

**RFP No:** **4243**4243

INVITATION: Proposals, subject to the attached conditions, will be received at this office until **January 6, 2023January 6, 2023 @ 3:00 p.m.** Central Time for the acquisition of the products/services described below for Mississippi Division of Medicaid**Mississippi Division of Medicaid**44440.

Interoperability, Data Lake, and APIs (IDA) SolutionInteroperability, Data Lake, and APIs (IDA) Solution

**MANDATORY** VENDOR WEB CONFERENCE: Tuesday, October 25, 2022 at 11:00 a.m. Central Time

**The Vendor must submit proposals and direct inquiries to:**

Khelli Reed

Technology Consultant

Information Technology Services

3771 Eastwood Drive

Jackson, MS 39211

(601) 432-81948194

Khelli.ReedKhelli.Reed@its.ms.gov

To prevent opening by unauthorized individuals, the proposal must be sealed in an envelope/package. The following must be clearly typed on a label affixed to the package in a clearly visible location:

PROPOSAL, SUBMITTED IN RESPONSE TO

RFP NO. 4243

due January 6, 2023 @ 3:00 p.m.,

ATTENTION: Khelli Reed

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**David C. Johnson**

**Executive Director, ITS**

**ITS** **RFP Response Checklist**

RFP Response Checklist: These items should be included in your response to RFP No. 4243.

|  |  |
| --- | --- |
| \_\_\_\_\_ | 1. One USB flash drive that includes the Vendor’s complete proposal. Label the USB with the Vendor name and RFP number. Include the items listed below on the USB.
 |
| \_\_\_\_\_ | 1. *Submission Cover Sheet*, signed and dated. (Section I)
 |
| \_\_\_\_\_ | 1. *Proposal Bond,* if applicable (Section I)
 |
| \_\_\_\_\_ | 1. *Proposal Exception Summary*, if applicable (Section V)
 |
| \_\_\_\_\_ | 1. Vendor response to *RFP Questionnaire* (Section VI)
 |
| \_\_\_\_\_ | 1. Point-by-point response to *Technical Specifications* (Section VII)
 |
| \_\_\_\_\_ | 1. Vendor response to *Cost Information Submission* (Section VIII)
 |
| \_\_\_\_\_ | 1. *References* (Section IX)
 |
| \_\_\_\_\_ | *9) Point-by-point response to Functional and Technical Specifications*  *(Attachment A)* |

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# SECTION I

## SUBMISSION COVER SHEET & CONFIGURATION SUMMARY

Provide the following information regarding the person responsible for the completion of your proposal. This person should also be the person the Mississippi Department of Information Technology Services, (**ITS**), should contact for questions and/or clarifications.

|  |  |  |  |
| --- | --- | --- | --- |
| Name |  | Phone # |  |
| Address |  | Fax # |  |
|  |  | E-mail |  |

Subject to acceptance by **ITS**, the Vendor acknowledges that by submitting a proposal AND signing in the space indicated below, the Vendor is contractually obligated to comply with all items in this Request for Proposal (RFP), including the Standard Contract in Exhibit A if included herein, except those listed as exceptions on the Proposal Exception Summary Form. If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions. This acknowledgement also contractually obligates any and all subcontractors that may be proposed. Vendors who sign below may not later take exception to any point during contract negotiations. The Vendor further certifies that the company represented here is an authorized dealer in good standing of the products/services included in this proposal.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Original signature** of Officer in Bind of Company/Date

|  |  |
| --- | --- |
| Name (typed or printed) |  |
| Title |  |
| Company name |  |
| Physical address |  |
|  |  |
| State of Incorporation |  |

CONFIGURATION SUMMARY

The Vendor must provide a summary of the main components of products/services offered in this proposal using 100 words or less.

## PROPOSAL BONDS

A Proposal Bond is not required for this procurement.

# SECTION II

## PROPOSAL SUBMISSION REQUIREMENTS

The objective of the Proposal Submission Requirements section is to provide Vendors with the information required to submit a response to this Request for Proposal (RFP). A Vendor who has responded to previous RFPs issued by **ITS** should not assume that the requirements are the same, as changes may have been made.

1. Failure to follow any instruction within this RFP may, at the State’s sole discretion, result in the disqualification of the Vendor’s proposal.
2. The State has no obligation to locate or acknowledge any information in the Vendor’s proposal that is not presented under the appropriate outline according to these instructions and in the proper location.
3. The Vendor’s proposal must be received, in writing, by the office of **ITS** by the date and time specified. **ITS** is not responsible for any delays in delivery or expenses for the development or delivery of proposals. Any proposal received after proposal opening time will be returned unopened. Any proposal received with insufficient postage will be returned unopened.
4. Any proposal or qualification, withdrawal, or modification not received at the place designated for receipt of proposals or qualifications is late and may not be accepted.
5. Proposals or alterations by fax, e-mail, or phone will not be accepted.
6. Original signatures in blue ink are required on the Submission Cover Sheet and Configuration Summary. The signed, original Submission Cover Sheet and Configuration Summary must be included in the sealed package/envelope. The Vendor must include the Proposal Bond within the proposal package, (if explicitly required in Section IV).
7. **ITS** reserves the right to reject any proposals, including those with exceptions, prior to and at any time during negotiations.
8. **ITS** reserves the right to waive any defect or irregularity in any proposal procedure.
9. The Vendor may intersperse their response following each RFP specification but must not otherwise alter or rekey any of the original text of this RFP. If the State determines that the Vendor has altered any language in the original RFP, the State may, in its sole discretion, disqualify the Vendor from further consideration. The RFP issued by **ITS** is the official version and will supersede any conflicting RFP language submitted by the Vendor.
10. The Vendor must conform to the following standards in the preparation of the Vendor’s proposal:
	1. The Vendor is required to submit one response of the complete proposal, including all sections and exhibits, on a USB flash drive. Vendor’s documents must be submitted in Microsoft Office 2010 or higher format and/or PDF format, as appropriate. If PDF format is submitted, the file must be searchable.
	2. To prevent opening by unauthorized individuals, the proposal must be sealed in a package/envelope. A label containing the information on the RFP cover page must be clearly typed and affixed to the package in a clearly visible location.
	3. Number each page of the proposal.
	4. Respond to the sections and exhibits in the same order as this RFP.
	5. Label the file names of each section and exhibit, using the corresponding headings from the RFP.
	6. If the Vendor does not agree with any item in any section, then the Vendor must list the item on the Proposal Exception Summary Form. (See Section V for additional instructions regarding Vendor exceptions.)
	7. Occasionally, an outline point in an attachment requests information which is not applicable to the products/services proposed. If the Vendor is certain the point does not apply to the given RFP, the Vendor should respond with “NOT APPLICABLE.”
	8. Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
	9. When an outline point/attachment is a statement provided for the Vendor’s information only, the Vendor need only read that point. The Vendor acknowledges having read and accepting, or taking exception to, all sections by signing the Submission Cover Sheet and providing a Proposal Exception Summary Form.
	10. Where a minimum requirement has been identified, respond by stating the item (e.g., device name/model number, guaranteed response time) proposed and how it will meet the specifications.
	11. The Vendor must fully respond to each requirement within the Technical Specifications by fully describing the manner and degree by which the proposal meets or exceeds said requirements.
11. It is the responsibility of the Vendor to clearly identify all costs associated with any item or series of items in this RFP. The Vendor must include and complete all parts of the cost proposal in a clear and accurate manner. **Omissions, errors, misrepresentations, or inadequate details in the Vendor’s cost proposal may be grounds for rejection of the Vendor’s proposal. Costs that are not clearly identified will be borne by the Vendor.** The Vendor must complete the *Cost Information Submission* in this RFP, which outlines the minimum requirements for providing cost information. The Vendor should supply supporting details as described in the *Cost Information Submission*.
12. **ITS** reserves the right to request additional information or clarification of a Vendor’s proposal. The Vendor’s cooperation during the evaluation process in providing **ITS** staff with adequate responses to requests for clarification will be considered a factor in the evaluation of the Vendor’s overall responsiveness. Lack of such cooperation or failure to provide the information in the manner required may, at the State’s discretion, result in the disqualification of the Vendor’s proposal.
13. Unsolicited clarifications and updates submitted after the deadline for proposals will be accepted or rejected at the sole discretion of **ITS**.
14. Unsolicited clarifications in the evaluation and selection of lowest and best proposal will be considered only if all the following conditions are met:
	1. A clarification to a proposal that includes a newly announced product line or service with equal or additional capability to be provided at or less than the proposed price will be considered.
	2. Information provided must be in effect nationally and have been formally and publicly announced through a news medium that the Vendor normally uses to convey customer information.
	3. Clarifications must be received early enough in the evaluation process to allow adequate time for re-evaluation.
	4. The Vendor must follow procedures outlined herein for submitting updates and clarifications.
	5. The Vendor must submit a statement outlining the circumstances for the clarification.
	6. The Vendor must submit unsolicited clarifications via USB in the same manner as detailed in Item 9 above.
	7. The Vendor must be specific about which part of the original proposal is being changed by the clarification (i.e., must include exact RFP reference to section and outline point).
15. **Communications with State**

From the issue date of this RFP until a Vendor is selected and the selection is announced, responding Vendors or their representatives may not communicate, either orally or in writing regarding this RFP with any statewide elected official, state officer or employee, member of the legislature or legislative employee except as noted herein. To ensure equal treatment for each responding Vendor, all questions regarding this RFP must be submitted in writing to the State’s contact person for the selection process, and not later than the last date for accepting responding Vendor questions provided in this RFP. All such questions will be answered officially by the State in writing. All such questions and answers will become addenda to this RFP, and they will be posted to the ITS web site. Vendors failing to comply with this requirement will be subject to disqualification.

* 1. The State’s contact person for the selection process is: Khelli Reed, Technology Consultant, 3771 Eastwood Drive, Jackson, MS 39211, 601-432-8194, Khelli.Reed@its.ms.gov.
	2. Vendor may consult with State representatives as designated by the State’s contact person identified in 15.1 above in response to State-initiated inquiries. Vendor may consult with State representatives during scheduled oral presentations and demonstrations excluding site visits.

# SECTION III

## VENDOR INFORMATION

The objective of the Vendor Information section of this RFP is to provide Vendors with information required to respond to the RFP successfully.

1. **Interchangeable Designations**

The terms “Vendor” and “Contractor” are referenced throughout this RFP. Generally, references to the “Vendor” are used in conjunction with the proposing organization and procurement process leading up to the final RFP selection and award. The term “Contractor” denotes the role assumed, post-award, by the winning Vendor. Additionally, the terms “State of Mississippi,” “State” or “ITS” may be used interchangeably throughout this RFP to denote the political entity issuing the RFP and requesting responses from Vendors throughout these specifications. References to a specific agency, institution or other political entity represent the client or customer on whose behalf ITS is issuing the RFP.

1. **Vendor’s Responsibility to Examine RFP**

Vendors must examine all documents, forms, specifications, standard provisions, and instructions.

1. **Proposal as Property of State**

All written proposal material becomes the property of the State of Mississippi.

1. **Written Amendment to RFP**

Any interpretation of an **ITS** RFP will be made by written amendment only. The State will not be responsible for any other explanation of this RFP. A copy of any amendment will be posted on the **ITS** website, together with the associated RFP specification. Vendors are required to check the **ITS** website periodically for RFP amendments before the proposal opening date at:

<http://www.its.ms.gov/Procurement/Pages/RFPS_Awaiting.aspx>

Any and all amendments will be posted no later than noon, seven calendar days prior to the proposal opening date listed on the cover page of this RFP. If you are unable to access the **ITS** website, you may contact the **ITS** Technology Consultant listed on the cover page of this RFP and request a copy.

1. **Oral Communications Not Binding**

Only transactions which are in writing from **ITS** may be considered official. No negotiations, decisions, or actions shall be executed by any Vendor as a result of any discussions with any State employee.

1. **Vendor’s Responsibility for Delivery**

Vendors must ensure, through reasonable and sufficient follow-up, proper compliance with, and fulfillment of all schedules and deliverables specified within the body of this RFP. The State will not be responsible for the failure of any delivery medium for submission of information to or from the Vendor, including but not limited to, public and private carriers, U.S. mail, Internet Service Providers, facsimile, or e-mail.

1. **Evaluation Criteria**

The State's intent in issuing this RFP is to award a contract to the lowest and best responsive Vendor who meets specifications, considering price and other factors. The Vendor’s past performance, cooperation, and ability to provide service and training are general factors that will be weighed in the selection process. More specific information concerning evaluation criteria is presented in *Technical Specifications*.

1. **Multiple Awards**

**ITS** reserves the right to make multiple awards.

1. **Right to Award in Whole or Part**

**ITS** reserves the right to approve an award by individual items or in total, whichever is deemed to be in the best interest of the State of Mississippi.

1. **Right to Use Proposals in Future Projects**

The State reserves the right to evaluate the awarded proposal from this RFP, including all products and services proposed therein, along with the resulting contractual terms, for possible use in future projects if (a) it is deemed to be in the best interest of the State to do so; and (b) the Vendor is willing to extend a cost less than or equal to that specified in the awarded proposal and resulting contract. A decision concerning the utilization of a Vendor’s proposal for future projects is solely at the discretion of the State and requires the agreement of the proposing Vendor. The State’s decision to reuse an awarded proposal will be based upon such criteria as: (1) the customer’s business requirements; (2) elapsed time since the award of the original project; and/or (3) research on changes in the Vendor, market, and technical environments since the initial award.

1. **Right to Use Proposals in Future Projects by Entities Outside Mississippi**

The State reserves the right to offer the awarded proposal from this RFP, including all products and services proposed therein, along with the resulting contractual terms, for possible use in future projects by governmental entities outside Mississippi (i.e., “piggyback option”), if (a) it is deemed to be in the best interest of the governmental entity desiring to do so; and (b) the Vendor is willing to extend a cost less than or equal to that specified in the awarded proposal and resulting contract. A decision concerning the utilization of a Vendor’s proposal for future projects outside Mississippi is solely at the discretion of the State, and requires the desire of the governmental entity outside Mississippi and the agreement of the proposing Vendor. The State’s decision to consent to the reuse of an awarded proposal outside Mississippi will be based upon such criteria as: (1) the governmental entity’s business requirements; (2) elapsed time since the award of the original project; and/or (3) research on changes in the Vendor, market, and technical environments since the initial award.

1. **Price Changes During Award or Renewal Period**

A price increase will not be accepted during the award period or the renewal period, unless stipulated in the contract. However, the State will always take advantage of price decreases.

1. **Right to Request Information**

The State reserves the right to request information relative to a Vendor’s references and financial status and to visit a Vendor’s facilities during normal working hours. The State also reserves the right to request a current financial statement, prepared and certified by an independent auditing firm, and reserves the right to require that Vendors document their financial ability to provide the products and services proposed up to the total dollar amount of the Vendor’s cost proposal. The State reserves the right to request information about the Vendor from any previous customer of the Vendor of whom the State is aware, even if that customer is not included in the Vendor’s list of references.

1. **Vendor Personnel**

For RFPs including professional services specifications, the Vendor will be required to provide and/or certify the following for each individual included in the Vendor’s proposal:

* 1. A direct telephone number at which the individual may be contacted for a telephone interview. The State will pay toll charges in the continental United States. The Vendor must arrange a toll-free number for all other calls.
	2. That, if onsite interviews are required, the individual can be at the specified location in Mississippi within the timeframe specified. All costs associated with onsite interviews will be the responsibility of the Vendor.
	3. That the individual is proficient in spoken and written English;
	4. That the individual is a U.S. citizen or that the individual meets and will maintain employment eligibility requirements in compliance with all United States Citizenship and Immigration Services (USCIS) regulations. The Vendor must provide evidence of identification and employment eligibility prior to the award of a contract that includes any personnel who are not U. S. citizens.
	5. That the personnel assigned to a project will remain a part of the project throughout the duration of the contract as long as the personnel are employed by the Vendor, unless replaced by the Vendor at the request of the State. This requirement includes the responsibility for ensuring all non-citizens maintain current USCIS eligibility throughout the duration of the contract.
1. **Vendor Imposed Constraints**

The Vendor must specifically document what limitations, if any, exist in working with any other Contractor acting in the capacity of the State’s business partner, subcontractor or agent who may be managing any present or future projects; performing quality assurance; integrating the Vendor’s software; and/or providing web-hosting, hardware, networking or other processing services on the State’s behalf. The project relationship may be based on roles as either equal peers; supervisory – subordinate; or subordinate – supervisory, as determined by the State. The State recognizes that the Vendor may have trade secrets, intellectual property and/or business relationships that may be subject to its corporate policies or agreements. The State must understand these issues in order to decide to what degree they may impact the State’s ability to conduct business for this project. These considerations will be incorporated accordingly into the proposal evaluation and selection process. The understanding reached between the Vendor and the State with regard to this business relationship precludes the Vendor from imposing any subsequent limitations of this type in future project undertakings by the State.

1. **Best and Final Offer**

The State reserves the right to solicit Best and Final Offers (BAFOs) from Vendors, principally in situations in which proposal costs eclipse available funding or the State believes none of the competing proposals presents a Best Value (lowest and best proposal) opportunity. Because of the time and expense incurred by both the Vendor community and the State, BAFOs are not routinely conducted. Vendors should offer their best pricing with the initial solicitation. Situations warranting solicitation of a BAFO will be considered an exceptional practice for any procurement. Vendors that remain in a competitive range within an evaluation may be requested to tender Best and Final Offers, at the sole discretion of the State. All such Vendors will be provided an equal opportunity to respond with a Best and Final Offer under a procedure to be defined by the State that encompasses the specific, refined needs of a project, as part of the BAFO solicitation. The State may re-evaluate and amend the original project specifications should it be deemed necessary in order to improve the opportunity for attaining Best Value scenarios from among the remaining competing Vendors. All BAFO proceedings will be uniformly conducted, in writing and subject to solicitation by the State and receipt from the Vendors under a precise schedule.

1. **Restriction on Advertising**

The Vendor must receive written approval from the State before advertising or referencing the award of the contract or the services being provided. The Vendor must agree not to refer to awards in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the State of Mississippi.

1. **Rights Reserved to Use Existing Product Contracts**

The State reserves the right on turnkey projects to secure certain products from other existing **ITS** contracts if it is in its best interest to do so. If this option is exercised, then the awarded Vendor must be willing to integrate the acquisition and implementation of such products within the schedule and system under contract.

1. **Additional Information to be Included**

In addition to answering each specification within this RFP, the Vendor must include complete product/service information, including product pictorials and technical/descriptive literature relative to any product/service offered with the proposal. Information submitted must be sufficiently detailed to substantiate that the products/services offered meet or exceed specifications.

1. **Valid Contract Required to Begin Work**

The successful Vendor should not commence any billable work until a valid contract has been executed. Any work done by the successful Vendor prior to the execution of the contract is done at the Vendor’s sole risk. The State is under no obligation to pay for work done prior to the execution of a contract.

# SECTION IV

## LEGAL AND CONTRACTUAL INFORMATION

The objective of the *Legal and Contractual Information* section is to provide Vendors with information required to complete a contract or agreement with **ITS** successfully.

1. **Acknowledgment Precludes Later Exception**

By signing the *Submission Cover Sheet*, the Vendor is contractually obligated to comply with all items in this RFP, including the *Standard Contract* in Exhibit A if included herein, except those specifically listed as exceptions on the *Proposal Exception Summary Form*. If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions. Vendors who respond to this RFP by signing the *Submission Cover Sheet* may not later take exception to any item in the RFP during contract negotiations. This acknowledgement also contractually obligates any and all subcontractors that may be proposed. No exceptions by subcontractors or separate terms and conditions will be entertained after the fact.

1. **Failure to Respond as Prescribed**

Failure to respond as described in Section II: *Proposal Submission Requirements* to any item in the sections and exhibits of this RFP, including the *Standard Contract* attached as Exhibit A, if applicable, shall contractually obligate the Vendor to comply with that item.

1. **Contract Documents**

**ITS** will be responsible for all document creation and editorial control over all contractual documentation related to each procurement project. The following documents will normally be included in all contracts between **ITS** and the Vendor:

* 1. The Proposal Exception Summary Form as accepted by ITS;
	2. Contracts which have been signed by the Vendor and ITS;
	3. ITS’ Request for Proposal, including all addenda;
	4. Official written correspondence from ITS to the Vendor;
	5. Official written correspondence from the Vendor to ITS when clarifying the Vendor’s proposal; and
	6. The Vendor’s proposal response to the ITS RFP.
1. **Order of Precedence**

When a conflict arises regarding contract intent due to conflicting statements in documents included in the contract, the order of precedence of each document is as listed above unless modification of order is negotiated and agreed upon by both **ITS** and the winning Vendor.

1. **Additional Contract Provisions**

The contract will also include such additional provisions, which are not inconsistent or incompatible with the material terms of this RFP, as may be agreed upon by the parties. All of the foregoing shall be in such form and substance as prescribed by the State.

1. **Contracting Agent by Law**

The Executive Director of **ITS** is, by law, the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of computer and telecommunications equipment, systems, software, and services (Section 25-53-1, et seq., of the Mississippi Code Annotated). **ITS** is issuing this RFP on behalf of the procuring agency or institution. **ITS** and the procuring agency or institution are sometimes collectively referred to within this RFP as "State".

1. **Legal Provisions**
	1. The State of Mississippi is self-insured; all requirements for the purchase of casualty or liability insurance are deleted.
	2. Any provisions disclaiming implied warranties shall be null and void. See Mississippi Code Annotated Sections 11-7-18 and 75-2-719(4). The Vendor shall not disclaim the implied warranties of merchantability and fitness for a particular purpose.
	3. The Vendor shall have no limitation on liability for claims related to the following items:
		1. Infringement issues;
		2. Bodily injury;
		3. Death;
		4. Physical damage to tangible personal and/or real property; and/or
		5. The intentional and willful misconduct or negligent acts of the Vendor and/or Vendor’s employees or subcontractors.
	4. All requirements that the State pay interest (other than in connection with lease-purchase contracts not exceeding five years) are deleted.
	5. Any contract negotiated under this RFP will be governed by and construed according to the laws of the State of Mississippi. Venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi.
	6. Any contract negotiated under this RFP is cancelable in the event the funding authority does not appropriate funds. Notice requirements to Vendor cannot exceed sixty (60) days.
	7. The State of Mississippi does not waive its sovereign immunities or defenses as provided by law by entering into this contract with the Vendor, Vendor agents, subcontractors, or assignees.
	8. The State will deliver payments to the Vendor within forty-five (45) days after receipt of invoice and receipt, inspection, and approval of Vendor’s products/services. No late charges will exceed 1.5% per month on any unpaid balance from the expiration of said period until payment is delivered. See Section 31-7-305 of the Mississippi Code Annotated. Seller understands and agrees that Purchaser is exempt from the payment of taxes.
	9. The State shall not pay any attorney's fees, prejudgment interest or the cost of legal action to or for the Vendor.
2. **Approved Contract**
	1. Award of Contract - A contract is considered to be awarded to a proposer once the proposer’s offering has been approved as lowest and best proposal through:
		1. Written notification made to proposers on **ITS** letterhead, or
		2. Notification posted to the **ITS** website for the project, or
		3. CP-1 authorization executed for the project, or
		4. The **ITS** Board’s approval of same during an open session of the Board.
	2. ITS statute specifies whether ITS Director approval or ITS Board approval is applicable for a given project, depending on the total lifecycle cost of the contract.
	3. A contract is not deemed final until five (5) working days after either the award of contract or post procurement review, as stipulated in the ITS Protest Procedure and Policy. In the event of a valid protest, the State may, at its sole discretion, continue the procurement or stay the procurement in accordance with the ITS Protest Procedure and Policy. If the procurement is stayed, the contract is not deemed final until the protest is resolved.
3. **Contract Validity**

All contracts are valid only if signed by the Executive Director of **ITS**.

1. **Order of Contract Execution**

Vendors will be required to sign contracts and to initial all contract changes before the Executive Director of **ITS** signs.

1. **Availability of Funds**

All contracts are subject to availability of funds of the acquiring State entity and are contingent upon receipt by the winning Vendor of a purchase order from the acquiring State entity.

1. **CP-1 Requirement**

All purchase orders issued for goods and services acquired from the awarded Vendor under this RFP must be encoded by the Customer agency with a CP-1 approval number assigned by **ITS**. This requirement does not apply to acquisitions that by policy have been delegated to State entities.

1. **Requirement for Electronic Payment and Invoicing**
	1. Payments to the awarded Vendor for all goods and services acquired under this RFP by state agencies that make payments through the Mississippi State Government’s Enterprise Resource Planning (ERP) solution (“MAGIC”) will be made electronically, via deposit to the bank account of the Vendor’s choice. The awarded Vendor must enroll and be activated in PayMode™, the State’s current vehicle for sending and receiving electronic payments, prior to receiving any payments from state agencies. There is no charge for a Vendor to enroll or receive payments via PayMode™. For additional information on PayMode™, including registration instructions, Vendors should visit the following website: <http://www.paymode.com/mississippi/>. Vendors may also request assistance from the Mississippi Management and Reporting System (MMRS) Call Center regarding PayMode™ registration by contacting mash@dfa.ms.gov.
	2. For state agencies that make payments through MAGIC, the awarded Vendor is required to submit electronically all invoices for goods and services acquired under this RFP, along with appropriate supporting documentation, as directed by the State.
	3. Items 13.1 and 13.2 only apply to state agencies that make payments through MAGIC. Payments and invoices for all other entities will conform to their standard methods of payment to contractors.
2. **Time For Negotiations**
	1. All contractual issues must be successfully negotiated within fifteen (15) working days from the Vendor’s initial receipt of the project contract from ITS, unless ITS consents to extend the period. Failure to complete negotiations within the stated time period constitutes grounds for rejection of the Vendor’s response to this RFP. ITS may withdraw the proposal award and begin negotiations with the next ranked Vendor immediately or pursue any other option.
	2. Negotiations shall be limited to items to which the Vendor has noted as exceptions on their Proposal Exception Summary Form, as well as any new items that the State may require. All contract changes requested by the Vendor related to such exceptions noted in Vendor’s proposal shall be submitted three (3) working days prior to scheduled negotiations, unless ITS consents to a different period.
3. **Prime Contractor**

The selected Vendor will be designated the prime contractor in the proposal, and as such, shall be solely responsible for all products/services offered in the proposal and for the fulfillment of the contract with the State.

1. **Sole Point of Contact**

**ITS** will consider the selected Vendor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

* 1. The Vendor must acknowledge and agree that in matters of proposals, clarifications, negotiations, contracts and resolution of issues and/or disputes, the Vendor represents all contractors, third parties and/or subcontractors the Vendor has assembled for this project. The Vendor’s commitments are binding on all such parties and consequently the State is only required to negotiate with the Vendor.
	2. Furthermore, the Vendor acknowledges and agrees to pass all rights and/or services related to all general consulting, services leasing, software licensing, warranties, hardware maintenance and/or software support to the State from any contractor, third party or subcontractor without the State having to negotiate separately or individually with any such parties for these terms or conditions.
	3. Should a proposing Vendor wish to assign payment of any or all charges resulting from this contract to a third party, Vendor must disclose that fact in his/her proposal, along with the third party’s name, address, nature of business, and relationship to the proposing Vendor, the reason for and purpose of the assignment, and all conditions of the assignment, including but not limited to a copy of an assignment document to be executed by the State, the Vendor, and the third party. Such assignments will be accepted or rejected at the sole discretion of the State. Vendor must clearly and definitively state in his/her proposal whether the proposal is contingent upon the requested assignment of payments. Whenever any assignment of payment is requested, the proposal, contract, and assignment document must include language specifically guaranteeing that the proposing Vendor is solely and fully liable and responsible for the performance of its obligations under the subject contract. No assignment of payment will be considered at the time of purchase unless such assignment was fully disclosed in the Vendor’s proposal and subsequently accepted by the State.
1. **ITS** **Approval** **of Subcontractor Required**

Unless provided in the contract, the Vendor shall not contract with any other party for furnishing any of the contracted work or services without the consent, guidance, and written approval of the State. **ITS** reserves the right of refusal and the right to request replacement of a subcontractor due to unacceptable work or conduct. This provision should not be interpreted as requiring the approval of individual contracts of employment between the Vendor and personnel assigned for services under the contract.

1. **Inclusion of Subcontract Agreements**

Copies of any agreements to be executed between the Vendor and any subcontractors must be included in the Vendor’s proposal.

1. **Negotiations with Subcontractor**

In order to protect the State’s interest, **ITS** reserves the right to attempt to resolve the contractual disagreements that may arise between the Vendor and its subcontractor after award of the contract.

1. **References to Vendor to Include Subcontractor**

All references in the RFP to “Vendor” shall be construed to encompass both the Vendor and its subcontractors.

1. **Outstanding Vendor Obligations**
	1. Any Vendor who presently owes the State of Mississippi money pursuant to any contract for which ITS is the contracting agent and who has received written notification from ITS regarding the monies owed, must submit, with the proposal, a certified check in the amount due and owing in order for the proposal in response to this RFP to be considered. For a Vendor currently in bankruptcy as of the RFP submission date, this requirement is met, if and only if, ITS has an active petition before the appropriate bankruptcy court for recovery of the full dollar amount presently owed to the State of Mississippi by that Vendor. If the Vendor has emerged from bankruptcy by the RFP submission date, the Vendor must pay in full any amount due and owing to the State, as directed in the court-approved reorganization plan, prior to any proposal being considered.
	2. Any Vendor who is presently in default on existing contracts for which ITS is the contracting agent, or who otherwise is delinquent in the performance of any such contracted obligations, is in the sole judgment of the State required to make arrangement for fulfilling outstanding obligations to the satisfaction of the State in order for the proposal to be considered.
	3. The State, at its sole discretion, may reject the proposal of a Vendor with any significant outstanding financial or other obligations to the State or who is in bankruptcy at the time of proposal submission.
2. **Equipment Condition**

For all RFPs requiring equipment, the Vendor must furnish only new equipment in response to **ITS** specifications, unless an explicit requirement for used equipment is otherwise specified.

1. **Delivery Intervals**

The Vendor’s proposal must specify, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, delivery and installation intervals after receipt of order.

1. **Pricing Guarantee**

The Vendor must explicitly state, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, how long the proposal will remain valid. Unless stated to the contrary in the *Technical Specifications*, pricing must be guaranteed for a minimum of ninety (90) days.

1. **Shipping Charges**

For all RFPs requiring shipment of any product or component, all products must be delivered FOB destination to any location within the geographic boundaries of the State with all transportation charges prepaid and included in the RFP proposal or LOC quotation. Destination is the point of use.

1. **Amortization Schedule**

For all RFPs requiring equipment, contracts involving the payment of interest must include an amortization schedule clearly documenting the amount of interest payable over the term of the contract.

1. **Americans** **with Disabilities Act Compliance for Web Development and Portal** **Related** **Services**

All Web and Portal development work must be designed and implemented in compliance with the Electronic and Information Technology Accessibility Standards associated with Section 508 of the Rehabilitation Act and with the Web Accessibility Initiative (WAI) of the W3C.

1. **Ownership of Developed Software**
	1. When specifications require the Vendor to develop software for the State, the Vendor must acknowledge and agree that the State is the sole owner of such developed software with exclusive rights to use, alter, or distribute the software without restriction. This requirement applies to source code, object code, and documentation.
	2. The State may be willing to grant the Vendor a nonexclusive license to use the State’s software subject to devising acceptable terms and license fees. This requirement is a matter of State Law, and not negotiable.
2. **Ownership of Custom Tailored Software**
	1. In installations where the Vendor’s intellectual property is modified and custom-tailored to meet the needs of the State, the Vendor must offer the State an application license entitling the State to use, and/or alter the software without restriction. These requirements apply to source code, object code and documentation.
	2. System Documentation for Federal Funding Participation. Pursuant to 42 C.F.R. 433.112, for any systems and modules developed, installed, or improved through the resultant contract from this RFP, Vendor shall provide to DOM documentation of components and procedures such that the resultant system could be operated by a variety of contractors and other users.
3. **Terms of** **Software** **License**

The Vendor acknowledges and agrees that the term of all software licenses provided to the State shall be perpetual unless stated otherwise in the Vendor’s proposal.

1. **The** **State is Licensee of Record**

The Vendor must not bypass the software contracting phase of a project by licensing project software intended for State use in its company name. Upon award of a project, the Vendor must ensure that the State is properly licensed for all software that is proposed for use in a project.

1. **Compliance with Enterprise Security Policy**

Any solution or service proposed in response to this RFP must be in compliance with the State of Mississippi’s Enterprise Security Policy.  The Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines and is established to safeguard the State’s information technology (IT) assets from unauthorized use, access, disclosure, modification, or destruction. Given that information security is an evolving technology practice, the State reserves the right to introduce new policy during the term of the contract resulting from this RFP and require the Vendor to ensure the solution or service complies with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.  Vendors wanting to view the Enterprise Security Policy should contact the Technology Consultant listed on the cover page of this RFP.

1. **Compliance with Enterprise Cloud and Offsite Hosting Security Policy**

Any cloud or vendor-hosted solution proposed in response to this RFP must be in compliance with the State of Mississippi’s Enterprise Cloud and Offsite Hosting Security Policy.  The Enterprise Cloud and Offsite Hosting Security Policy is based on industry-standard best practices, policy, and guidelines and augments the Enterprise Security Policy. Given that information security is an evolving technology practice, the State reserves the right to introduce new policy during the term of the contract resulting from this RFP and require the Vendor to ensure the cloud or vendor-hosted solution complies with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.  Vendors wanting to view the Enterprise Cloud and Offsite Hosting Security Policy should contact the Technology Consultant listed on the cover page of this RFP.

1. **Negotiating with Next Ranked Vendor**

Should the State cease doing business with any Vendor selected via this RFP process, for any reason, the State reserves the right to initiate negotiations with the next ranked Vendor.

1. **Disclosure of Proposal Information**

Vendors should be aware that any information in a proposal may be subject to disclosure or reproduction under the Mississippi Public Records Act of 1983, defined in Section 25-61-1 et seq. of the Mississippi Code Annotated.All disclosures of proposal information will be made in compliance with the **ITS** Public Records Procedures established in accordance with the Mississippi Public Records Act. The **ITS** Public Records Procedures are available in Section 019-010 of the **ITS** Procurement Handbook, on the **ITS** Internet site at:

<http://www.its.ms.gov/Procurement/Documents/ISS%20Procurement%20Manual.pdf#page=155> or from **ITS** upon request.

As outlined in the Third Party Information section of the **ITS** Public Records Procedures, **ITS** will give written notice to any affected Vendor of a request to view or reproduce the Vendor’s proposal or portion thereof. **ITS** will not,however, give such notice with respect to summary information prepared in connection with the State’s review or evaluation of a Vendor’s proposal, including, but not limited to, written presentations to the **ITS** Board or other approving bodies, and/or similar written documentation prepared for the project file. In addition, **ITS** will not provide third-party notice for requests for any contract executed as a result of this RFP.

Summary information and contract terms, as defined above, become the property of **ITS**, who has the right to reproduce or distribute this information without notification.

Vendors should further be aware that requests for disclosure of proposal information are sometimes received by **ITS** significantly after the proposal opening date. **ITS** will notify the signatory “Officer in Bind of Company” provided in Section I of this RFP for Notification of Public Records Requests in the event information is requested that your company might wish to consider protecting as a trade secret or as confidential commercial or financial information. If the “Officer in Bind of Company” should not be used for notification of public records requests, Vendor should provide the alternative contact information in response to this RFP item.

1. **Risk Factors to be Assessed**

The State will assess risk factors that may initially exist within a given procurement and that may develop over the course of a procurement process as facts become known. The State, at its sole discretion, may employ the following mechanisms in mitigating these risks: proposal bonding, Performance Bonding, progress payment plan with retainage, inclusion of liquidated damages, and withholding payment for all portions of the products/services acquired until final acceptance. The Vendor must agree to incorporate any or all of the above terms and conditions into the customer agreement.

1. **Proposal Bond**

The Vendor is not required to include a proposal bond with its RFP proposal.

1. **Performance Bond/Irrevocable Bank Letter of Credit**

The Vendor must include the price of a Performance Bond or Irrevocable Bank Letter of Credit with its RFP proposal. The cost of the bond or Letter of Credit must be shown as a separate line item in the *Cost Information Submission*. The Performance Bond or Letter of Credit must be procured at the Vendor’s expense prior to the execution of the contract and may be invoiced to **Mississippi Division of Medicaid** after contract initiation only if itemized in the *Cost Information Submission* and in the executed contract. **The final decision as to the requirement for a Performance Bond or Irrevocable Bank Letter of Credit will be made upon contract award and is at the State’s sole discretion.**

If a Performance Bond/Irrevocable Bank Letter of Credit is required, the Vendor must procure and submit to **ITS**, on behalf of **Mississippi Division of Medicaid**, with the executed contract, (a) a Performance Bond from a reliable surety company authorized to do business in the State of Mississippi or (b) an Irrevocable Bank Letter of Credit that is acceptable to the State. The Performance Bond or the Irrevocable Letter of Credit shall be for the total amount of the contract or an amount mutually agreed upon by the State and the successful Vendor and shall be payable to **Mississippi Division of Medicaid**, to be held by their contracting agent, the Mississippi Department of Information Technology Services. No contract resulting from this RFP will be valid until the required Performance Bond or Irrevocable Bank Letter of Credit has been received and found to be in proper form and amount. The Vendor agrees that the State has the right to request payment for a partial amount or the full amount of the Irrevocable Letter of Credit/Performance Bond should the products/services being procured hereunder not be provided in a manner consistent with this RFP and the Vendor’s proposal by the delivery dates agreed upon by the parties. The State may demand payment by contacting the bank issuing the Letter of Credit or the bonding company issuing the Performance Bond and making a written request for full or partial payment. The issuing bank/bonding company is required to honor any demand for payment from the State within fifteen (15) days of notification. The Letter of Credit/Performance Bond shall cover the entire contract period, with the exception of post-warranty maintenance and support, and shall not be released until final acceptance of all products and deliverables required herein or until the warranty period, if any, has expired, whichever occurs last. If applicable, and at the State’s sole discretion, the State may, at any time during the warranty period, review Vendor’s performance and performance of the products/services delivered and determine that the Letter of Credit/Performance Bond may be reduced or released prior to expiration of the full warranty period.

1. **Responsibility for Behavior of Vendor Employees/Subcontractors**

The Vendor will be responsible for the behavior of all its employees and subcontractors while on the premises of any State agency or institution. Any Vendor employee or subcontractor acting in a manner determined by the administration of any State agency or institution to be detrimental, abusive, or offensive to any of the staff or student body of any State agency or institution will be asked to leave the premises and can be suspended from further work on the premises.

1. **Protests**

The Executive Director of **ITS** and/or the Board Members of **ITS** or their designees shall have the authority to resolve Vendor protests in connection with the selection for award of a contract. Copies of the protest procedures are available on the **ITS** Internet site - **ITS** Protest Procedure and Policy, Section 019-020, **ITS** Procurement Handbook at:

<http://www.its.ms.gov/Procurement/Documents/ISS%20Procurement%20Manual.pdf#page=173> or from **ITS** upon request.

1. **Protest Bond**

Potential Vendors may protest any of the specifications of this RFP on the belief that the specification is unlawful, unduly restrictive, or unjustifiably restraining to competition. Any such protest must be in writing and submitted to the **ITS** Executive Director along with the appropriate protest bond within five (5) working days of the Official Release of the RFP, as defined in the **ITS** Protest Procedure and Policy. The outside of theenvelope must be marked “Protest” and must specify RFP Number 4243.

As a condition precedent to filing any protest related to this procurement, the Vendor must procure, submit to the **ITS** Executive Director with its written protest, and maintain in effect at all times during the course of the protest or appeal thereof, a protest bond in the full amount of the total estimated project lifecycle cost or $250,000.00$250,000.00, whichever is less. The total estimated project lifecycle cost will be the amount used by **ITS** in the computation of cost points, as the low cost in the denominator of the cost evaluation formula. The bond shall be accompanied by a dulyauthenticated or certified document evidencing that the person executing the bond is a licensed Mississippi agent for the bonding company. This certified document shall identify the name and address of the person or entity holding the protest bond and shall identify a contact person to be notified in the event that the State is required to take action against the bond. The protest bond shall not be released to the protesting Vendor until the protest is finally resolved and the time for appealing said protest has expired. The protest bond shall be procured at the protesting Vendor’s expense and be payable to the Mississippi Department of Information Technology Services. Prior to approval of the protest bond, **ITS** reserves the right to review the protest bond and require the protesting Vendor to substitute an acceptable bond in such form as the State may reasonably require. The premiums on such bond shall be paid by the protesting Vendor. The State may claim against the protest bond as specified in Section 25-53-5 (n) of the Mississippi Code of 1972, as amended during the 1998 Mississippi legislative session, in addition to all other rights and remedies the State may have at law or in equity.

Should the written protest submitted by the Vendor fail to comply with the content requirements of **ITS’** protest procedure and policy, fail to be submitted within the prescribed time limits, or fail to have the appropriate protest bond accompany it, the protest will be summarily dismissed by the **ITS** Executive Director.

1. **Mississippi Employment Protection Act**

Effective July 1, 2008, Vendor acknowledges that if awarded, it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the 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. Vendor will agree to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State.

Vendor acknowledges and certifies that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi.

Vendor acknowledges that violating the E-Verify Program (or successor thereto) requirements subjects Vendor to the following: (a) cancellation of any state or public contract and ineligibility for any state or public contract for up to three (3) years, with notice of such cancellation being made public, or (b) the loss of any license, permit, certification or other document granted to Vendor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. Vendor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

# SECTION V

## PROPOSAL EXCEPTIONS

Please return the *Proposal Exception Summary Form* at the end of this section with all exceptions to items in any Section of this RFP listed and clearly explained or state “No Exceptions Taken.” If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions to any item in this RFP document.

1. Unless specifically disallowed on any specification herein, the Vendor may take exception to any point within this RFP, including a specification denoted with “shall” or “must,” as long as the following are true:
	1. The specification is not a matter of State law;
	2. The proposal still meets the intent of the RFP;
	3. A Proposal Exception Summary Form is included with Vendor’s proposal; and
	4. The exception is clearly explained, along with any alternative or substitution the Vendor proposes to address the intent of the specification, on the Proposal Exception Summary Form.
2. The Vendor has no liability to provide items to which an exception has been taken. **ITS** has no obligation to accept any exception. During the proposal evaluation and/or contract negotiation process, the Vendor and **ITS** will discuss each exception and take one of the following actions:
	1. The Vendor will withdraw the exception and meet the specification in the manner prescribed;
	2. ITS will determine that the exception neither poses significant risk to the project nor undermines the intent of the RFP and will accept the exception;
	3. ITS and the Vendor will agree on compromise language dealing with the exception and will insert same into the contract; or
	4. None of the above actions is possible, and ITS either disqualifies the Vendor’s proposal or withdraws the award and proceeds to the next ranked Vendor.
3. Should **ITS** and the Vendor reach a successful agreement, **ITS** will sign adjacent to each exception which is being accepted or submit a formal written response to the *Proposal Exception Summary* responding to each of the Vendor’s exceptions. The *Proposal Exception Summary*, with those exceptions approved by **ITS**, will become a part of any contract on acquisitions made under this RFP.
4. An exception will be accepted or rejected at the sole discretion of the State.
5. The State desires to award this RFP to a Vendor or Vendors with whom there is a high probability of establishing a mutually agreeable contract, substantially within the standard terms and conditions of the State's RFP, including the *Standard Contract* in Exhibit A, if included herein. As such, Vendors whose proposals, in the sole opinion of the State, reflect a substantial number of material exceptions to this RFP, may place themselves at a comparative disadvantage in the evaluation process or risk disqualification of their proposals.
6. For Vendors who have successfully negotiated a contract with **ITS** in the past, **ITS** requests that, prior to taking any exceptions to this RFP, the individual(s) preparing this proposal first confer with other individuals who have previously submitted proposals to **ITS** or participated in contract negotiations with **ITS** on behalf of their company, to ensure the Vendor is consistent in the items to which it takes exception.

**PROPOSAL EXCEPTION SUMMARY FORM**

**List and clearly explain any exceptions, for all RFP Sections and Exhibits, in the table below.**

|  |  |  |  |
| --- | --- | --- | --- |
| **ITS** RFP Reference | Vendor Proposal Reference | Brief Explanation of Exception | **ITS** Acceptance  |
| (Reference specific outline point to which exception is taken) | (Page, section, items in Vendor’s proposal where exception is explained) | (Short description of exception being made) | (Sign here only if accepted) |
| 1. |  |  |  |
| 2. |  |  |  |
| 3. |  |  |  |
| 4. |  |  |  |
| 5. |  |  |  |
| 6. |  |  |  |
| 7. |  |  |  |

# SECTION VI

## RFP QUESTIONNAIRE

Please answer each question or provide the information as requested in this section.

1. **Mississippi’s Accountability System for Government Information and Collaboration (MAGIC) Information for State of Mississippi Vendor File**
	1. MAGIC Vendor Code: Any Vendor who has not previously done business with the State and has not been assigned a MAGIC Vendor code should visit the following link to register:

 <http://www.dfa.ms.gov/dfa-offices/mmrs/mississippi-suppliers-vendors/supplier-self-service/>

Vendors who have previously done business with the State may obtain their MAGIC Vendor code and all Vendors may access additional Vendor information at the link above.

All Vendors must furnish **ITS** with their MAGIC Vendor code. (begins with the number 3)

 MAGIC Vendor Code: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* 1. **Vendor Self-Certification Form:** The State of Mississippi, in an effort to capture participation by minority Vendors, asks that each Vendor review the State of Mississippi Minority Vendor Self Certification Form. This information is for tracking/reporting purposes only, and will not be used in determining which Vendor will be chosen for the project. Any Vendor who can claim status as a Minority Business Enterprise or a Woman Business Enterprise in accordance with the definitions on this form and who has not previously submitted a form to the State of Mississippi should submit the completed form with the proposal. A copy of the Minority Vendor Self-Certification Form can be obtained at:

 <https://mississippi.org/services/minority/>

Please direct any questions about minority certification in Mississippi to the Minority Business Enterprise Division of the Mississippi Development Authority by telephone at (601) 359-3448 or via email at minority@mississippi.org.

If Vendor is claiming status as a Minority Business Enterprise or Woman Business Enterprise, the Vendor must include a copy of their Minority Vendor Self-Certification Form with their RFP response.

1. **Certification of Authority to Sell**

The Vendor must certify Vendor is a seller in good standing, authorized to sell and able to deliver all items and related services proposed in the State of Mississippi in the time frame specified. Does the Vendor make these certifications? (A yes or no answer is required.)

1. **Compliance with National Defense Authorization Act**

The Vendor must state if Vendor equipment being provided is in compliance with the National Defense Authorization Act, Section 889. (A yes or no answer is required.)

1. **Certification of No Conflict of Interest**

Mississippi law clearly forbids a direct or indirect conflict of interest of a company or its employees in selling to the State. The Vendor must answer and/or provide the following:

* 1. Does there exist any possible conflict of interest in the sale of items to any institution within ITS jurisdiction or to any governing authority? (A yes or no answer is required.)
	2. If the possibility of a conflict does exist, provide a list of those institutions and the nature of the conflict on a separate page and include it in your proposal. The Vendor may be precluded from selling to those institutions where a conflict of interest may exist.
1. **Pending Legal Actions**
	1. Are there any lawsuits or other legal proceedings against the Vendor that pertain to any of the software, hardware, or other materials and/or services which are a part of the Vendor’s proposal? (A yes or no answer is required.)
	2. Are there any criminal or civil proceedings (federal or state) pending against the Vendor or its principals or employees that pertain to any public procurement within the State of Mississippi or elsewhere? (A yes or no answer is required.)
	3. If your answer to either of the above is “yes”, provide a copy of same and state with specificity the current status of the proceedings.
	4. The State, at its sole discretion, may reject the proposal of a Vendor who (a) has criminal or civil proceedings pending that pertain to a public procurement within Mississippi or elsewhere, or (b) has lawsuits or other legal proceedings pending that pertain to any of the products or services which are part of the Vendor’s proposal.
2. **Non-Disclosure of Social Security Numbers**

Does the Vendor agree that any information system proposed, developed, or modified under this RFP that disseminates, in any form or manner, information or material that contains the Social Security Number of an individual, has mechanisms in place to prevent the inadvertent disclosure of the individual’s Social Security Number to members of the general public or to persons other than those persons who, in the performance of their duties and responsibilities, have a lawful and legitimate need to know the individual’s Social Security Number? This agreement is required by Section 25-1-111 of the Mississippi Code Annotated.

1. **Web Amendments**

 As stated in Section III, **ITS** will use the **ITS** website to post amendments regarding RFPs before the proposal opening at:

 <http://www.its.ms.gov/Procurement/Pages/RFPS_Awaiting.aspx>

 **ITS** may post clarifications until noon seven calendar days prior to the proposal opening date listed on the cover page of this RFP or the posted extension date, if applicable.

 Vendors may list any questions or items needing clarification discovered in the week prior to the proposal opening in a written format at the beginning of the proposal binder or in the comment section for the individual offering.

 Does the Vendor certify that they have reviewed a copy of the **ITS** amendments for RFPs as above stated? (A yes or no answer is required.)

1. **Order and Remit Address**

The Vendor must specify both an order and a remit address:

Order Address:

Remit Address (if different):

1. **Taxpayer Identification Number**

Vendor must specify their taxpayer identification number.

1. **Certification of Liability Insurance**

Vendor must provide a copy of their Certificate of Liability Insurance with their RFP response.

1. **E-Verify Registration Documentation**

Vendor must ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008). Vendor must provide documentation of their E-Verify compliance with their RFP response. See Section IV, Item 42 for additional information.

1. **System for Award Management (SAM) Registration Documentation**

Vendor must include a copy of their registration with the Federal Government’s System for Award Management (SAM) with their RFP response.

# SECTION VII

## TECHNICAL SPECIFICATIONS

1. **Procurement Project Schedule**

|  |  |
| --- | --- |
| **Task** | **Date** |
| First Advertisement Date for RFP | 10/11/22 |
| Second Advertisement Date for RFP | 10/18/22 |
| Mandatory Vendor Web Conference | 11:00 a.m. Central Time on 10/25/22 |
| Deadline for Vendor’s Written Questions | 3:00 p.m. Central Time on 11/01/22 |
| Deadline for Questions Answered and Posted to ITS Web Site | 11/18/22 |
| Proposals Due | 01/06/23 |
| Evaluation of Proposals | 01/06/23 |
| ITS Board Presentation | 02/16/23 |
| Contract Negotiation | February 2023 |
| CMS Approval | April 2023 |
| Proposed Project Implementation Start-up | 05/01/23 |
| Project Go-Live Deadline | 12/04/23 |

1. **Statement of Understanding**
	1. Vendors may request additional information or clarifications to this RFP using the following procedure:
		1. Vendors must clearly identify the specified paragraph(s) in the RFP that is in question.
		2. Vendor must deliver a written document to Khelli Reed at ITS by Tuesday, November 1, 2022 at 3:00 p.m. Central Time. This document may be delivered by hand, mail, email, or fax. Address information is given on page one of this RFP. The fax number is (601) 713-6380. ITS WILL NOT BE RESPONSIBLE FOR DELAYS IN THE DELIVERY OF QUESTION DOCUMENTS. It is solely the responsibility of the vendor that the clarification document reaches ITS on time. Vendors may contact Khelli Reed to verify the receipt of their document. Documents received after the deadline will be rejected.
	2. All questions will be compiled and answered, and a written document containing all questions submitted and corresponding answers will be posted on the ITS web site by close of business on Friday, November 18, 2022.

When the RFP uses the term “State”, it is referring to staff from ITS, DOM, and any other authorized State employee or agent.

1. **Functional and Technical Requirements**

For the functional and technical requirements relevant to this procurement, refer to Attachment A, which is incorporated herein by reference and is considered integral to this RFP. Attachment A is posted on the same website location as this RFP No. 4243, and the link is located directly beneath the link to RFP No. 4243.

1. **Scoring Methodology**

An Evaluation Team composed of DOM and ITS staff will review and evaluate all proposals. All information provided by the Vendors, as well as any other information available to evaluation team, will be used to evaluate the proposals.

* + 1. Each category included in the scoring mechanism is assigned a weight between one and 100.
		2. The sum of all categories equals 100 possible points.
		3. For the evaluation of this RFP, the Evaluation Team will use the following categories and possible points:

|  |  |
| --- | --- |
| **Category** | **Possible Points** |
| Non-Cost Categories: |  |
| Functional/Technical Requirements | 35 |
| Support and Maintenance | 30 |
| Total Non-Cost Points | 65 |
| Cost | 35 |
| **Maximum Possible Points** | **100** |

The evaluation will be conducted in four stages as follows:

* + 1. Stage 1 – Selection of Responsive/Valid Proposals – Each proposal will be reviewed to determine if it is sufficiently responsive to the RFP requirements to permit a complete evaluation. A responsive proposal must comply with the instructions stated in this RFP with regard to content, organization/format, Vendor experience, submission via USB, bond requirement, timely delivery, and must meet any mandatory requirement. No evaluation points will be awarded in this stage. Failure to submit a complete and valid proposal may result in rejection of the proposal.
		2. Stage 2 – Non-cost Evaluation (all requirements excluding cost)
			1. Non-cost categories and possible point values are as follows:

|  |  |
| --- | --- |
| **Non-Cost Categories** | **Possible Points** |
| Functional/Technical Requirements | 35 |
| Support and Maintenance | 30 |
| **Maximum Possible Points** | **65**  |

* + - 1. Proposals meeting fewer than 90% of the requirements in the non-cost categories may be eliminated from further consideration.
			2. ITS scores the non-cost categories on a 10-point scale, with 9 points for meeting the requirement. The ‘Meets Specs’ score for each category is 90% of the total points allocated for that category. For example, the Functional/Technical Requirements category was allocated 35 points; a proposal that fully met all requirements in that section would have scored 9 points. The additional 10% is used for a proposal that exceeds the requirement for an item in a way that provides additional benefits to the state.
		1. Stage 3 – Cost Evaluation
			1. Points will be assigned using the following formula:

(1-((B-A)/A))\*n

Where:

A = Total lifecycle cost of lowest valid proposal

B = Total lifecycle cost of proposal being scored

n = Maximum number of points allocated to cost for acquisition

* + - 1. Cost categories and maximum point values are as follows:

|  |  |
| --- | --- |
| **Cost Category** | **Possible Points** |
| Lifecycle Cost | 35  |
| **Maximum Possible Points** | **35**  |

* + 1. Stage 4 – Selection of the successful Vendor
			1. Demonstrations and Interviews
				1. At the discretion of the State, evaluators may request interviews, presentations, demonstrations, or discussions with any and all Vendors for the purpose of system overview and/or clarification or amplification of information presented in any part of the proposal.
				2. If requested, Vendors must be prepared to make demonstrations of system functionality and/or proposal clarifications to the evaluation team and its affiliates with seven calendar days of notice. Each presentation must be made by the project manager being proposed by the Vendor to oversee implementation of this project.
				3. Proposed key team members must be present at the demonstration. The evaluation team reserves the right to interview the proposed key team members during this visit/demonstration.
				4. Although demonstrations may be requested, the demonstration will not be allowed in lieu of a written proposal.
		2. Site Visits
			1. At the State’s option, Vendors that remain within a competitive range must be prepared to provide a reference site within seven calendar days of notification. If possible, the reference site should be in the Southeastern region of the United States. Vendor must list potential reference sites in the proposal.

Final Quantitative Evaluation - Following any requested presentations, demonstrations, and/or site visits, the Evaluation Team will re-evaluate any technical/functional scores as necessary. The technical/functional and cost scores will then be combined to determine the Vendor’s final score.

# SECTION VIII

## COST INFORMATION SUBMISSION

Vendors must propose a summary of all applicable project costs in the matrix that follows. The matrix may be supplemented by a cost itemization fully detailing the basis of each cost category. The level of detail must address the following elements as applicable: item, description, quantity, retail, discount, extension, and deliverable. Vendors may add line items to any cost table to substantiate their entire offering. Any cost not listed, even if it was asked for in the RFP technical requirements but not included below, may result in the Vendor providing those products or services at no charge to the State or face disqualification.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Description – Interoperability, Data Lake, and APIs Solution** | **Quantity**  | **Unit Cost** | **20% Retainage** | **Extended Cost** |
| Implementation Services (fully loaded with travel, subsistence and associated per diem costs) Break out costs by: (80% to be paid after successful Acceptance Test. 20% Retainage of each amount payable will be held until six months after acceptance of the full system.) |  |  |  |  |
| **Base Offering: Product Customization, Implementation, Data Conversion/Migration, Interfaces, Integrations, Testing, Maintenance, etc. as described in RFP 4243**Itemize the cost for any deliverable not included in base offering as a separate line item below. | 1 | $ | $ | $ |
| Training/Knowledge Transfer Costs: |  |  |  |  |
| Initial Train-the-trainer Internal User Portal Training and a minimum of 1 annual refresher training session.  | 50 | $ | $ | $ |
| Administrator Training – system controls, security, configuration  | 5 | $ | $ | $ |
| System Set-up Costs |  | $ | $ | $ |
| Other Costs (specify) |  | $ | $ | $ |
| **Implementation Costs Subtotal** |  | $ | $ | $ |

| **Annual Costs – Support must include toll-free telephone support 6:00 a.m. – 6:00 p.m. CST, Monday-Friday** |
| --- |
| Annual Subscription and Hosting Fees - (including maintenance/support costs for 5 years) | Unit Cost(if applicable) | Combined Subscription and Hosting Fees |
| Year 1 |  | $ |
| Year 2 |  | $ |
| Year 3 |  | $ |
| Year 4 |  | $ |
| Year 5 |  | $ |
| Miscellaneous Costs (must specify) |  | $ |
| **Subscription and Hosting Subtotal:** |  | $ |
| Performance Bond | $ |
| **GRAND TOTAL (Implementation, Subscription/Hosting, and Performance Bond):** | $ |

**OPTIONAL ITEMS: Provide Optional pricing in the table below.**

DOM understands that Vendors may often have more competitive or innovative data sources that would be an advantage to the State. This is the opportunity for Vendors to propose optional services that the State could utilize at its discretion.

|  |  |  |  |
| --- | --- | --- | --- |
| **Item** | **Description** | **One-Time Cost** | **Annual Licensing Cost** |
|  | Optional Analytics |  |  |
|  | Migration of Transformed Medicaid Statistical Information System (T-MSIS) processes from the currently existing data warehouse and into the EDL |  |  |
|  | Migration of Data Warehouse reporting solution from the current data warehouse into the EDL to utilize data |  |  |
|  | New connections for Provider Trading Partners and Payers |  |  |
|  | Patient Access API |  |  |
|  | Payer-to-Payer API |  |  |
|  | Provider Directory API |  |  |
|  | Increase the capacity in incremental increases of 100 Mbps |  |  |
|  | Increase the capacity in incremental increases of 1 Gbps |  |  |

**CHANGE ORDER RATES**

DOM may wish to add functionality outside the scope of this RFP after the initial deployment of the awarded solution. The Vendor must propose all possible personnel/subject matter experts (SME’s) that may be needed for future enhancements in the table below with their fully loaded hourly rates inclusive of travel. Along with the fully loaded hourly rates, the Vendor must propose a fully loaded blended rate. The table lists possible roles but is not all inclusive and the Vendor may add additional roles. If the Vendor does not foresee a particular role being proposed, the Vendor must mark the hourly rate as N/A. Vendor must completely fill in the matrix listed below. The fully loaded fixed hourly rate will remain the same for the entire duration of the project. These rates shall be used in pricing of any subsequent change orders. Fully loaded rates include hourly rate plus travel, per diem, and lodging.

| **Role** | **Fully Loaded Fixed Hourly On-site Rate** | **Fully Loaded Fixed Hourly Off-site Rate** |
| --- | --- | --- |
| Project Manager |  |  |
| System Architect |  |  |
| Technical Manager |  |  |
| Test Manager |  |  |
| Functional Lead |  |  |
| Data Architect |  |  |
| Data Analyst |  |  |
| Database Administrator |  |  |
| Senior Developer |  |  |
| Junior Developer |  |  |
| Business Analyst |  |  |
| Functional Tester |  |  |
| Technical Writer |  |  |
| User Interface Designer |  |  |
| Product Manager |  |  |

# SECTION IX

## REFERENCES

Please return the following Reference Forms, and if applicable, Subcontractor Reference Forms.

1. **References**
	1. The Vendor must provide at least **three (3)three (3)** references consisting of Vendor accounts that the State may contact. Required information includes customer contact name, address, telephone number, email address, and engagement starting and ending dates. Forms for providing reference information are included later in this RFP section. The Vendor must make arrangements in advance with the account references so that they may be contacted at the Project team's convenience without further clearance or Vendor intercession.
	2. Any of the following may subject the Vendor’s proposal to being rated unfavorably relative to these criteria or removed from further consideration, at the State’s sole discretion:
		1. Failure to provide reference information in the manner described;
		2. Inability of the State to substantiate minimum experience or other requirements from the references provided;
		3. Non-responsiveness of references to the State's attempts to contact them; or
		4. Unfavorable references that raise serious concerns about material risks to the State in contracting with the Vendor for the proposed products or services.
	3. References should be based on the following profiles and be able to substantiate the following information from both management and technical viewpoints:
		1. The reference installation must be for a project similar in scope and size to the project for which this RFP is issued;
		2. The reference installation must have been operational for at least six (6) months.
	4. The State reserves the right to request information about the Vendor from any previous customer of the Vendor of whom the State is aware, including the procuring agency and/or other agencies or institutions of the State, even if that customer is not included in the Vendor’s list of references, and to utilize such information in the evaluation of the Vendor's proposal.
	5. Unless otherwise indicated in the Scoring Methodology in Section VII, reference information available to the State will be used as follows:
		1. As documentation supporting mandatory experience requirements for companies, products, and/or individuals, as required in this RFP;
		2. To confirm the capabilities and quality of a Vendor, product, or individual for the proposal deemed lowest and best, prior to finalizing the award.
	6. The State reserves the right to forego reference checking when, at the State's sole discretion, the evaluation team determines that the capabilities of the recommended Vendor are known to the State.
2. **Subcontractors**

The Vendor’s proposal must identify any subcontractor that will be used and include the name of the company, telephone number, contact person, type of work subcontractor will perform, number of certified employees to perform said work, and three (3)**three (3)** references for whom the subcontractor has performed work that the State may contact. Forms for providing subcontractor information and references are included at the end of this section.

Unless otherwise noted, the requirements found in the References section may be met through a combination of Vendor and subcontractor references and experience. Vendor's proposal should clearly indicate any mandatory experience requirements met by subcontractors. NOTE: The State reserves the right to eliminate from further consideration proposals in which the prime Vendor does not, in the State's sole opinion, provide substantive value or investment in the total solution proposed. (i.e. the State does not typically accept proposals in which the prime Vendor is only a brokering agent.)

## REFERENCE FORM

**Services sought by the State**: The State desires to migrate from the existing Clinical Data Interoperability Program (CDIP) to an overall Interoperability Strategy including an upgrade of the existing clinical data repository (CDR) to an Enterprise Data Lake (EDL) in addition to new Interoperability Tools to align with Centers of Medicare and Medicaid Services (CMS) rules, requirements, and functionality. The migration will ultimately make DOM compliant with current and future requirements.

Copy this form to be used for each of the references.

|  |
| --- |
| **Reference Information** |
| Contact Name: |  |
| Contact Title: |  |
| Company Name: |  |
| Address: |  |
| Phone #: |  |
| E-Mail: |  |
| **Project Information** |
| Vendor’s Name: |  |
| Project Start Date: |  |
| Project End Date: |  |
| Project Description: |  |

## SUBCONTRACTOR REFERENCE FORM

**Services sought by the State**: The State desires to migrate from the existing Clinical Data Interoperability Program (CDIP) to an overall Interoperability Strategy including an upgrade of the existing clinical data repository (CDR) to an Enterprise Data Lake (EDL) in addition to new Interoperability Tools to align with Centers of Medicare and Medicaid Services (CMS) rules, requirements, and functionality. The migration will ultimately make DOM compliant with current and future requirements.

Copy this form to be used for each of the references.

|  |
| --- |
| **Reference Information** |
| Contact Name: |  |
| Contact Title: |  |
| Company Name: |  |
| Address: |  |
| Phone #: |  |
| E-Mail: |  |
| **Project Information** |
| Vendor’s Name: |  |
| Project Start Date: |  |
| Project End Date: |  |
| Project Description: |  |

#

# EXHIBIT A

## STANDARD CONTRACT

A properly executed contract is a requirement of this RFP. After an award has been made, it will be necessary for the winning Vendor to execute a contract with **ITS**. The inclusion of this contract does not preclude **ITS** from, at its sole discretion, negotiating additional terms and conditions with the selected Vendor(s) specific to the projects covered by this RFP.

If Vendor cannot comply with any term or condition of this Standard Contract, Vendor must list and explain each specific exception on the *Proposal Exception Summary Form* included in Section V.

**PROJECT NUMBER** **44440**

**SOFTWARE AS A SERVICE AGREEMENT**

**BETWEEN**

**VENDOR NAME**

**AND**

**MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES**

**AS CONTRACTING AGENT FOR THE**

**MISSISSIPPI DIVISION OF MEDICAID****DOM****INSERT DATE MODIFIED**

This Software as a Service Agreement (hereinafter referred to as “Agreement”) is entered into by and between, VENDOR NAME, aINSERT STATE OF INCORPORATION STATE OF INCORPORATION corporation having its principal place of business at VENDOR ADDRESSINSERT VENDOR ADDRESS (hereinafter referred to as “Licensor”), and Mississippi Department of Information Technology Services having its principal place of business at 3771 Eastwood Drive, Jackson, Mississippi 39211 (hereinafter referred to as “ITS”), as contracting agent for the Mississippi Division of Medicaid located at 550 High Street, Suite 1000, Jackson, Mississippi 39201 (hereinafter referred to as “Licensee” and/or “DOM”). ITS and DOM are sometimes collectively referred to herein as “State.”

**WHEREAS,** DOM, pursuant to Request for Proposals (“RFP”) No. 4243 requested proposals for the services of a contractor to provide a Software as a Service (“SaaS”) solution for an Interoperability, Data Lake, and APIs (IDA) system; and

**WHEREAS,** Licensor was the successful proposer in an open, fair and competitive procurement process to provide the Applications to DOM pursuant to this Agreement;

**NOW THEREFORE,** in consideration of the mutual understandings, promises and agreements set forth, the parties hereto agree as follows:

**ARTICLE 1 DEFINITIONS**

**1.1 “Active User”** means DOM, its employees, and any third party consultants or outsourcers engaged by DOM actively participating on the system in any given month of operation, who shall be bound to the terms and conditions of this Agreement. Licensor does not impose a limit on the number of Active Users accessing or registering to use the system.

**1.2 “Application(s)” or “SaaS Application(s)”** means those Licensor software application programs which are made accessible for DOM to use under the terms of this Agreement.

**1.3 “Available Date”** means the date upon which Licensor notifies DOM that the Applications may be accessed on the Licensor’s SaaS server and DOM may begin acceptance testing.

**1.4 “Cloud Services” or “SaaS Services”** means those services related to Licensor’s private cloud environment provided to DOM, including but not limited to, infrastructure, equipment, bandwidth, server monitoring, backup services, disaster recovery services, storage area network (SAN) services, security services, system administration, connectivity services, performance tuning, update installation and maintenance services related thereto.

**1.5 “Content”** means any content DOM or Active Users post or otherwise input into the Services.

**1.6 “Documentation”** means the user and technical manuals and documentation published by Licensor relating to the use of the Services or Applications; the help files included within the Applications, and any files containing presentation materials or manuals or other related materials to train and educate Licensee and the Active Users on the use of the Applications.

**1.7 “Initial Term”** means the five (5) year term of Services as indicated in Article 2.

**1.8 “Licensee”** means the Mississippi Division of Medicaid, its employees, and any third party consultants or outsourcers engaged by DOM who have a need to know and who shall be bound by the terms and conditions of this Agreement.

**1.9 “Licensor”** means VENDOR NAME, and its successors and assigns.

**1.10 “Personally Identifiable Information (“PII”)”** means information concerning individually identifiable Active Users that is protected against disclosure under applicable law or regulation.

**1.11 “Services”** means any Cloud Services, on-line user access, customizations, interface development, consulting, education, SaaS installation, system administration, training, maintenance, support, and Help Desk services provided by Licensor to Licensee.

**1.12 “Supported Interfaces”** means application-based interfaces (API), network protocols, data formats, database schemas, and file formats used in the Applications as described in the Documentation.

**ARTICLE 2 PERIOD OF PERFORMANCE**

**2.1** Unless this Agreement is extended by mutual agreement or terminated as prescribed elsewhere herein, this Agreement shall begin on the date it is signed by all parties and shall continue in effect for five (5) years thereafter (“Initial Term”). At the end of the Initial Term, the Agreement may, upon the written agreement of the parties, be renewed under the same terms and conditions for INSERT RENEWAL TERMSan additional term, the length of which will be agreed upon by the parties. One hundred and eighty (180) days prior to the expiration of the Initial Term or any renewal term of this Agreement, Licensor shall notify DOM and ITS of the impending expiration and DOM shall have sixty (60) days in which to notify Licensor of its intention to either renew or cancel the Agreement.

**2.2** This Agreement will become a binding obligation on the State only upon the issuance of a valid purchase order by DOM following contract execution and the issuance by ITS of the CP-1 Acquisition Approval Document.

**ARTICLE 3 SCOPE OF SERVICES**

**3.1** The Licensor agrees to provide to DOM a SaaS based Interoperability, Data Lake, and APIs (IDA) system and associated deliverables as described in this Agreement. While the scope of work for this project is defined by the contract documents set forth herein in the article titled “Entire Agreement”, a summary of such work is outlined in Article 3.2 below.

**3.2** Licensor shall be responsible for the following:

1. Ensuring that all deliverables are complete and accepted by DOM pursuant to a mutually agreed upon project work plan;
2. Tracking date sensitive items to ensure timely updates;
3. Acknowledging that the Content is and shall remain the sole and exclusive property of DOM. Further, Licensor acknowledges that the Content may contain protected health information (“PHI”) or PII and Licensor agrees to maintain the confidentiality of the Content and shall not make the Content publicly available except as may be necessary in performing the SaaS Services or to comply with applicable laws. Upon the termination or expiration of this Agreement, Licensor shall provide such Content in its possession to DOM pursuant to a mutually agreed upon release schedule and in a format acceptable to DOM;
4. Working with DOM to achieve access rates that meet DOM’s needs;
5. Providing security for the site that is agreeable to DOM with Licensor responsible for all necessary equipment and software related to security;
6. Maintaining the accessibility of the site twenty-four (24) hours a day, seven (7) days a week at an uptime rate of 99.9% or greater, subject to the limitations set forth in this Agreement, including but not limited to, those in Article 4.4;
7. Completing daily backups of the site;
8. Notifying DOM at least three (3) business days prior to any anticipated service interruption, with said notice containing a general description of the reason for the service interruption;
9. Proposing and adhering to a disaster recovery plan and providing access to such plan to the State, all at Licensor’s expense;
10. Participating with DOM in disaster recovery planning and testing based on a mutually agreed upon schedule;
11. Maintaining the confidentiality of the information entered;
12. Providing DOM access to all of the technical information concerning operation of the Interoperability, Data Lake, and APIs (IDA) system, including but not limited to, server specifications, Internet connection information, personnel requirements and software implementations;
13. Identifying any commercially available software, by vendor and version number, integrated into the Applications and describing the particular functionality of any software that is proprietary to the Licensor;
14. Maintaining the host site, with the cost for such support, maintenance, and hosting for years following the initial five (5) year period not increasing annually beyond three percent (3%) or the percent increase in the consumer price index for all Urban Consumers, US City Average (C.P.I.-U) for the preceding year, whichever is less;
15. Providing 24x7x365 support of the site;
16. Providing redundant internet connections;
17. Providing Transport Layer Security (“TLS”) secure server support;
18. Maintaining sufficient bandwidth and server capacity to meet DOM’s and Active Users’ demand as it may fluctuate and increase during the term of this Agreement, and;
19. Ensuring that all Licensee data remains within the continental United States;
20. Partitioning Licensee’s data from other customer data so Licensee’s access is not impaired due to e-discovery, seizure, or the like, and
21. Ensuring that upon termination or expiration of this Agreement that transition from the Licensor to DOM or to a successor host will be accomplished at no expense to DOM.

**3.3** In the event Licensor creates any revisions to or upgrades of the system, Licensor shall provide DOM thirty (30) days written notification of such revision or upgrade, and shall, upon request of DOM, furnish such revision or upgrade to DOM free of charge as part of the SaaS fees.

**ARTICLE 4 SCOPE OF LICENSE AND RIGHT TO USE**

**4.1** Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee a non-exclusive and non-transferable license to access the Applications over the Internet and to use it for Licensee’s business operations and use it on the Licensor’s host server for the Initial Term of the Agreement and any subsequent renewal terms in accordance with, and subject to, the terms and conditions set forth in this Agreement. Licensee and Active Users are granted access to the Applications and Services twenty-four (24) hours a day, seven (7) days a week, three hundred and sixty five (365) days a year, subject to regularly scheduled maintenance and required repairs. The terms and conditions of this Agreement will apply to any enhancements or additional software products Licensee may procure from Licensor.

**4.2** Licensor will provide Licensee storage space on and access to Licensor’s Applications via the Internet and provide Internet access to the Applications and Cloud Services to the Active Users through Licensor’s site (“SaaS Services”).

**4.3** In connection with the SaaS Services, Licensor will provide and maintain all Applications and hardware, including, but not limited to, the server hardware and software, telecommunications hardware and software, security hardware and software and other software that is reasonably necessary to operate and maintain the Services.

**4.4** The Applications and Services will be accessible at least 99.9% of the time, twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of the SaaS Services due to causes beyond the control of Licensor. In the event that DOM or an Active User is unable to achieve the 99.9% application availability during any given month, excluding scheduled maintenance, required repairs, and unavailability due to causes beyond the control of Licensor, the Licensor shall reimburse DOM pursuant to Exhibit B Liquidated Damages and Performance Standards below. Licensor shall maintain the server at a secured location with restricted access.

**4.5** Licensor shall provide the Licensee with its standard managed firewall service, which shall enable secure delivery of Licensor’s Services using fully redundant hardware-based firewalls. Licensor’s managed firewall service will be available twenty-four (24) hours a day, seven (7) days a week.

**4.6** The use of the Services by Active Users will be governed solely by the terms and conditions of this Agreement.

**4.7** DOM acknowledges that Licensor retains ownership of all right, title and interest to the Services, all of which are protected by copyright and other intellectual property rights, and that, other than the express rights granted herein and under any other agreement in writing with DOM, DOM shall not obtain or claim any rights in or ownership interest to the Services or Applications or any associated intellectual property rights in any of the foregoing. DOM agrees to comply with all copyright and other intellectual property rights notices contained on or in any information obtained or accessed by DOM through the Services.

**ARTICLE 5 ACCEPTANCE**

**5.1** Licensor shall make the Applications and Documentation available through its Services pursuant to the delivery schedule mutually agreed to by the parties.

**5.2** DOM shall have thirty (30) calendar days after the Available Date to evaluate and conduct the final acceptance testing of the Applications and Services to confirm that they perform without any defects and perform in accordance with the requirements of this Agreement. DOM shall immediately thereafter notify Licensor of any defects in the Applications or Services which must be corrected. Thereafter, unless both parties agree to extend this period, Licensor shall have ten (10) business days in which to repair the Service or repair or replace the defective Applications, all at Licensor’s expense, and DOMshall have an additional thirty (30) calendar days to evaluate the Applications and Services. In the event Licensor is unable to repair the defect within this ten (10) day period, DOMmay terminate this Agreement pursuant to the Termination Article herein.

**ARTICLE 6 CONSIDERATION AND METHOD OF PAYMENT**

**6.1** The total compensation to be paid to the Licensor by DOM for all Applications, development, maintenance and SaaS Services, customizations, products, travel, performances and expenses under this Agreement shall not exceed the specified sum of $INSERT AMOUNT, and shall be payable as set forth in the Payment Schedule attached hereto as Exhibit A.

**6.2** Licensor shall submit invoices with the appropriate documentation to DOM monthly for any month in which SaaS Services and/or other services are rendered. Licensor shall submit invoices and supporting documentation to DOM electronically during the term of this Agreement using the processes and procedures identified by the State. DOM agrees to make payment in accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies”, Section 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by DOM within forty-five (45) days of receipt of the invoice. Licensor understands and agrees that DOM is exempt from the payment of taxes. All payments shall be in United States currency. Payments by state agencies using Mississippi’s Accountability System for Government Information and Collaboration (MAGIC) shall be made and remittance information provided electronically as directed by the State. The payments by these agencies shall be deposited into the bank account of the Licensor’s choice. No payment, including final payment, shall be construed as acceptance of defective products or incomplete work, and the Licensor shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the article herein titled “Entire Agreement.”

**6.3** Acceptance by the Licensor of the last payment due from DOM under this Agreement shall operate as a release of all claims for money against the State by the Licensor and any subcontractors or other persons supplying labor or materials used in the performance of the work under this Agreement.

**ARTICLE 7 WARRANTY**

**7.1** Licensor represents and warrants that it has the right to license the Applications provided under this Agreement.

**7.2** Licensor represents and warrants that the Applications provided by Licensor shall meet or exceed the minimum specifications set forth in RFP No. 4243 and Licensor’s Proposal, as accepted by the State, in response thereto.

**7.3** During the term of this Agreement, the Licensor represents and warrants that all deliverables shall be free from any defect, deficiency, faultiness, imperfection, inadequacy, incompleteness or other condition (collectively referred to herein as “Defect”) which would render any such deliverable inoperable in any way or which would prevent full performance in accordance with this Agreement. This warranty includes, without limitation, correction of errors, design deficiencies, performance deficiencies, and incorrect or defective Documentation, including those found during acceptance testing, implementation, and the warranty period. Acceptance testing shall not in any way relieve the Licensor of its responsibilities to correct any Defect during the warranty period. The Licensor shall repair any Defect at no cost to the State within ten (10) business days of receiving notice of the Defect from the State, unless DOM consents in writing to a longer period of repair time. In the event Licensor is unable to repair or replace the Application within the mutually agreed upon time frame after receipt of notice of the Defect, DOM shall be entitled to a full refund of fees paid and shall have the right to terminate this Agreement in whole or in part as provided for in the Termination Article herein. Licensee’s rights hereunder are in addition to any other rights Licensee may have.

**7.4** During the term of this Agreement, the Licensor represents and warrants that its Services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such Services and shall comply in all respects with the requirements of this Agreement. For any breach of this warranty, Licensor shall perform the Services again, at no cost to the State, or if Licensor is unable to perform the Services as warranted, Licensor shall reimburse the State the fees paid to Licensor for the unsatisfactory Services.

**7.5** Licensor represents and warrants that the Application shall not contain a disabling code, lockup program or device. Licensor further agrees that it will not, under any circumstances including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Licensee’s licensed use of the Applications and/or which would restrict Licensee from accessing its data files or in any way interfere with the transaction of Licensee’s business. For any breach of this warranty, Licensor at its expense shall, within ten (10) business days after receipt of notification of the breach, remove any such disabling code, lockup program or device.

**7.6** Licensor represents and warrants that it has tested and will test (not less than on a daily basis) the Applications using commercially reasonable methods to ensure that the Applications provided to DOM do not and will not contain or incorporate any computer code, programs, procedures, mechanisms or programming devices (including but not limited to, viruses, trojan horses, or worms) that are designed to, or would enable Licensor or any third-party to, disrupt, modify, delete, damage, deactivate, disable, harm or otherwise impede the operation of the Licensor’s system, or any other associated software, firmware, hardware, computer system or network, including DOM’s applications and DOM’s Content. For any breach of this warranty, Licensor at its expense shall, within five (5) business days after receipt of notification of the breach, be responsible for repairing, at Licensor’s expense, any and all damage done by the virus or such to DOM’s applications and DOM’s Content.

**7.7** Licensor represents and warrants that the Interoperability, Data Lake, and APIs (IDA) system provided by the Licensor shall be reasonably expandable and scalable so DOM can add and support additional business functions and users over time. It is understood and agreed that any standard revisions, enhancements, improvements, and upgrades to the Applications and host site equipment during the term of this Agreement, including operating system, database management system, and other software, shall be provided by Licensor to DOM at no additional cost to DOM.

**7.8** Licensor represents and warrants that it presently has and will continue to maintain, at its own expense, throughout the term of this Agreement, valid licenses for all software, trademarks, service marks, patents and copyrighted material and any other proprietary information of a third party that it will deploy in support of all products Licensor uses in the performance of this Agreement.

**7.9** Licensor represents and warrants that, to the extent applicable, it will ensure its compliance with the Mississippi Employment Protection Act, Miss. Code Ann. § 71-11-1, et seq. and any breach of Mississippi Employment Protection Act may subject Licensor to the consequences set forth under Miss. Code Ann § 71-11-3.

**7.10** Licensor represents and warrants that the system provided pursuant to this Agreement will pass both internal security audits and independent security audits. For any breach of the preceding warranty at any time during which the system is covered by warranty and/or software support, Licensor shall, at its own expense and at no cost to Licensee, remediate any defect, anomaly or security vulnerability in the system by repairing and/or replacing any and all components of the system necessary in order for the system to be secure.

**7.11** Licensor represents and warrants that no official or employee of Licensee or of ITS, and no other public official of the State of Mississippi who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of said project, voluntarily acquire any personal interest, direct or indirect, in this Agreement. The Licensor warrants that it has removed any material conflict of interest prior to the signing of this Agreement, and that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its responsibilities under this Agreement. The Licensor also warrants that in the performance of this Agreement no person having any such known interests shall be employed**.**

**7.12** The Licensor represents and warrants that no elected or appointed officer or other employee of the State of Mississippi, nor any member of or delegate to Congress has or shall benefit financially or materially from this Agreement. No individual employed by the State of Mississippi shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom. The State of Mississippi may, by written notice to the Licensor, terminate the right of the Licensor to proceed under this Agreement if it is found, after notice and hearing by the ITS Executive Director or his/her designee, that gratuities in the form of entertainment, gifts, jobs, or otherwise were offered or given by the Licensor to any officer or employee of the State of Mississippi with a view toward securing this Agreement or securing favorable treatment with respect to the award, or amending or making of any determinations with respect to the performing of such contract, provided that the existence of the facts upon which the ITS Executive Director makes such findings shall be in issue and may be reviewed in any competent court. In the event this Agreement is terminated under this article, the State of Mississippi shall be entitled to pursue the same remedies against the Licensor as it would pursue in the event of a breach of contract by the Licensor, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

**7.13** Licensor will not knowingly (a) introduce into the Services any virus or other code or routine intended to disrupt or damage the Services, or alter, damage, delete, retrieve or record information about the Services or its users; (b) use the Content for any purpose other than needed to provide the Services to DOM hereunder; or (c) otherwise act in a fraudulent, malicious or negligent manner when providing the Services.

**ARTICLE 8 INFRINGEMENT INDEMNIFICATION**

**8.1** Licensor represents and warrants, to the best of its knowledge, that neither the Applications and Services provided to DOM under this Agreement nor their use by DOM will violate or infringe on any copyright, patent, trade secret or other proprietary right of any person or entity. Licensor, at its own expense, shall defend or settle any and all infringement actions filed against Licensor or DOM which involve the Applications, Services or other items provided under this Agreement and shall pay all costs, attorney fees, damages and judgment finally awarded against DOM provided that: (a) DOM notifies Licensor in writing of any such claim of which it has knowledge; (b) Licensor has, to the extent authorized by Mississippi law, sole control of the defense of any actions or negotiations related to the defense or settlement of any such claim, and (c) DOM cooperates in the defense of the claim by supplying Licensor all relevant information currently available and in its possession, all at Licensor’s expense. In no event shall the State compromise, settle or adversely impact the defense of any actions or negotiations without the prior, written consent of Licensor. Further, in no event shall Licensor compromise or settle any such actions or negotiations without the prior written consent of DOM if such compromise or settlement would create an obligation or liability upon DOM or the State. If, in any such suit arising from such claim, the continued use of the items for the purpose intended is enjoined or threatened to be enjoined by any court of competent jurisdiction, Licensor shall, at its expense: (a) first procure for DOM the right to continue using such Applications or Services, or upon failing to procure such right; (b) modify or replace them with non-infringing items with equivalent functionality, or upon failing to secure either such right at Licensor’s reasonable expense, (c) issue a pro-rata refund to DOM for the fees previously paid by DOM for the infringing Applications and Services DOM may no longer use. Said refund shall be paid within ten (10) business days of notice to DOM to discontinue said use.

**8.2** Licensor shall have no obligation for infringement claims caused by: (a) an unauthorized modification of the Applications or Service by DOM or a third party; (b) use of the Service other than in accordance with the Documentation for the Service or as authorized herein; (c) use of the Services in conjunction with any data, equipment or software not provided by Licensor where the Services would not otherwise be infringing except for such combination; or (d) use of the Services or Application by DOM other than in accordance with this Agreement.

**ARTICLE 9 DATA SECURITY**

**9.1** As part of the Services, Licensor shall provide administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of DOM Content. Licensor agrees to comply with all applicable privacy or data protection statutes, rules, or regulations governing the respective activities of the parties under this Agreement.

**9.2** Prior to initiation of the Services under this Agreement and on an ongoing basis thereafter, DOM agrees to provide notice to Licensor of any extraordinary privacy or data protection statutes, rules, or regulations which are or become applicable to DOM’s industry and which could be imposed on Licensor as a result of provision of the Services. DOM will ensure that: (a) the transfer to Licensor and storage of any PHI or PII by Licensor is permitted under applicable data protection laws and regulations; and, (b) DOM will obtain consents from individuals for such transfer and storage to the extent required under applicable laws and regulations.

**9.3** Licensor shall maintain a hosting environment that undergoes examinations from an independent auditor in accordance with the American Institute of Certified Public Accounts SSAE 16 (i.e. SOC 1) and the AICPA Trust Services Principles Section 100a, Trust Services for Security, Availability, Processing Integrity, Confidentiality and Privacy (i.e. SOC 2). Licensor’s private cloud shall be evaluated for the principles of Security, Availability and Confidentiality by the independent auditor. The data center in which Licensor’s private cloud is located shall undergo pertinent security examinations. Management access to Licensor’s private cloud shall be limited to Licensor’s authorized support staff and DOM’s authorized staff. The Applications shall provide DOM with the ability to configure application security and logical access per DOM’s business processes. In the event DOM identifies a security issue, DOM will notify Licensor.

**9.4** At a minimum, Licensor’s safeguards for the protection of PHI and PII shall include: (i) limiting access of PHI and PII to authorized employees; (ii) securing business facilities, data centers, paper files, servers, back-up systems and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (iii) implementing network, device application, database and platform security; (iv) securing information transmission, storage and disposal; (v) implementing authentication and access controls within media, applications, operating systems and equipment; (vi) encrypting PII and PHI stored on any mobile media; (vii) encrypting PII and PHI transmitted over public or wireless networks; (viii) strictly segregating PII and PHI from information of Licensor or its other customers so that PII and PHI is not commingled with any other types of information; (ix) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law; and (x) providing appropriate privacy and information security training to Licensor’s employees. Any and all subcontractors shall adhere to the aforementioned protection and encryption (in transit and at rest) of PHI and PII, as well as follow the stated breach policy.

**9.5** Licensor will comply with all applicable federal and state laws to resolve security breaches, and, to the extent Licensor is responsible for such security breaches, will cover the cost of remedial measures as required by such laws and otherwise consistent with this Agreement. DOM may seek equitable relief including a restraining order, injunctive relief, specific performance, and such other relief that may be available from a court in addition to any other remedy to which DOM may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity.

**9.6** At any time during the term of this Agreement at DOM’s request or upon the termination or expiration of this Agreement for any reason, Licensor shall promptly return to DOM all copies, whether in written, electronic or other form or media, of PHI and PII in its possession, or securely dispose of all such copies, and certify in writing to DOM that such has been returned to DOM or disposed of securely. Licensor shall comply with all reasonable directions provided by DOM with respect to the return or disposal of PHI and PII.

**9.7** Upon DOM’s request, to confirm Licensor’s compliance with this Agreement, as well as any applicable laws, regulations and industry standards, Licensor grants DOM or, upon DOM’s election, a third party on DOM’s behalf, permission to perform an assessment, audit, examination or review of all controls in Licensor’s physical and/or technical environment in relation to all PHI or PII being handled and/or services being provided to DOM pursuant to this Agreement. Licensor shall fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, Documentation, infrastructure and application software that processes, stores or transports PHI or PII for DOM pursuant to this Agreement.

**9.8** It is understood and agreed that at least once per year, Licensor shall conduct site audits of the information technology and information security controls for all facilities used in complying with its obligations under this Agreement, including but not limited to, obtaining a network-level vulnerability assessment performed by a recognized third-party audit firm based on the recognized industry best practices. Licensor shall make the reports available to DOM for review. Any exceptions noted on the Statement on Standards for Attestation Engagements (SSAE) report or other audit reports will be promptly addressed with the development and implementation of a corrective action plan by Licensor’s management and resolved, at Licensor’s sole expense, within thirty (30) calendar days of the audit.

**ARTICLE 10 EMPLOYMENT STATUS**

**10.1** Licensor shall, during the entire term of this Agreement, be construed to be an independent contractor. Nothing in this Agreement is intended to nor shall be construed to create an employer-employee relationship, or a joint venture relationship.

**10.2** Licensor represents that it is qualified to perform the duties to be performed under this Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the duties required under this Agreement. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of Licensee.

**10.3** Any person assigned by Licensor to perform the Services hereunder shall be the employee of Licensor, who shall have the sole right to hire and discharge its employee. Licensee may, however, direct Licensor to replace any of its employees under this Agreement.

**10.4** Licensor shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Licensor nor employees of Licensor are entitled to state retirement or leave benefits.

**ARTICLE 11 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS**

Licensor will be responsible for the behavior of all its employees and subcontractors while on the premises of any Licensee location. Any employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive or offensive to any of the staff will be asked to leave the premises and may be suspended from further work on the premises. All Licensor employees and subcontractors who will be working at such locations shall be covered by Licensor’s comprehensive general liability insurance policy.

**ARTICLE 12 MODIFICATION OR RENEGOTIATION**

This Agreement may be modified only by written agreement signed by the parties hereto, and any attempt at oral modification shall be void and of no effect. 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.

**ARTICLE 13 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS**

**13.1** In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that Licensor represents all contractors, third parties, and/or subcontractors Licensor has assembled for this project. The Licensee is required to negotiate only with Licensor, as Licensor’s commitments are binding on all proposed contractors, third parties, and subcontractors.

**13.2** Neither party may assign or otherwise transfer this Agreement or its obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of its obligations without such consent shall be null and void. This Agreement shall be binding upon the parties’ respective successors and assigns.

**13.3** Licensor must obtain the written approval of Licensee before subcontracting any portion of this Agreement. No such approval by Licensee of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of Licensee in addition to the total fixed price agreed upon in this Agreement. All subcontracts shall incorporate the terms of this Agreement and shall be subject to the terms and conditions of this Agreement and to any conditions of approval that Licensee may deem necessary.

**13.4** Licensor represents and warrants that any subcontract agreement Licensor enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Licensee, and that the subcontractor acknowledges that no privity of contract exists between the Licensee and the subcontractor and that the Licensor is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with the Licensor. The Licensor shall indemnify and hold harmless the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Licensor’s failure to pay any and all amounts due by Licensor to any subcontractor, third party licensor, materialman, laborer or the like.

**13.5** All subcontractors shall be bound by any negotiation, arbitration, appeal, adjudication or settlement of any dispute between the Licensor and the Licensee, where such dispute affects the subcontract.

**ARTICLE 14 AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of Licensee 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 for the performances required under this Agreement. If the funds anticipated for the fulfillment of this Agreement are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to Licensee for the payments or performance due under this Agreement, Licensee shall have the right to immediately terminate this Agreement, in whole or in part, without damage, penalty, cost or expense to Licensee of any kind whatsoever, except for payment for work completed by Licensor and accepted by Licensee prior to termination. The effective date of termination shall be as specified in the notice of termination. Licensee shall have the sole right to determine whether funds are available for the payments or performances due under this Agreement.

**ARTICLE 15 TERMINATION**

**15.1** Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be terminated, in whole or in part, as follows: (a) upon the mutual, written agreement of the parties; (b) If either party fails to comply with the terms of this Agreement, the non-defaulting party may terminate the Agreement upon the giving of thirty (30) calendar days written notice unless the breach is cured within said thirty (30) day period; (c) Licensee may terminate the Agreement in whole or in part without the assessment of any penalties upon ten (10) calendar days written notice to Licensor if Licensor becomes the subject of bankruptcy, reorganization, liquidation or receivership proceedings, whether voluntary or involuntary, or (d) Licensee may terminate this Agreement in whole or in part for any reason without the assessment of any penalties after giving thirty (30) calendar days written notice specifying the effective date thereof to Licensor. The provisions of this Article do not limit either party’s right to pursue any other remedy available at law or in equity.

**15.2** In the event Licensee terminates this Agreement, Licensor shall be paid for Services rendered by Licensor and accepted by Licensee prior to the termination. Further, upon termination of this Agreement, Licensor shall refund any and all applicable unexpended prorated annual SaaS fees previously paid by Licensee.

**ARTICLE 16 GOVERNING LAW**

This Agreement shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. Licensor expressly agrees that under no circumstances shall the State be obligated to pay an attorney’s fee, prejudgment interest or the cost of legal action to Licensor. Further, nothing in this Agreement shall affect any statutory rights the parties may have that cannot be waived or limited by contract.

**ARTICLE 17 WAIVER**

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Agreement. A waiver by either party, to be effective, must be in writing, must set out the specifics of what is being waived, and must be signed by an authorized representative of that party.

**ARTICLE 18 SEVERABILITY**

If any term or provision of this Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law provided that the State’s purpose for entering into this Agreement can be fully achieved by the remaining portions of the Agreement that have not been severed.

**ARTICLE 19 CAPTIONS**

The captions or headings in this Agreement are for convenience only, and in no way define, limit or describe the scope or intent of any provision or Article in this Agreement.

**ARTICLE 20 HOLD HARMLESS**

To the fullest extent allowed by law, Licensor shall indemnify, defend, save and hold harmless, protect and exonerate Licensee, ITS and the State, its Board Members, officers, employees, agents and representatives from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever, including without limitation, court costs, investigative fees and expenses, attorney fees and claims for damages arising out of or caused by Licensor and/or its partners, principals, agents, employees or subcontractors in the performance of or failure to perform this Agreement.

**ARTICLE 21 THIRD PARTY ACTION NOTIFICATION**

Licensor shall notify Licensee in writing within five (5) business days of Licensor filing bankruptcy, reorganization, liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Licensor or Licensee by any entity that may result in litigation related in any way to this Agreement and/or which may affect the Licensor’s performance under this Agreement. Failure of the Licensor to provide such written notice to Licensee shall be considered a material breach of this Agreement and Licensee may, at its sole discretion, pursue its rights as set forth in the Termination Article herein and any other rights and remedies it may have at law or in equity.

**ARTICLE 22 AUTHORITY TO CONTRACT**

Licensor warrants that it is a validly organized business with valid authority to enter into this Agreement; 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 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.

**ARTICLE 23 NOTICE**

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their business address listed herein. ITS’ address for notice is: David C. Johnson, Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. Licensee’s address for notice is: Jennifer Wentworth, Deputy Administrator, Mississippi Division of Medicaid, 550 High Street, Suite 1000, Jackson, Mississippi 39201. The Licensor’s address for notice is: VENDOR NOTICE INFORMATION. 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.

**ARTICLE 24 RECORD RETENTION AND ACCESS TO RECORDS**

Licensor shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Agreement. The Licensee, ITS, any state or federal agency authorized to audit Licensee, and/or any of their duly authorized representatives, shall have unimpeded, prompt access to this Agreement and to any of the Licensor’s proposals, books, documents, papers and/or records that are pertinent to this Agreement to make audits, copies, examinations, excerpts and transcriptions at the State’s or Licensor’s office as applicable where such records are kept during normal business hours. All records relating to this Agreement shall be retained by the Licensor for three (3) years from the date of receipt of final payment under this Agreement. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the three (3) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.

**ARTICLE 25 INSURANCE**

Licensor represents that it will maintain workers’ compensation insurance as prescribed by law which shall inure to the benefit of Licensor’s personnel, as well as comprehensive general liability and employee fidelity bond insurance. Licensor will, upon request, furnish Licensee with a certificate of conformity providing the aforesaid coverage.

**ARTICLE 26 DISPUTES**

Any dispute concerning a question of fact under this Agreement which is not disposed of by agreement of the Licensor and Licensee, shall be decided by the Executive Director of ITS or his/her designee. This decision shall be reduced to writing and a copy thereof mailed or furnished to the parties. Disagreement with such decision by either party shall not constitute a breach under the terms of this Agreement. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.

**ARTICLE 27 COMPLIANCE WITH LAWS**

**27.1** Licensor shall comply with, and all activities under this Agreement shall be subject to, all Licensee policies and procedures which Licensor has received copies of, and all applicable federal, state, and local laws, regulations, policies and procedures as now existing and as may be amended or modified. Specifically, but not limited to, Licensor shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of this Agreement because of race, creed, color, sex, age, national origin or disability. Further, if applicable, Licensor shall comply with the provisions of the Davis-Bacon Act including, but not limited to, the wages, recordkeeping, reporting and notice requirements set forth therein.

**27.2** Licensor represents and warrants that it will comply with the state’s data breach notification laws codified at Section 75-24-29 of the Mississippi Code Annotated (Supp. 2012). Further, to the extent applicable, Licensor represents and warrants that it will comply with the applicable provisions of the Family Educational Rights & Privacy Act (FERPA) of 1974 (34 CFR Part 99); HIPAA Privacy Rule and Security Regulations (45 CFR Parts 160, 162 and 164) (“Privacy Rule” and “Security Regulations”, individually; or “Privacy and Security Regulations”, collectively); and the provisions of the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (the “HITECH Act”).

**ARTICLE 28 CONFLICT OF INTEREST**

Licensor shall notify Licensee of any potential conflict of interest resulting from the provision of services to other customers. If such conflict cannot be resolved to Licensee’s satisfaction, Licensee reserves the right to terminate this Agreement.

**ARTICLE 29 SOVEREIGN IMMUNITY**

By entering into this Agreement with Licensor, the State of Mississippi does in no way waive its sovereign immunities or defenses as provided by law.

**ARTICLE 30 CONFIDENTIAL INFORMATION**

**30.1** Licensor shall treat all Licensee data and information to which it has access by its performance under this Agreement as confidential and shall not disclose such data or information to a third party without specific written consent of Licensee. In the event that Licensor receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a validly issued judicial order requiring divulgence of such information, Licensor shall promptly inform Licensee and thereafter respond in conformity with such court order to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive the termination or completion of this Agreement and shall continue in full force and effect and shall be binding upon the Licensor and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in this Agreement on behalf of, or under the rights of the Licensor following any termination or completion of this Agreement.

**30.2** The parties understand and agree that this Agreement, including any amendments and/or change orders thereto, does not constitute confidential information, and may be reproduced and distributed by the State without notification to Licensor. ITS will provide third party notice to Licensor of any requests received by ITS for documents marked confidential in Licensor’s response to a RFP or LOC (if applicable) so as to allow Licensor the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

**30.3**  The parties understand and agree that pursuant to §25-61-9(7) of the Mississippi Code of 1972, as amended, the contract provisions specifying the commodities purchased or the services provided; the price to be paid; and the term of this Agreement shall not be deemed confidential information.

**ARTICLE 31 EFFECT OF SIGNATURE**

Each person signing this Agreement represents that he or she has read the Agreement in its entirety, understands its terms, is duly authorized to execute this Agreement on behalf of the parties and agrees to be bound by the terms contained herein. Accordingly, this Agreement shall not be construed or interpreted in favor of or against the State or the Licensor on the basis of draftsmanship or preparation hereof.

**ARTICLE 32 NON-SOLICITATION OF EMPLOYEES**

Licensor agrees not to employ or to solicit for employment, directly or indirectly, any of Licensee’s employees until at least one (1) year after the expiration/termination of this Agreement unless mutually agreed to the contrary in writing by Licensee and the Licensor and provided that such an agreement between these two entities is not a violation of the laws of the State of Mississippi or the federal government.

**ARTICLE 33 ENTIRE AGREEMENT**

**33.1** This contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating thereto, including all terms of any “shrink-wrap”, “click-wrap” or “browse-wrap” license of the Software. The RFP No. 4243 and Licensor’s Proposal, as accepted by the State, in response thereto are hereby incorporated into and made a part of this Agreement.

**33.2** The contract made by and between the parties hereto shall consist of, and precedence is hereby established by the order of the following:

**A.** This Agreement signed by the parties hereto;

**B.** Any exhibits attached to this Agreement;

**C.** RFP No. 4243 and written addenda, and

**D.** Licensor’s Proposal, as accepted by the State, in response to the RFP.

**33.3** The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by the Licensor. The documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof; provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority, that is, the highest document begins with the first listed document (“A. This Agreement”) and the lowest document is listed last (“D. Licensor’s Proposal”).

**ARTICLE 34 STATE PROPERTY**

Licensor shall be responsible for the proper custody of any Licensee-owned property furnished for Licensor’s use in connection with Services performed pursuant to this Agreement. Licensor shall reimburse the Licensee for any loss or damage, normal wear and tear excepted.

**ARTICLE 35 SURVIVAL**

Articles 7, 8, 16, 20, 24, 29, 30, 32, and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this Agreement.

**ARTICLE 36 DEBARMENT AND SUSPENSION CERTIFICATION**

Licensor certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against them 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; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the 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; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

**ARTICLE 37 SPECIAL TERMS AND CONDITIONS**

It is understood and agreed by the parties to this Agreement that there are no special terms and conditions except as specifically provided in this Agreement.

**ARTICLE 38 STATUTORY AUTHORITY**

By virtue of Section 25-53-21 of the Mississippi Code Annotated, as amended, the executive director of ITS is the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of information technology equipment, software and services. The parties understand and agree that ITS as contracting agent is not responsible or liable for the performance or non-performance of any of the Licensee’s or Licensor’s contractual obligations, financial or otherwise, contained within this Agreement. The parties further acknowledge that ITS is not responsible for ensuring compliance with any guidelines, conditions, or requirements mandated by Licensee’s funding source.

**ARTICLE 39 COMPLIANCE WITH ENTERPRISE SECURITY POLICY**

Licensor and Licensee understand and agree that all products and services provided by Licensor under this Agreement must allow Licensee to be and remain in compliance with the State of Mississippi’s Enterprise Security Policy. The parties understand and agree that the State’s Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines at the time of contract execution. The State reserves the right to introduce a new policy during the term of this Agreement and require the Licensor to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

**ARTICLE 40 COMPLIANCE WITH ENTERPRISE CLOUD AND OFFSITE HOSTING SECURITY**

If applicable, Licensor and Licensee understand and agree that all products and services provided by the Licensor under this Agreement must allow Licensee to be and remain in compliance with the State of Mississippi’s Enterprise Cloud and Offsite Hosting Security Policy. The parties understand and agree that the State’s Enterprise Cloud and Offsite Hosting Security Policy is based on industry-standard best practices, policy, and guidelines at the time of contract execution and augments the Enterprise Security Policy. The State reserves the right to introduce a new policy during the term of this Agreement and require the Licensor to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

**ARTICLE 41 SOFTWARE SUPPORT AND MAINTENANCE**

**41.1** As part of the maintenance services, Licensor will maintain the Applications and Services in an operable condition according to the specifications contained in the technical manuals and as outlined in the RFP and Licensor’s Proposal in response thereto. Licensor shall provide Licensee with enhancements to the Applications as they are made generally available from time to time.

**41.2** Licensor shall also provide unlimited email and toll-free telephone technical support in the operation of the Applications and Service twenty-four (24) hours a day, seven (7) days a week. Licensor shall respond by telephone within one (1) hour to requests for support services. Licensee shall be given priority placement in the support queue for all system locking situations or problems claimed by Licensee to be a mission critical process. Upon receipt of Licensee’s call, Licensor will (a) create an error report, (b) assign a severity level and (c) attempt to resolve the problem in accordance with the procedures and processes for problem resolution detailed in Exhibit B Liquidated Damages and Performance Standards below.

**ARTICLE 42 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 or terrorism, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the “Force Majeure Events”). When such a cause arises, the Licensor shall notify the Licensee 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 this Agreement.

**ARTICLE 43 TRANSPARENCY**

In accordance with the Mississippi Accountability and Transparency Act of 2008, §27-104-151, et seq., of the Mississippi Code of 1972, as Amended, the American Accountability and Transparency Act of 2009 (P.L. 111-5), where applicable, and §31-7-13 of the Mississippi Code of 1972, as amended, where applicable, a fully executed copy of this Agreement and any subsequent amendments and change orders shall be posted to the State of Mississippi’s accountability website at: [https://www.transparency.ms.gov](https://www.transparency.mississippi.gov).

**ARTICLE 44   CHANGE ORDER RATE AND PROCEDURE**

**44.1**     It is understood that the State may, at any time by a written order, make changes in the scope of the project. No changes in scope are to be conducted or performed by the Licensor except by the express written approval of the State. The Licensor shall be obligated to perform all changes requested by the Licensee, which have no price or schedule effect.

**44.2**     The Licensor shall have no obligation to proceed with any change that has a price or schedule effect until the parties have mutually agreed in writing thereto. Neither the State nor the Licensor shall be obligated to execute such a change order; and if no such change order is executed, the Licensor shall not be obliged or authorized to perform services beyond the scope of this Agreement and the contract documents. All executed change orders shall be incorporated into previously defined deliverables.

**44.3**     With respect to any change orders issued in accordance with this Article, the Licensor shall be compensated for work performed under a change order according to the hourly change order rate of specified in the attached Exhibit A. If there is a service that is not defined in the change order rate, the Licensor and the State will negotiate the rate. The Licensor agrees that this change order rate shall be a “fully loaded” rate, that is, it includes the cost of all materials, travel expenses, per diem, and all other expenses and incidentals incurred by the Licensor in the performance of the change order. The Licensor shall invoice the Licensee upon acceptance by the Licensee of all work documented in the change order, and the Licensee shall pay invoice amounts on the terms set forth in this Agreement.

**44.4**     Upon agreement of the parties to enter into a change order, the parties will execute such a change order setting forth in reasonable detail the work to be performed thereunder, the revisions necessary to the specifications or performance schedules of any affected project work plan, and the estimated number of professional services hours that will be necessary to implement the work contemplated therein. The price of the work to be performed under any change order will be determined based upon the change order rate; however, the change order will be issued for a total fixed dollar amount and may not be exceeded regardless of the number of hours actually expended by the Licensor to complete the work required by that change order. The project work plan will be revised as necessary.

**44.5**     The Licensor will include in the progress reports delivered under this Agreement, the status of work performed under all then¬ current change orders.

**44.6**     In the event the Licensor and the State enter into a change order which increases or decreases the time required for the performance of any part of the work under this Agreement, the Licensor shall submit to the Licensee a revised version of the project work plan, clearly indicating all changes, at least five (5) working days prior to implementing any such changes.

**44.7**     The Licensee shall promptly review all revised project work plans submitted under this Agreement and shall notify the Licensor of its approval or disapproval, in whole or in part, of the proposed revisions, stating with particularity all grounds for any disapproval, within ten (10) working days of receiving the revisions from the Licensor. If the Licensee fails to respond in such time period or any extension thereof, the Licensee shall be deemed to have approved the revised project work plan.

**ARTICLE 45   PERSONNEL ASSIGNMENT GUARANTEE**

Licensor guarantees that the personnel assigned to this project will remain a part of the project throughout the duration of the Agreement as long as the personnel are employed by the Licensor and are not replaced by Licensor pursuant to the third paragraph of the Article herein titled “Employment Status”. Licensor further agrees that the assigned personnel will function in the capacity for which their services were acquired throughout the life of the Agreement, and any failure by Licensor to so provide these persons shall entitle the State to terminate this Agreement for cause. Licensor agrees to pay the Licensee fifty percent (50%) of the total contract amount if any of the assigned personnel is removed from the project prior to the ending date of the contract for reasons other than departure from Licensor’s employment or replacement by Licensor pursuant to the third paragraph of the Article herein titled “Employment Status”.  Subject to the State’s written approval, the Licensor may substitute qualified persons in the event of the separation of the incumbents therein from employment with Licensor or for other compelling reasons that are acceptable to the State, and in such event, will be expected to assign additional staff to provide technical support to Licensee within thirty calendar days or within such other mutually agreed upon period of time, or the Licensee may, in its sole discretion, terminate this Agreement immediately without the necessity of providing thirty (30) days’ notice. The replacement personnel shall have equal or greater ability, experience and qualifications than the departing personnel, and shall be subject to the prior written approval of the Licensee. The Licensor shall not permanently divert any staff member from meeting work schedules developed and approved under this Agreement unless approved in writing by the Licensee. In the event of Licensor personnel loss or redirection, the services performed by the Licensor shall be uninterrupted and the Licensor shall report in required status reports its efforts and progress in finding replacements and the effect of the absence of those personnel.

**ARTICLE 46 RETAINAGE**

To secure the Licensor’s performance under this Agreement, the Licensor agrees the Licensee shall hold back as retainage twenty percent (20%) of each amount payable under this Agreement. The retainage amount will continue to be held until final acceptance of the deliverables by the Licensee.

**ARTICLE 47   LIQUIDATED DAMAGES**

The liquidated damages and performance standards are set forth in Exhibit B Liquidated Damages and Performance Standards, which is attached hereto and incorporated herein by reference.

**ARTICLE 48 PERFORMANCE BOND**

As a condition precedent to the formation of this Agreement, the Licensor must provide a performance bond as herein described. To secure the Licensor’s performance, the Licensor shall procure, submit to the State with this executed Agreement, and maintain in effect at all times during the course of this Agreement a performance bond in the total amount of this Agreement. The bond shall be accompanied by a duly authenticated or certified document evidencing that the person executing the bond is a licensed Mississippi agent for the bonding company. This certified document shall identify the name and address of the person or entity holding the performance bond and shall identify a contact person to be notified in the event the State is required to take action against the bond. The term of the performance bond shall be concurrent with the term of this Agreement, with the exception of post-warranty maintenance and support, and shall not be released to Licensor until final acceptance of all products and deliverables required herein or until the warranty period, if any, has expired, whichever occurs last. If applicable, and at the State’s sole discretion, the State may, at any time during the warranty period, review Licensor’s performance and performance of the products/services delivered and determine that the Licensor’s performance bond may be reduced or released prior to expiration of the full warranty period. The performance bond shall be procured at Licensor’s expense and be payable to Licensee. The cost of the bond may be invoiced to the Licensee after project initiation only if itemized in the Licensor’s cost proposal and in the attached Exhibit A.  Prior to approval of the performance bond, the State reserves the right to review the bond and require Licensor to substitute an acceptable bond in such form as the State may reasonably require. The premiums on such bond shall be paid by Licensor. The bond must specifically refer to this Agreement and shall bind the surety to all of the terms and conditions of this Agreement. If the Agreement is terminated due to Licensor’s failure to comply with the terms thereof, Licensee may claim against the performance bond.

For the faithful performance of the terms of this Agreement, the parties hereto have caused this Agreement to be executed by their undersigned authorized representatives.

|  |  |  |
| --- | --- | --- |
| **State of Mississippi, Department of** **Information Technology Services, on behalf of Mississippi Division of Medicaid** |  | **VENDOR NAME** |
| **By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |  | **By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Authorized Signature** |  | **Authorized Signature** |
| **Printed Name: David C. Johnson** |  | **Printed Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Title: Executive Director** |  | **Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |  | **Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |

**EXHIBIT A**

# EXHIBIT B

# LIQUIDATED DAMAGES & PERFORMANCE STANDARDS

**Liquidated Damages**

The Licensor agrees to the importance of this Agreement and the performance standards agreed to herein. For any failure by the Licensor to meet any contract requirement, performance standard, project task, project deliverable date or timeframes specified in any section of the Agreement or mutually agreed upon project work plan, damage shall be sustained by DOM, and it may be impractical and extremely difficult to ascertain and determine the actual damages which the DOM will sustain by reason of such failure. It is therefore agreed that the DOM, at its sole option, may require the Licensor to pay liquidated damages in the amount specified below per occurrence, per business day, per hour, per file, per task, per deliverable, performance standard or timeframe for each and every business/settlement day thereafter until such task, deliverable or performance standard is completed and accepted by the DOM.

DOM will provide Licensor with written notices of its intent to assess liquidated damages. Liquidated damages shall not apply to the extent they are caused, excluded, excused, or induced either by the State or by force majeure events. The assessment of liquidated damages shall not constitute a waiver or release of any other remedy the State may have under this Agreement for Licensor’s breach of the Agreement, including without limitation, the State’s right to terminate the Agreement. The State may recover actual damages in excess of the liquidated damages. Any assessment of liquidated damages, however, shall be credited to any subsequent assessment of actual damages for the same event. Liquidated damages due to the State from the Contractor hereunder may be deducted from monies due or to become due to Licensor in connection with this Agreement.

**Service Level Agreements (SLAs):**

1. System Availability – The Vendor’s proposed solution must operate 24 hours a day, and support a 99.9% uptime per month, and is subject to a up to a $5,000.00 penalty for each occurrence of downtime outside of the 99.9% uptime requirement. Uptime must be calculated by the following formula:

24 hours per day x 7 days a week x 52 weeks per year = Total hours per year.

Total hours per year x .001 = Allowed unscheduled downtime per year.

Table 1 - SLA

|  |  |  |  |
| --- | --- | --- | --- |
| **Uptime Range** | **Associated Down Time** | **Penalty Per Component or Interface** | **Penalty for Entire Solution Downtime** |
| 99.5-99.8% | 43.69 mins -3.6 hrs. | $2,500.00  | $10,000.00  |
| 99.0-99.4% | 3.7 hrs. -7.3 hrs. | $4,000.00  | $15,000.00  |
| 98.0-98.9% | 7.4 hrs. – 14.6 hrs. | $6,000.00  | $25,000.00  |
| Below 98% | >14.6 hrs. | $9,000.00  | $35,000.00  |

1. Allowed unscheduled downtime per year/12 = Allowed unscheduled downtime per month. (Multiply by 60 to convert to minute).
2. Solution downtime outside of the allowable downtime period must be categorized as unscheduled downtime and is subject to a $10,000.00 penalty for each occurrence.
3. System Maintenance: Scheduled downtime equals the aggregate total of all hours of planned and scheduled maintenance performed during the month. Any scheduled downtime exceeding this agreed upon amount must be deemed as unscheduled downtime for purposes of measuring system performance.
4. Scheduled solution downtime must occur between 1:00 a.m. and 4:00 a.m. Central Time, and only with prior, written approval from the State 48 hours in advance. Vendor will be assessed a penalty of $5,000.00 per instance of a failure to notify the State in writing 48 hours in advance of a scheduled downtime. Solution downtime outside of the allowable downtime period shall be categorized as unscheduled downtime and is subject to a $10,000.00 penalty for each occurrence.
5. Failure to annually meet the latest version of CMS MARS-E and attest to a MARS-E compliant environment is subject to a $10,000.00 penalty, with a $2,500.00 for each additional month out of compliance.
6. Vendor must adhere to the following table for severity of incidents and associated penalties (credit to DOM):

|  |  |  |  |
| --- | --- | --- | --- |
| **Category** | **Description**  | **Resolution**  | **SLA Penalty**  |
| **Severity 1\*** | A Severity 1 incident represents a complete loss of service or a significant feature that is completely unavailable or non-operational for all users of the system and no workaround exists.  | Severity 1 incidents, which are not code related or external network failure shall be corrected within 2 hours or within a mutually agreed upon time period (cure period), otherwise the Severity 1 incident shall be corrected within 4 hours or within a mutually agreed upon time period (cure period). | Up to $5,000 for each calendar day beyond the applicable cure deadline not to exceed $25,000 per incident. Applicable penalties will be assessed monthly. |
| **Severity 2** | A Severity 2 incident represents a partial loss of service with severe impact for all users of the system and no work-around exists.  | Severity 2 incidents which are not caused by capacity issues or backup site availability shall be corrected within 4 hours or within a mutually agreed upon time period (cure period), otherwise the Severity 2 incident shall be corrected within 8 hours or within a mutually agreed upon time period (cure period). | Up to $1,000 for each calendar day beyond the applicable cure deadline not to exceed $5,000 per incident. Applicable penalties will be assessed monthly |
| **Severity 3** | A Severity 3 incident represents a minor loss of service. The result is an inconvenience, which may require a temporary workaround.  | Severity 3 incidents shall be corrected within 3 days or within a mutually agreed upon time period (cure period).  | $250 for each calendar day beyond the applicable cure deadline not to exceed $1,500 per incident. Applicable penalties will be assessed monthly.  |
| **Severity 4** | A Severity 4 incident represents no loss of service. The result does not prevent operation of the software. An example of a Severity 4 could be a client facing error. | Severity 4 incidents shall be corrected within 5 days or within a mutually agreed upon time period (cure period). | $125 for each calendar day beyond the applicable cure deadline not to exceed $625 per incident. Applicable penalties will be assessed monthly. |

\*For severity 1 issues, the root cause analysis document must be provided within 5 working days from day of resolution.

**Operations:**

1. Vendor must adhere to the following table for SLAs and associated penalties (credit to DOM):

| Service **Requirement** | **Measurement** | **SLA** | **SLA Credit** |
| --- | --- | --- | --- |
| Problem Resolution Time – High | Resolution Time for each High Priority Problem. Problem resolution time is defined as the period from when the issue is reported to when it is properly resolved. | 98% <4 hours | –$8,000  |
| Problem Resolution Time - Normal | Resolution Time for Normal Priority Problems | 98% <24 hours | –$8,000  |
| Problem Resolution Time - Low | Resolution Time for Low Priority Problems | 98% <72 hours | $8,000  |
| Help Desk Operations- Daily Email & Voicemail | Time for Help Desk to Create a Ticket from Email or Voicemail notification (90% goal) | 90% <1business day | $8,000 |
| Help Desk Operations- Backlog Email & Voicemail | Time for Help Desk to Create a Ticket from Email or Voicemail notification (98% goal) | 98% <3business days | $16,000 |
| IDA Recovery | In the event of a declared disaster the recovery time objective is forty-eight (48) hours. The system should be fully operation and available.The SLA Credits for this Measurement are aggregated, i.e., each lower level of failure adds the stated additional percentage (for a maximum 50% credit at the lowest level). | <48 hours | $30,000 |
| <72 hours | +$45,000 |
| <96 hours | +$75,000 |

1. Data Integrations with Medicaid Trading Partners failed transactions: Any failure of transactions to or from Medicaid Trading Partners that is above a daily total of 2.5% of the daily transaction total shall be subject to a penalty of $1,000.00 per daily occurrence. Any failure of transactions to or from Medicaid Trading Partners that is above a monthly total of 1.0% of the monthly transaction totals must be subject to a penalty of up to $5,000.00 per monthly occurrence.
2. All maintenance and enhancement hours must have prior approval by DOM.

**Performance Requirements:**

1. As each component has a user interface (GUI), each component must support a five second or less average for each of these processes.
2. The user login,
3. Single patient query and return results,
4. Building and delivering a data file to the user,
5. Standard report generation (some reports, may take longer than the required five seconds to generate, and if so, please note in your response what reports these are, the data sets and size that are typically included, and the estimated performance for generating these reports), and
6. Averages of more than five seconds will be considered an outage and the Vendor must be assessed damages of $2,500.00 per day.

**Disaster Recovery**

1. Licensor shall host the proposed solution in a United States-based Tier 2 data center or better, with written approval from the State on any change in the selection of the data center, data center Vendor, and location. The State reserves the right to physically audit (by State or State contracted personnel) the data center the proposed solution is hosted in and the DR site. By the first 90 days after contract execution and on every August 30th thereafter, the Licensor must provide the State with an annual data center report, specifying their Tier Certification of Constructed Facility rating or TIA-942 Data Center Standard Rating, specifying the Tier rating of their facility and specifying what certifications have been awarded to the facility, including but not limited to LEED, SSAE 16, HIPAA, etc. Failure to provide an annual report is subject to a penalty of up to $50,000 per month until the report is completed and provided to the State.
2. Data center-provided servers and network switching equipment used to host the proposed solution shall be no more than three (3) years old, and hardware shall be regularly scheduled for an equipment refresh every three (3) years. Failure to refresh this hardware at least every three (3) years and to notify the State in writing as to this refresh is subject to a penalty of up to $50,000 per month until the refresh is complete, and the State is notified.
3. Data center where all instances are hosted shall have system intrusion detection, firewalls and firewall policies for cloud servers, regular OS security patches, the most current antivirus software installed, and follow hosting / data center best practices. Upon contract execution, and every quarter thereafter, the Licensor shall provide the State a quarterly report detailing how the Licensor and data center are adhering to these requirements. Failure to provide an annual report is subject to a penalty of up to $50,000 per month until the report is completed and provided to the State.
4. Vendor must have a DR plan, including a separate DR site with a separate physical location from the primary hosting site. Upon contract execution, the Vendor must provide documentation that the DR environmental test has been conducted within the past year and must provide written results to the State. The written results must include any remediation and the accompanying remediation schedule necessary to correct any failures or findings that were identified as a result of the DR test. Failure to provide the results to the State on an annual basis is subject to a penalty of up to $50,000.00 per month until the report is completed and provided to the State.
5. Vendor must execute the DR plan immediately upon notification of a Disaster (as outlined in the DR plan). Upon execution of the DR plan, the solution and data must return to at least 70% performance status of the production status. Failure to provide at least 70% performance status of the production status is subject to a penalty of up to $50,000.00 per month until at least 70% performance status is complete, and documentation is provided to the State.
6. Vendor must support a zero Recovery Point Objective (RPO), exclusive of a declared disaster event. Failure to provide zero RPO is subject to a penalty of up to $50,000.00 per month until a zero RPO is completed, and documentation is provided to the State.

**Privacy and Security**

1. Vendor and all subcontractors must adhere to the appropriate SLAs. Any and all subcontractor non-performance and delays are the responsibility of the prime Vendor, and all penalties will be assessed to the prime Vendor.
2. If any Vendor or any subcontractor fails to meet the requirements of the Business Associate Agreement (BAA) or Data Use Agreement (DUA), the Vendor shall be assessed a penalty of $2,500.00 per occurrence. An occurrence means each failure to comply with the BAA or DUA requirements, regardless of the number of persons or clinicians involved.
3. If any Vendor or subcontractor fails to notify the State of a breach (potential or otherwise) both in writing and by telephone within 24 hours of discovery, the Vendor shall be assessed damages of up to $25,000.00 per calendar day until the State is properly notified. The Vendor must pay the costs for notification of any breach, as well as for credit monitoring for all persons whose data is breached for the term of one year.

**Vendor Reporting Requirements and Penalties**

1. The Vendor must provide a monthly report to the State by the seventh business day of the following month. Failure to provide the monthly report by the seventh working day of the following month, the Licensor shall be assessed a penalty of up to $2,500 per calendar day until the report is delivered. Report should include:
2. Component performance metrics by component and all Data Integration performance metrics including failed transactions.
3. Internal monitoring of the EDL, including metrics and tools used.
4. Incidents (problems) incurred per defined SLAs.
5. Provider user metrics (number of active and inactive users for Provider Access, user logins, user queries, etc.).
6. Data Integration queries, responses, bi-directional data transmissions by integration type other queries and responses), etc.
7. EDL and Data Integration uptime.
8. Bandwidth metrics of the EDL.
9. Hardware status of the EDL.
10. Response times for interaction with the new EMPI from Verato.
11. Total ticket volume with aging, tickets opened and closed during the last period, by support, maintenance, and upgrades.
12. Daily test results of the performance of the Provider Portal. The daily test results on the performance of the Provider Portal will be reported to DOM in the monthly report.
13. Monthly hardware statistics and monitoring reports.
14. Other metrics to be defined by the State in coordination with the Vendor. If the Vendor does not provide the monthly report by the seventh working day of the following month, the Vendor shall be assessed a penalty of $2,500.00 per month until the report is delivered.
15. Should any Vendor have 50 or more unresolved Help Desk tickets that average in excess of 72 hours from submission, the Vendor is subject to a penalty of $2,500.00 per calendar day.
16. Failure by any Vendor to meet mutually agreed upon deliverables and/or milestones by the due date or as otherwise required, may result in a penalty of up to $2,500.00 per instance, per calendar day that the deliverable or milestone remains late or deficient.
17. Failure by any Vendor to maintain staffing levels, including the number and qualifications of staff, and provision of key positions that are outlined in the contract, is subject to a penalty of up to $5,000.00 per instance, per calendar day.
18. Vendor must provide the State a quarterly report detailing how the Vendor and datacenter are adhering to hosting requirements set forth in RFP and contract. These requirements. Failure to provide a quarterly report is subject to a penalty of up to $50,000.00 per month until the report is completed and provided to the State.
19. Vendor must have a failover process and documented failover plan that must be provided to the State. Failure to provide the failover plan may result in a penalty of up to $50,000.00 per month until the report is completed and provided to the State.
20. Any other failure of any Vendor that DOM determines constitutes non-compliance with any material term of the Contract not specifically enumerated herein, may result in a penalty of up to $10,000.00 per instance, per calendar day.
21. Failure by the Vendor to obtain approval in writing by the Division of Medicaid for publishing material requiring DOM approval. This may result in $5,000.00 per instance, per calendar day.
22. Unauthorized use of DOM’s name, brand, or likeness in violation of the contract may result in $1,000.00 per occurrence. An occurrence means each unauthorized use.
23. Failure of Vendor to comply with close out and turnover requirements may result in the assessment of damages of up to $20,000.00 per calendar day that, if imposed, shall be deducted from the final payment to be made to Vendor.
24. Unauthorized utilization of any data, in violation of the requirements of this RFP may result in $10,000.00 per occurrence. An occurrence means each unauthorized use, regardless of the number of beneficiaries or Trading Partners involved.
25. Failure to meet the requirements of Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Health Information Technology for Economic and Clinical Health Act (HITECH), and the implementing regulations thereunder, including but not limited to the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and 164, as amended (between $1,000 and $100,000 per incident, per calendar day). An incident means, with respect to protected health information (PHI), (i) any successful Security Incident which results in or is related to unauthorized access, use or disclosure of PHI, (ii) Breach of Unsecured PHI, or (iii) any loss, destruction, alteration or other event in which PHI cannot be accounted for.
26. Any other failure of Vendor that DOM determines constitutes non-compliance with any material term of the contract and/or RFP not specifically enumerated herein may result in an amount of up to $5,000.00 for each failure.
27. The Vendor shall publish on their public website any actual or liquidated damages that have been paid by Licensor within fifteen (15) business days of Licensor having paid such actual or liquidated damages, where such payment will only occur after notice of DOM approval and maintain the document on the site through the contract term.
28. If an SLA measurement yields an SLA credit, the Vendor must conduct a root cause analysis (RCA). Such root cause analysis must be provided to DOM within 5 business days of the outage event for DOM review and acceptance.

**Liquidated Damages and Corrective Action Plans**

1. DOM may require corrective action if any deliverable, report, SLA, or the like should indicate that the Vendor is not in compliance with any provision of the Contract. DOM may also require the modification of any policies or procedures of the Vendor relating to the fulfillment of its obligations pursuant to the Contract. DOM may issue a deficiency notice and may require a Corrective Action Plan (CAP) be filed within 15 calendar days following the date of the notice. A CAP shall delineate the time and way each deficiency is to be corrected. The CAP shall be subject to approval by DOM, which may accept it as submitted, accept it with specified modifications, or reject it. DOM may extend or reduce the time frame for corrective action depending on the nature of the deficiency and shall be entitled to exercise any other right or remedy available to it, whether it issues a deficiency notice or provides Vendor with the opportunity to take corrective action.
2. Because performance failures by the Vendor may cause DOM to incur additional administrative costs that are difficult to compute, DOM may assess liquidated damages against the Vendor pursuant to this section and deduct the amount of the damages from any payments due the Vendor. DOM, at its sole discretion, may establish an installment deduction plan for any damages. The determination of the monetary amount of damages shall be at the sole discretion of DOM, within the ranges set forth below. Self-reporting by the Vendor will be taken into consideration in determining the monetary amount of damages to be assessed. Unless specified otherwise, DOM shall give written notice to the Vendor of the failure that might result in the assessment of damages and the proposed amount of the damages. The Vendor shall have 15 calendar days from the date of the notice in which to dispute DOM’s determination. DOM may assess damages for specific performance failures set forth below. DOM may assess higher liquidated damages amounts when the Vendor consistently fails to meet specific performance standards and the deficient performance has not been corrected.
3. Assessment of actual or liquidated damages does not waive any other remedies available to DOM pursuant to the contract or State and Federal law. If liquidated damages are known to be insufficient, then DOM has the right to pursue actual damages.
4. Failure to timely submit a DOM approved CAP, DOM may assess liquidated damages of up to $2,500.00 per business day until the CAP is submitted.
5. Failure to successfully carry out a DOM approved CAP within the time frames outlined in the CAP, DOM may assess up to $5,000.00 per business day until the CAP is completed.
6. In the event of repeated violations of a single SLA measure or multiple failures across SLA measures over two consecutive months, the State reserves the right to renegotiate SLA measures and/or escalate the applicable reductions by 50% of the stated liquidated damages after non-responsiveness. Repeated violations may be grounds for Termination for Cause.

# ATTACHMENT B

## DOM BUSINESS ASSOCIATE AGREEMENT (BAA)

The DOM BAA will be executed between DOM and the Awarded Vendor. It is not considered part of the ITS standard contract.

**THE DIVISION OF MEDICAID OFFICE OF THE GOVERNOR STATE OF MISSISSIPPI**

**BUSINESS ASSOCIATE AGREEMENT**

**THIS BUSINESS ASSOCIATE AGREEMENT** (“Agreement”) is entered into by and between the **DIVISION OF MEDICAID IN THE OFFICE OF THE GOVERNOR**, an administrative agency of the **STATE OF MISSISSIPPI** (hereinafter “DOM”), and (hereinafter “Business Associate”), hereinafter collectively referred to as the Parties, and modifies any other prior existing agreement for this purpose. In consideration of the mutual promises below and the exchange of information pursuant to this Agreement and in order to comply with all legal requirements for the protection of this information, the Parties therefore agree as follows:



1. **RECITALS:**
	1. DOM is a state agency that acts both as an employer and as a Health Plan for public benefit with a principal place of business at 550 High Street, Suite 1000, Jackson, MS 39201. Business Associate is a corporation qualified to do business in Mississippi with a principal place of business at **.**
	2. Pursuant to the Health Insurance Portability and Accountability Act (“HIPAA”) of 1996 (as amended by the Genetic Information Nondiscrimination Act (“GINA”) of 2008 and the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), Title XIII of Division A, and Title IV of Division B of the American Recovery and Reinvestment Act (“ARRA”) of 2009) and its implementing regulations, including 45 C.F.R. Parts 160 and 164, Subparts A and E (“Privacy Rule”), and Subparts A and C (“Security Rule”):
		1. DOM, as a Covered Entity, enters into this Agreement to obtain satisfactory assurances that Business Associate will comply with and appropriately safeguard all Protected Health Information (“PHI”) created, received, maintained, or transmitted by Business Associate from or on behalf of DOM, and
		2. Certain provisions of HIPAA and its implementing regulations apply to Business Associate in the same manner as they apply to DOM and such provisions are incorporated into this Agreement.
	3. DOM desires to engage Business Associate to perform certain functions, activities, or services to, for, or on behalf of DOM involving the Disclosure of PHI by DOM to Business Associate, and/or the creation, receipt, maintenance, or transmission of PHI by Business Associate, and Business Associate desires to perform such functions, activities, or services, as set forth in the Service Agreements, and wholly incorporated herein.
2. **DEFINITIONS:**
	1. “Breach” shall mean the acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule which compromises the security or privacy of the PHI, and subject to the exceptions set forth in 45 C.F.R. § 164.402.
	2. “Business Associate” shall mean  **.** including all workforce

members, representatives, agents, successors, heirs, and permitted assigns.

* 1. “Covered Entity” shall mean the Division of Medicaid in the Office of the Governor, an administrative agency of the State of Mississippi.
	2. “Data Aggregation” shall have the same meaning as the term “Data aggregation” in 45

C.F.R. § 164.501.

* 1. “Designated Record Set” shall have the same meaning as the term “Designated record set” in 45 C.F.R. § 164.501.
	2. “Disclosure” shall have the same meaning as the term “Disclosure” in 45 C.F.R. § 160.103.
	3. “DOM” shall mean the Division of Medicaid in the Office of the Governor, an administrative agency of the State of Mississippi.



* 1. “Health Plan” shall have the same meaning as the term “Health plan” in 45 C.F.R. § 160.103.
	2. “Individual” shall have the same meaning as the term “Individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45

C.F.R. § 164.502(g).

* 1. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E.
	2. “Protected Health Information” shall have the same meaning as the term “Protected health information” in 45 C.F.R. § 160.103..
	3. “Required by Law” shall have the same meaning as the term “Required by law” in 45 C.F.R.

§ 164.103.

* 1. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his/her designee.
	2. “Security Incident” shall have the same meaning as the term “Security incident” in 45 C.F.R.

§ 164.304.

* 1. “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and C.
	2. “Service Agreements” shall mean any applicable Memorandum of Understanding (“MOU”), agreement, contract, or any other similar device, and any proposal or Request for Proposal (“RFP”) related thereto and agreed upon between the Parties, entered into between DOM and Business Associate.
	3. “Standard” shall have the same meaning as the term “Standard” in 45 C.F.R. § 160.103.
	4. “Subcontractor” shall have the same meaning as the term “Subcontractor” in 45 C. F. R. § 160.103.
	5. “Unsecured Protected Health Information” shall have the same meaning as the term “Unsecured protected health information” in 45 C.F.R. § 164.402.
	6. “Use” shall have the same meaning as the term “use” in 45 C.F.R. § 160.103.
	7. “Violation” or “Violate” shall have the same meaning as the terms “Violation” or “violate” in 45 C.F.R. § 160.103.

All other terms not defined herein shall have the meanings assigned in HIPAA and its implementing regulations.

1. **OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE:**
	1. Business Associate agrees to not Use or Disclose PHI other than as permitted or required by the Service Agreement or as Required by Law.
	2. Business Associate shall use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent use or disclosure of PHI other than as provided for by this Agreement.
	3. Business Associate agrees to notify DOM without unreasonable delay and no later than seventy-two (72) hours after discovery, of any Use or Disclosure of PHI not provided for by this Agreement of which it becomes aware, and any Security Incident of which it becomes aware.
	4. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in Violation of the requirements of this Agreement.



* 1. Business Associate agrees to notify DOM without unreasonable delay, and no later than seventy-two (72) hours after discovery of any actual or suspected Breach of Unsecured PHI, all in accordance with 45 C.F.R. § 164.410. The notification shall include, to the extent possible and subsequently as the information becomes available, the identification of all Individuals whose Unsecured PHI is reasonably believed by Business Associate to have been Breached along with any other available information that is required to be included in the notification to the Individual, HHS, and/or the media, all in accordance with the data Breach notification requirements set forth in 45 C.F.R.§ 164.410..
	2. Once an actual or suspected Breach is reported to DOM, Business Associate agrees to provide a written assessment to determine whether the incident is reportable within ten (10) working days. An impermissible use or disclosure of protected health information is presumed to be a Breach unless the Covered Entity or Business Associate, as applicable, demonstrates there is a low probability the PHI has been compromised or one of the exceptions to the definition of Breach applies, all in accordance with 45 C.F.R. §164.410.
	3. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), Business Associate agrees to ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information. Business Associate agrees to ensure that any Subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of Business Associate will agree to comply with the applicable requirements of the Security Rule and Privacy Rule by entering into a Business Associate Agreement and Business Associate shall provide DOM with a copy of all such executed agreements between Business Associate and Business Associate’s Subcontractors at least thirty (30) calendar days prior to disclosing any of DOM’s PHI pursuant to said agreements by submitting a written or electronic copy to DOM’s Privacy Officer at the address included in Section VII(f) of this Agreement. Business Associate understands that submission of their Subcontractors’ Business Associate Agreement(s) to DOM does not constitute DOM approval of any kind, including of the use of such Subcontractors or of the adequacy of such agreements.
	4. Business Associate agrees to provide access, at the request of DOM, and in the time and manner designated by DOM, to PHI in a Designated Record Set, to DOM or, as directed by DOM, to an Individual in order to meet the requirements under 45 CFR § 164.524.
	5. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that DOM directs or agrees to pursuant to 45 CFR § 164.526 at the request of DOM or an Individual, and in the time and manner designated by DOM.
	6. Business Associate agrees to document such Disclosures of PHI and information related to such Disclosures as would be required for DOM to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528. Business Associate agrees to retain such documentation for at least six (6) years after the date of disclosure or provide a full accounting and relevant documentation to DOM at the time of termination.
	7. Business Associate agrees to provide to DOM or an Individual, in a time and manner designated by DOM, information collected in accordance with section (III)(h) of this Agreement, to permit DOM to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.



* 1. Business Associate agrees that it shall only use or disclose the minimum PHI necessary to perform functions, activities, or services for, or on behalf of, DOM as specified in the Service Agreements. Business Associate agrees to comply with any guidance issued by the Secretary on what constitutes “minimum necessary” for purposes of the Privacy Rule, and any minimum necessary policies and procedures communicated to Business Associate by DOM.
	2. Business Associate agrees that to the extent that Business Associate carries out DOM’s obligations under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to DOM in the performance of such obligation.
	3. Business Associate agrees to make internal practices, books, and records, including policies and procedures, available to the Secretary for purposes of determining Business Associate’s and/or DOM's compliance with the Privacy Rule pursuant to 45 C.F.R. § 160.310.
	4. Business Associate agrees that nothing in this Agreement shall permit Business Associate to access, store, share, maintain, transmit or use or disclose PHI in any form via any medium with any third party, including Business Associate’s Subcontractors, beyond the boundaries and jurisdiction of the United States without express written authorization from DOM.
1. **PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE:**
	1. General Use and Disclosure Provisions: Subject to the terms of this Agreement, Business Associate may Use or Disclose PHI to perform functions, activities, or services for, or on behalf of, DOM as specified in the Service Agreements, provided that such Use or Disclosure would not violate what is required by Law or the Privacy Rule if done by DOM.
	2. Specific Use and Disclosure Provisions:
		1. Business Associate may use PHI, if necessary, for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate under the Service Agreements entered into between DOM and Business Associate.
		2. If Business Associate must disclose PHI pursuant to law or legal process, Business Associate shall notify DOM without unreasonable delay and at least five (5) days in advance of any disclosure so that DOM may take appropriate steps to address the disclosure, if needed.
		3. Business Associate may use PHI to provide Data Aggregation services exclusively to DOM as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).
2. **OBLIGATIONS OF DOM:**
	1. DOM shall provide Business Associate with the Notice of Privacy Practices that DOM produces in accordance with 45 C.F.R. § 164.520, accessible via its external website at Medicaid.ms.gov.
	2. DOM shall notify Business Associate of any limitation(s) in its Notice of Privacy Practices to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
	3. DOM shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.



* 1. DOM shall notify Business Associate of any restriction to the use or disclosure of PHI that DOM has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
	2. Permissible Requests by DOM: DOM shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by DOM.
1. **TERM AND TERMINATION:**
	1. Term. For all new Service Agreements entered into between DOM and Business Associate, the effective date of this Agreement is the first day that a Business Associate is provided, or has access to, PHI. For any ongoing Service Agreements entered into between DOM and Business Associate, the effective date of this Agreement is the first day that Business Associate is provided, or has access to, PHI under the applicable Service Agreement. This Agreement shall terminate when all of the PHI provided by DOM to Business Associate or created or received by Business Associate on behalf of DOM, is destroyed or returned to DOM, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions of this section.
	2. Termination for Cause. Upon DOM's knowledge of a material Breach or Violation by Business Associate, DOM shall, at its discretion, either:
		1. provide an opportunity for Business Associate to cure the Breach or end the Violation and terminate this Agreement and the associated Service Agreements, if Business Associate does not cure the Breach or end the Violation within the time specified by DOM, or
		2. immediately terminate this Agreement and the associated Service Agreements if Business Associate has Breached a material term of this Agreement and cure is not possible.
	3. Effect of Termination.
		1. Upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from or created or received by Business Associate on behalf of, DOM in accordance with Privacy and Security Rule guidelines. This provision shall apply to PHI that is in the possession of Subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
		2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to DOM notification of the conditions that make return or destruction infeasible. Upon notification in writing that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this

Agreement to such PHI and limit further Uses and Disclosures to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

1. **MISCELLANEOUS:**
	1. Statutory and Regulatory References. A reference in this Agreement to a section in HIPAA, its implementing regulations, or other applicable law means the section as in effect or, as amended, and for which compliance is required.
	2. Amendments/Changes in Law.



* + 1. General. Modifications or amendments to this Agreement may be made upon mutual agreement of the Parties, in writing signed by the Parties hereto and approved as required by law. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Agreement. Such modifications or amendments signed by the Parties shall be attached to and become part of this Agreement.
		2. Amendments as a Result of Changes in the Law. The Parties agree to take such action as is necessary to amend this Agreement as is necessary to effectively comply with any subsequent changes or clarifications of statutes, regulations, or rules related to this Agreement. The Parties further agree to take such action as is necessary to comply with the requirements of HIPAA, its implementing regulations, and other applicable law relating to the security and privacy of PHI.
		3. Procedure for Implementing Amendments as a Result of Changes in Law. In the event that there are subsequent changes or clarifications of statutes, regulations or rules relating to this Agreement, or the Parties’ compliance with the laws referenced in section (VII)(c)(ii) of this Agreement necessitates an amendment, the requesting party shall notify the other party of any actions it reasonably deems are necessary to comply with such changes or to ensure compliance, and the Parties promptly shall take such actions. In the event that there shall be a change in the federal or state laws, rules or regulations, or any interpretation of any such law, rule, regulation, or general instructions which may render any of the material terms of this Agreement unlawful or unenforceable, or materially affects the financial arrangement contained in this Agreement, the Parties may, by providing advanced written notice, propose an amendment to this Agreement addressing such issues.
	1. Interpretation. Any ambiguity in this Agreement shall be resolved to permit DOM to comply with HIPAA, its implementing regulations, and other applicable law relating to the security and privacy of PHI.
	2. Indemnification.
		1. To the fullest extent allowed by law, Business Associate shall indemnify, defend, save and hold harmless, protect, and exonerate DOM, its 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 Business Associate and/or its partners, principals, agents, and employees in the performance of or failure to perform this Agreement. In DOM’s sole discretion, Business Associate may be allowed to control the defense of any

such claim, suit, etc. In the event Business Associate defends said claim, suit, etc., Business Associate shall use legal counsel acceptable to DOM. Business Associate shall be solely responsible for all costs and/or expenses associated with such defense, and DOM shall be entitled to participate in said defense. Business Associate shall not settle any claim, suit, etc. without DOM’s concurrence, which DOM shall not unreasonably withhold.

* + 1. DOM’s liability, as an entity of the State of Mississippi, is determined and controlled in accordance with Mississippi Code Annotated § 11-46-1 *et seq.*, including all defenses and exceptions contained therein. Nothing in this Agreement shall have the effect of changing or altering the liability or of eliminating any defense available to the State under statute.



* 1. Disclaimer. DOM makes no warranty or representation that compliance by Business Associate with this Agreement, HIPAA, its implementing regulations, or other applicable law will be adequate or satisfactory for Business Associate’s own purposes or that any information in Business Associate’s possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized Use or Disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
	2. Notices. Any notice from one party to the other under this Agreement shall be in writing and may be either personally delivered, emailed, or sent by registered or certified mail in the United States Postal Service, Return Receipt Requested, postage prepaid, addressed to each party at the addresses which follow, or to such other addresses provided for in this Agreement, or as the Parties may hereinafter designate in writing. Any such notice shall be deemed to have been given as of the date transmitted.

For DOM: DOM Privacy Officer

Mississippi Division of Medicaid 550 High Street, Suite 1000

Jackson, MS 39201

For Business Associate:

* 1. Severability. It is understood and agreed by the Parties hereto that if any part, term, or provision of this Agreement is by the courts or other judicial body held to be illegal or in conflict with any law of the State of Mississippi or any federal law, the validity of the remaining portions or provisions shall not be affected and the obligations of the parties shall be construed in full force as if the Agreement did not contain that particular part, term, or provision held to be invalid.
	2. Applicable Law. This Agreement shall be construed broadly to implement and comply with the requirements relating to HIPAA and its implementing regulations. All other aspects of this Agreement 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. Business Associate shall comply with applicable federal, state, and local laws, regulations, policies, and procedures as now existing and as may be amended or modified. Where provisions of this Agreement differ from those mandated by such laws and regulations, but are nonetheless permitted by such laws and regulations, the provisions of this Agreement shall control.

* 1. Non-Assignment and Subcontracting. Business Associate shall not assign, subcontract, or otherwise transfer this Agreement, in whole or in part, without the prior written consent of DOM. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by DOM of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of DOM in addition to the total compensation agreed upon in this Agreement. Subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that DOM may deem necessary. Subject to the foregoing, this Agreement shall be binding upon the respective successors and assigns of the parties. DOM may assign its rights and obligations under this Agreement to any successor or affiliated entity.



* 1. Entire Agreement. This Agreement contains the entire agreement between the Parties and supersedes all prior discussions, instructions, directions, understandings, negotiations, agreements, and services for like services.
	2. No Third-Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and their respective successors, heirs, or permitted assigns, any rights, remedies, obligations, or liabilities whatsoever.
	3. Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any workforce members, contractors, subcontractors, representatives, agents, affiliates, or subsidiaries assisting Business Associate in the fulfillment of its obligations under this Agreement, available to DOM, at no cost to DOM, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DOM, its directors, officers, or any other workforce member based upon claimed Violation of HIPAA, its implementing regulations, or other applicable law, except where Business Associate or its workforce members, contractors, subcontractors, representatives, agents, affiliates, or subsidiaries are a named adverse party.

**IN WITNESS WHEREOF**, the Parties hereto have duly executed this Business Associate Agreement to be effective on the date provided for in section (VI)(a) of this Agreement.

**Mississippi Division of Medicaid Business Associate**

**By: By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Drew L. Snyder Executive Director

**Date: Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

# ATTACHMENT C

## DOM DATA USE AGREEMENT (DUA)

The DOM DUA will be executed between DOM and the Awarded Vendor. It is not considered part of the ITS standard contract.

**DATA USE AGREEMENT**

In order to secure data that resides in the **Mississippi Division of Medicaid** (“DOM”) system of records, whether stored electronically, on paper, or in any other medium, and to ensure the integrity, security, and confidentiality of such data and documents, and to permit only appropriate disclosure and use as may be permitted by law, the Parties below enter into this Data Use Agreement (“Agreement”) to comply with the following specific sections:

**I. RECITALS**

1. This Agreement is by and between **DOM** and **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (“User”), hereinafter referred to as theParties.
2. User warrants that it is not excluded from participation in any federal or state health-care program, including Medicare and Medicaid.
3. This Agreement addresses the conditions under which DOM will disclose and User will obtain and use DOM data.
4. The Parties mutually agree that the following named person is designated as “Custodian of Data” on behalf of User and shall be responsible for the observance of all conditions of use for establishment and maintenance of security arrangements as specified in this Agreement to prevent unauthorized use or disclosure. User agrees to notify DOM within fifteen (15) business days of any change to the custodianship.

 **(Name and Title of Custodian of Data) (Company/Organization)**

  **(Address)**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **(Phone) (Email address)**

1. The Parties mutually agree that the following named person will be designated as “Point-of-Contact” for this Agreement on behalf of DOM.

**Brad R. Estess**

**Deputy Administrator, Chief Information Technology Officer**

**(601) 359-6516**

**brad.estess@medicaid.ms.gov**

1. The Parties mutually agree that the following specified Attachments are part of this Agreement:

**Exhibit D:** SSA Computer Matching and Privacy Protection Act Agreement (original, amendment, and SSA agreement 2020)

**Exhibit E:** Security Controls

**Exhibit F:** Notification of Breach

**Exhibit G:** Certificate of Return or Destruction/Sanitization of Confidential Data

**Exhibit A:** Service Agreement

1. The Parties mutually agree, and in furnishing data hereunder DOM relies upon such agreement, that such data will be used solely for the following purpose, as detailed in the Service Agreement executed by the Parties **(Exhibit A)**: **Contract between \_\_\_\_\_\_\_\_\_\_\_\_\_ and the Mississippi Division of Medicaid** for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
2. Some of the data specified in this Agreement may constitute Protected Health Information (“PHI”), Personally Identifiable Information (PII), or personal information (“PI”) under federal or state law. The Parties mutually agree that the creation, receipt, maintenance, transmittal, and disclosure of DOM data containing PHI or PI shall be subject to the applicable provisions of the Health Insurance Portability and Accountability Act (“HIPAA”) of 1996 (as amended by the Genetic Information Nondiscrimination Act (“GINA”) of 2008 and the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), Title XIII of Division A, and Title IV of Division B of the American Recovery and Reinvestment Act (“ARRA”) of 2009), its implementing regulations, and the provisions of other applicable federal and state law.

**II. DEFINITIONS**

The following definitions shall apply to this Agreement.

1. “Confidential Data” shall mean any information from which an individual may be uniquely identified, including, without limitation, an individual’s name, address, telephone number, social security number, birth date, account numbers, and healthcare information. Confidential information is construed broadly to include DOM data, protected health information (PHI)[[1]](#footnote-1), and Personally Identifiable Information (PII)[[2]](#footnote-2), which shall include all data provided to DOM by the Social Security Administration (SSA).
2. “DOM” shall mean the Division of Medicaid in the Office of the Governor, an administrative agency of the State of Mississippi.
3. “DOM data” shall mean all data that is collected, stored, processed, or generated by or on behalf of DOM under this Agreement, including all attachments.
4. “Protected Health Information” shall have the same meaning as the term “Protected health information” in 45 C.F.R. § 160.103.
5. “Service Agreement” shall mean any applicable Memorandum of Understanding (“MOU”), agreement, contract, or any other similar device, and any proposal or Request for Proposal (“RFP”) related thereto and agreed upon between the Parties, entered into between DOM and User.
6. “User” shall mean \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, including all workforce members, representatives, subcontractors, agents, successors, heirs, and permitted assigns.

**III. OBLIGATIONS AND ACTIVITIES OF USER**

1. User represents and warrants that, except as DOM shall authorize in writing, User shall not disclose, release, reveal, show, sell, rent, lease, loan, or otherwise grant access to the data covered by this Agreement to any person, company, or organization. User agrees that, within User’s organization, access to the DOM data covered by this Agreement shall be limited to the minimum number of individuals necessary to achieve the purpose stated in section (I)(g) of this Agreement and to those individuals on a need-to-know basis only.
2. Upon completion of the purpose specified in section (I)(g) of this Agreement, User shall return to DOM and/or destroy/sanitize all DOM data covered by this Agreement in accordance with the following:
	1. Return. DOM data must be returned to DOM in a sealed secure method. User will maintain a log of all DOM data being returned to DOM. All DOM data returned via 3rd party carrier will be traceable and require the signature of the receiving party.
	2. Destruction/Sanitization. DOM data in electronic form must be sanitized (cleared or purged) in accordance with NIST Special Publication 800-88 Revision 1 or as approved in writing by DOM. Media may also be physically destroyed in accordance with NIST Special Publication 800-88 Revision 1. User shall destroy all paper documents with DOM data by using a confidential method of destruction, such as crosscut shredding or contracting with a company that specializes in confidential destruction of documents.

User agrees that no data from DOM records, any parts or copies thereof, including data derived from DOM records (electronic, paper, or otherwise), shall be retained when the data is returned and/or destroyed/sanitized unless authorization in writing for the retention of such data has been received from the DOM signatories designated in section (VI)(c) of this Agreement. User shall certify the return and/or destruction/sanitization of the file(s) in writing using **Exhibit G,** Certificate of Return or Destruction/Sanitization of Confidential Data, upon termination of the DUA. In the event that User determines that returning and/or destroying/sanitizing DOM data is infeasible, User shall provide to DOM notification of the conditions that make return and/or destruction/sanitization infeasible. Upon notification in writing that return and/or destruction of DOM data is infeasible, User shall extend the protections of this Agreement to such data and limit further uses and disclosures to those purposes that make the return and/or destruction/sanitization infeasible, for so long as User maintains such data.

1. User agrees to establish and maintain appropriate administrative, technical, and physical safeguards to protect the confidentiality of DOM data and to prevent unauthorized use or access to it. The safeguards shall provide a level and scope of security that is not less than the level and scope of security established in HIPAA and its implementing regulations. User also agrees to provide a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III – Security of Federal Automated Information systems, which sets forth guidelines for automated information systems in Federal agencies. If the data obtained by User from DOM includes data provided to DOM by the Social Security Administration (SSA), User shall also comply with the substantive privacy and security requirements in the Computer Matching and Privacy Protection Act Agreement between SSA and the State of Mississippi, which is attached as **Exhibit D** and incorporated into this Agreement. In addition, User agrees to comply with the specific Security Controls enumerated in **Exhibit E** of this Agreement. In case of a conflict between any of the security standards contained in any of these enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to DOM data from unauthorized disclosure.
2. User acknowledges that in addition to the requirements of this Agreement, they must also abide by the applicable privacy and disclosure laws and regulations under HIPAA, the Privacy Act of 1974 (as amended by the Computer Matching and Privacy Protection Act of 1988), 42 C.F.R. Part 2, their implementing regulations, and other applicable federal and state law.
3. User agrees that all DOM data shall not be co-mingled with other trading partner’s data, and shall be easily identifiable and exportable. DOM Data shall be stored in an individual structure in accordance with the following: User shall create an instance (single-tenant) of the particular database software utilized by User, and only DOM data shall reside in that instance of the database. The intent of this section is not to require separate procurement of hardware specific to DOM, however DOM data must not reside in a database that contains other entities’ data.
4. User agrees that nothing in this Agreement shall permit User to access, store, share, maintain, transmit or use or disclose PHI in any form via any medium with any third party, including User’s Business Associates or subcontractors, beyond the boundaries and jurisdiction of the United States without the express written authorization from DOM.
5. User agrees that all DOM data will be encrypted using industry standard algorithms as approved by DOM, in flight and at rest.
6. User agrees to comply with the State of Mississippi ITS Enterprise Security Policy, which will be provided upon request.
7. Without limitation of the foregoing:
	1. Pursuant to 42 U.S.C. § 17931(a), the following sections of the Security Rule shall apply to User as it relates to PHI in the same manner as they apply to DOM: 45 C.F.R. §§ 164.308 (Administrative Safeguards); 164.310 (Physical Safeguards); 164.312 (Technical Safeguards); and 164.316 (Policies and procedures and documentation requirements).
8. User agrees to report to DOM any use or disclosure of the information not provided for by this Agreement of which they become aware, without unreasonable delay, and no later than seventy-two (72) hours after discovery, and to take further action regarding the use or disclosure as specified in **Exhibit F**, Notification of Breach, of this Agreement.
9. User agrees to mitigate, to the extent practicable, any harmful effect that is known to user of a use or disclosure of PHI, PII, or confidential information by user in Violation of the requirements of this Agreement.
10. If User must Disclose DOM data pursuant to law or the legal process, User shall notify DOM without unreasonable delay and at least ten (10) calendar days in advance of any disclosure so that DOM may take appropriate steps to address the disclosure, if needed.
11. User agrees to train and use reasonable measures to ensure compliance with the requirements of this Agreement by employees who assist in the performance of functions or activities under this Agreement and use or disclose DOM data, and to discipline such employees who intentionally violate any provisions of this Agreement, including by termination of employment if necessary. In complying with the provisions of this section, User shall observe the following requirements:
	1. User shall provide information privacy and security training, at least annually, at its own expense, to all its employees who assist in the performance of functions or activities under this Agreement and use or disclose DOM data; and
	2. User shall require each employee who receives information privacy and security training to sign a certification, indicating the employee’s name and the date on which the training was completed.
12. From time to time, DOM may, upon prior written notice and at mutually convenient times, inspect the facilities, systems, books, and records of User to monitor compliance with this Agreement. User shall promptly remedy any violation of any provision of this Agreement and shall certify the same to the DOM Privacy Officer in writing. The fact that DOM inspects, or fails to inspect, or has the right to inspect, User’s facilities, systems, and procedures does not relieve User of their responsibility to comply with this Agreement.

**IV. TERM AND TERMINATION**

1. Term. The effective date of this Agreement is the effective date of the Service Agreement entered into between DOM and User.
2. Termination. This Agreement shall terminate when all of the data provided by DOM to User is destroyed/sanitized or returned to DOM as set forth in section (III)(b) of this Agreement and a Certificate of Return or Destruction/Sanitization of Confidential Data is sent to the DOM Point-of-Contact named in section (I)(e) of this Agreement.
3. Termination for Cause. Upon DOM knowledge of a material breach or violation of this Agreement by User, DOM shall at its discretion either:
	1. provide an opportunity for User to cure the breach or end the violation and terminate this Agreement and the associated Service Agreement, if User does not cure the breach or end the violation within the time specified by DOM, or
	2. immediately terminate this Agreement and the associated Service Agreement if User has breached a material term of this Agreement and cure is not possible.
4. Effect of Termination. Upon termination of this Agreement, for any reason, User shall return to DOM and/or destroy/sanitize all DOM data in accordance with section (III)(b) of this Agreement. The provisions of this Agreement governing the privacy and security of DOM data shall remain in effect until all data is returned and/or destroyed/sanitized and DOM receives a Certificate of Return or Destruction/Sanitization of Confidential Data from User.

**V. MISCELLANEOUS**

1. Penalties. User acknowledges that criminal, administrative, and civil penalties under HIPAA, the Privacy Act, 42 C.F.R. Part 2, their implementing regulations, and other applicable federal and state law, may apply with respect to any use or disclosure of information or data that is inconsistent with the terms of this Agreement. By signing this Agreement, User agrees to abide by all provisions set out in this Agreement, including all attachments, for protection of the data specified in this Agreement, and acknowledges having received notice of potential criminal, administrative, or civil penalties for violation of the terms of the Agreement. User agrees any material violations of the terms of this Agreement or any of the laws and regulations governing the use of DOM data may result in denial of access to DOM data.
2. Statutory and Regulatory References. A reference in this Agreement to HIPAA, the Privacy Act, 42 C.F.R. Part 2, their implementing regulations, or other applicable federal and state law means the section as in effect or as amended, and for which compliance is required.
3. Amendments/Changes in Law.
	1. *General.* Modifications or amendments to this Agreement may be made upon mutual agreement of the Parties, in writing signed by the Parties hereto and approved as required by law. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Agreement. Such modifications or amendments signed by the Parties shall be attached to and become part of this Agreement.
	2. *Amendments as a Result of Changes in the Law.* The Parties agree to take such action as is necessary to amend this Agreement to effectively comply with any subsequent changes or clarifications of statutes, regulations, or rules related to this Agreement. The Parties further agree to take such action as is necessary to comply with the applicable requirements of HIPAA, the Privacy Act, 42 C.F.R. Part 2, their implementing regulations, and any other applicable federal and state law relating to the security and privacy of DOM data.
	3. *Procedure for Implementing Amendments as a Result of Changes in Law.* In the event that there are subsequent changes or clarifications of statutes, regulations or rules relating to this Agreement, or the Parties’ compliance with the laws referenced in section (V)(c)(ii) of this Agreement necessitates an amendment, the requesting party shall notify the other party of the need for an amendment or any actions it reasonably deems are necessary to comply with such changes or to ensure compliance, and the Parties promptly shall take such actions. In the event that there shall be a change in the federal or state laws, rules or regulations, or any interpretation of any such law, rule, regulation or general instructions which may render any of the material terms of this Agreement unlawful or unenforceable, or materially affects the financial arrangement contained in this Agreement, the Parties may, by providing advanced written notice, propose an amendment to this Agreement addressing such issues.
4. Survival. The respective rights and obligations of User under section (IV)(d) of this Agreement shall survive the termination of this Agreement.
5. Interpretation. Any ambiguity in this Agreement shall be resolved to permit DOM to comply with HIPAA, the Privacy Act, 42 C.F.R. Part 2, their implementing regulations, and any other applicable federal or state law. The Parties agree that instructions or interpretations issued to User concerning this Agreement, and the data and documents specified herein, shall not be valid unless issued in writing by the DOM Point-of-Contact specified in section (I)(d) of this Agreement or the DOM signatories to this Agreement shown in section (VI)(c) of this Agreement.
6. Indemnification. To the fullest extent allowed by law, User shall indemnify, defend, save and hold harmless, protect, and exonerate DOM, its 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 User and/or its partners, principals, agents, and employees in the performance of or failure to perform this Agreement. In DOM’s sole discretion, User may be allowed to control the defense of any such claim, suit, etc. In the event User defends said claim, suit, etc., User shall use legal counsel acceptable to DOM. User shall be solely responsible for all costs and/or expenses associated with such defense, and DOM shall be entitled to participate in said defense. User shall not settle any claim, suit, etc. without DOM’s concurrence, which DOM shall not unreasonably withhold.

DOM’s liability, as an entity of the State of Mississippi, is determined and controlled in accordance with Mississippi Code Annotated § 11-46-1 *et seq.*, including all defenses and exceptions contained therein. Nothing in this Agreement shall have the effect of changing or altering the liability or of eliminating any defense available to the State under statute.

1. Disclaimer. DOM makes no warranty or representation that compliance by User with this Agreement, HIPAA, the Privacy Act, 42 C.F.R. Part 2, their implementing regulations, and other applicable laws and regulations will be adequate or satisfactory for User’s own purposes or that any information in User’s possession or control, or transmitted or received by User, is or will be secure from unauthorized use or disclosure. User is solely responsible for all decisions made by User regarding the safeguarding of DOM data.
2. Notices. Any notice from one party to the other under this Agreement shall be in writing and may be either personally delivered, emailed, or sent by registered or certified mail in the United States Postal Service, Return Receipt Requested, postage prepaid, addressed to each party at the addresses which follow or to such other addresses provided for in this agreement or as the parties may hereinafter designate in writing:

**DOM:** **Office of the Governor**

 **Division of Medicaid**

 **550 High Street, Suite 1000**

 **Jackson, MS 39201**

**User: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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Any such notice shall be deemed to have been given as of the date transmitted.

1. Severability. It is understood and agreed by the Parties hereto that if any part, term, or provision of this Agreement is by the courts or other judicial body held to be illegal or in conflict with any law of the State of Mississippi or any federal law, the validity of the remaining portions or provisions shall not be affected and the obligations of the parties shall be construed in full force as if the Agreement did not contain that particular part, term, or provision held to be invalid.
2. Applicable Law. This Agreement shall be construed broadly to implement and comply with the privacy and security requirements of HIPAA, the Privacy Act, 42 C.F.R. Part 2, their implementing regulations, and other applicable federal and state law. All other aspects of this Agreement 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. User shall comply with applicable federal, state, and local laws, regulations, policies, and procedures as now existing and as may be amended or modified. Where provisions of this Agreement differ from those mandated by such laws and regulations, but are nonetheless permitted by such laws and regulations, the provisions of this Agreement shall control.
3. Non-Assignment and Subcontracting. User shall not assign, subcontract, or otherwise transfer this Agreement, in whole or in part, without the prior written consent of DOM, and provided that User provides DOM with a list of all such subcontractors, and submits an updated list upon any subsequent change. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by DOM of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of DOM in addition to the total compensation agreed upon in this Agreement. Subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that DOM may deem necessary. Subject to the foregoing, this Agreement shall be binding upon the respective successors and assigns of the parties. DOM may assign its rights and obligations under this Agreement to any successor or affiliated entity.
4. Entire Agreement. This Agreement contains the entire agreement between Parties and supersedes all prior discussions, instructions, directions, understandings, negotiations, agreements, and services for like services.
5. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and their respective successors, heirs, or permitted assigns, any rights, remedies, obligations, or liabilities whatsoever.
6. Assistance in Litigation or Administrative Proceedings. User shall make itself and any workforce members, contractors, subcontractors, agents, representatives, subsidiaries, or affiliates assisting User in the fulfillment of its obligations under this Agreement, available to DOM, at no cost to DOM, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DOM, its directors, officers, or any other workforce member based upon claimed violation of HIPAA, the Privacy Act, 42 C.F.R. Part 2, their implementing regulations, or other laws relating to security and privacy, except where User or its workforce members, contractors, subcontractors, agents, representatives, subsidiaries, or affiliates are a named adverse party.

*[Remainder of page intentionally left blank; signature page follows.]*

**VI. ACKNOWLEDGEMENTS AND ATTESTATIONS**

1. **The Custodian of Data**, as named in section (I)(d) of this Agreement, hereby acknowledges his/her appointment as Custodian of the aforesaid data on behalf of User, and agrees in a representative capacity to comply with all of the provisions of this Agreement on behalf of User.

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**(Name of Custodian of Data – Typed or Printed) (Title/Component)**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**(Signature) (Date Signed – mm/dd/yyyy)**

1. **On behalf of User**, the undersigned person hereby attests that he/she is authorized to enter into this Agreement and agrees to all the terms specified herein.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**(Name – Typed or Printed) (Title/Component)**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**(Company/Organization) (User NPI Number- If Applicable)**

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**(Address)**

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**(Phone Number) (Email Address)**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**(Signature) (Date Signed – mm/dd/yyyy)**

1. **On behalf of DOM**, the undersigned person hereby attests that he/she is authorized to enter into this Agreement and agrees to all the terms specified herein.

**Drew L. Snyder Executive Director**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**(Signature) (Date Signed – mm/dd/yyyy)**

1. Which shall have the same meaning as the term “Protected Health Information” in 45 C.F.R. §160.103 [↑](#footnote-ref-1)
2. Which is defined by the United States Government Accountability Office (GAO) as, “any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as a medical, education, financial, and employment information” (NIST SP 800-122). [↑](#footnote-ref-2)