



REQUEST FOR QUALIFICATIONS

RFQ: 11.14.2023.480 (RFX – 3150005270)

TO PROVIDE: FOR THE PROCUREMENT OF PSYCHIATRIST (PHYSICIAN ADVISOR) SERVICES

ISSUE DATE: 10/09/2023

CLOSING LOCATON

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

PROCUREMENT COORDINATOR

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

RFQ COORDINATOR

Cherry Newsome/Medical Staff Liaison
Telephone: (601) 351-8612
Fax: (601) 351-8257
E-Mail: cherry.newsome@msh.ms.gov

CLOSING DATE AND TIME

Bids must be received by 3:00 p.m. (CST) on November 14, 2023

SECTION 1

1.1 Qualifications Acceptance Period

The original and one copy of the written statement of qualifications, 2 copies total, shall be signed and submitted in a sealed envelope or package to Purchasing/Procurement Office, building 93, 3550 Highway 468 W, Whitfield, MS 39193 no later than 3:00 P.M. CST, November 14, 2023. 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. Timely submission is the responsibility of the respondent. Statements of qualifications received after the specified time shall be rejected and returned to the respondent unopened. The envelope or package shall be marked with the Request for Qualifications opening date and time, and the number of the Request for Qualifications. The time and date of receipt shall be indicated on the envelope or package by the MSH Procurement Officer. Each page of the statement of qualifications and all attachments shall be identified with the name of the respondent. Modifications or additions to any portion of the procurement document may be cause for rejection of the statement of qualifications. The Mississippi State Hospital reserves the right to decide, on a case-by-case basis, whether to reject a statement of qualifications with modifications or additions as non-responsive.

1.1.1 Timeline

October 9, 2023, RFQ is issued to the newspaper, October 11, 2023 & October 18, 2023, ad is published in the newspaper, October 31, 2023, is the deadline for questions, November 14, 2023, RFQ responses are opened, Jan 15, 2024, projected contract start date. NOTE: MSH reserves the right to amend and/or change the above schedule of events as it deems necessary.

1.1.2 Late Submissions

A statement of qualifications received at the place designated in the solicitation for receipt of statements of qualifications after the stated deadline is late. Any withdrawal or modification of a statement of qualification received after the time and date set for opening of the statement of qualifications at the place designated for opening is late. No late statement of qualifications, late modification, or late withdrawal will be considered unless receipt would have been timely but for the action of state personnel directly serving Mississippi State Hospital. Offerors submitting late statement of qualifications, which shall not be considered for award, shall be so notified as practicable.

The only acceptable evidence to establish the date of mailing of a late statement of qualifications 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.

The only acceptable evidence to establish the time of receipt at the office identified for opening of statements of qualifications is the time and date stamp of that office on the statement of qualifications wrapper or other documentary evidence of receipt used by that office.

1.2 Expenses Incurred in Preparing Statement of Qualifications

The Mississippi State Hospital accepts no responsibility for any expense incurred by the respondent in the preparation and presentation of a statement of qualifications. Such expenses shall be borne exclusively by the respondent.

1.3 Registration with Mississippi Secretary of State

By submitting a statement of qualifications, the respondent certifies that it is registered to do business in the State of Mississippi as prescribed by the Mississippi Secretary of State or, if not already registered, that it will do so within seven (7) business days of being offered an award. Sole proprietors are not required to register with the Mississippi Secretary of State.

1.4 Debarment

By submitting a statement of qualifications, the respondent certifies that it is not currently debarred from submitting statements of qualifications for contracts issued by any political subdivision or agency of the State of Mississippi or Federal government, and that it is not an agent of a person or entity that is currently debarred from submitting statements of qualifications for contracts issued by any political subdivision or agency of the State of Mississippi.

1.5 Additional Information

Questions about the contract portions of the procurement document must be submitted in writing to Cherry Newsome at PO Box 157-A, Whitfield, MS 39193, fax--601-351-8257; or cherry.newsome@msh.ms.gov. Questions concerning the technical portions of the procurement document shall be submitted in writing to Dr. Duncan Stone at PO Box 157-A, Whitfield, MS 39193; fax-601-351-8257; email- duncan.stone@msh.ms.gov. The deadline for questions is October 31, 2023. Respondents are cautioned that any statements made by contact persons that cause a material change to any portion of the procurement document shall not be relied upon unless subsequently ratified by a formal written amendment to the procurement document.

1.6 Type of Contract

Compensation for services will be in the form of a firm, fixed-price agreement.

1.7 Written Statement of Qualifications

All statements of qualifications shall be in writing.

SECTION2

2.1 Compensation for Services

The compensation for services will be \$175.00 per hour and the rate shall be fixed and firm for the duration of the contract period.

2.2 Purpose

The Mississippi State Hospital is seeking to establish a contract for Utilization Review Services Physician Advisor to perform services at on site or remotely. Mississippi State Hospital seeks to contract with one (1) individual, board-certified Psychiatrist. It is understood that any contract resulting from RFQ 11.14.2023.480 requires approval by the Personal Service Contract Review Board. If any contract resulting from RFQ 11.14.2023.480 is not approved by the Personal Service Contract Review Board, it is void and no payment shall be made.

2.3 Scope of Services

a. Review medical documentation to determine the medical necessity of inpatient psychiatric admissions. b. Provide clinical collaboration with the Utilization Review Staff. c. Act as a liaison between the Coding and Compliance Office, Health Records Department, and the Medical Staff to facilitate accurate and complete documentation for coding and abstracting of clinical data. d. Collaborate with the Utilization Review Director on the Utilization Review Plan e. Acts as consultant to and resource for attending physicians regarding their decisions relative to appropriateness of hospitalization, continued stay, and use of resources

2.4 Term

The projected term of the contract shall be for a period of four years, January 15, 2024 – December 15, 2027, with the option to renew for one additional year. Upon written agreement of both parties at least 90 days prior to the contract expiration date, the contract may be renewed by the Mississippi State Hospital for a period of one final year under the same prices, terms, and conditions as in the original contract subject to approval by the PSCRB. The total number of renewal years permitted shall not exceed one.

2.4.1 Multi-Term Contracts

Unless otherwise provided by law, a contract for services may be entered into for a period of time not to exceed four (4) years with an option to renew for one (1) year, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.

2.4.1.1 Requirements

- a) The successful vendor may work up to 884 hours each year of the contract. For the portion of the contract that is a partial year, the number of hours the vendor may work will be pro-rated.
- b) A unit price shall be given for each service, and that unit price shall be the same throughout the contract.
- c) A multi-term contract will be canceled if funds are not appropriated or otherwise made available to support the continuation of performance in any fiscal period succeeding the first; however, this does not affect either the State's right or the contractor's rights under any termination clause in the contract.
- d) The designated MSH Officer shall notify the contractor on a timely basis that the funds are or are not available for the continuation of the contract for each succeeding fiscal period.
- e) A multi-term contract may be awarded. The need to continue a multi-year contract will be determined by the current needs of the Hospital and the availability of funds.

SECTION 3

3.1 Insurance

The successful vendor shall maintain at least the minimum level of workers' compensation insurance, comprehensive general liability, or professional liability insurance, with minimum limits of 1,000,000 per occurrence and fidelity bond insurance with minimum limits of. All workers' compensation, comprehensive general liability, professional liability, and fidelity bond insurance will provide coverage to the Mississippi State Hospital as an additional insured. The Mississippi State Hospital reserves the right to request from carriers, certificates of insurance regarding the required coverage. Insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance. The vendor shall be prepared to provide evidence of required insurance upon request by the Mississippi State Hospital at any point during the contract period and should consult with legal counsel regarding its obligations.

SECTION 4

4.1 Written Statements of Qualifications Shall Contain the Following Minimum Information

- 1) The name of the respondent, the location of the respondent's principal place of business and, if different, the place of performance of the proposed contract;
- 2) The age of the respondent's business and average number of employees over a previous period of time, as specified in the Request for Qualifications; .
- 3) The qualifications, including licenses, certifications, education, skills, and experience of all persons who would be assigned to provide the required services; and,
- 4) A listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a previous period of time, as specified in the Request for Qualifications.

4.2 Minimum Qualifications

Doctor of Medicine Degree or Doctor of Osteopathic Medicine Degree from an accredited medical school; successful completion of a psychiatry residency program; current board certification in psychiatry; at least 5 years of experience as a psychiatrist; a current, unrestricted license to practice medicine in the state of Mississippi; and two (2) references from peers with current knowledge of clinical practice.

4.2.1 Responsive Respondent

Respondent must submit statement of qualifications which conforms in all material respects to this Request for Qualifications, RFQ 11.14.2023.480, as determined by Mississippi State Hospital.

4.2.2 Responsible Respondent

Respondent must have capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance, as determined by Mississippi State Hospital .

4.3 Nonconforming Terms and Conditions

A statement of qualifications that includes terms and conditions that do not conform to the terms and conditions in the Request for Qualifications is subject to rejection as non-responsive. The Mississippi State Hospital reserves the right to permit the respondent to withdraw nonconforming terms and conditions from its statement of qualifications response prior to a determination by the Mississippi State Hospital of non-responsiveness based on the submission of nonconforming terms and conditions.

4.4 Conditioning Statement of Qualifications Upon Other Awards

Any statement of qualifications which is conditioned upon receiving award of both the particular contract being solicited and another Mississippi contract shall be deemed non-responsive and not acceptable.

4.5 Evaluation Procedure

4.5.1 Evaluation Factors See Exhibit C.

4.5.2 Submission Format

Submission of Qualifications must be in the form of: Cover letter summarizing elements specified in 4.1; a curriculum vitae; 2 peer references; and copies of credentials as specified in 4.2.

4.6 Award

The contract will be awarded by written notice to the highest ranked respondent whose statement of qualifications meets the requirements and criteria set forth in this Request for Qualifications.

4.6.1 Notification

All participating vendors will be notified of the Mississippi State Hospital intent to award a contract. In addition, the Mississippi State Hospital will identify the selected vendor. Notice of award is also made available to the public.

SECTION 5

5.1 Independent Contractor Agreement

Respondent must agree to the Independent Contractor agreement (Independent Contractor July 2020 Revision – **Exhibit D**) and (Attachment A). The total contract shall include the MSH independent contract agreement – **Exhibit D and Attachment - A**, MSH Business Associate Agreement – **Exhibit E** (Revised February 2019), the RFQ and any amendments, and the offeror's qualification/ final offer.

5.2 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 the Mississippi State Hospital within three (3) business days of notification of the contract award. A post-award debriefing is a meeting and not a 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 the Mississippi State Hospital in writing and identify its attorney by name, address, and telephone number. The Mississippi State Hospital 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 the 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*.

5.3 Protest of Award

Any actual or prospective respondent or contractor who is aggrieved in connection with this solicitation or the outcome of the Request for Qualifications may file a protest with the Request for Qualifications Coordinator, Cherry Newsome, Medical Staff Liaison. The protest shall be submitted on or before 5:00 p.m. on the seventh day following the 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 in writing, dated, 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 Coordinator, 5:00 p.m. Central Time on the seventh day via either U.S. mail, postage prepaid, or personal delivery. Protests filed after 5:00 p.m., Central Time, on the seventh day following the issuance will not be considered.

5.4 Required Contract Terms and Conditions

Any contract entered into between a Contracting Agency and a vendor/respondent shall include the required clauses found in the *Personal Service Contract Review Board's Rules and Regulations*, which can be found at dfa.ms.gov/personal-service-contract-review.

5.5 Optional Contract Terms and Conditions

Any contract entered into between a Contracting Agency and a vendor/respondent may have, at the discretion of the Contracting Agency, the optional clauses found within the *Personal Service Contract Review Board's Rules and Regulations* which can be found at dfa.ms.gov/personal-service-contract-review.

5.6 Mississippi Contract/Procurement Opportunity Search Portal

This Request for Qualifications, and the questions and answers concerning this Request for Qualifications, are posted on the Contract/Procurement Opportunity Search Portal.

5.7 Attachments

The attachments to this Request for Qualifications are made a part of this Request for Qualifications as if copied herein in words and figures. Exhibit A - Certifications & Assurances, Exhibit B – Mandatory Clauses, Exhibit C – Evaluation Factors, Exhibit D MSH Independent Contract, Exhibit – E MSH Business Associate Agreement, and Attachment A – Service Tasks & Duties.

5.8 Discussions

Discussions may be conducted with responsible offerors who submit qualifications determined to be reasonably susceptible to being selected for award. The discussions shall be for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Revision of qualifications may be permitted after submission and prior to award for the purpose of obtaining best and final qualifications. It shall be understood, however, that qualifications may be accepted without such discussions.

5.9 Requirements Contract

It is our intent to procure physician advisor services for the MSH Utilization Review Department for the types and quantities listed in the RFQ: however, quantities may be

increased or decreased accordingly if the needs of MSH require such a change. Contract award shall be a requirements contract as defined by paragraph 3-501.05.3 of the Mississippi Public Procurement 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 physician advisor services covered by the RFQ from the awarded contractor; 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.

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

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

Printed Name:

Signature/Date: _____

EXHIBIT A

Certifications and Assurances

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

Contractor represents that it **has/has not** retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's statement of qualifications.

2. REPRESENTATION REGARDING GRATUITIES

Contractor represents that it **has/has not** violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi Personal Service Contract Review Board Rules and Regulations.

3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

Contractor certifies that the prices submitted in response to the solicitation **have/have not** been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other respondent or competitor relating to those prices, the intention to submit a statement of qualifications, or the methods or factors used to calculate price.

4. PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES

The prospective Contractor represents as a part of such Contractor's statement of qualifications that such Contractor **has/has not** retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

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 statement of qualifications form may result in the statement of qualifications being rejected as nonresponsive. Modifications or additions to any portion of this statement of qualifications document may be cause for rejection of the statement of qualifications.

EXHIBIT B

Required Clauses for this RFQ

1. Applicable Law. The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws, provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations.
2. Availability of Funds. It is expressly understood and agreed that the obligation of the Agency to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the Agency, the Agency shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to the Agency of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
3. Compliance with Laws. Contractor understands that the Agency 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 Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. 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.
4. E-Payment. Contractor 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.
5. E-Verification. If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 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. 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. 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 Contractor to the following:

- a. termination of this contract for services 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 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 cancellation/termination, 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.

6. 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 Contractor's choice. The State may, at its sole discretion, require 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.
7. Proprietary Information
The bidder should mark any and all pages of the bid considered to be proprietary information. Any pages not marked accordingly will be subject to review by the general public after award of the contract. Requests to review the proprietary information will be handled in accordance with applicable legal procedures. Section 25-61-9 and 79-23-1 of the Mississippi Code shall be used in determining proper procedures for this paragraph.
8. Procurement Regulations. The contract shall be governed by the applicable provisions of the *Mississippi Personal Service Contract Review Board 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>.
9. Representation Regarding Contingent Fees. Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's statement of qualifications.
10. Representation Regarding Gratuities. Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*.
11. Stop Work Order.
 - a. *Order to Stop Work:* The Procurement Officer, may, by written order to Contractor at any time, and without notice to any surety, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall

have agreed, the Procurement Officer shall either:

1. cancel the stop work order; or,
 - n. 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, 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:
1. 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,
 11. 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.

12. E-Payment

Contractor 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 et seq.

13. Termination Upon Bankruptcy. This contract may be terminated in whole or in part by Agency upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.
14. 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.
15. Transparency. This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 et seq. and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 et seq. Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other

proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

16. Acknowledgment of Amendments

Bidders shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the bid, 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 the [agency] by the time and at the place specified for receipt of bids.

EXHIBIT C
Evaluation Factors

LIST OF EVALUATION FACTORS Technical Factors--Scored blindly	DEFINITION OF FACTORS	WEIGHT OF FACTOR (percentage)	EXPLANATION OF POINTS ASSIGNED.
Applicant must have graduated from an accredited medical school receiving a degree as a Medical Doctor or Doctor of Osteopathic Medicine (D.O.) degree	Technical Factor (Attachment A)	5%	5 points for Medical Degree 0 for no Medical Degree
Applicant must provide (Credential Verification) which must show a (5) year work history in psychiatry	Technical Factor (Attachment A)	10%	10 points for 5 years of experience working in psychiatry. 0 for less than five years of experience working in psychiatry.
Applicant shall provide proof of current Board Certification in Psychiatry	Technical Factor (Attachment A)	6%	6 points for Board Certification in Psychiatry 0 for no Board Certification in Psychiatry
Applicant must provide proof of current license to practice medicine in Mississippi	Technical Factor (Attachment A)	6%	6 points for current Mississippi Medical License 0 for no current Mississippi Medical License
Applicant must provide two (2) professional references for which similar services have been completed.	Technical Factor (Attachment A)	6%	6 points for each reference.

LIST OF EVALUATION FACTORS Management Factors All respondents with a score of <u>16.5%</u> or higher in the technical factors & have a Mississippi license to practice medicine will be interviewed.	DEFINITION OF FACTORS	WEIGHT OF FACTOR (percentage)	EXPLANATION OF POINTS ASSIGNED
Two (2) Professional references in good standings.	Agency will contact references	8%	Each good standings reference will receive 4%
INTERVIEW -COMMUNICATION SKILLS. All respondents must demonstrate knowledge of psychiatric treatment of chronically mentally ill patients.	Responds to questions with accurate information	8%	Excellent 6-8 Good: 3-5 Fair: 0-3
Must demonstrate knowledge of Center for Medicaid standards for utilization review.	Responds to questions with accurate information	8%	Excellent 6-8 Good: 3-5 Fair: 0-3
All respondents must demonstrate a clear understanding of the scope of work.	Responds to questions with accurate information	8%	Excellent 6-8 Good: 3-5 Fair: 0-3
(COST) ACCEPTANCE OF PRICE- \$175.00		35%	Acceptance of Price 35 points
Total		100%	100

EXHIBIT – D

MSH SAMPLE PERSONAL SERVICES AGREEMENT



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 _____. The contract may be renewed for one additional year based on the needs of the hospital, availability of funds, approval by the Board of Mental Health, and approval by the Mississippi Public Procurement Review Board.

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 and state 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 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 State 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, religion, physical handicap, disability, genetic information, or any other consideration made 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 to, 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 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. 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

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 withheld.

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
3550 Highway 468 West, 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

EXHIBIT – E

MSH SAMPLE BUSINESS ASSOCIATE AGREEMENT

Mississippi State Hospital

Business Associate Agreement

A. Purpose of this Agreement

Whereas, Mississippi State Hospital and its facilities (hereafter MSH) and _____ (hereafter Business Associate) intend to protect the privacy and security of certain Protected Health Information (PHI) to which the Business Associate may have access to, MSH and Business Associate will act in accordance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinstatement Act of 2009 (ARRA), Pub. L. No. 111-5 and any other applicable law subsequently adopted to deal with the use and disclosure of confidential information. Also, when substance use disorder patient records are involved, MSH and Business Associate (referred to as a Lawful Holder within 42 CFR Part 2) will act in accordance with 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.

B. Definitions: Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule, that is, standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E, the Security Rule, and the HITECH Act. For example:

1. Business Associate- A business associate is a person or entity, other than a member of the workforce of a covered entity, who performs functions or activities on behalf of, or provides certain services to, a covered entity that involve access by the business associate to protected health information. A business associate is also a subcontractor that creates, receives, maintains, or transmits protected health information on behalf of another business associate. A business associate may use or disclose protected health information only as permitted or required by its business associate contract or as required by law. A business associate is directly liable under the HIPAA Rules and subject to civil, and in some cases, criminal penalties for making uses and disclosures of protected health information that are not authorized by its contract or required by law. A business associate is also directly liable and subject to civil penalties for failing to safeguard electronic protected health information in accordance with the HIPAA Security Rule.
2. Covered Entity- A covered entity is a health plan, healthcare clearing house, or a healthcare provider who transmits any health information in electronic form in connection with a transaction that is covered by HIPAA regulations.
3. Protected Health Information- Protected health information means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium.
4. Subcontractor- Subcontractor means a person to whom a business associate delegates a function, activity, or service other than in the capacity of a member of the workforce of such business associate.

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: _____

PHYSICIAN ADVISOR ATTACHMENT - A

(Independent Contractor Service Tasks & Duties)

A. SCOPE OF WORK

Under the supervision of the MSH Clinical Director the Independent Contractor will perform the following essential functions:

- 1) Review documentation to determine the medical necessity of inpatient psychiatric admissions
- 2) Provides collaboration with the Utilization Management Staff
- 3) Acts as a consultant to and resource for attending physicians regarding their decisions relative to appropriateness of hospitalization, continued stay, and use of resources
- 4) Acts as a liaison between the Coding and Compliance office, Health Records Department, and the Medical Staff to facilitate accurate and complete documentation for coding and abstracting of clinical data
- 5) Collaborates with the Utilization Management Director on the Utilization Review plan

B. PERFORMANCE MEASURES

- 1) Makes determinations regarding medical necessity within 2 business days of receipt of each case at least 95% of the time
- 2) Notifies the assigned Utilization Management nurse within 2 business days of a determination to continue certification at least 95% of the time
- 3) Notifies the assigned Utilization Management nurse and attending provider of a denial of certification at least 100% of the time

C. OTHER REQUIREMENTS

The Independent Contractor will devote his/ her best efforts and necessary time and attention to completing the aforementioned duties. To transmit protected health information, the Independent Contractor will utilize the CMS-sanctioned software system provided by Change Healthcare or the encrypted email provided by BAE Systems.

The Independent Contractor shall maintain liability insurance with a minimum of \$1,000,000 per occurrence. The professional liability insurance policy and certificate will list Mississippi State Hospital as the Independent Contractor's practice location. Mississippi State Hospital reserves the right to request from carriers, certificates of insurance regarding the required coverage. Insurance carriers must be licensed or

hold a certificate of Authority from the Mississippi Department of Insurance. The Independent Contractor shall be prepared to provide evidence of required insurance upon request at any point during the contract period and should consult with legal counsel regarding its obligations.

In consideration of services provided, the Hospital agrees to pay to the Independent Contractor the specific sum of \$175.00 per hour and the rate shall be fixed and firm for the duration of the contract period, and in no event however, will the total compensation paid to the Independent Contractor be more than \$773,500.00.

D. CREDENTIALS

The Independent Contractor shall be credentialed by the Mississippi State Hospital Medical Staff and maintain medical staff appointment and clinical privileges as required by the Medical Staff Bylaws.

E. TERMINATION

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

F. PRECEDENCE

Any ambiguities, conflicts or questions of interpretation of this contract shall be resolved first by reference to this agreement, and if still unresolved, by reference to the original request for qualifications, and if still unresolved by reference to the Independent Contractor's statement of qualifications.

Independent Contractor

Date