

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL
PROFESSIONAL SERVICES AGREEMENT

1801

This Agreement is made and entered into by and between the New Mexico Office of the Attorney General (hereinafter referred to as the "Attorney General") and Bailey Perrin Bailey LLP (hereinafter referred to as the "Contractor").

The parties hereby agree as follows:

1. Scope of Services:

As requested by the Attorney General's Office, within the sole discretion of the Attorney General, the Contractor shall provide services for the evaluation, preparation, and, as approved, the prosecution of a course of action against the manufacturers of Risperdal and Seroquel to recover damages incurred by the State of New Mexico due to inappropriate marketing and promotion of these medications (the Litigation).

Tasks may include, but are not limited to,

- Provide legal advice as requested;
- Assist in pre-litigation negotiations;
- Assist in litigation or settlement strategy;
- Prepare and present case in state or federal court;
- Prepare briefs, motions and other pleadings as needed;
- Conduct discovery, case preparation and trial and any related appeals;
- Prepare memoranda of law on related topics;
- Advise and counsel as requested;
- Assist in such other legal work as the Attorney General deems necessary; and
- Develop and present expert testimony

The Contractor shall act at the discretion of the Attorney General's Office. The Contractor shall adhere to timetables established by the Attorney General.

1. Compensation and Payment Conditions:

A. With respect to the Litigation, the Contractor shall advance all necessary and reasonable actual costs and expenses. If costs and expenses are advanced, the State of New Mexico may be ultimately responsible to reimburse the Contractor for all necessary and reasonable costs and expenses of the litigation, pursuant to NMRA 1999, 16-108(E), subject to sufficient appropriations being made for that purpose by the New Mexico Legislature as determined by the AGO in its sole discretion.

B. The Contractor shall not incur any Litigation costs or expensed exceeding \$1,000 for any cost or expense item without first obtaining the approval of the AGO. In-house copying will be expensed at \$.15 per page; commercial copying (which will be utilized for major copying jobs and whenever otherwise practical), postage, telephone communications, facsimile transmissions and computer research will be expensed at the Contractor's actual cost with no overhead included. Any reimbursement at the conclusion of the Litigation by the State of travel expenses as may be incurred in the Contractor's performance of this Agreement shall be at the rates established in the New Mexico's Per Diem and Mileage Act as implemented by the Department of Finance and Administration Rule 95-1.

C. Neither the Attorney General or the State of New Mexico or any of its agencies shall be responsible to pay the Contractor any compensation for legal services rendered under the terms of this Agreement with the Office of the Attorney General in pursuit of any claims under this agreement.

D. The Contractor shall only receive compensation for legal services rendered in the pursuit of the Litigation as follows. Upon the successful recovery of damages from the defendant, the Contractor shall be entitled to petition the court for its reasonable attorneys fees (and for the necessary and reasonable costs and expenses of the Litigation to the extent advanced by the Contractor), to be awarded to the Contractor by the court from monies paid by the defendants that shall be deposited into the registry of the court to the Contractor after considering the following factors:

- a. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to pursue the Litigation properly;
- b. The likelihood that the acceptance of this employment precluded other employment by any Contractor;
- c. The fees customarily charged for complex litigation where the lawyers must prevail before they are entitled to any fee;
- d. The financial amount involved and the result obtained for the State of New Mexico;
- e. The time limitations imposed by the Litigation or the circumstances;
- f. The nature and length of the professional representation;
- g. The experience, reputation, and ability of the Contractor performing the services including the background in prescription drug litigation;
- h. The uncertainty and risk undertaken by each Contractor in accepting employment.

E. Other than in the event of termination, the Attorney General will support the Contractor in requesting and obtaining from the court reasonable compensation for its attorneys' fees to which petition has been made.

F. The Contractor is responsible for paying to the New Mexico Taxation and Revenue Department the New Mexico applicable gross receipts tax on amounts paid to the Contractor under this Agreement. In addition, the Contractor shall not bill, nor will the Office of the Attorney General pay or reimburse, gross receipts taxes.

3. Insurance:

Contractor must have a minimum of one million dollars (\$1,000,000.00) malpractice insurance for each and every attorney who will perform work under the contract. Proof of insurance shall be provided to the Attorney General prior to the effective date of this contract.

4. Term of Agreement; Approval:

A. THIS AGREEMENT SHALL NOT BE EFFECTIVE OR BINDING UNTIL APPROVED IN WRITING BELOW BY THE ATTORNEY GENERAL AND THE CONTRACTS REVIEW BUREAU OF THE NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION. FURTHERMORE, THERE WILL BE NO ENTITLEMENT TO PAYMENT TO THE CONTRACTOR FOR SERVICES PERFORMED UNDER THIS AGREEMENT PRIOR TO THE DATE AS OF WHICH THE AGREEMENT IS APPROVED BY THE NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION.

B. The initial term of the Agreement shall be for two years and shall commence on August 9, 2006 and terminate on June 30, 2008. The term of the Agreement may be extended in accordance with Paragraph 16, below, one year at a time, for up to two (2) additional years, upon the same terms and conditions in effect at the time of the extension. In no event, however, shall the entire term of the Agreement, including any and all extensions, exceed four years.

5. Early Termination:

This Agreement may be terminated without cause by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT CONSTITUTE A WAIVER OF ANY OTHER LEGAL RIGHTS AND REMEDIES AFFORDED TO THE ATTORNEY GENERAL OR STATE OF NEW MEXICO IN SUCH CIRCUMSTANCES AS THE CONTRACTOR'S DEFAULT OR BREACH OF CONTRACT.

6. Status of Contractor:

The Contractor, and his agents and employees, are independent contractors performing professional services for the Attorney General and are not employees of the State of New Mexico. The Contractor, and his agents and employees, shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement.

7. Assignment:

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without prior written approval of the Attorney General.

8. Subcontracting:

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without prior written approval of the Attorney General. In the event that the Attorney General approves the use of a subcontractor, the Contractor shall continue to be wholly responsible for performance of the work under this Agreement and for making payments to the approved subcontractor. By approving the use of a subcontractor, the Attorney General will in no way form a contractual relationship with, or become responsible for making payments to, the approved subcontractor.

9. Records and Audit:

During the term of this Agreement and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the Attorney General, the Department of Finance and Administration, the State Auditor and, if applicable, any appropriate federal authorities. The Attorney General shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Attorney General to recover excessive or illegal payments.

10. Release:

The Contractor, upon final payment of the amount due under this Agreement, releases the Attorney General, the officers and employees of the Attorney General, and the State of New Mexico, from all liabilities, claims, and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the State of New Mexico or the Attorney General to any obligation not assumed under this Agreement by the State of New Mexico or the Attorney General, unless the Contractor has express written authority from the Attorney General to do so, and then only within the limits of that authority.

11. Confidentiality:

Any attorney-client privileged information or attorney work product provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval by the Attorney General. Contractor shall immediately notify the Attorney General of any request for inspection of records. The Attorney General shall determine whether such documents are subject to disclosure pursuant to New Mexico law.

12. Product of Services; Copyright:

All written materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Attorney General not later than the termination date of this Agreement. Nothing produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for a copyright by or on behalf of the Contractor, without the prior written approval of the Attorney General. It is recognized that discovery responses may be subject to court orders restricting distribution, copying or other uses of such responses. To the extent possible, copies will be furnished to and become property of the Attorney General. In any event, Bailey Perrin Bailey will not seek to copyright any materials produced exclusively for New Mexico in this litigation. The original and one copy of all materials, work papers, meeting notes, design documents, or other documents produced or acquired by the Contractor as a result of this Agreement shall be indexed and placed in appropriately labeled binders and delivered to the Attorney General's Office at conclusion of the Agreement.

13. Conflict of Interest:

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required under this Agreement. The Contractor certifies that, if applicable, the requirements of the New Mexico Governmental Conduct Act, Sections 10-16-1 to 10-16-18 NMSA 1978, and the New Mexico Financial Disclosures Act, Sections 10-16A-1 to 10-16A-8 NMSA 1978, regarding contracting with a public officer or state employee, or former state officer or state employee, have been followed.

The Attorney General acknowledges that Contractor does or may represent other states, other public entities and individuals against the manufacturers of Risperdal and Seroquel, hereby consents to that representation, and waives any conflict arising from such other or multiple representation.

14. Equal Opportunity Compliance:

The Contractor agrees to abide by all Federal and State laws, rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, and executive orders of the Governor of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall on the grounds of race, color, religion, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

15. Amendment:

This Agreement shall not be altered, changed, or amended except by instrument in writing executed by the parties hereto and approved by the New Mexico Department of Finance and Administration.

16. Scope of Agreement:

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or other agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement, an amendment to this Agreement executed in accordance with Paragraph 16, above.

17. Approval of Change in Contractor Personnel:

Once work has started under the Agreement, the Contractor shall make no changes to the personnel assigned to the performance of this Agreement (listed in Exhibit A to the Agreement) without the prior written consent of the Attorney General. The Attorney General shall not agree to the replacement of any personnel listed in Exhibit A unless the replacement has equal or comparable ability, experience and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to ensure their being productive to the performance of the Agreement immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. In addition, the Attorney General shall retain the right to direct the removal of any of the Contractor's personnel at any time from the performance of this Agreement.

18. Indemnification:

The Contractor shall hold the state and its agencies and employees harmless and shall indemnify the state and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damages to property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors.

19. Worker's Compensation:

The Contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this agreement may be terminated by the AGO.

20. Applicable Law:

This Agreement shall be governed by the laws of the State of New Mexico.

21. Notice of Civil and Criminal Penalties:

The New Mexico Procurement Code, Sections 13-1-28 through 13010199 NMSA 1978, imposes civil and criminal penalties for violation of its provisions. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date approved below by the Contracts Review Bureau of the New Mexico Department of Finance and Administration.

STATE OF NEW MEXICO

CONTRACTOR

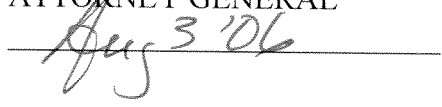
OFFICE OF THE ATTORNEY GENERAL

By:



PATRICIA A. MADRID
ATTORNEY GENERAL

Date:



Aug 3 '06

By:



Name: MICHAEL W. PERRIN
Title: PARTNER

Date: August 2, 2006

This Agreement has been approved by the Contracts Review Bureau of the New Mexico Department of Finance and Administration:

By: Paul Keipert

Contracts Review Bureau

Date: 8/24/06

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

TAXATION AND REVENUE DEPARTMENT

TAX ID NO.: **03-076693-00-1**

By: GA Jo

Date: 8/9/06

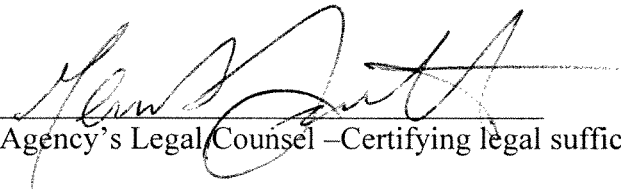


Attorney General of New Mexico

PATRICIA A. MADRID
Attorney General

STUART M. BLUESTONE
Chief Deputy Attorney General

GLENN R. SMITH
Deputy Attorney General

By:  Date: 8-9-10
Agency's Legal Counsel - Certifying legal sufficiency

STATE OF NEW MEXICO
ATTORNEY GENERAL'S OFFICE
PROFESSIONAL SERVICES CONTRACT #AG090012

THIS AGREEMENT is made and entered into by and between the New Mexico Office of the Attorney General, hereinafter referred to as (the Agency) and **Bailey Perrin Bailey** hereinafter referred to as (the Contractor), and is effective as of the date set forth below upon which it is executed by the Department of Finance and Administration ("DFA").

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work

A. The Contractor shall perform the following work:

As requested by the Agency, within the sole discretion of the Agency, the Contractor shall provide services for the evaluation, preparation, and as approved, the prosecution of litigation against Janssen, the manufacturer of Risperdal, and AstraZeneca, the manufacturer of Seroquel. The Contractor shall perform these duties in order to recover damages incurred by the State of New Mexico due to fraudulent marketing and promotion of these medications and deceptive concealment of information regarding the profoundly detrimental side-effects caused by these medications (the "Litigation").

Representation tasks may include, but are not limited to,

- Provide legal advice as requested;
- Assist in pre-litigation negotiations;
- Assist in litigation or settlement strategy;
- Prepare and present cases in State or Federal Court;
- Prepare briefs, motions, and other pleadings as needed;
- Conduct discovery, case preparation and trial, and any related appeals;
- Prepare memoranda of law on related topics;
- Advise and counsel as requested;
- Assist in such other legal work as the Agency deems necessary; and
- Develop and present expert testimony.

B. Services will be performed by Bailey Perrin Bailey, at their offices, 440 Louisiana, Suite 2100, Houston, Texas 77002. The contractor shall work and act at the direction of the Agency. The Contractor shall adhere to timetables established by the Agency and shall contact the Agency with regard to all settlement and strategy discussions.

C. Performance Measures

Contractor shall substantially perform the following Performance Measures:

1. By receipt of deliverables contemplated under this agreement, the Contractor shall assist the agency in meeting its goal as stated on Page 1 of the AGO Strategic Plan

Mission Statement and the Goal VI as stated on Page 3 of the agency strategic plan, which is to proactively litigate on behalf of state officials in civil matters to protect the public interest.

2. **Compensation**

A. Neither the Agency or the State of New Mexico, or any of its agencies, shall be responsible to pay the Contractor any compensation for legal services rendered under the terms of this Agreement with the Office of the Attorney General in pursuit of any claims for the benefit of the State of New Mexico. With respect to the Litigation, the Contractor shall be responsible for all necessary and reasonable costs and expenses incurred in pursuing the Litigation. Neither the Agency nor the State of New Mexico, or any of its agencies shall be responsible to pay the Contractor any compensation for services rendered under the terms of this Agreement with the Agency in pursuit of any claims.

B. The Contractor shall only receive compensation for legal services rendered in the pursuit of the Litigation as follows: upon the successful recovery of damages for the benefit of the State of New Mexico from any defendants, the Contractor shall be entitled to petition the court for its reasonable Contractor fees (and for the necessary and reasonable costs and expenses of the Litigation to the extent advanced by the Contractor), to be awarded to the Contractor by the court from monies paid by the defendants. The parties agree that a court is the appropriate authority to determine the amount of fees pursuant to existing law. Contractor's fees shall be awarded by the court to the Contractor after considering the following factors and existing law:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to pursue the Litigation properly;
2. The likelihood that the acceptance of this employment precluded other employment by any Contractor;
3. The fees customarily charged for similarly complex litigation where the lawyers must prevail before they are entitled to any fee;
4. The financial amount involved and the value of the result obtained for the State of New Mexico;
5. The time limitations imposed by the Litigation or the circumstances;
6. The nature and length of the professional representation;
7. The experience, reputation, and ability of the Contractor performing the services, including background in this area of law.;
8. The uncertainty and risk undertaken by Contractor in accepting employment.

D. Further, with respect to any Litigation, the Contractor shall advance all necessary and reasonable actual costs and expenses. The Agency shall not be responsible for the reimbursement of these costs. The Contractor may seek to obtain compensation for these costs in an application for fees and costs to the court against the opposing parties of the litigation. The Agency will support a reasonable application for fees and costs to the court on behalf of the contractor,

including through making personnel available for the purpose of preparing affidavits for, or giving testimony at, a hearing on such application.

C. Any application for costs at the conclusion of the Litigation of travel expenses as may be incurred in the Contractor's performance of this Agreement, shall be at the rates established in the New Mexico's Per Diem and Mileage Act as implemented by the Department of Finance and Administration Rule 95-1.

D. Other than in the event of termination, the Agency will support the Contractor in making a fee petition application that the Agency deems reasonable, to obtain reasonable compensation for its Contractor fees from the court. Contractor shall submit a full lodestar analysis of work performed, including supporting documentation, to the Agency together with its proposed fee petition at least one month prior to filing the fee petition with the court. Contractor shall also provide a description of fees that have already been awarded to counsel or are included in pending fee requests in this and any related actions. Agency support for a reasonable fee petition may include making personnel available for the purpose of preparing affidavits for, or giving testimony at, any hearing to determine such reasonable compensation, and endorsing pleadings requesting payment of such reasonable compensation.

E. To the extent that the Contractor controls the allocation of common costs and a lump sum settlement proposal to all of Contractor's clients in the litigation, Contractor agrees that the allocation proposed to the Agency will be proportionate to the allocation offered other clients who are otherwise similarly situated and Contractor will provide documentation to the Agency to justify said allocation.

F. The Contractor is responsible for paying to the New Mexico Taxation and Revenue Department the New Mexico applicable gross receipts tax on amounts paid to the Contractor under this Agreement, in addition, the Contractor shall not bill, nor will the Agency pay or reimburse, gross receipts taxes.

3.

Term.

A. THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DFA. THIS AGREEMENT SHALL NOT BE EFFECTIVE OR BINDING UNTIL APPROVED IN WRITING BELOW BY THE ATTORNEY GENERAL AND THE CONTRACTS REVIEW BUREAU OF THE NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION. FURTHERMORE, THERE WILL BE NO ENTITLEMENT TO PAYMENT TO THE CONTRACTOR FOR SERVICES PERFORMED UNDER THIS AGREEMENT PRIOR TO THE DATE AS OF WHICH THE AGREEMENT IS APPROVED BY THE NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION.

B. This Agreement shall terminate November 15, 2009 or terminated pursuant to paragraph 4 or paragraph 5. In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978. Because this is a sole source contract it shall have a one year term, renewable from year to year, until the conclusion of the Litigation or until termination occurs, pursuant to paragraph 4 below. This contract may be extended for the next four years, or until the Litigation is resolved, which ever occurs first. However, at no time shall the Agency or the State of New Mexico pay compensation or reimbursement to the Contractor.

4. **Termination**

A. **Termination**. This Agreement may be terminated by either of the parties hereto, without cause, upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the Agency's sole liability upon such termination shall be to support a reasonable lien for attorney's fees or to support a reasonable fee petition to the court at an appropriate time, for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the Agency is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the Agency or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of State funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTORS DEFAULT/BREACH OF THIS AGREEMENT.

B. **Termination Management**. Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services, or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention, or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

5. **Appropriations**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding within thirty (30) days of receipt of the proposed amendment.

6. **Status of Contractor**

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. **Assignment**

The Contractor shall 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 the Agency.

8. **Subcontracting**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without prior written approval of the Attorney General. In the event that the Attorney General approves the use of a subcontractor, the Contractor shall continue to be wholly responsible for performance of the work under this Agreement and for making payments to the approved subcontractor. By approving the use of a subcontractor, the Attorney General will in

no way form a contractual relationship with, or become responsible for making payments to, the approved subcontractor. The Attorney General may instruct contractor to terminate a subcontractor and contractor may not unreasonably withhold such action.

9. **Release**

The Contractor, upon final payment of the amount due under this Agreement, releases the Attorney General, the officers and employees of the Attorney General, and the State of New Mexico, from all liabilities, claims, and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the State of New Mexico or the Attorney General to any obligation not assumed under this Agreement by the State of New Mexico or the Attorney General, unless the Contractor has express written authority from the Attorney General to do so, and then only within the limits of that authority. Final payment of the amounts due under this Agreement shall operate as a release of the Agency, its officers and employees, and the State of New Mexico from all liabilities, claims, and obligations whatsoever arising from or under this Agreement.

10. **Confidentiality**

Any attorney-client privileged information or attorney work product provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval by the Attorney General. Contractor shall immediately notify the Attorney General of any request for inspection of records. The Attorney General shall determine whether such documents are subject to disclosure pursuant to New Mexico law.

11. **Product of Service - Copyright**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

12. **Conflict of Interest; Governmental Conduct Act**

Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding

contracting with a public officer or state employee or former state employee have been followed.

13. Amendment

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto, and approved by the New Mexico Department of Finance and Administration.

14. Merger

This Agreement incorporates all the Agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements, and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Penalties for violation of law

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kickbacks.

16. Equal Opportunity Compliance

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the

courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Workers Compensation

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

19. Records and Financial Audit

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature, and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Department of Finance and Administration, and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments

20. Indemnification.

The Contractor shall defend, indemnify, and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees, and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act, or any act or omission of the Contractor, its officers, employees, servants, subcontractors, or agents, or if caused by the actions of any client of the Contractor, resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant, or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit, or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant, or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

21. New Mexico Employees Health Coverage

A. If the Contractor is a New Mexico business entity, and has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to:

(1) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;

(2) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$500,000 dollars or;

(3) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of New Mexico employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all New Mexico employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenemexico.state.nm.us/>.

22. Invalid Term or Condition

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

23. Enforcement of Agreement

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

24. Notices

Any notice required to be given to either party by this Agreement

shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Agency: David K. Thomson, New Mexico Attorney General's Office, 408 Galisteo St., New Mexico 87501

To the Contractor: Michael W. Perrin, Bailey Perrin Bailey, 440 Louisiana, Suite 2100, Houston, Texas 77002.

25. Authority

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau below.

By: *Guadalupe Hernandez* Date: 11/18/08
Agency

By: *Robert Ramos* Date: 11.12.08
Agency's Legal Counsel - Certifying legal sufficiency

By: *Will Lewis* Date: 11-14-08
Contractor

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: 03-076693-00-1

By: *Juli Arco* Date: 11/18/08
Taxation and Revenue Department

This Agreement has been approved by the DFA Contracts Review Bureau:

By: *B-D Mat* Date: 11.24.8
DFA Contracts Review Bureau

Deviation Statement

- Paragraph 4A: The phrase “without cause” was added to ensure that the Agency could terminate the agreement with the contractor without having to prove a valid necessity for the termination. Also, the language regarding paying the contractor in the event of termination was changed because this is a “no cost” contract. Therefore, any income to the contractor will have to come from an approved fee petition to the court.
- Paragraph 8 Language was added provide the Attorney General’s office with added protection in the event the contractor uses a subcontractor.
- Paragraph 9: This language was changed grant the Agency and the state better protection in the event of a release of claims.
- Paragraph 10: This language was changed to reflect the fact that this contract will cover material that is attorney-client privileged, and to provide greater protections for that privilege. The language also makes clear that the Agency must specifically authorize any release of those documents.

SOLE SOURCE DETERMINATION FORM
For Professional Services Contracts & Contract Amendments

A professional services contract procured by a sole source determination is not effective until the sole source determination has been approved, in writing, by the Secretary of the Department of Finance and Administration and approved, in writing, by the DFA Administrative Services Division, Contracts Review Bureau, even if signed by the agency and the prospective contractor.

I. Name of Agency: Attorney General's Office

Contact Person: David K. Thomson / Lyn Payne

Telephone Number: (505)827-6000

II. Name of prospective contractor: Michael W. Perrin, Bailey Perrin Bailey

Address of prospective contractor: 440 Louisiana, Ste. 2100, Houston, Texas 77002

III. An explanation of the criteria developed and specified by the agency as necessary to perform the contract and upon which the state agency reviewed available sources. (Please do not use "technical jargon;" use plain English.) Also, please do not tailor the criteria simply to exclude other contractors if it is not rationally related to the purpose of the contract.

Representation tasks may include, but are not limited to,

- Provide legal advice as requested;
- Assist in pre-litigation negotiations;
- Assist in litigation or settlement strategy;
- Identify critical documents and witnesses;
- Prepare and present case in the New Mexico State Court, First Judicial District, or other appropriate courts;
- Prepare briefs, motions and other pleadings as needed;
- Conduct discovery, case preparation and trial;
- Prepare memoranda of law on related topics;
- Advise and counsel as requested;
- Assist in such other legal work as the Agency deems necessary; and
- Develop and present expert testimony.

- IV. A detailed, sufficient explanation of the reasons, qualifications, proprietary rights or unique capabilities of the prospective contractor that makes the prospective contractor the only source capable of providing the required professional service. (Please do not state the source is the "best" source or the "least costly" source. Those factors do not justify a "sole source.")

Bailey Perrin Bailey is a unique vendor for this particular litigation. Bailey Perrin Bailey has filed litigation against Janssen in the States of Louisiana, Arkansas, South Carolina, Mississippi, and Pennsylvania, in each instance representing one or more state agencies or relators on claims involving the drugs Risperdal and Seroquel. Bailey Perrin Bailey filed a similar case in New Mexico on behalf of the Attorney General. However, the pendency of another case filed under seal prevented the case from going forward at that time. This is no longer a barrier to progress in the suit on behalf of the Agency. Bailey Perrin Bailey has been the attorney of record for New Mexico in this litigation and they have vast experience on this case in particular. Bailey Perrin Bailey has particularly unique information, developed in this and related litigation and they have expertise that makes them the most desirable firm for the Agency to hire to pursue this litigation.

Both of these drugs are classified as atypical antipsychotics and both have been associated with detrimental side-effects including weight gain, glucose regulation, and diabetes. Bailey Perrin Bailey brought information to the Attorney General that is imperative to the prosecution of these cases. Extensive discovery, including database production and many depositions, has been underway in other jurisdictions and continues in this jurisdiction. Bailey Perrin Bailey has particular information and knowledge regarding the prosecution of these cases that would not be available to other counsel who might bid on a contract during RFP process. A firm with less experience in this field or less information than that already possessed by Bailey Perring Bailey through this and other litigation, would require costly time and discovery to come up to speed in this litigation.

The Attorney General has made a determination that his participation in litigation against the defendants regarding these prescription drugs will benefit the State of New Mexico. The Attorney General believes it is in the State's best interest to proceed by retaining Bailey Perrin Bailey as contract counsel to pursue this litigation and any pre-trial settlement negotiations. Prosecution of the litigation at issue is beyond the scope of capability of the Attorney General's office. We do not have sufficient litigators to manage this litigation on our own. The litigation can return tens of millions of dollars to the state coffers to replace Medicaid funds that were improperly paid as a result of the fraudulent marketing and other illegal acts on the part of Janssen and AstraZeneca. As a result, the Bailey Perrin Bailey firm is specifically qualified to pursue and manage this litigation.

- V. A narrative description of the procedures used by the Agency to conduct a good faith review of available sources, including researching trade publications, industry newsletters and the internet; reviewing telephone books and other advertisements; contacting similar service providers; and reviewing the State Purchasing Agent's vendor list.

We acknowledge that there are other law firms available to conduct this particular FATA. However, any other firm we would hire would lack the wealth of knowledge already accumulated by Bailey Perrin Bailey with respect to these particular cases. If we publish an RFP, wait for the bidding process, and retain a different firm who must then be brought up to speed on the case, we may well have been delayed to the detriment of the State. It is most prudent to keep these contractors as our counsel to complete these cases.

**Sole Source Determination Form
For Professional Services Contracts**

VI. A list of all businesses contacted (do not state that no other businesses were contacted), date of contact, method of contact (telephone, mail, e-mail, other), and documentation demonstrating an explanation of why those businesses could not or would not, under any circumstances, perform the contract; or an explanation of why the agency has determined that no businesses other than the prospective contractor can perform the contract.

See answer above.

Submitted by: Gay Kij 11/14/08
Cabinet Secretary or Designee Date

Approved: _____
Cabinet Secretary Date
Department of Finance and Administration