

Mississippi Department of Mental Health Response
Legislative Workgroup – Contracts

1. How much annually do you spend on contracts, whether it be employees or RFPs for projects?

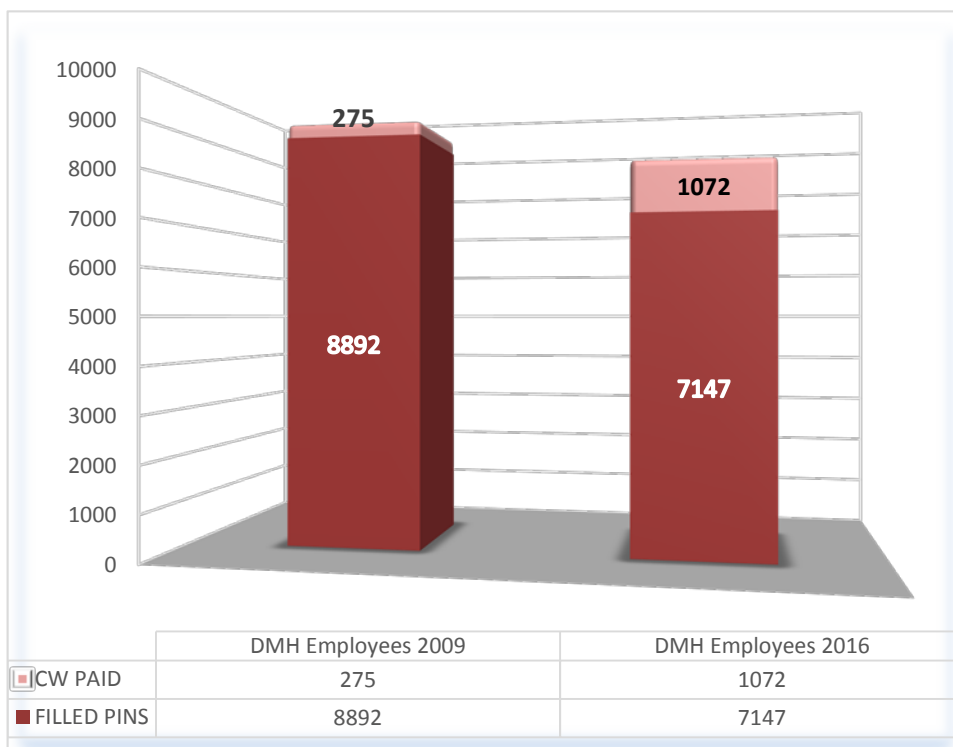
a. What are those positions and projects? How much for each?

The Mississippi Department of Mental Health (DMH) and the 12 programs operated under its authority expended approximately \$14,647,378 for contractual worker positions in FY16. Contractual worker positions include the following categories by function: direct support, food service/dietary, specialty clinical areas (i.e. psychology, social work, occupational, physical, speech, and respiratory therapies, audiology), medical services, nursing services, support coordination/targeted case management, security, grounds/facilities, support services, and academic services.

DMH and the 12 programs operated under its authority expended approximately \$29,483,154.37 for independent contracts in FY16. Independent contracts include the following categories by project function: direct care, employee-related services, food service/dietary, grounds/facilities, information technology, leases, medical equipment, medical services, nursing services, other, pharmacy related services, project evaluation, regulatory compliance, service maintenance/repair, specialty clinical, and support services.

Included on page two is a chart comparing the number of DMH employees that are in contract worker positions (WINS) and in filled PINs from FY09 to FY16. While there has been an increase in the number of contract worker positions, there has been a decrease in the number of filled PINs.

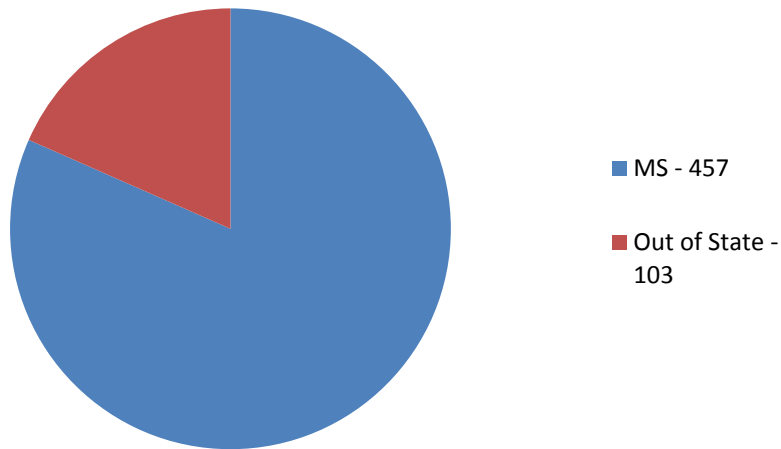
Comparative Report of DMH Employees FY09 – FY16



2. How many RFPs are awarded to MS companies? How many are awarded to out-of-state companies?

Out of the 560 independent contracts with expenditures in FY16, DMH and the 12 programs operated under its authority had 457 contracts with vendors identified as Mississippi companies. Out of the 560 independent contracts with expenditures in FY 16, DMH and the 12 programs operated under its authority had 103 contracts with vendors identified as out-of-state companies. For contracts under the purview of the Personal Service Contract Review Board, DMH complies with the requirement that vendors identified as limited liability corporations who are awarded contracts are registered with the Mississippi Secretary of State’s office to do business in the state. DMH strives to support Mississippi companies as evidenced by only awarding 18% of its total contracts to out-of-state companies.

Contracts with Mississippi Companies



3. How many employees can receive a 1099 to do work they were doing before as a state employee?

During FY 16, nine (9) former employees have been identified as independent contractors who either have, or can, receive a 1099.

a. How many of these are retired employees?

Out of the nine (9) identified independent contractors, five (5) have been identified as retired employees.

b. Furthermore, do your independent contractors meet the IRS criteria for independent contractors as defined by IRS publication 15-A?

We believe that vendors serving as business partners with DMH meet the IRS criteria for independent contractors. As outlined in IRS publication 15-A, DMH and its programs evaluate the relationship between the agency and the contractor based on behavioral control, financial control, and the type of relationship that exists between the two.

4. Can you provide us with a mock up in house contract, personnel involved, etc.?

DMH has provided copies of the contract templates for independent contractors (see Attachment A) and contract workers (see Attachment B). Both templates include the required clauses as set forth by the Personal Service Contract Review Board. Dependent upon the nature of the contract, additional optional clauses provided by the Personal Service Contract Review Board may be included.

The Program Directors at each of the DMH programs and the DMH Executive Director and/or her designee have the authority to enter into contracts. Contractual needs are

typically first identified at the departmental level within a program. Once a contractual need is identified approvals are required at multiple levels to include, but not limited to, the following: the departmental level, human resources (if the need for a contract worker is identified), and fiscal approval. Per DMH policy, contracts with an annual cost of \$50,000 or more require presentation to the Board of Mental Health. Contracts with retirees with an annual cost of \$20,000 or more require the approval of the Board of Mental Health. DMH also complies with the procurement and contracting rules and regulations of the Personal Service Contract Review Board, the Information Technology Services Board, and the Department of Finance and Administration.

5. What percent of your contracts, if any, are mandated by the Legislature?

While DMH is uncertain of what could be interpreted as a contract mandated by the Legislature, DMH engages in contractual relationships for the agency's operations that support the mission of the agency and the services mandated by the Legislature. Without the ability of the agency to contract for services such as medical and nursing services, DMH could not provide the needed treatment services to individuals with mental illness and intellectual/developmental disabilities as mandated by the Legislature. In the course of mandated service provision, DMH also utilizes contracts to meet state and federal licensure requirements (i.e. clinical staff) and provisions set forth in federal grants (i.e. cross-site project evaluation). There are obligations mandated by the Legislature, like participation in the Public Employees Retirement System and liability coverage approved by the Mississippi Tort Claims Board.

6. Please indicate if your agency has entered into any Maintenance of Effort agreements with federal government or subdivision thereof. If your agency is currently under a Maintenance of Effort agreement, could you briefly outline the terms of that agreement?

DMH has agreed to Maintenance of Effort terms outlined in the two federal formula block grants and one discretionary grant that the agency receives from the Substance Abuse Mental Health Services Administration (SAMHSA). The Maintenance of Effort terms state, "The State agency may not make payments under Section 521 of the Public Health Service Act (42 U.S.C 290cc-21), unless the State involved agrees that the State will maintain State expenditures for services specified in subsection (b) of this section at a level that is not less than the average level of such expenditures maintained by the State for the 2 year period preceding the fiscal year for which the State is applying to receive such payments." In addition to the federal formula block grants referenced above, DMH also receives one discretionary grant from SAMHSA that has a Maintenance of Effort Requirement. The Maintenance of Effort terms for that discretionary grant are the same as the terms stated above.

In addition to Maintenance of Effort agreements, DMH is also held to Cost Sharing conditions in two federal discretionary grants. The Non-Federal Cost Sharing Requirement states, "The State must agree to make available, directly or through donations from public or private entities, non-Federal contributions of at least \$1 (in cash

or in-kind) for each \$3 of Federal funds. The costs borne by the matching and in-kind contributions are subject to the rules governing allowability in 45 CFR Part 75.403, along with other terms and conditions of the award that govern the expenditure of Federal funds. The Federal Funds Approved is subject to adjustment should the State not meet the match amount.”

**DEPARTMENT OF MENTAL HEALTH
PERSONAL SERVICE CONTRACT
CONTRACT WORKER**

This Personal Service Contract (“Contract”) is made by and between the Mississippi Department of Mental Health (“DMH”) whose address is 239 North Lamar Street, Suite 1101, Robert E. Lee Building, Jackson, Mississippi 39201 and _____ (“Contractor”), whose address is _____ on the _____ day of _____, 20__ under the following terms and conditions:

1. **Scope of Services** The Contractor will provide services as specified in the _____ (hereinafter referred to and attached as Exhibit “A”).
2. **Contract Term** The period of performance of services under this Contract shall begin on _____ and end no later than _____.
3. **Consideration** As consideration for the performance of the personal services included in this Contract, Contractor shall be paid a fee not to exceed _____ in accordance with the terms of this Contract. Amount is payable on a biweekly delayed payment schedule after completion of services and submission of the DMH required timesheet. It is agreed that, in no event, the total compensation paid to Contractor will exceed the specified amount contained in this paragraph.

The Contractor may be reimbursed for travel subject to the approval and preauthorization by the DMH and will be reimbursed in accordance with State of MS travel rules, regulations and guidelines after completion of specified services.

4. **Availability of Funds** It is expressly understood and agreed that the obligation of the DMH to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the DMH, the DMH shall have the right upon ten (10) working days written notice to the Contractor, to terminate this Agreement without damage, penalty, cost or expenses to the DMH of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. (MCA Section 27-104-25(3)). DMH shall have the sole right to determine whether funds are available for the payments or performances due under this Contract.
5. **Record Retention and Access to Records** The Contractor agrees that the DMH or any of its duly authorized representatives at any time during the term of this Agreement shall have unimpeded, prompt access to and the right to audit and examine any pertinent

books, documents, papers, and records of the Contractor related to the Contractor's charges and performance under this Agreement. In addition, such records, including, but not limited to, financial records, supporting documents, statistical records and all other records pertinent to the services performed under this Contract shall be maintained and made available to DMH, any state agency authorized to audit DMH, the federal grantor agency, the Comptroller General of the United States or any of their duly authorized representatives. The Contractor agrees to refund to the DMH any overpayment disclosed by any such audit arising out of or related in any way to this contract. All records related to this Agreement shall be kept by the Contractor for a period of three (3) years after final payment under this Agreement and all pending matters are closed, unless the DMH authorizes their earlier disposition. However, if any litigation, claim, negotiation, audit or other action arising out of or related in any way to this Contract has been started before the expiration of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved.

6. **Applicable Law** The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and venue for resolution of any dispute shall be Jackson, Hinds County, Mississippi. The Contractor shall comply with applicable federal, state, and local laws and regulations. Contractor expressly agrees that under no circumstances shall DMH be obligated to pay an attorney's fee, prejudgment interest or the cost of legal action to Contractor. Further, nothing in this Contract shall affect any statutory rights that DMH may have and such rights cannot be waived or limited by contract.
7. **Assignment** The Contractor shall not assign, subcontract or otherwise transfer in whole or in part, its rights or obligations under this Contract without prior written consent of the DMH. Any attempted assignment or transfer without said consent shall be void and of no effect.
8. **Compliance with Laws** The Contractor understands that the DMH is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and the Contractor agrees during the term of the agreement that the Contractor will strictly adhere to this policy in its employment practices and provision of services. The Contractor shall comply with, and all activities under this Contract shall be subject to, all DMH policies and procedures and all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.
9. **Transparency** This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 *et seq.* and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of

the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

10. **Trade Secrets, Commercial and Financial Information** It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.
11. **Contract Worker** Based upon the Internal Revenue Code, Contractor has been classified as a contract worker. Contractor shall perform all services as a contract worker and shall discharge all of its liabilities as such. No act performed or representation made, whether oral or written, by Contractor with respect to third parties shall be binding on DMH.
12. **Termination** The DMH may terminate this Contract without cause upon ten (10) days written notice to the Contractor. The DMH may terminate this Contract with cause at any time without notice. The Contractor may terminate this Contract with cause upon thirty (30) days written notice to the DMH.
13. **Termination for Default**
 - (1) **Default.** If the contractor refuses or fails to perform any provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Procurement Officer of DMH may notify the contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Procurement Officer, such officer may terminate the contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Procurement Officer may procure similar services in a manner and upon terms deemed appropriate by the Procurement Officer. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
 - (2) **Contractor's Duties.** Notwithstanding termination of the contract and subject to

any directions from the Procurement Officer, the contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the contractor in which the State has an interest.

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

(4) **Excuse for Nonperformance or Delayed Performance.** Except with respect to defaults of subcontractors, the contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the contractor has notified the Procurement Officer within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the contractor to meet the contract requirements.

Upon request of the contractor, the Procurement Officer of the DMH shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the DMH under the clause entitled "Termination for Convenience".

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

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

14. **Termination for Convenience**

(1) **Termination.** The Procurement Officer of the DMH may, when the interests of the

DMH so require, terminate this contract in whole or in part, for the convenience of the DMH. The Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

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

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

16. **Modification or Renegotiation** This Agreement may be modified, altered or changed only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal, state and/or the DMH revisions of any applicable laws or regulations make changes in this Contract necessary.

17. **Stop Work Order**

(1) **Order to Stop Work.** The Procurement Officer of the DMH, may, by written order to the contractor at any time, and without notice to any surety, require the contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to the contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Procurement Officer shall either:

- a. cancel the stop work order; or,
- b. terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.

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

- a. the stop work order results in an increase in the time required for the performance of any part of this contract; or,
- b. the stop work order results in an increase in the contractor's cost properly allocable to the performance of any part of this contract; and,
- c. the contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

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

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

18. **Procurement Regulations** The Contract shall be governed by the applicable provisions of the Personal Service Contract Review Board Regulations, a copy of which is available at 210 East Capitol, Suite 800, Jackson, MS, 39201 for inspection, unless exempted.
19. **Ownership of Documents and Work Papers** The DMH shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, whether completed or in progress, created in connection with the Project which is the subject of this Contract, except for the Contractor's internal administrative and quality assurance files and internal project correspondence. The Contractor shall deliver such documents and work papers to the DMH upon termination or completion of the Contract. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. The Contractor shall be entitled to use such work papers only after receiving written permission from the DMH and subject to any copyright protections.
20. **Indemnification** To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the DMH, its officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, and claims for damage arising out of or caused by the Contractor

and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this Contract.

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

For the Contractor:

For DMH:

Kris Jones, Director, Bureau of Contract Management
Mississippi Department of Mental Health
239 North Lamar Street, Suite 1101
Jackson, Mississippi 39201
Telephone: 601-359-1288

22. **Severability** If any term or provision of this Contract is prohibited by the laws of this State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Contract shall not be affected thereby and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
23. **Change in Scope of Work** The Mississippi Department of Mental Health may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No services may be changed, no changes to the amount of compensation to the Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the Mississippi Department of Mental Health and the Contractor.

If the Contractor believes that any particular work is not within the scope of the project, is a material change, or will otherwise require more compensation to the Contractor, the Contractor must immediately notify the Mississippi Department of Mental Health in writing of this belief. If the Mississippi Department of Mental Health believes that the particular work is within the scope of the contract as written, the Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the scope.

24. **Failure to Enforce** Failure by the DMH, at any time, to enforce the provisions of the Contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the Contract or any part thereof or the right of the DMH to enforce any provision at any time in accordance with its terms.
25. **Conflict of Interest** Contractor shall notify the DMH of any potential conflict of interest resulting from the representation of or service to other clients. If such conflict cannot be resolved to the DMH's satisfaction, the DMH reserves the right to terminate this Contract.
26. **Sovereign Immunity** By entering into this Contract with Contractor, the State of Mississippi does, in no way, waive its sovereign immunities or defenses, as provided by law.
27. **Confidential Information** Contractor shall treat all DMH data and information to which it has access by its performance under this Contract as confidential and shall not disclose such data or information to a third party without specific written consent of DMH. In the event that Contractor receives notice that a third party requests divulgence of confidential or otherwise protected and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, Contractor shall promptly inform the DMH and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive termination or completion of this Contract and shall continue in full force and effect and shall be binding upon the Contractor and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in this Contract on behalf of, or under the rights of the Contractor following any termination or completion of this Contract.
28. **Network Security** Contractor agrees that any access to the state network must follow all the guidelines set forth by MS ITS security policy and be responsible for cost for implementation and or any changes or updates of such policy unless agreed upon by both parties including ITS.
29. **Representation Regarding Contingent Fees** Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or proposal.
30. **Representation Regarding Gratuities** The bidder, offeror, or Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*.

31. **Entire Agreement** This Contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supercedes or replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating thereto.

This Contract has been entered into and executed between the Department of Mental Health and _____ hereto as of the day and year first above written.

XXXXXX, Contractor

, Director of Bureau of _____

Kelly Breland, Director of the Bureau of Administration
Mississippi Department of Mental Health
239 North Lamar Street, Suite 1101
Jackson, Mississippi 39201
Telephone: 601-359-1288

**DEPARTMENT OF MENTAL HEALTH
PERSONAL SERVICE CONTRACT
INDEPENDENT CONTRACTOR**

This Personal Service Contract (“Contract”) is made by and between the Mississippi Department of Mental Health (“DMH”) whose address is 239 North Lamar Street, Suite 1101, Robert E. Lee Building, Jackson, Mississippi 39201 and XXXXX (“Contractor”), whose address is XXXXX on the XX day of XXXX, 2016 under the following terms and conditions:

1. **Scope of Services** The Contractor will provide: XXXXXX
2. **Contract Term** The period of performance of services under this Contract shall begin on XXXX and shall end no later than XXXX.
3. **Consideration** As consideration for the performance of this Contract, Contractor shall be paid a fee not to exceed XXXXX in accordance with the terms of this Contract. Contractor shall submit an invoice for approval by the DMH within ten (10) days of completion of each phase of the project. The invoice shall include: (a) a reference to this Contract (b) Contractor’s tax payer identification number (c) any other details as the DMH may reasonably request. It is agreed that, in no event, the total compensation paid to Contractor will exceed the specified amount contained in this paragraph.
4. **E-Payment** The Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The Department of Finance and Administration (DFA) agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Section 31-7-305, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of the invoice.
5. **Paymode** Payments by state agencies using the Mississippi Accountability System for Government Information and Collaboration (MAGIC) and shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Contractor's choice. The State may, at its sole discretion, require the Contractor to submit invoices and supporting documentation electronically at any time during the term of this Agreement. The Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.
6. **Availability of Funds** It is expressly understood and agreed that the obligation of the DMH to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or

material alteration of the program under which funds were provided or if funds are not otherwise available to the DMH, the DMH shall have the right upon ten (10) working days written notice to the Contractor, to terminate this Agreement without damage, penalty, cost or expenses to the DMH of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. (MCA Section 27-104-25(3)). DMH shall have the sole right to determine whether funds are available for the payments or performances due under this Contract.

7. **Representation Regarding Contingent Fees** Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or proposal.
8. **Representation Regarding Gratuities** The bidder, offeror, or Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*.
9. **Record Retention and Access to Records** The Contractor agrees that the DMH or any of its duly authorized representatives at any time during the term of this Agreement shall have unimpeded, prompt access to and the right to audit and examine any pertinent books, documents, papers, and records of the Contractor related to the Contractor's charges and performance under this Agreement. In addition, such records, including, but not limited to, financial records, supporting documents, statistical records and all other records pertinent to the services performed under this Contract shall be maintained and made available to DMH, any state agency authorized to audit DMH, the federal grantor agency, the Comptroller General of the United States or any of their duly authorized representatives. The Contractor agrees to refund to the DMH any overpayment disclosed by any such audit arising out of or related in any way to this contract. All records related to this Agreement shall be kept by the Contractor for a period of three (3) years after final payment under this Agreement and all pending matters are closed, unless the DMH authorizes their earlier disposition. However, if any litigation, claim, negotiation, audit or other action arising out of or related in any way to this Contract has been started before the expiration of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved.
10. **Applicable Law** The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws, provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations.
11. **Assignment** The Contractor shall not assign, subcontract or otherwise transfer in whole or in part, its rights or obligations under this Contract without prior written consent of the DMH. Any attempted assignment or transfer without said consent shall be void and of no effect.

12. **Compliance with Laws** The Contractor understands that the DMH is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and the Contractor agrees during the term of the agreement that the Contractor will strictly adhere to this policy in its employment practices and provision of services. The Contractor shall comply with, and all activities under this Contract shall be subject to, all DMH policies and procedures and all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

13. **Trade Secrets, Commercial and Financial Information** It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

14. **Transparency** This contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983,” and its exceptions. See Mississippi Code Annotated §§ 25-61-1 *et seq.* and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration’s independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

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

perform services hereunder meets the employment eligibility requirements of all immigration laws.

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

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

Contractor represents that it is qualified to perform the duties to be performed under this Contract and that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the duties required under this Contract. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of DMH. Any person assigned by Contractor to perform the services hereunder shall be the employee of Contractor, who shall have the sole right to hire and discharge its employee. DMH may, however, direct Contractor to replace any of its employees under this Contract. Contractor will be responsible for the behavior of all its employees and subcontractors while on the premises if any DMH location. Any employee or subcontractor of Contractor acting in a manner determined by the administration of that location to be detrimental, abusive or offensive to any of the staff will be asked to leave the premises and may be suspended from further work on the premises. All employees and subcontractors of Contractor who will be working at such locations shall be covered by Contractor's comprehensive general liability insurance policy. Contractor shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be

- required. Neither Contractor nor its employees are entitled to state retirement or leave benefits.
17. **Modification or Renegotiation** This Agreement may be modified, altered or changed only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal, state and/or the DMH revisions of any applicable laws or regulations make changes in this Contract necessary.
 18. **Procurement Regulations** The Contract shall be governed by the applicable provisions of the Personal Service Contract Review Board Regulations, a copy of which is available at 210 East Capitol, Suite 800, Jackson, MS, 39201 for inspection, or downloadable at <http://www.mspb.ms.gov> unless exempted.
 19. **Ownership of Documents and Work Papers** The DMH shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, whether completed or in progress, created in connection with the Project which is the subject of this Contract, except for the Contractor's internal administrative and quality assurance files and internal project correspondence. The Contractor shall deliver such documents and work papers to the DMH upon termination or completion of the Contract. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. The Contractor shall be entitled to use such work papers only after receiving written permission from the DMH and subject to any copyright protections.
 20. **Indemnification** To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the DMH, its officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, and claims for damage arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this Contract.
 21. **Third Party Action Notification** The Contractor shall notify DMH in writing within five (5) business days of its receipt of liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Contractor or DMH by any entity that may result in litigation related in any way to this Contract and/or which may affect the Contractors performance under this Contract. Failure of the Contractor to provide such written notice to DMH shall be considered a material breach of this Contract and the DMH may, at its sole discretion, pursue its rights as set forth in the Termination clauses herein and any other remedies it may have at law or in equity.
 22. **Notices** All notices required or permitted to be given under this Contract must be in writing and personally delivered or sent by facsimile provided that the original of such notice is sent by certified United States mail postage prepaid, return receipt requested, or

overnight courier with the signed receipt, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

For the Contractor:

XXXXXX

For DMH:

Kris Jones, Director, Bureau of Contract Management
Mississippi Department of Mental Health
239 North Lamar Street, Suite 1101
Jackson, Mississippi 39201
Telephone: 601-359-1288

23. **Severability** If any term or provision of this Contract is prohibited by the laws of this State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Contract shall not be affected thereby and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
24. **Change in Scope of Work** The Mississippi Department of Mental Health may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No services may be changed, no changes to the amount of compensation to the Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the Mississippi Department of Mental Health and the Contractor.

If the Contractor believes that any particular work is not within the scope of the project, is a material change, or will otherwise require more compensation to the Contractor, the Contractor must immediately notify the Mississippi Department of Mental Health in writing of this belief. If the Mississippi Department of Mental Health believes that the particular work is within the scope of the contract as written, the Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the scope.

25. **Failure to Enforce** Failure by the DMH, at any time, to enforce the provisions of the Contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the Contract or any part thereof or the right of the DMH to enforce any provision at any time in accordance with its terms.
26. **Conflict of Interest** Contractor shall notify the DMH of any potential conflict of interest resulting from the representation of or service to other clients. If such conflict cannot be

resolved to the DMH's satisfaction, the DMH reserves the right to terminate this Contract.

27. **Sovereign Immunity** By entering into this Contract with Contractor, the State of Mississippi does, in no way, waive its sovereign immunities or defenses, as provided by law.
28. **Confidential Information** Contractor shall treat all DMH data and information to which it has access by its performance under this Contract as confidential and shall not disclose such data or information to a third party without specific written consent of DMH. In the event that Contractor receives notice that a third party requests divulgence of confidential or otherwise protected and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, Contractor shall promptly inform the DMH and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive termination or completion of this Contract and shall continue in full force and effect and shall be binding upon the Contractor and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in this Contract on behalf of, or under the rights of the Contractor following any termination or completion of this Contract.
29. **Network Security** Contractor agrees that any access to the state network must follow all the guidelines set forth by MS ITS security policy and be responsible for cost for implementation and or any changes or updates of such policy unless agreed upon by both parties including ITS.
30. **Stop Work Order**
 - (1) *Order to Stop Work:* The Procurement Officer, may, by written order to Contractor at any time, and without notice to any surety, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Procurement Officer shall either:
 - (a) cancel the stop work order; or,
 - (b) terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.
 - (2) *Cancellation or Expiration of the Order:* If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of

the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:

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

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

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

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

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

A. Termination for Convenience:

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

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

B. Termination for Default

(1) *Default.* If Contractor refuses or fails to perform any of the provisions of this

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

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

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

(4) *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the DMH Executive Director or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the DMH Executive Director or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause

entitled “Termination for Convenience” in fixed price contracts and “Termination” in cost-reimbursement contracts.

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

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

C. Termination Upon Bankruptcy

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

32. **Waiver** No delay or omission by either party to this agreement in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this agreement shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this agreement will void, waive, or change any other term or condition. No waiver by one party to this agreement of a default by the other party will imply, be construed as or require waiver of future or other defaults.
33. **Attorney’s Fees and Expenses** Subject to other terms and conditions of this agreement, in the event Contractor defaults in any obligations under the agreement, Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees, court costs, and attorney’s fees) incurred by the State in the enforcing of this agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the customer be obligated to pay any attorney’s fees or costs of legal action to the Contractor.
34. **Entire Agreement** This Contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supercedes or replaces any and all prior

negotiations, understandings and agreements, written or oral, between the parties relating thereto.

This Contract has been entered into and executed by DMH and Tann, Brown & Russ Co., PLLC hereto as of the day and year first above written.

XXXXXX, Contractor

Date

XXXXX, Director, Bureau of XXXXX

Date

Kelly Breland, Director of the Bureau of Administration
Mississippi Department of Mental Health
239 North Lamar Street, Suite 1101
Jackson, Mississippi 39201
Telephone: 601-359-1288

Date