

EAST MISSISSIPPI STATE HOSPITAL
P. O. Box 4128 West Station, Meridian, MS 39304-4128
601-581-7666

SECTION I: Introduction

- 1.0 **OVERVIEW:** East Mississippi State Hospital (EMSH) is a mental health facility that cares for individuals in need of services from thirty-one (31) different counties. The mission at EMSH is to provide behavioral health, chemical dependency and nursing home services, in a caring and compassionate environment.

In order to provide the best care for Nursing Home residents, a Contractor pharmacist is necessary for monitoring all pharmaceutical services in the facilities. EMSH will use the information obtained to determine which Contractor pharmacist will be selected for contract negotiations. This proposal will be considered an integral part of the contract and EMSH will expect the Respondent to honor all representations made in its proposal.

- 1.1 **PURPOSE:** The goal of this Request for Proposals (RFP) is to establish a service contract with a licensed Contractor pharmacist to provide auditing and oversight of all pharmaceutical services in the Nursing Home Division.
- 1.2 **INVITATION:** Written proposals, subject to the conditions herein stated and attached hereto, will be received at this office until June 15, 2017, at 10 a.m. CDT for furnishing the services as described below for EMSH.
- 1.3 **DESCRIPTION:** The EMSH is hereby requesting written proposals as follows:

EMSH is seeking the best contract possible with an experienced licensed Contractor pharmacist. All documentation submitted in response to this RFP, and any subsequent requests for information pertaining to this RFP shall become the property of EMSH and will not be returned to the Respondent.

EMSH will receive proposals from individuals/firms having specific experience and qualifications in the area identified in the solicitation. For consideration, proposals for the project must contain evidence of the firm's experience and abilities in the specified area and other disciplines directly related to the proposed service. Other information required by the EMSH may be included elsewhere in the solicitation. Unless otherwise stated, all Respondents shall provide profiles and resumes of the staff to be assigned to the project, references, illustrative examples of similar work performed, and any other information that clearly demonstrates the Respondent's expertise in the area of the solicitation.

1.4 **REJECTION OF PROPOSALS**

Proposals which do not conform to the requirements set forth in this RFP may be rejected by EMSH. Proposals may be rejected for reasons which include, but are not limited to, the following:

- (1) the proposal contains unauthorized amendments to the requirements of the RFP;
- (2) the proposal is conditional
- (3) the proposal is incomplete or contains irregularities which make the proposal indefinite or ambiguous;
- (4) the proposal is received late;
- (5) the proposal is not signed by an authorized representative of the party;
- (6) the proposal contains false or misleading statements or references; and,
- (7) the proposal does not offer to provide all services required by the RFP.

1.5 **EVALUATION:** A selection committee shall review and evaluate all proposals. The selection committee will have only the response to the solicitation to review for selection of finalists. It is, therefore, important that respondents emphasize specific information pertinent to the work. Evaluation of the responses will be based on the following criteria:

EVALUATION COMPONENTS	MINIMUM INFORMATION TO BE SUBMITTED IN PROPOSAL	MAX POINTS ASSIGNED	EVALUATOR POINTS
Overall quality of proposed plan for performing the required services	Understanding of the project and its objectives and completeness of the response to minimum specifications. A plan giving as much detail as practical explaining how the services will be performed.	10	
Contractor's ability to provide the required services as reflected by qualifications. Ability to provide work product that is legally defensible.	Certifications, qualifications, accreditation; Age of the business, location of Contractor's place of business and (if different) place of performance of proposed contract.	25	
The personnel, equipment, facilities, and financial resources to perform the services currently available or demonstrated to be made available at the time of contracting	Provide pharmacists who have completed advanced training; show experience in area of Contractor pharmacy, Description of processes and software currently available.	10	
A record of past performance of similar work	References, list of other contracts, documentation of past performance	15	
Price:	Must agree to pricing.	40	
	TOTAL SCORE	100	

1.6 COMPETITIVE NEGOTIATION

The proposal method to be used is that of competitive negotiation from which EMSH is seeking the best combination of price, experience and quality of service. Discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award. Likewise, EMSH also reserves the right to accept any proposal as submitted for contract award, without substantive negotiation of offered terms, services or prices. For these reasons, all parties are advised to propose their most favorable terms initially.

1.7 QUESTIONS AND DELIVERY

**Inquiries regarding this Request for
Proposal must be directed to:**

Rick Entrekin
Resource Management Director
East Mississippi State Hospital
rentrekin@emsh.ms.gov
601-581-7666
Before Friday June 9, 2017 at 2:00 p.m.
CDT

**Proposals and attachments
must be submitted to:**

Rick Entrekin
Resource Management Director
East Mississippi State Hospital
P.O. Box 4128 West Station
Meridian, MS 39304
Before Friday June 15, 2017,
at 10:00 a.m. CDT

EAST MISSISSIPPI STATE HOSPITAL
P. O. Box 4128 West Station, Meridian, MS 39355-4128
601-581-7666

Section II: Specifications

2.0 SPECIFICATIONS, TERMS AND CONDITIONS

2.1 GENERAL STATEMENT

East Mississippi State Hospital (referred to as "EMSH"), in order to ensure that selection procedures for a Contractor pharmacist for residents and patients follow the guidelines of Mississippi State Personnel Board and result in the best quality of patient care; is requesting proposals that will be used to determine qualifications and abilities of Contractors. Additional information can be obtained by written request to *Rick Entrekin, East Mississippi State Hospital, P. O. Box 4128 West Station; Meridian, MS 39304-4128.*

2.2 PROPOSAL ACCEPTANCE PERIOD

The original and one copy of the proposal need to be signed and submitted in a sealed envelope or package to East Mississippi State Hospital, Attn: Rick Entrekin, Resource Management Director, at P. O. Box 4128 West Station, Meridian, MS 39304 no later than the time and date specified for receipt of proposal. Timely submission of the proposal is the responsibility of the Respondent. Proposals received after the specified time shall be rejected and returned to the Respondent unopened. The envelope or package should be marked with the proposal opening date and time, and the number of the request for proposals. The time and date of receipt will be indicated on the envelope or package by Business Services. Each page of the proposal and all attachments should be identified with the name of the Respondent.

Modifications or additions to any portion of the proposal document may be cause for rejection of the proposal. EMSH reserves the right to decide, on a case-by-case basis, whether to reject a proposal with modifications or additions as non-responsive. As a precondition to proposal acceptance, EMSH may request the Respondent to withdraw or modify those portions of the proposal deemed non-responsive that do not affect quality, quantity, price, or delivery of the service.

2.3 DETAILED MINIMUM SPECIFICATIONS

Devise a written proposal that will ensure that the selection procedure for Contractor pharmacist services follows the guidelines of the Mississippi State Personnel Board and results in the best quality of patient care. The written proposal should be such that it clearly and fully explains how the Respondent will:

- A. Provide proof that Respondent is a licensed Contractor pharmacist and can provide proof of accreditation
- B. Proof that staff is adequately equipped to provide necessary Contractor pharmacist services to EMSH.
- C. Meet the Scope of Work listed on Attachment A, on page 12 of this document.

The proposal shall contain the following information:

- (1) The name of the offeror, the location of the offeror's principal place of business and , if different, the place of performance of the proposed contract;
- (2) The age of the offeror's business and average number of employees over a previous period of time, as specified in the Request for Proposal;
- (3) The abilities, qualifications, and experience of all persons who would be assigned to provide the required services;
- (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 Proposal; and,
- (5) A plan giving as much details as is practical explaining how the services will be performed.

2.4 PERIOD OF PERFORMANCE

The period of performance of this service is July 1, 2017, to June 30, 2018.

2.5 PROPOSAL WITHDRAWAL

If the price is substantially lower than those of other Respondents, a mistake may have been made. A Respondent may withdraw its proposal from consideration if certain conditions are met:

- A. The proposal is submitted in good faith.
- B. The price is substantially lower than those of other Respondents because of a mistake.
- C. The mistake is a clerical error, not an error of judgment.
- D. Objective evidence drawn from original work papers, documents, and other materials used in the preparation of the proposal demonstrates clearly that the mistake was an unintentional error in arithmetic or an unintentional omission of a quantity of labor or material.

To withdraw a proposal that includes a clerical error after the proposal opening, the Respondent will give written notice to EMSH to claim the right to withdraw a proposal. Within five business days after the proposal opening, the Respondent requesting withdrawal must provide to EMSH all original work papers, documents, and other materials used in the preparation of the proposal.

A Respondent may also withdraw a proposal, prior to the time set for the opening of proposals, by simply making a request in writing to EMSH. No explanation is required.

A Respondent may also withdraw a proposal if EMSH fails to award or issue a notice of intent to award the proposal within sixty (60) days after the date fixed for the opening of proposals.

No Respondent who is permitted to withdraw a proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work for the person to whom the contract is awarded, or otherwise benefit from the contract.

No partial withdrawals of a proposal are permitted after the time and date set for the proposal opening; only complete withdrawals are permitted.

2.6 ACCEPTANCE OF PROPOSALS

EMSH reserves the right, in its sole discretion, to waive minor irregularities in proposals. A minor irregularity is a variation of the RFP which does not affect the price of the proposal, or give one party an advantage or benefit not enjoyed by other parties, or adversely impact the interest of EMSH. Waivers, when granted, shall in no way modify the RFP requirements or excuse the party from full compliance with the RFP specifications and other contract requirements, if the party is awarded the contract.

2.7 DISPOSITION OF PROPOSALS

All submitted proposals become the property of the State of Mississippi.

2.8 RFP DOES NOT CONSTITUTE ACCEPTANCE OF OFFER

The release of the Request for Proposal does not constitute an acceptance of any offer, nor does such release in any way obligate EMSH to execute a contract with any other party. EMSH reserves the right to accept, reject, or negotiate any or all offers on the basis of the evaluation criteria contained within this document. The final decision to execute a contract with any party rests solely with EMSH.

2.9 RESPONDENT'S CERTIFICATION

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

2.10 RESPONDENT'S INVESTIGATIONS

Before submitting a proposal, each Respondent shall make all investigations and examinations necessary to ascertain all site conditions and requirements affecting the full performance of the contract and to verify any representations made by EMSH upon which the Respondent will rely. If the Respondent receives an award as a result of its proposal submission, failure to have made such investigations and examinations will in no way relieve the Respondent from its obligation to comply in every detail with all provisions and requirements of the contract documents, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim whatsoever for additional compensation. Investigations should be completed by June 9, 2016.

2.11 CERTIFICATES AND LICENSES

The Respondent shall provide notarized copies of all valid licenses and certificates required for performance of the work. The notarized copies shall be delivered to EMSH no later than ten (10) days after the Respondent receives the notice of award from EMSH. Current notarized copies of licenses and certificates shall be provided to EMSH within twenty-four (24) hours of demand at any time during the contract term. Licenses and

certificates required for this contract include, by way of illustration and not limitation, the following:

- A. A business license valid in Mississippi; and
- B. A professional license or certificate of accreditation.

2.12 **CONFIDENTIALITY**

Notwithstanding any provision to the contrary contained herein, it is recognized that EMSH 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 EMSH pursuant to the agreement, EMSH shall promptly notify the disclosing party of such request and will respond to the request only in accordance with the procedures and limitations set forth in applicable law. The disclosing party shall promptly institute appropriate legal proceedings to protect its information. No party to the agreement shall be liable to the other party for disclosures of information required by court order or required by law.

2.13 **CONFIDENTIAL INFORMATION**

“Confidential Information” shall mean: (a) those materials, documents, data, and other information which Contractor has designated in writing as proprietary and confidential; and, (b) all data and information which Contractor acquires as a result of its contact with and efforts on behalf of the customer and any other information designated in writing as confidential by the State. Each party to this agreement agrees to the following:

- A. To protect all confidential information provided by one party to the other;
- B. To treat all such confidential information as confidential **to the extent that confidential treatment is allowed under State and/or federal law**; and,
- C. Except as otherwise required by law, not to publish or disclose such information to any third party without the other party’s written permission; and,
- D. To do so by using those methods and procedures normally used to protect the party’s own confidential information.

Any liability resulting from the wrongful disclosure of confidential information on the part of Contractor or its subcontractor shall rest with contractor. Disclosure of any confidential information by Contractor or its subcontractor without the express written approval of the customer shall result in the immediate termination of this agreement.

2.14 **EXCEPTIONS TO CONFIDENTIAL INFORMATION**

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.

This Agreement shall be construed in favor of a meaning that permits designated laboratory service provider(s) to comply with HIPAA and the regulations promulgated pursuant thereto.

2.15 DISCUSSIONS WITH RESPONSIBLE CONTRACTORS

Discussions may be conducted with responsible Respondents who submit proposals 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. In conducting discussions, there shall be no disclosure of any information derived from competing proposals. Respondents shall be accorded fair and equal treatment with respect to any opportunity for discussion. Revision of proposals may be permitted after submissions and prior to award for the purpose of obtaining best and final offers.

2.16 AWARD

Award shall be made to the responsible Respondents whose proposal is determined in writing to be the most advantageous to the State taking into consideration price and the evaluation factors set forth in the Request for Proposal. No other factors or criteria shall be used in the evaluation.

Respondents may designate those portions of the proposals which contain trade secrets or other proprietary data which may remain confidential in accordance with Mississippi Code Annotated §§25-61-9 and 79-23-1.

2.17 EXCEPTIONS

Respondent taking exception to any part or section of the solicitation shall indicate such exceptions on the proposal form. Failure to indicate any exception will be interpreted as the Respondent's intent to comply fully with the requirements as written. Conditional or

qualified proposals, unless specifically allowed, shall be subject to rejection in whole or in part.

2.18 DEBARMENT

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

2.19 DEBARMENT AND SUSPENSION

The Respondent 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.

2.20 EXPENSES INCURRED IN PREPARING PROPOSAL

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

2.21 INFORMALITIES AND IRREGULARITIES

EMSH has the right to waive minor defects or variations of a proposal from the exact requirements of the specifications that do not affect the price, quality, quantity, delivery, or performance time of the services being procured. If insufficient information is submitted by a Respondent with the proposal for EMSH to properly evaluate the proposal, EMSH has the right to require such additional information as it may deem necessary after the time set for receipt of proposals, provided that the information

requested does not change the price, quality, quantity, delivery, or performance time of the services being procured.

2.22 INSURANCE

The Respondent represents that it will maintain workers' compensation insurance which shall inure to the benefit of all the Respondent's personnel provided hereunder; comprehensive general liability and professional liability insurance, with minimum limits not less than \$1,000,000 per claim and \$2,000,000 annual aggregate. EMSH 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.

2.23 LATE SUBMISSIONS

A proposal received at the place designated in the solicitation for receipt of proposals after the exact time specified for receipt will not be considered unless it is the only proposal received, or it is received before an award has been made and was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of proposals. It must be determined by EMSH that the late receipt was due solely to mishandling by EMSH after receipt at the specified address.

The only acceptable evidence to establish the date of mailing of a late proposal 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 proposal opening is the time and date stamp of that office on the proposal wrapper or other documentary evidence of receipt used by that office.

2.24 NON-CONFORMING TERMS AND CONDITIONS

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

2.25 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 EMSH and agreed to by Contractor.

2.31 PRICE ADJUSTMENT CLAUSE

2.31.1 *Price Adjustment Methods.* Any adjustments in contract price, pursuant to a clause in this contract, shall be made in one or more of the following ways:

- a. By agreement on a fixed price adjustment before commencement of the additional performance;
- b. By unit prices specified in the contract;
- c. By the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract; or,
- d. By the price escalation clause.

2.31.2 *Submission of Cost or Pricing Data.* Contractor shall provide cost or pricing data for any price adjustments subject to the provisions of Section 3-403 (Cost or Pricing Data) of the *Mississippi Personal Service Contract Procurement Regulations*.

2.32 POST-AWARD DEBRIEFING:

General Statement

In an effort to build and strengthen business relationships and improve the procurement process between vendors and the State, post-award vendor debriefing is available. The following information may be disclosed during post-award debriefing in accordance with Section 7-112.03 of the Personal Service Contract Review Board Rules and Regulations:

- 1) The agency's evaluation of significant weaknesses or deficiencies in the vendor's bid or proposal, if applicable;
- 2) The overall evaluated cost or price, and technical rating, if applicable, of the successful vendor(s) and the debriefed vendor;
- 3) The overall ranking of all vendors, when any ranking was developed by the agency during the selection process;
- 4) A summary of the rationale for award; and,
- 5) Reasonable responses to relevant questions about selection procedures contained in the solicitation, applicable regulations, and other applicable authorities that were followed.

24.2 Debriefing Request

A vendor, successful or unsuccessful, may request a post-award vendor debriefing, in writing, by U.S. mail or electronic submission, to be received by EMSH within three (3) business days of notification of the contract award. A vendor debriefing is a meeting and not a hearing; therefore, legal representation is not required. If a vendor prefers to have legal representation present, the vendor must notify EMSH and identify its attorney.

24.3 When Requested Debriefing Will Be Conducted

Unless good cause exists for delay, the debriefing will occur within five (5) business days after receipt of the vendor request and may be conducted during a face-to-face meeting, by telephonic or video conference, or by any other method acceptable to the EMSH.

24.4 Additional Information Regarding Post-Award Debriefing

Additional information regarding post-award debriefing may be found in Section 7-112 of the Personal Service Contract Review Board Rules and Regulations which may be found at <http://www.mspb.ms.gov>..

2.33 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.

Attachment A

SCOPE OF WORK

1. Checks the drug regimen of each resident each month and documents drug precautions, possible interactions with food or other drugs, abnormal lab findings, recommended laboratory work, and so forth, at their professional discretion. Includes:
 - (1) Drug regimen reviews
 - (2) Medication dosage compliance review
 - (3) Psychoactive drug monitoring
 - (4) Regulatory compliance review
2. Physically inspects each drug storage area to monitor storage and handling of drugs and biologicals and submits a report of findings on a monthly basis. This may include, but is not limited to:
 - (1) Checking the Emergency Kit for completeness and outdated drugs.
 - (2) Random checks of controlled drugs for proper administration and recording.
 - (3) Random checks of medication containers for proper labeling.
 - (4) Inspection of the refrigerator(s) in the medical prep room for proper temperature and proper storage of refrigerated medications.
 - (5) Quarterly perform a medication pass review of sufficient number of residents.
3. Assists in the destruction and reconciliation of unused controlled substances as prescribed by law, rule, or regulation
4. Generates computer forms and reports.

CONTRACTOR'S CERTIFICATION

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

Contractor's Signature

CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

The Contractor certifies that the prices submitted in response to the solicitation have been arrived at independently and without - for the purpose of restricting competition - any consultation, communication, or agreement with any other Contractor or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate the prices bid.

Contractor's Signature

PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES

The prospective contractor represents as a part of such contractor's bid or proposal that such contractor has/has not (please circle one) retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

Contractor's Signature

**EAST MISSISSIPPI STATE HOSPITAL
P. O. Box 4128 West Station, Meridian, MS 39355-4128
601-581-7666**

Section III: Standard Terms and Conditions

3.0 ACKNOWLEDGMENT OF AMENDMENTS

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

3.1 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.

3.2 AUTHORITY TO CONTRACT

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.

3.3 AVAILABILITY OF FUNDS

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

3.4 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

The Contractor certifies that the prices submitted in response to the solicitation have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other Contractor or competitor

relating to those prices, the intention to submit a proposal, or the methods or factors used to calculate the prices proposal.

3.5 COMPLIANCE WITH LAWS

Contractor understands that ESMH 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.

3.6 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," Mississippi Code Annotated §31-7-301, which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice.

3.7 E-VERIFICATION

Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Mississippi Code Annotated §§ 71-11-1 and 71-11-3, and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the legal 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 and, upon request of the State, to provide a copy of each such verification to the State. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws of these warranties, the breach of which may subject 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 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, Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit.

3.8 INDEPENDENT CONTRACTOR STATUS

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, 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 Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of EMSH and shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. EMSH shall not withhold from the contract payments to Contractor any federal or State unemployment taxes, federal or State income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, the EMSH shall not provide to Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

3.9 INDEMNIFICATION

To the fullest extent allowed by law, 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 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, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the State. 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. Contractor shall not settle any claim, suit, etc. without the State's concurrence, which the State shall not unreasonably withhold.

3.10 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 210 East Capitol Street, Suite 800, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.mspb.ms.gov>.

3.11 RECORD RETENTION AND ACCESS TO RECORDS

Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the State or any duly authorized

representatives shall have unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this agreement shall be retained by Contractor for three years after final payment is made under this agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three year period, the records shall be retained for one year after all issues arising out of the action are finally resolved or until the end of the three year period, whichever is later.

3.12 REPRESENTATION REGARDING CONTINGENT FEES

Contractor represents that it has not retained a person to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or proposal.

3.13 REPRESENTATION REGARDING GRATUITIES

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

3.14 PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES

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

3.15 TERMINATION FOR CONVENIENCE CLAUSE

A. *Termination.* The Agency Head 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 Agency Head or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.

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

3.16 TERMINATION FOR DEFAULT CLAUSE

- (1) *Default.* If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Agency Head or designee may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- (2) *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the procurement officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.
- (3) *Compensation.* Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
- (4) *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the Agency Head or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one

or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

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

3.17 STOP WORK ORDER

- (1) *Order to Stop Work:* The Procurement Officer, may, by written order to Contractor at any time, and without notice to any surety, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Procurement Officer shall either:
 - (a) cancel the stop work order; or,
 - (b) terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.
- (2) *Cancellation or Expiration of the Order:* If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the

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

- (a) the stop work order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this contract; and,
 - (b) Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.
- (3) *Termination of Stopped Work:* If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.
- (4) *Adjustments of Price:* Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this contract

3.18 **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.

3.19 **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.

**EAST MISSISSIPPI STATE HOSPITAL
P. O. Box 4128 West Station, Meridian, MS 39355-4128
601-581-7666**

Section IV: Standard Contract Form

CONTRACTOR PHARMACIST SERVICES

The Contractor Pharmacist Agreement hereinafter referred to as the Agreement, by and between (Contractor) hereinafter referred to as "Contractor," and East Mississippi State Hospital, R. P. White Nursing Facility, and James T. Champion Nursing Facility hereinafter referred to as "EMSH."

4.1 TERM

The term of this Agreement shall be for one year beginning July 1, 2017 and ending June 30, 2018. Either party may terminate this Agreement upon thirty (60) days prior written notice to the other party.

4.2 RELATIONSHIP

Healthcare Facility and Contractor agree that their relationship is that of independent contractors and not of employer or principal and agent. However, Healthcare Facility shall retain professional and administrative responsibility for the services rendered hereunder.

4.3 SCOPE OF WORK

Contractor agrees to provide the services to Healthcare Facility listed in the Statement of Work attached to this agreement and made a part thereof (Attachment A). Contractor shall apprise the Administrator of the Healthcare Facility of recommendations, plans for implementation, and continuing assessment in respect of the services furnished hereunder.

4.4 COMPENSATION

Healthcare Facility agrees to compensate Contractor at the rate of _____ Contractor will not be eligible for fringe benefits.

4.5 LICENSURE AND ACCREDITATION

Contractor is a licensed independent Pharmacist and is qualified to be a Contractor pharmacist. CONTRACTOR agrees to maintain such licensure and/or accreditation during the term of this Agreement. CONTRACTOR will immediately notify EMSH if its accreditation status changes.

4.6 INDEMNIFICATION

CONTRACTOR agrees to indemnify and hold harmless EMSH and its directors, officers, employees and agents from and against any and all claims, actions, causes of action, damages, expenses (including court costs and reasonable attorneys' fees), obligations,

losses, liabilities and liens, imposed on, incurred by, or asserted against EMSH as a result of negligence in providing services by CONTRACTOR under this Agreement, except to the extent that any such claims shall arise of or relate to EMSH's negligence or willful misconduct with respect thereto; and EMSH agrees to indemnify and hold harmless CONTRACTOR and its directors, officers, employees and agents from and against any and all claims, actions, causes of action, damages, expenses (including court costs and reasonable attorneys' fees), obligations, losses, liabilities and liens, imposed on, incurred by, or asserted against CONTRACTOR as a result of the acts of omission of EMSH, except to the extent that any such claims shall arise of or relate to CONTRACTOR's negligence or willful misconduct with respect hereto

4.7 ANTI-ASSIGNMENT/SUBCONTRACTING

Neither party may assign, subcontract, delegate or otherwise transfer this Agreement or any of its rights or obligations hereunder, without the other party's prior written consent, except that CONTRACTOR may assign its rights and obligations hereunder in the event of a change of control or sale of all or substantially all of its assets related to this Agreement, whether by merger, reorganization, operation of law or otherwise.

4.8 INDEPENDENT CONTRACTOR STATUS

The parties are and shall function as independent contractors. Neither party shall be deemed any employee or agent of the other, nor shall either party be entitled to employee benefits from the other party. Neither party shall be liable for any failure to perform its obligations under this Agreement if prevented from doing so due to acts of God, regulations or laws of any government, acts of terrorism, war or any other condition or cause beyond its reasonable control.

4.9 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.

4.10 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 210 East Capitol Street, Suite 800, Jackson, Mississippi 39201, for inspection, or downloadable at www.mspb.ms.gov.

4.11 COMPLIANCE WITH THE LAWS

Contractor understands that EMSH 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.

4.12 STOP WORK ORDER

- (1) *Order to Stop Work:* The Procurement Officer, may, by written order to Contractor at any time, and without notice to any surety, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Procurement Officer shall either:
 - (a) cancel the stop work order; or,
 - (b) terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.
- (2) *Cancellation or Expiration of the Order:* If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:
 - (a) the stop work order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this contract; and,
 - (b) Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.
- (3) *Termination of Stopped Work:* If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable

costs resulting from the stop work order shall be allowed by adjustment or otherwise.

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

4.13 AMENDMENTS

No amendment, change modification or alteration of the terms and conditions hereof shall be binding unless in writing and duly executed by both parties. 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 EMSH and agreed to by Contractor.

4.14 LEGAL 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 Contractor: *name, title, contractor, address*

For the EMSH: Rick Entrekin, Director of Resource Management,
P. O. Box 4128 West Station, Meridian, MS 39304-4128

4.15 TERMINATION FOR CONVENIENCE

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

4.16 **CONFIDENTIAL INFORMATION**

The terms and existence of this Agreement (including all pricing information) shall be deemed Confidential Information, along with such other information designed as such by a party. Confidential Information and Protected Healthcare Information (as defined by the current HIPAA Law) shall only be provided to employees on a need-to-know basis. Neither party shall disclose the others party's Confidential Information to any third party, except as required to be perform its obligations hereunder, and in any event no disclosure shall be made to any third party that is not bound by confidentiality obligations equivalent to those herein.

4.17 **TERMINATION FOR DEFAULT**

- (1) **Default.** If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, or otherwise fails to timely satisfy the contract provision, or commits any other substantial breach of this contract, the Agency Head or designee of EMSH may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Procurement Office, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- (2) **Contractor's Duties.** Notwithstanding termination of the contract and subject to any directions from the Agency Head or designee, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.
- (3) **Compensation.** Payment for completed services delivered and accepted by EMSH shall be at the contract price. EMSH may withhold from amounts due Contractor such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
- (4) **Excuse for Nonperformance or Delayed Performance.** Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the Procurement Office within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity;

fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonable obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and , if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be reviewed accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in the Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

- (5) Erroneous Termination for Default. If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.
- (6) Additional Rights and Remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

4.18 **RECORD RETENTION**

For a period of four (4) years after the furnishing of the services as stated in this Agreement, both EMSH and CONTRACTOR shall make available, upon written request by the Secretary of Health and Human Services or upon request by the Comptroller General, or any of their duly authorized representatives, the contract, and books, documents and records of EMSH and CONTRACTOR that are necessary to certify the nature and extent of the cost under the Agreement, and, if EMSH or CONTRACTOR carries out any of their duties under this Agreement through a subcontract, with a value or cost of \$10,000.00 or more over a twelve-month period with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available upon written request by the Secretary of Health and Human Services, or upon representatives, the subcontract, books, documents, and records or such organization that are necessary to verify the nature and extent of such costs.

4.19 AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of the State to proceed under the 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 this agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or 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 state, the state shall have the right upon ten (10) working days written notice to the hospital, 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.

4.20 REPRESENTATION REGARDING CONTINENT FEES

Contractor represents that it has not retained a person to solicit or secure a State contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid proposal.

4.21 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 §31-7-305.

4.22 E-VERIFICATION

If applicable 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. 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 hereunder meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:

- (1) 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
- (2) 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
- (3) both. In the event of such termination/cancellation, 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.

4.23 **REPRESENTATION REGARDING GRATUITIES**

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

4.24 **FALSE CLAIMS ACT**

The False Claims Act allows people, whether affiliated with the government or not, to file actions against federal contractors claiming fraud against the government. The act of filing such actions is informally called “whistleblowing”. Persons filing under the Act stand to receive a portion (usually about 15-25 percent) of any recovered damages. The act provides a legal tool to counteract fraudulent billings turned in to the Federal Government. Claims under the law have been filed by persons with insider knowledge of false claims which have typically involved health care, military, or other government spending programs.

The Department of Mental Health and its twelve residential facilities actively encourage persons with knowledge of fraudulent claims to report it. The False Claims Act gives a person reporting such fraud certain rights and protections, among which is protection from adverse action by the employer for reporting such fraud. In the case of Medicaid fraud – 1-800-880-5920 is the Fraud and Abuse Hotline for the Bureau of Program Integrity at the Mississippi Division of Medicaid. Fraudulent Medicaid claims would include, but not be limited to:

- Billing for services not rendered
- Billing for services rendered by not medically necessary
- “Up-coding” or inappropriate billing that results in a loss to the Medicaid Program
- Inappropriate or lack of documentation to support services billed
- Quality of care issues (care that fails to meet professionally recognized health care standards)
- Falsifying certificates of medical necessity, plans of treatment, and/or medical records to justify payment
- Soliciting or receiving kickbacks
- Violating Medicaid policies, procedures, rules, regulations, and/or statutes.

Medicaid beneficiaries should be referred to the Bureau of Program Integrity at the Division of Medicaid if there is a suspicion of:

- Excessive use or over-use of Medicaid

- Using another's Medicaid identification card
- Lending, altering, or duplicating a Medicaid identification card
- Providing incorrect eligibility or false information to a provider to obtain treatment
- Simultaneously receiving benefits in two or more states
- Knowingly assisting providers in rendering services to defraud the Medicaid program
- Prescription fraud

Every dollar lost to fraud is a dollar that cannot serve a deserving Medicaid beneficiary

Other suspected fraud and abuse with regard to non-Medicaid claims against state government can be reported to the State Attorney General's Office. For that matter, Medicaid fraud can also be reported to the Attorney General. Contact information for reporting fraud to the State Attorney General is:

Public Integrity Division
Office of Attorney General
P.O. Box 2
Jackson, Ms. 39205
Phone: 601-359-4250
Toll-free numbers for AG's Office: 1-800-281-4418 Or 1-800-829-6766

Additionally, the Federal Government employs many independent Inspectors General whose duties include the prevention and detection of waste, fraud, and abuse within their respective federal departments. A list of all those Inspectors General can be found at www.ignet.gov. The two most likely to be associated with the activities of the Department of Mental Health are:

Inspector General
U.S. Department of Education
400 Maryland Ave., SW
Washington, D.C. 20024
Hotline Number: 1-202-245-6911
Hotline E-Mail: oighotline@ed.gov

Inspector General
U.S. Department of Health and Human Services
330 Independence Ave, SW
Washington, D.C. 20201
Hotline Number: 1-800-447-8477
Hotline E-mail: HHSTips@oig.hhs.gov

Controlling fraud and abuse is everybody's business. All employees of the Department of Mental Health and its facilities, and contractors associated with the Department of Mental Health and its facilities, are encouraged to report fraud and abuse of which they

are aware to the appropriate authorities. If you believe your concern can be adequately addressed at the facility at which you believe the fraud occurred, you may contact the Facility Director, or you may contact the Executive Director of the Department of Mental Health at 601-359-6250, or you may make your report to any of the entities listed previously in this notice. The False Claims Act gives you rights as a “whistleblower”, among which is the prohibition of adverse action against you for reporting such fraud and abuse when you have reason to believe such fraud and abuse exists.

4.25 INSURANCE

The Contractor represents that it will maintain workers’ compensation insurance which shall inure to the benefit of all the Contractor’s personnel provided hereunder, comprehensive general liability or professional liability insurance, with minimum limits not less than \$1,000,000 per claim and \$2,000,000 annual aggregate. EMSH 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.

4.26 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 EMSH and agreed to by Contractor.

4.27 ATTORNEY’S FEES AND EXPENSES

Subject to other terms and conditions of this agreement, in the event Contractor defaults in any obligations under this agreement, Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees, court costs, and attorney’s fees) incurred by the State in enforcing this agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the customer be obligated to pay any attorney’s fees or costs for legal action to Contractor.

4.28 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 EMSH 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 EMSH determines it to be in its best interest to terminate the agreement.

4.29 THIRD PARTY ACTION NOTIFICATION

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

4.30 UNSATISFACTORY WORK

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

4.31 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 conditional. 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.

4.32 APPROVAL

It is understood that the Contract is void and no payment shall be made in the event that the Personal Services Contract Review Board does not approve this contract.

4.33 FAILURE TO ENFORCE

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

4.34 RIGHT TO INSPECT FACILITY

The State, may at reasonable times, inspect the place of business of a Contractor or any subcontractors which is related to the performance of any contract awarded by the State.

4.35 HIPAA

The parties specifically agree to take such action as is necessary to implement the requirements of Sections 1173 and 1175 of the Social Security Act, otherwise referred to as the Health Insurance Portability and Accountability Act of 1996, (hereinafter referred to as "HIPAA"); the regulations promulgated under HIPAA by the United States Department of Health and Human Services (hereinafter referred to as "HIPAA regulations") which are codified at 45 C.F.R. § 160 and §164; and other applicable laws

relating to the security and confidentiality of protected health information. Upon request by either the designated hospital or EMSH, the non-requesting party agrees to promptly enter into negotiations with the requesting party regarding the terms of a written amendment to this Agreement to supplement and/or modify language as is required to comply with all applicable laws.

The designated hospital and EMSH agree to maintain protected health information as confidential, disclosing information only as required or allowed by law and only after securing proper consent and/or authorization, as required by HIPAA regulations.

This Agreement shall be construed in favor of a meaning that permits designated hospital to comply with HIPAA and the regulations promulgated pursuant thereto.

4.36 AUTHORITY TO CONTRACT

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.

4.37 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.

4.38 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.

4.39 **TERMINATION UPON BANKRUPTCY**

This contract may be terminated in whole or in part by EMSH 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.

4.40 **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.

CONTRACTOR

EAST MISSISSIPPI STATE
HOSPITAL

BY: _____

BY: _____

NAME: _____
(PRINT)

NAME: _____
(PRINT)

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

Attachment A

SCOPE OF WORK

1. Checks the drug regimen of each resident each month and documents drug precautions, possible interactions with food or other drugs, abnormal lab findings, recommended laboratory work, and so forth, at their professional discretion. Includes:
 - (1) Drug regimen reviews
 - (2) Medication dosage compliance review
 - (3) Psychoactive drug monitoring
 - (4) Regulatory compliance review
2. Physically inspects each drug storage area to monitor storage and handling of drugs and biologicals and submits a report of findings on a monthly basis. This may include, but is not limited to:
 - (1) Checking the Emergency Kit for completeness and outdated drugs.
 - (2) Random checks of controlled drugs for proper administration and recording.
 - (3) Random checks of medication containers for proper labeling.
 - (4) Inspection of the refrigerator(s) in the medical prep room for proper temperature and proper storage of refrigerated medications.
 - (5) Quarterly perform a medication pass review of sufficient number of residents.
3. Assist in the destruction and reconciliation of unused controlled substances as prescribed by law, rule, or regulation
4. Generate computer forms and reports.