

***BID RESPONSE PACKET***  
***710-22-0007***

# PROPOSAL SIGNATURE PAGE

Type or Print the following information.

PROSPECTIVE CONTRACTOR'S INFORMATION					
Company:	Habilitation Center LLC d/b/a Millcreek of Arkansas				
Address:	1828 Industrial Dr				
City:	Fordyce	State:	AR	Zip Code:	71742
Business Designation:	<input checked="" type="checkbox"/> Individual <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Public Service Corp <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Nonprofit				
Minority and Women-Owned Designation*:	<input type="checkbox"/> Not Applicable <input type="checkbox"/> American Indian <input type="checkbox"/> Service Disabled Veteran <input type="checkbox"/> African American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Women-Owned <input type="checkbox"/> Asian American <input type="checkbox"/> Pacific Islander American				
AR Certification #: _____ * See Minority and Women-Owned Business Policy					
PROSPECTIVE CONTRACTOR CONTACT INFORMATION					
Provide contact information to be used for RFP solicitation related matters.					
Contact Person:	Brady Serafin	Title:	CEO		
Phone:	8703528203 ext 144	Alternate Phone:	6033206798		
Email:	brady.serafin@millcreekbehavioralhealth.com				
CONFIRMATION OF REDACTED COPY					
<input type="checkbox"/> YES, a redacted copy of submission documents is enclosed. <input type="checkbox"/> NO, a redacted copy of submission documents is <u>not</u> enclosed. I understand a full copy of non-redacted submission documents will be released if requested. <i>Note: If a redacted copy of the submission documents is not provided with Prospective Contractor's response packet, and neither box is checked, a copy of the non-redacted documents, with the exception of financial data (other than pricing), will be released in response to any request made under the Arkansas Freedom of Information Act (FOIA). See RFP Solicitation for additional information.</i>					
ILLEGAL IMMIGRANT CONFIRMATION					
By signing and submitting a response to this RFP Solicitation, Prospective Contractor agrees and certifies that they do not employ or contract with illegal immigrants and <b>shall not</b> employ or contract with illegal immigrants during the term of a contract awarded as a result of this RFP.					
ISRAEL BOYCOTT RESTRICTION CONFIRMATION					
By checking the box below, Prospective Contractor agrees and certifies that they do not boycott Israel and <b>shall not</b> boycott Israel during the term of a contract awarded as a result of this RFP.					
<input type="checkbox"/> Prospective Contractor does not and <b>shall not</b> boycott Israel.					

An official authorized to bind the Prospective Contractor to a resultant contract shall sign below.

The signature below signifies agreement that any exception that conflicts with a Requirement of this RFP Solicitation may cause the Prospective Contractor's proposal to be rejected.

Authorized Signature: \_\_\_\_\_

Use Ink Only.

Title: \_\_\_\_\_

Chief Executive Officer

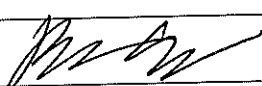
Printed/Typed Name: *Brady Seratin*

Date: *2/21/22*

## **SECTION 1 - 4 VENDOR AGREEMENT AND COMPLIANCE**

- Any requested exceptions to items in this section which are NON-mandatory **must** be declared below or as an attachment to this page. Vendor **must** clearly explain the requested exception, and should label the request to reference the specific solicitation item number to which the exception applies.
- Exceptions to Requirements **shall** cause the vendor's proposal to be disqualified.

By signature below, vendor agrees to and **shall** fully comply with all Requirements as shown in this section of the bid solicitation. **Use Ink Only**

<b>Vendor Name:</b>	Habilitation Center LLC d/b/a Millcreek of Arkansas	<b>Date:</b>	02/18/2022
<b>Authorized Signature:</b>		<b>Title:</b>	CEO
<b>Print/Type Name:</b>	Brady Serafin		

## MINIMUM QUALIFICATIONS

*Please select one of the following:*

☒ Currently providing CRT and/or SRP services. Contract Number: 4600048738

If the Respondent currently provides Acute, Subacute, or Sexual Rehabilitative services for Arkansas Department of Human Services, the Respondent may check the box above and provide contract number(s) in lieu of submitting each item detailed in 2.2 Minimum Qualifications A-G.

☐ Not currently providing CRT and/or SRP services. Submit the following information:

If the Respondent does not currently provide Acute, Subacute, or Sexual Rehabilitative services for Arkansas Department of Human Services, the Respondent shall:

- A. Contractors providing acute care **must** be licensed by the Arkansas Department of Health (ADH). For verification purposes, prospective contractor must submit copy of licensure.
- B. Contractors providing sub-acute care must be licensed by the Arkansas Department of Health (ADH) or by the Division of Child Care and Early Childhood Education (DCCECE). For verification purposes, prospective contractors must submit copy of licensure.
- C. Contractors providing sexual rehabilitation services **must** be licensed under Arkansas law for the independent practice of social work or counseling to provide all diagnosis, evaluation, and therapy. Personnel providing direct client service **shall** have a current Arkansas license and degree in one or more of the following: psychology, psychological examiner, licensed associate counselor under appropriate supervision, licensed professional counselor, licensed master social worker under appropriate supervision, licensed certified social worker, licensed psychologist, or psychiatrist. For verification purposes, prospective contractor **must** submit copy of licensure, with bid submission, for all personnel providing sexual rehabilitation services.
- D. All facilities must be certified by Joint Commission on Accreditation of Healthcare Organization (JCAHO), or Commission on Accreditation of Rehabilitation Facilities (CARF), now known as Rehabilitation Accreditation Commission, or the Council on Accreditation (COA). For verification purposes, Prospective Contractor **must** submit copy of certification.
- E. Contractors must be currently enrolled as a Medicaid Provider. For verification purposes, Prospective Contractor **must** submit current Medicaid Provider ID number: 135301725
- F. The Contractor **shall** be registered to do business in the State of Arkansas. For verification purposes, Contractor must submit official documentation of their active registration from the Arkansas Secretary of State's Office.
- G. The Contractor **shall** maintain a copy of the current Arkansas license/certification of staff who are required by state laws, rules, or regulations to be licensed. These licenses **shall** remain current throughout the duration of the contract.

Contract Number 4600048738

Attachment Number

Action Number

# CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM

Failure to complete all of the following information may result in a delay in obtaining a contract, lease, purchase agreement, or grant award with any Arkansas State Agency.

SUBCONTRACTOR: SUBCONTRACTOR NAME:

☐ Yes ☒ No Habitation Center LLC d/b/a Millcreek of Arkansas

IS THIS FOR:

Goods? ☐ Services? ☒ Both? ☐

TAXPAYER ID NAME: Habitation Center LLC d/b/a Millcreek of Arkansas

M.I.:

YOUR LAST NAME: FIRST NAME

ADDRESS: 1828 Industrial Dr

STATE: AR ZIP CODE: 71742

COUNTRY: US

city: Fordyce

AS A CONDITION OF OBTAINING, EXTENDING, AMENDING, OR RENEWING A CONTRACT, LEASE, PURCHASE AGREEMENT, OR GRANT AWARD WITH ANY ARKANSAS STATE AGENCY, THE FOLLOWING INFORMATION MUST BE DISCLOSED:

## FOR INDIVIDUALS \*

Indicate below if: you, your spouse or the brother, sister, parent, or child of you or your spouse is a current or former: member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee:

Position Held	Mark (✓)		Name of Position of Job Held [senator, representative, name of board/ commission, data entry, etc.]	For How Long?		What is the person(s) name and how are they related to you? [i.e., Jane Q. Public, spouse, John Q. Public, Jr., child, etc.]	Relation
	Current	Former		From MM/YY	To MM/YY		
General Assembly							
Constitutional Officer							
State Board or Commission Member							
State Employee							

☒ None of the above applies

## FOR AN ENTITY (BUSINESS) \*

Indicate below if any of the following persons, current or former, hold any position of control or hold any ownership interest of 10% or greater in the entity: member of the General Assembly, Constitutional Officer, State Board or Commission Member, State Employee, or the spouse, brother, sister, parent, or child of a member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee. Position of control means the power to direct the purchasing policies or influence the management of the entity.

Position Held	Mark (✓)		Name of Position of Job Held [senator, representative, name of board/ commission, data entry, etc.]	For How Long?		What is the person(s) name and what is his/her % of ownership interest and/or what is his/her position of control?	Ownership Interest (%)	Position of Control
	Current	Former		From MM/YY	To MM/YY			
General Assembly								
Constitutional Officer								
State Board or Commission Member								
State Employee								

☒ None of the above applies

Contract Number 4600048738

Attachment Number \_\_\_\_\_

Action Number \_\_\_\_\_

## Contract and Grant Disclosure and Certification Form

Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.

As an additional condition of obtaining, extending, amending, or renewing a contract with a state agency I agree as follows:

1. Prior to entering into any agreement with any subcontractor, prior or subsequent to the contract date, I will require the subcontractor to complete a CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM. Subcontractor shall mean any person or entity with whom I enter an agreement whereby I assign or otherwise delegate to the person or entity, for consideration, all, or any part, of the performance required of me under the terms of my contract with the state agency.

2. I will include the following language as a part of any agreement with a subcontractor:

*Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this subcontract. The party who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the contractor.*

3. No later than ten (10) days after entering into any agreement with a subcontractor, whether prior or subsequent to the contract date, I will mail a copy of the CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM completed by the subcontractor and a statement containing the dollar amount of the subcontract to the state agency.

I certify under penalty of perjury, to the best of my knowledge and belief, all of the above information is true and correct and that I agree to the subcontractor disclosure conditions stated herein.

Signature [Signature] Title Chief of Security Services Date 2/24/22

Vendor Contact Person Brady Serafin Title CEO Phone No. (870) 352-8203

Agency use only

Agency Number 0710 Name Department of Human Services

Agency Contact Person \_\_\_\_\_

Contact Phone No. \_\_\_\_\_

Contract or Grant No. \_\_\_\_\_

State of Arkansas  
DEPARTMENT OF HUMAN SERVICES  
700 South Main Street  
P.O. Box 1437 / Slot W345  
Little Rock, AR 72203

**ADDENDUM 1**

**TO:** All Addressed Vendors  
**FROM:** Office of Procurement  
**DATE:** February 14, 2022  
**SUBJECT:** 710-22-0007 Comprehensive Residential Treatment/Sexual Rehabilitative Program

The following change(s) to the above referenced IFB have been made as designated below:

- ☒ Change of specification(s)  
☒ Additional specification(s)  
☐ Change of bid opening date and time  
☐ Cancellation of bid  
☐ Other

**CHANGE OF SPECIFICATIONS**

- IFB, page 12, Section 2.4.5.F, delete and replace with the following:

Requirements in IFB Section 2.4.6 (F-W) apply to both acute and sub-acute care.

- IFB, page 14, Section 2.4.6.U, delete and replace with the following:

The Contractor shall provide for discharge of youth from the program. The Contractor shall produce a letter of recommendation for the mental health treatment team to review. Discharge summaries may be provided at the date and time of discharge to the DCFS family service worker.

- IFB, page 14, Section 2.4.6.W, delete and replace with the following:

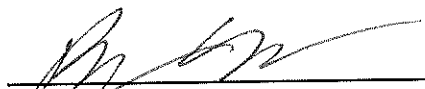
In rare circumstances, a client may need one-to-one treatment. Contractor shall submit a written request to DCFS for authorization prior to providing services along with a copy of physician orders. DCFS reserves the right to deny or approve requests for one-to-one treatment. If one-to-one treatment is provided, the Contractor shall not bill more than the hourly rate of non-licensed direct care staff for one-to-one treatment.

**ADDITIONAL SPECIFICATIONS**

- **ATTACHMENT J**, add Certification of Compliance to the list of attachments.

The specifications by virtue of this addendum become a permanent addition to the above referenced IFB. Failure to return this signed addendum may result in rejection of your proposal.

If you have any questions, please contact: Buyer's name, Buyer's email address and phone number.

  
Vendor Signature

2/21/22  
Date

Habilitation Center LLC d/b/a Millcreek of Arkansas  
Company



**SEXUAL REHABILITATIVE PROGRAM**  
**COMPREHENSIVE RESIDENTIAL TREATMENT SERVICES**  
**Certification of Compliance with Performance Indicators**

Contractor's Name: Habilitation Center LLC d/b/a Millcreek of Arkansas \_\_\_\_\_ Contract Number: 4600048738  
The undersigned Contractor hereby certifies that it is in compliance with the goals and performance indicators as specified within its current Fiscal Year contract to the best of its knowledge. The Contractor makes the following further specific certifications for the billing period 7/01/2022 thru 6/30/2023 :

<b>PROGRAM DELIVERABLE I:</b> To provide intensive, in-patient, psychiatric and medical Sexual Rehabilitative Program services to clients in the custody of the Department of Human Services (DHS) who have been assessed and determined to require intensive psychiatric services in a Sexual Rehabilitative Program. The program shall meet the requirements stated in the Minimum Licensing Standards for Child Welfare Agencies, section 600 incorporated herein by reference. Licensed personnel qualified under Arkansas law for the independent practice of social work or counseling shall provide all therapy. Competent and qualified person(s) providing direct client service shall have a current Arkansas license and degree in one or more of the following: psychology, psychological examiner, licensed associate counselor under appropriate supervision, licensed professional counselor, licensed master social worker under appropriate supervision, licensed certified social worker, licensed psychologist or psychiatrist.			
1. The Contractor shall provide services solely to clients who have been prior authorized by APS Health Care Midwest through the Medicaid Certificate of Need (CON) process established by Medicaid (Division of Medical Services) or written approval from the Manager of the DCFS Specialized Placement Unit (SPU).	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	
2. The Contractor shall develop and implement an individualized plan of care based on the recommendations of the psychosexual report.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	
3. The Contractor shall perform a psychological and medical need assessment for each DHS/DCFS client admitted to the program.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	
4. The Contractor shall maintain progress reports for each client admitted for placement.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	
5. The Contractor shall review and update each client's individualized case plan as necessary, but at least once every ninety- (90) days.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	
6. A DHS/DCFS client shall not be discharged without DHS/DCFS approval. The Contractor shall submit a written 30 day notice of discharge to the placing county and the Specialized Placement Unit (SPU).	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	
7. The Contractor shall be licensed by the Joint Commission on Accreditation of Hospital Organizations (JCAHO) or the Commission on Accreditation of Rehabilitation Facilities (CARF) now known as Rehabilitation Accreditation Commission. Contractor shall also comply with the standard certification process developed by APS Health Care Midwest, and with any subsequent standards for sex offender treatment programs promulgated by the Department of Human Services.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	
8. The Contract shall maintain monthly contact by phone, fax, letter, or in person with the referring DCFS Family Service Worker and the client's family. The Contractor shall initiate, sustain, and document involvement with the client's family and assigned DCFS Family Service Worker to discuss the client's progress, continuing needs and any problem areas, and shall document what was discussed at the conference and any recommendations, conclusions, or decisions made. This is not required when the court has relieved the youth's parents/guardian of any responsibility or authority for the youth	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	
9. The Contractor must work with DCFS Family Service Worker and the client's family to develop and implement a written visitation plan.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	
10. The Contractor shall assure that the client's service needs including routine medical needs are met on a daily basis covering immediate and preventative care (appointment and transportation). a) The Contractor shall ensure that any needed psychotropic medications are administered and monitored by appropriately licensed personnel. b) The Contractor shall maintain records which document that the needed medical treatment or other care was provided and shall include all presenting problems, medical symptoms, physician identification, diagnosis, prognosis, treatment protocols, listing of all funding sources, and proof of compliance with physician orders. c) The Contractor shall cooperate with DCFS to, seek, facilitate and document that Medicaid funds for any and all eligible services were sought for all DCFS clients that were Medicaid eligible.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	

<p>11. Contractor shall adhere to DCFS Family Service Policy and Procedure Manual, Procedure VI-C4, incorporated herein by reference in maintaining the Medical Passport (medical and psychological history) for each DCFS foster child in placement. NOTE: It is the responsibility of the DCFS worker assigned to the child to originate the passport and provide to the Contractor at time of placement. Contractor should document receipt of passport. If not readily available, documentation within 10 days that it has been received, or requested from caseworker.</p>	<p>YES <input checked="" type="checkbox"/></p>	<p>NO <input type="checkbox"/></p>
<p>12. Contractor shall be responsible for ensuring that the youth's educational needs are met by developing an individual education plan for each client. The Contractor shall initiate, supervise and document an individual education plan and shall ensure that educational services are provided in compliance with Arkansas and federal law including Department of Education (DOE) rules and regulations.</p>	<p>YES <input checked="" type="checkbox"/></p>	<p>NO <input type="checkbox"/></p>
<p>13. The Contractor will provide a secure environment that protects the public, staff and residents. The Contractor shall maintain sufficient staff as stated in the <u>Minimum Licensing Standards for Child Welfare Agencies</u>, section 620. The Contractor shall provide 24-hour awake supervision (staff is not asleep during the time he/she is responsible for supervision of clients) of DCFS clients referred to the facility.</p>	<p>YES <input checked="" type="checkbox"/></p>	<p>NO <input type="checkbox"/></p>
<p>14. The Contractor shall adhere to the Department of Human Services Incident Reporting Policy No. 1090 incorporated herein by reference. In the event of a runaway, the Contractor shall strictly follow DHS Incident Reporting Policy No. 1090 in one hundred percent (100%) of the cases. The Contractor shall notify law enforcement in the youth's home county or local county where the youth is believed to be and the youth's parents or guardians. For all other incidents, the Contractor shall complete Incident Report and fax (501-682-8991) to DCFS within twenty-four (24) hours of the incident and follow-up with hard copy. Any incident involving death, life-threatening injury, runaway, or an incident which may be reported in the media, shall be immediately, within ten (10) minutes, reported to DCFS by phone during regular business hours, Monday through Friday and after hours and holidays to DCFS identified 24 hour phone line (1-800-482-5964) with a written report submitted by fax on the same day and followed by a hard copy.</p>	<p>YES <input checked="" type="checkbox"/></p>	<p>NO <input type="checkbox"/></p>
<p>15. The Contractor and its agents shall pursue all legal remedies, including filing criminal charges in a court of competent jurisdiction, against a client who has committed any delinquent act unless the Contractor or its agents can demonstrate that such action would be therapeutically counter-indicated.</p>	<p>YES <input checked="" type="checkbox"/></p>	<p>NO <input type="checkbox"/></p>
<p>16. The Contractor shall notify the Child Abuse and Neglect Hotline (1-800-482-5964) of one hundred percent (100%) of the cases of suspected abuse or neglect, as required by state law and DHS policy. The Contractor shall notify DCFS by the next business day of all reports of suspected abuse or neglect involving youth referred by or in the custody of DHS.</p>	<p>YES <input checked="" type="checkbox"/></p>	<p>NO <input type="checkbox"/></p>
<p>17. Treatment will be provided to enable the child to successfully return to his home, school, and community or another appropriate placement.</p> <ol style="list-style-type: none"> <li>1. The Contractor shall notify and provide a written discharge summary report to all specified parties of client's discharge date in one hundred percent (100%) of the cases. Discharge of a child from the program shall be planned. The discharge summary shall be submitted to the placing DCFS county office 30 days prior to the discharge date and at a minimum contain:             <ol style="list-style-type: none"> <li>a. Identifying data</li> <li>b. Reason for admission and diagnosis</li> <li>c. Family and Social History</li> <li>d. Psychiatric, behavioral, medical, emotional and education history</li> <li>e. Placement history</li> <li>f. Progress/accomplishment of sexual offender treatment goals</li> <li>g. Risk level for re-offending</li> <li>h. Aftercare plans:                 <ol style="list-style-type: none"> <li>1. mental health, educational, medical, and social referrals and follow-up</li> <li>2. discharge medications</li> <li>3. educational recommendations</li> <li>4. specific placement recommendation</li> </ol> </li> </ol> </li> </ol> <p>Signed and dated by therapist or program director</p> <p>The only exception to the planned discharge in Program Deliverable 7 is an emergency discharge. An appropriate placement must be available to which the client can be moved. If an appropriate placement is not available, the program must hold the child until placement is available. The following written documentation shall be provided:</p> <p style="padding-left: 40px;">Specific behavior supporting the conclusion that the child is a danger to himself or others;</p> <p style="padding-left: 40px;">Internal options that were explored;</p> <p>Waiver request made to the Specialized Placement Unit (SPU). If SPU staff is not available, the Assistant Director, Community Services, is to be contacted at 682-8541 (if after hours, holiday or weekend, call should be made as soon as possible on the next working day).</p>	<p>YES <input checked="" type="checkbox"/></p>	<p>NO <input type="checkbox"/></p>

18. The Contractor shall furnish a copy of all reports required within the time frames specified by DCFS				
<b>1. Annual Reports</b> A. A report detailing an independent fiscal audit, certified by a Certified Public Accountant in accordance with generally accepted accounting principles, of the program shall be submitted to the Fiscal Audit Section of the Office of Chief Counsel, Department of Human Services, at the end of each contract period. B. A written summary that includes measurable results of the performance indicators shall be provided to the Division no later than thirty (30) days prior to the end of the contract.			YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
<b>2. Monthly Reports</b> A. The Contractor shall, by the 10 <sup>th</sup> working day of the month, for the preceding month, furnish to the DCFS Specialized Placement Unit a monthly report containing the following: 1. List of youth referred for placement into the services purchased by DCFS and/or Medicaid, by source of referral noting clients accepted for placement and those not accepted with the reason why. 2. Name of youth discharged from the program, including the dates of admission and discharge. 3. For youth discharged from the program: a. Date that DCFS received notice of discharge and copy of discharge summary b. Placement that the client was discharged to (e.g. home, another residential treatment facility, or DCFS facility). B. The Contractor shall submit monthly certificate of compliance with Performance Indicators certifying that: 1. Case files have been reviewed to determine that all clients served have written authorization from DCFS and that the billings with certifications were submitted within the specified timelines. 2. Tests meet generally accepted medical and psychiatric standards as stated in American Psychological Association Standards incorporated herein by reference. 3. Individual education plans have been developed and treatment services and medical records have been maintained. 4. Due diligence has been exercised in qualifying DCFS clients for Medicaid including Certificates of Needs (Con's). 5. Incident reporting is in compliance with DHS Policy No. 1090. 6. Compliance with procedure for discharge of all youth referred by or in DCFS custody.			YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
<b>19. BILLING/REIMBURSEMENT:</b> Monthly billing will be submitted to SPU by the 10 <sup>th</sup> day of the following month. Attached to the billing will be a monthly summary of clients served by each program and certification of compliance. The monthly summary will identify the client by name, social security number, and Medicaid number. The billing will clearly identify the number of units for each client served by the specific program (e.g. residential treatment). DCFS will not be responsible for billing received outside this timeframe, but will consider each case on an individual basis. Invoices should be developed on-line through the PROVIDER INVOICE ENTRY at <a href="https://DHS.arkansas.gov/wa_PIE/Login.aspx">https://DHS.arkansas.gov/wa_PIE/Login.aspx</a> . Only signed original invoices will be accepted.			YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

The Contractor certifies by the signature of its authorized agent that the foregoing statements are true. For any statements for which the response was "NO," please attach a detailed explanation as to why the deviation occurred.

Signature of Contractor's Authorized Agent

Date:

2/21/22

Agreement  
 Action -----  
 Attachment

## **BUSINESS ASSOCIATE AGREEMENT**

Arkansas Department of Human Services, Division of Children and Family Services

☒ ("Covered Entity")

and Habilitation Center LLC d/b/a Millcreek of Arkansas

("Business Associate") enter into this Business Associate Agreement ("BAA") as of ("Effective Date").

Covered Entity and Business Associate agree that under entered into by Covered Entity and Business Associate (the "Agreement"), Business Associate provides services for or on behalf of Covered Entity that may involve access to PHI (as defined below) and that, as such, the parties agree as follows:

### **I. DEFINITIONS**

Unless otherwise specified in this BAA, all capitalized terms used in this BAA not otherwise defined have the meanings ascribed by HIPAA and ARRA, as each may be amended from time to time.

- A. "ARRA" means the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, Pub. Law No. 111-5 and its implementing regulations.
- B. "Breach" means the actual or reasonably suspected acquisition, access, Use or Disclosure of PHI in a manner not permitted by the Privacy Rule that compromises the security or privacy of the PHI.
- C. "Breach Notice Rule" means the federal breach notification regulations issued pursuant to ARRA, as amended from time to time, 45 C.F.R. Parts 160 and 164.
- D. "Compliance Date" means, in each case, the date by which compliance is required under the referenced provision of ARRA's or HIPAA's implementing regulations, as applicable.
- E. "Discovery" means the first day on which Business Associate, or any workforce member, agent, or Subcontractor of Business Associate, knows, or, by exercising reasonable diligence would have known, of a Breach.
- F. "Encrypt" means to use an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key, which process conforms to NIST Special Publications 800-111, 800-52, 800-77, or 800-113, as appropriate, or that is otherwise validated against the Federal Information Processing Standards (FIPS) 140-2.
- G. "ePHI" means PHI as defined below, which is transmitted or maintained in electronic media.
- H. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations.
- I. "PHI" means Protected Health Information, as defined in 45 C.F.R. § 160.103, limited to the Protected Health Information received from, or received, created, or accessed on behalf of, Covered Entity.
- J. "Privacy Rule" means the federal privacy regulations issued pursuant to HIPAA, as amended from time to time, 45 C.F.R. Parts 160 and 164.
- K. "Security Incident" means the successful unauthorized access, Use, Disclosure, modification or destruction of ePHI or interference with system operations in an information system. Unsuccessful attempts to breach security, including pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as such incidents do not result in unauthorized access, use or disclosure of PHI, shall not be deemed Security Incidents. However, more than 20 unsuccessful attempts or other patterns of successive attempts, that are not individual deemed Security Incidents in themselves shall be considered Security Incidents due to the number or pattern of such events.

Agreement  
 Action -----  
 Attachment

- L. **"Security Rule"** means the federal security regulations issued pursuant to HIPAA, as amended from time to time, 45 C.F.R. Parts 160 and 164.
- M. **"Subcontractor"** means Business Associate's subcontractors and agents that create, receive, maintain or transmit PHI for the purpose of performing any of Business Associate's obligations under the Agreement.

## **II. RESPONSIBILITIES OF BUSINESS ASSOCIATE.**

- A. Business Associate shall provide relevant training on HIPAA and the requirements of this agreement to all persons accessing PHI or ePHI. The training materials and records shall be provided to the covered entity upon request.
- B. Business Associate shall implement and use appropriate Technical, Physical and Administrative Safeguards to reasonably and appropriately protect the Confidentiality, Integrity and Availability of PHI and to prevent Use or Disclosure of PHI, other than as permitted by this BAA.
- C. Business Associate shall, within the earlier of the Compliance Date or 90-days from the Effective Date, comply with all applicable provisions of the Security Rule. The Business Associate shall conduct a risk assessment to evaluate compliance with the Security Rule and shall, at the request of the Covered Entity, provide a written attestation acknowledging completion and communicating the results of the risk assessment.
- D. Business Associate shall Encrypt all transmissions of ePHI and all portable media or storage devices on which ePHI may be stored, including laptops, back-up media, CDs, or USB drives.
- E. Within 30-days after receiving a written request from Covered Entity, make available information necessary for Covered Entity to make an accounting of disclosures of PHI about an Individual, as provided in 45 C.F.R. § 164.528; and in accordance with 42 U.S.C. § 17935(c) and its implementing regulations as of the Compliance Date, make that accounting directly to the Individual if directed to do so by Covered Entity.
- F. At the request of Covered Entity and in the time, manner, and form designated by Covered Entity, not to exceed 15-days, provide access to PHI in a Designated Record Set to Covered Entity or, if directed by Covered Entity, to an Individual or to a recipient designated by the Individual, in accordance with the requirements of 45 C.F.R. § 164.524. Business Associate shall not charge Covered Entity or any Individual any fee associated with the production of PHI in accordance with this section that exceeds fees described at 45 C.F.R. § 164.524.
- G. Make available PHI in a Designated Record Set, no more than 30-days following receipt of a written request by Covered Entity, PHI for amendment and incorporate any amendments to the PHI as directed by Covered Entity, all in accordance with 45 C.F.R. § 164.526.
- H. Business Associate shall notify Covered Entity, in writing, no more than 3-days following Business Associate's receipt directly from an Individual of any request for an accounting of disclosures or access to or amendment of PHI as contemplated in Sections II (D) (E) or (F), above.
- I. Business Associate shall require each Subcontractor to agree, in writing, to the same restrictions and conditions that apply to Business Associate. Furthermore, to the extent that Business Associate provides ePHI to Subcontractor, Business Associate shall require Subcontractor to comply with all applicable provisions of the Security Rule upon the earlier of the Compliance Date or 90-days from the Effective Date. If Subcontractor is not subject to the jurisdiction or laws of the United States, or if any use or disclosure of PHI in performing the obligations under this BAA or the Agreement will be outside of the jurisdiction of the United States, Business Associate must require Subcontractor to agree by written contract with Business Associate to be subject to the jurisdiction of the Secretary, the laws, and the courts of the United States, and waive any available jurisdictional defenses that pertain to the parties' obligations under this BAA, HIPAA, or ARRA.

- J. Business Associate shall not Use or Disclose PHI except as necessary to perform its obligations under the Agreement or as otherwise required by this BAA, provided that such Use or Disclosure is permitted by applicable law and complies with each applicable requirement of 45 C.F.R. § 164.504(e).
1. In compliance with 45 C.F.R. § 164.502(b)(1), as of its Compliance Date or no more than 90-days following the Effective Date, whichever is earlier, Business Associate shall request, Use, and Disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, Use, or Disclosure.
  2. Business Associate shall not use PHI to make or cause to be made any communication that would constitute Marketing.
- K. Without unreasonable delay, and in any event, no more than 24-hours after Discovery, Business Associate shall notify Covered Entity of any Breach, Use or Disclosure of PHI not permitted under this BAA, or any Security Incident. Business Associate shall deliver the initial notification of such Breach, in writing, which must include a reasonably detailed description of the Breach and the steps Business Associate is taking and would propose to mitigate or terminate the Breach. Furthermore, Business Associate shall supplement the initial notification, no more than 5 calendar-days following Discovery, with information including the identification of each individual whose PHI was or is believed to have been involved; a reasonably detailed description of the types of PHI involved, and written updates every 5 calendar-days until the event has been concluded; all other information reasonably requested by Covered Entity, including all information necessary to enable Covered Entity to perform and document a risk assessment in accordance with 45 C.F.R. Part 164 subpart D; and all other information necessary for Covered Entity to provide notice to individuals, the U.S. Department of Health & Human Services ("HHS"), or the media, if required. Despite anything to the contrary in the preceding provisions, in Covered Entity's sole and absolute discretion and in accordance with its directions, Business Associate shall conduct, or pay the costs of conducting, an investigation of any Breach and shall provide or pay the costs of providing any notices required by the Breach Notice Rule or other applicable law.
- L. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate that is not permitted by this BAA.
- M. Business Associate shall make available to HHS its internal practices, books, and records, relating to the Use and Disclosure of PHI pursuant to the Agreement for purposes of determining Business Associate's and Covered Entity's compliance with the Privacy Rule.
- N. Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI.
- O. To the extent Business Associate is to carry out one or more of Covered Entity's obligations under the Privacy Rule, the Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations.
- P. Business Associate shall provide contact information for one primary person and one secondary person in Appendix A. Any changes in the contact information shall be forwarded to the Covered Entity.
- Q. The Business Associate shall respond in writing within 10 business days to the Covered Entity's request(s) to attest to the Business Associate's compliance with the Privacy Rule, the Security Rule, and the Responsibilities of the Business Associate as specified in this BAA. The Business Associate shall make available to the Covered Entity its internal practices, books, and records, relating to the Use and Disclosure of PHI as necessary to substantiate the attestation of compliance.

### **III. RESPONSIBILITIES OF COVERED ENTITY**

Covered Entity shall notify Business Associate, in writing, of an Individual's request to restrict the Use or Disclosure of such Individual's PHI, any limitations in Covered Entity's Privacy Notice relevant to Business Associate's performance of its obligations under this BAA or the Agreement, or any revocation by an Individual of authorization to Use or Disclose PHI.

#### **IV. TERM, TERMINATION AND DAMAGES**

- A. This BAA is effective as of the Effective Date and terminates when Business Associate and its Subcontractors no longer have access to PHI, and when all of the PHI in Business Associate's possession, inclusive of PHI in the possession of Business Associate's Subcontractors, has been returned or destroyed, unless earlier terminated in accordance with Sections IV(B) through (C) of this BAA.
- B. Upon Covered Entity's determination of a breach of a material term of this BAA by Business Associate, Covered Entity may terminate this BAA. As of the Compliance Date of 45 C.F.R. § 164.504(e)(1)(iii), if either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of this BAA, the non-breaching party will provide notice thereof to the other party. Such notice must clearly specify the nature of the breach or violation. Each party must take reasonable steps to cure the breach or end the violation. If after 30-days or such longer time specified in writing by the non-breaching party, the non-breaching party reasonably determines that such steps are unsuccessful in curing the breach or ending the violation, the non-breaching party may terminate this BAA and the Agreement, if feasible. In the event that termination is not feasible, the non-breaching party shall report the problem to HHS.
- C. Except as provided below, Business Associate shall return or destroy all PHI, including all PHI in possession of its Subcontractors, immediately following the termination or expiration of this BAA. However, in the event that Business Associate is legally obligated to retain such PHI, Business Associate may do so provided that:
  - 1. Business Associate notifies Covered Entity of such legal obligation, in writing, immediately upon Business Associate's notice of such legal obligation, which such writing must describe in detail the legal obligation;
  - 2. Business Associate extends all protections, limitations, and restrictions contained in this BAA to Business Associate's Use or Disclosures of any PHI retained after termination or expiration of this BAA;
  - 3. Business Associate limits any further Use or Disclosures solely to satisfying such legal obligation for which it has provided Covered Entity with written notice in accordance with Section IV(C)(1), above.
  - 4. Business Associate returns or destroys all PHI when such legal obligation has been fulfilled or has concluded.
- D. In addition to any damages recoverable under this BAA, the parties acknowledge that certain breaches or violations of this BAA may result in litigation or investigations pursued by federal or state governmental authorities of the United States resulting in civil liability or criminal penalties. Each party shall cooperate in good faith in all respects with the other party in connection with any request by a federal or state governmental authority for additional information and documents or any governmental investigation, complaint, action, or other inquiry.

#### **V. INDEMNIFICATION**

Business Associate shall indemnify Covered Entity, its owners, employees and representatives in the event Business Associate's performance or failure to perform under this BAA has given rise to liabilities, costs, damages, and losses (including attorneys' fees) reasonably and properly incurred by Covered Entity in connection with any actual, threatened, or pending, civil, criminal, or administrative cause of action, claim, inquiry, investigation, lawsuit, or other proceeding (collectively a "Claim"). Upon demand by Covered Entity, Business Associate shall defend any Claim brought or threatened against Covered Entity, at Business Associate's expense, by counsel acceptable to Covered Entity. Business Associate shall not authorize or enter into any settlement without Covered Entity's written consent.


Agreement  
 Action -----  
 Attachment

## VI. GENERAL TERMS

- A. This BAA amends and is made a part of the Agreement. Any changes or modification to this BAA must be in writing and signed by both parties.
- B. To the extent not clear, the terms of this BAA are to be construed to allow for compliance by the parties with HIPAA or ARRA. If any provision of the BAA is in conflict with any provision of the Agreement, the conflicting provision of this BAA prevails to the extent necessary for the parties to comply with HIPAA and ARRA.
- C. Nothing in this BAA confers upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities, whatsoever.
- D. Sections II(G)(H)(J)(M) and Sections IV, V, VI(E)(F) survive the termination for any reason or expiration of this BAA.
- E. In the event Business Associate receives a notification from or on behalf of HHS regarding a compliance review, an audit, or an investigation or inquiry of any kind pertaining to the services provided under the Agreement or Covered Entity, it will notify Covered Entity no more than 3-days following its receipt of that notice.
- F. The law of the State of Arkansas without regard to its internal law on the conflict of laws, controls this BAA. The Business Associate consents and submits to the jurisdiction of the federal and/or state courts of Arkansas, and hereby waives any defense based upon venue, inconvenience of forum, or lack of personal jurisdiction in any action or suit brought in connection with or relating to this BAA or related matters. The Business Associate will bring any action or suit concerning this Agreement or related matters in federal or state court or the Arkansas Claims Commission with appropriate subject matter jurisdiction in Little Rock, Arkansas. **The Business Associate acknowledges that it has read and understands this clause and agrees willingly to these terms.**
- G. The parties may execute this BAA in a number of counterparts and each counterpart signature, when taken with the other counterpart signatures, is treated as if executed upon one original of this BAA. A facsimile or pdf signature, or a scanned image of an original signature, of any party to this BAA is binding upon that party as if it were an original.

Signed:

BUSINESS ASSOCIATE: Habilitation Center LLC d/b/a Millcreek of Arkansas

Signed: 

Title: CEO

Date: 02/22/20

COVERED ENTITY

Division of Children and Family Services



Signed:

Title:

Date:



**Appendix A: Business Associate Contact Information**

**Business Associate Primary Contact:**

Name: Brady Serafin  
Title: CEO  
Address: 1828 Industrial Dr  
City: Fordyce  
State: AR  
Phone: 870-352-8203 ext 144  
Fax: 870-352-5277  
Email: brady.serafin@millcreekbehavioralhealth.com

**Business Associate Secondary Contact:**

Name: Ben Beasley  
Title: CFO  
Address: 1828 Industrial Dr  
City: Fordyce  
State: AR  
Phone: 870-352-8203 ext 156  
Fax: 8703525277  
Email: ben.beasley@millcreekbehavioralhealth.com

## ATTACHMENT D

Except upon the approval of DHS, the terms and conditions set out in this section are non-negotiable items and will be transferred to the contract as written. DHS has determined that any attempt by any vendor to reserve the right to alter or amend the terms and conditions via negotiation, without the approval of DHS, is an exception to the terms and conditions that will result in rejection of the proposal. A statement accepting and agreeing to the terms and conditions set out in this section, or to alternate terms and conditions upon approval of DHS, is required to be submitted with the respondent's proposal.

### PROFESSIONAL SERVICES CONTRACT GENERAL TERMS AND CONDITIONS FOR NON-STATE AGENCY

In consideration of the premises and the mutual agreements hereinafter set forth, the Contractor and the Department of Human Services ("the Department") agree as follows:

#### Legal Considerations

The contract shall be construed according to the laws of the State of Arkansas, and the rights and remedies of the parties hereunder shall be determined in accordance with Arkansas law. Nothing in this contract may be construed as a waiver of the Department's sovereign immunity.

In no event shall the initial term of this contract extend beyond the end of the current biennial period unless the General Assembly, prior to the expiration of the biennial period, makes an appropriation for such purpose.

#### Financial Terms of the Contract

All services rendered under this contract must be billed as set out herein. No services may be billed to a Medicaid Provider or to any other contract. Payments will be made after services are provided based on the following financial terms:

Funding Source	Reimbursement Method *	Payment Limitations **	Match Requirements***	
			Maximum Amount of Match Required OR Percentage of Allowable Billing Required	Type(s) of Match (Select from listing below)

\*Reimbursement Method: (Select from the following) Actual Cost Reimbursement; Final Negotiated Rate; Fixed Rate; Scheduled Reimbursement \*\*Payment Limitations: (Select from the following) Quarterly Cumulative; Monthly Cumulative; None \*\*\*Matching Requirements: The Contractor certifies the funds, property, goods, or services listed in this section will be used to meet the match requirements of this agreement. If there are no matching requirements for a funding source, enter "None" in the corresponding box above.

Type(s) of Match: The matching requirement may be satisfied by any one or a combination of the following methods unless specific funding source restrictions apply:

Cash Match: Cash will be obtained by the Contractor and will be applied against allowable costs

covered by this agreement.

**Donation of Property:** Title to or the use of property or equipment has been donated by a public agency for the program(s) covered by this agreement. If title to property is donated, match value is the fair market value of the property. If the use of the property or equipment is donated, match value is the fair rental value as determined by applicable Department policy will be used as matching of the payments.

**Third Party In-Kind Contributions.** Property, goods, or services have been donated by a non-federal agency for the programs(s) covered by this agreement without charge to the contractor. The Code of Federal Regulations, Title 45, Part 74, Subpart G shall be used to establish the basis of valuation.

**Funds Transfer:** Match funds will be submitted by a third party to the Department of Human Services by check or money order under the terms of this agreement. Matching funds are to be received by the Department in an amount sufficient to match billing before the contractor will be reimbursed for services.

The Contractor certifies that any funds to be donated under this agreement which are derived or come directly or indirectly from Federal or State funds, or any other contractor under contract to the Department, have been specifically listed as a source above.

The Contractor certifies that the matching arrangements comply with requirements established in the Code of Federal Regulations, Title 45, Part 74, Subpart G (Cost Sharing or Matching) and all applicable Department policy.

#### **Terms of Payment/Billing**

The Contractor agrees to submit all billing invoices within sixty days of the expiration of the contract. Any billings for services rendered during a particular state fiscal year which are not submitted within ninety days of the end of the fiscal year will not be paid.

#### **Termination of Contract**

The Department may cancel this contract unilaterally at any time, for any reason including convenience, unavailability of federal funds, state funds or both by giving the other party thirty (30) calendar days written notice, and delivering notice of cancellation either in person or by certified mail, return receipt requested, restricted delivery. Availability of funds will be determined at the sole discretion of the Department.

Payments for completed services or deliverables satisfactorily delivered to and approved by the Department shall be at the contract price. Payment for partially completed services or deliverables satisfactorily delivered to and not yet approved by the Department shall be at a price mutually agreed upon by the Contractor and the Department. In addition to any other law, rule or provision which may authorize complete or partial contract termination, the Department may immediately terminate this contract in whole or in part when the Department determines that the Contractor or subcontractor has failed to satisfactorily perform its contractual duties and responsibilities.

#### **Procedure on Expiration or Termination**

Upon delivery by certified mail to the Contractor of a Notice of Termination specifying the nature of the termination and the date upon which such termination becomes effective, the Contractor shall:

- ☐ Stop work under the contract on the date and to the extent specified in the Notice of Termination,
- ☐ Place no further orders or enter in any additional subcontracts for services,
- ☐ Terminate all orders and subcontracts to the extent that they relate to the performance of work

- terminated by the Notice of Termination,
- ☐ Assign to the Department in the manner and to the extent directed by the Department representative all of the right, title and interest of the Contractor in the orders or subcontracts so terminated. The Department shall have the right, in its discretion, to settle or pay any and all claims arising out of the termination of such orders and subcontracts,
  - ☐ With the approval or ratification of the Department representative, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable, in whole or part, in accordance with the provisions of this Contract.
  - ☐ Transfer title to the Department and deliver in the manner, at the time, and extent directed by the Department representative, all files, data, information, manuals, or other documentation, or property, in any form whatsoever, that relate to the work terminated by the Notice of Termination.
  - ☐ Complete the performance of such part of the work as shall not have been terminated by the Notice of Termination.
  - ☐ Take such action as may be necessary, or as the Department representative may direct, for the protection and preservation of the property related to the contract which is in the possession of the Contractor and in which the Department has or may acquire an interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of any item or reimbursable price under this clause.

#### **Termination Claims**

After receipt of a Notice of Termination, the Contractor shall submit to the Department all outstanding claims within ten (10) working days. The Contractor and the Department may agree upon the amounts to be paid to the Contractor by reason of the total or partial termination of work as described in this section.

In the event of the failure of the Contractor and the Department to agree in whole or in part as to the amount with respect to costs to be paid to the Contractor in connection with the total or partial termination of work as described in this section, the Department shall determine, on the basis of information available, the amount, if any, due to the Contractor by reason of termination and shall pay to the Contractor the amount so determined.

#### **Contractor**

It is expressly agreed that the Contractor, officers, and employees of the Contractor or Sub-Contractor in the performance of this contract shall act in an independent capacity and not as officers or employees of the Department. It is further expressly agreed that the Department shall exercise no managerial responsibility over the Contractor nor shall this contract be construed as a partnership or joint venture between the Contractor or any subcontractor and the Department or the State of Arkansas.

The Contractor hereby represents and warrants to the Department that as of the execution date of this Contract:

- ☐ The Contractor has been duly organized and is validly existing and in good standing under the laws of the State of Arkansas, with power, authority, and legal right to enter into this Contract.
- ☐ There are no proceedings or investigations pending or threatened, before any court, regulatory body, administrative agency or other governmental instrumentality having jurisdiction over the Contractor or its properties (i) seeking to prevent the consummation of any of the transactions contemplated by this Contract; or (ii) seeking any determination or ruling that might materially and adversely affect the performance by the Contractor of

- its obligations hereunder, or the validity or enforceability of this Contract.
- ☐ All approvals, authorizations, consents, orders or other actions of any person or of any governmental body or official required to be obtained on or prior to the date hereof in connection with the execution and delivery of this Contract and the performance of the services contemplated by this Contract and the fulfillment of the terms hereof have been obtained.
- ☐ The Contractor and the executive officers of the Contractor have not been the subject of any proceeding under the United States Bankruptcy Code.

#### **Force Majeure**

The Contractor will not be liable for delay in performing under the contract if the delay arises out of causes beyond the control and without the fault or negligence of the Contractor.

#### **Disputes**

In the event of any dispute concerning any performance by the Department under the contract, the Contractor shall notify the Division Director in writing. The State Procurement Director or a designee, prior to commencement of an action in court or any other action provided by law, will attempt to negotiate a settlement of the dispute with the parties in accordance with A.C.A. § 19-11-246. If the claim or controversy is not resolved by mutual agreement, and after reasonable notice to the parties in accordance with A.C.A. § 19-11-246 (c) (1), the State Procurement Director or his designee shall promptly issue a decision in writing stating the reason for the actions taken and a copy of the decision shall be mailed or otherwise furnished to the Contractor. This decision will be final and conclusive.

Pending final determination of any dispute hereunder, the contractor shall proceed diligently with the performance of the contract and in accordance with the Division Director's instructions.

#### **Confidentiality of Information**

In connection with this contract, the Contractor will receive certain Confidential Information relating to DHS clients. For purposes of this contract, any information furnished or made available to the Contractor relating to DHS clients, the financial condition, results of operation, business, customers, properties, assets, liabilities or information relating to recipients and providers including but not limited to protected health information as defined by the Privacy Rule promulgated pursuant to the Health Insurance Portability and Accountability Act (HIPAA) of 1996, is collectively referred to as "Confidential Information". The Contractor shall comply with all DHS policies governing privacy and security of Confidential Information, including the contracting division's designation of the Confidential Information as required by the Arkansas Data and System Security Classification Standards, and shall implement and maintain reasonable security procedures and practices appropriate to the nature of the Confidential Information as required by A.C.A. § 4-110-104, the Personal Information Protection Act ("the Act"). In addition, the Contractor shall comply with the Business Associate Agreement between the parties, incorporated herein by reference, and shall disclose any breaches of privacy or security by contacting the Information Technology Security Officer within one (1) business day of the breach by notification to the following e-mail address: [dhs-it-security@arkansas.gov](mailto:dhs-it-security@arkansas.gov).

The contractor shall treat all Confidential Information which is obtained by it through its performance under the contract as Confidential Information as required by state and federal law and shall not use any information so obtained in any manner except as necessary for the proper discharge of its obligations. The parties acknowledge that the disclosure of Confidential Information in contravention of the provisions hereof would damage the party to whom the information disclosed relates and such party has the right to seek all remedies at law or equity to minimize such damage and to obtain compensation therefore. The Contractor agrees to retain all protected health information as defined by the Privacy Rule promulgated pursuant to HIPAA for

six (6) years or as otherwise required by HIPAA.

The contractor shall safeguard the use and disclosure of information concerning applicants for or recipients of Title XIX services in accordance with 42 CFR Part 431, Subpart F, and shall comply with 45 CFR Parts 160 and 164 and shall restrict access to and disclosure of such information in compliance with federal and state laws and regulations.

#### **Public Disclosure**

Upon signing of the contract by all parties, terms of the contract shall become available to the public, pursuant to the provisions of Ark. Code Ann., § 25-19-101 et seq.

#### **Inspection of Work Performed**

The State of Arkansas and its authorized representatives shall, at all reasonable times, have the right to enter the Contractor's work areas to inspect, monitor, or otherwise evaluate the quality, appropriateness, and timeliness of work, services, or both, that have been or are being performed.

#### **Subcontracts**

The Contractor is fully responsible for all work performed under the contract. The Contractor may, with the prior written consent of the Department, enter into written subcontract(s) for performance of certain of its functions under the contract. No subcontract under this contract shall in any way relieve the Contractor of any responsibility for performance of its duties. The Contractor agrees that all subcontracts shall adhere to Department policies.

The Contractor shall give the Department immediate notice in writing by certified mail of any action or suit filed and prompt notice of any claim made against the Contractor or any subcontractor which may result in litigation related in any way to the contract or the Department.

In accordance with Executive Order 98-04, IF the agreement between the contractor and the subcontractor is greater than \$25,000.00:

- The contractor shall require the subcontractor to complete a Contract and Grant Disclosure and Certification Form. This form must be signed no later than 10 days after entering into any agreement with a subcontractor and the contractor shall transmit a copy of this form to the agency.
- The contractor shall include the following in the contract between the Contractor and that Subcontractor:

Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation or policy adopted pursuant to that Order, shall be a material breach of the terms of this subcontract. The party who fails to make the required disclosure or who violates the rule, regulation, or policy shall be subject to all legal remedies available to the contractor.

#### **Audit Requirement:**

Contractor shall comply with the Department audit requirements as outlined in "Arkansas Department of Human Services Audit Guidelines". Copies may be obtained from:

Arkansas Department of Human Services  
Office of Policy & Legal Services Audit Section  
P.O. Box 1437 – Slot S270  
Little Rock, Arkansas 72203-1437

#### **Indemnification**

The Contractor agrees to indemnify, defend, and save harmless the State, the Department, its officers, agents and employees from any and all damages, losses, claims, liabilities and related costs, expenses, including reasonable attorney's fees and disbursements awarded against or incurred by the Department arising out of or as a result of:

- Any claims or losses resulting from services rendered by any person, or firm, performing or supplying services, materials, or supplies in connection with the performance of the contract;
- Any claims or losses to any person or firm injured or damaged by the erroneous or negligent acts (including without limitation disregard of Federal or State regulations or statutes) of the Contractor, its officers or employees in the performance of the contract;
- Any claims or losses resulting to any person or firm injured or damaged by the Contractor, its officers or employees by the publication, translation, reproduction, delivery, performance, use, or disposition of any data processed under the contract in a manner not authorized by the contract, or by Federal or State regulations or statutes;
- Any failure of the Contractor, its officers or employees to observe local, federal or State of Arkansas laws or policies, including but not limited to labor laws and minimum wage laws.
- The Contractor shall agree to hold the Department harmless and to indemnify the Department for any additional costs of alternatively accomplishing the goals of the contract, as well as any liability, including liability for costs or fees, which the Department may sustain as a result of the Contractor's or its subcontractor's performance or lack of performance.

#### **Assignments**

The Contractor shall not assign the contract in whole or in part or any payment arising therefrom without the prior written consent of the Department representative.

#### **Waiver**

No covenant, condition, duty, obligation, or undertaking contained in or made a part of the contract will be waived except by the written agreement of the parties, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply; and until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, any other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.

#### **Department Property**

Property, including intellectual property, acquired or created by the Contractor as a Contract deliverable, is the property of the Department. The Contractor shall be responsible for the proper custody and care of all Department owned property, including Department owned property used in connection with the performance of this contract and the Contractor agrees to reimburse the Department for its loss or damage due to negligence, theft, vandalism, or Acts of God.

#### **Use and Ownership of Software**

The Contractor will have access to all applications software that the Department requires the Contractor to use in the performance of the services covered in the contract, subject to customary confidentiality and other license terms and conditions. No changes in the applications software may be made without the written consent of the Contract Administrator if the change would have the effect of causing the Department to incur additional costs for either hardware or software upgrades or both.

Any applications software developed by the Contractor in the performance of the services under this contract must become the property of the State of Arkansas at no additional cost. Any existing software applications owned by the Contractor and used in the performance of the services under this contract must be granted to the State of Arkansas at no additional cost, subject to customary confidentiality and other license terms and conditions.

#### **Contract Variations**

If any provision of the Contract (including items incorporated by reference) is declared or found to

be illegal, unenforceable, or void, then both the Department and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of the Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

#### **Attorney's Fees**

In the event that either party to this Contract deems it necessary to take legal action to enforce any provision of the contract, and the Department prevails, the Contractor agrees to pay all expenses of such action, including attorney's fees and costs at all stages of litigation as set by the court or hearing officer. Legal action shall include administrative proceedings.

#### **Liability**

In the event of non-performance of a contractual obligation by the Contractor or his agents which results in the determination by Federal authorities of noncompliance with Federal regulations and standards, the Contractor will be liable to the Department in full for all penalties, sanctions and disallowances assessed against the Department.

#### **Records Retention**

The Contractor agrees to retain all records for five (5) years after final payment is made under this Contract or any related subcontract. In the event any audit, litigation or other action involving these records is initiated before the end of the five (5) year period, the Contractor agrees to retain these records until all issues arising out of the action are resolved or until the end of the five (5) year period, whichever is later. The Contractor agrees to retain all protected health information as defined by the Privacy Rule promulgated pursuant to HIPAA for six (6) years or as otherwise required by HIPAA.

#### **Access to Contractor's Records**

The Contractor will grant access to its records upon request by state or federal government entities or any of their duly authorized representatives. Access will be given to any books, documents, papers or records of the Contractor which are related to any services performed under the contract. The Contractor additionally consents that all subcontracts will contain adequate language to allow the same guaranteed access to the records of subcontractors.

#### **Ownership of Documentation**

All documents and deliverables prepared by the Contractor and accepted by the Department shall become the property of the Department and shall not be used for any other purpose by the Contractor without the Department's specific written consent.

#### **Disclosure**

The failure of any person or entity to disclose as required under any term of Executive Order 98-04, or the violation of any rule, regulation or policy promulgated by the State Department of Finance and Administration pursuant to this Order, shall be considered a material breach of the terms of the contract, lease, purchase agreement, or grant and shall subject the party failing to disclose or in violation to all legal remedies available to the Department under the provisions of existing law.

#### **Set-Off**

The parties agree that the Department, in its sole discretion, shall have the right to set-off any money Contractor owes the Department from the Department's payment to Contractor under this contract.

#### **State and Federal Laws**

Performance of this contract by both parties must comply with State and federal laws and regulations. If any statute or regulation is enacted which requires a change in this contract or any attachment, then both parties will deem this contract and any attachment to be automatically



amended to comply with the newly enacted statute or regulation as of its effective date.

#### **Accessibility Act 1227 of 1999**

**TECHNOLOGY ACCESS:** When procuring a technology product or when soliciting the development of such a product, the State of Arkansas is required to comply with the provisions of Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, which expresses the policy of the State to provide individuals who are blind or visually impaired with access to information technology purchased in whole or in part with state funds. The Vendor expressly acknowledges and agrees that state funds may not be expended in connection with the purchase of information technology unless that system meets the statutory requirements found in 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating systems) and 36 C.F.R. § 1194.22, as it existed on January 1, 2013 (web-based intranet and internet information and applications), in accordance with the State of Arkansas technology policy standards relating to accessibility by persons with visual impairments.

**ACCORDINGLY, THE VENDOR EXPRESSLY REPRESENTS AND WARRANTS** to the State of Arkansas through the procurement process by submission of a Voluntary Product Accessibility Template (VPAT) or similar documentation to demonstrate compliance with 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating systems) and 36 C.F.R. § 1194.22, as it existed on January 1, 2013 (web-based intranet and internet information and applications) that the technology provided to the State for purchase is capable, either by virtue of features included within the technology, or because it is readily adaptable by use with other technology, of:

- ☐ Providing, to the extent required by Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, equivalent access for effective use by both visual and non-visual means;
- ☐ Presenting information, including prompts used for interactive communications, in formats intended for non-visual use;
- ☐ After being made accessible, integrating into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired;
- ☐ Providing effective, interactive control and use of the technology, including without limitation the operating system, software applications, and format of the data presented is readily achievable by nonvisual means;
- ☐ Being compatible with information technology used by other individuals with whom the blind or visually impaired individuals interact;
- ☐ Integrating into networks used to share communications among employees, program participants, and the public; and
- ☐ Providing the capability of equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

If the information technology product or system being offered by the Vendor does not completely meet these standards, the Vendor must provide an explanation within the Voluntary Product Accessibility Template (VPAT) detailing the deviation from these standards. State agencies cannot claim a product as a whole is not commercially available because no product in the marketplace meets all the standards. If products are commercially available that meets some but not all of the standards, the agency must procure the product that best meets the standards or provide written documentation supporting selection of a different product.

For purposes of this section, the phrase "equivalent access" means a substantially similar ability to communicate with, or make use of, the technology, either directly, by features incorporated within the technology, or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar

state and federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands or other means of navigating graphical displays, and customizable display appearance. As provided in Act 308 of 2013, if equivalent access is not reasonably available, and then individuals who are blind or visually impaired shall be provided a reasonable accommodation as defined in 42 U.S.C. § 12111(9), as it existed on January 1, 2013.

As provided in Act 308 of 2013, if the information manipulated or presented by the product is inherently visual in nature, so that its meaning cannot be conveyed non-visually, these specifications do not prohibit the purchase or use of an information technology product that does not meet these standards.

#### **Employee Background Requirements**

Contractor shall comply with Arkansas Code Annotated (A.C.A.) §21-15-101 *et seq.*, or any amendments thereto, which requires all employees of state agencies, in designated positions including those providing care, supervision, treatment or any other services to the elderly, mentally ill or developmentally disabled persons, to individuals with mental illnesses or to children who reside in any state-operated facility or a position in which the applicant or employee will have direct contact with a child, to have a criminal history check and a central registry check. Should an applicant or employee be found to have been convicted of a crime listed in A.C.A. §21-15-101 *et seq.*, that employee shall be prohibited from providing services in a designated position as defined by Arkansas law or being present at the facility. Should an applicant or employee be found to have been named as an offender or perpetrator in a true, substantiated, or founded report from the Child Maltreatment Central Registry, the Adult Abuse Central Registry, or the Certified Nursing Assistant/ Employment Clearance Registry, the applicant/employee shall be immediately disqualified.

#### **Prohibition Against Contingent Fees**

It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business.

#### **Compliance with Department Policy Issuances**

The Contractor agrees to deliver the services authorized by this contract or any attachment in accordance with all policies, manuals and other official issuances of the State of Arkansas and Department promulgated through the Administrative Procedures Act.

#### **Relinquishment**

The failure of the Department to insist upon the performance of any of the conditions in any one or more instances shall not be construed as a waiver or relinquishment of the future benefit of said condition.

#### **Entire Contract**

The parties acknowledge that each have read this Contract, understand it and agree to be bound by the terms. The parties further agree that this Contract is the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and that it supersedes all prior proposals, representations, arrangements, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof.

This Contract may not be modified, amended, or in any way altered except by a written agreement duly executed by the parties and approved in accordance with the laws and established procedures of the State of Arkansas.

**Survival of Rights and Obligations**

The right and obligations of the Parties under this Contract shall survive and continue after the ending or expiration of the term of this Contract, and shall bind the parties, and their legal representatives, successors, heirs and assigns.

**Notices**

All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if mailed by first class mail, postage prepaid, to:

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(address)

1828 Industrial Dr, Fordyce AR 71742

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Attention: Brady Serafin

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(Name of contractor contact person or such other name or address as may hereafter be furnished to Department in writing by the Contractor)

**Notices to the Department should be mailed to:**

**DHS Division of Medical Services**

Attention: Dawn Stehle, DMS Director  
P.O. Box 1437, Slot S401  
Little Rock, AR 72203-1437

**Severability of Provisions**

If any one or more of the covenants, agreements, provisions or terms of this Contract shall be for any reason whatsoever held invalid, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Contract and shall in no way affect the validity or enforceability of the other provisions of this Contract.

**Certification Regarding Lobbying:**

The Contractor will comply with public law 101-121, section 319 (section 1352 of Title 31 U.S.C.) for an award in excess of \$100,000.00 by certifying that appropriated federal funds have not been or will not be used to pay any person to influence or attempt to influence a federal official/employee in connection with the awarding of any federal contract, grant, loan or cooperative agreement.

If the Contractor has paid or will pay for lobbying using funds other than federal appropriated funds, Standard Form-LLL (Disclosure of Lobbying Activities) shall be completed and included as an attachment to this contract.

**Certification Regarding Debarment**

The Contractor, as a lower tier recipient of \$25,000.00 or more in federal funds, will comply with Executive Order 12549 (Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions). By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 C.F.R. Part 76, certifies to the best of its knowledge and belief that it and its principals:

- ☐ are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or state agency
- ☐ where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled \*Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions\* without modification in all lower tier covered transactions.

Contractor certifies that the Contractor is in compliance with Public Law 101-121 (Certification Regarding Lobbying) and Executive Order 12549 (Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions):

#### **Certification Regarding Employment Practices**

Neither the Contractor nor its subcontractors shall discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliation, or disability. The Contractor must take affirmative action to ensure that employees, as well as applicants for employment, are treated without discrimination because of their race, color, religion, sex, national origin, age (except as provided by law), marital status, political affiliation, or disability. Such action shall include, but not be limited to, the following:

- ☐ Employment;
- ☐ Promotion;
- ☐ Demotion or transfer;
- ☐ Recruitment or recruitment advertising;
- ☐ Layoff or termination;
- ☐ Rates of pay or other forms of compensation; and
- ☐ Selection for training, including apprenticeship.

Contractor certifies that neither the contractor nor its subcontractors shall discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, age (except as provided by law) or disability. Contractor must insure that employees, as well as applicants for employment, are treated without discrimination because of their race, color, religion, gender, national origin, age (except as provided by law) or disability. Such action shall include, but not be limited to, employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection of training, including apprenticeships.



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**Policy Title:** Equal Employment Opportunity

**Policy Number:** HR - 030

**Effective Date:** September 1, 2015

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**Policy:**

It is the policy of Acadia to provide equal employment opportunity to all employees and applicants for employment regardless of any individual's race, creed, color, religion, national origin, sex, age, physical or mental disability, and genetic information unrelated to the individual's ability to perform essential functions of a particular job; status as a military veteran or qualified disabled veteran; or any other characteristic protected under applicable state, federal and local laws.

Additionally, it is the company's policy to provide promotion and advancement or transfer opportunities, compensation, participation in training or educational activities or programs, discipline and termination in a nondiscriminatory fashion.

**Approval:**

Administrative: Keri Phang

Date: 09/01/15