

INMATE MENTAL HEALTH CARE SERVICES CONTRACT

THIS CONTRACT is made this 16th day of May, 2012 by and between MHM Maryland, Inc. and the **STATE OF MARYLAND**, acting through the **DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES**.

IN CONSIDERATION of the premises and the covenants herein contained, the parties agree as follows:

1. Definitions

In this Contract, the following words have the meanings indicated:

- 1.1 "Contract" means this Contract for Inmate Mental Health Care Services.
- 1.2 "Contract Manager" means the individual identified in RFP Section 1.6.
- 1.3 "Contractor" means MHM Maryland, Inc whose principal office in Maryland is 3104 Lord Baltimore Drive, Suite 105 Baltimore, MD 21244.
- 1.4 "Department" means the Department of Public Safety and Correctional Services.
- 1.5 "Financial Proposal" means the Contractor's Financial BAFO Proposal dated April 4, 2012.
- 1.6 "Procurement Officer" means the individual identified in RFP Section 1.5.
- 1.7 "RFP" means the Request for Proposals for DPSCS Inmate Mental Health Care Services, Solicitation No. Q001002014, dated December 7, 2011, and as amended through March 26, 2012.
- 1.8 "State" means the State of Maryland.
- 1.9 "Technical Proposal" means the Contractor's Technical Proposal, dated February 15, 2012, as amended and supplemented through April 4, 2012 by the Contractor's responses to cure/clarification questions and a technical Best and Final Offer.

2. Scope of Work

- 2.1 The Contractor shall provide inmate mental health programs and services specific to the Contract awarded in accordance with Exhibits A-D listed in this section 2.1 and incorporated as part of this Contract. If there is any conflict between this Contract and

the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – Request for Proposals –Project No. Q001002014

Exhibit B – Contractor's Technical Proposal.

Exhibit C – Contractor's Financial Proposal.

Exhibit D – Contractor's Contract Affidavit dated 4/11/12.

2.2 The Procurement Officer may, at any time, by written change order, make changes in the work within the general scope of the Contract. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of a written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section may be the basis for a claim under the Disputes clause. The Contractor may not delay or refuse performance under a change order for any reason, but will proceed immediately and diligently with performance of the Contract in accordance with the change.

3. Time for Performance.

3.1 In accordance with RFP § 1.4 the term of this Contract begins the date the Contract is signed by the Department following approval of the Contract by the Board of Public Works, and unless terminated earlier in accordance with the Contract, ends June 30, 2017. The Contractor shall undertake transition activities necessary to provide its services under the Contract upon receipt of a written Notice to Proceed issued by the Procurement Officer and shall provide all the services, hardware, related software, and other deliverables under this Contract pursuant to the Contract terms. Audit, confidentiality, document retention, and indemnification obligations under this Contract shall survive expiration of the Contract.

4. Compensation and Method of Payment

4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of RFP § 3.3 and the Contractor's Financial Proposal. Payment to the Contractor pursuant to this Contract shall not exceed \$72,837,932.90 which amount may not be increased without a written Contract modification signed by both parties that has received all required State approvals.

4.2 Payments to the Contractor shall be made no later than thirty (30) days after the Department's receipt of a proper invoice for services provided by the Contractor, acceptance by the Department of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for services rendered must include the Contractor's Federal Tax Identification Number which is [REDACTED]. The Contractor's eMaryland Marketplace registration number is [REDACTED]. Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, are prohibited. Invoices should be submitted to the Department Contract Manager. Electronic funds transfer will be used by the State to pay Contractor under this Contract and any other State payments due Contractor, unless the State Comptroller's Office grants Contractor an exemption. The final payment under this Contract will not be made until after certification is received from the Comptroller of the State that all taxes have been paid.

4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced, or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer. The Department may adjust payment to the Contractor to cover damages.

4.4 The Contractor shall not be responsible for damages to the extent that the damages are directly the result of acts or omissions by the State's employees. Each party shall bear responsibility for the damages directly caused by their acts or omissions.

4.5 Payment of an invoice by the Department, including but not limited to payment of an invoice for liquidated damages as provided in Section 5, is not evidence that services were rendered as required under this Contract.

5. Damages and Payments

5.1. Process.

- (A) The Department may deduct liquidated damages as set forth in RFP Attachment Q; however through September 30, 2012, the Department will not assess any of the liquidated damages described in Attachment Q "Liquidated Damages (L.D.), Calculation Methodology."
- (B) When the Department has identified a deficiency for which it could assess a liquidated damage, it shall notify the Contractor in writing of the deficiency (the "Initial Notice").
- (C) The Contractor shall provide to the Department Contract Manager within 20 working days of the date of the Initial Notice, its written explanation for the deficiency, and if applicable, how the circumstance(s) causing the non-performance was beyond its control.

- (D) The Department may determine whether or not to assess the liquidated damages without considering the Contractor's response if it has not received the Contractor's explanation within 20 working days.
- (E) The total amount for liquidated damages arising out of any one incident or occasion will not exceed \$5,000.

5.2 Payment Adjustments.

- (A) The Department shall notify the Contractor of each payment adjustment due to the imposition of direct damages.
- (B) The Department shall provide the Contractor with such evidence as the Department determines is adequate to justify each adjustment.
- (C) If the Contractor does not agree with the adjustment or the action taken to obtain the adjustment, the Contractor's sole remedy to resolve the issue is as provided in Article 12 (Disputes) of this Contract.

5.3 Payments to the Department.

- (A) Unless otherwise provided in the Contract, the Contractor shall make all payments owed to the Department within 30 days after receipt by the Contractor of the invoice. If the Contractor fails to make payment to the Department within 45 days after the Contractor receives a correct invoice, the Contractor shall pay the Department interest for that portion of the unpaid balance prorated for the period beginning with the 31st day after the Contractor receives the invoice from the Department and ending when the Department receives the payment. The Department shall separately invoice the Contractor for any interest due. The rate of interest shall be the same rate as that specified in Section 11-107(a) of the Courts and Judicial Proceedings Article, Annotated Code of Maryland, during the time that the interest is accruing.
- (B) The Department is not responsible for bills incurred or paid by the Contractor for processing fees, indirect or direct costs, or overhead costs related to bills paid or incurred by the Contractor, other than those fees or costs which the Contractor has included in the Financial Proposal or for which the Contractor is authorized to submit an invoice for reimbursement under this Contract. This provision shall survive the Contract term for any and all instances when payment is due to the State.

In the event that any monies due the Contractor are not sufficient to satisfy all claims against the Contractor, the Department may invoice the Contractor for all additional

amounts due. In the event the Contractor fails to pay the amount owed within 30 days, the Department, in addition to any other remedies, may deduct the amounts due from any monies due the Contractor under the Contract.

5.4 Third Party Payments

- (A) The Contractor shall obtain reimbursements, credits, reductions, refunds, rebates and gifts, including insurance and government payments (“third party payments”), for services rendered to Inmates, when such are available.
- (B) When the Contractor can receive, will receive, or has received third party payments in relation to the Contract, the Contractor shall immediately notify the Department of the source, nature and amount of the third party payments.
- (C) All third party payments are the property of the Department and the Contractor shall follow the Department’s instructions in each instance concerning the disposition of such payments. Such instructions may include, within the sole discretion of the Department, the remission to the Department of the third party payment in its entirety.
- (D) Because third party payments are the property of the Department, the Contractor’s obligations under this Section 5 shall survive the expiration of the Contract.
- (E) At the end of each Contract Year, the Contractor shall submit a report to the Department’s Contract Manager in the form and format as required detailing all funds received from third party payments.

5.5 Direct Damages.

- (A) The Department may deduct for direct damages sustained as a result of Contractor’s failure to perform as required under this Contract.
- (B) If hospitalization, outpatient or specialty care not otherwise provided onsite is required as a result of the negligence or maliciousness of the Contractor, including its Staff, subcontractors, subcontractor staff, or any other party used by the Contractor to provide services under the Contract, the Contractor will be responsible for these and related costs. The determination as to whether these services were required as a result of Clinician negligence will be that of the Department’s Medical Director, whose decision shall be final, subject to Article 12 (Disputes) of this Contract.

6. Rights to Records

6.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations and data prepared by the Contractor solely for purposes of this Contract shall be the sole property of the Department and shall be available to the Department at any time. The Department shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

6.2 Upon the request of the Department, the Contractor shall provide, free of charge, certified copies of all records related to this Contract produced through the use of a time keeping or other record systems owned, developed or utilized by the Contractor.

6.3 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not "works made for hire" for the Department, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

6.4 The Contractor shall report to the Procurement Officer, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this agreement.

6.5 The Contractor shall not affix any restrictive markings upon any data and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

6.6 Upon termination of this Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

6.7 Nothing in this Section shall abrogate or transfer any intellectual property rights of the Contractor in its proprietary information related to its methodologies, methods of analysis, ideas, know how, methods, techniques, and skills possessed prior to this Contract.

7. Patents, Copyrights, Intellectual Property

7.1 If the Contractor furnishes any design, device, material, process, or other item ("Product") that is covered by a patent or copyright, or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.

7.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any Product infringes any patent, trademark, copyright, or trade secret. If a third party claims that a Product infringes that party's patent or copyright, the Contractor will defend the Department against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a Court finally awards, provided the Department (i) promptly notifies the Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with Contractor in the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in paragraph 7.3 below.

7.3 If any Product becomes, or in the Contractor's opinion is likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: a) procure for the State the right to continue using the Product, b) replace the Product with a non-infringing product substantially complying with the item's specifications, or c) modify the Product so that it becomes non-infringing and performs in a substantially similar manner to the original Product.

8. Confidentiality

8.1 Subject to the Maryland Public Information Act and any other applicable laws including without limitation HIPAA, the HI-TECH Act, and the Maryland Medical Records Act each as updated from time to time, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant Confidential Information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party, (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information or (e) which such party is required to disclose by law.

8.2 The Contractor shall not use Maryland data or create any publication related to the system of programs and services being provided under the Contractor without first obtaining the written approval of the Deputy Secretary for Treatment Services.

8.3 The Contractor shall notify the Department promptly of any request for information, request for statement, or other similar request from any entity or organization other than the Department that requires the Contractor to discuss or disclose information related to this Contract or gathered in performance of this Contract. Disclosures specifically pursuant to the RFP to the State's auditor, actuary and/or consultant, and in the context of Inmate services are not included within the scope of this section. The Contractor may not discuss this Contract or the Inmate services

administered pursuant to this Contract without approval from the Department. This Section 8 shall survive expiration of this Contract.

9. Loss of Data

In the event of loss of any State data or records held or maintained by the Contractor in the performance of services, where such loss is due to the intentional act or omission or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data, in the manner and on the schedule set by the Procurement Officer. The Contractor shall ensure that all data is backed up, and is recoverable by the Contractor. Contractor shall use its best efforts to assure that at no time shall any actions undertaken by the Contractor under this Contract (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms and/or applications with which the Contractor is working hereunder.

10. Indemnification

10.1 The Contractor shall indemnify the State and the State's employees against liability for any suits, actions, or claims of any character arising from or relating to the performance of the Contractor or its subcontractors under this Contract.

10.1.1 This shall not be construed to mean that the Contractor shall indemnify the State or the State's employees against liability for any suits, actions, or claims of any character that are directly the result of acts or omissions in the performance of the State or of the State's employees. Each party shall bear sole responsibility for any liability for any suits, actions, or claims of any character to the extent that such are directly caused by their acts or omissions.

10.2 The State of Maryland has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.

10.3 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.

10.4 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.

10.5 This Section 10 shall survive termination of this Contract.

11. Non-Hiring of Employees

No official or employee of the State of Maryland, as defined under State Government Article, § 15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

12. Disputes

This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

13. Maryland Law

12.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland. The Maryland Uniform Computer Information Transactions Act, Maryland Code Annotated, Commercial Law Article, Title 22, does not apply to this Contract. Any and all references to the Annotated Code of Maryland contained in this Contract shall be construed to refer to such Code sections as from time to time amended.

14. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

15. Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the Contractor to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee, bona fide salesperson or commercial selling agency, any fee or other consideration contingent on the making of this Contract.

16. Non-Availability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State of Maryland from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

17. Termination for Cause

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State of Maryland shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

18. Termination for Convenience

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory

profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12 (A)(2).

19. Contractor Transition

If the Department awards a contract to another contractor to perform services presently being performed by the Contractor under the Contract, the Contractor shall cooperate with the Department and the new contractor in facilitating the transition as the Department directs, including providing the new contractor with a copy of all the current policies, procedures and work plans applicable to the institutions covered by the Contract.

20. Delays and Extensions of Time

The Contractor agrees to perform this Agreement continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances, regardless of cause, in the performance of services under this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

21. Suspension of Work

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

22. Pre-Existing Regulations

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

23. Financial Disclosure

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall, within 30 days of the time when the aggregate value

of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

24. Political Contribution Disclosure

The Contractor shall comply with Election Law Article, §§14-101 – 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall, file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

25. Retention of Records

The Contractor shall retain and maintain all records and documents in any way relating to this Contract for five years after final payment by the State under this Contract or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. This Section 25 shall survive expiration of the Contract.

26. Compliance with Laws

The Contractor hereby represents and warrants that:

26.1 It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

26.2 It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

26.3 It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and,

26.4 It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

27. Costs and Price Certification

27.1 By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its offer.

27.2 The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information, which, as of the date of its offer, was inaccurate, incomplete, or not current.

28. Subcontracting; Assignment

28.1 The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the Department, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Department. Any such subcontract or assignment shall include such terms of this Contract as the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

28.2 The Contractor shall not write into any subcontract or negotiate with any subcontractor for a requirement that would in any way limit the subcontractor's flexibility to compete with the Contractor or to negotiate with a competitor of the Contractor for any future contract with the State.

29. Commercial Nondiscrimination

A. As a condition of entering into this Agreement, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material

breach of this Agreement and may result in termination of this Agreement, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

- B. The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department, in all sub-contracts.
- C. As a condition of entering into this Agreement, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the state of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that is requested by the State. Contractor understands that violation of this clause is a material breach of this Agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

30. Prompt Payment Requirements

- 30.1. If a Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:
 - (a) Not process further payments to the Contractor until payment to the subcontractor is verified
 - (b) Suspend all or some of the Contract work without affecting the completion date(s) for the Contract work;
 - (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
 - (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
 - (e) Take other or further actions as appropriate to resolve the withheld payment.
- 30.2. An "undisputed amount" means an amount owed by a Contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation, (a) retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor and (b) an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

- 30.3. An act, failure to act, or decision of a procurement officer or a representative of the Department, concerning a withheld payment between a Contractor and subcontractor under this provision, may not:
- (a) Affect the rights of the Contracting parties under any other provision of law;
 - (b) Be used as evidence on the merits of a dispute between the Department and the Contractor in any other proceeding; or
 - (c) Result in liability against or prejudice the rights of the Department.
- 30.4. The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.
- 30.5. To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:
- (a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
 - (b) This verification may include, as appropriate:
 - i. Inspecting any relevant records of the Contractor;
 - ii. Inspecting the jobsite; and
 - iii. Interviewing subcontractors and workers.
 - iv. Verification shall include a review of:
 - a. The Contractor's monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and
 - b. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.
 - (c) If the Department determines that a Contractor is in noncompliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
 - (d) If the Department determines that a Contractor is in material noncompliance with MBE Contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
 - i. Terminate the Contract;
 - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
 - iii. Initiate any other specific remedy identified by the Contract, including the contractual remedies required by this Directive regarding the payment of undisputed amounts.
 - (e) Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form

under the penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

31. Living Wage

- 31.1 A State contract for services valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement Article, Annotated Code of Maryland and COMAR 21.11.10.
- 31.2 Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier Area. If Contractor is an out of state Contractor, this Contract is deemed to be a Tier 1 Contract.
- 31.3 The Contractor shall comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland and COMAR 21.11.10, including the submission of payroll reports to the Commissioner of Labor and Industry and the posting in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.
- 31.4 The Contractor shall make any subcontractor on this Contract aware of the Living Wage law requirements.

32. Administrative

- 32.1 Procurement Officer. The work to be accomplished under this Contract shall be performed under the direction of the Contract Manager. All matters relating to the interpretation of this Agreement shall be referred to the Procurement Officer for determination.
- 32.2 Authority of the Department - Except as expressly prohibited by Maryland law, any of the State's rights, powers or duties under this Contract may be exercised or enforced by any officials or employees of the Department who are authorized to do so by the Secretary of Public Safety and Correctional Services. Where this Contract provides for the exercise or enforcement of rights, powers or duties by a specific official or employee of the Department, the Department may unilaterally, and within its sole discretion, change the designated official or employee upon written notice to the Contractor. To the extent that the Department utilizes internal review or approval processes in making determinations under this Contract, the Contractor has no right to or in connection with those processes.
- 32.3 Notices: All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid as follows:

If to the State: Director, Thomas P. Sullivan

Treatment Services, Inmate Health Administration
Department of Public Safety and Correctional Services
6776 Reisterstown Road, Suite 210
Baltimore, MD 21215

And

Patti Tracey
Procurement Officer
Department of Budget and Management
Room 139, 45 Calvert Street
Annapolis, Maryland 21401

If to the Contractor:

Stewart H. Wheeler
President & COO
1598 Spring Hill Rd #610
Vienna VA 22182

IN WITNESS WHEREOF, the parties have executed this Contract as of the date hereinabove set forth.

CONTRACTOR

MHOS Maryland Inc.

By: [Redacted] (SEAL)

Title: President & COO Date: 4/11/2012

Witness/Attest: [Redacted]

STATE OF MARYLAND: DEPARTMENT OF PUBLIC SAFETY AND PROFESSIONAL SERVICES

By: [Redacted]

Title: Secretary Date: 5-16-2012

[Redacted] Witness: [Redacted]

Approved for form and legal sufficiency this 2nd day of May, 2012.

[Redacted]
Assistant Attorney General

APPROVED BY BPW: 5/2/2012 75
(Date) (BPW Item #)