funds: 100% General Funds.

Respectfully submitted,



Sheri L. Rockburn  
Director

Approved by:



Nicholas A. Toumpas  
Commissioner

## AMENDMENT

This Agreement (hereinafter called the "Amendment") dated this 1<sup>st</sup> day of April 2014, by and between the State of New Hampshire acting by and through its Division of Community Based Care Services of the Department of Health & Human Services (hereinafter referred to as the "Division") and Attorney John LeBrun, an individual contractor, (hereinafter referred to as the "Contractor").

**WHEREAS**, pursuant to an agreement (hereinafter called the "Agreement"), dated 19<sup>th</sup> day of June, 2013, the Provider agreed to perform certain services upon the terms and conditions specified in the Agreement and in consideration of payment by the Division of certain sums as specified therein;

**WHEREAS**, pursuant to the provisions of Section 18 of the Agreement, the Agreement may be modified or amended only by a written instrument executed by the parties thereto and only after approval of such modification by the Governor & Council, or amendment;

**WHEREAS**, the Provider and the Division have agreed to amend the Agreement in certain respects;

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

1. Amendment and modification of Agreement:

The Agreement is hereby amended as follows:

1.1 Amend Section 1.8 of the General Provisions by replacing \$78,988 with \$85,498.

1.2 Replace Exhibit B, Methods and Conditions of Payment, paragraph 1 with the following:

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 the sum of \$62.00 per case for professional services rendered pursuant to this agreement. The total of the payments made pursuant to this Agreement shall not exceed \$85,498, the price limitation set forth in block 1.8 of the General Provisions.

2. Effective Date of Amendment:

This Amendment shall be effective April 23, 2014, or date of Governor and Executive Council approval, whichever is later through June 30, 2015.

3. Continuance of Agreement:

Except as specifically amended and modified by the terms and conditions of this Amendment, the Agreement and the obligation of the parties thereunder shall remain in full force and effect in accordance with the terms and conditions set forth therein.

Contractor Initials JPL

Date 4/1/14

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

STATE OF NEW HAMPSHIRE  
Division of Community Based Care Services

By Sh L Rock  
Sheri L. Rockburn,  
Director

By [Signature]  
John P. LeBrun

State of New Hampshire  
County of Merrimack

On this the 1<sup>st</sup> day of Apr, 2014, before me, Donna E. Walker, the undersigned officer, personally appeared John P. LeBrun, who executed the foregoing instrument by signing his name.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Donna E. Walker  
Notary Public

My Commission expires: April 18, 2017

Approved as to form, execution and substance:

OFFICE OF THE ATTORNEY GENERAL

By [Signature]  
Attorney

Date 4-9-14, 2014

Contractor Initials JPL

Date 4/1/14

**NH Department of Health and Human Services**

**AMENDED BUDGET**

Attorney John P. LeBrun

	<b>FY 2014</b>	<b>FY 2015</b>	<b>Total</b>
Current Contract Budget Amount	\$39,494.00	\$39,494.00	\$78,988.00
105 cases @ \$62 per case	\$6,510.00		\$ 6,510.00
Revised Contract Budget Amount	\$46,004.00	\$39,494.00	\$85,498.00

Contractor Initials VPL

Date 4/1/14

**EDUCATION:**

1983 J.D., Franklin Pierce Law Center  
Concord, NH

1976 M.A., University of Rhode Island  
Kingston, RI

1975 B.A., Rhode Island College  
Providence, RI

**EXPERIENCE:**

1990 – Present Partner, Goldman & LeBrun, P.A.  
General practice of law

1984 – 1990 Associate, Law Office of Stephen R. Goldman, P.A.  
Associate Attorney in general practice of law.

**TRAINING & EXPERIENCE IN IEA ISSUES:**

1995 – Present Defense Attorney in IEA Defense Representation  
on Fridays and also on an as-needed basis on Thursdays.  
I have also covered for other contract attorneys when they  
have had conflicts in their schedules.

1986 – 1995 Special Justice, Concord District Court for IEA Hearings.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
4/1/2014

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> Foy Insurance Group - Pembroke 570 Pembroke St.  Pembroke NH 03275	<b>CONTACT NAME:</b> Tami O'Neill, CISR <b>PHONE (A/C No. Ext):</b> (603) 224-1121 <b>FAX (A/C. No):</b> (603) 224-4827 <b>E-MAIL ADDRESS:</b> tami.oneill@foyinsurance.com
<b>INSURER(S) AFFORDING COVERAGE</b>	
INSURER A: Twin City Fire Ins. Co.      NAIC # 0063	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	
<b>INSURED</b> Goldman & LeBrun PA PO Box 660  Concord NH 03302-0660	

**COVERAGES**      **CERTIFICATE NUMBER:** Master 11/2013 to 2014      **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
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below						<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	<b>Lawyer's Professional Liability</b>			LT1615926	11/13/2013	11/13/2014	Each Claim Limit \$500,000 Deductible \$5,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
 Policy is subject to a \$500,000 aggregate limit.

**CERTIFICATE HOLDER**

(603) 228-4680  
  
 State of New Hampshire  
 Bureau of Behavioral Health  
 105 Pleasant Street  
 Concord, NH 03301

**CANCELLATION**

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

M Foy, CIC/PTAMI



**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 7, 2013

Approved by LS+C

Date 6-19-13

Item # 117

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

Contract # 1030503

**REQUESTED ACTION**

Authorize the Department of Health and Human Services, Division of Community Based Care Services, Bureau of Behavioral Health to enter into an agreement with Attorney John P. LeBrun, vendor number 174196-R001, to provide legal services, in an amount not to exceed \$78,988 effective July 1, 2013, or date of Governor and Executive Council approval, whichever is later, through June 30, 2015. Funds are anticipated to be available in the following account in State Fiscal Years 2014 and 2015 upon the availability and continued appropriation of funds in the future operating budget.

**05-95-92-920010-7003 HEALTH AND SOCIAL SERVICES, DEPT. OF HEALTH AND HUMAN SVCS, HHS: BEHAVIORAL HEALTH – DIV OF, DIV OF BEHAVIORAL HEALTH, COMMITMENT COSTS**

<u>Class/Object</u>	<u>Class Title</u>	<u>Activity Code</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>Total</u>
102-500732	Contracts for Program Services	92107003	\$39,494	\$39,494	\$78,988

**EXPLANATION**

The purpose of this request is to provide legal services to individuals subject to involuntary emergency admission at probable cause hearings held in the 6<sup>th</sup> Circuit Court – District Division - Concord and to meet with individuals at New Hampshire Hospital whose conditional discharge has been revoked to review their legal rights and effectuate any appeal. Individuals subject to involuntary admission or absolute revocation of conditional discharge have an unconditional right to legal counsel at such hearings or upon readmission to New Hampshire Hospital as provided in RSA 135-C:22 and He-M 609. Reimbursement for these expenses has been included in the budget of the Bureau of Behavioral Health.

Attorney LeBrun was one of four respondents to a notice posted on the Division of Community Based Care Services website on April 18, 2013 for a week, requesting letters of interest in providing this service. The Bureau of Behavioral Health currently contracts with Attorney LeBrun and will continue to do so in Fiscal Year 2014 and Fiscal Year 2015. Attorney LeBrun's resume is attached.

The rate of reimbursement for this service was established by the Bureau of Behavioral Health in Fiscal Year 2004, to be paid on a per case rate rather than the hourly fee for service rate established by the New Hampshire

May 7, 2013

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Supreme Court in indigent defense cases. Previously, counsel have been appointed by the courts and have billed the Bureau of Behavioral Health at \$60 per hour, the rate for appointed counsel in indigent defense cases. This contract will reduce expenses to the State for providing this service by reimbursing Attorney Carrel at the rate of \$62 per case.

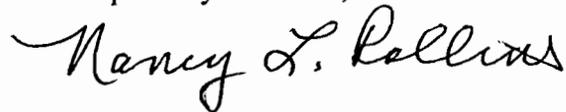
As referenced in Exhibit C-1, paragraph 3, this agreement has the option for two 1-year extensions of the term of the contract pending availability of funding, acceptable performance of the Scope of Services, the agreement of the parties and approval by the Governor and Executive Council.

Should Governor and Executive Council determine not to approve this request the State will not be able to commit people who are mentally ill and dangerous to New Hampshire Hospital. The state and federal constitutions require representation by an attorney before the State can deprive a person of their liberty.

Area served: statewide.

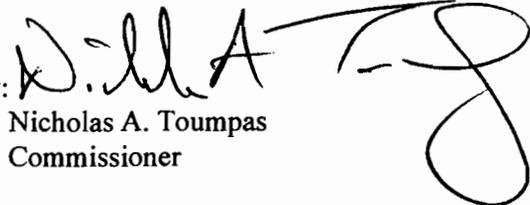
Source of funds: 100% general funds.

Respectfully submitted,



Nancy L. Rollins  
Associate Commissioner

Approved by:

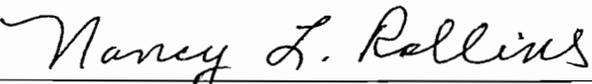
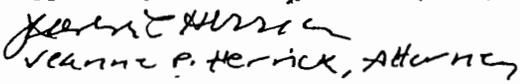


Nicholas A. Toumpas  
Commissioner

Subject: Office of Client and Legal Services**AGREEMENT**

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

**GENERAL PROVISIONS****1. IDENTIFICATION.**

<b>1.1 State Agency Name</b> DHHS - Div of Community Based Care Services Bureau of Behavioral Health		<b>1.2 State Agency Address</b> 105 Pleasant Street Concord, NH 03301	
<b>1.3 Contractor Name</b> John P. LeBrun		<b>1.4 Contractor Address</b> 46 North State Street Concord NH, 03301	
<b>1.5 Contractor Phone Number</b>	<b>1.6 Account Number</b> 05-95-92-920010-70030000- 102-500732	<b>1.7 Completion Date</b> June 30, 2015	<b>1.8 Price Limitation</b> \$78,988
<b>1.9 Contracting Officer for State Agency</b> Nancy L. Rollins, Associate Commissioner		<b>1.10 State Agency Telephone Number</b> 603-271-9410	
<b>1.11 Contractor Signature</b> 		<b>1.12 Name and Title of Contractor Signatory</b> John P. LeBrun, Attorney	
<b>1.13 Acknowledgement: State of <u>New Hampshire</u>, County of <u>Merrimack</u></b> On <u>April 24, 2013</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.			
<b>1.13.1 Signature of Notary Public or Justice of the Peace</b> [Seal] 			
<b>1.13.2 Name and Title of Notary or Justice of the Peace</b> <b>DONNA E. WALKER</b> Notary Public, State of New Hampshire My Commission Expires April 18, 2017			
<b>1.14 State Agency Signature</b> 		<b>1.15 Name and Title of State Agency Signatory</b> Nancy L. Rollins Associate Commissioner	
<b>1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable)</b> By: _____ Director, On: _____			
<b>1.17 Approval by the Attorney General (Form, Substance and Execution)</b> By:  <b>Jeanne P. Herrick, Attorney</b> On: <u>15 May 2013</u>			
<b>1.18 Approval by the Governor and Executive Council</b> 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.

## NH Department of Health and Human Services

**EXHIBIT A**  
**SCOPE OF SERVICES**

**John P. LeBrun**

1. Provisions Applicable to All Services.
  - 1.1. The Contractor shall represent all individuals scheduled for involuntary emergency admission hearings held in the Concord District Court on Friday or such other days as hearings usually scheduled by the Court on Fridays are rescheduled during the period of this Agreement, except as otherwise provided herein.
  - 1.2. The Contractor shall represent all individuals scheduled for involuntary emergency admission hearings held in the Concord District Court on Thursdays on an as needed basis.
  - 1.3. The Contractor shall immediately notify the District Court in any case where the Contractor may have a conflict of interest so that the court can make arrangements for alternate counsel.
  - 1.4. On Friday, and on Thursday on an as needed basis, the Contractor shall meet personally with individuals who have had their conditional discharge absolutely revoked to consult with that individual and discuss with him/her the legal implications of the revocation of the conditional discharge. The Contractor shall explore with the individual the merits of any avenue of legal recourse, including but not limited to an appeal of the revocation or other extraordinary remedies. The Contractor shall either effectuate any appeal the individual elects to pursue or notify the state in writing that, at this time, the individual declines to appeal his/her revocation.
  - 1.5. The Contractor agrees to not accept court appointment as counsel or to provide legal services to any person served by the State or any agency or program funded by the State when such representation is likely to create a potential conflict of interest in cases in which the Contractor may be called to provide representation pursuant to this Agreement, without the prior consent of the State.
  - 1.6. The Contractor shall not subcontract or delegate any responsibilities as provided in this Agreement without the express written consent of the State except that the Contractor may arrange and pay for coverage for any occasional day the Contractor is scheduled to provide services under this agreement, but is unavailable. The Contractor shall, in the first instance, make arrangement for coverage with an attorney also under contract to provide representation to individuals subject to involuntary emergency admission.
  - 1.7. The Contractor agrees to meet with court personnel and staff of the State from time to time as may be necessary to address issues related to this Agreement.
  
2. The Commencement Date of this agreement shall be the Effective Date, that is July 1, 2013, or date of Governor and Executive 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.

Initials: JPL  
Date: 4/26/12

## NH Department of Health and Human Services

**EXHIBIT B**  
**METHOD, SCHEDULE AND CONDITIONS PRECEDENT TO PAYMENT****John P. LeBrun**

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 the sum of \$62 per case for professional services rendered pursuant to this Agreement. The total of the payments made pursuant to this Agreement shall not exceed \$78,988, the price limitation set forth in block 1.8 of the General Provisions.
2. Payment to the Contractor shall be made on a monthly basis subject to the following conditions:
  - 2.1. The Contractor shall submit a statement of the number of cases scheduled during the day(s) in which the Contractor is scheduled in court pursuant to this Agreement, including Thursdays as needed, during the preceding month; and
  - 2.2. The State shall pay the Contractor \$62 per case for services to be provided on Fridays, and Thursdays as needed.
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 State or Federal law, rule or regulation applicable to the services provided or if the services have not been satisfactorily completed in accordance with the terms and conditions of this Agreement.
4. The parties agree to renegotiate the terms of this Agreement subject to approval of Governor and Executive Council if the average number of cases scheduled on Friday during any three month period during this agreement increase or decrease more than 20% from the anticipated average of 53 cases per month.
5. The parties agree to review the scope of the work and other issues related to this Agreement as often as reasonably necessary.

Initials: JPL  
Date: 4/26/13

## NH Department of Health and Human Services

## STANDARD EXHIBIT C

SPECIAL PROVISIONS

**1. 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:

**2. 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.

**3. Time and Manner of Determination:** Eligibility determinations shall be made on forms provided by the Department for that purpose and shall be made and remade at such times as are prescribed by the Department.

**4. 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.

**5. Fair Hearings:** The Contractor understands that all applicants for services hereunder, as well as individuals declared ineligible have a right to a fair hearing regarding that determination. The Contractor hereby covenants and agrees that all applicants for services shall be permitted to fill out an application form and that each applicant or re-applicant shall be informed of his/her right to a fair hearing in accordance with Department regulations.

**6. Gratuities or Kickbacks:** The Contractor agrees that it is a breach of this Contract 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 Contract. The State may terminate this Contract 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.

**7. Retroactive Payments:** Notwithstanding anything to the contrary contained in the Contract or in any other document, contract or understanding, it is expressly understood and agreed by the parties hereto, that no payments will be made hereunder to reimburse the Contractor for costs incurred for any purpose or for any services provided to any individual prior to the Effective Date of the Contract 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.

**8. 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 Contractor's 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:

8.1 Renegotiate the rates for payment hereunder, in which event new rates shall be established;

8.2 Deduct from any future payment to the Contractor the amount of any prior reimbursement in excess of costs;

8.3 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.

**RECORDS: MAINTENANCE, RETENTION, AUDIT, DISCLOSURE AND CONFIDENTIALITY:**

**9. 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:

**9.1 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, 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.

**9.2 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.

**9.3 Medical Records:** Where appropriate and as prescribed by the Department regulations, the Contractor shall retain medical records on each patient/recipient of services.

**10. Audit:** Contractor shall submit an annual audit to the Department within 60 days after the close of the Contractor 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.

**10.1 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.

**10.2 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.

**11. 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 and conditions contained in the Paragraph shall survive the termination of the Contract for any reason whatsoever.

**12. Reports: Fiscal and Statistical:** The Contractor agrees to submit the following reports at the following times if requested by the Department.

**12.1 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.

**12.2 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.

**13. 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 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.

**14. Credits:** All documents, notices, press releases, research reports and other materials prepared during or resulting from the performance of the services of the Contract shall include the following statement:

**14.1** The preparation of this (report, document etc.) was financed under a Contract with the State of New Hampshire, Department of Health and Human Services, with funds provided in part by the State of New Hampshire and/or such other funding sources as were available or required, e.g., the United States Department of Health and Human Services.

**15. 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.

**16. 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, by-laws and regulations.

**17. 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:

- Evaluate the prospective subcontractor's ability to perform the activities, before delegating the function
- 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

- Monitor the subcontractor's performance on an ongoing basis
- Provide to DHHS an annual schedule identifying all subcontractors, delegated functions and responsibilities, and when the subcontractor's performance will be reviewed
- DHHS shall review and approve all subcontracts.

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

**SPECIAL PROVISIONS – DEFINITIONS**

As used in the Contract, the following terms shall have the following meanings:

**COSTS:** Shall mean those direct and indirect items of expense determined by the Department to be allowable and reimbursable in accordance with cost and accounting principles established in accordance with state and federal laws, regulations, rules and orders.

**DEPARTMENT:** NH Department of Health and Human Services.

**PROPOSAL:** If applicable, shall mean the document submitted by the Contractor on a form or forms required by the Department and containing a description of the Services to be provided to eligible individuals by the Contractor in accordance with the terms and conditions of the Contract and setting forth the total cost and sources of revenue for each service to be provided under the Contract.

**UNIT:** For each service that the Contractor is to provide to eligible individuals hereunder, shall mean that period of time or that specified activity determined by the Department and specified in Exhibit B of the Contract.

**FEDERAL/STATE LAW:** Wherever federal or state laws, regulations, rules, orders, and policies, etc. are referred to in the Contract, the said reference shall be deemed to mean all such laws, regulations, etc. as they may be amended or revised from the time to time.

**SUPPLANTING OTHER FEDERAL FUNDS:** The Contractor guarantees that funds provided under this Contract will not supplant any existing federal funds available for these services.

## NH Department of Health and Human Services

**EXHIBIT C-1  
ADDITIONAL SPECIAL PROVISIONS****John P. LeBrun**

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

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 identified in block 1.6, or any other account, in the event funds are reduced or unavailable.

2. Replace Paragraph 14.1.1 of the General Provisions with the following:

Lawyers Professional Liability insurance in amounts of not less than \$100,000 per claim and \$300,000 in aggregate.

3. This contract shall commence July 1, 2013 or upon Governor and Executive Council approval, whichever is later, and terminate on June 30, 2015, with the option for two (2) 1-year extensions of the term of the contract to be exercised by mutual agreement by the parties, upon acceptable performance of the Scope of Services, availability of funding, and subsequent approval by the Governor and Executive Council.