

CONTRACT FROM THE MONTANA
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

CONTRACT NUMBER: 16103000030

SECTION 1: PARTIES

THIS CONTRACT, is entered into between the Department of Public Health and Human Services, (the "Department"), State of Montana ("State"), 111 N. Sanders, P.O. Box 4210, Helena, Montana 59604, 406-444-2985, and AWARE, INC., (hereinafter referred to as the "Contractor"), whose nine (9) digit Federal ID Number is [REDACTED], whose DUNS # is [REDACTED], whose NPI # is [REDACTED] whose Montana Medicaid Provider ID # is [REDACTED], whose address is 205 East Park, Anaconda, MT 59711, phone number is 406.563.8117, fax number is 406.563.5956.

THE PARTIES AGREE AS FOLLOWS:

SECTION 2: PURPOSE.

- A. The purpose of this Contract is to provide one-time stipends to support the transition of certain residents of the Montana Developmental Center (MDC) into state sponsored home and community services provided by the Contractor and to provide additional services and supports not payable under the DD Home and Community Based service waiver (0208 Waiver) that meet federal Title XX spending rules.
- B. This Contract is also in furtherance of the purposes of Contract #13-14-4500, entered into between the Contractor and the Department for the term of 07/01/2013 through 06/30/2016 and future contracts for services entered into between the Department and the Contractor.

SECTION 3: TERM OF CONTRACT.

- A. The term of this Contract, unless terminated otherwise in accordance with the Contract, begins on January 1, 2016 and terminates June 30, 2017.

This Contract may be extended for 6 months beyond June 30, 2017 if the parties agree to such extension prior to that termination date.

- B. The completion date of performance for purposes of issuance of final payment for services under this Contract is the date upon which:
 - 1) the Contractor is required to perform nothing further and has no additional corrective actions to complete; and

- 2) all final reports required under this Contract are appropriately submitted and are satisfactory.
- C. After completion or termination of the Contract, Contractor remains obligated to comply with all continuing legal and contractual obligations, duties and responsibilities including but not limited to obligations related to state and federal reporting, record retention, provision of access and information for audits, indemnification, insurance, protection of confidential information, recipient grievances and appeals, and property ownership and use.

SECTION 4. GOVERNANCE OF PRINCIPAL CONTRACT

The delivery of services purchased under this Contract are, except as otherwise provided by federal and state law and the terms of this Contract, subject to the terms of the existing principal contract between the parties, Contract #13-14-4500 and any extensions thereof and the terms of a successor principal contract to that Contract.

SECTION 5. SERVICES TO BE PROVIDED.

- A. The Contractor is to provide services to a total of 21 former residents of MDC for a period of 12 months for each resident while the person is receiving Medicaid funded home and community services from the Contractor in accordance with the person's personal supports plan and Individual Cost Plan.
- B. The Contractor will provide additional services and supports not payable under the Home and Community based service waiver (0208 Waiver) that meet federal Title XX spending rules.
- C. The Contractor is to accept into the Contractor's home and community services 21 former residents of MDC by June 30, 2016 in accordance with the following schedule:
 - four residents are to be served by the Contractor within 45 days of signing this Contract and maintained in those services for a period of one year
 - beginning 45 days after the signing of this Contract, an additional 2 to 4 residents are to be brought into the Contractor's services per month through June 30, 2016. Those persons are to be maintained in those services for a period of one year.
- D. The Parties have mutually identified and agreed on, and the Department has approved cost plans for, the 21 persons who are to be served by the Contractor upon placement out of MDC as memorialized in Addendum 1. If the Contractor does not accept or is unable to establish services for any one of those persons, that person may be placed in the normal course through listing on the port list and acceptance by another provider. As provided for in Section 6. C. there will be no

Addendum 1 for whom the Contractor fails to fully serve with home and community based services.

- E. Client information for each person including the Individual Cost Plan (ICP) will be reviewed at 3, 6, 9, and 12 months following placement into services with the Contractor to determine the appropriateness of the person's plan. However, the allowed for costs in the ICP will not be reduced for the first 12 months of placement with the Contractor.
- F. The persons will be assigned to a Department designated case manager with enhanced case management duties. The DDP Bureau Chief will serve as the Regional Manager for these persons. The case manager will complete at least one functional adaptive behavior assessment yearly in conjunction with the Contractor. These results must be shared with the Personal Supports Team. As part of the Plan of Care process, the case manager will review with the Personal Supports Team the Individualized Cost Plan. (this is still subject to the adjustment provisions in the remainder of the contract).The case manager will conduct increased in-person visits to individual's day/work service and living environment. (this is still subject to the notice requirements in the remainder of the contract). The case manager will have access to client's case file and may facilitate review by DDP Psychiatrist.
- G. DDP staff will make visits to assess the services, status and placements of these persons at times agreed upon by the case manager and Department staff on a case by case basis to accommodate client privacy and schedule.
- H. Retention of the one-time \$60,000 stipend for each person is contingent upon successful community placement with the Contractor and continued service delivery for 12 months. Each 12 month period begins with each person's placement into services with the Contractor. The services provided by the Contractor must be community based during the duration of the 12 months of placement with the Contractor. Admission into settings including, but not limited to, behavioral health units and other state facilities means the person is not in a community placement. Acute stays in facilities may be approved by the Department on a case by case basis as an exception to this requirement. The Contractor must pay back the monies provided on a pro-rated basis if they fail to retain the person for the 12 month period.
- I. No additional residents of MDC will be placed with the Contractor after July 1, 2016 under this contract.
- J. The services to be delivered are in addition to those Medicaid funded home and community services that the Contractor is obligated to provide under Contract #13-14-4500 and any extensions thereof.
- K. Time is of the essence under this Contract. Uninterrupted and continuous delivery of the contracted services is required.

- L. All persons and entities the Contractor engages under this contract, including its employees and approved subcontractors, must be appropriately trained, licensed, certified and credentialed as required by law.
- M. The Department and the Contractor, their employees, agents, approved contractors and subcontractors will cooperate with those of the other party, and with other state or federal administrative agency employees and subcontractors at no charge for purposes relating to the administration of the services to be delivered under this Contract.
- N. This Contract is predicated in part on the terms and conditions specified in Contract #13-14-4500 referenced in Section 2 above. The attachments and materials referred to in that contract, including resources, persons, and personnel qualifications, are applicable to performance under this Contract. The Contractor must ensure it will apply those specific resources, persons, personnel qualifications, and other performance features as necessary for the accomplishment of the purposes of this Contract. The Contractor may not substitute specified features without written approval of the Department. Substitutions proposed must be equal to or better than those originally proposed, offered or identified.
- O. The Department may recover any monies paid to the Contractor when the Contractor has failed to maintain these features or has varied from them without written approval of the Department, retroactive to the date of occurrence.

SECTION 6. CONSIDERATION AND PAYMENTS

The Department will pay the Contractor in consideration of the services the Contractor provides and renders under this Contract as follows.

A. Payment

For the 12 month placement of each person specified in Addendum 1 the payment available to the Contractor is \$60,000.

The Department will make payment in full to the Contractor of the monies for each person upon approval by the Department of the Contractor's service proposal for that person.

Payment to the Contractor is made to:

AWARE, Inc.
205 East Park
Anaconda MT 59711

- B. **Total Monies Available Per Person**
The total monies available for each person under this Contract is limited to that determined in accordance with subsection A above and in no event will additional funds be available under this Contract for that person.
- C. **Recoupment For Failure To Retain Placed Person**
The Contractor must pay back to the Department a pro-rated amount of monies provided by the Department to the Contractor for the acceptance into services of a person if the Contractor fails to retain the person for the 12 month period or fails to expend the monies provided under this Contract in accordance with the person's personal supports plan, the person's Individual Cost Plan.
- D. **Other Programs as Payers For Services**
The Contractor may not seek compensation from monies payable through this Contract for the costs of services that may be or are reimbursed, in whole or in part, from other programs and sources.
- E. **Non-duplication of Payment**
The Contractor may not receive payment under this Contract for services delivered by the Contractor under Contract #13-14-4500 and any extensions thereof.
- F. **This Contract is valid and enforceable only if sufficient funds are made available to the State and by the State for the appropriate fiscal year for the purposes of this Contract.**
- G. **Adjustments to Consideration**
The Department may adjust the consideration provided to the Contractor under this Contract based on any reductions of funding, governing budget, erroneous or improper payments, audit findings, or failings in the Contractor's delivery of services.
- H. **Sources of Funding**
The source of the funding for this Contract is Title XX Social Services Block Grant monies from the U.S. Department of Public Health and Human Services, CFDA # 93.667.

SECTION 7. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The Contractor may not agree to assign, transfer, delegate or subcontract this contract in whole or in part, or any right or duty arising under this contract, unless the Contractor submits a written request to the Department's liaison and the Department gives its express written approval to the assignment, transfer delegation or subcontract.

SECTION 8. CIVIL RIGHTS

- A. **Discrimination Prohibited Under Federal and State Authorities**
The Contractor may not discriminate in any manner against any person on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin in the performance of this Contract or in the delivery of state services or funding on behalf of the State. The Contractor may not receive funds from the State if the Contractor engages in discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.
- B. **Compliance with Federal and State Authorities**
The Contractor must comply, as applicable, with the provisions of:
1. The Montana Human Rights Act (49-2-101, *et seq.*, MCA);
 2. The Montana Governmental Code of Fair Practices (49-3-101, *et seq.*, MCA);
 3. The federal Civil Rights Act of 1964 (42 U.S.C. 2000d, *et seq.*), prohibiting discrimination based on race, color, or national origin;
 4. The federal Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*), prohibiting discrimination based on age;
 5. The Education Amendments of 1972 (20 U.S.C. 1681), prohibiting discrimination based upon gender;
 6. Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. 794), prohibiting discrimination based upon disability;
 7. The federal Americans with Disabilities Act of 1990 (42 U.S.C. 12101, *et seq.*), prohibiting discrimination based upon disability;
 8. The Vietnam-Era Veterans Readjustment Assistance Act (38 U.S.C. 4212);
 9. The federal Executive Orders 11246 and 11375 and 41 CFR Part 60, requiring equal employment opportunities in employment practices; and
 10. The federal executive Order 13166 requiring facilitation of access for persons with limited English proficiency to federally funded services.
- C. **Civil Rights Violations**
The Department may undertake any and all actions, including contract termination, necessary to remedy any prohibited discriminatory action by the Contractor or to remedy any failure by the Contractor to carry out an affirmative action as required in federal or state legal authorities.

SECTION 9. CONTRACTUAL DISPUTE RESOLUTION PROCESS

- A. In the event of a dispute about matters related to this Contract, the Contractor agrees to follow the "Contractual Dispute Resolution" process for Human Services Contracts as set forth.

1. This Contract dispute resolution process implements the state law requirement in 2-15-2230, MCA that contracts entered into for the provision of human services contain a dispute resolution process clause providing recourse to a provider for disagreement about the terms of this Contract.
2. This dispute resolution process may not be invoked for purposes of resolving an issue that concerns conformance by the Contractor with federal law and policy requirements that govern the expenditure of Medicaid monies or the delivery of services funded with Medicaid monies. Medicaid issues must be appealed through the fair hearing due process appeal process provided for at ARM 37.5.311 that is expressly applicable to persons and organizations that provide services funded with Medicaid monies.
3. This dispute resolution process is not applicable to the contest of any matters arising as an obligation upon the Department or the Contractor under legal authority, inclusive of federal or state law, regulation or rule that supersedes or governs over the contractual term that is at issue.
4. The Contractor, except as otherwise provided in this Section or by legal authorities, may appeal any issue concerning performance or consideration under the terms of this Contract by following these procedures.
 - a) The dispute resolution process is initiated by the Contractor submitting the dispute in writing to the Contract Liaison for the Department. The Department's Contract Liaison will provide a written response to the Contractor within 10 working days.
 - b) If the Department's Contract Liaison fails to issue a written response within 10 working days, or the Contractor disagrees with the a written response, the Contractor may request a dispute resolution review within 10 working days of either receiving the written response or 10 working days from the date it was due, whichever comes first.
 - c) A dispute resolution review will be conducted within 15 working days of receiving the request for the review. An extension of 15 additional work days may be granted at the request of either the Department's Contract Liaison or the Contractor.
 - d) A dispute resolution review will be conducted by the Division Administrator or designee. Consideration will be given to substantiating documents and information which the Contractor and Department's Contract Liaison wish the Department to consider. The review will include an informal hearing, conducted in person or telephonically, that provides the opportunity for the Department's Contract Liaison and the Contractor to present information and positions as to the matters at issue.

- e) A written decision with findings from the review will be issued within 30 days of the hearing.
- B. A dispute appealed through this dispute resolution process is also subject, as provided for by 18-1-402, MCA, to the statutory requirements for and limitations upon appeals in contractual relationships with the State.

SECTION 10. CONTRACTOR COOPERATION AND DEPARTMENTAL GUIDANCE

- A. **Cooperation with the Department and Other Governmental Entities**
The Contractor must ensure that Contractor's personnel cooperate with the Department or other state or federal administrative agency personnel at no cost to the Department for purposes relating to the delivery and administration of the contracted for services including but not limited to the following purposes:
 - 1. The investigation and prosecution of fraud, abuse, and waste;
 - 2. Audit, inspection, or other investigative purposes; and
 - 3. Testimony in judicial or quasi-judicial proceedings or other delivery of information to HHSC or other agencies investigators or legal staff.
- B. **Departmental Guidance**
The Contractor may request guidance from the Department in administrative and programmatic matters that are necessary to the Contractor's performance. The Department may provide such guidance as it deems appropriate. Guidance may include copies of regulations, statutes, standards and policies that are to be compiled with under this Contract. The Department may supply interpretations of such materials and this Contract to assist the Contractor with compliance. A request for guidance does not relieve the Contractor of any obligation to meet the requirements of this Contract. The Department will not provide legal services to the Contractor in any matters relating to the Contractor's performance under this Contract.

SECTION 11. ACCESS TO PREMISES

The Contractor must provide the State of Montana and any other legally authorized governmental entity, or their authorized representatives, the right to enter at all reasonable times the Contractor's premises or other places where contractual performance occurs to inspect, monitor or otherwise evaluate contractual performance. The Contractor must provide reasonable facilities and assistance for the safety and convenience of the persons performing these duties. All inspection, monitoring and evaluation must be performed in such a manner as not to unduly interfere with contractual performance.

SECTION 12. LIAISON AND SERVICE OF NOTICES

- A. Novelene Martin, DDP Bureau Chief, FAX 406-444-0230, email nomarting@mt.gov is the liaison for the Department, telephone number 406-444-5662. Larry P Noonan, telephone number 406-563-8117, fax: 406-563-5956 is the liaison for the Contractor. These persons serve as the primary contacts between the parties regarding the performance of this contract.
- B. Written notices, reports and other information required to be exchanged between the parties must be directed to the liaison at the parties' addresses set out in this contract.

SECTION 13. CONTRACT TERMINATION

- A. The Department may terminate this Contract in whole or in any aspect of performance under the Contract if:
 - 1. federal or state funding for this Contract becomes unavailable or reduced for any reason;
 - 2. the Contractor fails to perform in accordance with the terms of the Contract; or
 - 3. the Contractor fails to perform in accordance with any applicable governing legal authority.
 - 4. Except as may be otherwise required or necessitated by federal or state legal authorities, the Department must give written notice of termination to the liaison for other party at least sixty (60) days prior to the effective date of termination of the Contract unless the parties agree in writing to a different notice period.
- B. Notice of termination given to the Department by the Contractor may only be revoked with the consent of the Department.
- C. Upon expiration, termination or cancellation of this Contract, the Contractor must assist the Department, its agents, representatives and designees in closing out the Contract, and in providing for the orderly transfer of contract responsibilities and the continued delivery of contract services by the Department or its designee, and shall allow the Department access of the Contractor's facilities, records and materials to fulfill these requirements.

SECTION 14. CHOICE OF LAW, REMEDIES AND VENUE

- A. This Contract is governed by the laws of the State of Montana. In accordance with Montana Code Annotated § 18-1-401, the district courts of the State of

Montana have exclusive original jurisdiction to entertain claims or disputes arising out of contracts entered into by the Department.

- B. For purposes of litigation concerning this Contract, venue must be in the First Judicial District in and for the County of Lewis and Clark, State of Montana.
- C. If there is litigation concerning this Contract, the Contractor must pay its own costs and attorney fees.
- D. If there is a contractual dispute, the Contractor agrees to continue performance under this Contract unless the Department in writing explicitly waives performance.
- E. Any remedies provided by this Court are not exclusive and are in addition to any other remedies provided by law.

SECTION 15. SCOPE, AMENDMENT AND INTERPRETATION OF CONTRACT

- A. This Contract consists of numbered pages 1 through 11, and a list of those persons to be in receipt of services appearing in Addendum 1. This is the entire Contract between the parties.
- B. No statements, promises, or inducements made by either party or their agents are valid or binding if not contained in this Contract and the materials expressly referenced in this Contract as governing the contractual relationship.
- C. The headings to the section of this Contract are convenience of reference and do not modify the terms and language of the sections to which they are headings.
- D. Except as expressly provided in this Contract, no contractual provisions from a prior contract of the parties are valid or binding in this contractual relationship.
- E. Except as may be otherwise provided by its terms, this Contract may not be enlarged, modified or altered except by written amendment signed by the parties to this Contract.
- F. If there is a dispute as to the duties and responsibilities of the parties under this Contract, the Contract along with any attachments prepared by the Department, including request for proposal, if any, govern over the Contractor's proposal, if any.
- G. If a court of law determines any provision of this Contract is per se or as applied legally invalid, all other provisions of this Contract remain in effect and are valid and binding on the parties.

- H. Any provision of this Contract that is determined to conflict with any federal or state law or regulation, whether per se or as applied, is inoperative to the extent it conflicts with that authority and is to be considered modified to the extent necessary to conform with that authority.
- I. Waiver of any default, breach or failure to perform under this Contract may not be construed to be a waiver of any subsequent default, breach or failure of performance. In addition, waiver of a default, breach or failure to perform may not be construed to be a modification of the terms of this Contract unless reduced to writing as an amendment to this Contract.

The parties through their authorized agents have executed this contract on the dates set out below.

MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

By: *Rebecca deCamara* Date 1-5-16
 Rebecca deCamara, Administrator

Department of Public Health & Human Services
 111 Sanders Rm 305
 P.O Box 4210
 Helena, MT 59604
 Address

406.444.2995
 Phone Number

CONTRACTOR

BY: *Lauren P Brown* Date: 1-4-16

Address

email

Phone Number

Federal I.D. Number

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

Addendum to contract # 16103000030

It is the intent of the Department and the Contractor to utilize the skills, knowledge and abilities of MDC employees to enhance the services offered in community settings. To that end, the parties agree that:

- a. Contractor shall give State of Montana personnel employed at MDC a preference in hiring for positions for which they are qualified.
- b. The Department shall provide Contractor a list of all MDC employees and their respective positions by January 15, 2016. Contractor shall provide the Department with a list of individuals who have been hired from MDC on April 1, August 1, and December 31, 2016.
- c. Contractor shall take reasonable steps to provide for a successful transition of newly hired employees from MDC.

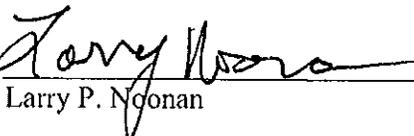
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MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

By:  Date: 1-5-16
Rebecca deCamara, Administrator

Department of Public Health & Human Services
111 N Sanders Rm 305
P.O Box 4210
Helena, MT 59604
406.444.2995

CONTRACTOR

By:  Date: 1-5-16
Larry P. Noonan

205 East Park,
Anaconda, MT 59711
406.563.8117