



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 _____.

4. 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.

5. 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. The Independent Contractor shall comply with applicable federal, state, and local laws and regulations.

6. 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.

7. 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.

8. REPRESENTATION REGARDING GRATUITIES

The bidder, offeror, or Independent 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 Procurement Regulations*.

9. 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, Suite 800, Jackson, MS 39201 for inspection, or

downloadable at <http://www.mspb.ms.gov>.

10. TRADE SECRETS, COMMERCIAL AND FINANCIAL INFORMATION

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

11. 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.

12. 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)."

13. HIPAA

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

14. 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.

15. 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.

16. 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.

17. E-PAYMENT

Independent Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The Hospital 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.

18. 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, Contract 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 cancellation/termination, 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.

19. 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.

20. STOP WORK ORDER

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

- (1) Cancel the stop work order; or,
- (2) Terminate the work covered by such order as provided in the Termination for 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, the Independent Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Independent Contractor price, or both, and the contract shall be modified in writing accordingly, if:

- (1) the stop work order results in an increase in the time required for, or in the Independent Contractor's cost properly allocable to, the performance of any part of this contract; and,
- (2) the Independent Contractor asserts a claim for such an adjustment within 30

days after the end of the period of work stoppage; provided that, if the procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

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

21. PAYMODE

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

22. APPROVAL

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

23. 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.

24. 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.

25. INFORMATION DESIGNATED BY INDEPENDENT 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.

26. 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 Independent 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.

27. INDEPENDENT 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.

28. 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.

29. 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.*

30. 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 Independent Contractor from any nonparty; or,

(f) is disclosed with the disclosing party's prior written consent.

31. 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.

32. 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.

33. 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, Independent 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.

34. 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, 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 State. 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 State's concurrence, which the State shall not unreasonably withhold.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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 Independent 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.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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

45. 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