

**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 EMSH patients and residents, acute care hospital services are required when advanced care is necessary. EMSH will use the information obtained in the bidding process to determine which acute care hospital will be selected for a contract.

- 1.1 **PURPOSE:** The goal of this Invitation for Bids (IFB) is to establish a service contract with an acute care hospital for inpatient and outpatient services to treat the patients/residents of EMSH.

- 1.2 **INVITATION:** Sealed bids, subject to the conditions herein stated and attached hereto, will be received at this office until Thursday May 04, 2023, at 5 p.m. for furnishing the services as described below for EMSH.

EMSH is seeking the best contract possible with a local acute care hospital. All documentation submitted in response to this IFB, and any subsequent requests for information pertaining to this IFB shall become the property of EMSH and will not be returned to the Bidder.

EMSH will receive bids from firms having specific experience and qualifications in the area identified in the solicitation.

1.7 **QUESTIONS AND DELIVERY**

**Inquiries regarding this Invitation for Bids must be directed to:**

Andrea M. Davis  
Procurement Team Leader  
East Mississippi State Hospital  
[adavis@emsh.ms.gov](mailto:adavis@emsh.ms.gov)  
601-581-7666  
Before Thursday May 4, 2023,  
at 5:00 p.m.

**Bids must be submitted to:**

Andrea Davis  
Procurement Team Leader  
Director East Mississippi State  
Hospital P.O. Box 4128 West  
Station Meridian, MS 39304  
Before Thursday May 4, 2023,  
at 5:00 p.m.

**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:**

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

**2.1 DETAILED MINIMUM SPECIFICATIONS**

Devise a written bid that will ensure that the selection procedure for acute care hospital services follows the guidelines of the Public Procurement Contract Review Board and results in the best quality of patient care.

The prospective bidder should be able to provide a full range of medical services; including emergency room, surgical suites, radiologic facilities, physicians in a multitude of specialties, and laboratory services. The prospective bidder should be accredited and all physicians should be licensed. The bidder's facility should be within ten (10) miles of 1818 College Drive, Meridian, MS 39307. The bidder must be qualified, and accept Medicare A and B, and Medicaid. The bidder must be willing to provide evidence of all accreditations, certifications, and licenses when requested. Services will be requested on an as needed basis, with no minimum or maximum volumes.

**2.2 PERIOD OF PERFORMANCE**

The period of performance of this contract is four years from: August 16, 2023, to August 15, 2027. One additional year can be added to the contract with the written consent of both parties; and with the approval of the Office of Personal Service Contract Review Board; and subject to the availability of State funds.

**2.3 BID WITHDRAWAL**

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

- A. The bid is submitted in good faith.
- B. The price is substantially lower than those of other Bidders 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 bid 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 bid that includes a clerical error after the bid opening, the Bidder will give written notice to EMSH to claim the right to withdraw a bid. Within five business days after the bid opening, the Bidder requesting withdrawal must provide to EMSH all original work papers, documents, and other materials used in the preparation of the bid.

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

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

No Bidder who is permitted to withdraw a bid 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 bid are permitted after the time and date set for the bid opening; only complete withdrawals are permitted.

**2.4 IFB DOES NOT CONSTITUTE ACCEPTANCE OF OFFER**

The release of the Request for Bids 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.

**2.5 BIDDER'S CERTIFICATION**

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

**2.6 CERTIFICATES AND LICENSES**

The bidder 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 bidder 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. Professional licenses or certificates of accreditation.

2.7 **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.

2.8 **CONFIDENTIAL INFORMATION**

“Confidential Information” shall mean: (a) those materials, documents, data, and other information which the contractor has designated in writing as proprietary and confidential; and, (b) all data and information which the 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 the contractor or its subcontractor shall rest with contractor. Disclosure of any confidential information by the contractor or its subcontractor without the express written approval of the customer shall result in the immediate termination of this agreement.

2.9 **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 the 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 provider(s) to comply with HIPAA and the regulations promulgated pursuant thereto.

**2.10 EXCEPTIONS**

Bidder taking exception to any part or section of the solicitation shall indicate such exceptions on the bid form. Failure to indicate any exception will be interpreted as the Bidder's intent to comply fully with the requirements as written. Conditional or qualified bids, unless specifically allowed, shall be subject to rejection in whole or in part.

**2.11 DEBARMENT**

By submitting a bid, the Bidder certifies that it is not currently debarred from submitting bids 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 bids for contract issued by any political subdivision or agency of the State.

**2.12 DEBARMENT AND SUSPENSION**

The Bidder 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 bid, 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 bid, 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 bid, had one or more public transactions (Federal, State, or local) terminated for cause or default.

**2.13 EXPENSES INCURRED IN PREPARING BID**

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

**2.14 INSURANCE**

The Bidder represents that it will maintain workers' compensation insurance which shall inure to the benefit of all the Bidder's personnel provided hereunder; comprehensive general liability and professional liability insurance, with minimum limits not less than \$1,000,000 per claim and \$3,000,000 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.

**2.15 LATE SUBMISSIONS**

A bid received at the place designated in the solicitation for receipt of bids after the exact time specified for receipt will not be considered unless it is the only bid 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 bids. 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 bid 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. Bidders 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 bid opening is the time and date stamp of that office on the bid wrapper or other documentary evidence of receipt used by that office.

**2.16 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 the contractor.

2.17 **PRICE ADJUSTMENT CLAUSE**

2.17.1 *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.

2.17.2 *Submission of Cost or Pricing Data.* The 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*.

**CONSULTANT’S CERTIFICATION**

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

\_\_\_\_\_  
Consultant’s Signature

**CERTIFICATION OF INDEPENDENT PRICE DETERMINATION**

The Consultant 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 Consultant or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate the prices bid.

\_\_\_\_\_  
Consultant’s Signature

**PROSPECTIVE CONTRACTOR’S REPRESENTATION REGARDING CONTINGENT FEES**

The prospective contractor represents as a part of such contractor’s bid or bid 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.

\_\_\_\_\_  
Consultant’s Signature



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*Section III: Standard Terms and Conditions*

**3.0 ACKNOWLEDGMENT OF AMENDMENTS**

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

**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 the 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 bidder 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 bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate

the prices bid.

**3.5 COMPLIANCE WITH LAWS**

The 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.

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

**3.7 E-VERIFICATION**

If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 *et seq.* The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:

- (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;
- (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, both.
- (3) In the event of such cancellations/termination, Contractor would also be liable for any

additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

**3.8 INDEPENDENT CONTRACTOR STATUS**

The 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, the 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 the contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or the contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and the contractor. The contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither the 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 the contractor, its servants, agents, or employees. EMSH shall not withhold from the contract payments to the contractor any federal or State unemployment taxes, federal or State income taxes, Social Security tax, or any other amounts for benefits to the contractor. Further, the EMSH shall not provide to the contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

**3.9 PROCUREMENT REGULATIONS**

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

**3.10 RECORD RETENTION AND ACCESS TO RECORDS**

Provided the contractor is given reasonable advance written notice and such inspection is made during normal business hours of the contractor, the State or any duly authorized representatives shall have unimpeded, prompt access to any of the 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 the 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.

**3.11 REPRESENTATION REGARDING CONTINGENT FEES**

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

3.12 **REPRESENTATION REGARDING GRATUITIES**

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

3.13 **PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES**

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

3.14 **STOP WORK ORDER**

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

- a. cancel the stop work order; or,
- b. terminate the work covered by such order as provided in the Termination for Default Clause or the Termination for Convenience Clause of this contract.

3.14.2 *Cancellation or Expiration of the Order:* If a stop work order issued under this clause is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contractor price, or both, and the contract shall be modified in writing accordingly, if:

- a. The stop work order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this contract; and,
- b. Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any such

claim asserted may be received and acted upon at any time prior to final payment under this contract.

3.14.3 *Termination of Stopped Work:* If a stop work order is not cancelled 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.

3.14.4 *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.

### 3.15 **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.

### 3.16 **TRANSPARENCY**

This contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983,” and its exceptions. See Miss. Code Ann. §§ 25-61-1 et seq., and Miss. Code Ann. § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 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.

### 3.17 **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.

3.18 **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.

3.19 **POST-AWARD DEBRIEFING**

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. EMSH shall be allowed to schedule and /or suspend and reschedule the meeting at a time when a representative of the Office of the Mississippi Attorney General can be present.

**EAST MISSISSIPPI STATE HOSPITAL**  
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*Section IV: Standard Contract Form*

**Acute Care Hospital Services**

This contract is hereinafter referred to as the “Agreement”, by and between \_\_\_\_\_ hereinafter referred to as “Consultant,” and East Mississippi State Hospital and its’ Nursing Home Facilities hereinafter referred to as “EMSH.”

**4.1 TERM**

The term of this Agreement shall be for four years beginning August 16, 2023, and ending August 15, 2027. The contract may be renewed for one additional year with the written consent of both parties; subject to approval by the Personal Services Contract Review Board; and subject to available State funds (refer to clause 4.19). Either party may terminate this Agreement upon thirty (60) days prior written notice to the other party.

**4.2 RELATIONSHIP**

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

**4.3 SCOPE OF WORK**

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

**4.4 COMPENSATION**

EMSH agrees to compensate Consultant according to rates determined by \_\_\_\_\_. Consultant will not be eligible for fringe benefits.

**4.5 LICENSURE AND ACCREDITATION**

Consultant is a licensed and accredited hospital and agrees to maintain such licensure and/or accreditation during the term of this Agreement. CONSULTANT will immediately notify EMSH if its accreditation status changes.

**4.6 INDEMNIFICATION**

CONSULTANT 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 CONSULTANT 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 CONSULTANT 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 CONSULTANT as a result of the acts of omission of EMSH, except to the extent that any such claims shall arise of or relate to CONSULTANT'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 CONSULTANT 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 prospective contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of law provisions, and any litigation with respect thereto shall be brought in the courts of the State. The 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 Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.DFA.ms.gov>.

**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 the 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 the contractor:            *name, title, contractor, address*

For the EMSH:                Andrea Davis, Procurement Team Leader  
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 Procurement Officer 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 Procurement Officer may procure similar supplies or services in a manner and upon terms deemed appropriate by the Procurement Officer. 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 Chief 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 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 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 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 contact.

#### 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 CONSULTANT 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 CONSULTANT that are necessary to certify the nature and extent of the cost under the Agreement, and, if EMSH or CONSULTANT 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 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.

**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 or 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 §31-7-301 *et seq.*

**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 Public Procurement Review Board Office of Personal Service Contract Review 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](http://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](mailto: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](mailto: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 Consultant represents that it will maintain workers’ compensation insurance which shall inure to the benefit of all the Consultant’s personnel provided hereunder, comprehensive general liability or professional liability insurance, with minimum limits not less than \$1,000,000 per claim and \$3,000,000 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. EMSH is covered under the State of Mississippi’s Tort Claims Act.

**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 the 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 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.

4.32 **APPROVAL**

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

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 ESH, 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 Contractor and ESH 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 Contractor 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 Miss. Code Ann. §§ 25-61-1 et seq., and Miss. Code Ann. § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 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.

## **Attachment A**

### **Additional Terms and Conditions**

**1. PROCEDURE**

This agreement is for acute care hospital services including emergency room visits.

Facility, upon determining that a patient requires medical care at Consultant, shall contact the office/department designated by Consultant, advise said office/department that Facility has a patient to be considered for transfer to Consultant, and provide such information regarding the patient and needed medical care and services as requested by Consultant. All oral requests by Facility for transfer shall be confirmed by Facility in writing as soon thereafter as reasonably practical. Consultant shall then, in its sole discretion, determine whether such proposed patient is appropriate for transfer to Consultant and whether a bed and the appropriate facilities and requested medical care are available. Consultant shall notify Facility of its acceptance or rejection of proposed transfer patients and, as to accepted patients, notify facility of the date, location, and time at which it will accept the transfer and each such accepted patient. When appropriate, the attending physician who will be admitting such patient to his/her service must also give approval.

**2. TRANSFER AND DELIVERY**

Facility after consultation with Consultant, shall arrange for the appropriate transportation of accepted transfer patients from Facility to Consultant. Facility will institute and provide all necessary measures to minimize any danger of deterioration of the patient's condition. Consultant shall have no responsibility for arranging such transfers or the care of the patient(s) during transfer.

**3. ADMISSION TO CONSULTANT**

Patients transferred and admitted to Consultant must be formally admitted to Consultant by a member of Consultant's Medical Staff and must comply with Consultant's conditions, requirements and policies for admission.

**4. PATIENT RECORDS AND INFORMATION**

4.1. Facility shall, at the time of transfer, provide Consultant with all pertinent medical and other information necessary for appropriate care and treatment of patient at Consultant including, but not limited to, current medical findings, diagnosis, summary of course of treatment/care followed at Facility and to be provided at Consultant, nursing and dietary information, and ambulation status, as well as pertinent administrative and social information. When such information is needed in connection with Consultant's determination of whether to accept a proposed transfer or Consultant's preparation to admit, receive or care for the patient, Facility shall provide such information to Consultant prior to transfer of the patient. Otherwise, such information shall accompany the patient upon transfer.

4.2. It is acknowledged by the parties that the quality of patient care to be provided by Consultant is directly affected by the information provided to Consultant, and,

therefore, Facility agrees to promptly provide Consultant with all useful or requested information concerning the patient, available to Facility.

5. **PATIENT AUTHORIZATIONS AND CONSENT**

Facility shall, prior to transfer, advise and inform each patient, or the patient's surrogate in the event of patient's medical or legal incompetence, of the details of the transfer, the need or reason(s) for the transfer, alternatives to the transfer, the risks involved and possible benefits of the transfer, and other information in accordance with the guidelines set out in the Accreditation Manual of the Joint Commission and in accordance with all applicable laws, rules and regulations. In addition, Facility shall obtain from each patient an informed consent for such transfer to Consultant.

6. **PATIENT'S VALUABLES**

Only such valuables as are necessary for the care and treatment of the patient shall accompany the patient to Consultant. In the event that valuables are necessary for patient care, Facility shall prepare an inventory of each patient's valuables that are being transported with patient, and shall have the transporting medium execute a receipt of said inventory and valuables. Said inventory and a copy of said receipt shall be provided to Consultant, which shall execute a receipt for the valuables it actually receives. Consultant shall have no responsibility or liability for any valuables not listed on the executed receipt.

7. **RETURN OF PATIENTS**

Facility shall accept the return and transfer of all patients transferred to Consultant hereunder. When Consultant, in its sole discretion, determines that such patient should be returned to Facility, it shall so notify Facility and Facility agrees to accept the return of each such patient within twenty-four (24) hours of the receipt of said notice or arrange for another facility to receive the patient within the same time limitations. Arrangement for such return transportation shall be made by Facility after consultation with Consultant.

8. **BILLING AND COLLECTIONS**

8.1 Consultant shall bill Medicare Part A, Medicare Part B, Medicaid, and all third party payors for applicable services rendered to patients of Facility. Services for private pay patients shall be billed directly by Consultant to the Facility. Facility shall compensate Consultant for billed services based on the agreed upon fee schedule applicable as of the date of service.

8.2. It is further understood that professional fees will be billed by those physicians or other professions who actually participate in the care and treatment of the patient and who are entitled to bill for their professional services at usual and customary rates. To the extent allowed by law, each institution agrees to provide information in its possession to the other institution and such physicians or professional providers sufficient to enable them to bill the appropriate payor.

- 8.3 Consultant shall assist Facility in transfer agreements with acceptable billing terms with physicians, institutions, or other providers who provide services for Consultant and conduct their own separate billing to Facility.

9. **TERM AND TERMINATION**

In the event of termination, the parties shall ensure the continuity of care for all patients previously transferred hereunder and shall continue to meet all commitments and obligations hereunder for all patients previously transferred to Consultant but not yet returned to the Facility. This Agreement shall terminate immediately upon either party losing (by revocation or otherwise) its license or accreditation, becoming ineligible as a provider of services under Public Law 89-97, or becoming unable to provide necessary patient care and services.

10. **MISCELLANEOUS PROVISIONS**

- 10.1. Consultant has not and does not, by execution of this Agreement, represent or warrant that it will reserve any beds for such transfer patients from Facility or guarantee the availability of beds at Consultant for use by proposed transfer patients.
- 10.2. Nothing in this Agreement shall be construed as limiting the right of either party to contract with any other health care facility or institution while this Agreement is in effect or thereafter.
- 10.3. With certain exceptions, Consultant shall have no liability whatsoever for refusing or failing to approve or accept any patient proposed by Facility for transfer hereunder.
- 10.4. Neither party shall use the name of the other in any promotional, fund raising or advertising material unless approved in writing by the party whose name is to be so used.
- 10.5. Consultant and Facility shall each designate an appropriate person to act as liaisons between the two parties regarding this Agreement.
- 10.6. All transfers hereunder shall be accomplished in every respect so as to comply with all applicable laws, rules and regulations, including but not limited to, Emergency Medical Treatment and Active Labor Act, and any state's applicable transfer regulations.
- 10.7. Consultant shall provide available laboratory, radiology, and other services when ordered by such patient's attending physician. Upon being provided with an appropriate consent from such patient, Consultant shall furnish copies of reports from such laboratory, radiology and other services to Facility.
- 10.8. No failure or omission by the parties hereto in the performance of any

obligation of this Agreement shall be deemed a breach of this Agreement nor shall it create any liability if the same shall arise from any cause or causes beyond the reasonable control of the affected party, including but not limited to, the following, which for purposes of this Agreement shall be regarded as beyond the control of the party in question: acts or omission of any government, any rules, regulations, or orders issued by any governmental authority or by any officer, department, agency, or instrumentality thereof; fire, storm, flood, explosions, earthquake, other acts of God, accident, war, rebellion, vandalism, insurrection, riot, invasion, strikes, labor lockouts, and failure of transportation, machinery or supplies, provided, the party so affected shall use its best efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder with the utmost dispatch whenever such causes are removed.

- 10.9. Neither party, nor its shareholders, members, directors, officers, agents, employees or members of this workforce have been excluded or served a notice of exclusion or have been served with a notice of proposed exclusion, or have committed any acts which are cause for exclusion from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or state healthcare program, including but not limited to Medicare or Medicaid, or have been convicted , under federal or state law (including without limitation a plea of nolo contendere or participation in a first offender deterred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to (a) the neglect or abuse of a patient, (b) the delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under a federal or state healthcare program, (c) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by any federal, state or local government agency, (d) the unlawful, manufacture, distribution, prescribing or dispensing of a controlled substance, or (e) interference with or obstruction of any investigation into any criminal offense described in (a) through (d) above. Each Party further agrees to notify the other Party immediately after the Party becomes aware that any of the foregoing representation and warranties may be inaccurate or may become incorrect.
- 10.10. Facility shall notify Consultant immediately of the initiation of any complaint, inquiry, investigation, by any patient, person, physician, nursing personnel, review organization, committee, organization, or other body that reviews quality of medical care related to the activities contemplated by this Agreement. Facility shall require its employees, managers, directors and agents to cooperate fully with Consultant's Risk Management and/or Compliance programs, including if necessary, interviews with Consultant's Risk Management and/or Compliance staffs, and cooperating with any investigation in any other respect reasonably requested by Consultant. Facility agrees that Consultant shall solely direct the investigation and resolution of any complaint of any nature.

10.11. The parties agree that their respective signatories are authorized to act on behalf of the parties in entering this Agreement.

CONSULTANT

EAST MISSISSIPPI STATE  
HOSPITAL

BY: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_  
(PRINT)

NAME: \_\_\_\_\_  
(PRINT)

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_