



**NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY
ASSISTANCE
40 NORTH PEARL STREET
ALBANY, NY 12243-0001**

David A. Paterson
GOVERNOR

Administrative Directive

Section 1

Transmittal:	10-ADM-05
To:	Local District Commissioners
Issuing Division/Office:	Division of Child Support Enforcement (DCSE) Center for Child Well-Being (CCWB)
Date:	July 14, 2010
Subject:	Purchase of Service Agreements/Memorandum of Understanding for the Child Support Program
Suggested Distribution:	Child Support Enforcement Coordinators Support Collection Unit Supervisors IV-D Attorneys Accounting Supervisors
Contact Person(s):	Division of Child Support Enforcement at 1-800-343-8859 Office of Legal Affairs – Brian Wootan at 1-518-473-6188
Attachments:	<u>Attachment 1: Draft Agreement</u> <u>Attachment 2: IRS Agreement Language For General Services</u>
Attachment Available On – Line:	X

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
85-ADM-32		346.4; 346.5; 347.4	110-a;352;352-a 45 CFR 303.107 45 CFR 302.34 45 CFR 304.21 45 CFR 304.22		

Section 2

I. Summary

The local district may enter into purchase of service agreements (POS) with nonprofit organizations, private entities, local officials, departments and agencies which do not have judicial or law enforcement authority, to assist in the administration of the child support enforcement program at the local district level. These include, but are not limited to, laboratories licensed and approved by the New York State Department of Health for paternity testing in paternity establishment cases and process servers. When services are being purchased from another governmental agency, with the exceptions noted above (courts and law enforcement), a Memorandum of Understanding (MOU) is used. For the purposes of this ADM, government agencies and private entities that could otherwise be referred to as agency/contractor/vendor will be referred to as "Service Provider." Also, legal services may be provided by a POS with a private attorney or non-profit legal services attorney or a Cooperative Agreement with the County Attorney's office (refer to 10- ADM-02 for contracting legal services).

Regardless of whether a POS or MOU is used, State and Federal law and regulations require the inclusion of certain terms and provisions in order to be eligible for federal financial participation.

II. Purpose

This administrative directive sets forth provisions that must be contained in a POS or MOU. It also provides direction for obtaining prior approval of the POS/MOU from the Division of Child Support Enforcement (DCSE).

III. Background

Local districts enter into POS/MOUs to obtain the assistance of Service Providers in carrying out their functions under the child support enforcement program as specified under Parts 346 (excluding support collection unit services) and 347 of Title 18 of New York Codes Rules and Regulations. These POS/MOUs must be in written form and must contain certain terms and conditions in order to be eligible for federal financial participation (refer to 45 CFR 302.34, 303.107, 304.21 and 304.22 and 18 NYCRR 346.4 and 347.4). All POS/MOUs must be provided to DCSE for *prior* approval.

IV. Program Implications

Local districts must review current procedures for services obtained through a POS/MOU to ensure compliance with relevant statutes, regulations and these instructions.

V. Required Action

A. All POS/MOUs must:

1. Provide for adequate supervision and monitoring by State and local officials.
2. Include a clear description of the specific duties, functions and responsibilities of each party. This means that the POS/MOU must state clearly what will be done and who will do it. It is the responsibility of the local district Child Support Enforcement Unit (CSEU) to monitor the POS/MOU to ensure effective implementation of its terms and to identify any problems that may affect the delivery of services.
3. Any POS/MOUs must:
 - a. specify clear and precise performance standards by which the terms of the arrangement and quality of services under the arrangement are measured;
 - b. contain standards of performance that are measurable, consistent with federal and state requirements, and acceptable to each party. These standards must be related specifically to the duties outlined in the POS/MOU; and
 - c. contain both qualitative and quantifiable performance standards. Some examples of qualitative standards are accuracy and thoroughness. Examples of quantifiable standards are: how many specific actions must be taken; what time frame is allowable for the completion of a task, for example, time for service of process.
4. Specify the financial arrangements including: budget estimates; covered expenditures; methods of determining costs; procedures for billing the CSEU; and any relevant federal and state reimbursement requirements and limitations.
5. Specify the kind of records that must be maintained and the appropriate Federal and State reporting and safeguarding requirements. Any information (e.g., tax refund offset amounts) obtained from the IRS and recorded on the Child Support Management System is subject to specific IRS safeguards. Any POS/MOU that would include sharing IRS information must have certain language (see Attachment 2 and refer to IRS Publication 1075). Also, any Service Provider must sign the IRS confidentiality statement.

6. Clearly state organizational relationships (e.g., who is accountable to whom, resources used, etc.).
7. Include a justification that the POS/MOU is the most cost-effective way of providing the service and that the cost is reasonable and necessary to assure the quality of the services.
8. If applicable, include a justification for the POS/MOU using two or more part-time employees, whose combined time under the arrangement will be greater than one full-time employee equivalent.
9. Specify the documentation that the POS/MOU must provide to support claims for federal and state reimbursement for services performed under the arrangement.
10. Specify the dates on which the POS/MOU begins and ends, any conditions for renewal, and the circumstances under which the arrangement may be terminated.

B. Some required terms and conditions are standard for all POS and MOUs. These terms and conditions are set out in Attachment 1, which must be attached to and incorporated in every POS/MOU. These standard terms and conditions require that the POS/MOU:

1. Specify that the parties will comply with Title IV-D of the Social Security Act, implementing Federal and State law and regulations and any other applicable Federal and State law and regulations and requirements.
2. Provide for the proper use and disclosure of confidential records. Child support information may be used and disclosed only to authorized individuals and only for authorized purposes, including information given to a Service Provider (see Social Services Law §111-v and 18 NYCRR 347.19).
3. Include a provision that the POS/MOU may be terminated by the local district Department of Social Services or CSEU upon 30 days written notice to the other party without cause and immediately for cause or if federal or state reimbursement is terminated or not allowed.
4. The POS/MOU must have a provision for bonding of any POS/MOU employees who will have access to or control over child support collections as required by 18 NYCRR 346.5. Any collections received by the local district or a service provider must be immediately remitted to the Processing Center.

- C. POS/MOUs for legal services should follow the format of Attachment 1, “Cooperative Agreement/Purchase of Services Agreement,” provided in 10-ADM-02. The sample POS/MOU includes all the required terms and conditions specific to legal services. Attachment 1 to this administrative directive should not be attached.
- D. All POS/ MOUs must be submitted to DCSE for review and prior approval. DCSE will review such agreements within 45 days of receipt and notify the district if the agreement is approved or return the agreement with comment. Such POS/MOUs must be

mailed to:

Bureau of Program Operations
NYS OTDA
Center for Child Well-Being
Division of Child Support Enforcement
40 North Pearl St., 13th Floor, Albany, NY 12243-0001

OR

emailed to:

otda.sm.dcse.bpo@otda.state.ny.us

VI. Systems Implications

None.

VII. Additional Information

Fiscal Claiming

Costs incurred through a POS/MOU must be supported by the DSS-Form-2674 and claimed on Schedules DSS-923A and 923 in accordance with the instructions contained in Chapter 15 of Bulletin 143b. For services negotiated on a fee-for-service basis, the DSS-Form-2674 does not need to be prepared.

VIII. Effective Date

This administrative directive is effective immediately.

Issued By:

Name: Scott E. Cade
Title: Deputy Commissioner and Director
Division/Office: New York State OTDA
Center for Child Well-Being
Division of Child Support Enforcement

ATTACHMENT 1

Appendix 1

Terms applicable to all Purchase of Service Agreements/Memorandums of Understanding for Child Support Services

The _____ (the "Agency") and the _____ (the "Service Provider"), as parties to the Agreement agree to be bound by the following terms which are hereby made a part of the Agreement. In the event of a conflict between the terms of the Agreement (including any and all attachments thereto and amendments thereof) and the terms of this Appendix 1, the terms of this Appendix 1 shall control. The Service Provider shall include these terms in all agreements and subcontracts.

I. Confidentiality

- A. The Service Provider agrees that all information and data obtained in the performance of the Agreement is deemed confidential and will be used or disclosed only for the intended purposes as permitted by law. Measures shall be taken to safeguard the confidentiality of such information to the extent required by applicable federal and state laws and regulations. The Service Provider agrees to be bound by provisions of Section 654(26) of Volume 42 of the United States Code, Section 6103(l) and (p) of Volume 26 of the United States Code, Section 303.21 and 307.13 of Volume 45 of the Code of Federal Regulations, Section 111-v of the Social Services Law, Section 347.19 of Volume 18 of the New York Code of Rules and Regulations, and other related statutes or regulations regarding confidentiality of child support information. This paragraph shall survive the termination of the Agreement.
- B. The Service Provider shall insure that any officer, employee, subcontractor, or other person with access to information and data obtained in the performance of the Agreement is advised of the confidential nature of the information and data, the permitted uses of the information and data, and the penalties for improper use or disclosure. Upon written notice by the Child Support Agency, the officers, employees, subcontractors or other persons who receive access to this information must execute a "Confidentiality and Nondisclosure Agreement" using the form attached hereto. Each executed Confidentiality and Nondisclosure Agreement shall be provided to the Child Support Agency.
- C. The Service Provider agrees to limit access to child support information to those officers, employees, subcontractors or other persons who need access to the information to perform work or services under the Agreement.

- D. In the event that the Service Provider learns or has reason to believe that child support information has been disclosed or accessed by an unauthorized party, the Service Provider will immediately give notice of such event to the Child Support Agency. Furthermore, if the child support information contains personally identifying information, the Child Support Agency may direct the Service Provider to notify the individuals whose information was disclosed that a Security Event has occurred. The Service Provider shall be responsible for any other legal obligations which may arise under applicable law in connection with such a Security Event.

II. Reports and Record Keeping

- A. The Service Provider shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under the attached Agreement (hereinafter, collectively, "the Records"). The Records must be kept for no less than six (6) years after final settlement of the Agreement. The Child Support Agency, and any other person or entity authorized by the Child Support Agency to conduct an examination or audit, shall have access to the Records during normal business hours at an office of the Service Provider within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.
1. In addition, these records shall be subject at all reasonable times to inspection, review, or audit by the New York State Office of Temporary and Disability Assistance ("OTDA"), and the Federal Office of Child Support Enforcement.
 2. Upon request of the Child Support Agency, the Service Provider agrees to collect and report information or data, including fiscal or case result information, on a regular basis and to make statistical reports at times prescribed by and on forms furnished by the Child Support Agency.
 3. If an audit by or on behalf of the Child Support Agency, the Federal Office of Child Support Enforcement and/or OTDA has begun but is not completed by the end of the six (6) year period, the records shall be retained until resolution of the audit findings.
- B. The Service Provider shall cooperate in developing a system of reports to be made periodically by the Child Support Agency as are or may be necessary to comply with applicable Federal and State requirements. The Service Provider agrees to include these requirements in all agreements and subcontracts.
- C. If state or federal reimbursement for any claims under this Agreement is lost because of the performance or failure to perform by the Service Provider under the Agreement, then such loss shall be chargeable to the Service Provider.

III. Approval and Assignment

- A. The Agreement shall not take effect until approved by OTDA, and shall be terminated if OTDA withdraws or revokes its approval.
- B. The Service Provider shall not assign, transfer, convey or otherwise dispose of the Agreement or the Service Provider's right, title or interest therein, or authority to execute the Agreement to any other person or corporation without written approval of the Child Support Agency (which shall be attached to the original Agreement). No such approval by the Child Support Agency of any assignment, transfer, conveyance or other disposition shall be effective without the approval of OTDA.

IV. Governing Law

- A. The Service Provider agrees to comply with the requirements of Title IV-D of the Federal Social Security Act and the implementing Federal and State statutes and regulations, including any new or revised requirements issued by the Federal Department of Health and Human Services, or OTDA. The Child Support Agency agrees to notify the Service Provider of any directives or policy transmittals affecting the services provided under the Agreement.
- B. The Agreement shall be governed by the laws of the State of New York.

V. Miscellaneous Terms

- A. The Service Provider shall provide for bonding of any officer, employee, or subcontractor who will have access to or control over child support collections, as required by 18 NYCRR 346.5.
- B. The Agreement may be terminated by the Child Support Agency upon 30 days written notice to the Service Provider without cause or when deemed to be in the Child Support Agency's best interest.
- C. The Service Provider may be terminated by the Child Support Agency immediately for cause or if Federal or State reimbursement is terminated or not allowed.
- D. In the event the Agreement is terminated, suspended, revoked, nullified, or voided, except if for cause, the Child Support Agency agrees to pay for services rendered by the Service Provider under this Agreement which have been completed prior to the effective date of such termination, suspension, revocation, nullification, or voiding. The Child Support Agency may, at its discretion, process other necessary and proper costs, which the service provider could not reasonably avoid, for services begun but not completed prior to termination, suspension, revocation, nullification, or voiding of the Agreement; provided such cost would have otherwise been allowable.

Confidentiality and Non-Disclosure Agreement

I, the undersigned, an employee/officer of _____ (the "Service Provider"), hereby state that I understand and agree that all information provided to the Service Provider from _____ (the "Child Support Agency") or otherwise obtained pursuant to the Agreement entered between the Child Support Agency and the Service Provider, is CONFIDENTIAL, is to be used only for the purposes of performing services required by the Agreement, and must be safeguarded from unauthorized disclosure. I further understand that such information includes, but is not limited to, any and all information regarding parents or guardians and their children, and all employment, financial, and personal identifying data.

I agree to maintain all such information as CONFIDENTIAL, and I agree to use such information only in the performance of my official duties to perform the functions required by the Agreement, unless otherwise authorized in writing by the Child Support Agency.

I understand that if I disclose CONFIDENTIAL information in violation of the requirements stated herein, any individual who incurs damages due to the disclosure may recover such damages in a civil action.

I understand that, in addition to any other penalties provided by law, any person who willfully releases or willfully permits the release of any CONFIDENTIAL information as described herein to persons or agencies not authorized under New York State law to receive it shall be guilty of a class A misdemeanor.

Print Name: _____

Signature: _____

Title: _____

Date: _____

NOTICE: Pursuant to Social Services Law § 111-v, a person who improperly releases or permits release of confidential child support information shall be guilty of a Class A misdemeanor and shall be liable in a civil action to any person who incurs damages due to said disclosure.

ATTACHMENT 2

AGREEMENT LANGUAGE FOR GENERAL SERVICES

I. PERFORMANCE:

In performance of the Agreement, the Service Provider agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- A. All work will be done under the supervision of the Service Provider or the Service Provider's employees.
- B. Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of the Agreement. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of the Agreement. Disclosure to anyone other than an officer or employee of the Service Provider will be prohibited.
- C. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- D. The Service Provider certifies that the data processed during the performance of the Agreement will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Service Provider at the time the work is completed. If immediate purging of all data storage components is not possible, the Service Provider certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- E. Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the Service Provider will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- F. All computer systems processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.

- G. No work involving Federal tax information furnished under the Agreement will be subcontracted without prior written approval of the IRS.
- H. The Service Provider will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- I. The agency will have the right to void the Agreement if the Service Provider fails to provide the safeguards described above.
- J. (Include any additional safeguards that may be appropriate.)

II. CRIMINAL/CIVIL SANCTIONS:

- A. Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- B. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Agreement. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.

C. Additionally, it is incumbent upon the Service Provider to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to subcontractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a subcontractors, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established there under, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

III. INSPECTION:

The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the Service Provider for inspection of the facilities and operations provided for the performance of any work under the Agreement. On the basis of such inspection specific measures may be required in cases where the Service Provider is found to be noncompliant with Agreement safeguards.