STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT
PROFESSIONAL SERVICES CONTRACT

THIS PROFESSIONAL SERVICES CONTRACT (this "Agreement") is made and entered into by and between the State of New Mexico, **Human Services Department**, hereinafter referred to as the "HSD," and **Turquoise Health and Wellness, Inc.**, a New Mexico non-profit corporation, hereinafter referred to as the "Contractor," hereinafter individually referred to as a "Party" and collectively, as the "Parties", and is effective upon the last signature of either of the Parties.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work; Preexisting Work.

A. Scope of Work. The Contractor agrees to perform the services described in Exhibit A, attached to this Agreement (the "Services).

B. Preexisting Work.

1. For purposes of this Agreement, "Preexisting Work" shall include all Services and related operational tasks performed (or failed to be performed) by the Behavioral Health Entity named in the HSD's notice to the Contractor described in Exhibit A.

2. The Contractor may rely upon all Preexisting Work related information and records (including but not limited to, assessments, treatment plans, and progress notes) for the purposes of performing the Services, including the provision of clinical services to consumers and patients previously serviced by the Behavioral Health Entity named in the HSD's notice to the Contractor described in Exhibit A.

3. The HSD agrees to take all necessary steps, including administrative and court remedies, to ensure that the Contractor has access to all Preexisting Work related information and records (including but not limited to, assessments, treatment plans, and progress notes) necessary or appropriate for the Contractor to carry out its responsibilities under this Agreement.

4. The Parties expressly agree that under no circumstances shall the Contractor assume or incur any liability of any kind arising out of or related to the Preexisting Work, or otherwise of the Behavioral Health Entity named in the HSD's notice to the Contractor described in Exhibit A (or any other entity similarly situated).

2. Compensation.

A. The HSD shall pay to the Contractor in full payment for the Services performed pursuant to this Agreement, compensation not to exceed two million dollars ($2,000,000), including gross receipts tax, if applicable. This amount is the maximum payable for compensation related to the Services and reimbursement of costs incurred by Contractor, in each case, as set forth in Exhibit A, and is not a guarantee that the work assigned to be performed by the Contractor under this Agreement shall equal the amount stated herein. The Parties do not

intend for the Contractor to continue to provide Services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the HSD when the total amount payable in respect of Services performed and expenses incurred reaches the total compensation amount. In no event will the Contractor be paid for Services or reimbursed for expenses in excess of the total compensation amount without this Agreement being amended in writing prior to those Services in excess of the total compensation amount being provided. Notwithstanding anything else to the contrary, the Parties agree that the amount set forth in Section 2.A shall not count toward or otherwise reduce the maximum payment amount described in this Section 2.B.

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Article 1, Scope of Work. Except as provided in Section 4.C, all invoices MUST BE received by the HSD no later than fifteen (15) days after the termination of the Fiscal Year in which the Services were delivered. **Invoices received after such date WILL NOT BE PAID.** For the purposes of this Agreement, "Fiscal Year" means a period running July 1, 2013 to June 30, 2014.

C. The Contractor must submit a detailed statement accounting for all Services performed and expenses incurred. If the HSD finds that the Services were not performed or expenses were not incurred in accordance with this Agreement, within thirty (30) days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the request for payment, and outlining steps the Contractor may take to provide remedial action. Once the Contractor has provided assurances to HSD that such remedial action has been taken or upon certification by the HSD that the Services were performed or expenses were incurred in accordance with this Agreement, payment shall be tendered to the Contractor within thirty (30) days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

D. Funding for this Agreement comes from the Centers for Medicare and Medicaid Services (CMS) with federal funds in the amount of one million dollars ($1,000,000.00) plus state funding in the amount of one million dollars ($1,000,000.00).

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL SIGNED BY BOTH PARTIES. This Agreement shall terminate on December 31, 2013, unless terminated pursuant to Article 4 (Termination), Article 5 (Appropriations) or otherwise. In accordance with Section 13-1-150 NMSA 1978, no contract term for a Professional Services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. Termination.

A. Grounds. Either Party may terminate this Agreement for convenience or cause with thirty (30) days written notice to the other Party.

B. For Cause; Right to Cure

1. BY THE CONTRACTOR: In the case of termination for cause, the Contractor shall give the HSD written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the HSD's material breaches of this Agreement upon which the termination is based and (ii) state what the HSD must do to cure such material breaches. Contractor's notice of termination shall only be effective (iii) if the HSD does not cure all material breaches within the thirty (30)-day notice period or (iv) in the case of material breaches that cannot be cured within thirty (30) days, the HSD does not, within the thirty (30)-day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

2. BY THE HSD: In the care of termination for cause, the HSD shall give the Contractor written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Contractor's material breaches of this Agreement upon which the termination is based and (ii) state what the Contractor must do to cure such material breaches. The HSD's notice of termination shall only be effective (i) if the Contractor does not cure all material breaches within the thirty (30)-day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Contractor does not, within thirty (30)-day notice period, notify the HSD of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice by the HSD to the Contractor (i) if the Contractor becomes unable to perform the Services contracted for, as determined by the HSD; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Article 5, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, in the event this Agreement is terminated, the HSD shall be obligated to pay Contractor for the Services performed and expenses incurred in accordance with this Agreement prior to the effective date of such termination; provided, however, that a termination of this Agreement shall not nullify or otherwise affect either Party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit a final invoice for Services performed and expenses incurred within thirty (30) days of the effective date of any termination of this Agreement. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE EITHER PARTY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE OTHER PARTY'S DEFAULT/BREACH OF THIS AGREEMENT.*

D. Termination Management. Within seven (7) calendar days of receipt of a notice of termination, the Contractor shall submit a transition plan for recipient services to the HSD for review and approval. In addition, the Contractor shall (1) comply with all directives issued by the HSD in the notice of termination as to the performance of work under this Agreement; and (2) take such action as the HSD shall direct for the protection, preservation, retention or transfer of all property titled to the HSD and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the HSD upon termination and shall be submitted to the

HSD as soon as practicable. Notwithstanding the effective date of any termination of this Agreement, upon written request of the HSD, the Contractor agrees to continue performing the Services to the HSD for up to sixty (60) additional days to aid in transition and ensure continuity of care. Any Services performed and expenses incurred by the Contractor under this Section 4.D. shall be compensated and paid in accordance with this Agreement.

5. Appropriations.

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

6. Status of Contractor.

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

7. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the HSD, provided, however, upon written notice to the HSD, that the Contractor may assign this Agreement to: (1) a wholly owned subsidiary or affiliate under common control; or (2) a successor in interest in connection with a merger, reorganization, consolidation, or similar corporate transaction.

8. Subcontracting.

The Contractor shall not subcontract any portion of the Services to be performed under this Agreement without the prior written approval of the HSD, except as otherwise provided in Exhibit A, and provided that the HSD approves the Contractor's entering into subcontracts in the normal course of business for the provision of the Services. No such subcontract shall relieve the Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the HSD.

DRAFT

9. Release.

Subject to Sections 4.C and 20, final payment of the amounts due under this Agreement shall operate as a release of the HSD, its officers and employees, and the State of New Mexico from all financial liabilities, claims and obligations whatsoever arising from or under this Agreement.

10. Confidentiality.

The Contractor may release confidential information as may be required to perform the Services under this Agreement in accordance with federal and state law and regulations. The Contractor shall not otherwise release any confidential information without the prior written approval of HSD.

11. Product of Service - Copyright.

Any written materials developed or acquired by the Contractor specifically and solely for the HSD under this Agreement shall become the property of the State of New Mexico and shall be delivered to the HSD no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor. Nothing in this section shall prevent the Contractor from retaining a copy of such materials in accordance with Section 19 and its own internal record keeping policies.

12. Conflict of Interest; Governmental Conduct Act.

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance or Services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1. in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any HSD employee while such employee was or is employed by the HSD and participating directly or indirectly in the HSD's contracting process;

2. this Agreement complies with Section 10-16-7(A) NMSA 1978 because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by Section 10-16-7(A) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3. in accordance with Section 10-16-8(A) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the HSD's making this Agreement;

4. this Agreement complies with Section 10-16-9(A) NMSA 1978 because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by Section 10-16-9(A) NMSA 1978, this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5. in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6. in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the HSD.

C. The Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the HSD relied when this Agreement was entered into by the Parties. Contractor shall provide immediate written notice to the HSD if, at any time during the term of this Agreement, the Contractor learns that the Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that the Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the HSD and notwithstanding anything in the Agreement to the contrary, the HSD may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

13. <u>Amendment.</u>

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the Parties hereto and all other required signatories.

B. If the HSD proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

DRAFT

14. Merger.

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

15. Penalties for violation of law.

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

16. Equal Opportunity Compliance.

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

17. Applicable Law.

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

18. Workers Compensation.

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

19. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of Services rendered during the Agreement's term and effect and retain them for a period of five (5) years from the date of final payment under the term of this Agreement. The records shall be subject to inspection by the HSD, the Department of Finance and Administration and the State Auditor. The HSD shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the HSD to recover excessive or illegal payments.

DRAFT

20. Indemnification.

The Contractor shall defend, indemnify and hold the HSD (in the case of the HSD, the State of New Mexico) harmless from and against all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source that arise out the Contractor's breach of this Agreement, or the gross negligence or willful misconduct of the Contractor's officers, employees, servants, subcontractors, representatives or agents resulting in injury or damage to persons or property during the term of this Agreement, other than claims relating to or arising out of Preexisting Work, which are governed by Section 20.B below. In the event that any action, suit or proceeding related to the Services or this Agreement is brought against the HSD, the Contractor shall, as soon as practicable but no later than five (5) days after it receives notice thereof, notify the HSD in writing.

21. New Mexico Employees Health Coverage.

A. If the Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least twenty (20) hours per week over a six (6) month period during the term of this Agreement, the Contractor certifies, by signing this Agreement, to have in place, and agree to maintain for the term of this Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the HSD exceed $250,000 dollars.

B. The Contractor agrees to maintain a record of the number of employees who have (1) accepted health insurance; (2) declined health insurance due to other health insurance coverage already in place; or (3) declined health insurance for other reasons. These records are subject to review and audit by a representative of the State.

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

22. Employee Pay Equity Reporting.

The Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this Agreement, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If the Contractor has two hundred and fifty (250) or more New Mexico employees the Contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, the Contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than one hundred eighty (180) days has elapsed since submittal of the last report, at the completion of this Agreement, whichever comes first. Should the Contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, the Contractor agrees to provide the required report within ninety (90) days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. The Contractor also

agrees to levy this requirement on any subcontractor(s) performing more than ten percent (10%) of the dollar value of this Agreement if such subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of this Agreement. The Contractor further agrees that, should one or more subcontractors not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, the Contractor will submit the required report, for each such subcontractor, within ninety (90) days of that subcontractor's meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. The Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. The Contractor acknowledges that this subcontractor requirement applies even though the Contractor itself may not meet the size requirement for reporting and be required to report itself.

Notwithstanding the foregoing, if this Agreement was procured pursuant to a solicitation, and if the Contractor has already submitted the required report accompanying its response to such solicitation, the report does not need to be re-submitted with this Agreement.

23. Invalid Term or Condition.

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

24. Enforcement of Agreement.

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

25. Notices.

Any notice required to be given to either Party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the HSD: Diana McWilliams, Acting CEO
New Mexico Interagency Behavioral Health Collaborative
37 Plaza La Prenza
Santa Fe, New Mexico 87507
Diana.mcwilliams@state.nm.us

To Contractor: Thomas K. McKelvey, President/CEO
202 E. Earll Drive, Suite 200
Phoenix, Arizona 85012
tmckelvey@THWNM.org

26. Authority.

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

27. Debarment and Suspension

A. Consistent with either 7 C.F.R. Part 3017 or 45 C.F.R. Part 76, as applicable, and as a separate and independent requirement of this Agreement the Contractor certifies by signing this Agreement, that it and its principals, to the best of its knowledge and belief: (1) are not debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency; (2) have not, within a three (3)-year period preceding the effective date of this Agreement, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; (3) have not been indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with, commission of any of the offenses enumerated above in this Paragraph A; (4) have not, within a three-year period preceding the effective date of this Agreement, had one or more public Agreements or transactions (Federal, State or local) terminated for cause or default; and (5) have not been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a-7.

B. The Contractor's certification in Paragraph A, above, is a material representation of fact upon which the HSD relied when this Agreement was entered into by the Parties. The Contractor's certification in Paragraph A, above, shall be a continuing term or condition of this Agreement. As such at all times during the performance of this Agreement, the Contractor must be capable of making the certification required in Paragraph A, above, as if on the date of making such new certification the Contractor was then executing this Agreement for the first time. Accordingly, the following requirements shall be read so as to apply to the original certification of the Contractor in Paragraph A, above, or to any new certification the Contractor is required to be capable of making as stated in the preceding sentence:

(1) The Contractor shall provide immediate written notice to the HSD's Program Manager if, at any time during the term of this Agreement, the Contractor learns that its certification in Paragraph A, above, was erroneous on the effective date of this Agreement or has become erroneous by reason of new or changed circumstances.

(2) If it is later determined that the Contractor's certification in Paragraph A, above, was erroneous on the effective date of this Agreement or has become erroneous by reason of new or changed circumstances, in addition to other remedies available to the HSD, the HSD may terminate the Agreement.

C. As required by statute, regulation or requirement of this Agreement, and as contained in Paragraph A, above, the Contractor shall require each proposed first-tier subcontractor whose subcontract will equal or exceed $25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by any Federal department or agency. The Contractor shall make such disclosures available to the HSD when it requests subcontractor approval from the HSD. If the subcontractor, or its principals, is debarred, suspended, or proposed for debarment by any Federal, state or local department or agency, the HSD may refuse to approve the use of the subcontractor.

28. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions

A. The applicable definitions and exceptions to prohibited conduct and disclosures contained in 31 U.S.C. § 1352 and 45 C.F.R. Part 93 or Subparts B and C of 7 C.F.R. Part 3018, as applicable, are hereby incorporated by reference in subparagraph (B) of this certification.

B. The Contractor, by executing this Agreement, certifies to the best of its knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative Agreement; and

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer.

C. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative Agreements) and that all subrecipients shall certify and disclose accordingly.

D. This certification is a material representation of fact upon which reliance is placed when this PSC is made and entered into. Submission of this certification is a prerequisite for making and entering into this Agreement imposed under 31 U.S.C. § 1352. It shall be a material obligation of the Contractor to keep this certification current as to any and all individuals or activities of anyone associated with the Contractor during the pendency of this Agreement. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to: (1) a civil

penalty of not less than $10,000 and not more than $100,000 for such failure; and/or (2) at the discretion of the HSD, termination of this Agreement.

29. Non–Discrimination

A. The Contractor agrees to comply fully with Title VI of the Civil Rights Act of 1964, as amended; the Rehabilitation Act of 1973, Public Law 93-112, as amended; and the Americans With Disabilities Act of 1990, Public Law 101-336; in that there shall be no discrimination against any employee who is employed in the performance of this Agreement, or against any applicant for such employment, because of age, color, national origin, ancestry, race, religion, creed, disability, sex, sexual orientation, gender identity or marital status.

B. This provision shall include, but not be limited to, the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

C. The Contractor agrees that no qualified handicapped person shall, on the basis of handicap, be excluded from participation or be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the Contractor. The Contractor further agrees to insert similar provisions in all subcontracts for Services allowed under this Agreement under any program or activity.

D. The Contractor agrees to provide meaningful access to Services for individuals with Limited English Proficiency (LEP) in accordance with Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency."

30. Drug Free Workplace

A. *Definitions.* As used in this paragraph—

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act, 21 U.S.C 812, and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

B. The Contractor, if other than an individual, shall:

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about:

(i) The dangers of drug abuse in the workplace;
(ii) The Contractor's policy of maintaining a drug-free workplace:
(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of this Agreement with a copy of the statement required by subparagraph B(1);

(4) Notify such employees in writing in the statement required by subparagraph (B)(1) of this clause that, as a condition of continued employment on this Agreement, the employee will:

(i) Abide by the terms of the statement; and
(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction;

(5) Notify the HSD Program Manager in writing within ten (10) days after receiving notice under (B)(4)(ii) of this paragraph, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within thirty (30) days after receiving notice under B(4)(ii) of this paragraph of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or
(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of B(1) through B(6) of this paragraph.

C. The Contractor, if an individual, agrees by entering into this Agreement not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled

substance while performing this contract.

D. In addition to other remedies available to the HSD, the Contractor's failure to comply with the requirements of subparagraph B or C of this paragraph will render the Contractor in default of this Agreement and subject the Contractor to suspension of payments under the PSC and/or termination of the Agreement in accordance with paragraph 4, above.

31. Findings and Sanctions

A. The Contractor agrees to be subject to the findings and sanctions assessed as a result of the HSD audits, federal audits, and disallowances of the Services provided pursuant to this Agreement. The Contractor shall receive notice of such findings and proposed sanctions and have the opportunity to respond prior to the imposition of any sanctions. If the Contractor fails to respond within fifteen (15) calendar days from HSD's notice, or if after the Contractor has respond, HSD may impose such findings and sanctions as deemed appropriate. The Contractor shall have the right to appeal any final findings and sanctions pursuant to HSD's Fair Hearing process set forth in NMAC 8.353 Part 2.

B. The Contractor will make repayment of any funds expended by the HSD, subject to which an auditor with the jurisdiction and authority finds were expended, or to which appropriate federal funding agencies take exception and so request reimbursement through a disallowance or deferral based upon the acts or omissions of the Contractor that violate applicable federal statues and/or regulations, subject to sufficient appropriations of the New Mexico Legislature.

C. If the HSD becomes aware of circumstances that might jeopardize continued federal funding, the situation shall be reviewed and reconciled by a mutually agreed upon panel of Contractor and the HSD officials. If reconciliation is not possible, both Parties shall present their view to the Director of the Administrative Services Division who shall determine whether continued payment shall be made.

32. Performance

In performance of this Agreement, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees in accordance with federal and state law and regulations as are applicable for the Services rendered.

The remainder of this page intentionally left blank.

DRAFT

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the last signature by the Human Services Department below.

FOR THE NEW MEXICO HUMAN SERVICES DEPARTMENT:

By: _____ Date:_____
HSD Cabinet Secretary

By: _____ Date:_____
HSD Office of General Counsel

By: _____ Date:_____
HSD Chief Financial Officer

FOR THE CONTRACTOR, TURQUOISE HEALTH AND WELLNESS, INC.

By: _____ Date:_____
Thomas K. McKelvey, CEO

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

ID Number: **03-271877-00-2**

By: _____ Date:_____
Taxation and Revenue Department

DRAFT

Exhibit A

PROFESSIONAL SERVICES AND COSTS

I. REIMBURSED FEES AND COSTS

The Contractor agrees to provide transitional administrative, consulting and other services as are reasonably necessary or appropriate in order to ensure continuity of care relative to the patients and consumers previously serviced by such Behavioral Health Entity as will be identified by the HSD in a notice sent to the Contractor, in each case, as directed by the HSD, or in the absence of such direction, as reasonably determined by the Contractor. The Parties acknowledge and agree that the Contractor shall not be required to perform clinical services of any kind under this Agreement, nor shall the Contractor be responsible for supervising any persons providing clinical care to any persons, unless expressly authorized by HSD.

Contractor agree to begin providing the Services described in this Exhibit A no later than seven (7) calendar days after receiving the notice from the HSD described in the preceding paragraph.

The HSD shall compensate the Contractor for services performed in accordance with this Exhibit A pursuant to the following rates:

A. Professional and para-professional rates per hour as follows:

Executive Director	$300.00
Chief Operations Officer	$275.00
Chief Financial Officer	$275.00
Manager	$250.00
Associate Manager	$200.00
Business Analyst	$200.00
System Analyst	$250.00
Transition Consultant	$250.00
Clinical Leadership	$250.00
Clinical Trainers	$200.00
Office Staff	$ 35.00
Administrative Assistant	$ 50.00

The Parties agree that the services described in this Exhibit A shall be provided and paid for under this Agreement until the earlier of: (i) such time as the Contractor is able to bill Optum Health for Medicaid and non-Medicaid services, provided, that, this Agreement may be continued for such longer period as is necessary in the event continued billing for management services under this Agreement remains appropriate in order to ensure stabilization of the Behavioral Health Entity(ies); or (ii) ninety (90) days after the Contractor begins providing the services described herein, unless the Parties subsequently agree otherwise.

B. The Contractor shall be reimbursed for its costs and expenses incurred in connection with its performance of the services under this Agreement, which the Parties agree include, without limitation, costs and expenses related to travel, food, lodging, mobile and office

telecommunications equipment and service charges, temporary office space, copying expenses, professional service fees and other similar operational and administrative expenses related to the Contractor's performance hereunder, provided, however, that any single expenditure for tangible personal property in excess of ten thousand dollars ($10,000.00) must be prior approved by the HSD, which approval shall not be unreasonably withheld if shown by the Contractor to be necessary or appropriate for the Contractor's performance under this Agreement. Any tangible personal property purchased pursuant to this Section shall become the property of the HSD unless specifically authorized by the HSD or if the Contractor continues to do business in New Mexico as a behavioral health provider under contract to serve Medicaid and non-Medicaid (Behavioral Health Purchasing Collaborative) eligible recipients.

II. REVIEW FOR RISK AND OTHER CONCERNS

Within thirty (30) calendar days of entering into this Agreement, the Parties shall, in good faith, meet and identify all risks and other concerns regarding the temporary management/transition of consumers. No later than three (3) business days prior to such meeting, each Party shall provide the other with a list of such risks and concerns, including possible solutions.

DRAFT