

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (the "Agreement") is made and entered into as of the 1st day of July, 2016 by and between the State of Connecticut, Office of the Probate Court Administrator, with a principal place of business at 186 Newington Road, West Hartford, Connecticut, 06110, acting by Paul J. Knierim, Probate Court Administrator (the "Administrator") and the following Contractor:

Name of Contractor _____

Address _____

Email _____

WHEREAS, the Connecticut Probate Courts need qualified professionals to serve as conservators for indigent individuals; and

WHEREAS, Section 16.9 of the Probate Court Regulations authorizes the Administrator to contract with one or more organizations to develop and maintain a program for individuals who are unable to pay for services of a conservator; and

WHEREAS, the Contractor is currently serving as conservator on behalf of ____ indigent individuals; and

WHEREAS, the Contractor is willing to continue serving as conservator and accept additional appointments for indigent individuals;

NOW, THEREFORE, in consideration of the covenants set forth herein, the Administrator and the Contractor agree as follows:

1. **DEFINITIONS.**

For the purposes of this Agreement:

A. "Caseworker" means a Contractor who acts as court-appointed conservator or a Contractor's employee, owner, member, partner, shareholder, director or officer who:

i. carries out his or her duties as a court-appointed conservator under the auspices of the Contractor;

ii. has legal authority to act on behalf of the Contractor in matters in which the Contractor is a court-appointed conservator; or

iii. directly assists an individual described in subsections i or ii by performing activities listed as compensable under Regulation section 16.5.

B. "Client" means an individual who is unable to pay for the services of a conservator and for whom a Connecticut Probate Court has appointed the Contractor or a Caseworker as conservator of the person, estate or both.

C. "Contractor" means the individual or organization named above as party to this Agreement. References in this Agreement to the Contractor shall include the Contractor's Caseworkers.

D. "Medicaid" means medical assistance under the provisions of Title XIX of the Social Security Act, 45 U.S.C. section 1396 et seq., C.G.S. section 17b-261, and section 4005.10 of the Department of Social Services Uniform Policy Manual.

E. "Regulation" means the Probate Court Regulations adopted under C.G.S. section 45a-77.

F. "Rules of Professional Conduct" means the Rules of Professional Conduct for attorneys published in the Connecticut Practice Book.

G. "Guardianship Standards" means the 4th Edition of the Standards of Practice for Guardians published in 2013 by the National Guardianship Association.

H. "Unable to pay" means that a Probate Court has determined that an individual is unable to pay for the services of a conservator under the standards set forth in Regulation section 16.2 (b).

2. **TERM.** The term of this Agreement shall begin on July 1, 2016 and end on June 30, 2017. This Agreement shall automatically renew on July 1, 2017 for a term of one (1) year and annually on July 1 in each succeeding year unless a party gives notice of nonrenewal, which notice shall be given at least sixty (60) days before an annual term expires, or this Agreement is otherwise terminated under section 13 of this Agreement.

3. **DESCRIPTION OF SERVICES.**

A. Except as provided in subsection B, the Contractor shall accept all proposed conservatorship appointments for individuals who are unable to pay from the following Probate Courts:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

B. The Contractor shall seek to maintain a minimum of 40 conservatorship appointments throughout the term of this Agreement. The maximum number of conservatorship appointments that the Contractor is required to accept under this Agreement is _____. The Contractor shall not be required to accept an appointment if service as conservator would violate a provision of law, the Guardianship Standards or, if applicable, the Rules of Professional Responsibility.

C. The Contractor shall perform the duties assigned by the appointing court for each Client in the manner ordered by the court and in accordance with Connecticut law and the Guardianship Standards.

D. The Contractor shall arrange for at least one Caseworker to be available at all times, including nights, weekends and holidays.

E. The Contractor shall not permit an individual to act as a Caseworker under this Agreement if:

- i. The individual has been convicted of a felony; or
- ii. The individual is an attorney who has received a reprimand or more severe sanction in the preceding 10 years for violation of the Rules of Professional Responsibility.

The Contractor shall perform background checks as necessary to comply with the provisions of this section.

F. The Contractor acknowledges and agrees that the duties of the Contractor to each Client as court-appointed conservator continue after the termination of this Agreement unless and until the appointing court accepts the resignation of the Contractor or removes the Contractor. In the event of resignation or removal, the Contractor shall assist in the orderly and timely transition of the Client's affairs to a successor conservator.

4. COMPENSATION.

A. Except as provided in subsections B through G, the Administrator shall compensate the Contractor for all services described in Section 3 at the flat rate of eighty-six dollars (\$86) per Client per month, or part thereof.

B. Except as provided in subsections C through G, if the Contractor has authority as conservator to apply for Medicaid on behalf of a Client who has not previously been determined to be eligible for Medicaid, the Administrator shall pay the Contractor an additional one-time fee of one thousand two hundred fifty dollars (\$1,250) to handle all aspects of the application and the execution of any spend-down plan associated with the application.

C. The Contractor shall not be eligible for compensation for a Client under this Agreement if the Contractor or any of its Caseworkers is related to the Client by blood or marriage.

D. The Contractor shall not be eligible for compensation under this Agreement if the Contractor is appointed only as conservator of the estate for a Client when:

- (i) the Client has been determined to be eligible for Medicaid and the requirements of any spend-down plan have been satisfied; and
- (ii) the Client:
 - (a) resides in a nursing home, hospital or similar facility; or
 - (b) has financial management needs that can be met by a person other than the Contractor who is designated representative payee by the Social Security Administration.

E. The compensation set forth in this Agreement shall be reduced by the amount paid to the Contractor from a Client's personal resources.

F. If the Contractor is appointed as conservator together with one or more individuals or organizations (whether as a co-conservator or when the Contractor is conservator of the person and another is conservator of the estate or vice versa) who are also eligible for compensation from the Administrator, the Contractor's compensation shall be reduced by the amount calculated by multiplying the amount provided under subsections A or B by a fraction, the numerator of which equals the number of other individuals or organizations serving as co-conservator, excluding the Contractor, and the denominator of which equals the total number of co-conservators, including the Contractor. Notwithstanding the foregoing, the compensation of the Contractor shall not be reduced under this subsection if the Contractor is serving as conservator of the estate for an individual with persistent and severe mental illness when Guardian Ad Litem Services, Inc. is serving as conservator of the person for the individual.

G. In the event that a Probate Court determines that a Client does not meet the standards for unable to pay under Regulation section 16.2 (b) due to the discovery of previously unknown assets or income or due to other circumstances, the Contractor shall reimburse the Administrator the compensation paid under this Agreement in the amount of any compensation recovered from the personal resources of the Client.

H. During the term of this Agreement, the Contractor shall not be eligible for compensation under Regulation section 16. If this Agreement is terminated, the Contractor shall be eligible for compensation under Regulation section 16 for services rendered after the month in which the termination becomes effective.

I. The Administrator may increase the fees set forth in subsections A or B for any renewal term of this Agreement. The Administrator shall give notice of any fee increase to the Contractor on or before the date on which the renewal term begins.

5. INVOICES.

A. The Contractor shall submit quarterly invoices for services under this Agreement in the form and manner specified by the Administrator.

B. No invoice for handling an application for Medicaid may be submitted until a final determination on the Client's eligibility, including any appeals, has been rendered.

C. The deadline for submission of an invoice shall be six (6) months from the last day of the calendar quarter for which payment is sought. The Administrator shall not pay any portion of an invoice that covers activity during a calendar quarter ending more than six months from the date of submission.

D. The compensation set forth under this Agreement includes all applicable taxes. The Contractor is responsible for any taxes applicable to any payments under this Agreement and hereby agrees to hold harmless and indemnify the Administrator from any taxes that may be directly assessed against the Administrator.

6. RECORDKEEPING AND REPORTING. The Contractor shall maintain the following records for each Client: the case names and Probate Court file numbers for each Client; the beginning and ending dates of each appointment; invoices and records of payment; and such other data as the Administrator may direct. During the term of this Agreement and for a period of three years following termination of this Agreement, the Contractor shall afford the attorneys, accountants, auditors and other authorized representatives of the Administrator free and full access to the aforementioned records during normal business hours for any purpose, including, but not limited to, audits of such records.

7. CONTINUING EDUCATION. The Contractor shall require that each of its Caseworkers attend a minimum of three (3) hours of continuing education relating to conservatorship per year. Caseworkers may satisfy the continuing education requirement by participating in educational programs conducted in-house by the Contractor or by attending relevant instructional programs sponsored by other organizations

8. SAFEGUARDING CLIENT INFORMATION. The Contractor shall safeguard all personal information about Clients, including computerized data, and shall use its best efforts to prevent unauthorized disclosure of such information, in accordance with all applicable federal and state laws, including C.G.S. section §36a-701b. Any Contractor considered a "covered entity" under the Health Insurance Portability Act of 1996 (HIPAA) agrees to follow HIPAA's privacy regulations governing the use of protected health information. Notwithstanding any other provision to the contrary, the Contractor is solely responsible for any disclosure of information in violation of federal or state law by it or its employees.

9. INDEMNIFICATION. The Contractor shall indemnify, defend and hold harmless the Administrator and its successors and assigns from and against any and all (1) actions, suits, claims, demands, investigations and legal, administrative or arbitration

proceedings pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum (collectively, the "Claims") arising, directly or indirectly, in connection with this Agreement including, but not limited to, acts of commission or omission (collectively, the "Acts") by the Contractor, its Caseworkers, owners, members, partners, directors, officers, shareholders, or employees or any other person or entity with whom the Contractor is in privity of oral or written contract (collectively, the "Contractor Parties"); (2) liabilities arising, directly or indirectly, in connection with this Agreement, out of the Acts of the Contractor or Contractor Parties concerning its or their duties and obligations as set forth in this Agreement; and (3) all damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, that may arise out of such Claims and/or liabilities. The Contractor shall reimburse the Administrator for any and all damages to the real or personal property of the Administrator caused by the Acts of the Contractor or any Contractor Parties. The Administrator shall give to the Contractor reasonable notice of any such Claim. The Contractor shall use counsel reasonably acceptable to the Administrator in carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this Agreement, and shall not be limited by reason of any insurance coverage.

10. INSURANCE REQUIREMENTS.

A. The Contractor shall maintain the following types and amounts of insurance at all times during the term of this Agreement:

- i. General liability insurance with a minimum coverage limit of one million dollars (\$1,000,000);
- ii. Professional liability insurance with a minimum coverage limit of one million dollars (\$1,000,000);
- iii. Fidelity bond with a minimum coverage limit of fifty thousand dollars (\$50,000);
- iv. Automobile liability insurance with a minimum coverage limit of one million dollars (\$1,000,000) per occurrence, if the Contractor owns automobiles that are used in connection with services provided under this Agreement; and
- v. Worker's Compensation insurance with a minimum coverage limit not less than the minimum Connecticut statutory coverage.

B. The Administrator shall be named as an additional insured or certificate holder on all insurance policies set forth in paragraph A above. Each policy shall include an endorsement which states that the Administrator will be given thirty (30) days prior notice of cancellation. The Contractor shall furnish the Administrator with certificates evidencing the Contractor's compliance with the obligations set forth in this section and, upon request, shall promptly furnish the Administrator with a copy of the policy. The Contractor shall be solely responsible for the payment of all premiums required for the insurance coverage required under this section.

11. OFFER OF GRATUITIES. The Contractor warrants, represents, and certifies that no elected or appointed official or employee of the State of Connecticut has, or agrees to, benefit financially or materially from this procurement. This Agreement may be terminated by the Administrator without liability attaching to the Administrator if it is determined that gratuities of any kind were either offered to, or received by, any of the aforementioned officials or employees from the Contractor, or any of its agents, representatives or employees.

12. REPRESENTATIONS AND WARRANTIES. The Contractor represents and warrants to the Administrator that:

A. The Contractor has taken all necessary action to authorize the execution, delivery and performance of this Agreement and has the power and authority to execute, deliver and perform its obligations under this Agreement;

B. The execution, delivery and performance of this Agreement by the Contractor will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (i) any provision of law; (ii) any order of any court or any governmental department, commission, board, bureau, agency, office, council, institution or instrumentality; or (iii) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;

D. It is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

E. Neither the Contractor nor any of its employees or persons who would perform any services under this Agreement have, within the three years preceding this Agreement, in their current or former job, been convicted of, or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract. This includes, but is not limited to, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

F. Neither the Contractor nor any of its employees or persons who would perform any services under this Agreement, is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated above;

G. The Contractor has not, in the three years preceding this Agreement, had any public transactions (federal, state or local) terminated for cause or default;

H. The Contractor has a record of compliance with OSHA regulations without any unabated, willful or serious violations;

I. The Contractor owes no unemployment compensation contributions and is not delinquent in the payment of any taxes owed;

J. Neither the Contractor nor its employees or any immediate family member of any of it or its employees is a public official or state employee as defined in C.G.S. section 1-79; and

K. The Contractor represents that it has not, in connection with this Agreement, entered into any consulting agreement as defined in C.G.S. section 4a-81.

13. TERMINATION.

A. Either party may terminate this Agreement for any reason at any time by providing ninety (90) days written notice to the other party.

B. The Administrator may terminate this Agreement immediately by providing written notice to the Contractor upon any of the following occurrences:

i. The Contractor breaches the Agreement;

ii. A Connecticut Probate Court removes the Contractor or a Caseworker as conservator and the Administrator determines that the basis for removal raises a substantial question regarding the Contractor's or Caseworker's fitness to serve as conservator in other matters;

iii. The number of conservatorship appointments held by the Contractor falls below 40; or

iv. Budgeted funds are exhausted.

14. NOTICE. All notices, demands, requests, consents, approvals or other communications (collectively, "Notices") required or permitted to be given or which are given with respect to this Agreement shall be in writing and shall be sent by first class U.S. Mail, postage prepaid, by hand delivery or by recognized, overnight express delivery service, addressed as follows:

A. To the Administrator: Office of the Probate Court Administrator
186 Newington Road
West Hartford, CT 06110

B. To the Contractor: _____

In the event either party moves or updates its contact information, the moving party shall inform the other of such changes in writing within ten (10) days. The Administrator will not be held responsible for payments delayed due to the Contractor's failure to provide such notice.

15. STANDARD TERMS AND CONDITIONS.

A. Evaluations. Except for information protected by attorney/client privilege, the Administrator reserves the right to inspect, monitor or otherwise evaluate the work being performed under this Agreement. The Contractor agrees to cooperate with the Administrator in the monitoring and evaluation of services, which shall include, but not be limited to, providing reasonable access to and use of the Contractor's office for such purpose.

B. Non-Discrimination. The provisions of C.G.S. sections 4a-60 and 4a-60a are hereby incorporated into this Agreement and the Administrator and Contractor mutually agree to be bound by all of the provisions contained therein.

C. Americans with Disabilities Act. Contractor shall comply with the Americans with Disabilities Act in accordance with Public Law 101-336 and any other applicable federal Laws and regulations.

D. Executive Orders. Contractor shall comply with the provisions of Executive Order No. Three of Governor Thomas J. Meskill promulgated June 16, 1971, concerning labor employment practices; the provisions of Executive Order No. Seventeen of Governor Thomas J. Meskill promulgated February 15, 1973, concerning the listing of employment openings; and the provisions of Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace. In addition, this Agreement is subject to Executive Order No. 7C of Governor M. Jodi Rell promulgated July 13, 2006, concerning review by the State Contracting Standards Board.

E. Sovereign Immunity. The parties acknowledge and agree that nothing in this Agreement shall be construed as a waiver by the Administrator of any rights or defenses of sovereign immunity, which it may have had, now has or will have with respect to all matters arising out of this Agreement. To the extent this provision conflicts with any other provision, this provision shall govern.

F. Subcontractors. The Contractor shall not subcontract any of the services required under this Agreement.

G. Assignment. The Contractor shall not transfer, pledge or otherwise assign this Agreement or any rights or responsibilities hereunder to any third party.

H. Choice of Law. This Agreement is governed by the laws of the state of Connecticut. It is agreed that any questions of interpretation of this Agreement or actions brought pursuant to this Agreement shall be according to Connecticut law.

I. Entire Agreement. The parties agree that this Agreement embodies the entire agreement between the Administrator and the Contractor on the matters specified herein, whether expressed or implied, written or oral. No changes, amendments or modifications of any of the terms or conditions of this Agreement are valid unless reduced to writing and signed by both parties.

J. Headings. The headings given to the sections in this Agreement are inserted only for convenience and are in no way to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers.

K. Severability. If any provision of this Agreement is found by a proper authority to be invalid or unenforceable, the remainder of the Agreement shall remain valid and the invalid provision shall be replaced by a valid provision that comes closest in intent to the invalid provision. The remaining provisions of this Agreement shall continue in full force and effect.

L. Survival. Upon termination of this Agreement, all rights, duties and obligations hereunder shall be null and void, so that no party shall have any further rights, duties or obligations to any other, except with respect to Sections 3.F (Description of Services), 5 (Invoices), 6 (Recordkeeping and Reporting), 8 (Safeguarding Client Information), 9 (Indemnification), 11 (Offer of Gratuities), 12 (Representations and Warranties), and 15 (Standard Terms and Conditions) herein, which shall survive termination of this Agreement.

*Remainder of page intentionally left blank.
Signature page to follow.*

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement with full knowledge of and agreement with the terms and conditions of this Agreement.

AGREED AND ACCEPTED:

OFFICE OF THE PROBATE COURT ADMINISTRATOR:

By _____
Paul J. Knierim, Probate Court Administrator

Name of Contractor: _____

Signature: _____

Title: _____