

## TERM SHEET

This Term Sheet is entered into by and between T.R. and K.W. on behalf of themselves and others similarly situated; Protection and Advocacy for People with Disabilities, Inc. (collectively the "Plaintiffs") and The South Carolina Department of Corrections (the "SCDC") as of this 12<sup>th</sup> day of January, 2015 (the "Effective Date"). In this Term Sheet the Plaintiffs and the SCDC may be referred to individually as a "Party" and collectively as the "Parties".

Plaintiffs and the SCDC are parties to the case captioned T.R., P.R., and K.W., on behalf of themselves and others similarly situated; and Protection and Advocacy for People with Disabilities, Inc. v. South Carolina Department of Corrections; and William R. Byars, Jr., as Agency Director of the South Carolina Department of Corrections (the "Litigation"). Plaintiffs and the SCDC have been engaged in mediation (the "Mediation") with the mutual goal of reaching a settlement of the Litigation. The Honorable William L. Howard has served and will continue to serve as the Mediator. The purpose of this Term Sheet is to identify the proposed terms which the parties have discussed regarding the settlement of the Litigation. This Term Sheet is not a contract or an agreement. However, the Parties plan to use this Term Sheet as an outline for a binding settlement agreement (the "Settlement Agreement"). Subject to the above, the Parties have identified the following proposed terms regarding the settlement of the Litigation:

1. **Improvement Plan.** In the Mediation, the Parties have collaborated to develop an extensive improvement plan to address the conditions of mentally ill inmates incarcerated at the SCDC (the "Improvement Plan"). The general components of the Improvement Plan are:

- a. screening and evaluation;
- b. development of a comprehensive mental health program which addresses: (i) access to higher levels of care; (ii) appropriate clinical settings; (iii) limited use of segregation; (iv) disciplinary standards; and (v) use of force;
- c. staffing levels of mental health professionals;
- d. maintenance of mental health records;
- e. administration of medications; and
- f. suicide prevention and crisis intervention.

When completed, the Parties shall attach the final Improvement Plan to the Settlement Agreement.

2. **Implementation.** The Parties acknowledge that the implementation of the Improvement Plan (the "Implementation") will be a multi-year process which will involve

extensive hiring of additional mental health staff, construction of facilities upgrades and implementing new SCDC policies. Because of the multi-year aspect of the Implementation, the Implementation budget will require General Assembly approval for each of the fiscal years 2015-16, 2016-17 and 2017-18. The following is an outline of the proposed Implementation:

- a. **Budget.** Attached as Exhibit A is the proposed SCDC budget for fiscal years 2015-16, 2016-17 and 2017-18 for the Implementation of the Improvement Plan that will be incorporated into the Governor's Executive Budget. The Parties acknowledge that all budgets are subject to General Assembly approval for each fiscal year. Plaintiffs are relying on SCDC's financial projections regarding facilities improvements and reserve all rights under this Term Sheet to contest them if the projections prove to be insufficient to implement the proposed facilities improvements.
- b. **Staffing.** Attached as Exhibit B is the proposed staffing plan for the Implementation of the Improvement Plan. The Parties acknowledge that Implementation of the staffing plan is contingent on General Assembly approval of the budget for each fiscal year.
- c. **Facilities Improvements.** Attached as Exhibit C is the proposed facilities improvement plan for the Implementation of the Improvement Plan.
- d. **Electronic Medical Records.** A Request for Proposal for a new electronic medical records system will be posted and will be included in the Improvement Plan. Upon award of the bid, the Parties will work cooperatively to develop acceptable Implementation standards for the electronic medical records system.
- e. **Policies.** The Parties are working together to complete revisions of SCDC operational and mental health policies and procedures, and program descriptions (collectively the "Policies") and intend to try to reach an agreement on the terms of the Policies on or before July 31, 2015.
- f. **Implementation Communication and Review Process.** The Improvement Plan will require communication and review by the Parties as the Implementation progresses. The following is the proposed Implementation communication and review process:
  - i. SCDC will provide Plaintiffs with the quarterly data reports which will track mutually agreed upon statistics related to elements of the Improvement Plan and the Implementation.

- ii. The Parties shall meet with the Mediator at such times as the Parties and the Mediator may mutually agree. During these meetings, the Parties shall identify the elements of the Improvement Plan on which they agree have been successfully implemented, as well as those on which they will continue to work toward resolution.
- iii. Upon Plaintiffs' request and as scheduled by agreement of the Parties, Plaintiffs' counsel and experts shall have access to SCDC's facilities and records, subject to reasonable concerns SCDC may raise regarding security, for the purpose of reviewing SCDC's Implementation progress. Nothing in this Agreement shall affect the rights of Protection and Advocacy for People with Disabilities, Inc. under applicable federal and state law to obtain access to SCDC facilities.
- iv. The Parties acknowledge that because of the complexity of the Implementation of the Improvement Plan, contingencies may arise in the future which will require adjustments to the Improvement Plan. The Parties will work in good faith to address any such contingencies and shall make reasonable adjustments to the Improvement Plan, as needed.

3. **Resolution of Disputes Regarding Implementation.** To the extent any disputes arise regarding the Implementation or the Settlement Agreement which the Parties cannot resolve themselves (each a "Dispute"), the following process shall apply:

- a. either Party may first submit a Dispute to mediation before the Mediator;
- b. if the mediation is unsuccessful, upon mutual agreement, the Parties may submit the Dispute to the Mediator for final, binding arbitration;
- c. if the Dispute is not resolved pursuant to (a) or (b) above, then the Parties each shall retain their respective rights to proceed with the appeal of the Litigation pursuant to SCDC's Notice of Appeal before the South Carolina Supreme Court.

4. **Disposition of the Litigation.** The Parties agree that the disposition of the Litigation will occur as follows:

- a. Upon completion of the Settlement Agreement (which should occur on or before July 31, 2015), the Parties shall petition the South Carolina Supreme Court requesting that the Court continue the writ of supersedeas as set forth in the Order dated July 24, 2014 until the Implementation is completed.

- b. The Mediation shall remain in place during the Implementation.
- c. Subject to its consent, the South Carolina Supreme Court shall retain jurisdiction of the Litigation during the Implementation.
- d. Upon the Parties' agreement that the SCDC has completed the Implementation, then: (i) the Parties shall petition the South Carolina Supreme Court to vacate the Order dated January 8, 2014; (ii) the Settlement Agreement shall terminate; and (iii) the Plaintiffs shall release the SCDC and other affiliated parties from all claims, damages, liabilities and remedies available pursuant to the Litigation.
- e. If during any Legislative session, the South Carolina General Assembly fails to approve the proposed annual budget for the next fiscal year, then the Parties shall attempt to resolve any outstanding issues through the Dispute resolution procedures set forth in Section 3, with each Party retaining all rights and remedies with regard to the Notice of Appeal filed by SCDC.
- f. If after the date of the final Implementation deadline, which shall be agreed upon by the Parties and set forth in the Settlement Agreement, the Parties do not agree that the SCDC has fulfilled its obligations under the Settlement Agreement, then the matter shall be subject to the Dispute resolution procedures set forth in Section 3 with each Party retaining all rights and remedies with regard to the Notice of Appeal filed by the SCDC.

5. **Confidentiality.** The confidentiality of the Mediation pursuant to applicable law and the Confidentiality Agreements as have been executed by the Parties shall remain in place, provided that, the Parties agree:

- a. This Term Sheet is not confidential; and
- b. From time to time, the Parties may mutually agree upon specific statements or the scope of discussions which the Parties may have with elected officials, the media, and the public.

6. **Fees and Costs.** Each Party shall be responsible for the payment of such Party's respective attorneys' fees, expert fees and any other fees and costs and shall not seek payment of such from any other Party, except the fees and costs incurred in mediation, which shall be borne equally by the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Term Sheet to be executed as of the Effective Date.

**T.R. and K.W. on behalf of themselves and other  
similarly situated**

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

**Protection and Advocacy for People with  
Disabilities, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

**The South Carolina Department of Corrections**

By: Bryan P. Stirling

Name: Bryan P. Stirling

Title: Director

**T.R. and K.W. on behalf of themselves and other similarly situated**

By: Joy C. Jay  
Name: Joy C. Jay  
Title: Guardian Ad Litem

**Protection and Advocacy for People with Disabilities, Inc.**

By: Gloria M. Prevost  
Name: GLORIA M. PREVOST  
Title: EXECUTIVE DIRECTOR

**The South Carolina Department of Corrections**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



# MENTAL HEALTH REMEDIAL PLAN COST ANALYSIS

Exhibit A

	Total Cost	TIMELINE			FUNDING	
	Year 1, 2, & 3	Year 1	Year 2	Year 3	Recurring	Non Recurring
<b>Mental Health Staffing Plan (Attachment 1)</b>						
Total Additional Staffing	\$8,037,174	\$4,034,694	\$2,572,560	\$1,429,920	\$8,037,174	
<b>FY2014-15 Mental Health Allocation (10 pos)</b>	(\$1,000,000)	(\$1,000,000)			(\$1,000,000)	
<b>Equipment</b>						
Equipment (PC, Tele, Copiers, Printers)	\$66,735	\$66,735				\$66,735
Phone lines & lease copiers	\$45,120	\$45,120			\$45,120	
<b>3%/\$1000 Incentive</b>	\$105,000	\$105,000			\$105,000	
<b>Facilities (Attachment 2)</b>						
BMU (F-3 Dorm)	\$457,700					
Crisis Intervention Unit (F-1 Dorm)	\$163,300					
GPH	\$101,200					
Womens Center	\$52,900					
Crisis Intervention (17) locations	\$46,000					
SMU Recr. & Yard Access (9 Locations)	\$780,800					
<b>Total</b>	\$1,601,900	\$1,601,900				\$1,601,900
<b>Unallocated Mental Health Funds FY2014* (Carryforward)</b>	(\$168,976)	(\$168,976)				(\$168,976)
<b>TOTALS</b>	\$8,686,953	\$4,684,473	\$2,572,560	\$1,429,920	\$7,187,294	\$1,499,659
Non Recurring		\$1,499,659				\$1,499,659
Recurring		\$3,184,814	\$2,572,560	\$1,429,920	\$7,187,294	
Total per year		44%	36%	20%		

\*These funds accumulated because positions were filled and contracts were negotiated late in the fiscal year.

## Exhibit B

**New Request (Changes Highlighted)**

<b>HIRING AND SALARY 3 YEAR PROJECTION</b>						
				<b># of Positions</b>		
<b>Staffing (FTE)</b>	<b>Baseline Salary</b>	<b>Benefits</b>	<b>Total Package</b>	<b>Current</b>	<b>Requested</b>	<b>ADD'L COST</b>
Psychiatrist	200,000	88,000	288,000	7.5	8.5	\$2,448,000
Counselors (Licensed, Masters level)	45,000	19,800	64,800	92.5	20.0	\$1,296,000
Mental Health Technicians	37,000	16,280	53,280	0	30.0	\$1,598,400
Activity Therapist	33,000	14,520	47,520	0	3.0	\$142,560
Clinical Activity Supervisor	60,000	26,400	86,400	0	1.0	\$86,400
*Quality Assurance (QA) Director	80,000	35,200	115,200	0	1.0	\$115,200
*Quality Assurance Monitors	48,000	21,120	69,120	1	4.0	\$276,480
*Health Services Recruiter	60,000	26,400	86,400	0	1.0	\$86,400
Administrative Support Staff (ICS)	24,500	10,780	35,280	7	2.0	\$70,560
Salary Equity (Existing Psychiatry Staff Only)	351,926	154,847	506,773	0	0	\$506,773
Psychologist PhD	95,000	41,800	136,800	1	3	\$410,400
<b>STAFFING ANNUAL TOTAL</b>	<b>956,926</b>	<b>421,048</b>	<b>1,377,974</b>	<b>125.5</b>	<b>66.5</b>	<b>\$7,037,173</b>
* Positions are for use in all of Medical - not solely for MH.						



## 1ST YEAR TOTALS

HIRING AND SALARY PROJECTION (YEAR 1)						
Staffing (FTE) Function	Baseline Salary	Benefits	Total Package	# of Positions		ADDT'L COST
				Current	Requested	
Psychiatrist	\$200,000	\$88,000	\$288,000	7.5	3	\$864,000
Counselors (Licensed, Masters level)	\$45,000	\$19,800	\$64,800	109	8	\$518,400
Mental Health Technicians	\$37,000	\$16,280	\$53,280	0	11	\$586,080
Activity Therapist	\$33,000	\$14,520	\$47,520	0	1	\$47,520
Quality Assurance (QA) Director	\$80,000	\$35,200	\$115,200	0	1	\$115,200
Quality Assurance Monitors	\$48,000	\$21,120	\$69,120	1	2	\$138,240
Health Services Recruiter	\$60,000	\$26,400	\$86,400	0	1	\$86,400
Administrative Support Staff (ICS)	\$24,500	\$10,780	\$35,280	7	1	\$35,280
Salary Equity for existing psychiatry staff	\$351,926	\$154,847	\$506,773	0	0	\$506,773
Psychologist PhD	95,000	41,800	136,800	1	1	\$136,800
	694,444	305,556	1,000,000	10	0	\$1,000,000
<b>1ST YEAR TOTALS</b>	<b>\$879,426</b>	<b>\$386,947</b>	<b>\$1,266,373</b>	<b>124.5</b>	<b>28</b>	<b>\$4,034,694</b>

## 2nd Year Totals

HIRING AND SALARY PROJECTION ( YEAR 2 )						
Staffing (FTE)	Baseline Salary	Benefits	Total Package	Current	# of Positions Requested	ADDT'L COST
Psychiatrist	\$200,000	\$88,000	\$288,000	10.5	3.0	\$864,000
Counselors (Licensed, Masters level)	\$45,000	\$19,800	\$64,800	117.0	8.0	\$518,400
Mental Health Technicians	\$37,000	\$16,280	\$53,280	11.0	14.0	\$745,920
Activity Therapist	\$33,000	\$14,520	\$47,520	1.0	1.0	\$47,520
Clinical Activity Supervisor	60,000	26,400	86,400	0	1.0	\$86,400
Quality Assurance (QA) Director	\$80,000	\$35,200	\$115,200	1.0	0.0	\$0
Quality Assurance Monitors	\$48,000	\$21,120	\$69,120	3.0	2.0	\$138,240
Health Services Recruiter	\$60,000	\$26,400	\$86,400	1.0	0.0	\$0
Salary Equity for existing psychiatry staff	\$351,926	\$154,847	\$506,773	0.0	0.0	\$0
Psychologist PhD	95,000	41,800	136,800	3	1	\$136,800
<b>2ND YEAR TOTALS</b>	<b>\$939,426</b>	<b>\$413,347</b>	<b>\$1,352,773</b>	<b>152.5</b>	<b>30</b>	<b>\$2,572,560</b>

### 3rd Year Totals

HIRING AND SALARY PROJECTION (YEAR 3)						
Staffing (FTE)	Baseline Salary	Benefits	Total Package	Current	# of Positions Requested	ADDT'L COST
Psychiatrist	\$200,000	\$68,000	\$288,000	13.5	2.5	\$720,000
Counselors (Licensed, Masters level)	\$45,000	\$19,800	\$64,800	125	4	\$259,200
Mental Health Technicians	\$37,000	\$16,280	\$53,280	25	5	\$266,400
Activity Therapist	\$33,000	\$14,520	\$47,520	2	1	\$47,520
Quality Assurance (QA) Director	\$80,000	\$35,200	\$115,200	1	0	\$0
Quality Assurance Monitors	\$48,000	\$21,120	\$69,120	5	0	\$0
Health Services Recruiter	\$60,000	\$18,700	\$61,200	1	0	\$0
Administrative Support Staff (ICS)	\$24,500	\$10,780	\$35,280	9	0	\$0
Salary Equity for existing psychiatry staff	\$351,926	\$154,847	\$506,773	0	0	
Psychologist PhD	95,000	41,800	136,800	4	1	\$136,800
<b>3rd YEAR TOTALS</b>	<b>\$879,426</b>	<b>\$379,247</b>	<b>\$1,241,173</b>	<b>181.5</b>	<b>12.5</b>	<b>\$1,429,920</b>

South Carolina Department of Corrections  
MENTAL HEALTH PROJECTS

Behavioral Management Unit- A one hundred (100) bed security unit for inmates with mental illnesses who have persistent violations in SCDC. The nature of these violations prevents the housing of these inmates in general population. These infractions include serious assault against other persons (e.g. staff, or other inmates), attempted escape, and homicide.

- Location F-3 (Kirkland CI)
  - Add a 40 unit recreation yard - \$264,500
    - *Behavioral Management Unit (Therapeutic lock-up) for up to one hundred (100) inmates to have recreation outside. These inmates will be required to recreate in separate cells based on security risk.*
  - Add eight (8) cameras to both wings - \$42,550
    - *Four (4) cameras in each day area on both sides of the unit. Cameras will be used to monitor inmate activities in the unit and staff security.*
  - Add twenty nine (29) cameras to recreation yard - \$86,250
    - *Cameras outside in the recreation area for inmate monitoring/surveillance.*
  - Add food flaps to one hundred twenty eight (128) cells. - \$64,400
    - *Inmates being able to receive meals inside their cell.*

**Estimated Project Total- \$457,700**

Crisis Intervention Unit – A thirty two (32) bed unit for inmates arriving with or developing a condition that warrants an immediate response due to being in danger of harming themselves or others. This unit will primarily serve the specialized programs in Columbia (e.g., Intermediate Care Services, Kirkland R&E, and Broad River CI) and serve as an overflow for institutions throughout the state needing long-term (over 72 hours) crisis observation beds. This strategy is a low-cost solution compared to the construction of a new facility for the purpose of managing crisis intervention inmates.

- Location F-1 Dorm
  - Add fence downstairs to multipurpose room with walk-through gates on each side. - \$9,050
    - *This fence will separate this thirty two (32) bed unit from the other wing.*
  - Add fence upstairs with a walk-through gate on the multipurpose room side- \$24,300
    - *This fence will separate this thirty two (32) bed unit from the other wing.*
  - Add thirty five (35) cameras to all 32 cells and three (3) cameras in the wing - \$104,650
    - *For the monitoring and surveillance of inmates in cell on suicide watch.*
  - Change out glass in thirty two (32) cell doors to non-breakable glass - \$25,300
    - *For visibility to see clearly inside the cell for monitoring and surveillance of inmates on suicide watch.*

**Estimated Project Total: \$163,300**

Gilliam Psychiatric Center (GPH) An eighty eight (88) bed prison psychiatric hospital facility for male inmates needing hospital level of care because of their mental illness. This facility is located at Kirkland CI and serves the entire SCDC prison system. Current capacity of this facility has been at 90% for the last year.

- Location GPH (Kirkland CI)
  - Add eight (8) cameras to group rooms - \$32,200
    - *The making of additional space for inmates to have and attend groups with cameras in group rooms.*
  - Change-out glass in eighty eight (88) cell doors to non-breakable glass - \$69,000
    - *Retrofitting doors for better visibility for seeing in inmate rooms for security purposes.*

**Estimated Project Total: \$101,200**

Women Center-Services for the women committed to SCDC housed at Camille Graham with a mental health diagnosis spending the vast of their time in lock-up because of disciplinary infractions. The number of female inmates with a mental health diagnosis in lock-up averages approximately 20 inmates.

- Location- Camille Graham
  - Add four (4) unit recreational yard - \$17,250
    - *For lock-up – inmates to recreate outside in separate cells.*
  - Add eight (8) cameras- \$35,650
    - *Camera in cells for inmate monitoring/surveillance.*

**Estimated Project Total: \$52,900**

Crisis Intervention at various locations- Identified space for SCDC institutions to manage inmates who need short term crisis intervention (72 hours or less) in a non-lock-up setting. These inmates will be seen daily by mental health staff for monitoring and evaluation determining the next course of action.

- Location- at seventeen (17) SCDC Institutions
  - Adding no breakable glass - \$46,000
    - *Retrofitting doors outside of lock-up in identified CI cells at seventeen (17) institutions.*

**Estimated Project Total: \$46,000**

**SMU Housing Unit Level III Recreation and Yard Access**

- Location at nine (9) Level III institutions (Lieber, McCormick, Perry, Lee, Allendale, Tyger River, Turbeville, Ridgeland, Kershaw).
  - Convert portions of institutions SMU's into a general population area with their own recreation area and access to the institution's yard- \$780,800

**Estimated Project Total: 780,000**

**Total Mental Health Projects Estimated: \$1,601,900**