

SPECIALIZED TREATMENT FACILITY
Personal Service Contract
Independent Contractor

This Personal Service Contract (“Contract”) is made by and between the Specialized Treatment Facility (STF) whose address is 14426 James Bond, Gulfport, MS, 39503 and **name of contractor** (“Contractor”), whose address is **address** on the **number** day of **month**, 2016 under the following terms and conditions:

1. **Scope of Services**

- Contractor will maintain **license** as a physician who is board-certified child/adolescent psychiatrist or a psychiatrist who has successfully completed an approved residency in child/adolescent psychiatry.
- Contractor will perform services required of a child/adolescent psychiatrist as **regulations** require from a Psychiatric Residential Treatment Facility as stated by the Mississippi Division of Medicaid and the Mississippi Department of Health; from a Behavioral Health Care Program by as stated by the Joint Commission and the Mississippi Department of Mental Health; and from a non-public school as stated by the Mississippi Department of Education. Contractor will abide by and ensure that all regulations are met.
- Contractor will abide by all **policies** and procedures of the Specialized Treatment Facility and the Mississippi Department of Mental Health.
- Contractor will serve as the **Medical Director** to coordinate medical services and direct resident treatment. Contractor will also serve as the child-adolescent psychiatrist to residents.
- Contractor will serve as **Primary Collaborating Physician** to the full-time Mental Health Nurse Practitioner (MHNP). Collaboration includes a monthly review of 10% or 20 charts, whichever less, of residents seen by the MHNP. Physician will also document once per quarter a face-to-face quality assurance meeting with the MHNP. The primary collaborating physician to the MHNP will coordinate coverage in advance with the pre-arranged back-up collaborating physician provided by the STF when needed.
- Contractor will conduct a **direct consultation at least once per week** when the MHNP is not available. Each resident must have a direct consultation with the Psychiatrist or the MHNP each week. The primary responsibility for direct consultations is the MHNP. However, if the MHNP pre-plans a vacation or is unavailable due to emergency, etc., then the Psychiatrist will need to satisfy this Department of Health regulation for the STF. This requirement may be satisfied in groups.
- Contractor will approve all resident admissions and discharges.

- Contractor will conduct **psychiatric evaluations** of each resident admitted within seven (7) days of admission and document in the medical record.
- Contractor will participate in weekly **Treatment Team** committee meetings.
- State Holidays - In the event that holidays fall on a Saturday or Sunday, then the legal holiday will be observed the following Monday. The Governor may deem additional days for holidays. The State of Mississippi observes the following legal holidays:
 - January 1 - New Year's Day
 - The Third Monday of January - Robert E. Lee's Birthday and Dr. Martin Luther King Jr.'s Birthday
 - The Third Monday of February - Washington's Birthday
 - The Last Monday of April - Confederate Memorial Day
 - The Last Monday of May - National Memorial Day & Jefferson Davis' Birthday
 - July 4 - Independence Day
 - The First Monday of September - Labor Day
 - November 11 - Armistice or Veterans' Day
 - A day fixed by proclamation by the Governor of Mississippi as a day of Thanksgiving, which shall be fixed to correspond to the date proclaimed by the United States President - Thanksgiving Day
 - December 25 - Christmas Day
- Document **Professional Supervision** monthly on clinical psychologist, director of nursing, and the MHNP.
- Professional contractor will submit a **Medical Staff Application**, to include work history, educational history, references, release of information form, and credentials (license and DEA certificate) which must be processed by STF's Licensed Professional Staff Committee and approved by the MS Board of Mental Health initially and then every two (2) years thereafter.
- Professional contractor will submit to fingerprinting for federal and state criminal **background checks** and provide a urine and alcohol screen.
- The Specialized Treatment Facility will pay for **Professional Liability Insurance** (Medical Malpractice) for services rendered in connection with this agreement.
- The services will be provided on a mutually agreed, consistent, written schedule or as often as needed and mutually written agreement. Contractor will be paid for on-site hours as worked and documented by the KRONOS time clock for up to 20 hours per week. Contractor will be paid \$1000 per month for on-call phone consultations with the MHNP and staff.

- Contractor work week for is Sunday through Saturday.
- Professional contractor will serve on the **Medical Care and Quality Review** committee monthly.
- Professional contractor will serve as the **Strategic National Stockpile physician coordinator**.
- The Specialized Treatment Facility will furnish any equipment or supplies as needed. Or the Contractor may bring any equipment/supplies that he/she deems necessary, as prior approved.
- Contractor will not utilize cellular or recording devices of any kind in resident treatment areas. Cellular or recording devices are not permitted in resident treatment areas by any person, unless it is an emergency.
- The STF will maintain a backup physician to cover for the Contractor when needed. The Contractor will provide to the STF Program Director a minimum of 30 days' notice when planning for more than a week off for vacation, training, etc.
- Either party may terminate this agreement with a ninety-day written notice.
- Unethical or unprofessional behavior will warrant immediate termination of this agreement.
- Contractor shall abide by attached Business Associate Agreement (hereinafter referred to and attached as Exhibit "A").

With regards to protected health information described in this agreement, it is understood and agreed that **name**, as the Business Associate, as he does not have jurisdiction to directly supervise the medical records department at the STF, is only able to be held directly responsible for physical or electronic STF protected health information that he/she may maintain outside of the STF. However, this does not diminish **name**'s obligations under the law, and as a physician licensed to practice in the state of Mississippi, to adhere to all Federal and State statutes pertaining to protected health information while at the STF or elsewhere.

The Contractor will provide services as specified in the STF RFQ-06.2016.IC.005 - Child-Adolescent Psychiatrist (hereinafter referred to and attached as Exhibit "B") and the SOQ by Contractor dated **date** (hereinafter referred to and attached as Exhibit "C").

2. **Contract Term** The period of performance of services under this Contract shall begin on September 1, 2016 and end no later than June 30, 2018 with an option to renew for three additional years.

3. **Consideration** As consideration for the performance of this Contract, Contractor shall be paid the following in accordance with the terms of this Contract.

- \$250 per hour up to 20 hours per week on-site, and
- \$1,000 per month for on-call

Potential Annual Value of Contract

9/1/16-6/30/17 – on-site up to 20 hours/week for 44 weeks = \$220,000

9/1/16-6/30/17 – on-call for 10 months = \$10,000

7/1/17-6/30/18 – on-site up to 20 hours/week for 52 weeks = \$260,000

7/1/17-6/30/18 – on-call for 12 months = \$12,000

Option to Renew for Three Years

7/1/18-6/30/19 – on-site up to 20 hours/week for 52 weeks = \$260,000

7/1/18-6/30/19 – on-call for 12 months = \$12,000

7/1/19-6/30/20 – on-site up to 20 hours/week for 52 weeks = \$260,000

7/1/19-6/30/20 – on-call for 12 months = \$12,000

7/1/20-6/30/21 – on-site up to 20 hours/week for 52 weeks = \$260,000

7/1/20-6/30/21 – on-call for 12 months = \$12,000

It is agreed that, in no event, the total compensation paid to Contractor will exceed the specified amount contained in this paragraph.

4. **E-Payment** The Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The Department of Finance and Administration (DFA) agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Section 31-7-305, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of the invoice.
5. **Paymode** Payments by state agencies using the Mississippi Accountability System for Government Information and Collaboration (MAGIC) and shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Contractor's choice. The State may, at its sole discretion, require the Contractor to submit invoices and supporting documentation electronically at any time during the term of this Agreement. The Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.
6. **Availability of Funds** It is expressly understood and agreed that the obligation of the STF to proceed under this Agreement is conditioned upon the appropriation of funds by the

Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the STF, the STF shall have the right upon ten (10) working days written notice to the Contractor, to terminate this Agreement without damage, penalty, cost or expenses to the STF of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. (MCA Section 27-104-25(3)). STF shall have the sole right to determine whether funds are available for the payments or performances due under this Contract.

7. **Representation Regarding Contingent Fees** Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or proposal.
8. **Representation Regarding Gratuities** The bidder, offeror, or Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*.
9. **Record Retention and Access to Records** The Contractor agrees that the STF or any of its duly authorized representatives at any time during the term of this Agreement shall have unimpeded, prompt access to and the right to audit and examine any pertinent books, documents, papers, and records of the Contractor related to the Contractor's charges and performance under this Agreement. In addition, such records, including, but not limited to, financial records, supporting documents, statistical records and all other records pertinent to the services performed under this Contract shall be maintained and made available to STF, any state agency authorized to audit STF, the federal grantor agency, the Comptroller General of the United States or any of their duly authorized representatives. The Contractor agrees to refund to the STF any overpayment disclosed by any such audit arising out of or related in any way to this contract. All records related to this Agreement shall be kept by the Contractor for a period of three (3) years after final payment under this Agreement and all pending matters are closed, unless the STF authorizes their earlier disposition. However, if any litigation, claim, negotiation, audit or other action arising out of or related in any way to this Contract has been started before the expiration of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved.
10. **Applicable Law** The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and venue for resolution of any dispute shall be Gulfport, Harrison County, Mississippi. The Contractor

shall comply with applicable federal, state, and local laws and regulations. Contractor expressly agrees that under no circumstances shall STF be obligated to pay an attorney's fee, prejudgment interest or the cost of legal action to Contractor. Further, nothing in this Contract shall affect any statutory rights that STF may have and such rights cannot be waived or limited by contract.

11. **Assignment** The Contractor shall not assign, subcontract or otherwise transfer in whole or in part, its rights or obligations under this Contract without prior written consent of the STF. Any attempted assignment or transfer without said consent shall be void and of no effect.
12. **Compliance with Laws** The Contractor understands that the STF is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and the Contractor agrees during the term of the agreement that the Contractor will strictly adhere to this policy in its employment practices and provision of services. The Contractor shall comply with, and all activities under this Contract shall be subject to, all STF policies and procedures and all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.
13. **Trade Secrets, Commercial and Financial Information** It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.
14. **Transparency** This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 *et seq.* and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

15. **Employee Status Verification System** If applicable, the Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp. 2008), and will register and participate in the status verification system for all newly hired employees. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. The Contractor agrees to maintain records of such compliance, and upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. The Contractor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws.

The Contractor understands and agrees that any breach of these warranties may subject the Contractor to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to the Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, the Contractor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit to do business in the State.

16. **Independent Contractor** The Contractor shall perform all services as an Independent Contractor and shall at no time act as an agent for the STF. No act performed or representation made, whether oral or written, by the Contractor with respect to third parties shall be binding on the STF. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the STF; and the STF shall no time be legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. It is expressly understood and agreed that STF enters into this Contract with Contractor based on the procurement of professional services and not based on an employer-employee relationship. For all purposes under this Contract, it is understood that the consideration expressed herein constitutes full and complete compensation for all services and performances hereunder, and that any sum due and payable to Contractor shall be paid as a gross sum with no withholdings or deductions being made by STF for any purpose from said Contract sum. Contractor accepts exclusive responsibility for the payment of Federal Income Tax, State tax, Social Security, and any other withholdings that may be required.

Contractor represents that it is qualified to perform the duties to be performed under this Contract and that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the duties required under this Contract. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of STF. Any person assigned by Contractor to perform the services hereunder

shall be the employee of Contractor, who shall have the sole right to hire and discharge its employee. STF may, however, direct Contractor to replace any of its employees under this Contract. Contractor will be responsible for the behavior of all its employees and subcontractors while on the premises if any STF location. Any employee or subcontractor of Contractor acting in a manner determined by the administration of that location to be detrimental, abusive or offensive to any of the staff will be asked to leave the premises and may be suspended from further work on the premises. All employees and subcontractors of Contractor who will be working at such locations shall be covered by Contractor's comprehensive general liability insurance policy. Contractor shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Contractor nor its employees are entitled to state retirement or leave benefits.

17. **Modification or Renegotiation** This Agreement may be modified, altered or changed only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal, state and/or the STF revisions of any applicable laws or regulations make changes in this Contract necessary.
18. **Procurement Regulations** The Contract shall be governed by the applicable provisions of the Personal Service Contract Review Board Regulations, a copy of which is available at 210 East Capitol, Suite 800, Jackson, MS, 39201 for inspection, or downloadable at <http://www.mspb.ms.gov> unless exempted.
19. **Ownership of Documents and Work Papers** The STF shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, whether completed or in progress, created in connection with the Project which is the subject of this Contract, except for the Contractor's internal administrative and quality assurance files and internal project correspondence. The Contractor shall deliver such documents and work papers to the STF upon termination or completion of the Contract. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. The Contractor shall be entitled to use such work papers only after receiving written permission from the STF and subject to any copyright protections.
20. **Indemnification** To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the STF, its officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, and claims for damage arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this Contract.

21. **Third Party Action Notification** The Contractor shall notify STF in writing within five (5) business days of its receipt of liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Contractor or STF by any entity that may result in litigation related in any way to this Contract and/or which may affect the Contractors performance under this Contract. Failure of the Contractor to provide such written notice to STF shall be considered a material breach of this Contract and the STF may, at its sole discretion, pursue its rights as set forth in the Termination clauses herein and any other remedies it may have at law or in equity.

22. **Notices** All notices required or permitted to be given under this Contract must be in writing and personally delivered or sent by facsimile provided that the original of such notice is sent by certified United States mail postage prepaid, return receipt requested, or overnight courier with the signed receipt, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

For the Contractor:

name
title
address
phone #, email

For STF:

Anastasia "Stacy" G. Miller
STF Program Director
14426 James Bond Road, Gulfport, MS 39503
228-328-6000, sgmillier@stf.ms.gov

23. **Severability** If any term or provision of this Contract is prohibited by the laws of this State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Contract shall not be affected thereby and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

24. **Change in Scope of Work** The STF may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No services may be changed, no changes to the amount of compensation to the Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the STF and the Contractor.

If the Contractor believes that any particular work is not within the scope of the project, is a material change, or will otherwise require more compensation to the Contractor, the

Contractor must immediately notify the STF in writing of this belief. If the STF believes that the particular work is within the scope of the contract as written, the Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the scope.

25. **Failure to Enforce** Failure by the STF, at any time, to enforce the provisions of the Contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the Contract or any part thereof or the right of the STF to enforce any provision at any time in accordance with its terms.
26. **Conflict of Interest** Contractor shall notify the STF of any potential conflict of interest resulting from the representation of or service to other clients. If such conflict cannot be resolved to the STF's satisfaction, the STF reserves the right to terminate this Contract.
27. **Sovereign Immunity** By entering into this Contract with Contractor, the State of Mississippi does, in no way, waive its sovereign immunities or defenses, as provided by law.
28. **Confidential Information** Contractor shall treat all STF data and information to which it has access by its performance under this Contract as confidential and shall not disclose such data or information to a third party without specific written consent of STF. In the event that Contractor receives notice that a third party requests divulgence of confidential or otherwise protected and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, Contractor shall promptly inform the STF and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive termination or completion of this Contract and shall continue in full force and effect and shall be binding upon the Contractor and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in this Contract on behalf of, or under the rights of the Contractor following any termination or completion of this Contract.
29. **Network Security** Contractor agrees that any access to the state network must follow all the guidelines set forth by MS ITS security policy and be responsible for cost for implementation and or any changes or updates of such policy unless agreed upon by both parties including ITS.
30. **Stop Work Order**
 - (1) *Order to Stop Work:* The Procurement Officer, may, by written order to Contractor at any time, and without notice to any surety, require Contractor to stop all or any part of

the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Procurement Officer shall either:

(a) cancel the stop work order; or,

(b) terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.

(2) *Cancellation or Expiration of the Order:* If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:

(a) the stop work order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this contract; and,

(b) Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

(3) *Termination of Stopped Work:* If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

(4) *Adjustments of Price:* Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this contract.

31. **Termination** The STF may terminate this Contract with or without cause upon ten (10) days written notice to the Contractor. The Contractor may terminate this Contract with cause upon thirty (30) days written notice to the STF.

A. Termination for Convenience:

(1) *Termination.* The STF Director or designee may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The STF Director or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.

(2) *Contractor's Obligations.* Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The STF Director or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

B. Termination for Default

(1) *Default.* If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the STF Director or designee may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the STF Director or designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the STF Director or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the STF Director or designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

(2) *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the procurement officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.

(3) *Compensation.* Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the STF Director or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.

(4) *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the STF Director or designee within 15 days after the cause of the delay and the failure arises out of causes such as:

acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the STF Director or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled "Termination for Convenience.

(5) *Erroneous Termination for Default.* If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.

(6) *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

C. Termination Upon Bankruptcy

This contract may be terminated in whole or in part by STF upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

32. **Waiver** No delay or omission by either party to this agreement in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this agreement shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this agreement will void, waive, or change any other term or condition. No waiver by one party to this agreement of a default by the other party will imply, be construed as or require

waiver of future or other defaults.

33. **Insurance** Contractor represents that it will maintain workers' compensation insurance which shall inure to the benefit of all Contractor's personnel provided hereunder, comprehensive general liability or professional liability insurance, with minimum limits of \$1,000,000 per occurrence and an annual aggregate amount of \$3,000,000 , and fidelity bond insurance. All general liability, professional liability and fidelity bond insurance will provide coverage to the STF as an additional insured. The STF reserves the right to request from carriers, certificates of insurance regarding the required coverage. Insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance.
34. **Attorney's Fees and Expenses** Subject to other terms and conditions of this agreement, in the event Contractor defaults in any obligations under the agreement, Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees, court costs, and attorney's fees) incurred by the State in the enforcing of this agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the customer be obligated to pay any attorney's fees or costs of legal action to the Contractor.
35. **Entire Agreement** This Contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supercedes or replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating thereto.

This Contract has been entered into and executed by STF and **name** hereto as of the day and year first above written.

name
title

Tanya Goolsby
STF Fiscal Services Director

Anastasia "Stacy" G. Miller
STF Program Director

Exhibit A

SPECIALIZED TREATMENT FACILITY BUSINESS ASSOCIATE AGREEMENT revision 3-1-16

This Business Associate Agreement ("Agreement") is entered into by and between the **Specialized Treatment Facility** ("STF") and **name** ("Business Associate"), hereinafter referred to as the Parties, and modifies any other prior existing agreement or contract for this purpose. In consideration of the mutual promises below and the exchange of information pursuant to this Agreement and in order to comply with all legal requirements for the protection of this information, the Parties therefore agree as follows:

I. RECITALS

- a. STF is a state agency that acts both as an employer for public benefit with a principal place of business at 14426 James Bond Road, Gulfport, MS 39503.
- b. Business Associate is a corporation qualified to do business in Mississippi that will act to perform consulting services for STF with a principal place of business at 14426 James Bond Road, Gulfport, MS 39503.
- c. Pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") of 1996 (as amended by the Genetic Information Nondiscrimination Act ("GINA") of 2008 and the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), Title XIII of Division A, and Title IV of Division B of the American Recovery and Reinvestment Act ("ARRA") of 2009) and its implementing regulations, including 45 C.F.R. Parts 160 and 164, Subparts A and E ("Privacy Rule"), and Subparts A and C ("Security Rule"):
 - i. STF, as a Covered Entity is required to enter into this Agreement to obtain satisfactory assurances that Business Associate will comply with and appropriately safeguard all Protected Health Information ("PHI") Used, Disclosed, created, or received by Business Associate on behalf of STF, and
 - ii. certain provisions of HIPAA and its implementing regulations apply to Business Associate in the same manner as they apply to STF and such provisions must be incorporated into this Agreement.
- d. STF desires to engage Business Associate to perform certain functions for, or on behalf of, STF involving the Disclosure of PHI by STF to Business Associate, or the creation or Use of PHI by Business Associate on behalf of STF, and Business Associate desires to perform such functions, as set forth in the Service Agreement which involve the exchange of information, and wholly incorporated herein.

II. DEFINITIONS

- a. "Breach" shall mean the acquisition, access, Use or Disclosure of PHI in a manner not permitted by the Privacy Rule which compromises the security or privacy of the PHI, and subject to the exceptions set forth in 45 C.F.R. § 164.402.
- b. "Business Associate" shall mean **name**, including all workforce members, representatives, agents, successors, heirs, and permitted assigns.
- c. "Covered Entity" shall mean the Division of Medicaid in the Office of the Governor, an administrative agency of the State of Mississippi.
- d. "Data Aggregation" shall have the same meaning as the term "Data aggregation" in 45 C.F.R. § 164.501.
- e. "Designated Record Set" shall have the same meaning as the term "Designated record set" in 45 C.F.R. § 164.501.
- f. "Disclosure" shall have the same meaning as the term "Disclosure" in 45 C.F.R. § 160.103.
- g. "STF" shall mean the Specialized Treatment Facility operating under the auspices of the Mississippi Department of Mental Health, an administrative agency of the State of Mississippi.
- h. "Health Plan" shall have the same meaning as the term "Health plan" in 45 C.F.R. § 160.103.
- i. "Individual" shall have the same meaning as the term "Individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- j. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E.

- k. "Protected Health Information" shall have the same meaning as the term "Protected health information" in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of STF.
- l. "Required by Law" shall have the same meaning as the term "Required by law" in 45 C.F.R. § 164.103.
- m. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- n. "Security Incident" shall have the same meaning as the term "Security incident" in 45 C.F.R. § 164.304.
- o. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- p. "Service Agreement" shall mean any Memorandum of Understanding ("MOU"), agreement, contract, or any other similar device, and any proposal or Request for Proposal ("RFP") related thereto and agreed upon between the Parties, entered into between STF and Business Associate.
- q. "Standard" shall have the same meaning as the term "Standard" in 45 C.F.R. § 160.103.
- r. "Subcontractor" shall have the same meaning as the term "Subcontractor" in 45 C.F.R. § 160.103.
- s. "Unsecured Protected Health Information" shall have the same meaning as the term "Unsecured protected health information" in 45 C.F.R. § 164.402.
- t. "Use" shall have the same meaning as the term "Use" in 45 C.F.R. § 160.103.
- u. "Violation" or "Violate" shall have the same meaning as the terms "Violation" or "violate" in 45 C.F.R. § 160.103.

All other terms not defined herein shall have the meanings assigned in HIPAA and its implementing regulations.

III. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a. Business Associate agrees to not Use or Disclose PHI other than as permitted or required by this Agreement or as Required by Law.
- b. Business Associate agrees to use appropriate safeguards and comply, where applicable, with the Security Rule, to prevent Use or Disclosure of the PHI other than as provided for by this Agreement.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in Violation of the requirements of this Agreement.
- d. Business Associate agrees to notify STF without unreasonable delay, and no later than seventy-two (72) hours after discovery of any Breach of Unsecured PHI, all in accordance with 45 C.F.R. § 164.410. The notification shall include, to the extent possible and subsequently as the information becomes available, the identification of all Individuals whose Unsecured PHI is reasonably believed by Business Associate to have been Breached along with any other available information that is required to be included in the notification to the Individual, HHS and/or the media, all in accordance with the data Breach notification requirements set forth in 42 U.S.C. § 17932 and 45 C.F.R. Parts 160 and 164, Subparts A, D, and E.
- e. Business Associate agrees to notify STF without unreasonable delay, and no later than seventy-two (72) hours after discovery, any Use or Disclosure of PHI not provided for by this Agreement of which it becomes aware, and any Security Incident of which it becomes aware.
- f. Business Associate agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions and conditions that apply to the Business Associate with respect to such information, all in accordance with 45 C.F.R. §§ 164.308 and 164.502.
- g. Business Associate agrees to ensure that any Subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of the Business Associate agree to comply with the applicable requirements of the Security Rule and Privacy Rule by entering into a Business Associate Agreement in accordance with 45 C.F.R. §§ 164.308, 164.314, 164.502, and 164.504, and ensuring that any Subcontractor executes a separate Business Associate Agreement with STF, attached hereto as Attachment "B" and wholly incorporated herein.
- h. Business Associate agrees to provide access, at the request of STF, and in the time and manner designated by STF, to PHI in a Designated Record Set, to STF or, as directed by STF, to an Individual in order to meet the requirements under 45 CFR § 164.524.
- i. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that STF directs or agrees to pursuant to 45 CFR § 164.526 at the request of STF or an Individual, and in the time and manner designated by STF.

- j. Business Associate agrees to document such Disclosures of PHI and information related to such Disclosures as would be required for STF to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528. Business Associate agrees to retain such documentation for at least six (6) years after the date of disclosure; the provisions of this section shall survive termination of this Agreement for any reason.
- k. Business Associate agrees to provide to STF or an Individual, in a time and manner designated by STF, information collected in accordance with section (III)(J) of this Agreement, to permit STF to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.
- l. Business Associate agrees that it shall only Use or Disclose the minimum PHI necessary to perform functions, activities, or services for, or on behalf of, STF as specified in the Service Agreement. Business Associate agrees to comply with any guidance issued by the Secretary on what constitutes “minimum necessary” for purposes of the Privacy Rule, and any minimum necessary policies and procedures communicated to Business Associate by STF.
- m. Business Associate agrees that to the extent that Business Associate carries out STF’s obligations under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to STF in the performance of such obligation.
- n. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the Use and Disclosure of PHI received from, or created or received by Business Associate on behalf of, STF available to the Secretary for purposes of determining STF’s compliance with the Privacy Rule.
- o. Business Associate agrees that all of STF’s data will not be co-mingled with other trading partner’s data. Data will be stored in an individual structure and will be easily identifiable and exportable.
- p. The provisions of the HITECH Act that apply to Business Associate and are required to be incorporated by reference in a business associate agreement are hereby incorporated into this Agreement, including, without limitation, 42 U.S.C. §§ 17935(b), (c), (d) and (e), and 17936(a) and (b), and their implementing regulations.
- q. Without limitation of the foregoing:
 - i. Pursuant to 42 U.S.C. § 17931(a), the following sections of the Security Rule shall apply to Business Associate in the same manner as they apply to STF: 45 C.F.R. §§ 164.308 (Administrative Safeguards); 164.310 (Physical Safeguards); 164.312 (Technical Safeguards); and 164.316 (Policies and procedures and documentation requirements).
 - ii. 42 U.S.C. §§ 17931(b) and 17934(c), and their implementing regulations, each apply to Business Associate with respect to its status as a business associate to the extent set forth in each such section.

IV. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- a. General Use and Disclosure Provisions: Subject to the terms of this Agreement, Business Associate may Use or Disclose PHI to perform functions, activities, or services for, or on behalf of, STF as specified in the Service Agreement, provided that such Use or Disclosure would not Violate what is Required by Law or the Privacy Rule if done by STF, except for the specific Uses and Disclosures set forth below, for the purpose of performing the Service Agreement.
- b. Specific Use and Disclosure Provisions:
 - i. Business Associate may Use PHI, if necessary, for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate under the Service Agreement entered into between STF and Business Associate.
 - ii. Business Associate may Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that Disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that it will remain confidential and Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.
 - iii. If Business Associate must Disclose PHI pursuant to law or the legal process, Business Associate shall notify STF without unreasonable delay and at least five (5) days in advance of any Disclosure so that STF may take appropriate steps to address the Disclosure, if needed.

- iv. Business Associate may Use PHI to provide Data Aggregation services exclusively to STF as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).

V. OBLIGATIONS OF STF

- a. STF shall provide Business Associate with the Notice of Privacy Practices that STF produces in accordance with 45 C.F.R. § 164.520, attached hereto as Attachment “A” and wholly incorporated herein, as well as any changes to such Notice of Privacy Practices.
- b. STF shall notify Business Associate of any limitation(s) in its Notice of Privacy Practices to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.
- c. STF shall notify Business Associate of any changes in, or revocation of, permission by Individual to Use or Disclose PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.
- d. STF shall notify Business Associate of any restriction to the Use or Disclosure of PHI that STF has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.
- e. Permissible Requests by STF: STF shall not request Business Associate to Use or Disclose PHI in any manner that would not be permissible under the Privacy Rule if done by STF, except as provided for in section (IV)(b) of this Agreement.

VI. TERM AND TERMINATION

- a. Term. For all new Service Agreement entered into between STF and Business Associate, the effective date of this Agreement is the effective date of the Service Agreement entered into between STF and Business Associate. For any ongoing Service Agreement entered into between STF and Business Associate, the effective date of this Agreement is the date first herein written. This Agreement shall terminate when all of the PHI provided by STF to Business Associate, or created or received by Business Associate on behalf of STF, is destroyed or returned to STF, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this section. Termination of this Agreement shall automatically terminate the Service Agreement.
- b. Termination for Cause. Upon STF's knowledge of a material Breach or Violation by Business Associate, STF shall, at its discretion, either:
 - i. provide an opportunity for Business Associate to cure the Breach or end the Violation and terminate this Agreement and the associated Service Agreement, if Business Associate does not cure the Breach or end the Violation within the time specified by STF, or
 - ii. immediately terminate this Agreement and the associated Service Agreement if Business Associate has Breached a material term of this Agreement and cure is not possible.
- c. Effect of Termination.
 - i. Upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from, or created or received by Business Associate on behalf of, STF in accordance with State and Federal retention guidelines. This provision shall apply to PHI that is in the possession of Subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 - ii. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to STF notification of the conditions that make return or destruction infeasible. Upon notification in writing that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further Uses and Disclosures to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

VII. MISCELLANEOUS

- a. Statutory and Regulatory References. A reference in this Agreement to a section in HIPAA and its implementing regulations, or other applicable law means the section as in effect or as amended, and for which compliance is required.
- b. Amendments/Changes in Law.
 - i. General. Modifications or amendments to this Agreement may be made upon mutual agreement of the Parties, in writing signed by the Parties hereto and approved as required by law. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Agreement.

Such modifications or amendments signed by the Parties shall be attached to and become part of this Agreement.

- ii. Amendments as a Result of Changes in the Law. The Parties agree to take such action as is necessary to amend this Agreement as is necessary to effectively comply with any subsequent changes or clarifications of statutes, regulations, or rules related to this Agreement. The Parties further agree to take such action as is necessary to comply with the requirements of HIPAA, its implementing regulations, and other applicable law relating to the security and privacy of PHI.
- iii. Procedure for Implementing Amendments as a Result of Changes in Law. In the event that there are subsequent changes or clarifications of statutes, regulations or rules relating to this Agreement, or the Parties' compliance with the laws referenced in section (VII)(c)(ii) of this Agreement necessitates an amendment, the requesting party shall notify the other party of any actions it reasonably deems are necessary to comply with such changes or to ensure compliance, and the Parties promptly shall take such actions. In the event that there shall be a change in the federal or state laws, rules or regulations, or any interpretation or any such law, rule, regulation, or general instructions which may render any of the material terms of this Agreement unlawful or unenforceable, or materially affects the financial arrangement contained in this Agreement, the Parties may, by providing advanced written notice, propose an amendment to this Agreement addressing such issues.
- c. Survival. The respective rights and obligations of Business Associate provided for in section (VI)(c) of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit STF to comply with HIPAA, its implementing regulations, and other applicable law relating to the security and privacy of PHI.
- e. Indemnification. Business Associate will indemnify and hold harmless STF to this Agreement from and against all claims, losses, liabilities, costs, and other expenses incurred as a result of, or arising directly or indirectly out of or in conjunction with:
 - i. any misrepresentation, breach of warranty, or non-fulfillment of any undertaking on the part of the Business Associate under this Agreement, and
 - ii. any claims, demands, awards, judgments, actions, and proceedings made by any person or organization arising out of or in any way connected with the performance of the Business Associate under this Agreement.
 - iii. STF's liability, as an entity of the State of Mississippi, is determined and controlled in accordance with Mississippi Code Annotated § 11-46-1 *et seq.*, including all defenses and exceptions contained therein. Nothing in this Agreement shall have the effect of changing or altering the liability or of eliminating any defense available to the State under statute.
- f. Disclaimer. STF makes no warranty or representation that compliance by Business Associate with this Agreement, HIPAA, its implementing regulations, or other applicable law will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized Use or Disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- g. Notices. Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and may be either personally delivered, emailed, or sent by registered or certified mail in the United States Postal Service, Return Receipt Requested, postage prepaid, addressed to each party at the addresses which follow or to such other addresses provided for in this Agreement or as the Parties may hereinafter designate in writing:

STF:
Specialized Treatment Facility
14426 James Bond Road
Gulfport, MS 39503

Business Associate:

name
street address
city, state & zip

Any such notice shall be deemed to have been given as of the date transmitted.

- h. Severability. In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms.
- i. Governing Law. This Agreement shall be construed broadly to implement and comply with the requirements relating to HIPAA, its implementing regulations, and other applicable law relating to the security and privacy of PHI. All other aspects of this Agreement shall be governed under the laws of the State of Mississippi. Where provisions of this Agreement differ from those mandated by such laws and regulations, but are nonetheless permitted by such laws and regulations, the provisions of this Agreement shall control.
- j. Assignment/Subcontracting. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors, heirs, and permitted assigns. Except as otherwise provided in the Service Agreement, Business Associate may not assign or subcontract the rights or obligations under this Agreement without the express written consent of STF, provided that any Subcontractor executes a separate Business Associate Agreement with STF. STF may assign its rights and obligations under this Agreement to any successor or affiliated entity.
- k. Entire Agreement. This Agreement contains the entire agreement between the Parties and supersedes all prior discussions, instructions, directions, understandings, negotiations, agreements, and services for like services.
- l. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and their respective successors, heirs, or permitted assigns, any rights, remedies, obligations, or liabilities whatsoever.
- m. Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any workforce members, contractors, Subcontractors, representatives, agents, affiliates, or subsidiaries assisting Business Associate in the fulfillment of its obligations under this Agreement, available to STF, at no cost to STF, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against STF, its directors, officers, or any other workforce member based upon claimed Violation of HIPAA, its implementing regulations, or other laws relating to the security and privacy of PHI, except where Business Associate or its workforce members, contractors, Subcontractors, representatives, agents, affiliates, or subsidiaries are a named adverse party.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement to be effective on the date provided for in section (VI)(a) of this Agreement.

For Business Associate:

By:

name
title/position

date

For STF:

By:

Anastasia "Stacy" G. Miller
Program Director, Specialized Treatment Facility

date