

Horizons of New Mexico Membership Agreement

THIS AGREEMENT, made this _____ day of _____, 20_____, by and between TIBH Industries, Inc., d/b/a Horizons of New Mexico, a nonprofit corporation incorporated under the laws of the State of Texas, and authorized to conduct business in the State of New Mexico, with principal New Mexico offices located at 1128 Pennsylvania St. NE, Ste. 220, Albuquerque, New Mexico 87110 (“Horizons” or “Horizons of New Mexico”) and (insert *Member name*):

_____, (*choose one*), [an individual with a disability], [a business primarily owned and operated by persons with disabilities that employs at least seventy-five percent (75%) persons with disabilities in the provision of direct labor, as described in the New Mexico State Use Act, N.M.S.A. § 13-1C-1, et seq], [a community rehabilitation program, as defined by the New Mexico State Use Act] with principal offices located at _____ (insert Member or Business Address) hereinafter called (“Member”).

WHEREAS, Horizons of New Mexico operates to facilitate the distribution of orders for the purchase of services to state agencies, local public bodies and the New Mexico System of Higher Education performed by persons with disabilities in the State of New Mexico among Horizons of New Mexico Members pursuant to the New Mexico State Use Act; and

WHEREAS, Member has applied to Horizons of New Mexico to participate as a Member providing services as aforementioned; and

WHEREAS, Member understands and agrees that in order to accomplish its purpose, Horizons of New Mexico in accordance with its policies and procedures as approved by the New Mexico

Council for Purchasing from Persons with Disabilities (“the Council”), determines which of its Members shall provide services as aforementioned in each instance;

NOW, THEREFORE, for and in consideration of these provisions, which are incorporated herein and the mutual promises, covenants and agreements hereinafter set forth by Horizons of New Mexico and Member, with the intent to be legally bound, do agree as follows:

1. Horizons of New Mexico will have the exclusive right to represent its members in all matters pertaining to the sales of services to the State of New Mexico and/or any of its departments, commissions, councils, boards, committees, institutions, legislative bodies, agencies, government corporations, educational institutions, or officials of its executive, legislative, or judicial branches. Horizons of New Mexico will also have the exclusive right to represent its members in all matters pertaining to the sales of services to any political subdivision of the State of New Mexico, and/or any agency, instrumentality, or institution of that political subdivision. Horizons has the exclusive rights described above regardless of the location where such sales are conducted, pursuant to N.M.S.A. 13-1C-1, et seq, and pursuant to Title 2, Chapter 40, Part 5 of New Mexico’s Administrative Code. The direct negotiation by any Horizons Member regarding sales of services in contravention of these exclusive rights is grounds for the immediate termination of this Membership Agreement.

2.

a. All service contracts negotiated by Horizons will either be tripartite agreements between Horizons, the Member, and the state agency or local public body, or contracts between Horizons and the state agency or local public body, to which the Member is not a party. The Members’ rights and obligations under tripartite agreements are subject to the conditions described in this Agreement. If Horizons negotiates a service contract on behalf of a Member to which the Member is not a party, the Member must enter into a

subcontract with Horizons, which will be subject to the terms of this Agreement, including, but not limited to, paragraph 2b.

b. All subcontracts into which the Member enters pursuant paragraph 2(a), above shall be subject to the following conditions:

i. the Member shall bind itself to Horizons and to the state agency or local public body. Additionally, under all subcontracts, the Member will be obligated to Horizons and the state agency or local public body in the same manner and to the same extent that Horizons is bound and obligated to the state agency or local public body under the original service contract.

ii. Under all subcontracts, all rights under the original contract that the state agency or local public body may exercise and enforce against Horizons may be exercised and enforced by Horizons against the Member, in the event of any dispute between the state agency or local public body and Horizons.

iii. Under all subcontracts, Member shall be bound by all decisions, directives, interpretation[s] and rulings of the state agency or local public body, including Owner's termination or suspension of Contractor.

2. Horizons of New Mexico will have the exclusive right to represent its members in all matters pertaining to N.M.S.A. § 13-1C-1, et seq, and Title 2, Chapter 40, Part 5 of New Mexico's Administrative Code, as amended from time to time.

3. Member certifies that it meets at least one of the following requirements:

a. If Member is an individual, the Member certifies that he or she has a mental or physical impairment that constitutes or results in a substantial impediment to employment, as described in the State Use Act;

b. If Member is a business, the Member certifies that it is primarily owned and operated by persons with disabilities in the provision of direct labor, direct labor being defined as work directly relating to the provision of services, but not work required for or relating to supervision, administration or inspection;

c. If Member is a community rehabilitation program, Member certifies that it is organized under the laws of New Mexico or elsewhere in the United States, and operated in the interest of persons with disabilities and operated, as a non-profit entity, so that no part of its income inures to the benefit of any shareholder or other person. Member also certifies that, in the provision of total services, it employs during the state fiscal year at least seventy-five percent persons with disabilities in direct labor for the those services.

4. Member agrees that no services shall be delivered to any agency of the State of New Mexico or local government unless during the State Fiscal Year at least seventy-five percent persons with disabilities are used in the direct labor for the provision of the Members' total services, whether or not they are provided under the State Use Act. Member also agrees that no such services shall be delivered unless Member has the appropriate business and/or professional license(s) in the State of New Mexico.

5. Member agrees to provide, on a quarterly basis, reports pertaining to its employees describing their wages, hours and the percentage of employees with disabilities, based on the definitions in the State Use Act.

6. To be eligible to participate in this program, Member Agencies must certify to the Council that persons with qualifying disabilities will make an appreciable contribution to the performance of the service. In each case, the Council makes the final determination of eligibility. If the Member wishes to obtain a specific procurement, the Member must also be capable of performing the service in accordance with the specifications of the procurement contract, and must submit the following documents as proof of its

capability: Price Proposal and Cost Analysis spreadsheet, Contract Authorization checklist, disability documentation regarding the member and each employee, certificate of liability insurance, and service contract agreement

7. Pursuant to all contracts negotiated by Horizons of New Mexico on behalf of any Member, the Member will be entitled to payment according to a fair market price negotiated by the Council. The state agency or local public body will make this payment to Horizons, and Horizons will transfer this payment to the Member, pursuant to the contract with the state agency, local public body or New Mexico System of Higher Education. The state agency or local public body will also pay Horizons an additional fee of five percent (5%) of the member's payment. Horizons will retain this additional fee as payment for its administrative services. In the event that the Member, rather than Horizons, is paid by the state agency, local public body or New Mexico System of Higher Education, and fails to pay Horizons the 5% administrative fee, Horizons reserves the right to collect the fee from the Member, or to deduct it from the payment owed the Member on a different procurement. In the event that Horizons has paid its Member and the state agency, local public body or New Mexico System of Higher Education, fails to pay Horizons, Horizons reserves the right to collect the fees from the Member, or to deduct it from the payment owed the Member on a different procurement.

8. Member agrees to abide by any and all rules, procedures and policies which Horizons of New Mexico establishes pertaining to these Contracts, including but not limited to, rules, procedures and policies pertaining to the following:

A. Quality and standards of services;

B. Employment of persons with disabilities to perform such contracts;

C. Types and amounts of insurance coverage Member shall maintain with respect to the performance of such contracts. *In addition Horizons of New Mexico requires a current certificate of liability insurance on file for all member agencies as a requirement of membership.*

D. Roles and responsibilities in performing such contracts.

E. The Agency and Horizons of New Mexico Policy and Procedures Manual.

9. Member hereby agrees to indemnify Horizons of New Mexico and hold it harmless from and against any damage, liability, loss or deficiency including, but not limited to, reasonable attorney's fees and other costs and expenses incident to any claim, suit, action or proceeding arising out of or resulting from Member's performance of any Contract. This paragraph shall survive any termination of this Agreement.

10. With the approval of the Council, either party may terminate this Agreement by giving 120 days written notice thereof to the party. With the approval of the Council, Horizons may terminate this Agreement immediately for a material breach by the Member of this Agreement. Horizons may terminate any procurement contracts to which the Member is a party immediately for a material breach by the Member. In the event of immediate termination of this Agreement Horizons shall provide written notice of the termination, and the Member may seek a hearing before the Council to contest the termination. The Member must seek a hearing within fifteen (15) days after receiving notice of immediate termination. Upon notice of termination by either party, Horizons of New Mexico shall have the right to reassign all executory contracts which had been assigned to Member to its other Members; provided, however, that, until such reassignment, Member shall perform work to deliver any assigned service contract and shall remain entitled to payment for work performed less damages caused by any material breach of contract by the Member.

11. If either party breaches any provisions of this Agreement, the other party shall have the right, at its election, to sue for damages for such breach or seek other remedies or relief as may be available. The party breaching this contract shall be responsible for payment of reasonable attorney fees and other costs incurred by the other in enforcing its rights under this Agreement.

12. For each service contract to which it is a party, the Member shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of Services rendered during the term and effect of the service contracts, and retain the records for a period of three (3) years from the date of final payment under the service contract, unless a longer period of time is required by the service contract. For each service contract, the records shall be subject to inspection by Horizons, as well as by any and all state, federal, local, and/or tribal agencies that have the right to audit either Horizons or the Member pursuant to the contract. For each service contract, the Member shall retain all time and expenditure records. Horizons and the state agenc(ies) and/or local public bod(ies) for whom the services are provided shall have the right to audit billings both before and after payment. Payment for Services under service contracts shall not foreclose the right of Horizons to recover excessive or illegal payments on its own behalf. Member agrees to reimburse Horizons for all expenses associated with audits conducted by the federal government. Nothing in this paragraph shall limit the Member's duty to keep records under the terms of any service contract, tripartite agreement, or subcontract.

13. This Agreement contains the entire understanding of the parties, and there are no representations, warranties, covenants or undertakings other than those expressly set forth herein, except as provided in any procurement subcontract between Horizons and the Member, the State Use Act, the regulations governing the State Use Act, and any other applicable state and federal law.

14. The modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement. The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any subsequent default of the same or similar nature.

15. If any term, condition, clause, or provision of this Agreement shall be determined or declared to be void or invalid in law or otherwise, then only that term, condition, clause or provision shall be stricken from this Agreement. In all other respects this Agreement shall be valid and continue in full force, effect and operations.

16. Except as provided below, this Agreement shall not be assigned by either party without the prior written consent of both parties. However, if Horizons is replaced as the central non-profit agency under the New Mexico State Use Act, it may assign this Agreement to the new central non-profit agency. In the event of Horizons' replacement as central non-profit agency, the Member shall continue to perform its duties required under all service contracts to which it is a party unless and until it receives a notice of termination from Horizons, the new central non-profit agency to which this Agreement was assigned, or the state agenc(ies) or local public bod(ies) that contracted for the services.

Any notice to be given hereunder shall be in writing and shall be effective by registered or certified mail, return receipt requested. Notice to Horizons of New Mexico shall be sufficient if addressed to:

Horizons of New Mexico
1128 Pennsylvania St. NE, Ste. 220
Albuquerque, NM 87110

And to Member at: *(Please provide mailing address)* *(Please provide e-mail and business, cell phone)*

Each party may change the address for notice by giving notice of such change in accordance with the provision of the paragraph.

Executed by the parties hereto on the day and year first above written with the intent to be legally bound:

Print Member Name

Signature of Horizons Member

Horizons Executive Director Name

Signature of Horizons Executive Director
