

**CONTRACT BETWEEN  
THE DEPARTMENT OF ATTORNEY GENERAL  
AND  
CAIN BROTHERS & COMPANY, LLC**

The Michigan Department of Attorney General (“Department”) and Cain Brothers & Company, LLC (“Contractor” or “Expert”), agree that Contractor's designated employee(s) will provide expert services, and other related matters as assigned by the Attorney General or his designee under the terms and conditions set forth below in this Contract (“Contract” or “Expert Contract”), to assist the Department in its review of two separate hospital transactions (each, a Transaction and, collectively, the “Transactions”) by LifePoint Holdings 2, LLC (“LifePoint”) including (i) a joint venture with Portage Health (“Portage”) in Hancock, Michigan and (ii) the purchase of Bell Memorial (“Bell”) in Ishpeming, Michigan.

The terms of the Transactions specifically make the Department’s review and approval a condition of the Transactions.

The primary purpose of this Contract is to facilitate the Department in completing a thorough but expeditious review of the respective definitive agreements and other matters related to the Transactions.

It is anticipated that this Contract will facilitate the Department’s review in a manner that:

- Reasonably limits the costs and expenses of the Expert’s services under this Contract;
- Minimizes disruption and inconvenience to Portage and Bell personnel;
- Avoids unnecessary delay in completing the Department’s review.

**1. Issuing Office**

This Contract is issued by the Department, which is the only State office authorized to change the terms and conditions of this Contract.

**2. Description of Services**

Contractor shall perform the services set forth in Exhibit A, Statement of Expert Services, and as reasonably requested by the Department (collectively, the “Expert Services”). In particular, Contractor shall assist the Department in reviewing the terms of the Transaction between Portage and LifePoint and the terms of the Transaction between Bell and LifePoint. Exhibit A, Statement of Expert Services, is incorporated in this Contract and summarizes the scope of the anticipated services by Contractor.

Services will be provided by the following Contractor employees or other qualified employees of the Contractor:

Carsten Beith, Managing Director

Daniel Koob, Vice President  
Michael Cargo, Analyst

### **3. Term of Contract**

This Contract covers services rendered from the date of the Contract until the time that the Contractor delivers its final Opinions (as defined below) or the Contract is terminated.

### **4. Compensation for Services Provided**

- A. Contractor will be compensated *exclusively* by LifePoint for delivery of Expert's written report and opinion for each of the Transactions (collectively, the "Opinions"). Department's contract with LifePoint shall require LifePoint to pay Contractor a single fixed fee of \$100,000 (the "Opinion Fee") for all Expert Services related to both Transactions upon delivery of both Opinions. The cost of overhead, including secretarial and clerical employees utilized by Contractor, is part of Contractor's Opinion Fee and such services will not be separately billed to the Department for payment by LifePoint. The Opinion Fee shall further include compensation for necessary travel time expended in the performance of the services covered by this Agreement. Contractor's Expert Services will be provided in accordance with this Agreement and Exhibit A attached hereto.
- B. Contractor also shall be reimbursed for the out-of-pocket expenses described in Section 5. Contractor must provide receipts for all out-of-pocket expenses for which reimbursement is requested.

Contractor will not be compensated for travel time expended in the performance of the services covered by this Contract.

The cost of secretarial and clerical employees utilized by Contractor is part of Contractor's agreed upon fee and such services will not be separately billed to the Department. No other additional charges shall be allowed except by prior written permission from the Department, which shall not be unreasonably withheld.

### **5. Travel Expenses**

Contractor will be reimbursed by LifePoint for reasonable and necessary meals, lodging, telephone and travel expenses in accordance with the State of Michigan travel and other expense requirements, which can be found at [http://www.michigan.gov/dmb/0,1607,7-150-9141\\_13132--,-00.html](http://www.michigan.gov/dmb/0,1607,7-150-9141_13132--,-00.html). The Contractor acknowledges that it has reviewed the State travel rates posted on this website.

Contractor must provide receipts for all permissible reimbursement requests.

## **6. Billings and Payment**

The Department shall enter into a written agreement (“Payment Agreement”) with LifePoint for providing payment to Contractor for services and expenses. Under the Payment Agreement, once Contractor’s billing statements have been reviewed and approved by the Department, the Department will send a summary invoice to LifePoint, and LifePoint shall pay all invoices within 14 days after receipt. Contractor acknowledges and agrees that the Department shall have no obligation to Contractor for payments for services or expenses. All disputes regarding compensation must be resolved directly with LifePoint.

Contractor shall have no obligation to provide services until it has reviewed and approved terms of the Payment Agreement between the Department and LifePoint. Upon written notice to LifePoint and the Department, Contractor may stop providing services under this Agreement, if any payment payable to Contractor pursuant to the Payment Agreement is not received within five business days after its due date under the Payment Agreement; provided that Contractor shall recommence its services under this Agreement immediately upon receipt of all payments then due and payable.

Contractor will invoice the Department the Opinion Fee upon issuance of Expert’s written reports and the Opinions. Expenses shall be specifically and individually identified at the end of the invoice, together with attached receipts and a total cumulative statement. Additional information shall be provided upon request by the Department. Contractor also shall transmit to the Department a summary invoice containing only the Opinion Fee, expenses incurred pursuant to this Agreement, and instructions for payment. The Department will send such summary invoice to LifePoint, and LifePoint shall pay such invoice within 14 days after receipt.

If the Transactions are terminated and/or Contractor’s work is stopped by the Department, for any reason other than Contractor’s material breach of its obligations under this Agreement, prior to the issuance of Contractor’s written reports and Opinions, Contractor shall be reimbursed out of pocket expenses incurred to date. The Department shall promptly (and in no event more than 7 days from receipt) review Contractor’s billing statement and, upon approval, shall transmit a request to LifePoint for payment.

All invoices and summary invoices and all supporting documents, together with all of Contractor’s work papers relating to this Agreement and its services hereunder shall be maintained by the Contractor for three (3) years after the termination or expiration of the Agreement for audit purposes.

Contractor shall make available to LifePoint, on request, copies of itemized billing statements, receipts and any additional information after the Department concludes its review and has issued its report.

## **7. Notices**

All communications, notices, and invoices concerning this Contract must be addressed to:

For the Department: William R. Bloomfield, Assistant Attorney General AND  
Joseph J. Kylman, Charitable Trust Auditor  
Department of Attorney General  
Consumer Protection Division - Charitable Trust Section  
Williams Bldg.  
525 W. Ottawa – 1st Floor  
Lansing, MI 48913  
517-335-0855  
517-335-1935 (fax)  
BloomfieldW@michigan.gov  
KylmanJ@michigan.gov

For the Contractor: Carsten Beith  
Managing Director | Co-Head Tax-Exempt M&A  
Cain Brothers & Company, LLC  
One North Franklin, Suite 300  
Chicago, IL 60606  
Direct 312.604.0500  
cbeith@cainbrothers.com

## **8. Time of the Essence**

Contractor understands that the Department anticipates completing its review and issuing a report on the Transactions by October 31, 2013.

Contractor agrees to use best efforts to provide all requested services, including but not limited to the preparation of written material, public appearances, meetings with the Department staff, etc., as expeditiously as possible and to conclude its services involving acquisition and review of information from LifePoint, Portage, Bell, and other third parties and preparation of the report described on Exhibit A hereto, by September 30, 2013. Contractor's written report shall be submitted to the Department within 45 days of execution of this Contract.

## **9. Termination**

Contractor may terminate this contract for good cause shown upon 30 days written notice to the Department, Portage, Bell, and Lifepoint; for these purposes, "good cause" is defined as only a material breach by the Department of its obligations under this Contract, or a material breach by Lifepoint of its obligations under the Payment Agreement, which, in either case, is not cured within the thirty-day notice period.

Contractor acknowledges that the Department may at any time request Contractor to discontinue work in progress, and may do so without consequence to the Department or LifePoint. The Department shall review and approve for payment, in accordance with this Contract, reimbursement of expenses already incurred.

## **10. Property and Publication Rights**

All property rights, including publication rights of interim, draft, and final reports, documents and machine-readable media produced by Contractor in connection with the work under this Contract, shall vest in the State. Contractor shall not publish, whether verbally or in writing, any of the results of the work, nor shall it disclose in any other manner any information it has received from the Department, LifePoint, Portage, or Bell that has not previously been made publicly available, without the written permission of the Department. The Department may publish the Opinions only in their entirety and shall not publish any summary or excerpt of the Opinions without the written permission of the Contractor. Notwithstanding the foregoing, following the delivery of the Opinions and termination of this Contract, Cain Brothers shall have the right, at its own expense, to place advertisements in financial and other newspapers and journals and to utilize within any marketing materials produced by Cain Brothers information describing its services to the Department hereunder and, in that regard, shall have the right to include the name and corporate logo of LifePoint, Portage Health and Bell Memorial as well as the name and seal of the Department.

## **11. Disclosure of Information**

Contractor further acknowledges that all services it provides and all writings, notes, and other communications it produces are specifically authorized under this Contract in anticipation of litigation under the Supervision of Trustees for Charitable Purposes Act, MCL 14.251 *et seq.*, and other applicable Michigan law. Contractor agrees that its reports and conclusions are confidential information of the State and that it will not disclose these conclusions, in whole or in part, to any unauthorized person without the prior written consent of the Department, except to the extent necessary to comply with applicable laws, rules or regulations.

As a material precondition to the obligations of LifePoint and the Department under this Agreement and the Payment Agreement, Contractor shall execute the two Confidentiality and Non-Duplication Agreements in the forms collectively attached hereto as Exhibit B.

## **12. Non-Discrimination**

In the performance of this Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability unrelated to the individual's ability to perform the duties of the particular job or position. This covenant is required pursuant to the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and any breach thereof may be regarded as a material breach of the Contract. In connection with the performance of services under this Contract, the Contractor agrees to comply with the Federal Civil Rights Act of 1964, 42 USC §2000d.

## **13. Unfair Labor Practices**

The State shall not award a contract or subcontract to any employer or any subcontractor, manufacturer or supplier of the employer, whose name appears in the current register compiled by the Michigan Department of Energy, Labor, and Economic Growth. The State may void this Contract, if after the award of the Contract, the name of the Contractor appears in the register. 1980 PA 278, MCL 423.321 *et seq.*

#### **14. Independent Contractor**

The relationship of Contractor to the Department in this Contract is that of an independent contractor. No liability or benefits, such as workers compensation rights or liabilities, insurance rights or liabilities, or any other provisions or liabilities, arising out of or related to a contract for hire or employer/employee relationship, shall arise, accrue or be implied to either party or either party's agent, subcontractor or employee as a result of the performance of this Contract. Contractor will be solely and entirely responsible for its acts and the acts of its agents and employees during the performance of this Contract.

Notwithstanding the above, Contractor acknowledges that while compensation will be received from LifePoint, not the Department, Contractor's services are provided solely for and on behalf of the Department. Contractor and its employees shall at all times act in the best interest of the Department and shall promptly disclose any material facts that may impair their ability to perform services under this Contract free of actual or apparent conflicts between their business or personal interests and those of the Department.

All communications between Contractor and the Department are subject to applicable privileges, including specifically the attorney work-product privilege.

#### **15. Governing Law and Jurisdiction**

This Contract shall be subject to, applied, and interpreted according to the laws of the State of Michigan. No action shall be commenced against the Department or the Attorney General, his designee, agents or employees for any matter whatsoever arising out of the Contract, in any courts other than a court of competent jurisdiction of the State of Michigan.

#### **16. Entire Agreement**

This Contract, including Exhibits A and B attached hereto and the Payment Agreement, represents the entire agreement between the parties and supersedes all proposals or other prior agreements, oral or written, and all other communications between the Contractor and the Department relating to the Department retaining the Contractor's services.

*Signatures appear on next page.*

**17. Authorized Signatures**

Contractor agrees that \_\_\_\_\_ is authorized to sign on its behalf.

Dated: \_\_\_\_\_

\_\_\_\_\_  
For Contractor/Expert

Dated: \_\_\_\_\_

\_\_\_\_\_  
Bill Schuette, Attorney General, or his Designee

Incorporated Exhibits

Exhibit A – Expert Services

Exhibit B – Portage and Bell Confidentiality and Non-Duplication Agreements

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