

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (this "Agreement") is entered into effective \_\_\_\_\_ between the Regents of the University of New Mexico, for its public operation known as University of New Mexico Hospitals ("UNMH"), and \_\_\_\_\_, a \_\_\_\_\_ ("Contractor").

### RECITALS

- A. UNMH has issued a Request for Proposals No. **358-16** (the "RFP") for Consulting Services for UNMH Wayfinding Standards.
- B. Contractor has responded to the RFP and assures UNMH that it is qualified and willing to perform such services.
- C. This Agreement sets forth the terms and conditions under which Contractor will perform services and UNMH will reimburse Contractor for such services.

**The parties agree as follows:**

### I. RESPONSIBILITIES OF CONTRACTOR

- A. Contractor will perform those duties assigned by UNMH, as set forth in the section entitled "Scope of Services" in the RFP and in accordance with statements set forth in Contractor's response to that RFP, copies of which are attached to and incorporated by reference in this Agreement.

Contractor will develop an efficient and effective wayfinding design and sign standard for patients and visitors to the three buildings that comprise the UNMH Main Hospital described in the RFP and Exhibits.

- B. Contractor will furnish reports to UNMH in such form and number as may be deemed necessary by UNMH.

Reports and Deliverables may include but are not limited to:

1. Exterior Sign schedule including locations and details;
2. Interior Sign schedule including locations and details;
3. Interior wayfinding standard for UNMH to include colors, text font/heights, layouts, ADA requirements, and design specifications.

All reports and deliverables shall be provided in both hard copy and electronic copy (AutoCAD, Excel, etc...).

**II. QUALITY MANAGEMENT COMPLIANCE.** Contractor will comply with all quality management programs required by UNMH, The Joint Commission, the federal Centers for Medicare and Medicaid Services, and any other applicable accrediting or regulatory agencies, as well as all policies and procedures of UNMH facilities.

**III. LIABILITY, INDEMNIFICATION, AND INSURANCE**

**A. Liability.** As between the parties, each party acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or property to the extent they result from negligence of that party's employees. Contractor understands that UNMH is not indemnifying Contractor for the acts or omissions of UNMH. The liability of UNMH will be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1 *et seq.* NMSA 1978, as amended.

**B. Indemnification.** Notwithstanding the foregoing, Contractor will indemnify and hold harmless UNMH, its Regents, officers, agents and employees from any claims for losses, costs, damages, expenses or liability by reason of bodily injury (including death) or property damage, to the extent such damages are determined by a court of competent jurisdiction, in a proceeding to which Contractor is a party, to result from Contractor's negligence, act or omission, except to the extent of UNMH's negligence. The foregoing indemnification obligation shall specifically include, but not be limited to, any breach of the Contractor's obligations as a Business Associate, as set forth in the Business Associate Addendum hereto, and any breach of Contractor's non-assignment and/or subcontractor obligations set forth in Section IX.D of this Agreement.

**C. Insurance.** Contractor will procure and maintain in effect during the term of this Agreement: (1) general liability insurance coverage with minimum limits of \$1 million per occurrence and \$3 million aggregate; and (2) as applicable, professional liability insurance coverage within minimum limits of \$1 million per occurrence and \$3 million in aggregate; and (3) workers' compensation insurance coverage within statutory limits of the state in which Business Associate is located. Upon request, Contractor shall provide evidence of continuous coverage to Covered Entity.

**V. FINANCIAL REQUIREMENTS**

**A. Compensation.** Contractor will accept as payment in full by UNMH for services provided by Contractor under this Agreement the following amounts:

\_\_\_\_\_

The maximum amount payable under this Agreement shall not exceed \$\_\_\_\_\_.

- B. Billing.** During the term, Contractor will submit monthly invoices to UNMH within thirty (30) days after services are provided. Invoices will be sent to the following address:

\_\_\_\_\_

- C. Payment.** UNMH will pay Contractor within a reasonable time after receipt of invoices from Contractor. Disputed invoices will be resolved in good faith by Contractor and UNMH in a timely manner. Payment will be sent to the following address:

\_\_\_\_\_

- D. Accounting.** Contractor will keep an accurate record of all work performed regarding this Agreement, and will make such records available to UNMH at all reasonable times.

## VI. TERM AND TERMINATION

- A. Term/Termination.** This Agreement will become effective on the date first set forth above, and will continue in effect until \_\_\_\_\_, unless earlier terminated at any time with or without cause by delivering written notice to the other party at least thirty (30) days in advance of the proposed date of termination. Thereafter, this Agreement may be renewed by written agreement of the parties for \_\_\_ additional one-year terms. In no event will the term of this Agreement extend beyond \_\_\_\_\_.
- B. Multi-Term Determination.** Pursuant to Section 13-1-151 NMSA 1978, it has been determined that the estimated requirements covered in this Agreement are reasonably firm and continuing and a multi-term contract will serve the best interests of UNMH.

## VII. MISCELLANEOUS

- A. Entire Agreement.** This Agreement represents the entire understanding between the parties and supersedes any prior agreements or understandings with respect to the subject matter of this Agreement. This Agreement incorporates by reference RFP No. **358-16** in its entirety, Contractor's response to the RFP, and UNMH's Purchase Order No. \_\_\_\_\_. In the event of any conflict in the provisions of this Agreement, the RFP, Contractor's response to the RFP, and the Purchase Order, the terms of, first, this Agreement, second, the RFP, and third, the Purchase Order, will control.

- B. Waiver of Breach.** The waiver by either party of a breach or violation of any provision of this Agreement will not operate as or be construed as a waiver of any subsequent breach of this Agreement.
- C. Modifications.** No changes, amendments or alterations to this Agreement will be effective unless in writing and signed by both parties.
- D. Non-Assignability.** This Agreement will not be assigned by either party, nor will the duties imposed upon either party by this Agreement be delegated, subcontracted, or transferred by either party, in whole or in part, without the prior written consent of the other party; provided, however, that UNMH may assign this Agreement to a wholly-owned subsidiary or affiliate of UNMH or any component part thereof without the consent of Contractor. Contractor shall require any subcontractors to demonstrate that they have in place administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic Protected Health Information, in accordance with the Business Associate Addendum to this Agreement, and shall, upon request, provide evidence of such to UNMH. Contractor shall not, in any event, assign, delegate, transfer, or subcontract this Agreement, in whole or in part and/or directly or indirectly, to any off-shore entity. Furthermore, Contractor will not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of UNMH. Violation of this provision shall give UNMH the right to immediately terminate this Agreement and subject Contractor to the indemnification provision set forth in Section IV.B of this Agreement.
- E. Governing Law.** This Agreement will be construed, interpreted, governed and enforced in accordance with the statutes, judicial decisions, and other laws of the State of New Mexico, without regard to its conflict of law provisions.
- F. Severability.** The invalidity or unenforceability of any term or provision of this Agreement will in no way affect the validity or enforceability of any other term or provision to the extent permitted by law.
- G. Headings.** Headings and captions used in this Agreement are for convenience and ease of reference only and will not be used to construe, interpret, expand or limit the terms, conditions, or other provisions of this Agreement.

**H. Confidentiality**

- 1. Compensation.** Contractor and UNMH will not disclose the compensation payable to Contractor pursuant to this Agreement, except to the extent required by applicable laws or regulations or as may be required to carry out the terms of this Agreement.

2. **Other Information.** Any information given to Contractor by UNMH or developed by Contractor in the performance of this Agreement will be kept confidential and will not be made available to any individual or organization by Contractor without the prior written approval of UNMH. All documents, materials, and information developed by Contractor in the performance of this Agreement will become the property of UNMH, and Contractor will not retain title or ownership to any of such information or documents.
- J. Retention of Records.** Contractor will maintain detailed records indicating the date, time and nature of services provided under this Agreement for a period of at least five years after termination of this Agreement, and will allow access for inspection by UNMH, the Secretary for Health and Human Services, the Comptroller General and the Inspector General to such records for the purpose of verifying costs associated with provision of services under this Agreement.
- K. Relationship of Parties.** The parties and their respective employees are at all times acting as independent contractors. Contractor and its employees will not be considered employees of UNMH for any purpose, including, but not limited to, workers' compensation, insurance, bonding or any other benefits afforded to employees of UNMH. Neither party has any express or implied authority to assume or create any obligation or responsibility on behalf of or in the name of the other party.
- L. Release.** Contractor, upon final payment of the amount due under this Agreement, will release UNMH, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations not assumed in this Agreement by UNMH or the State of New Mexico.
- M. Appropriations.** The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Regents of the University of New Mexico, or other sponsoring agency for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Regents or other sponsoring agency, this Agreement will terminate upon delivery of written notice by UNMH to Contractor. The decision of UNMH as to whether sufficient appropriations are available will be accepted by Contractor and will be final.
- N. Cooperation and Dispute Resolution.** The parties agree that, to the extent compatible with the separate and independent management of each, they will maintain effective liaison and close cooperation. If a dispute arises related to the obligations or performance of either party under this Agreement, representatives of the parties will meet in good faith to resolve the dispute.

- O. Third Parties.** Nothing in this Agreement, express or implied, is intended to confer any rights, remedies, claims, or interests upon a person not a party to this Agreement.
- P. Eligibility for Participation in Government Programs.** Each party represents that neither it, nor any of its management or any other employees or independent contractors who will have any involvement in the services or products supplied under this Agreement, have been excluded from participation in any government healthcare program, debarred from or under any other federal program (including but not limited to debarment under the Generic Drug Enforcement Act), or convicted of any offense defined in 42 U.S.C. Section 1320a-7, and that it, its employees, and independent contractors are not otherwise ineligible for participation in federal healthcare programs. Further, each party represents that it is not aware of any such pending action(s) (including criminal actions) against it or its employees or independent contractors. Each party shall notify the other party immediately upon becoming aware of any pending or final action in any of these areas.
- Q. Antifraud Compliance.** Both parties to this Agreement expressly acknowledge that the Medicare/Medicaid antifraud statute, 42 U.S.C. Section 1320a-7b, prohibits "illegal remuneration" as defined therein, in connection with the provision of goods or services for which payment is made in whole or in part under Medicare. The parties are entering into this Agreement with the intent of complying fully with the Medicare/Medicaid antifraud statute. To this end, the parties expressly agree that nothing contained in this Agreement is intended to, or shall in the context of the administration of this Agreement, require either party to refer any patients to the other, or to any affiliate or subsidiary of the other; rather, the purpose of this Agreement is to clarify the parties' understanding with regard to services to be provided to Contractor by UNMH.
- R. No Inducement to Refer.** Nothing contained in this Agreement will require either party or any physician of a party to admit or refer any patients to the other party's facilities. The parties enter into this Agreement with the intent of conducting their relationship in full compliance with applicable federal, state and local law, including the Medicare/Medicaid Anti-Fraud and Abuse Amendments and the Physician Ownership and Referral Act (commonly known as the Stark Law). Notwithstanding any unanticipated effect of any of the provisions herein, neither party will intentionally conduct itself under the terms of this Agreement in a manner to constitute a violation of these provisions.
- S. Notices.** Any notice required to be given pursuant to the terms and provisions of this Agreement will be made in writing and delivered either by: (i) actual delivery of the notice into the hands of the party entitled thereto, including by a nationally recognized overnight express common courier; or (ii) by the mailing of the notice in the U.S. mail to the address set forth below of the party entitled thereto, by

registered or certified mail, return receipt requested. The notice shall be deemed to be received on the date of its actual receipt by the party entitled thereto.

To UNMH: University of New Mexico Hospitals  
Purchasing Director  
933 Bradbury Dr. SE, Ste. 3165  
Albuquerque, New Mexico 87106

To Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

**T. Binding Effect.** This Agreement is binding upon, and inures to the benefit of, the parties to this Agreement and their respective successors and assigns.

**CONTRACTOR:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**REGENTS OF THE UNIVERSITY OF NEW MEXICO,  
FOR UNM HOSPITALS**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Jeffrey C. Gilmore  
Purchasing Director

Approved as to form: \_\_\_\_\_ Date: \_\_\_\_\_

Office of University Counsel