



REQUEST FOR QUALIFICATIONS

RFQ: 12.28.2022.003 (RFX - 3140003341)

TO PROVIDE: FOR THE PROCUREMENT OF FORENSIC PSYCHOLOGIST SERVICES

ISSUE DATE: 11/23/2022

CLOSING LOCATON

Mississippi State Hospital - Building 93
3550 Hwy 468 West/P.O. Box 1
Whitfield, MS 39193

RFQ COORDINATOR

H.L. Lockhart/Purchasing Chief
Telephone: (601) 351-8056
Fax: (601) 351-8034
E-Mail: Lockhhl@msh.ms.gov

CLINICAL CONTACT

Dr. Amanda Gugliano/Director, Forensic Evaluation Service
Telephone: (601) 351-8606
E-Mail: Amanda.Gugliano@msh.ms.gov

CLOSING DATE AND TIME

Bids must be received by 3:00 p.m. (CST) on December 28, 2022

Request for Qualifications (RFQ)- Forensic Psychologists

1) Mississippi State Hospital (MSH) will accept Statement of Qualifications (SOQ) until 3 PM (Central Time), December 28, 2022, for the purpose of hiring four individual clinical/forensic psychologists (not a company, agency, or firm) to work as independent contractors to complete court-ordered forensic mental health evaluations for the Forensic Evaluation Service (FES) at MSH. A SOQ along with supporting credentials to serve in this capacity should be contained in a sealed envelope and can be mailed or hand delivered to the Purchasing/Procurement Office (Bldg. 93), 3550 Hwy 468 West/PO Box 1, Whitfield, MS 39193. Bidders must also submit a bid online in the State of Mississippi electronic procurement system, Magic. In order to submit an online bid, bidders must be registered as a vendor in Magic and have an ID Number and Password assigned. Bidders can obtain help with registration and online bidding by calling (601) 359-1343 or at www.dfa.ms.gov/mmrs.

2) Purpose

MSH seeks to contract with four individual clinical/forensic psychologists (not a company, agency, or firm) to work as independent contractors to complete court-ordered forensic mental health evaluations of competence to proceed legally, mental state at the time of the alleged offense, violence risk assessments, competence to waive or assert constitutional rights, *Atkins* evaluations, and mitigation.

3) Background

- a) MSH is a large psychiatric hospital and is the largest facility operated by the Mississippi State Department of Mental Health. It is located about 15 miles southeast of Jackson, Mississippi, and directly south of the Jackson International Airport on County Road 468.
- b) MSH was completed in 1935. The hospital complex was built on the cottage plan and occupies 350 acres. It includes over 130 buildings.
- c) MSH is licensed for 1329 beds. The hospital and nursing homes have an average daily census of 726 patients.
- d) All divisions of MSH and Jaquith Nursing Homes are accredited by the Joint Commission.
- e) The operational divisions of MSH are Whitfield Medical Surgical Hospital, Jaquith Nursing Homes, child and adolescent psychiatric, adult psychiatric, medical psychiatric, forensic services, and female chemical dependency services.

4) Definitions

- a) RFQ - Request for Qualifications.

- b) SOQ - Statement of Qualifications.
- c) Respondent - An individual that submits or intends to submit a proposal in response to this Statement of Qualifications.
- d) MSH/Hospital - Mississippi State Hospital.
- e) FES - Forensic Evaluation Service.
- f) JC - Joint Commission.
- g) Must/Mandatory/Required - A requirement that must be met in order for a proposal to receive consideration.
- h) Contract - The written agreement resulting from this Request of Qualifications/ Statement of Qualifications executed by MSH and the independent contractor.
- i) Independent Contractor - An individual with which a written agreement is executed.

5) Minimum qualifications are listed below. Documents supporting sections a), b), and c) must be provided when submitting the SOQ:

- a) Education/Diploma:
 Doctoral degree in clinical psychology or counseling psychology from an accredited program, including successful completion of an accredited pre-doctoral internship in clinical or counseling psychology.
- b) Degree, License, and Insurance:
 - (1) Doctor of Philosophy (Ph.D.) degree or Doctor of Psychology (Psy.D.) degree from an accredited program;
 - (2) Current, unrestricted license to practice psychology in the State of Mississippi or licensure as a psychologist in another state and application for Mississippi licensure is in progress;
 - (3) Evidence of Professional Liability Insurance with coverage of at least \$1,000,000 inclusive per occurrence and \$3,000,000 aggregate.
- c) Current Curriculum Vitae:
 Demonstrates at least 5 years of experience performing forensic psychological evaluations and/or providing expert testimony.
- d) Other Requirements:

- (1) If not already privileged to perform forensic psychological evaluations at MSH, the Respondent must complete an application to be granted privileges to work as an MSH clinical psychologist and complete the process to be granted privileges to perform independent forensic psychological evaluations.
- (2) After Facility receives the completed application materials and reviews all of the required credentialing documents, the Respondent must be interviewed by MSH Forensic Services. It is incumbent upon the Respondent to ensure that all required documents are received by the Facility prior to the interview. The applicant will be assigned a time for an interview.

6) Essential Functions

The Independent Contractor agrees to provide forensic psychological evaluation services which may include, but are not limited to, the following duties:

- a) Conducting evaluations of:
 - (1) Competence to proceed legally;
 - (2) Mental state at the time of the alleged offense;
 - (3) Competence to waive or assert constitutional rights;
 - (4) Violence risk assessments;
 - (5) *Atkins* evaluations;
 - (6) Mitigation;
- b) Providing expert witness testimony;
- c) Serving as a consultant for MSH Transition Advisory Panel;
- d) Participating in quality assurance and performance improvement activities;
- e) Abiding by all MSH Forensic Services Policies and Procedures, Rules and Regulations of the MS Board of Psychology, APA Ethical Principles of Psychologists and Code of Conduct, and APA Specialty Guidelines for Forensic Psychology.

7) Performance Measures

- a) Completing evaluations (except for capital murder evaluations) within 30 days of receiving the minimally required information (court order, information related to the alleged offense, legal history, and MSH Patient Information Form) or within 90 days of MSH receiving the court order if the minimal information has not been provided;

- b) Submitting the Independent Contractor's written report and all records related to evaluations to MSH Forensic Evaluation Service within 30 days of completing evaluations;
- c) Answering each of the referral questions that are listed in the court order for the forensic psychological evaluation;
- d) Reports include forensic opinions and/or recommendations that are in accordance with Rule 12 of the Mississippi Rules of Criminal Procedure and/or professional practice standards.

8) Other Requirements

- a) Independent Contractors can anticipate spending up to an average of 20 hours per week performing the aforementioned essential functions;
- b) It is our intent to procure psychologist services for the MSH Forensic Evaluation Service for the types and quantities listed in this RFQ; however, quantities may be increased or decreased accordingly if the needs of MSH require such a change. Contract awards shall be requirement contracts as defined by paragraph 3-501.05.3 of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Regulations, and, therefore, quantities of MSH service requirements will be considered indefinite, no specific quantity of services are guaranteed. MSH shall order all psychologist services covered by this RFQ from the awarded vendors; however, MSH reserves the right to take bids separately if a particular quantity requirement arises which exceeds MSH's normal requirements or an amount specified herein this RFQ. It shall be understood that MSH is exempt from ordering under the eventual contract when (1) services provided under this contract will not meet a nonrecurring, special need of MSH and (2) services are performed incidental to the State of Mississippi's own programs that can satisfy the need.

9) Evaluation of SOQ will be based on weighted scoring from the Respondent's content in section 13.

10) Performance of the services will begin on March 24, 2023 and end on March 23, 2027, with the option to extend the contract for one additional year.

11) Type of contract will be an Independent Contractor.

12) The deadline for submission of the SOQ will be December 28, 2022 at 3 PM.

13) Content of Evaluation of SOQ will include:

- a) Name of Respondent;
- b) Credentials (Weight of Factor 33%);

- c) Experience (Weight of Factor 22%);
- d) Interview (Weight of Factor 10%);
- e) Price (Weight of Factor 35%).

14) Method of Award

Award will be made to the four Respondents with the highest score(s) during the evaluation process.

15) Proposal/SOQ Certification

The Respondent agrees that submission of a signed SOQ is certification that the Respondent will accept an award made to it as a result of the submission.

16) Proposal/SOQ Investigations

Before submitting a SOQ, each Respondent shall make all investigations and examinations necessary to ascertain all conditions and requirements affecting the full performance of the contract and to verify any representations made by MSH upon which the SOQ will rely. If the Respondent receives an award as a result of its SOQ submission, failure to have made such investigations and examinations will in no way relieve the Respondent from its obligation to comply in every detail with all provisions and requirements of the contract documents, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim whatsoever for additional compensation.

17) Debarment

By submitting a SOQ, the Respondent certifies that it is not currently debarred from submitting proposals/SOQs for contracts issued by any political subdivision or agency of Mississippi, and that it is not an agent of a person or entity that is currently debarred from submitting proposals/SOQs for contracts issued by any political subdivision or agency of Mississippi.

18) Exceptions

Respondents taking exception to any part or section of the solicitation shall indicate such exceptions on the proposal/SOQ. Failure to indicate any exception will be interpreted as the Respondent's intent to comply fully with the requirements as written. Conditional or qualified proposals/SOQs, unless specifically allowed, shall be subject to rejection in whole or in part.

19) Expenses Incurred in Preparing Proposal/SOQ

MSH accepts no responsibility for any expense incurred by the Respondent in the preparation and presentation of a proposal/SOQ. Such expenses shall be borne exclusively by the Respondent.

20) Late Submissions

- a) A proposal/SOQ received at the place designated in the solicitation for receipt of proposal/SOQ after the exact time specified for receipt will not be considered unless it is the only proposal/SOQ received, or it is received before award is made and was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of the RFQ. It must be determined by MSH that the late receipt was due solely to mishandling by MSH after receipt at the specified address;
- b) The only acceptable evidence to establish the date of mailing of a late proposal/SOQ is the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service. If the postmark does not show a legible date, the contents of the envelope or package shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression, exclusive of a postage meter impression, that is readily identifiable without further action as having been supplied and affixed by the U.S. Postal Service on the date of mailing. Respondents should request postal clerks to place a hand cancellation postmark (often called a bull's eye) on both the receipt and the envelope or wrapper;
- c) The only acceptable evidence to establish the time of receipt at the office identified for proposal/SOQ opening is the time and date stamp of that office on the proposal/SOQ wrapper or other documentary evidence of receipt used by that office.

21) Nonconforming Terms and Conditions

A proposal/SOQ response that includes terms and conditions that do not conform to the terms and conditions in the RFQ document is subject to rejection as non-responsive. MSH reserves the right to permit the Respondent to withdraw nonconforming terms and conditions from its proposal/SOQ response prior to a determination by MSH of non-responsiveness based on the submission of nonconforming terms and conditions.

22) Reservation of Right

Any and all forms, reports, designs, and other materials prepared by Respondents for MSH shall be used by MSH and Mississippi Department of Mental Health only for its own internal operations. MSH retains all rights and interest in said reports.

23) Applicable Law

The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of law's provisions, and any litigation with respect hereto shall

be brought in the courts of the State. The Respondent shall comply with applicable federal, state, and local laws, and regulations.

24) Availability of Funds

It is expressly understood and agreed that the obligation of MSH 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 MSH, MSH shall have the right upon ten (10) working days written notice to Independent Contractor, to terminate this agreement without damage, penalty, cost, or expenses to the State of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

25) Representation Regarding Contingent Fees

The Respondent represents that it has not retained a person to solicit or secure an MSH contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in the consultant's proposal/SOQ.

26) Representation Regarding Gratuities

The Bidder, Offeror, or Respondent 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 Procurement Regulations.

27) Acknowledgment of Amendments

Respondents shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment, by identifying the amendment number and date in the space provided for this purpose on the bid form, or by letter. The acknowledgment must be received by MSH by the time and at the place specified for receipt of SOQs.

28) Procurement Regulations

The contract shall be governed by the applicable provisions of the Mississippi Procurement Review Board Office of Personal Services Contract Review Rules and Regulations, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection or downloadable at <http://www.DFA.ms.gov>.

29) 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.

30) 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 Respondent 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.

31) Compliance with Laws

The Respondent understands that MSH 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 and the Respondent agrees during the term of the agreement that the Respondent will strictly adhere to this policy in its employment practices and provisions of services. The Respondent shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified, as well as in accordance with the standards of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

32) HIPAA/BAA

Respondent agrees to comply with the Final Omnibus Rule of the Health Insurance Portability and Accountability Act of 1996 and any amendments there too, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the service under this contract. A Business Associate Agreement will be executed.

33) Compensation

- a) When the charge(s) against the defendant do not include capital murder, the Independent Contractor will be compensated \$250 per hour, for a maximum of eight (8)

hours, with the possibility of up to an additional four (4) hours upon prior approval by the FES Director, for evaluations of competence to proceed legally, mental state at the time of alleged offense(s), competence to waive or assert constitutional rights, mitigation, and/or *Atkins*;

- b) When the charge(s) against the defendant include capital murder, the Independent Contractor will be compensated \$250 per hour for evaluations of competence to proceed legally, mental state at the time of alleged offense(s), competence to waive or assert constitutional rights, mitigation, and/or *Atkins*;
- c) The Independent Contractor will be compensated \$250 per hour for a maximum of twenty (20) hours, with the possibility of up to an additional ten (10) hours upon prior approval by the FES Director, for violence/sexual violence risk assessments;
- d) The Independent Contractor will be compensated \$250 per hour for serving as a consultant to MSH Transition Advisory Panel and for expert witness testimony;
- e) The Independent Contractor will not be compensated for travel time and/or any travel expenses, except for when providing expert witness testimony for more than one day which requires at least one overnight stay in a hotel. Under those circumstances, MSH will reimburse the Independent Contractor for the cost of hotel accommodations upon MSH receiving an itemized hotel receipt.

34) E-Payment

Respondent agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301. Invoices should be submitted timely.

35) E-Verification

Respondent represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act 2008 and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 et seq. 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. Respondent agrees to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State. Respondent further represents and warrants that any person assigned to perform

services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Respondent understands and agrees that any breach of these warranties may subject Independent 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 Independent Contractor by an agency, department, or governmental entity for the right to do business in Mississippi for up to one (1) year, or both. (c) In the event of such termination/cancellation, Independent 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.

36) Stop Work Order

- a) Order to Stop Work: The Chief Procurement Officer, may, by written order to Independent Contractor at any time, and without notice to any surety, require Independent 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 Independent 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, Independent 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:
 - 1) cancel the stop work order; or,
 - 2) terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.
- b) 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, Independent Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Independent Contractor price, or both, and the contract shall be modified in writing accordingly, if:
 - 1) the stop work order results in an increase in the time required for, or in Independent Contractor's properly allocable to, the performance of any part of this contract; and,
 - 2) Independent 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;

- c) 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.
- d) Adjustment 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.

37) Termination Upon Bankruptcy

This contract may be terminated in whole or in part by MSH upon written notice to Independent Contractor, if Independent Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Independent Contractor of an assignment for the benefit of its creditors. In the event of such termination, Independent 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.

38) Approval

It is understood that this contract requires approval by the Personal Service Contract Review Board. If this contract is not approved, it is void and no payment shall be made hereunder.

39) Independent Contractor Agreement

Respondent must agree to the Independent Contractor agreement (Independent Contractor July 2020 Revision) and (Attachment A).

40) The deadline for submission of questions will be December 12, 2022.

41) Post-Award Vendor Debriefing

A Respondent, successful or unsuccessful, may request a post-award debriefing, in writing, by U.S. mail or electronic submission. The written request must be received by the Director of MSH within three (3) business days of notification of the contract award. A post-award debriefing is a meeting and not hearing; therefore, legal representation is not required. A debriefing typically occurs within five (5) business days of receipt of the request. If a Respondent prefers to have legal representation present, the Respondent must notify the Director of MSH in writing and identify its attorney by name, address, and telephone number. MSH will schedule and/or suspend and reschedule the meeting at a time when a Representative of the Office of the Mississippi Attorney General can be present.

For additional information regarding Post-Award Debriefing, as well as information that may be provided and excluded, please see Section 7-114 through 7-114.07, Post-Award Vendor Debriefing, of the Personal Service Contract Review Board's Rules and Regulations.

42) Protest of Award

Any actual or prospective Respondent or Contractor who is aggrieved in connection with this solicitation or the outcome of the RFQ may file a protest with the Request for Qualifications Clinical Coordinator, Dr. Amanda Gugliano. The protest shall be submitted during the protest period which begins on the day following the issuance of the notice of intent to award contract and end 5:00 PM on the seventh day following issuance of the notice of intent to award, in writing after such aggrieved person or entity knows or should have known of the facts giving rise thereto. All protests must be dated, and signed by the Respondent or an individual authorized to sign contracts on behalf of the protesting Respondent, and contain a statement of the reason(s) for protest, citing the law(s), rule(s) or regulation(s), and/or procedure(s) on which the protest is based. The written protest letter shall contain an explanation of the specific basis for the protest. The protesting Respondent must provide facts and evidence to support the protest. A protest is considered filed when received by the Request for Qualifications Clinical Coordinator, Dr. Amanda Gugliano, via either U.S. mail, postage prepaid, or personal delivery. Protests filed after 5 PM Central Time, on the seventh day following issuance of the notice of intent to award, will not be considered.

43) Respondents shall be registered with the Mississippi Secretary of State's Office as a business provider in good standing to provide services in the State of Mississippi as required by Mississippi Code 79-4-15.01. If not already registered at the time the SOQ is submitted, the Respondent understands that they must do so within seven (7) working days of being offered an award. This requirement does not apply to Sole Proprietors and MSH reserves the right to request documentation of the Respondent's business status.

44) Paymode

Payments by state agencies using the State's accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Independent Contractor's choice. The state may, at its sole discretion, require Independent Contractor to electronically submit invoices and supporting documentation at any time during the term of this agreement. Independent Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

Mississippi Contract/Procurement Opportunity Search Portal

This RFQ, and the questions and answers concerning the RFQ, are posted on the Contract/Procurement Opportunity Search Portal.

Attachments

The attachments to this RFQ are made a part of this RFQ as if copied herein in words and figures. Attachments include: Attachment - A, Independent Contractor Contract; Attachment - B, Independent Contract Agreement; Certifications & Assurances: Attachment – C; and Attachment – D, Business Associate Agreement.

By signing below, the Company Representative/Independent Contractor certifies that he/she has authority to bind the company/he/she, and further acknowledges on behalf of the company/person:

1. That he/she has thoroughly read and understands this RFQ, RFQ.12.28.2022.003 and the attachments herein;
2. That the Independent Contractor meets all requirements and acknowledges all certifications contained in this RFQ, RFQ.12.28.2022.003 and the attachments herein;
3. That the Independent Contractor agrees to all provisions of this RFQ, RFQ.12.28.2022.003 and the attachments herein;
4. That the Independent Contractor has, or will secure at its own expense, applicable personnel who shall be qualified to perform the duties required to be performed under this RFQ.

Printed Name: _____

Signature: _____

Date: _____

ATTACHMENT A

A. SCOPE OF WORK

- 1) Conducting evaluations of:
 - (a) Competence to proceed legally;
 - (b) Mental state at the time of the alleged offense;
 - (c) Competence to waive or assert constitutional rights;
 - (d) Violence risk assessments;
 - (e) *Atkins* evaluations;
 - (f) Mitigation;
- 2) Providing expert witness testimony;
- 3) Serving as a consultant for MSH Transition Advisory Panel;
- 4) Participating in quality assurance and performance improvement activities;
- 5) Abiding by all MSH Forensic Services Policies and Procedures, Rules and Regulations of the MS Board of Psychology, APA Ethical Principles of Psychologists and Code of Conduct, and APA Specialty Guidelines for Forensic Psychology.

B. PERFORMANCE MEASURES

- 1) Completing evaluations (except for capital murder evaluations) within 30 days of receiving the minimally required information (court order, information related to the alleged offense, legal history, and MSH Patient Information Form) or within 90 days of MSH receiving the court order if the minimal information has not been provided;
- 2) Submitting the Independent Contractor's written report and all records related to evaluations to MSH Forensic Evaluation Service within 30 days of completing evaluations;
- 3) Answering each of the referral questions that are listed in the court order for the forensic psychological evaluations;
- 4) Reports include forensic opinions and/or recommendations that are in accordance with Rule 12 of the Mississippi Rules of Criminal Procedure and professional practice standards.

C. OTHER REQUIREMENTS

Independent Contractor can anticipate spending up to an average of up to 24 hours per week performing the aforementioned duties. The Independent Contractor will not work more than 6,240 hours during the contract period.

The Independent Contractor will devote his/her best efforts and necessary time and attention to completing the aforementioned duties.

D. CREDENTIALS/PRIVILEGES

The Independent Contractor shall be credentialed by the MSH Behavioral Health Services Department and shall maintain privileges to perform independent forensic psychological evaluations.

E. COMPENSATION

MSH agrees to compensate the Independent Contractor as follows:

- 1) When the charge(s) against the defendant do not include capital murder, the Independent Contractor will be compensated \$250 per hour, for a maximum of eight (8) hours, with the possibility of up to an additional four (4) hours upon prior approval by the FES Director, for evaluations of competence to proceed legally, mental state at the time of alleged offense(s), competence to waive or assert constitutional rights, mitigation, and/or *Atkins*;
- 2) When the charge(s) against the defendant include capital murder, the Independent Contractor will be compensated \$250 per hour for evaluations of competence to proceed legally, mental state at the time of alleged offense(s), competence to waive or assert constitutional rights, mitigation, and/or *Atkins*;
- 3) The Independent Contractor will be compensated \$250 per hour for a maximum of twenty (20) hours, with the possibility of up to an additional ten (10) hours upon prior approval by the FES Director, for violence risk assessments;
- 4) The Independent Contractor will be compensated \$250 per hour for serving as a consultant to MSH Transition Advisory Panel and for expert witness testimony;
- 5) The Independent Contractor will not be compensated for travel time and/or any travel expenses, except for when providing expert witness testimony for more than one day which requires at least one overnight stay in a hotel. Under those circumstances, MSH will reimburse the Independent Contractor for the cost of hotel accommodations upon MSH receiving an itemized hotel receipt.

F. TERMINATION

The Independent Contractor will provide MSH with at least forty-five (45) days written notice of the intent to terminate this contract.

Independent Contractor Signature

Date

ATTACHMENT – B

INDEPENDENT CONTRACT AGREEMENT (SAMPLE DOCUMENT)



AGREEMENT BETWEEN MISSISSIPPI STATE HOSPITAL of

Whitfield Mississippi (MSH) and _____.

This agreement is entered into by Mississippi State Hospital, hereafter called "Hospital" whose address is Post Office Box 157-A, 3550 Highway 468 West, Whitfield, Mississippi and _____, hereinafter called "Independent Contractor" for the provision of services as set out herein. The term "Hospital" includes Whitfield Medical Surgical Hospital, Jaquith Nursing Home, Oak Circle Center, and other programs and divisions of Mississippi State Hospital

NOW THEREFORE, the parties agree to the terms and conditions herein.

1. INDEPENDENT CONTRACTOR

Neither Independent Contractor nor its employees shall, under any circumstances, be considered servants or agents of the Hospital or any of its subordinate programs and Hospital or any of its subordinate programs shall be at no time legally responsible for any negligence or other wrongdoing by the Independent Contractor or its servants, or agents. Hospital agrees to compensate as outlined in Attachment A, which is attached hereto and made a part of as if fully copied herein. These funds shall be paid directly to the Independent Contractor by Hospital. Hospital or any of its subordinate programs shall not withhold from the Independent Contractor payments for any federal or state unemployment taxes, federal or state income taxes, Federal Insurance Contributions Act (FICA) withholdings, or any other amounts for benefits to Independent Contractor. Further, Hospital or its subordinate programs shall not provide to Independent Contractor any insurance coverage or other benefits including Workers Compensation, normally provided by the state for its employees.

2. SCOPE OF WORK

Independent Contractor agrees to provide services to the Hospital as described, and under the conditions, as set out in Attachment A which is attached hereto and made a part of as if fully copied herein.

3. PERIOD OF AGREEMENT

Performance of the services will begin on or about _____ and will end on or about _____, with the option to renew for one additional year.

4. COMPENSATION

Hospital agrees to compensate Independent Contractor at a rate for services described in Attachment

A. The total contract amount will not exceed \$_____.

5. RESERVATION OF RIGHT

Any and all forms, reports, designs, and other materials prepared by Independent Contractor for Hospital shall be used by Hospital only for its own internal operations. Hospital retains all rights and interest in said reports.

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 any litigation with respect hereto shall be brought in the courts of the state. The Independent Contractor shall comply with applicable federal, state, and local laws and regulations.

7. AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of the Hospital 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 time 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 Hospital, the Hospital shall have the right upon ten (10) working days written notice to the Independent Contractor, to terminate this agreement without damage, penalty, cost or expenses to the Hospital of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

8. REPRESENTATION REGARDING CONTINGENT FEES

The Independent 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 the contractor's bid or proposal.

9. 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 Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations.

10. PROCUREMENT REGULATIONS

The contract shall be governed by the applicable provisions of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.DFA.ms.gov>.

11. 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.

12. 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 Independent 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.

13. COMPLIANCE WITH LAWS

The Independent Contractor understands that the Hospital 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 Independent Contractor agrees during the term of the agreement that the Independent Contractor will strictly adhere to this policy in its employment practices and provisions of services. The Independent Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified, "as well as in accordance with the standards of the Joint Commission (JC)."

14. HIPAA

Independent Contractor agrees to comply with the Final Omnibus Rule of the Health Insurance Portability and Accountability Act of 1996 and any amendments there too, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the service under this contract."

15. TERMINATION FOR CONVENIENCE

(a) *Termination.* The Hospital 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 Hospital Director

or designee shall give written notice of the termination to Independent Contractor specifying the part of the contract terminated and when termination becomes effective.

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

16. TERMINATION FOR DEFAULT

(a) *Default.* If Independent 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 Hospital Director or designee may notify Independent 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 Hospital Director or designee, such officer may terminate Independent 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 Hospital Director or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Hospital Director or designee. Independent 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.

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

(c) *Compensation.* Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Independent Contractor such sums as the Hospital 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.

(d) *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Independent 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 Independent Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Independent Contractor has notified the Hospital 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, Independent 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 Independent Contractor to meet the contract requirements. Upon request of Independent Contractor, the Hospital 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, Independent 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 (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination").

(e) *Erroneous Termination for Default.* If, after notice of termination of Independent 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.

(f) *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.

17. TERMINATION UPON BANKRUPTCY

This contract may be terminated in whole or in part by the Hospital upon written notice to Independent Contractor, if Independent Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Independent Contractor of an assignment for the benefit of its creditors. In the event of such termination, Independent 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.

18. E-PAYMENT

Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle, if applicable. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 et seq.

19. E-VERIFICATION

If applicable, Independent Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act 2008 and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 et seq. 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. Independent Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Independent Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Independent 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;
- (b) the loss of any license, permit, certification or other document granted to Independent 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, Independent 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.

20. ANTI-ASSIGNMENT/SUBCONTRACTING

The Independent Contractor acknowledges that it was selected by the Hospital to perform the services required hereunder based, in part, upon the Independent

Contractor's special skills and expertise. The Independent Contractor shall not assign, subcontract, or otherwise transfer this agreement in whole or in part without the prior written consent of the Hospital, which the Hospital may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the Hospital of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the Hospital in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the Hospital may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

21. STOP WORK ORDER

(1) Order to Stop Work: The Chief 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 Chief 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 Chief 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.

22. PAYMODE

Payments by state agencies using the State's accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Independent Contractor's choice. The State may, at its sole discretion, require Independent Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

23. APPROVAL

It is understood that if this contract requires approval by the Public Procurement Review Board and/or the Mississippi Department of Finance and Administration Office of Personal Service Contract Review and this contract is not approved by the PPRB and/or OPSCR, it is void and no payment shall be made hereunder.

24. AUTHORITY TO CONTRACT

Independent Contractor warrants: (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and, (d) notwithstanding any other provision of this agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

25. CHANGE IN SCOPE OF WORK

The Hospital may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by Independent Contractor that the scope of the project or of Independent Contractor's services has been changed, requiring changes to the amount of compensation to Independent Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the Hospital and Independent Contractor. If Independent 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 Independent Contractor, Independent Contractor must immediately notify the Hospital in writing of this belief. If the Hospital believes that the particular work is within the scope of the contract as written, Independent Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the contract.

26. INFORMATION DESIGNATED BY CONTRACTOR AS CONFIDENTIAL

Any disclosure of those materials, documents, data, and other information which Independent Contractor has designated in writing as proprietary and confidential shall be subject to the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1. As provided in the contract, the personal or professional services to be 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. Any liability resulting from the wrongful disclosure of confidential information on the part of Independent Contractor or its subcontractor shall rest with Independent Contractor. Disclosure of any confidential information by Independent Contractor or its subcontractor without the express written approval of the Hospital shall result in the immediate termination of this agreement.

27. CONFIDENTIALITY

Notwithstanding any provision to the contrary contained herein, it is recognized that Hospital is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Mississippi Code Annotated §§ 25-61-1 *et seq.* If a public records request is made for any information provided to Hospital pursuant to the agreement and designated by the Contractor in writing as trade secrets or other proprietary confidential information, Hospital shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The Hospital shall not be liable to the Independent Contractor for disclosure of information required by court order or required by law.

28. CONTRACTOR PERSONNEL

The Hospital shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by Independent Contractor. If the Hospital reasonably rejects staff or subcontractors, Independent Contractor must provide replacement staff or subcontractors satisfactory to the Hospital in a timely manner and at no additional cost to the Hospital. The day-to-day supervision and control of Independent Contractor's employees and subcontractors is the sole responsibility of Independent Contractor.

29. DEBARMENT AND SUSPENSION

Independent Contractor certifies to the best of its knowledge and belief, that it:

- (a) is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
- (b) has not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;
- (c) has not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (d) is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (2) and (3) of this certification; and,
- (e) has not, within a three year period preceding this proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.

30. DISCLOSURE OF CONFIDENTIAL INFORMATION

In the event that either party to this agreement receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this agreement. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq.*

31. EXCEPTIONS TO CONFIDENTIAL INFORMATION

Independent Contractor and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("disclosing party") which:

- (a) is rightfully known to the recipient prior to negotiations leading to this agreement, other than information obtained in confidence under prior engagements;
- (b) is generally known or easily ascertainable by nonparties of ordinary skill in the business of the customer;
- (c) is released by the disclosing party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
- (d) is independently developed by the recipient without any reliance on confidential information;
- (e) is or later becomes part of the public domain or may be lawfully obtained by the State or Contractor from any nonparty; or,
- (f) is disclosed with the disclosing party's prior written consent.

32. FAILURE TO DELIVER

In the event of failure of Independent Contractor to deliver services in accordance with the contract terms and conditions, the Hospital, after due oral or written notice, may procure the services from other sources and hold Independent Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the Hospital may have.

33. FAILURE TO ENFORCE

Failure by the Hospital 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 Hospital to enforce any provision at any time in accordance with its terms.

34. FORCE MAJEURE

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters ("force majeure events"). When such a cause arises, Contractor shall notify the State immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate the agreement.

35. INDEMNIFICATION

To the fullest extent allowed by law, Independent Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the agency, its commissioners, board members, 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 attorney's fees, arising out of or caused by Independent Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement. In the State's sole discretion upon the approval of the Office of the Mississippi Attorney General, Independent Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Independent Contractor defends said claim, suit, etc., Independent Contractor shall use legal counsel acceptable to the Office of the Mississippi Attorney General. Independent Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. Independent Contractor shall not settle any claim, suit, etc. without the concurrence of the Office of the Mississippi Attorney General, which shall not unreasonably withhold.

36. INDEPENDENT CONTRACTOR STATUS

Independent Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, Independent Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the State and Independent Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or Independent Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Independent Contractor. Independent Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Independent Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the Hospital and the Hospital shall be at no time legally responsible for any negligence or other wrongdoing by Independent Contractor, its servants, agents, or employees. The Hospital shall not withhold from the contract payments to Independent Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Independent Contractor. Further, the Hospital shall not provide to Independent Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

37. MODIFICATION OR RENEGOTIATION

This agreement may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or state revisions of any applicable laws or regulations make changes in this agreement necessary.

38. NO LIMITATION OF LIABILITY

Nothing in this agreement shall be interpreted as excluding or limiting any tort liability of Independent Contractor for harm caused by the intentional or reckless conduct of Independent Contractor or for damages incurred through the negligent performance of duties by Independent Contractor or the delivery of products that are defective due to negligent construction.

39. ORAL STATEMENTS

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the Hospital or Independent Contractor and agreed to by the other party in the contract.

40. RECOVERY OF MONEY

Whenever, under the contract, any sum of money shall be recoverable from or payable by Independent Contractor to the Hospital, the same amount may be deducted from any sum due to Contractor under the contract or under any other contract between Independent Contractor and the Hospital. The rights of the Hospital are in addition and without prejudice to any other right the Hospital may have to claim the amount of any loss or damage suffered by the Hospital on account of the acts or omissions of Independent Contractor.

41. STATE PROPERTY

Independent Contractor will be responsible for the proper custody and care of any state-owned property furnished for Independent Contractor's use in connection with the performance of this agreement. Independent Contractor will reimburse the State for any loss or damage, normal wear and tear excepted.

42. THIRD PARTY ACTION NOTIFICATION

Independent Contractor shall give the customer prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Independent Contractor by any entity that may result in litigation related in any way to this agreement.

43. UNSATISFACTORY WORK

If, at any time during the contract term, the service performed or work done by Independent Contractor is considered by the Hospital to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, Independent Contractor shall, on being notified by the Hospital, immediately correct such deficient service or work. In the event Independent Contractor fails, after notice, to correct the deficient service or work immediately, the Hospital shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of Independent Contractor.

44. 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.

45. NOTICES

All notices required or permitted to be given under this agreement must be in writing and personally delivered or sent by certified United States mail, postage prepaid, return receipt requested, 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 Independent Contractor: Name: _____ Title: _____

Address: _____

For the Hospital: Name: _____ Title: _____

Address: Post Office Box 157-A, Whitfield, Mississippi

46. INTEGRATED AGREEMENT/MERGER

This agreement, including all contract documents, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This agreement may be altered, amended, or modified only by a written document executed by the State and Independent Contractor. Independent Contractor acknowledges that it has thoroughly read all contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this agreement shall not be construed or interpreted in favor of or against the State or Independent Contractor on the basis of draftsmanship or preparation hereof.

James G. Chastain
Director
Mississippi State Hospital

Date

Independent Contractor

Date

Certifications and Assurances: Attachment - C

I/We make the following certifications and assurances as a required element of the offer to which it is attached, of the understanding that the truthfulness of the facts affirmed here and the continued compliance with these requirements are conditions precedent to the award or continuation of the related contract(s) by circling the applicable word or words in each paragraph below:

1. Representation Regarding Contingent Fees. The contractor represents that it has/has not **(Circle One)** 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 the contractor's bid.
2. Representation Regarding Gratuities. The bidder, offeror or contractor represents that it has/has not **(Circle One)** 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 Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations.
3. Certification of Independent Price Determination. The bidder certifies that the prices submitted in response to the solicitation has/has not **(Circle One)** been arrived at independently and without – for the purpose of restricting competition – any consultation, communication, or agreement with any other bidder or competitor relating to those prices, the intention to submit an bid, or the methods or factors used to calculate the prices bid.
4. Prospective Contractor's Representation Regarding Contingent Fees. The prospective contractor represents as a part of such contractor's bid that such contractor has/has not **(Circle One)** retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.
5. Certification of Non-Debarment. By submitting a bid, the bidder certifies that it is/is not **(Circle One)** currently debarred from submitting bids for contracts issued by an political subdivision or agency of Mississippi and that it is not an agent of a person or entity that is currently debarred form submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi.

Name/Title: _____

Signature/Date: _____

Note: Please be sure to circle the applicable word or words provided above. Failure to circle the applicable word or words and/or to sign the SOQ form may result in the SOQ being rejected as nonresponsive. Modifications or additions to any portion of this SOQ document may be cause for rejection of the SOQ.

ATTACHMENT – D

BUSINESS ASSOCIATE AGREEMENT (SAMPLE DOCUMENT)

Business Associate Agreement

Revised February 2019

5. Designated Record Set- A designated record set means a group of records maintained by or for a covered entity that is the medical records or billing records about Individuals maintained by or for a covered health provider, the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan, or used, in whole or in part, by or for the covered entity to make decisions about Individuals.

C. Obligations and Activities of the Business Associate:

1. Business Associate agrees to keep records and submit compliance reports as well as follow all other requirements regarding compliance with 45 CFR § 160.310.
2. Business Associate agrees to acknowledge that if the Secretary determines that the business associate has violated any administrative provision then the business associate is subject to a civil money penalty pursuant to 45 CFR § 160.402.
3. Business Associate agrees to ensure the confidentiality, integrity, and availability of all electronic protected health information the business associate creates, receives, maintains, or transmits.
4. Business Associate must review and modify security measures implemented as needed to continue to protect electronic protected health information, and update documentation of such security measures in accordance with 45 CFR § 164.316.
5. Business Associate must implement policies and procedures to comply with administrative safeguards pursuant to 45 CFR § 164.308.
6. Business Associate must implement policies and procedures to comply with physical safeguards pursuant to 45 CFR § 164.310.
7. Business Associate must implement policies and procedures to comply with technical safeguards pursuant to 45 CFR § 164.312.
8. Business Associate agrees to notify MSH of any breach of unsecured protected health information within 5 days so that MSH can notify and identify, at the business associate's expense, each Individual whose unsecured protected health information has been acquired, accessed, or disclosed within 60 days.
9. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the business associate of a use or disclosure of protected health information by the business associate in violation of the requirements of this Agreement.
10. Business Associate agrees that discovery of the breach will be treated as of the first day that the business associate knew of the breach or, by exercising reasonable diligence, would have been known to the business associate.
11. Business Associate may use or disclose protected health information only as permitted or required by this agreement or as required by law.
12. Business Associate agrees to provide MSH with protected health information in order for MSH to satisfy MSH's obligations under HIPAA regulations.
13. Business Associate agrees to provide access, at the request of MSH, to any applicable protected health information maintained by business associate in a Designated Record Set. Such access will be provided within 10 days of receiving

- a written request from MSH. Such access will be provided to MSH or, as directed by MSH, to an Individual in order to meet the 30 day requirement and other requirements under 45 CFR § 164.524.
14. Business Associate agrees to make any amendment to protected health information in a Designated Record Set that MSH directs or agrees to in accordance with 45 CFR § 164.526 at the request of MSH or an Individual, within 30 days of receiving a written request for such amendment.
 15. Business Associate agrees to document such disclosures of protected health information and information related to such disclosures as would be required for MSH to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
 16. Business Associate agrees to provide to MSH or an Individual information collected in accordance with this Agreement, to permit MSH to respond to a request by an Individual for an accounting of disclosures of protected health information in accordance with 45 CFR § 164.528. Business associate agrees to provide this information within 30 days of receiving a written request from MSH.
 17. Business Associate agrees that when using or disclosing protected health information or when requesting protected health information from another business associate, the business associate must make reasonable efforts to limit the protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.
 18. Business Associate agrees to comply with 45 CFR § 164.504 in order to properly safeguard information if the business associate works with a subcontractor.
 19. Business Associate agrees to acknowledge that it will not be found in compliance with 45 CFR § 164.502 if the business associate knew of a pattern of activity or practice of a subcontractor that constituted a material breach or violation of the subcontractor's obligation under the agreement, unless the business associate took reasonable steps to cure the breach or end the violation, as applicable, and, if such steps were unsuccessful terminate the contract if feasible.
 20. Business Associate agrees to ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to same restrictions and conditions that apply to the business associate with respect to protected health information.
 21. Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by the business associate on its behalf of MSH available to MSH for purposes of auditing and inspecting to determine compliance with this Agreement.
 22. Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by the business associate on its behalf of MSH available to the Secretary for purposes of determining MSH's compliance.
 23. Business Associate agrees to only use protected health information received by MSH for the proper management and administration of the business associate or to carry out the legal responsibilities of the business associate.

D. Additional Obligations and Activities of the Business Associate when Substance Use Disorder Patient Records are involved:

1. Business Associate agrees to be fully bound by the provisions of 42 CFR Part 2 upon receipt of applicable patient identifying information.
2. Business Associate must implement appropriate safeguards to prevent unauthorized uses and disclosures as required by 42 CFR Part 2.
3. Business Associate must report any unauthorized uses, disclosures, or breaches of patient identifying information to MSH.
4. Business Associate must not re-disclose information to a third party unless that third party is a contract agent of the Business Associate, helping them provide services described in the contract, and only as long as the agent only further discloses the information back to the Business Associate or MSH from which the information originated.

E. Obligations and Activities of Business Associate in the event there is a Breach of Unsecured Protected Health Information:

1. Notices of breaches involving unsecured protected health information shall include identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed to have been, Breached, and such other information as Covered Entity may require in order to meet its obligations under 45 C.F.R. § 164.404, including, without limitation, (i) a description of the Breach, including the date of the Breach and its discovery; (ii) the types of information involved in the Breach; (iii) to extent known, the identity of the individual(s) who caused the Breach and the recipient(s) of the data; (iv) a description of Business Associate's investigation efforts; and (v) a description of Business Associate's mitigation and prevention efforts. Business Associate agrees to cooperate with Covered Entity in investigating any potential Breach and in complying with its reporting obligations under the Breach Notification Rule, and Business Associate shall have a continuing duty to inform Covered Entity of new information learned by Business Associate regarding a Breach. Business Associate agrees to reimburse Covered Entity for all reasonable costs incurred by Covered Entity in connection with a Breach, including without limitation, the cost of preparing and distributing notifications to affected Individuals and, as applicable, to DHHS and the media; the cost of providing affected Individuals with credit monitoring services for a specified period not to exceed twenty-four (24) months, or longer if required by law, to the extent the Breach could lead to a compromise of the data subject's credit or credit standing; call center support for such affected Individuals for a specific period not to exceed thirty (30) days from the date notice is sent to affected Individuals; and the costs of any other measures required under applicable law. This Section shall survive expiration or termination of this Agreement and shall remain in effect for so long as Business Associate maintains Protected Health Information.

2. Business Associate will indemnify and hold Covered Entity and its officers, directors, employees, agents, affiliates, successors and assigns harmless from and against any and all claims, damages, liabilities, losses and expenses (including reasonable attorney's fees) based upon or arising out of: (1) Business Associate's breach of this Agreement or violation of the HIPAA Regulations; or (2) any third-party claim based upon any breach of this Agreement or

violation of the HIPAA Regulations by Business Associate. Upon Covered Entity's written request, Business Associate shall obtain and maintain, throughout the term of this Agreement, liability insurance coverage for reasonable costs and expenses associated with a data breach or privacy or security violation, with policy limits of not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate. Promptly following Covered Entity's written request, Business Associate shall deliver to Covered Entity a certificate evidencing Business Associate's maintenance of such insurance. This Section shall survive termination or expiration of this Agreement, and Business Associate's indemnity obligation hereunder is without regard to any limitation or exclusion of damages or liability provision otherwise set forth in the Agreement or in any other agreement.

F. Obligations of MSH

1. MSH shall notify the business associate of any limitations in its notice of privacy practices in accordance with 45 CFR § 164.520 to the extent that such limitation may affect the business associate's use or disclosure of protected health information.
2. MSH shall notify the business associate of any changes in, or revocation of, permission by an Individual to use or disclose protected health information, to the extent that such changes may affect the business associate's use or disclosure of protected health information.
3. MSH shall notify business associate of any restriction to the use or disclosure of protected health information that MSH has agreed to in accordance with 45 CFR § 164.522, to the extent that such restrictions may affect the business associate's use or disclosure of protected health information.

G. Permissible Requests by MSH

MSH shall not request the business associate to use or disclose protected health information in any manner that would not be permissible under the Privacy/Security Rule if done by MSH.

H. Term and Termination

1. Term. The Term of this Agreement shall be effective as of the date signed by both parties, and shall terminate when all of the protected health information provided by MSH to the business associate, or created or received by the business associate on behalf of MSH, is destroyed or returned to MSH, or, if it is infeasible to return or destroy protected health information, protections are extended to such information, in accordance with the termination provisions in this Section.
2. Termination for Cause. Upon MSH's knowledge of a material breach by the business associate, MSH shall either:
 - a.) Provide an opportunity for the business associate to cure the breach or end the violation and terminate this Agreement if business associate does not cure the breach or end the violation within the time specified by MSH; or

b.) Immediately terminate this Agreement if the business associate has breached a material term of this Agreement and cure is not possible.

3. Effect of Termination. Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the business associate shall return or destroy all protected health information received from MSH, or created or received by the business associate on behalf of MSH. This provision shall apply to protected health information that is in the possession of subcontractors or agents of the business associate. The business associate shall retain no copies of the protected health information.

In the event that the business associate determines that returning or destroying the protected health information is infeasible, the business associate shall provide to MSH written notification of the conditions that make return or destruction infeasible. Upon notifying MSH that return or destruction of the protected health information is infeasible, the business associate shall extend the protections of this Agreement to such protected health information and limit further uses and disclosures of such protected health information to those purposes that make the return or destruction infeasible for so long as the business associate maintains such protected health information.

I. Regulatory References. A reference in this Agreement to a section in the Privacy/Security Rule means the section as in effect or as amended.

J. Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for MSH and the business associate to comply with the requirements of the Privacy/Security Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 and the Substance Abuse and Mental Health Services Administration's regulations governing the Confidentiality of Substance Use Disorder Patient Records as found in 42 CFR Part 2 as well any other applicable state or federal law.

K. Survival. The respective rights and obligations of the business associate as provided in this Agreement shall survive the termination of this Agreement.

L. Interpretation. Any ambiguity in this Agreement shall be resolved to permit MSH and the business associate to comply with the Privacy/Security Rule.

IN WITNESS WHEREOF, the parties have hereunto affixed signatures intending to be legally bound by this Agreement.

Business Associate Execution:

By: _____

Print Name: _____

Print Title: _____

Date Signed: _____

Mississippi State Hospital Execution:

By: _____

Print Name: _____

Print Title: _____

Date Signed: _____

Attachment A

Mississippi State Hospital

Privacy Violation Report for Business Associates

Date: _____

To: HIPAA Privacy Officer

Mississippi State Hospital

P.O. Box 157-A

Whitfield, MS 39193

soilepe@msh.state.ms.us

From: Business Associate

Name of Business Associate

Address

City, State, Zip Code

Contact Person's Name and Title

Contact Person's Phone Number and Email

Please report possible security violations of HIPAA using this form. Violations include unauthorized acquirement, access, use or disclosure of Protected Health Information.

ALLEGED VIOLATION

Date of Discovery: _____

Actual Occurrence Date: _____

Number of Individuals whose Protected Health Information was disclosed or involved:

1. What type of violation was it? (Please mark all that apply)

☐ Improper Disposal ☐ Loss ☐ Theft ☐ Unauthorized Access/Disclosure
☐ Hacking/IT incident ☐ Other: (If the type of violation is not known, currently under investigation, or some other type not listed then please provide additional information below.)

2. Where was the location of the violation? (Please mark all that apply)

☐ Electronic Medical Record ☐ E-mail ☐ Network Server ☐ Laptop
☐ Desktop Computer ☐ Paper ☐ Other Portable Electronic Device ☐ Other:
(If the location is not known, currently under investigation, or some other location not listed then
please provide additional information below.)

3. What type of Protected Health Information was involved? (Please mark all that apply)

☐ Date of Birth ☐ Social Security Number ☐ Demographic information
☐ Financial Information ☐ Clinical information ☐ Other: (If the type of Protected
Health Information is not known, currently under investigation, or some other type not listed then
please provide additional information below.)

4. Please explain the violation: Please include location, type, description of how the violation occurred, and any additional relevant information regarding the violation. (Attach additional pages if necessary.)

5. What safeguards were in place prior to the violation? (Please mark all that apply)

☐ Intrusion Detection ☐ Physical Security ☐ Anti-virus software ☐ Firewalls
☐ Secure Browser Sessions ☐ Encrypted Wireless ☐ Logical Access Control

____ Biometrics ____ Packet Filtering (router-based) ____ Strong Authentication
Other: _____

6. What are the actions that have been taken to prevent future violations? (Attach additional pages if necessary.)

7. Please describe any actions taken to mitigate the harmful effects of the violation. (Attach additional pages if necessary.)

NOTIFICATION

Has the violation been determined to constitute a breach? ____ Yes ____ No

Date of determination of breach: _____ By whom: _____

Notice of Breach to Individual or Individuals affected (if applicable): Individual _____

Date _____ Address and/or contact information where notification was made:

Was notice given to someone else on behalf of the individual whose Protected Health Information was at risk? ____ Yes ____ No If yes then to whom: _____

Relationship to Individual: _____

Address and/or contact information: _____

Media Notice (if required): Date: _____ Time: _____

Media Name: _____

Contact Person: _____ Contact person phone number: _____

Email: _____

Has a complaint been received or stated regarding this violation? ☐ Yes ☒ No

If so, please attach a copy.

Has complaint been resolved? ☐ Yes ☒ No

If so, please attach a copy of relevant documents regarding the resolution.