

## CONTRACT FOR ADULT INPATIENT SERVICES

**BEXAR COUNTY BOARD OF TRUSTEES FOR MENTAL HEALTH MENTAL RETARDATION SERVICES, d/b/a THE CENTER FOR HEALTH CARE SERVICES** (hereinafter called "CENTER"), a mental health mental retardation community center established under Section 534.001 of the Texas Health and Safety Code, and **{CONTRACTOR NAME}** (hereinafter called "CONTRACTOR"), a **{Legal Designation}**, have jointly considered and determined that a contractual agreement should be entered into whereby certain adult inpatient psychiatric services will be provided to CENTER by CONTRACTOR.

### RECITALS

WHEREAS, CENTER is the Texas Health and Human Services Commission (hereinafter called "HHSC" or "State") designated mental health local authority established to plan, coordinate, develop policy, develop and allocate resources, supervise, and ensure the provision of community based mental health services for the residents of Bexar County; and

WHEREAS, CENTER as the designated mental health local authority has the authority and responsibility for planning, policy development, coordination, resource allocation and resource development for and oversight of mental health services in its Service Area of Bexar County; and

WHEREAS, CENTER has entered into a funding contract with HHSC to provide mental health services in its Service Area; and

WHEREAS, CENTER desires to assemble a network of providers for the provision of mental health services in its Service Area; and

WHEREAS, CONTRACTOR meets CENTER'S qualification criteria for participating as a Network Provider; and

WHEREAS, CENTER and CONTRACTOR mutually desire to enter into this Contract pursuant to which CONTRACTOR will participate in CENTER'S network, will provide services as described further herein ("Services") to authorized CENTER Consumers, and CENTER will pay CONTRACTOR for the provision of authorized Services;

NOW, THEREFORE, in consideration of the mutual covenants, rights, and obligations set forth herein, the benefits to be derived therefrom, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

**I.**  
**INDEPENDENT CONTRACTOR RELATIONSHIP**  
**BETWEEN THE PARTIES**

**1.01 Independent Contractor.**

- a) The relationship between CENTER and CONTRACTOR shall be that of an independent contractor. CONTRACTOR shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between CENTER and CONTRACTOR. It is agreed that CONTRACTOR and CONTRACTOR'S personnel will not be considered an employee, agent, partner, joint venture, ostensible or apparent agent, servant, or borrowed servant of CENTER.
- b) CONTRACTOR understands and agrees that CENTER:
  - i) Will not withhold on behalf of CONTRACTOR any sums for income tax, unemployment insurance, social security, or any other withholding;
  - ii) Will not give to CONTRACTOR any of the benefits given to employees of CENTER.
- c) CONTRACTOR is solely responsible for paying its employees, subcontractors, joint venture participants and agents.
- d) The parties hereto understand and agree that the CENTER shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the CONTRACTOR under this contract and that the CONTRACTOR has no authority to bind the CENTER.

**1.02 Professional Judgment.** CONTRACTOR and its personnel shall exercise their own professional judgment, sole discretion and control in the performance of Services to the persons served under this Contract. Except for those responsibilities and obligations required by the State of both CONTRACTOR and CENTER as set out herein, CENTER shall have no right to control or direct the professional judgment of CONTRACTOR in the performance of CONTRACTOR duties. The exercise by CENTER of its utilization management, quality assurance, contract monitoring and oversight responsibilities pursuant to this Contract shall not be construed by or interpreted by the parties or any third party as the exercise of any direction or control over CONTRACTOR and its

personnel in the performance of the Services to be provided by CONTRACTOR and none is intended.

## II.

### OBLIGATIONS OF CONTRACTOR

- 2.01 Services.** CONTRACTOR shall provide the Services as set forth in **EXHIBIT 'A', "SERVICES TO BE PROVIDED BY CONTRACTOR"**, which is attached hereto and incorporated herein by reference.
- 2.02 Inability to Pay.** CONTRACTOR agrees that it will not deny Services to any individual (hereinafter called "patient" or "consumer") served under this Contract because of the patient's inability to pay CONTRACTOR for the Services provided.
- 2.03 Removal of Consumer.** CONTRACTOR must give twenty-four (24) hours' notice to CENTER prior to the removal of any CENTER-authorized patient from CONTRACTOR'S facility, unless such removal is due to an emergency or law enforcement activity, in which case CONTRACTOR shall notify CENTER of the removal as soon as possible after its occurrence.
- 2.04 Coordination of Benefits.** CONTRACTOR agrees to coordinate patient benefits, to provide CENTER with any relevant information that CONTRACTOR may reasonably have relating to any other coverage held by a patient, and to abide by CENTER'S policies relating to the coordination of benefits, ability to pay, subrogation, and duplicate coverage. CONTRACTOR acknowledges that CENTER is considered the Payor of Last Resort and that all other funding sources must be exhausted prior to billing CENTER for authorized Services. Collection of any co-payments or deductibles from referred consumers is the responsibility of CONTRACTOR. CONTRACTOR will submit evidence documenting its efforts to collect fees from any and all payment sources prior to submitting claims for payment to CENTER.
- 2.05 Disclosure.** CONTRACTOR agrees to disclose to CENTER if it or any of its employees or its agents rendering Services to an individual pursuant to this CONTRACT:
- a) Is currently barred from the award of a federal, state or county contract, or if such occurs anytime during the term of this CONTRACT;
  - b) Has been convicted of a criminal offense related to any county, state or federally funded program;
  - c) Is placed on "vendor hold" status for any county, state, or federally funded program; or,
  - d) Is delinquent in the payment of any state or federal tax.

**2.06 Permits, Licenses and Certifications.** CONTRACTOR shall maintain as current and in good standing, any permits, licenses or certifications required by law to provide Services pursuant to this CONTRACT. These shall include, but will not be limited to:

- a) Hospital license issued by the State of Texas;
- b) Local Fire Marshal Inspection report and annual renewal to include quarterly summary reports of fire drills; and
- c) Certificate of Occupancy from the City of San Antonio.

Confirmation of compliance with this provision will be provided to CENTER prior to the execution of this Contract by providing copies of the above-mentioned permits, licenses and certifications. No referrals will be made under this Contract until CONTRACTOR has complied with such terms. CONTRACTOR must inform CENTER immediately of any changes, including any termination, reduction, revocation, or the suspension of any certifications, registrations, or licenses held by CONTRACTOR, its employees or agents. CONTRACTOR shall report to CENTER any allegation that an individual licensed or certified by the State of Texas and employed by CONTRACTOR has committed an action that constitutes grounds for the denial or revocation of the certification or licensure.

**2.07 Criminal History Clearances.** CONTRACTOR represents and warrants that its employees and volunteers have not been convicted of any offense set out in Texas Health and Safety Code Chapter 250, Section 250.006 or Title 25 of the Texas Administrative Code, Part 1, Chapter 414, Subchapter K, Rule 414.504 (g), that would prohibit CONTRACTOR from contracting with CENTER. If an employee, or volunteer of CONTRACTOR has a criminal history relevant to his or her employment as described in Title 25 of the Texas Administrative Code, Chapter 414, Subchapter K, Rule 414.504 (g) (relating to Criminal History Clearances), then CONTRACTOR will take appropriate action with respect to the employee or volunteer, including terminating and removing any such employee or volunteer from direct contact with consumers served by CONTRACTOR. The disclosure, representation and warranty requirements of this paragraph shall continue throughout the term of this Contract and CONTRACTOR shall again provide to CENTER the required criminal record history information at any time when there is a relevant conviction of CONTRACTOR, its employees or volunteers and CONTRACTOR shall take the appropriate action regarding any such employee or volunteer with a relevant criminal conviction as required by this paragraph.

- 2.08 Required Credentialing.** CONTRACTOR agrees that its licensed staff and other appropriate staff will be credentialed as required by CENTER before Services are delivered.
- 2.09 Reports of Abuse and Neglect.** CONTRACTOR covenants and agrees to immediately report as soon as information has been received of any known or suspected allegation of abuse, neglect or exploitation of a patient served under this Contract in accordance with applicable law or State rules to the Texas Department of Family and Protective Services (“DFPS”) at 1-800-252-5400 or successive number for DFPS, and to CENTER by a verbal report and a written report (Local Authority Incident Report) which shall be prepared and submitted to CENTER’S Compliance and Regulatory Services Division within twenty-four (24) hours of the verbal report. Failure to report an incident of abuse, neglect, or exploitation within the allotted time frame is a material breach of this Contract and may be grounds for immediate termination of this Contract.
- 2.10 Other Reports.** CONTRACTOR shall provide immediate notification to CENTER’S Compliance and Regulatory Services Division concerning serious injury to, deaths and suicide attempts of patients covered by this Contract by a verbal report and a written report (Local Authority Incident Report) which shall be prepared and submitted to CENTER’S Compliance and Regulatory Services Division within twenty-four (24) hours of the verbal report. Failure to report an incident of abuse, neglect, or exploitation within the allotted time frame is a material breach of this Contract and may be grounds for immediate termination of this Contract by CENTER.
- 2.11 Utilization Management.** CONTRACTOR agrees to comply with utilization management requirements as specified by CENTER. CENTER will determine medical necessity prior to the admission and provide written authorization by the close of business of the following working day. During the course of the authorization, CENTER will conduct concurrent reviews to verify continued medical need for service and authorization for subsequent Services and/or recommend termination of Services.
- 2.12 Medical Care.** CONTRACTOR agrees to ensure that a patient receives appropriate medical care while receiving inpatient psychiatric Services from CONTRACTOR. CONTRACTOR shall inform CENTER of any injury or illness of a patient being served under this Contract by faxing an Incident Report to CENTER’S Compliance and Regulatory Services Division on the form prescribed by CENTER.
- 2.13 Transfer Obligations.** CONTRACTOR shall coordinate approval from CENTER prior to transferring any patient to any other residential setting unless a transfer is required by the patient's treatment plan or by an emergency, in which case approval for the transfer must be requested within twenty-four (24) hours. Failure to comply with the terms of this paragraph is a material

breach of this Contract and may be grounds for immediate termination of this Contract by CENTER.

**2.14 Confidentiality of Records of Consumers.** CONTRACTOR agrees to keep all client information received during the performance of this Contract, including Protected Health Information (PHI) and any other information that discloses confidential personal information or identifies any individual served under this Contract confidential in accordance with all applicable state and federal laws, and HHSC rules, including the Texas Health and Safety Code Chapters 595 and Section 611.002; the Texas Occupations Code, Chapter 159; Title 25 of the Texas Administrative Code, Part 1, Chapter 414, Subchapter A; the Health Insurance Portability and Accountability Act (HIPAA) and all applicable regulations thereunder at 45 CFR Parts 160 and 164; and 45 CFR Parts 160 and 164; and 42 C.F.R. Part 2.

**2.15 Ownership and Maintenance of Records**

- a) Consumer records or documents (paper or electronic) generated or maintained by CONTRACTOR are considered property of CONTRACTOR and shall be retained for a minimum of six years. Upon request, CONTRACTOR will make consumer records or documents available to CENTER as specified in sections 2.16 and 2.17 of this contract.
- b) CONTRACTOR shall maintain consumer records or documents (paper or electronic) generated or maintained by CONTRACTOR at the site of CONTRACTOR. The following minimum documents will be kept in the consumer's record: consent to Services and psychoactive medications; authorization form; demographic information; insurance information; diagnosis(es); psychiatric evaluation; medication orders/history; labs, or other pertinent diagnostic reports; medical health history; physician follow up progress note; and any other pertinent documents as specified by CENTER.

**2.16 Access to Facilities, Books and Records.**

- a) Pursuant to Texas Health and Safety Code, Section 534.061, CONTRACTOR agrees to allow the State, CENTER, and their designees, including independent financial auditors, unrestricted access during usual business hours to all facilities, service providers, individuals served, records, data, and other information under the control of CONTRACTOR as necessary to enable the State and CENTER or other authorized agencies to audit, monitor, and review all financial and programmatic activities and Services associated with this Contract. CONTRACTOR authorizes CENTER and the State or their designated agents to make copies, at no charge, of CONTRACTOR'S medical,

financial and administrative books, documents, and records related to the provision of Services to consumers and the cost thereof, subject to applicable laws and regulations.

- b) CONTRACTOR shall, upon request, make all records books, papers documents, or recordings available for inspection, audit or reproduction during normal business hours to any authorized representative of the State. CONTRACTOR understands that the acceptance of state funds received indirectly under this Contract acts as acceptance of the authority of the State Auditor's Office ("SAO"), or any successor agency, to conduct an audit or investigation in connection with those funds. CONTRACTOR agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested, and providing access to information the SAO considers relevant to the investigation or audit.

**2.17 Right of Audit and Recovery.** CONTRACTOR hereby authorizes the State and/or its successor, CENTER, or other governmental agencies to conduct retrospective audits of CONTRACTOR'S claims and other records related to any Service rendered to a patient for a period of up to two (2) years or as allowed by law, following payment to CONTRACTOR. In the event such an audit reveals that CENTER paid CONTRACTOR for Services not rendered, not documented, or not eligible for payment, CONTRACTOR shall reimburse CENTER any compensation paid to CONTRACTOR for such Services within thirty (30) days of notification by CENTER.

**2.18 Representations, Covenants and Warranties**

- a) CONTRACTOR covenants and agrees that it shall comply with the most current State and/or its successor's Community Standards for Community Mental Health and Mental Retardation Centers and Community Service Programs, all applicable policies of CENTER, and all applicable local, state, and federal laws and regulations now in effect and that become effective during the term of this Contract.
- b) CONTRACTOR represents and warrants that its employees or personnel are not currently employees of CENTER.
- c) CONTRACTOR and any person having a twenty-five (25%) or more ownership interest in CONTRACTOR represents and warrants that it is not more than thirty (30) days delinquent in child support payments and is eligible to receive payments from State funds as required by the Texas Family Code §231.006.

- 2.19 AIDS/HIV Work Place Guidelines.** CONTRACTOR agrees to adopt and implement AIDS/HIV workplace guidelines similar to those adopted by the State and/or its successor, and AIDS/HIV confidentiality guidelines, consistent with state and federal law.
- 2.20 Immigration Reform and Control Act.** CONTRACTOR agrees to maintain appropriate identification and employment eligibility documents to meet requirements of the Immigration Reform and Control Act of 1986.
- 2.21 Staffing.** CONTRACTOR must comply, at a minimum, with the staffing requirements required to maintain licensure with the HHSC, as applicable, and to afford the reasonable and necessary care and Services to CENTER-authorized consumers receiving Services under this Contract.
- 2.22 Consumer Complaints.** CONTRACTOR agrees to inform consumers of the right to file a complaint with CENTER regarding CONTRACTOR. CONTRACTOR will cooperate with CENTER in resolving any complaints related to its provision of Services pursuant to this Contract.
- 2.23 Funds of Consumer That Are Held By CONTRACTOR.** In the event CONTRACTOR shall acquire and hold funds of the consumer, CONTRACTOR shall assume all responsibility for the safeguarding of the consumer's funds. CONTRACTOR shall have in place and abide by a written policy for the protecting and accounting for such funds of the consumer in accordance with generally accepted accounting principles which shall be subject to approval by CENTER. CENTER shall be provided a copy of such written policies upon execution of this Contract for review and approval. CONTRACTOR shall make such changes to its written policies as may be required by CENTER to obtain approval of the written policies. CENTER may request CONTRACTOR to make such financial information concerning the funds of consumers held by CONTRACTOR available to CENTER so CENTER may conduct an audit of the funds held and ensure compliance by CONTRACTOR with its written policies.
- 2.24 Liability for Treatment or Service.** Nothing in this Contract shall be deemed to change or alter any relationship that exists or may come to exist between CONTRACTOR and a consumer. CONTRACTOR shall have and be subject to the same duties, liabilities and responsibilities toward consumers as exist generally between patients and health care providers. Further, Utilization, Review and Quality Management/ Resource Allocation procedures of CENTER shall not diminish CONTRACTOR'S obligation to render Services consistent with the applicable standards of care.
- 2.25 Use of Name.** CONTRACTOR agrees that its name may be used, along with a description of its facilities, care, and Services in any information distributed by CENTER listing its contracted service providers.



- 2.26 Meetings and Staff Training.** CONTRACTOR shall ensure that appropriate representatives of CONTRACTOR'S staff attend meetings, staffings, and training programs relevant to this Contract when requested by CENTER. CENTER will notify CONTRACTOR in advance of the date(s) of the meeting, staffing, or training program at which attendance is requested. CONTRACTOR shall be solely responsible for the cost of CONTRACTOR'S representatives attending meetings, staffings, or training programs, unless otherwise agreed to by CENTER.
- 2.27 Changes and Amendments based on CENTER'S contract with HHSC.** CONTRACTOR acknowledges and agrees that the terms of this Contract, including all Exhibits and Attachments, are subject to change according to changes in CENTER'S funding contract with HHSC. CONTRACTOR further acknowledges and agrees that, subject to mutual agreement by CONTRACTOR and CENTER, this Contract shall be amended to incorporate any such HHSC-related contract changes, as applicable to the scope of Services contained herein.
- 2.28 Discontinuation of Services.** CONTRACTOR shall notify CENTER no later than ninety (90) days prior to discontinuing the provision of adult inpatient psychiatric services at its facility.

### **III.**

#### **OBLIGATIONS OF CENTER**

- 3.01 Payment.** In consideration of the obligations undertaken by CONTRACTOR, CENTER agrees to pay CONTRACTOR and CONTRACTOR agrees to accept payment in accordance with the fee schedule and the claims processing procedures outlined in **EXHIBIT 'B', "PAYMENT"**. CONTRACTOR will accept payment from CENTER in accordance with the Fee Schedule set forth in **EXHIBIT 'B'** as payment in full for a claim for Authorized Services provided pursuant to the terms of this Contract.
- 3.02** Payment for Services is conditioned upon CONTRACTOR completing and providing the documentation and data reporting necessary for CENTER to report Services to the State. The documentation must meet the content standards, reporting requirements and rules set forth by the State and CENTER. Failure of CONTRACTOR to provide CENTER with the required documentation may result in sanctions, penalties, or termination of this Contract by CENTER.
- 3.03 Contract Monitoring.** CENTER is responsible for routine monitoring of this Contract to ensure CONTRACTOR complies with the terms herein. If CENTER determines that CONTRACTOR is in non-compliance with the terms of this Contract, CENTER may, in its sole discretion, in addition to any rights or remedies it may have under this Contract or at law, request corrective action from

CONTRACTOR and/or impose sanctions. Corrective action and sanctions may include submission and implementation of a written plan of correction, withholding referral of Consumers to CONTRACTOR, and withholding payment under this Contract until the non-compliance is remedied. If CONTRACTOR fails to take corrective action to remedy non-compliance, CENTER may terminate this Contract as provided for in Article IV herein.

#### IV. TERM AND TERMINATION

**4.01 Term.** The term of this Contract is {START} to {END}. This Contract may be renewed for up to three (3) additional one-year terms at the sole option of CENTER.

**4.02 Immediate Termination.** CENTER may terminate this Contract immediately if:

- a) CENTER does not receive or ceases to receive funding from the State to pay for designated Services under this Contract;
- b) CENTER has cause to believe that termination of the Contract is in the best interests of the health and safety of the persons served under this Contract;
- c) CONTRACTOR has become ineligible to receive CENTER funds as per CENTER'S network requirements or the provisions of this Contract;
- d) CONTRACTOR, or its employees providing Services under this Contract, has its Texas license or certification suspended or revoked, provided that if CONTRACTOR terminates such individual's right to provide Services hereunder, such termination shall not take effect;
- e) CONTRACTOR is in violation of any Contract Representations, Covenants or Warranties;
- f) CONTRACTOR is convicted of any crime related to any state or federally funded program during the term of this Contract or CONTRACTOR becomes barred from the award of a state or federal contract at any time during the term of this Contract; or
- g) CENTER determines, based upon an evidence-based review, that CONTRACTOR has violated the client rights of a person served under this Contract or has committed any act with the intent or purpose of defrauding CENTER, the State, or any regulatory agency.

**4.03 Termination upon Default.** If either party is in default of any of the provisions herein, the other party shall give the defaulting party written notice of the default and direct the defaulting party to cure the default within ten (10) business days of the date of the notice of default. In the event if

the cure is not completed within ten (10) business days, then the non-defaulting party may terminate the Contract with ten (10) business days' notice to the defaulting party.

- 4.04 Termination without Cause.** This Contract may be terminated by either party, without cause, after thirty (30) days written notice to the other party.
- 4.05 Termination by Mutual Consent.** This Contract may be terminated at any time by the mutual consent of both parties.
- 4.06 Effect upon Notice of Termination.** Upon notice of termination, CONTRACTOR will cooperate fully with CENTER in the transfer of consumers to other CENTER-contracted or community providers, but shall in the interim continue to provide Services as set out in the obligations of CONTRACTOR. CONTRACTOR shall be paid for any Services provided up to the effective date of termination.
- 4.07** In no event shall any failure of CENTER to immediately terminate this Contract upon any violation or failure of CONTRACTOR to comply with any provision of the Contract, or of any applicable local, state or federal laws, rules or regulations constitute or be construed as a waiver by CENTER of its right to terminate this Contract at any time during the performance thereof for any future breach or default of this Contract which may have been committed by CONTRACTOR. The rights and remedies of CENTER provided in this Contract are in addition to any other legal rights which CENTER may have or will have arising from this Contract in law or in equity.

## V.

### INSURANCE

- 5.01** Prior to the commencement of this Contract, CONTRACTOR shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to CENTER's Contract & Procurement Department, which shall be clearly labeled "Adult Inpatient Psychiatric Services" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. CENTER will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to CENTER. CENTER shall have no duty to pay or perform under this Contract until such certificate and endorsements have been received and approved by CENTER's Contract & Procurement Department. No officer

or employee other than CENTER's Director of Contracting & Procurement, shall have authority to waive this requirement.

**5.02** CENTER reserves the right to review the insurance requirements of this Article during the effective period of this Contract and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by CENTER's Director of Contracting & Procurement based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. In no instance will CENTER allow modification whereby CENTER may incur increased risk.

**5.03** CONTRACTOR shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at CONTRACTOR's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

- a) Workers' Compensation: Employee Injury Benefit Plan with sufficient insurance to meet requirements of Texas law.
- b) Automobile Liability Coverage: One Hundred Thousand Dollars (\$100,000) per occurrence, and Three Hundred Thousand Dollars (\$300,000) in aggregate, for any vehicle used to transport patients.
- c) Comprehensive general liability coverage, including premises liability and employee misconduct in an amount not less than combined single limit of One Million Dollars (\$1,000,000) per occurrence, and One Million Dollars (\$1,000,000) in aggregate.
- d) General professional liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in aggregate.

**5.04** CONTRACTOR agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverage required of CONTRACTOR herein, and provide a certificate of insurance and endorsement that names CONTRACTOR and CENTER as additional insureds. CONTRACTOR shall provide CENTER with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by CENTER's Director of Contracting & Procurement, when deemed necessary and

prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by CENTER's Director of Contracting & Procurement, which shall become a part of the contract for all purposes.

**5.05** CONTRACTOR agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- a) Name CENTER as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with CENTER, with the exception of the workers' compensation and professional liability policies;
- b) Provide for an endorsement that the "other insurance" clause shall not apply to CENTER where CENTER is an additional insured shown on the policy;
- c) Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of CENTER.
- d) Provide advance written notice directly to CENTER of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

**5.06** Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, CONTRACTOR shall provide a replacement Certificate of Insurance and applicable endorsements to CENTER. CENTER shall have the option to suspend CONTRACTOR's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Contract.

**5.07** In addition to any other remedies CENTER may have upon CONTRACTOR's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CENTER shall have the right to order CONTRACTOR to stop work hereunder, and/or withhold any payment(s) which become due to CONTRACTOR hereunder until CONTRACTOR demonstrates compliance with the requirements hereof.

**5.08** Nothing herein contained shall be construed as limiting in any way the extent to which CONTRACTOR may be held responsible for payments of damages to persons or property resulting from CONTRACTOR's or its subcontractors' performance of the work covered under this Contract.

**5.09** CONTRACTOR's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by CENTER for liability arising out of operations under this Contract.

- 5.10** The insurance required under this Article is in addition to and separate from any other obligation contained in this Contract and that no claim or action by or on behalf of CENTER shall be limited to insurance coverage provided.
- 5.11** CONTRACTOR and its subcontractors are responsible for all damage to their own equipment and/or property.

## VI.

### INDEMNIFICATION

To the extent authorized by the laws of the State of Texas, CONTRACTOR hereby agrees to indemnify and hold CENTER its trustees, officers and employees harmless against any and all liabilities, claims, actions, expenses, including reasonable attorneys' fees and costs relating to the investigation of defense of any such claim, action, or proceeding, obligations, losses, fines, penalties, damages, and assessments, incurred by CENTER, its trustees, officers, and employees resulting from or arising out of the performance or non-performance of CONTRACTOR, agents directors, officers, or employees, of its obligations hereunder.

## VII.

### MISCELLANEOUS

- 7.01 Nondiscrimination.** Each party to this Contract agrees that no person, on the basis of race, color, national origin, religion, sex, sexual orientation, age, disability, or political affiliation, will be excluded from participation, be denied the benefits of, or be subject to discrimination in the provision of any Services hereunder. The parties hereto agree to comply with the Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, the Civil Rights Act of 1991, and the Age Discrimination in Employment Act of 1967, all amendments to each and all requirements imposed by the regulations issued pursuant to these acts.
- 7.02 Dispute Resolution.** In the event a dispute arises between the parties involving the provision or interpretation of any term or condition of this Contract and both parties desire to attempt to resolve the dispute prior to termination or expiration of the Contract, or withholding payments, then the parties may refer the issue to a mutually agreeable dispute resolution process or as required by the State or its successor.

- 7.03 Renegotiation.** If, as a result of a change to the State or its successor's rules or state or federal law, the contractual obligations of CONTRACTOR are materially changed or a significant financial burden is placed on CONTRACTOR, then the parties may renegotiate in good faith to amend the terms of this Contract.
- 7.04 Entire Contract.** This Contract, including all attachments referenced herein, and documents incorporated herein by reference, constitutes the sole and only contract of the parties hereto and supersedes any prior understandings or written or oral contracts between the parties respecting the subject matter herein.
- 7.05 CENTER Approval of CONTRACTOR'S Subcontractors and/or Assignees.** CONTRACTOR agrees not to subcontract or assign any of the Services obligated to Provider by the terms of this Contract, unless approval of such subcontractors is given by CENTER in writing. Any subcontractors or employees of CONTRACTOR are the direct responsibility of CONTRACTOR and any such subcontractor or assignee must comply with all provisions of this Contract.
- 7.06 Waiver.** In no event shall any payment by CENTER to CONTRACTOR or any act or omission of CENTER constitute or be construed in anyway to be a waiver by CENTER of any breach or default of this Contract which may then or subsequently be committed by CONTRACTOR. Neither shall any payment, act or omission in any manner impair or prejudice any right, power, privilege or remedy available to CENTER to enforce its rights, as such rights, powers, privileges and remedies are specifically preserved. No employee or agent of CENTER may waive the effect of this provision.
- 7.07 IMMUNITY NOT WAIVED.** THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS CONTRACT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY CENTER OF ANY IMMUNITIES FROM SUIT OR LIABILITY THAT CENTER MAY HAVE BY OPERATION OF LAW.
- 7.08 Governing Law and Venue.** This Contract shall be construed and enforced in accordance with the laws of the State of Texas, and venue shall lie in Bexar County, Texas.
- 7.09 Amendment/Assignment.** Unless otherwise specifically provided herein, this Contract may be amended or changed only by mutual written consent of an authorized representative of CENTER and CONTRACTOR. CENTER shall have the right to sell, assign, or transfer this Contract together with all the rights, title and interest in this Contract to any successor entity at any time

during the term of this Contract, and such assignee shall acquire all the rights and assume all of the obligations of CENTER under this Contract.

**7.10 Authority to Bind CENTER.** This Contract is not binding upon CENTER until it has been executed by the authorized signature of CENTER Official set forth below.

**7.11 CONTRACTOR'S Authority.** The person or persons executing and signing this Contract on behalf of CONTRACTOR represent and guarantee that they have been fully authorized by CONTRACTOR to execute this Contract and to legally bind CONTRACTOR to all the terms and provisions of this Contract.

**7.12 CONTRACTOR'S Acknowledgement.** CONTRACTOR acknowledges that it has read this Contract and is familiar with and fully understands the terms and obligations set out in this Contract and CONTRACTOR'S obligations and responsibilities for performance. CONTRACTOR further acknowledges that any questions concerning the terms and conditions of this Contract have been satisfactorily explained to CONTRACTOR by CENTER.

**7.13 Exhibits and Attachments.** All Exhibits and Attachments referred to in this Contract and attached hereto are essential provisions of this Contract, are to be construed in harmony with each to give purpose and effect to the fulfillment of the obligations and responsibilities of the parties and are incorporated herein by this reference as if set out herein verbatim.

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**7.14 Notices.** Any required notice shall be in writing and shall be sent, postage prepaid, by certified mail, to CENTER or CONTRACTOR at the address below. Delivery of the notice shall be presumed to have occurred within five (5) calendar days of the mailing of the notice.

If to CENTER:

The Center for Health Care Services  
President/Chief Executive Officer  
6800 Park Ten Blvd, Suite 200-S  
San Antonio, Texas 78213

If to CONTRACTOR:

{ Company }  
{ Title }  
{ Address }  
{ City, State, Zip }

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Contract by their respective duly authorized representatives as evidenced by their signatures below, and is dated by the last signatory below on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

BEXAR COUNTY BOARD OF  
TRUSTEES FOR MENTAL HEALTH  
MENTAL RETARDATION SERVICES  
d/b/a THE CENTER FOR HEALTH  
CARE SERVICES

**{ CONTRACTOR NAME }**

\_\_\_\_\_  
Jelynn LeBlanc Burley  
President/CEO

\_\_\_\_\_  
{ Name }  
{ Title }

Exhibits

Exhibit A – Services to Be Provided by Contractor  
Exhibit B – Payment  
Exhibit C – Business Associate Agreement

## **EXHIBIT A**

### **SERVICES TO BE PROVIDED BY CONTRACTOR**

#### **A. DESCRIPTION**

##### **Inpatient Psychiatric Intensive Care:**

As required by CENTER'S contract with HHSC, hospital services provided by CONTRACTOR under this Contract shall be staffed with medical and nursing professionals who provide 24 hour professional monitoring, supervision, and assistance in an environment designed to provide safety and security during acute psychiatric crisis. CONTRACTOR'S staff shall provide intensive interventions designed to relieve acute psychiatric symptomatology and restore patient's ability to function in a less restrictive setting. The services to be provided shall include: (a) crisis stabilization and assessment; (b) acute care psychiatric treatment, and (c) appropriate disposition in conjunction with CENTER'S Mobile Crisis Outreach Team (MCOT) staff. This acute setting will provide or cause to be provided, on a 24-hour basis, a full range of diagnostic and therapeutic services, with the capability for immediate implementation of emergency psychiatric and medical interventions. CONTRACTOR will ensure 24-hour per day physician coverage by a board certified/eligible psychiatrist, direct daily involvement of the attending psychiatrist in the direction and management of a multi-disciplinary treatment plan, and 24-hour per day skilled nursing care. The condition and response to treatment of the adult served will be continuously monitored and assessed. Both appropriate voluntary and involuntary admissions will be accepted. All primary clinical service providers will be fully qualified mental health professionals to include board certified/eligible psychiatrists, licensed social workers, licensed professional counselors, and licensed psychologists. CONTRACTOR will designate and identify to CENTER (a) a single board certified/eligible psychiatrist to serve as medical director for CENTER-contract beds and (b) a single point of contact for any administrative issues related to this Contract; this administrative contact, and any designated backup staff, will be accessible by telephone to CENTER staff 24 hours per day 7 days per week, and all contacts will be fully educated on the parties' obligations under this Contract. Services to be provided by CONTRACTOR will include, but not be limited to:

1. Hospital daily care;
2. Physical examination;
3. Nursing assessment;
4. Social work assessment, regarding disposition needs;
5. Group and Individual psychotherapy as prescribed;
6. Family and Legally Authorized Representative (LAR) involvement, if applicable;
7. Education services as indicated;
8. Psychopharmacological evaluation and management, with consideration for client's ability to pay in choice of medications; and
9. Discharge coordination, in collaboration with CENTER'S Adult Mental Health Outpatient Program and coordination with the receiving provider of care, to consider housing, access to medication, as well as treatment needs.

#### **B. ADMISSION, CONTINUITY OF CARE, AND DISCHARGE REQUIREMENTS**

1. CONTRACTOR shall provide the full array of services that comply with admission, continuity of care and discharge requirements as outlined below:

- a. Effective, responsive, individualized, and least restrictive treatment;
  - b. Treatment and care through the development and implementation of a Comprehensive Treatment Plan and corresponding intervention(s) including but not limited to:
    - i. A reasonable and appropriate discharge plan that is JOINTLY DEVELOPED by CENTER and CONTRACTOR;
    - ii. Communication that will facilitate the exchange of information needed to accomplish common Utilization Management activities; and
    - iii. As HHSC continues to utilize DSM IV, GAF scores must be included on admission and all discharge summaries must include the 5 axes and must be completed, signed, and forwarded to CENTER intake within 24 hours of discharge.
  - c. Promotion of recovery, independence, and self-sufficiency;
  - d. Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy rules;
  - e. Comprehensive client/patient rights consistent with regulatory and TJC requirements;
  - f. Interdisciplinary, goal-directed and evidence-based treatment;
  - g. Behavior management program;
  - h. Culturally competent treatment; and
  - i. Telemedicine (if currently provided), in accordance with applicable HHSC rules and regulations.
1. CONTRACTOR shall demonstrate efforts to reduce restraint and seclusion by adopting and implementing the following restraint/seclusion reduction tools:
    - a. Using assessment tools to identify risk factors for violence and seclusion and restraint history;
    - b. Using a trauma assessment;
    - c. Using tools to identify persons with risk factors for death and injury;
    - d. Using de-escalating or safety surveys; and
    - e. Making environmental changes to include comfort and sensory rooms and other meaningful clinical interventions that assist people in emotional self-management.
  3. CONTRACTOR must comply with the following standards regarding admission, continuity of care and discharge:
    - a. CONTRACTOR must not allow admissions without CENTER approval. CENTER will maintain an admission queue and will inform CONTRACTOR of the next patient up for admission. Admissions without express CENTER referral from the queue will not be eligible for payment;
    - b. When CONTRACTOR admits a patient, a physician must issue and sign a written order admitting the patient;
      - a. CONTRACTOR must conduct an intake process as soon as possible, but not later than 24 hours after the patient is admitted;
      - b. Upon admission of a patient to CONTRACTOR, CONTRACTOR must begin discharge planning for the patient with CENTER. CONTRACTOR will inform CENTER'S MCOT of anticipated discharges as soon as they are known;
      - c. Discharge planning must involve CONTRACTOR'S treatment team, the designated CENTER liaison staff or other CENTER-designated staff, the designated mental retardation authority (MRA) liaison staff if appropriate, the patient, the patient's legally authorized representative (LAR), if any, and any other individual authorized by the patient;
      - f. Discharge planning must include, at a minimum, the following activities:
        - i. A determination of the following:
          1. The amount of medication that will be provided upon discharge or transfer, and the

amount of medication the patient will need after discharge or transfer until the patient is evaluated by a physician. At a minimum, patients shall be discharged with a seven day supply of medication(s); and

2. The name of the individual or entity responsible for providing and paying for the medication needed after discharge or transfer until the patient is evaluated by a physician
  - ii. Development of a transportation plan

### **C. PATIENTS SERVED**

The Center is purchasing the inpatient beds at the stated occupied bed rate within Exhibit B. The Local Service Area for patients served under this Application is Bexar County.

Provider will serve Center-authorized and referred patients who may be voluntary or involuntary through the civil commitment process.

All admissions will be authorized and approved in advance by Center through a process which will be developed and outlined in the awarded Contract(s).

Provider will conduct medical screening evaluations and make medical condition determinations of Center-authorized patients. Acute and Chronic Medical Condition Criteria: The presence of any of the following represent an acute or chronic medical conditions that the Hospital does not have the capability to treat and so, in accordance with the Emergency Medical Treatment & Labor Act (EMTALA) and state law, the Hospital will provide evaluation and treatment within its capability to stabilize the person and will arrange for the person to be transferred to a hospital that has the capability to treat the condition:

Medical Emergency Indicators, including:

- Overdose;
- Chest Pain;
- Fluctuating Consciousness;
- Stab wound, bleeding or serious injury;
- Seizure activity;
- Complications from Diabetes;
- Injured in assault or fight;
- Victim of a sexual assault; or
- Resident of a nursing home or assisted living facility.

Acute Medical Conditions, including:

- Acute overdose resulting in any vital sign instability in the prior 24 hours;
- Acute drug intoxication (blood alcohol level over 0.1);
- Unconscious or fluctuating consciousness;
- Delirium, including substance induced syndrome;
- Uncontrolled seizure activity;
- Recent trauma that has not received medical evaluation, including fractures, lacerations, burns, head trauma, and bleeding;
- Recent assault or fight that has not received medical evaluation;
- Recent Sexual assault that has not received medical evaluation;
- Blood pressure greater than 160-110;
- Pulse less than 50, or any symptomatic bradycardia, in the prior 24 hours;
- Pulse greater than 120 in the prior 24 hours;
- Temperature above 101° Fahrenheit;

White blood count (WBC) greater than 15,000;  
Hemoglobin (HGB) less than 10;  
Hematocrit (HCT) less than 30;  
Any abnormal electrolytes;  
Creatinine4 phosphokinase (CPK) greater than 1500; or. CPK greater than 1000 with elevated temperature and muscular rigidity;  
Serum glucose below 70 or over 400 during prior 48 hours;  
Acute O2 saturation below 90%;  
Chest pain;  
Shortness of breath;  
Unstable arrhythmia;  
Pulmonary edema;  
Acute congestive heart failure;  
Acute respiratory distress syndrome;  
Acute asthma; Acute cardiovascular accident;  
Acute CNS trauma;  
Gastrointestinal (GI) bleeding during prior 48 hours;  
Requires indwelling tubing (for example, a nasogastric tube);  
Post-op instability, demonstrated as any instability in vital signs or laboratory values in the prior 48 hours; or  
Open wounds and/or wounds requiring sterile equipment to manage.

Chronic Medical Conditions, including individuals who:

Require specialized cancer care, including radiation or chemotherapy;  
Require medical care from a nursing home, prior to admission;  
Require care for decubiti – Stage 3-4;  
Require blood or blood product transfusion;  
Require continuous oxygen, oximetry, or support equipment (CPCPs, BiPAPs, O2 concentrators);  
Are being treated for active tuberculosis (TB);  
Require isolation for the purpose of infection control;  
Require on-going intravenous (IV);  
Have a subclavian line, arterial line, or require hyperalimentation or total parenteral nutrition

(TPN)

Require suctioning;  
Require peritoneal or hemodialysis treatments;  
Require complex care or sterile equipment for managing the care of wounds;  
Require tracheotomy care and have a chronic condition that causes non-ambulation to an extent to preclude the engagement in treatment programming;  
Are considered a high-risk pregnancy;  
Have a multiparous pregnancy; or  
Are pregnant and at 38-weeks' gestation or later.

A patient will not be eligible for admission to the Provider if the patient is adjudicated incompetent to stand trial pursuant to Texas Code of Criminal Procedure, Article 46B.073(d), Article 46B.080, or Article 46B.102, or if pending charges make the patient eligible for maximum security admission pursuant to Texas Code of Criminal Procedure, Article 46B.073(c) or Article 46B.104.

## **D. DATA COLLECTION**

CONTRACTOR shall timely comply with all data collection and reporting requirements outlined by CENTER, with data entry/submission of reporting elements within two business days of receipt/action and discharge summary data to be entered/submitted within 24 hours following discharge. Data elements to be regularly reported to CENTER shall include, but not be limited to the following:

1. Patient demographic information, including but not limited to, name, address, date of birth, and social security number;
2. Patient admission date and discharge date;
3. CENTER authorization number;
4. Maintain accreditation and certifications;
5. Report and evaluate findings from Joint Commission or other HHSC-approved accreditation Self-Assessment Tool (ongoing);
6. Establish a baseline of the rate of confirmed allegations of abuse and neglect and demonstrate efforts to reduce such occurrences (ongoing);
7. Report patient complaints and grievances;
8. Demonstrate efforts to reduce the restraints and seclusion rate with a goal of zero (ongoing); Utilize the Behavioral Restraint and Seclusion Monitoring Instrument;
9. Maintain 95% compliance for data integrity review (DIR) measures;
10. Calculate, trend and review rate of patient injuries, according to best hospital practices;
11. Continue to demonstrate efforts to reduce patient injuries caused by behavioral restraint and seclusion;
12. Report patient satisfaction using a nationally accepted program; and
13. Ad hoc reports, as required by CENTER

## **E. COMPLIANCE WITH APPLICABLE LAW**

1. CONTRACTOR shall comply with all applicable state and federal laws and regulations related to:
  - a. The provision of inpatient mental health services, including, but not limited to:
  - b. Emergency Medical Treatment and Labor Act of 1986;
  - c. Texas Health and Safety Code Chapters 241, 571, 575, 576, and 577; and
  - d. Title 25 Texas Administrative Code:
    - i. Chapter 133 (relating to Hospital Licensing)
    - ii. Chapter 134 (relating to Private Psychiatric Hospitals and Crisis Stabilization Units);
    - iii. Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services);
    - iv. Chapter 405, Subchapter E (relating to Electroconvulsive Therapy);
    - v. Chapter 411, Subchapter J (relating to Standards of Care and Treatment in Psychiatric Hospitals);
    - vi. Chapter 414, Subchapter I (relating to Consent to Treatment with Psychoactive Medication – Mental Health Services); and
    - vii. Chapter 415, Subchapter F (relating to Interventions in Mental Health Programs).
2. Medications and medication-related services will be provided to patients as specified in Title 25 Texas Administrative Code, Chapter 415 C (relating to Use and Maintenance of TDMHMR Drug Formulary).

## II. CONTRACTOR SERVICES STANDARDS

CONTRACTOR shall provide evidence of its compliance with the following services standards, prior to the commencement of and throughout the term of this Contract:

### A. Licensing and Accreditation

1. CONTRACTOR shall provide evidence that it maintains a license as a private psychiatric hospital in accordance with Chapter 577 of the Texas Health and Safety Code and with 25 Texas Administrative Code Chapter 134, concerning Private Psychiatric Hospitals and Crisis Stabilization Units, or a General or Special Hospital in accordance with Chapter 241 of the Texas health and Safety Code and with 25 Texas Administrative Code Chapter 133, concerning Hospital Licensing.
2. CONTRACTOR shall provide evidence that it maintains its accreditation with The Joint Commission (TJC) or other HHSC-approved accreditation as a hospital throughout the term of this Program Attachment.

B. CONTRACTOR is registered as an organization with the Secretary of State to do business in Texas;

C. Professionals to provide services hold current and valid Texas licenses and/or certifications;

D. Providers and staff to perform services meet minimum and mandatory credentialing requirements for the services to be provided;

E. CONTRACTOR is able to provide, directly or through interpretation, services in the language of the person receiving services and to hearing impaired patients;

F. CONTRACTOR engages and involves patients, their legally authorized representatives, and families in the policy and practice levels within CONTRACTOR'S organization;

G. CONTRACTOR has the ability and capacity to provide inpatient hospital services to individuals referred by CENTER for admission; and

H. CONTRACTOR has the ability to provide services in compliance with the Contract requirements.

I. If, at any time during the term of this Contract, CONTRACTOR is a consortium of providers, a single entity responsible for services must be identified and the financial agent must be an organization with a demonstrated ability to manage funds.

## **EXHIBIT B**

### **PAYMENT**

- A. It is agreed that CENTER shall pay CONTRACTOR for Services performed under this Contract at a fee of \$677.00 per day, per occupied adult psychiatric inpatient hospital bed.
- B. Funds paid under this Contract shall be payable only to CONTRACTOR and shall cover the cost for all medical care and treatment including the cost of psychiatric and physician services and all non-prescription and prescription medications (including discharge medications) incurred by or on behalf of patients admitted to CONTRACTOR. This includes all on-site medical care and treatment, as well as any outside medical care and treatment, emergency room and hospitalization costs, as well as any and all charges by specialists, consultants, and laboratories, incurred by or on behalf of patients admitted. No additional CENTER funds will be made available for this purpose.
- C. CONTRACTOR shall have an affirmative duty to coordinate the benefits of consumers referred to CONTRACTOR by CENTER under this Contract. Per Section 2.04 of this Contract, CONTRACTOR shall utilize any available third party funding before the funds provided by CENTER. Should CONTRACTOR receive third party payment for services paid for by CENTER under this Contract, CONTRACTOR shall provide CENTER with a credit for the amount on CONTRACTOR's next monthly invoice. CONTRACTOR shall clearly itemize any credited amounts on the monthly invoice, including the credit amount and related Consumer identification number. The amount of any credits outstanding at the time of, or following, the expiration or earlier termination of this Contract shall be paid to CENTER by CONTRACTOR within thirty days of CONTRACTOR'S receipt, by check mailed to CENTER'S Vice President of Compliance and Regulatory Services or designee.
- D. Payment will be made based upon a completed invoice submitted by CONTRACTOR to be sent to and approved by CENTER'S Vice President of Restoration Services or designee. Further, CONTRACTOR will not submit a claim, bill or invoice or collect any compensation from CENTER for any Non-Authorized Service. Such invoice shall be submitted to CENTER'S Vice President of Restoration Services or designee at 601 N. Frio Street, San Antonio, Texas, 78207, by the tenth (10th) calendar day of the month following the (1) month of Services or (2) after exhaustion of all other funding sources pursuant to Section 2.4 of this Contract. CENTER is not liable for invoices submitted outside of these timeframes and failure to meet deadlines will result in non-payment for services, even if CENTER authorized these services.



- E. CENTER will remit payment to CONTRACTOR within sixty (60) calendar days from the date an approved, undisputed, accurate, and complete claim with all required supporting documentation has been received by CENTER.
- F. CENTER will notify CONTRACTOR of any disputed invoice claim within thirty (30) calendar days of receipt of CONTRACTOR'S invoice. All claim decisions will be considered final unless CONTRACTOR requests an adjustment. All requests for claim adjustments must be in writing and must be received by CENTER within fifteen (15) days subsequent to the payment or denial of the original claim. The parties agree to work together collaboratively and in good faith to resolve invoice claim issues. If determination is made that the claim is to be paid, payment will be made with the next scheduled payment. If determination is made that the claim will not be paid, CONTRACTOR may appeal the decision to CENTER's Chief Operating Officer. Decisions of CENTER's Chief Operating Officer regarding claim adjustments are final
- G. If CENTER overpays CONTRACTOR for any reason, CONTRACTOR hereby authorizes CENTER to offset the amount of such overpayment against future payments to CONTRACTOR. If the overpayment is not discovered by CENTER until after the expiration of termination of this Contract, CONTRACTOR shall remit to CENTER the amount of the overpayment made to CONTRACTOR within thirty (30) calendar days' notice and demand for payment by CENTER. If CENTER underpays CONTRACTOR for any reason, CENTER will pay the difference between the amount paid and the amount payable pursuant to the Contract within thirty (30) calendar days of discovering such underpayment.

## EXHIBIT C

### BUSINESS ASSOCIATE AGREEMENT

Compliance with Health Insurance Portability and Accountability Act of 1996  
("HIPAA") (42 U.S.C. §§1320d-1320d-8)

This Business Associate Agreement ("Agreement") is entered into by and between Bexar County Board of Trustees for Mental Health Mental Retardation Services /dba/ The Center for Health Care Services ("Covered Entity", "CHCS") and {NAME} ("Business Associate").

WHEREAS, CHCS and BUSINESS ASSOCIATE have entered into a contract ("Base Contract") wherein BUSINESS ASSOCIATE shall provide certain adult inpatient psychiatric services to CENTER, effective {date} ("Base Contract Start Date"); and

WHEREAS, CHCS and BUSINESS ASSOCIATE may need to use, disclose and/or make available certain information pursuant to the terms of the Base Contract, some of which may constitute Protected Health Information ("PHI"); and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of laws(s) or regulations(s) regarding PHI, as set forth below;

NOW THEREFORE, based upon the mutual obligations agreed to by the Parties in the underlying Base Contract, the Parties hereby agree as follows:

**(a) Background.**

(1) All terms used in this Business Associate Agreement that are not otherwise defined in this Agreement have the same meaning as those terms in the Privacy Rule, 45 C.F.R. parts 160 and 164;

(2) Under the terms of this Agreement, CHCS may provide or make available to BUSINESS ASSOCIATE, or BUSINESS ASSOCIATE may create or receive on behalf of CHCS, certain Confidential Information that is and must be afforded special treatment and protection under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") (42 U.S.C. §§1320d-1320d-8) in conjunction with goods or services that are being provided to CHCS by BUSINESS ASSOCIATE;

(3) BUSINESS ASSOCIATE may have access to or receive from CHCS or create or receive on behalf of CHCS certain electronic protected health information that must be safeguarded in accordance with this Agreement and the security rules adopted by the U.S. Department of Health and Human Services (HHS) under HIPAA, 45 C.F.R. §§ 164.302-.318. BUSINESS ASSOCIATE is a Business Associate as that term is defined in the HIPAA security rules, 45 C.F.R. § 160.103.

(4) BUSINESS ASSOCIATE is a Business Associate of CHCS.

(5) The obligations of BUSINESS ASSOCIATE under this section are in addition to the duties of BUSINESS ASSOCIATE with respect to Confidential Information described elsewhere in this Agreement.

**(b) Uses and Disclosures.**

Except as otherwise limited by this Agreement, BUSINESS ASSOCIATE may:

(1) Use or disclose Protected Health Information to perform the Services and accomplish the purposes of this Agreement, provided that:

- (A) Such use or disclosure would not violate the Privacy Rule if the disclosure were made by CHCS; and
- (B) Such use or disclosure is limited to the minimum necessary to accomplish the purposes of the use or disclosure;

(2) Use Protected Health Information for the proper management and administration of BUSINESS ASSOCIATE or to carry out BUSINESS ASSOCIATE's legal responsibilities;

(3) Disclose Protected Health Information for the proper management and administration of BUSINESS ASSOCIATE or to carry out BUSINESS ASSOCIATE's legal responsibilities if:

(A) Disclosure is required by law; or

(B) BUSINESS ASSOCIATE obtains assurances from the person to whom the information is disclosed that the person will:

(i) Maintain the confidentiality of the Protected Health Information;

(ii) Use or further disclose the information only as required by law or for the purpose for which it was disclosed to the person; and

(iii) Notify BUSINESS ASSOCIATE of any breaches of confidentiality of which the person is aware; and

(4) Use Protected Health Information to provide data aggregation services to CHCS, as that term is defined at 45 C.F.R. §164.501 and permitted by 45 C.F.R. §164.504(e)(2)(i)(B).

**(c) BUSINESS ASSOCIATE's commitment and obligations.**

BUSINESS ASSOCIATE agrees that it will:

(1) Not use or disclose Protected Health Information provided by, made available by, or created or received on behalf of CHCS other than as permitted or required by this Agreement or as required by law;

(2) Establish and maintain appropriate safeguards to prevent any use or disclosure of Protected Health Information other than as provided for by this Agreement;

(3) Have procedures in place for mitigating, to the maximum extent practicable, any harmful effect of a use or disclosure of Protected Health Information that is contrary to this Agreement or the Privacy Rule;

(4) Immediately report to CHCS any use or disclosure of Protected Health Information not provided for or allowed by this Agreement of which BUSINESS ASSOCIATE becomes aware;

(5) Enter into a subcontract anytime BUSINESS ASSOCIATE proposes to provide or make available Protected Health Information to any sub-Business Associate or agent. Such subcontract or agreement must:

(A) Contain the same terms, conditions, and restrictions on the use and disclosure of Protected Health Information and restrictions on the security of information as contained in this Agreement; and

(B) Be approved as to the form of the terms, conditions, and restrictions by CHCS prior to entering into any such agreement;

(6) Make Protected Health Information in a designated records set available to CHCS or, as directed by CHCS, to the subject of the Protected Health Information, in compliance with the requirements of 45 C.F.R. §164.524.

(7) Make Protected Health Information in a designated records set available for amendment and will incorporate any amendments to this information that CHCS directs or agrees to pursuant to 45 C.F.R. §164.526.

(8) Document and make available to CHCS the Protected Health Information required to provide an accounting of disclosures, in accordance with 45 C.F.R. §164.528.

(9) Make internal practices, books, and records relating to the use or disclosure of Protected Health Information received from, or created or received by BUSINESS ASSOCIATE on behalf of CHCS, available to the Secretary of Health and Human Services or the Secretary's designee for purposes of determining compliance with the privacy regulations.

(10) Return, destroy, or continue to maintain appropriate safeguards for all Protected Health Information received from CHCS or created or received on behalf of CHCS once BUSINESS ASSOCIATE finishes providing goods or services under this Agreement:

(A) If BUSINESS ASSOCIATE destroys the information, it must certify to CHCS that the information has been destroyed;

(B) BUSINESS ASSOCIATE may not elect to destroy information that must be retained under federal or state law; and

(C) BUSINESS ASSOCIATE must maintain appropriate safeguards for the information as long as BUSINESS ASSOCIATE has such Protected Health Information;

(11) Develop and implement a system of sanctions for any employee, subBusiness Associate, or agent who violates this Agreement or the Privacy Rule.

(12) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of CHCS as required by 45 C.F.R. §§ 164.302-.318.

(13) Immediately report to CHCS any security incident of which it becomes aware.

(14) Make internal practices, books, and records relating to the security of information received from or created or received by BUSINESS ASSOCIATE on behalf of CHCS available to the Secretary of Health and Human Services or the Secretary's designee for purposes of determining compliance with the security rules.

(15) Develop and implement a system of sanctions for any employee, subBusiness Associate or agent who violates this Agreement or the security rules.

**(d) *Ownership of Protected Health Information.***

(1) The Protected Health Information shall be and remain the property of CHCS.

(2) BUSINESS ASSOCIATE agrees it acquires no title or rights to the information, including any de-identified information, as a result of this Agreement.

**(e) *Injunctive relief; survival of terms.***

(1) Notwithstanding any rights or remedies provided for in the contract, CHCS retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of Protected Health Information or a violation of the security rules by BUSINESS ASSOCIATE or any agent, subBusiness Associate, or third party that received information from BUSINESS ASSOCIATE.

(2) The duties and obligations imposed on BUSINESS ASSOCIATE under this section of this Agreement will survive the expiration or termination of the Agreement until all Protected Health Information provided by CHCS to BUSINESS ASSOCIATE, or created or received by BUSINESS ASSOCIATE on behalf of CHCS, is destroyed or returned to CHCS. This provision shall apply to PHI that is in possession of BUSINESS ASSOCIATE or its subcontractors or agents. BUSINESS ASSOCIATE shall not retain any copies of PHI. In the event that BUSINESS ASSOCIATE determines that destroying PHI is infeasible, BUSINESS ASSOCIATE shall provide to CHCS written notification of the condition that makes the return or destruction of PHI infeasible. Upon BUSINESS ASSOCIATE'S conveyance of such written notification, BUSINESS ASSOCIATE shall extend the protection of

this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BUSINESS ASSOCIATE maintains such PHI.

**(f) Definitions.**

(1) For purposes of this Business Associate Agreement: a “Business Associate” has the meaning given the term under 45 C.F.R. §160.103.

(2) For purposes of this Business Associate Agreement, “Protected Health Information” has the meaning given the term in 45 C.F.R. §164.501, limited to the information created or received by BUSINESS ASSOCIATE from or on behalf of CHCS.

**(g) Term and Termination.**

(1) The term of this Agreement shall commence on the Execution Date, as defined below, or on the Base Contract Start Date, as defined above, whichever is later. This Agreement shall terminate when all PHI encompassed under this Agreement is destroyed or returned to CHCS or, if it is infeasible to return or destroy PHI, protections are extended to such information in accordance with the provisions in Section (e)(2) herein.

(2) Termination for cause. Upon CHCS’S knowledge of a material breach by BUSINESS ASSOCIATE, CHCS shall either (a) provide an opportunity for BUSINESS ASSOCIATE to cure the breach, and if the BUSINESS ASSOCIATE does not cure the breach, then CHCS may immediately terminate this Agreement and the Base Contract; or (b) immediately terminate this Agreement and the Base Contract if BUSINESS ASSOCIATE has breached a material term of this Agreement and cure is not possible.

(3) Termination of the Base Contract. If the Base Contract is terminated by either or both parties for convenience, then this Agreement shall terminate on the date of the Base Contract’s termination, subject to the survival of any Sections, as stated herein.

**(h) General Terms**

(1) Except as otherwise specified in the Agreement, if any legal action or other proceeding is brought for the enforcement of the contract, or because of an alleged dispute, breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of the contract, each party will bear their own legal expenses and all other costs incurred in that action or proceeding.

(2) The contract consists of this Agreement and the Base Contract and constitutes the entire agreement between the parties. There are no understandings or agreements relating to this Agreement or the Base Contract that are not fully expressed in the contract and no change, waiver, or discharge of obligations arising under the contract will be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced. This Agreement shall supersede any prior agreement between the parties related to the subject matter contained herein, effective the Execution Date.

(3) Any violation by BUSINESS ASSOCIATE of a material term of this Agreement will be considered a breach of contract if BUSINESS ASSOCIATE knew of the violation and failed to immediately take reasonable steps to cure it.

(4) This Agreement supersedes any prior Business Associate Agreement executed between the Parties.

(5) Notice. Any required notification under this Agreement shall be directed to:

(a) Covered Entity: The Center for Health Care Services  
Attention: President/CEO  
6800 Park Ten Blvd, Suite 200-S  
San Antonio, Texas 78213

(b) Business Associate: {Agency/Company}  
{Name, Title}  
{Address}  
{City, State, Zip}

SIGNED by the last signatory below this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (“Execution Date”).

COVERED ENTITY: Bexar County Board of Trustees for Mental Health Mental Retardation Services /dba/ The Center for Health Care Services

By: \_\_\_\_\_  
Jelynn LeBlanc Burley, President and CEO

AND

BUSINESS ASSOCIATE: {NAME}

By: \_\_\_\_\_  
{Name, Title}