

STATE USE PROGRAM AGREEMENT PURSUANT TO NMSA 1978, 13-1C et seq., New Mexico Procurement Code

The State of New Mexico has enacted legislation to further the state's policy of encouraging and assisting persons with disabilities to achieve maximum independence by engaging in useful and productive employment. This contract is executed to accomplish the legislative goals set forth in the State Use Program, NMSA 1978, 13-1C et seq., New Mexico Procurement Code. The terms of this agreement are mandated and/or authorized by said statutory scheme.

The Council for Purchasing from Persons with Disabilities, hereinafter **COUNCIL** has selected WorkQuest d/b/a Horizons of New Mexico to act as the Central Nonprofit Agency, hereinafter **CNA** under the State Use Program.

_____, hereinafter **PROVIDER**, is [] individual with a disability, [] 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., or [] community rehabilitation program, as defined by the New Mexico State Use Act, **Provider** has been approved by **COUNCIL**, and is now eligible to receive contract/work order (hereinafter contracts) assignment through the **CNA** under the State Use Program.

PROVIDER REPRESENTATIONS AND OBLIGATIONS

PROVIDER understands and agrees that its participation in the State Use Program is contingent upon its qualification for certification as a **PROVIDER** by the **COUNCIL**. **PROVIDER** understands and agrees that it must stay in compliance with all aspects of program requirements.

PROVIDER affirms that it has read and understands NMSA 1978, 13-1C et seq., New Mexico Procurement Code as well as Title 2, Chapter 40 Part 5 §2.40.5.1 et seq. Full compliance with the statutory and administrative requirements are material terms of this agreement, and failure to comply with same constitutes a material breach of this agreement on the part of the **PROVIDER** resulting in its disqualification from participation in the State Use Program.

PROVIDER understands and agrees that any alterations or deletions to the terms of this Agreement required by changes in federal or state law or by regulations are automatically incorporated into this Agreement and will be reduced to writing as soon as practicable. Said changes shall become effective on the date designated by such law or regulation.

PROVIDER understands and agrees that when it is notified that it may be assigned a contract by **CNA** it will immediately read the contract/work order in its entirety. It will immediately notify **CNA** if it is unable to comply with all terms of said contract. **PROVIDER** is obligated to refuse the assignment of such contract. Acceptance of the contract by the **PROVIDER** constitutes an affirmative representation by the **PROVIDER** that it is fully qualified and capable of performing all aspects of the contract in its entirety, and that it has and will maintain all certifications necessary to comply with the contract terms. Any additional requirements set forth in the contract are hereby

incorporated by reference as if fully set forth verbatim herein. Moreover, these additional requirements are material terms of this agreement.

PROVIDER acknowledges that it alone is responsible for verifying, accepting and fulfilling the contract terms and conditions, cost estimates, pricing, specifications, measurements, quantities, shipping costs, customer's requirements, liabilities and all other risks and circumstances relevant to performance under any referenced contract.

PROVIDER understands and agrees that by participating in the State Use Program it authorizes **CNA** to solicit and negotiate contracts on its behalf. **PROVIDER** understands and agrees that it assumes sole responsibility for performing all terms and conditions of said contract even if **PROVIDER** is not a signatory on the contract assigned to it.

PROVIDER understands and agrees that by participating in the State Use Program it authorizes **CNA** to perform accounting services related to payments to **PROVIDER** for goods and services. **PROVIDER** agrees that **CNA** shall receive all payments on its behalf which **PROVIDER** may be entitled to for goods and/or services under the State Use Program. Moreover, **CNA** is specifically authorized to deduct its management fee and any other offsets from all said payments before payment is made to **PROVIDER**.

PROVIDER is solely responsible for any legal or contractual obligations arising from its operation as a PROVIDER within the State Use Program.

PROVIDER understands and agrees that compliance with New Mexico state contract terms and provisions it is a condition precedent to its eligibility to participate in the New Mexico State Use Program. **PROVIDER** represents that it is currently in compliance with the following, and any change in this status constitutes a breach of a material terms of this Agreement. **PROVIDER** agrees that it is obligated to comply with all terms of each state contract assigned to it by Horizons of New Mexico, and it specifically represents that it has policies in compliance with the following:

Debarment and Suspension

The Agency is prohibited from contracting with entities that have been listed on the government wide exclusions in the System for Award Management (SAM) pursuant to the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp. p. 189) and 12689 (3 CFR part 1989 Comp., p. 235). **The Contractor affirms that it is not listed on the System for Award Management. The Contractor further agrees to immediately notify the Agency should it be listed on the System for Award Management at any time during the term of this Agreement. The Agency shall also monitor the System for Award Management, and this Agreement shall be terminated immediately on written notice should the Contractor be listed on the System for Award Management.**

Prohibition of Covered Telecommunications Equipment or Services

The Contractor certifies and warrants that no part of the Contract uses covered telecommunications equipment or services as a substantial or essential component of the Contract, or as critical technology as part of the Contractor's business. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

Whistleblower Protection

An employee of the contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a federal or state agency information that the employee reasonably believes is evidence of mismanagement of a federal contract or grant, a waste of state or federal funds, an abuse of authority relating to a federal contract or grant, a danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract or grant (including the competition for or negotiation of a contract).

Specially Designated Nationals and Blocked Persons

Contractor and Contractor's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>.

Additional **COUNCIL** mandated requirements:

- a) The **PROVIDER** affirms it has in place policies and practices in place to prevent fraud, waste, and abuse;
- b) The **PROVIDER** affirms that no part of a Contract will use covered telecommunications equipment or services as a substantial or essential component of the Contract, or as critical technology as part of the member's business. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); and
- c) The **PROVIDER**, should it be a community rehabilitation program, affirms it is in compliance with the Americans with Disabilities Act (ADA), including with respect to the provision of reasonable accommodations, and that it takes affirmative action to employ and advance in employment qualified individuals with disabilities covered under and on the same terms and conditions as in section 503 of the Rehabilitation Act.

Horizons will not independently verify, nor will it monitor ongoing compliance with these terms and conditions by the **PROVIDER**. However, these terms and conditions are material to this agreement, and a **PROVIDER'S** failure to comply constitutes a material breach of this

agreement and allows Horizons to cancel any contracts which have been awarded to the **PROVIDER**. Contracts may also be monitored by state agencies and local public bodies.

WORKQUEST D/B/A HORIZONS OF NEW MEXICO REPRESENTATIONS AND OBLIGATIONS

The obligations of the **CNA** are set out in the statutes and rules that govern the State Use Program and have been specifically enumerated in the contract awarded by the **Council** to the **CNA**. WorkQuest d/b/a Horizons of New Mexico is specifically obligated to establish and operate a Central Non-Profit Agency to meet the following service requirements:

Marketing State Use Act Services to existing and potential customers, which includes a business operation plan;

Researching and developing existing and new services;

Providing superior customer services by monitoring customer satisfaction with services, by responding to customer complaints within on business day;

Providing public relations duties by promoting State Use Services;

Recruiting and retaining individuals with disabilities and community rehabilitation programs;

Resolving contract issues and problems as they arise between the parties;

Providing training to interested individuals with disabilities and community rehabilitation programs;

Providing quarterly reports that indicate number of contracts, number of those employed by state use contracts, number of dollars earned and other information useful to the Council;

Tracking of state legislation and keeping abreast of changes in the State Use Act and related programs;

Providing an annual audit that includes audited financial statements of the program administered pursuant to this contract;

Preparing an annual report that details employment opportunities for persons with disabilities, number of contracts, number of those employed by state use contracts, number of dollars earned and other information useful to the Council;

Working cooperatively with the state and community leaders to promote services;

Conducting business in an ethical manner;

Following the directives of the Council;

Maintaining excellent external and internal communication;

Maintaining an automated system that tracks and monitor contracts and services; xvii. Maintaining all necessary records in accordance with State and Federal law and directives set forth by the Council;

Maintain a web page as directed by the Council and that provides information necessary to administer the program; and

Performing any other tasks that may be required by Laws 2005, Chapter 334 or 2.40.5 NMAC.

These obligations include but are not limited to: promotion of the State Use Program, assisting in the identification and qualification of **PROVIDERS** eligible for **COUNCIL** certification, distribution of orders among the **PROVIDERS**, management and coordination of the day to day operation of the program, including the administration of the contracts with the **PROVIDERS**.

CNA will assist **COUNCIL** in verifying that **PROVIDER** is eligible to participate in the State Use Program. Thereafter, **CNA** will negotiate contracts on behalf of **PROVIDER** and facilitate completion of said contracts by acting as a liaison between **PROVIDER** and the state or local governmental entity.

CNA and **PROVIDER** agree that the State Use Program contemplates **CNA** negotiating contracts on behalf of **PROVIDER**. Negotiation of the contracts, facilitation of performance of the contract, and facilitating payment of the **PROVIDER** after the **PROVIDER** has discharged contractual obligations and **CNA** has deducted its management fee are the only obligations assumed by **CNA** under any contract assigned to **PROVIDER**. **CNA** is not a performing party to any contract. **CNA** is not a buyer or seller of goods, not a bailee, consignee, merchant or manufacturer. **CNA** has made no warranties, express or implied, to **PROVIDER** or any governmental entity/customer as to the merchantability or fitness for use of any of the goods described in any referenced contract.

BREACH OF CONTRACT OR STATUTORY SCHEME

If **CNA** is notified by the governmental entity/customer that **PROVIDER** has failed to perform any term or condition under the contract assigned to said **PROVIDER**, **CNA** will attempt to facilitate a resolution of the controversy to the satisfaction of both the customer and **PROVIDER**.

If **CNA** determines that **PROVIDER** has failed to perform a material term of a contract or if **PROVIDER** is in violation of any of its obligations under the State Use Program, **CNA** may terminate this Agreement as well as any contract(s) assigned to **PROVIDER** pursuant to this contract. **PROVIDER** stipulates and agrees that if any of its contracts are terminated due to its inability and/or unwillingness to discharge its obligations, it shall be solely responsible for any penalties, expenses and damages claimed by the customer/governmental entity as a result of such

termination. CNA will attempt to mitigate the any damages claimed by the customer/governmental entity by assigning the contract to another **PROVIDER**, if practicable.

MANAGEMENT FEE

Pursuant to all Contracts negotiated by Horizons of New Mexico on behalf of any Provider, the Provider 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 Provider 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 Provider's payment. Horizons will retain this additional fee as payment for its administrative Services. In the event that the Provider, 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 Provider, or to deduct it from the payment owed the Provider on a different procurement. In the event that Horizons has paid its Provider 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 Provider, or to deduct it from the payment owed the Provider on a different procurement.

CNA and **PROVIDER** stipulate and agree that said fee is fair and reasonable for the services provided by CNA in the overall management of the State Use Program.

DEFENSE AND INDEMNITY

PROVIDER AGREES TO DEFEND, INDEMNITY, AND HOLD HARMLESS CNA FROM ANY AND ALL CLAIMS OR SUITS OF ANY KIND OR TYPE WHATSOEVER, INCLUDING, BUT NOT LIMITED TO PROPERTY DAMAGE, PERSONAL INJURIES, BREACH OF CONTRACT, AND/OR VIOLATION OF ANY FEDERAL, STATE, OR LOCAL STATUTE, REGULATION OR ORDINANCE ARISING OUT OF, DIRECTLY OR INDIRECTLY, ANY WORK PERFORMED BY PROVIDER UNDER THIS AGREEMENT OR ANY CONTRACT ASSIGNED PURSUANT TO THIS AGREEMENT. IT IS EXPRESSLY INTENDED BY THE PROVIDER THAT THIS PROVISION BE CONSTRUED AS BROADLY AS POSSIBLE, AND EXPRESSLY INCLUDES ANY AND ALL PENALTIES, FINES AND DAMAGES RELATED TO THE SUITS AND/OR CLAIMS. IT IS EXPRESSLY AGREED THAT THIS INDEMNIFICATION IS TO BE CONSTRUED IN FAVOR OF CNA TO THE EXTENT ALLOWED BY LAW.

PROVIDER EXPRESSLY AGREES TO DEFEND AND PROTECT CNA EVEN IF THERE IS NO CREDIBLE BASIS FOR ANY SUCH ALLEGATIONS OF NEGLIGENCE OR FAULT AGAINST CNA. THIS DUTY TO DEFEND AND PROTECT ATTACHES TO ANY ALLEGATION, SUIT OR CLAIM MADE AGAINST CNA ARISES OUT OF, (DIRECTLY OR INDIRECTLY), ANY WORK PERFORMED BY PROVIDER UNDER A CONTRACT ASSIGNED WITHIN THE STATE USE PROGRAM.

INSURANCE

BEFORE PERFORMING ANY WORK UNDER THIS AGREEMENT PROVIDER AGREES TO OBTAIN A GENERAL LIABILITY POLICY FROM A MAJOR INSURANCE COMPANY LICENSED IN THE STATE OF NEW MEXICO. SAID POLICY SHALL PROVIDE LIABILITY LIMITS OF AT LEAST ONE MILLION (\$1,000,000.00) PER OCCURRENCE AND TWO MILLION (\$2,000,000.00) AGGREGATE. SUCH POLICY MUST BE ON AN OCCURRENCE BASIS AND MUST LIST CNA AS ADDITIONAL INSURED UNDER SUCH POLICY AND PROVIDE THAT THE POLICY CANNOT BE CANCELLED WITHOUT 30 DAY REQUIRED NOTICE TO CNA.

OFFSET

PROVIDER grants CNA a right of set-off against all of PROVIDER's funds or property now or hereafter in possession of CNA or to be received or serviced by CNA for any payments made by CNA for any damages, fines or penalties arising from PROVIDERs performance of a contract under the State Use Program.

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 Provider 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 agency(ies) or local public body(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
6121 Indian School Rd. NE, Ste. 220
Albuquerque, NM 87110

And to Provider 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 Provider Name

Horizons Executive Director Name

Signature of Horizons Provider's
Authorized Representative

Signature of Horizons Executive Director
