

PROFESSIONAL SERVICES CONTRACT

between

**DETROIT WAYNE
MENTAL HEALTH AUTHORITY**

and

(CONTRACTOR)

Term: October 1, 201_ – September 30, 201_

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APPENDICES

APPENDIX A	SCOPE OF SERVICES
APPENDIX B	COMPENSATION & REIMBURSEMENT OF EXPENSES
APPENDIX C	BUSINESS ASSOCIATE AGREEMENT

THIS CONTRACT is between the Detroit Wayne Mental Health Authority, (“Authority”), a community mental health services program authority pursuant to Sections 204 and 205 of the Michigan Mental Health Code, Act 258 of 1974, and (Contractor’s name), a _____ corporation (the “Contractor”). (Authority and Contractor is each a “Party” and, collectively, the “Parties”). The Authority was established on October 1, 2013, pursuant to Michigan Public Acts 375 and 376 of 2012, and an enabling resolution by the Wayne County Commission. In consideration of the mutual covenants, promises and undertakings herein and intending to be legally bound hereby the Parties agree as follows:

1. PURPOSE

1.01 The Authority is required to fulfill its obligations under the contract.

1.02 The Contractor is experienced and able to perform technical and professional services. The Contractor desires to provide these services for the Authority. Maximum Compensation under this contract shall not exceed _____ (\$0.00) Dollars.

2. ENGAGEMENT OF CONTRACTOR

2.01 The Authority engages the Contractor and the Contractor agrees to faithfully and diligently perform the services according to the terms and conditions contained in this Contract and consistent with the standard of professional practice in the community.

2.02 The Contractor shall not subcontract work described in this Contract.

3. SCOPE OF SERVICE

3.01 The Contractor must perform the services described in Appendix A in a satisfactory manner, as determined within the discretion of the Authority. The Contractor warrants that the Contractor is authorized to do business under the laws of the State of Michigan and is qualified to perform the Services in this Contract.

3.02 If there is any dispute between the parties regarding the extent and character of the services to be performed, the interpretation of the Authority governs.

3.03 The services include all conferences and consultation deemed necessary by the Authority to properly and fully perform the services.

3.04 All services are subject to review and approval of the Authority for completeness and fulfillment of the requirements of this Contract. Neither the Authority's review, approval, or payment for any of the services shall be construed to operate as a waiver of any rights under the Contract, and the Contractor shall be and remain liable in accordance with the applicable law for all damages to the Authority caused by the Contractor's negligent performance or nonperformance of any of the Services furnished under this Contract.

4. TERM OF CONTRACT

4.01 This Contract begins on October 1, 201_ and ends September 30, 201_. The Contractor must expediently perform the services to achieve the objectives of this Contract.

5. DATA TO BE FURNISHED CONTRACTOR

5.01 Upon the request of the Contractor, without charge, the Authority will furnish copies of all information, data, reports, records, etc., that the Authority thinks is necessary for the Contractor to perform the described services. The Contractor is entitled to visit Authority offices and key facilities as approved by the Authority, during regular business hours to obtain the necessary data. The Contractor will schedule meetings at convenient times with key administrative personnel of the Authority to gather and distribute information.

6. PERSONNEL

6.01 To induce the Authority to enter into the Contract, the Contractor represents and warrants that the Contractor is authorized to do business under the laws of the State of Michigan

and is duly qualified to perform the services as set forth in the Contract. The execution of this Contract is within the Contractor's authorized powers, and is not in contravention of federal, state, or local law.

6.02 The Contractor warrants that all employees of the Contractor assigned to the performance of the services are qualified and authorized to perform the services under the state and local laws and governing professional association rules where the employee is employed.

6.03 Each employee of the Contractor shall devote the time and professional ability as is necessary to most effectively and efficiently perform the services according to professional standards.

6.04 Whenever an employee assigned to this Contract must be replaced for any reason, the Contractor must supply an acceptable replacement as soon as possible and agrees not to substitute a lower classified employee to perform the services without obtaining prior Authority approval in writing.

6.05 Employees' daily working hours may be determined by the Contractor. When the employees are working in or about an Authority facility, Contractor agrees to adjust its employees' daily working hours to be the same as those worked by Authority employees working at the facility.

7. ADMINISTRATION

7.01 The Contractor must inform the Authority as soon as the following types of conditions become known:

- A. Probable delays or adverse conditions, which do or may materially, prevent the meeting of the objectives of the Contract. The Contractor must accompany this disclosure with a statement of any remedial action taken or contemplated by it; and

- B. Favorable developments or events, which enable meeting time schedules or goals sooner than anticipated.

7.02 The Contractor must regularly inform the Authority of its activities in connection with its duties and must keep the Authority informed of the status of any program. The Contractor is not required to perform in a manner materially in conflict with requirements imposed by any applicable law including any statute, county charter, ordinance, resolution or executive order.

7.03 The Contractor shall have no authority in the name of the Authority to borrow money, commence or defend litigation, spend money, or enter into contracts except as otherwise provided in this Contract.

8. COMPENSATION AND METHOD OF PAYMENT

8.01 The Authority agrees to pay the Contractor at the rates in Appendix B, attached. The compensation includes all remuneration to which the Contractor may be entitled. The Authority will not pay the Contractor for overtime, holiday or other premium charges or other benefits in addition to those stated in Appendix B. Maximum compensation shall not exceed the “shall not exceed” amount listed in Section 1.02 of the Contract.

8.02 The Contractor must, upon reasonable notice, be available to participate in any proceeding, whether legal, administrative or otherwise, or in any internal Authority preparatory meetings for the proceeding, in order to assist the Authority in any matter relating to the purpose or outcome of this Contract. The Authority may, at its sole option, compensate the Contractor under a separately negotiated agreement for any services rendered pursuant to this section.

8.03 The Authority will pay for the proper performance of the services, commensurate with the progress of the work as evidenced by the timely performance of the services, and after it

receives an invoice for payment. The invoice must certify the total cost of the services rendered to the project to date and the cost of all services for that billing period; and must describe the services rendered. If the invoice also requests reimbursement or payment for reimbursable expenses, the appropriate receipts must be attached. The Contractor must sign the invoice and send it to the Authority for each calendar month. This section is limited by the provisions of Articles 1 & 8 with regard to the amounts payable for performance, including the “shall not exceed” amount.

8.04 The Contractor must direct invoices to the attention of the individual specified in the Notice provisions, Article 18.

8.05 The Contractor must submit as part of the invoices, monthly progress reports indicating the Contractor's activities during the month and being signed by an authorized officer of the Contractor.

9. RECORDS - ACCESS

9.01 The Contractor must maintain complete books, ledgers, journals, accounts, or records in which it keeps all entries reflecting its operation pursuant to this Contract. The Contractor must keep the records according to generally accepted accounting practices and for a minimum of seven (7) years after the Contract's termination and completion, with a longer period, if required by law or regulation. The Contractor must also maintain copies of all records, correspondence and documents, including electronically stored information, prepared in anticipation of this Contract, and for this Contract, for a period of seven (7) years after the Contract's termination and completion.

9.02 The Authority has the right to examine and audit all books, records, documents and other supporting data as they deem necessary of the Contractor, or any subcontractors, or

agents rendering services under this Contract, whether direct or indirect, which will permit adequate evaluation of the services or the cost or pricing data submitted by the Contractor. The Contractor must include a similar covenant allowing for audit by the Authority in any contract it has with a consultant or agent whose services will be charged directly or indirectly to the Authority. The Authority may delay payment to the Contractor pending the results of any such audit without penalty or interest.

9.03 The Contractor agrees that representatives of the Authority are entitled to make periodic inspections to ascertain that the Contractor is properly performing the services. The inspections may be made at any time during normal business hours of the Contractor. If, in the course of the inspections, the representatives of the Authority should note any deficiencies in the performance of the services of the Contractor, or any other mutually agreed upon performance deficiencies, the alleged deficiencies must be reported promptly to the Contractor, in writing. The Contractor agrees to promptly remedy and correct any reported deficiencies within 10 days of notification by the Authority.

9.04 If, as a result of any audit conducted by the Authority, State of Michigan or Federal agency relating to the Contractor's performance under this Contract, a discrepancy should arise as to the amount of compensation due the Contractor, the Authority may retain the amount of compensation in question from any funds allocated to the Contractor but not yet disbursed under the Contract. Should a deficiency still exist, the Authority may offset such a deficiency against the compensation to be paid the Contractor in any successive or future Contracts between the parties.

10. RELATIONSHIP OF PARTIES

10.01 Independent Contractor Status. The relationship between Authority and

Contractor, as well as their respective employees and agents, is that of independent contractors, and neither shall be considered an agent or representative of the other Party for any purpose, nor shall either hold itself out to be an agent or representative of the other for any purpose. Authority and Contractor shall each be solely liable for its own activities and those of its agents and employees, and neither Authority nor Contractor shall be liable for the activities of the other Party or the other Party's agents or employees, including, without limitation, any liabilities, losses, damages, injunctions, suits, actions, fines, penalties, claims or demands of any kind or nature by or on behalf of any Consumers, party or governmental authority arising out of or in connection with: (a) any failure to perform any of the agreements, terms, covenants or conditions of this Agreement; (b) any negligent act or omission or other misconduct; (c) the failure to comply with any applicable laws, rules or regulations; or (d) any accident, injury or damage. Contractor agrees to indemnify and hold harmless Authority from any and all claims, liabilities and causes of action (including costs and counsel fees) arising out of Contractor's delivery of Covered Services to Consumers. This provision does not require Contractor to indemnify or hold harmless Authority (including for costs and counsel fees) for the acts or conduct of Authority giving rise to liability, and shall survive the termination of this Agreement, regardless of the reason for termination. Nothing herein shall be construed as a waiver of any governmental immunity for the Authority, its agents or employees or as provided by statute or modified by court decisions.

10.02 For all purposes, Authority employees will remain employees of the Authority and the Contractor's employees will remain employees of the Contractor. The Contractor is being retained by the Authority as an independent contractor to provide services to the Authority, and is not being retained in any capacity as a joint enterprise or venture with the Authority. The Contractor also covenants that none of its employees are or will be, during the period of this

Contract, employees of the Authority.

10.03 Use of Names.

- (a) Contractor agrees that the Authority may use the Contractor's address, phone number, picture or logo, type of practice or other professional services offered, applicable practice restrictions, in any communication from the Authority to Consumers regarding Covered Services,
- (b) Contractor also agrees to acknowledge the Authority as a funding source in its publications and communications, in accordance with Authority policy.

11. INSURANCE

11.01 The Contractor must maintain, at its expense, must maintain during the term of this Contract the following insurance:

- A. Workers' Compensation Insurance which meets Michigan statutory requirements.
- B. Commercial General Liability Insurance with minimum limits, for bodily injury and property damage, of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate.
- C. Commercial Automobile Liability (owned, non-owned, and leased vehicles) with minimum combined single limits of One Million Dollars (\$1,000,000).

11.02 All insurance must be effected under valid and enforceable policies, issued by recognized, responsible insurers qualified to conduct business in Michigan which are well-rated by national rating organizations. All companies providing the coverage required shall be licensed or approved by the Insurance Bureau of the State of Michigan and shall have a financial rating no

lower than XI and a policyholder's service rating no lower than [A] as listed in A.M. Best's Key Rating guide, current edition or interim report.

11.03 Insurance policies must name the Authority as additional insured and loss payee, and must not be canceled or materially changed without at least thirty (30) days prior notice from the Contractor to the Authority. The Contractor must submit certificates evidencing the insurance to the Risk Management Division at the time the Contractor execute the Contract, and at least fifteen (15) days prior to the expiration dates of expiring policies.

12. INDEMNIFICATION

12.01 Except for claims arising from the Authority's gross negligence, the Contractor agrees to indemnify, defend and save harmless the Authority against, and from any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed upon, incurred by or asserted against the Authority because of any of the following occurring during the term of this Contract:

- A. Any negligent or tortious act, error, or omission held in a court of competent jurisdiction to be attributable, in whole or in part to the Contractor, or any of its personnel, employees, consultants, agents, or any entities associated, affiliated, (directly or indirectly) or subsidiary to the Contractor now existing, or to be created, their agents and employees for whose acts any of them might be liable.
- B. Any failure by the Contractor, or any of its employees to perform its obligations either implied or expressed under this Contract.

12.02 The Contractor agrees that it is its responsibility and not the responsibility of the

Authority to safeguard the property and materials that the employees of the Contractor use in performing this Contract. The Contractor must hold the Authority harmless for costs and expenses resulting from any loss of the property and materials used by its employees pursuant to the performance of the Contractor under this Contract.

12.03 Nothing in this article shall be deemed to relieve the Contractor of its duty to defend the Authority, as specified, pending a determination of the respective liabilities of the Contractor and the Authority, by legal proceeding or agreement. The Authority shall cooperate with the Contractor in the defense against the suit. In no event shall the Contractor make any admission of guilt or liability on behalf of the Authority without the Authority's prior, written consent.

12.04 For purposes of these provisions, the term "Authority" includes the Detroit-Wayne Mental Health Authority and all other associated, affiliated, or subsidiary departments or divisions now existing or to be created, their agents and employees.

12.05 This indemnity applies without regards to whether the claim, damage, liability or expense is based on breach of contract, breach of warranty, negligence, strict liability, or other tort. This indemnity survives delivery and acceptance of services.

12.06 This indemnity must not be construed as a waiver of any governmental immunity of the Authority, its employees or contractors, has as provided by statute or modified by court decisions.

13. BANKRUPTCIES OR INSOLVENCY

13.01 If the Contractor is adjudicated bankrupt or insolvent, or if a trustee is appointed over the Contractor or any of its property, whether it is a third party or Contractor as debtor-in-possession (referred to as "Contractor" in this Article unless the context clearly requires

otherwise) the following rights, obligations and limitations control:

- A. Contractor or any trustee must not assign any or all of its rights, title or interest, in or to this Contract, as this Contract is for the delivery of professional services and related services, as to which the Authority is entitled to insist upon performance solely by the Contractor.
- B. Contractor or any trustee may only assume this Contract if it provides adequate assurance of future performance. Adequate assurance of future performance means proof reasonably satisfactory to the Authority of:
 - (i) adequate financial capacity to employ or contract with sufficient personnel to perform the services assigned to the Contractor as provided in this Contract, and to pay for all services contracted for by the Contractor;
 - (ii) adequate financial capacity to own, operate, lease or obtain sufficient facilities and supplies to perform the services assigned to the Contractor as provided for in this Contract; and
 - (iii) adequate financial and professional capacity to maintain the professional standard provided in this Contract. The reasonable determination of the Authority as to the adequate professional capacity of the Contractor is determinative.
- C. Because of the unique nature of the services this Contract requires the Contractor to provide, the Contractor agrees that any requests by the Authority that the trustee, or the Contractor, as debtor-in-possession, assume or reject this Contract in a shorter time than provided for in 11 U.S.C. §365 is reasonable so long as the trustee or Contractor receives no less than five (5) business days' notice.

- D. If this Contract is terminated during bankruptcy proceedings or if the trustee or debtor-in-possession successfully and properly obtains a court order rejecting this Contract, the Contractor as debtor-in-possession or its trustee must cooperate with the Authority in arranging for the orderly transfer of responsibilities to persons or entities as the Authority may designate. The rejection is not effective until the orderly transfer of responsibilities, consistent with sound professional practice, has been completed.

13.02 Although neither party has the right to terminate the Contract merely because the other is adjudicated bankrupt or insolvent, or if a trustee or a debtor-in-possession is appointed over any parties' property, each party retains all of the other termination rights set forth elsewhere in this Contract during the period of any proceedings under the Bankruptcy Code.

14. NOTICE OF MATERIAL CHANGES

14.01 The Contractor must immediately inform the Authority of material changes in its operation, ownership or financial condition. Material changes include, but are not limited to:

- A. Reduction or change in staffing assigned to the Contract.
- B. Decrease in, or cancellation of, insurance coverage.
- C. Delinquent payment, or nonpayment, of tax obligations.
- D. Delinquent payment, or nonpayment, of payroll obligations.
- E. Delinquent funding, or non-funding, of pension or profit sharing plans.
- F. Delinquent payment, or nonpayment, of subcontractors.
- G. Termination of, or changes in, subcontracts.
- H. Transfer, sell, assignment or delegation to an entity other than the Contractor, of ownership or administrative services.

15. TERMINATION

15.01 The Authority may terminate this Contract without cause at any time, without incurring any further liability, other than as stated in this Article by giving written notice to the Contractor of the termination. The notice must specify the effective date, at least thirty (30) days prior to the effective date of the termination, and this Contract will terminate as if the date were the date originally given for the expiration of this Contract. If the Contract is terminated, the Authority will pay the Contractor for the services rendered prior to termination, as soon as can be authorized. The Authority will compute the amount of the payment on the basis of the services rendered, and other means which, in the judgment of the Authority represents a fair value of the services provided, less the amount of any previous payments made. The final payment constitutes full payment. If the Contractor accepts the payment, the Contract is satisfied. The parties agree that no payments under this section will exceed the amount payable under Article 1.

15.02 The Authority may terminate this Contract because the Contractor has failed to comply with any of the material terms and conditions of this Contractor or has deliberately failed without good cause to perform according to the specifications or within the time limit provided in this Contract. The Authority may procure, upon such terms and in such manner as the Authority may deem appropriate, services similar to those terminated, and the Contractor shall be liable to the Authority for any costs to obtain and transition similar services, provided the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this Article. In addition to any legal remedies otherwise available to the Authority by law or equity, the Contractor shall be responsible for all additional costs, charges, and damages incurred by the Authority in connection with the completion of the Contract. Such expenses shall be deducted from any monies due or which may become due the Contractor under the Contract. If such

expense exceeds the sum which would have been payable under the Contract, then the Contractor shall pay, on demand, such excess amount to the Authority. Should a deficiency exist, the Authority may offset such a deficiency against the compensation to be paid the Contractor in any concurrent, successive or future contracts between the parties. All excess procurement costs and damages shall not be considered by the parties to be consequential, indirect or incidental, and shall not be excluded by any other terms otherwise included in the Contract.

15.03 After receipt of a Notice of Termination and except as otherwise directed by the Authority, the Contractor must:

- A. Stop work under the Contract on the date and to the extent specified in the Notice of Termination.
- B. Obligate no additional contract funds for payroll costs and other costs beyond the date as the Authority specifies.
- C. As of the date the termination is effective, present all Contract records and submit to the Authority the records, data, notes, reports, discs, and documents ("Records") as the Authority specifies, all pertinent keys to files, and carry out such directives as the Authority may issue concerning the safeguarding or disposition of files and property.
- D. Submit within 30 days a final report of receipts and expenditures of funds relating to this Contract.
- E. Place no further orders for materials, services, or facilities, except as may be necessary for completion of such portion of the work under this Contract as is not terminated.
- F. Terminate all orders to the extent that they relate to the portion of work so

terminated.

- G. Submit within 30 days a listing of all creditors, and other parties, with which the Contractor has incurred financial obligations pursuant to the Contract.

15.04 Upon termination of this Contract, all Records prepared by the Contractor under this Contract or in anticipation of this Contract must, at the option of the Authority, become its exclusive property, whether or not in the possession of the Contractor. The Records are free from any claim or retention of rights on the part of the Contractor except as specifically provided. The Authority must return all the properties of the Contractor to it.

15.05 Any intentional failure or delay by the Contractor to deliver the Records to the Authority will cause irreparable injury to the Authority not adequately compensable in damages and for which the Authority has no adequate remedy at law. The Contractor will pay the Authority \$500.00 per day as damages, and not as a penalty, until it delivers the Records to the Authority. The Authority may seek and obtain injunctive relief in a court of competent jurisdiction and compel delivery of the Records, which the Contractor consents to as well as all applicable damages and costs. The Authority has unrestricted use of the Records for the purpose of completing the services.

15.06 Access to the records prior to delivery must be restricted to authorized representatives of the Authority and the Contractor. The Contractor has no right to disclose or use any information gathered in the course of its work without obtaining the written concurrence of the Authority. All the information must be confidential and handled in such a manner at all times as to preserve confidentiality. The Records as well as any related products and materials are proprietary to the Authority, having been developed for the Authority for its own and sole use.

15.07 In addition, each party will assist the other party in the orderly termination of this

Contract and the transfer of all aspects, tangible or intangible, as may be necessary for the orderly, non-disrupted business continuance of each party.

16. ETHICS IN CONTRACTING

16.01 Because the Authority is a community mental health services program established under Sections 204 and 205 of the Michigan Mental Health Code, the Contractor must comply with Article 12 of Chapter 120 of the Wayne County Code governing “Ethics in Public Contracting.”

16.02 Contractor’s material misrepresentation or delinquency in the disclosures required by section 120-225 of the Wayne County Code constitutes a material breach of this Contract, sufficient to warrant immediate termination and the imposition of liquidated damages (not a penalty) of fifteen percent (15%) of the consideration made or due under the Contract as of the date of termination.

16.03 If the Authority determines that the Contractor has made a material misrepresentation or is willfully delinquent or knowingly evasive in the disclosures required by section 120-225, the Contractor and any other business which has substantially the same principal beneficiaries (as defined in section 120-238 of the Wayne County Code), may be debarred by the Purchasing Director, pursuant to Article 6 of Chapter 120 of the Wayne County Code, from competing for any further Authority contracts for up to three (3) years.

16.04 If the contract price is in excess of \$20,000, and the Contractor knowingly collaborate in or induces a violation of any of the ethical standards that are set forth in sections 120-225, 120-228, 120-229, 120-230, or 120-233 of the Wayne County Code, the Authority has the right to impose any one or more of the following sanctions:

- A. Immediately terminate the Contract and require the Contractor to pay the Authority

- liquidated damages, and not a penalty of 15% of the total Contract compensation;
- B. Debar or suspend the Contractor from consideration from competing for further Authority contracts; or
- C. Recover the value transferred or received in breach of the ethical standards by an Authority employee or other person.

17. NONDISCRIMINATION PRACTICES

17.01 The Contractor must comply with:

- A. Titles VI and VII of the Civil Rights Act (42 U.S.C. §2000d et. seq.) and the United States Department of Justice Regulations (28 C.F.R. Part 42) issued pursuant to those Titles.
- B. The Age Discrimination Act of 1985 (42 U.S.C. §6101-07).
- C. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794).
- D. The Americans with Disabilities Act of 1990 (42 U.S.C. §2101 et. seq.) and its associated regulations.
- E. The Michigan Civil Rights Act (P.A. No. 453 of 1976) and the Persons With Disabilities Civil Rights Act (P.A. No. 220 of 1976).
- F. Article XI of Chapter 120 of the Wayne County Code governing Equal Contracting Opportunity.
- G. Any other appropriate affirmative action provisions as may be required from time to time by the Director of Human Relations of the County. Authority shall promptly give notice of any such provisions to Contractor during the term of the Contract.
- H. Any other law, regulation, or other provision that applies to this contract.

Compliance with applicable laws is expected, with or without notice by the Authority. However, notification of specific requirements may be given by any practical means, including letter or notice. Additional specific laws or regulations may be included by incorporating them through modification of an attachment to the contract. The Authority reserves the right to modify the attachments of the contract at any time, through notice to the Contractor.

17.02 The Contractor must not:

- A. Refuse to recruit, hire, employ, promote or to bar or discharge from employment an individual, or discriminate against an individual in compensation, terms, conditions or privileges of employment because of race, color, creed, national origin, age, marital status, handicap, sex, religion, familial status, height or weight.
- B. Limit, segregate, or classify an employee or applicant for employment in a way which deprives or tends to deprive any individual of employment opportunities or otherwise adversely affects the employment status of an employee because of race, color, creed, national origin, age, marital status, handicap, sex, religion, familial status, height or weight.
- C. Print or publish or cause to be printed or published a notice, application, or advertisement relating to employment by the Contractor indicating a preference, limitation, specification, or discrimination based upon race, color, creed, national origin, age, marital status, handicap, sex, religion, familial status, height or weight.
- D. Except as permitted by rules and regulations promulgated pursuant to section 120-192 of the Wayne County Code, or applicable state or federal law, make or use a written or oral inquiry or form of application that elicits or attempts to solicit

information concerning the race, color, creed, national origin, age, marital status, handicap, sex, religion, familial status, height or weight, of prospective employees. Contractor also shall not make or keep a record of that information or disclose such information.

- E. Make or use a written or oral inquiry or form of application that expresses a preference, limitation or specification based on religion, race, color, creed, national origin, age, marital status, handicap, sex, religion, familial status, height or weight.

17.03 The Contractor must not discriminate against any employee or applicant for employment, training, education, or apprenticeship connected directly or indirectly with the performance of this Contract, with respect to hire, promotion, job assignment, tenure, terms, conditions or privileges of employment because of race, color, creed, national origin, age, marital status, handicap, sex, religion, familial status, height or weight. This Section does not apply if it is determined by the Director of Human Relations and the Authority's Compliance Officer that the requirements are bona fide occupational qualifications reasonably necessary to perform the duties required for employment. The burden of proof that the occupational qualifications are bona fide is upon the Contractor.

17.04 Breach of any of the covenants in this Article may be regarded as a material breach of this Contract.

17.05 If the Contractor does not comply with the non-discrimination and affirmative action provisions of this Contract, the Authority may impose sanctions, as it determines to be appropriate, including but not limited to:

- A. Withholding of payments to the Contractor under this Contract until the Contractor attains compliance;

- B. Cancellation, termination or suspension of this Contract, in whole or in part;
- C. Disqualification from bidding on future contractors for a period of no more than 3 years;
- D. Referral to Authority's Legal Affairs for consideration of injunction, liquidated damages or other remedies; and/or
- E. Because of the impracticable ability and extreme difficulty of fixing and ascertaining the actual damages which the Authority would sustain, the imposition of liquidated damages (not a penalty) in the amount of \$500.00 per day, for each day that the Contractor shall fail to comply with said requirements, as determined by the Purchasing Director, in consultation with the Director of Human Relations and Authority's Compliance Officer. The liquidated damages shall first be setoff against the unpaid portion of the Contract price, and the balance shall be paid by the Contractor.

17.06 If the Contract is funded, in whole or in part, by federal funds:

- A. Contractor's breach of the affirmative action commitments set forth in this Article constitutes a material breach of the Contract sufficient to warrant termination and the imposition of liquidated damages as set forth above, based upon the decision of the Director of Human Relations and the Authority's Compliance Officer.
- B. Contractor must establish and implement a good faith plan and goal to eliminate the continuing effects of past discrimination, which is determined by the Division of Human Relations and the Authority's Compliance Officer to be appropriate for that purpose, provided the Authority has been authorized by the funding source to require such an affirmative action commitment from the Contractor.

17.07 In the event that this Contract is or becomes subject to federal or state law which conflicts with the requirements of Section 120, Article XI of the Wayne County Code, the provisions of the federal or state law shall apply and the Contract shall be interpreted and enforced accordingly.

17.08 Contractor acknowledges the right of the Authority to sue the Contractor to enforce the provisions of this Article of the Contract.

18. NOTICES

18.01 All notices, consents, approvals, requests and other communications (“Notices”) required or permitted under this Contract must be given pursuant to the terms and provisions hereof shall be effective only if given in writing. Notices shall be sent by U.S. Mail or Certified Mail Return Receipt Requested. Notices sent in writing, but delivered by other means shall only be deemed received when actually received by the appropriate party at the Authority. All notices shall be sent to the Authority at:

Detroit Wayne Mental Health Authority
Executive Office
640 Temple, 8th Floor
Detroit, MI 48201
ATTN: Chief Operating Officer

Detroit Wayne Mental Health Authority
Office of General Counsel
640 Temple, 8th Floor
Detroit, MI 48201
ATTN: General Counsel

18.02 All notices are deemed given on the day of mailing. Either party to this Contract may change its address for the receipt of notices at any given time by giving notice to the other as provided. Any notice given to a party must be signed by an authorized representative of such party.

18.03 Termination notices, change of address notices, and other notices of a legal nature, are an exception and must be sent by registered or certified mail, postage prepaid, return receipt requested.

19. JURISDICTIONS AND LAW

19.01 This Contract, and all actions arising from it, must be governed by, subject to, and construed according to the law of the State of Michigan. The Contractor consents to the personal jurisdiction of any competent court in Wayne County, Michigan, for any action arising out of this Contract. Service of process at the address and in the manner specified in this Contract will be sufficient to put the Contractor on notice. The Contractor will not commence any action against the Authority because of any matter arising out of or relating to the validity, construction, interpretation and enforcement of this Contract, in any courts other than those in the County of Wayne, State of Michigan unless original jurisdiction is in the United States District Court for the Eastern District of Michigan, Southern Division, the Michigan Supreme Court or the Michigan Court of Appeals.

20. CONFIDENTIAL INFORMATION

20.01 If the Authority discloses confidential information to the Contractor's employees, agents, and other parties pertaining to the Authority's past, present and future activities, the Contractor must instruct its employees to regard all information gained by each person as a result of the services to be performed as information which is confidential and not to be disclosed to any organization or individual without the prior written consent of the Authority. Contractor shall fully protect the confidentiality of any documents or information containing medical or other personal information concerning a patient, consumer or employee and, in that regard, the Contractor agrees to follow all applicable confidentiality laws including HIPAA, the HITECH

revisions and the Michigan Mental Health Code. If a Business Associates Agreement is required, it has been executed and is appended as Exhibit C.

20.02 The Contractor agrees to take appropriate action with respect to its employees to insure that the obligations of nonuse and non-disclosure of confidential information concerning this Contract can be fully satisfied. This includes proper training and agreements as necessary.

21. COMPLIANCE WITH LAWS

21.01 The Contractor must comply with and must require its employees to comply with all applicable laws and regulations.

21.02 The Contractor must hold the Authority harmless with respect to any damages arising from any violations of this Article by it or its employees.

22. CHANGES IN SCOPE/SERVICE

22.01 Authority may request changes to the scope of Services to be furnished or performed by the Contractor under the Contract, as well as changes in the time of performance of the Contract. All such changes shall be authorized by either Change Order or Contract Modification.

22.02 If any such change request increases or decreases the Contractor's cost of, or the time required for, performance of any part of the Services under this Contract, an adjustment may be made and the Contract modified in writing accordingly.

22.03 Contractor shall provide Authority with a written proposal to Authority's change request within five (5) business days of receipt of any such request. Contractor's proposal shall describe in reasonable detail the basis for any proposed price or time adjustment. All cost estimates shall include all completed Services, and cover all costs, expenses, overhead and profit of subcontractors, if any.

22.04 Contractor acknowledges that any change in the Contract price represents full compensation for all costs associated with the change request, including delay costs, impacts, acceleration, disruption, consequential damages and any other cost of any nature.

22.05 If the Authority does not accept the Contractor's proposal, the Authority may:

- A. withdraw its change request;
- B. modify its change request, in which case the procedures set forth above will apply to the modified change request; or
- C. issue a Change Order.

22.06 Any adjustment in the Contract price shall be computed in the manner as the parties may agree. Failure of the parties to agree to an adjustment shall not excuse the Contractor from proceeding with the Contract as changed, provided the Authority promptly and duly makes provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the required Services under protest, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of the time for completion.

22.07 No action, conduct, omission, prior failure or course of dealing by the Authority shall act to waive, modify, change or alter the requirement that Contract Modifications must be in writing and signed by the Authority and the Contractor. Contractor further acknowledges that Change Orders and Contract Modifications are the exclusive method for effecting any change to the Contract.

22.08 No change to this Contract is effective unless it is in writing and references this Contract. If the change is a Contract Modification, it must be signed and acknowledged by duly authorized representatives of both parties. If the change is a Change Order, it must be signed by an authorized representative of the Authority.

23. DEBARMENT AND SUSPENSION

23.01 The Contractor certifies to the best of its knowledge and belief, that:

- A. The Contractor and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal agency;
- B. The Contractor and its principals have not, within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connections with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under public transaction; 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;
- C. The Contractor and its principals are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in 23.01B above; and;
- D. The Contractor and its principals have not, within a three-year period preceding this contract, had one or more public transactions (Federal, State or local) terminated for cause or default.

23.02 The certification in this clause is a material representation of fact upon which reliance was placed. When the Authority determines that the Contractor knowingly rendered an

erroneous certification, in addition to other remedies available to the Authority, the Authority may terminate this Contract for cause or default.

23.03 The Contractor shall provide immediate written notice to the Authority if, at any time, Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

23.04 The terms “covered transaction”, “debarred”, “suspended”, “ineligible”, “lower tier covered transaction”, “Grantee”, “person”, “primary covered transaction”, “principal”, “proposal”, and “voluntarily excluded”, as used in this clause, have the meaning set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549: 45 CFR Part 76.

23.05 The Contractor agrees that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Authority.

23.06 The Contractor further agrees that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction”, provided by the Authority, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

23.07 A Contractor may rely upon a certification of a participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A Contractor may decide the method and frequency by which it determines the eligibility of its principals. Each Contractor may, but is not required to, check the Non-procurement List (of excluded parties).

23.08 Nothing contained in the foregoing shall be construed to require establishment of a

system of records in order to render in good faith the certification required by this clause. The knowledge and information of a Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

23.09 If a Contractor is in a covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Authority, the Authority may terminate this transaction for cause or default.

24. MISCELLANEOUS

24.01 The Contractor covenants that it is not, and will not become, in arrears to the Authority upon any contract, debt, or any other obligation to the Authority, including real property and personal property taxes.

24.02 Articles 9, 10, 11, 12, 18, 19, 20 and 24 survive termination of the Contract.

24.03 All the provisions of this Contract are "covenants" and "conditions" as though the words specifically expressing or imparting covenants and conditions are used in each provision.

24.04 If any Affiliate of the Contractor takes any action which, if done by the Contractor, would constitute a breach of this Contract, the action is deemed a breach by the Contractor. "Affiliate" is a "parent", subsidiary or other company controlling, controlled by or in common control with the Contractor.

24.05 Neither party is responsible for *force majeure* events. If there is a dispute between the parties with regard to what constitutes a *force majeure* event, the Authority's reasonable determination is controlling.

24.06 Unless the context otherwise requires, the words, "herein", "hereof" and "hereunder", and other words of similar import, refer to this Contract as a whole and not to any particular article, section, or other subdivision.

24.07 The headings of the articles in this Contract are for convenience only and must not be used to construe or interpret the scope or intent of this Contract or in any way affect the Contract.

24.08 As used, the singular includes the plural, the plural includes the singular, and the use of any gender is applicable to all genders.

24.09 The Contractor warrants that any products sold or processes used in the performance of this Contract do not infringe upon or violate any patent, copyright, trademark, trade secret or any other proprietary rights of any third party. If a third party makes a claim against the Authority, the Authority must promptly notify the Contractor. The Contractor must defend the claim in the name of the Authority, at the Contractor's expense. The Contractor must indemnify the Authority against any loss, cost, expense or liability arising out of the claim, whether or not the claim is successful.

24.10 No failure by a party to insist upon the strict performance of any term of this Contract or to exercise any term after a breach constitutes a waiver of any breach of term. No waiver of any breach affects or alters this Contract, but every term of this Contract remains effective with respect to any other then existing or subsequent breach.

24.11 The Contractor shall secure all permits necessary to perform the services and shall comply with all statutes, ordinance, and laws.

24.12 If any provision of this Contract or the application to any person or circumstance is, to any extent, judicially determined to be invalid or unenforceable, the remainder of the

Contract, or the application of the provision to persons or circumstances other than those as to which it is invalid or unenforceable, is not affected and is enforceable.

24.13 This document, including the Appendices, contains the entire agreement between the parties and all prior negotiations and agreements are merged in this document. Neither party has made any representations except those expressly set forth. No rights or remedies are, or will be acquired by either party by implication or otherwise unless set forth.

24.14 The Contractor must not assign this Contract, nor any part, or subcontract any of the work or services to be performed in this Contract.

24.15 This Agreement may be executed in counterparts, and counterpart signatures may be furnished by email scan. If so executed, this Agreement shall be fully valid and binding.

25. AUTHORIZATIONS AND CAPABILITY

25.01 The Contractor warrants to the Authority that it has taken all corporate actions necessary for the authorization, execution, delivery and performance of this Contract. It is ready to perform its obligations. The Contractor further warrants that the person signing this Contract is authorized to do so on behalf of the Contractor and is empowered to bind the Contractor to this Contract.

26. INTELLECTUAL PROPERTY

26.01 Copyright, Trademark, and Intellectual Property: Materials that have been copyrighted by Contractor, or by professionals at Contractor, shall be made available to the Authority as appropriate to the training activities. The Authority shall not distribute or publish copyrighted materials to third parties except as approved by the copyright holder and as necessary to effectuate and accomplish the objectives of this agreement and the practice in Wayne County, Michigan, or as otherwise allowed or required by law.

27. SIGNATURE

27.01 The Authority and the Contractor, by their authorized officers and representatives have executed this Contract.

FOR: DETROIT WAYNE MENTAL HEALTH AUTHORITY

By: _____ Date: _____
Sandra Peppers
Chief Operating Officer

FOR: (CONTRACTOR)

By: _____ Date: _____

**Reviewed by DWMHA
OFFICE OF GENERAL COUNSEL:**

By: _____ Date: _____

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Revised 10/2/13
//updated 11-13-13 rbs