



RFP No: 4631

INVITATION: Proposals, subject to the attached conditions, will be received at this office until August 25, 2026 @ 3:00 p.m. Central Time for the acquisition of the products/services described below for Mississippi State Department of Health (MSDH).

Women, Infants, and Children Electronic Benefits Transfer (WIC-EBT)

NOTE: THIS RFP CONTAINS MANDATORY REQUIREMENTS TO WHICH NO EXCEPTION MAY BE TAKEN. SEE SECTION VII, ITEM 2, FOR DETAILS.

The Vendor must submit proposals and direct inquiries to:

Roshunda Ware
Information Technology Services
3771 Eastwood Drive
Jackson, MS 39211
(601) 432-8223
Roshunda.Ware@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. 4631
August 25, 2026 @ 3:00 p.m. Central Time
ATTENTION: Roshunda Ware

Signed by:

F577530FD3CA425...

Craig P. Orgeron, CPM, Ph.D.
Executive Director

ITS RFP Response Checklist

RFP Response Checklist: These items should be included in your response to RFP No. 4631.

- 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.
- 2) *Submission Cover Sheet*, signed and dated (Section I)
- 3) *Proposal Bond*, if applicable (Section I)
- 4) *Proposal Exception Summary*, if applicable (Section V)
- 5) Vendor response to *RFP Questionnaire* (Section VI)
- 6) Point-by-point response to *Technical Specifications* (Section VII or Attachment A)
- 7) Vendor response to *Cost Information Submission* (Section VIII)
- 8) *References* (Section IX)

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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 will be the person that the Mississippi Department of Information Technology Services, (ITS), will contact for purposes of this RFP.

Name _____ Phone # _____
Address _____ Fax # _____
_____ Email _____

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 any expenses for the development or delivery of proposals. Any proposal received after the proposal response deadline will be returned unopened. Any proposal received with insufficient postage will be returned unopened.
4. Proposals or alterations by fax, e-mail, or phone will not be accepted.
5. Original signatures in blue ink are required on the Submission Cover Sheet and Configuration Summary.
6. ITS reserves the right to reject any proposals, including those with exceptions, prior to and at any time during negotiations.
7. ITS reserves the right to waive any defect or irregularity in any proposal procedure.
8. 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.
9. The Vendor must conform to the following standards in the preparation of the Vendor's proposal:
 - 9.1 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.
 - 9.2 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.
 - 9.3 Number each page of the proposal.

- 9.4 Respond to the sections and exhibits in the same order as this RFP.
 - 9.5 Label the file names of each section and exhibit, using the corresponding headings from the RFP.
 - 9.6 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.)
 - 9.7 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."
 - 9.8 Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
 - 9.9 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.
 - 9.10 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.
 - 9.11 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.
10. 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*.
 11. ITS reserves the right to request additional information or clarification of a Vendor's proposal at any time during the evaluation process. 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.
 12. Unsolicited clarifications and updates submitted after the deadline for proposals will be accepted or rejected at the sole discretion of ITS.

13. Unsolicited clarifications in the evaluation and selection of lowest and best proposal will be considered only if all the following conditions are met:
- 13.1 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.
 - 13.2 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.
 - 13.3 Clarifications must be received early enough in the evaluation process to allow adequate time for re-evaluation.
 - 13.4 The Vendor must follow procedures outlined herein for submitting updates and clarifications.
 - 13.5 The Vendor must submit a statement outlining the circumstances for the clarification.
 - 13.6 The Vendor must submit unsolicited clarifications via USB in the same manner as detailed in Item 9 above.
 - 13.7 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).
14. **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 website. Vendors failing to comply with this requirement will be subject to disqualification.
- 14.1 The State's contact person for the selection process is: Roshunda Ware, Technology Consultant, 3771 Eastwood Drive, Jackson, MS 39211, 601-432-8223, Roshunda.Ware@its.ms.gov.
 - 14.2 Vendor may consult with State representatives as designated by the State's contact person identified in 14.1 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 successfully respond to the RFP.

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.

2. **Vendor's Responsibility to Examine RFP**

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

3. **Proposal as Property of State**

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

4. **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:

<https://www.its.ms.gov/procurement/rfps-and-sole-sources>

Any and all amendments will be posted no later than noon, seven 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 page one of this RFP and request a copy.

5. **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.

6. **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.

7. **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 Section VII.

8. **Multiple Awards**

ITS reserves the right to make multiple awards.

9. **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.

10. **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.

11. **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.

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

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

13. **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.

14. 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:

- 14.1 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.
- 14.2 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.
- 14.3 That the individual is proficient in spoken and written English.
- 14.4 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.
- 14.5 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.

15. 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.

16. 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. However, the State reserves the right to issue BAFOs to any and all responding Vendors at any time during the RFP evaluation process. 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.

17. **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.

18. **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, the awarded Vendor must be willing to integrate the acquisition and implementation of such products within the schedule and system under contract.

19. **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.

20. **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 successfully complete a contract or agreement with ITS.

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 they take 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.
2. **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.
3. **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:
 - 3.1 The *Proposal Exception Summary Form* as accepted by ITS;
 - 3.2 Contracts which have been signed by the Vendor and ITS;
 - 3.3 ITS' Request for Proposal, including all addenda;
 - 3.4 Official written correspondence from ITS to the Vendor;
 - 3.5 Official written correspondence from the Vendor to ITS when clarifying the Vendor's proposal; and
 - 3.6 The Vendor's proposal response to the ITS RFP.
4. **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.
5. **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.

6. 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".

7. Legal Provisions

7.1 The State of Mississippi is self-insured; all requirements for the purchase of casualty or liability insurance are deleted.

7.2 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.

7.3 Pursuant to Mississippi Code Annotated Section 25-53-21(e), the Executive Director of ITS may negotiate a limitation on the liability to the State of prospective contractors provided such limitations afford the State reasonable protection and the limitation is approved by the State entity for whom the acquisition is being made. A Vendor who wishes to negotiate a limitation to their liability to the State under this RFP must provide a proposed limitation of liability in their response at the time of submission for the State's consideration. However, the Vendor shall have no limitation on liability for claims related to the following items:

7.3.1 Infringement issues;

7.3.2 Bodily injury;

7.3.3 Death;

7.3.4 Physical damage to tangible personal and/or real property; and/or

7.3.5 The intentional and willful misconduct or negligent acts of the Vendor and/or Vendor's employees or subcontractors.

7.4 All requirements that the State pay interest (other than in connection with lease-purchase contracts not exceeding five years) are deleted.

7.5 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.

7.6 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.

- 7.7 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.
- 7.8 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.
- 7.9 The State shall not pay any attorney's fees, prejudgment interest or the cost of legal action to or for the Vendor.
- 7.10 The State shall not propose any prohibited technology as defined in the law (a) "Prohibited technology" means any information technology deemed to pose an unacceptable risk to the security of the United States and/or the State of Mississippi by Mississippi and/or federal law, regulation, or guidance

8. **Approved Contract**

- 8.1 Award of Contract - A contract is considered to be awarded to a Vendor once the awarded Vendor's offering has been approved as lowest and best proposal through:
- 8.1.1 Written notification made to Responding Vendors on ITS letterhead, or
 - 8.1.2 Notification posted to the ITS website for the project, or
 - 8.1.3 CP-1 authorization executed for the project, or
 - 8.1.4 The ITS Board's approval of same during an open session of the Board.
- 8.2 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.
- 8.3 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.

9. **Contract Validity**

All contracts, including any Amendments or Change Orders, are valid only if signed by the Executive Director of ITS.

10. **Order of Contract Execution**

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

11. 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.

12. 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.

13. Requirement for Electronic Payment and Invoicing

13.1 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://portal.paymode.com/ms/>. Vendors may also request assistance from the Mississippi Management and Reporting System (MMRS) Call Center regarding PayMode registration by contacting mash@dfa.ms.gov.

13.2 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.

13.3 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.

14. Time For Negotiations

14.1 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.

14.2 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.

15. **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.

16. **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.

16.1 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.

16.2 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.

16.3 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.

17. **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.

18. **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.

19. **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.

20. **References to Vendor to Include Subcontractor**

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

21. **Outstanding Vendor Obligations**

21.1 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.

21.2 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.

21.3 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.

22. **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.

23. **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.

24. **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.

25. **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.
26. **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.
27. **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.
28. **Ownership of Developed Software**
- 28.1 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.
- 28.2 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.
29. **Ownership of Custom-Tailored Software**
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.
30. **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.
31. **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.
32. **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. A copy of the Enterprise Security Policy can be found on the ITS website.

33. 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. A copy of the Enterprise Cloud and Offsite Hosting Security Policy can be found on the ITS website.

34. 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.

35. 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 website at:

<https://www.its.ms.gov/sites/default/files/ProcurementPDFs/ISS%20Procurement%20Manual.pdf#page=173> 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.

36. **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.

37. **Proposal Bond**

A Proposal Bond is not required for this procurement.

38. **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 State Department of Health (MSDH) 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.**

The Vendor must procure and submit to ITS, on behalf of Mississippi State Department of Health (MSDH), 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 State Department of Health (MSDH), 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.

39. **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.

40. **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 website - ITS Protest Procedure and Policy, Section 019-020, ITS Procurement Handbook at:

<https://www.its.ms.gov/sites/default/files/ProcurementPDFs/ISS%20Procurement%20Manual.pdf#page=180> or from ITS upon request.

41. **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 the envelope must be marked "Protest" and must specify RFP Number 4631.

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, 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 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 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.

42. **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:
 - 1.1 The specification is not a matter of State law;
 - 1.2 The proposal still meets the intent of the RFP;
 - 1.3 A *Proposal Exception Summary Form* is included with Vendor's proposal; and
 - 1.4 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:
 - 2.1 The Vendor will withdraw the exception and meet the specification in the manner prescribed;
 - 2.2 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;
 - 2.3 ITS and the Vendor will agree on compromise language dealing with the exception and will insert same into the contract; or
 - 2.4 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**

- 1.1 **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:

<https://www.dfa.ms.gov/vendors>

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 10-digit MAGIC Vendor code (begins with the number 3).

MAGIC Vendor Code: _____

- 1.2 **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.

2. **Certification of Authority to Sell**

- 2.1 Vendors must provide proof, in its response to this RFP, from the Office of the Secretary of State of the State of Mississippi demonstrating that the Vendor is in good standing to do business in Mississippi. Failure to comply with this requirement may subject the Vendor's response being deemed non-responsive and subject to disqualification.

- 2.2 The Vendor must certify that they are 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.)
3. **Compliance with National Defense Authorization Act**
The Vendor must provide equipment that is in compliance with the National Defense Authorization Act, Section 889. (Vendor must state if they can meet this requirement.)
4. **Compliance with National Security on State Devices and Networks Act**
Vendors shall not provide or propose to provide any prohibited technology as defined under the National Security on State Devices and Networks Act, Mississippi Code Ann. Section 25-53-193. Failure to meet this requirement may disqualify vendor from consideration. (Vendor must state if they can meet this requirement.)
5. **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:
- 5.1 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.)
- 5.2 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.
6. **Pending Legal Actions**
- 6.1 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.)
- 6.2 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.)
- 6.3 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.
- 6.4 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.
7. **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. (A yes or no answer is required.)

8. **Web Amendments**

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

<https://www.its.ms.gov/procurement/rfps-and-sole-sources>

ITS may post clarifications until noon seven 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.)

9. **Order and Remit Address**

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

Order Address:

Remit Address (if different):

10. **Taxpayer Identification Number**

Vendor must specify their taxpayer identification number.

11. **Certification of Liability Insurance**

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

12. **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.

13. **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	05/26/2026
Second Advertisement Date for RFP	06/02/2026
Deadline for Vendor’s Written Questions	3:00 p.m. Central Time on 06/11/2026
Deadline for Questions Answered and Posted to ITS Website	06/26/2026
Open Proposals	3:00 p.m. Central Time on 08/25/2026
Evaluation of Proposals	08/25/2026
ITS Board Presentation	10/16/2026
Begin Contract Negotiations	October 2026
Proposed Project Implementation Start-up	TBD
Project Go-Live Deadline	TBD

2. Mandatory Provisions in Technical Requirements for this RFP

- 2.1 Certain items in the technical specifications of this RFP are **MANDATORY**. Vendors are specifically disallowed from taking exception to these mandatory requirements, and proposals that do not meet a mandatory requirement is subject to immediate disqualification.
- 2.2 Mandatory requirements are those classified as **MANDATORY** in this Section of the RFP and/or Attachment A. Meeting a mandatory requirement means the Vendor has provided a detailed response that demonstrates that the Vendor meets the qualifications and experience required and/or the requested functionality exists in the base solution at time of proposal submission.

3. Statement of Understanding

- 3.1 Vendors may request additional information or clarifications to this RFP using the following procedure:
 - 3.1.1 Vendors must clearly identify the specified paragraph(s) in the RFP that is in question. The following table should be used to format Vendor questions.

Question	RFP Item	RFP Page	Vendor Question
1)			
2)			
3)			
4)			
5)			

3.1.2 Vendor must deliver a written document to Roshunda Ware at Roshunda.Ware@its.ms.gov by Thursday, June 11, 2026 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 Roshunda Ware to verify the receipt of their document. Documents received after the deadline will be rejected.

3.2 All questions will be compiled and answered, and a written document containing all questions submitted and corresponding answers will be posted on the ITS website by close of business on Friday, June 26, 2026.

3.3 For 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 the RFP No. 4631 and the link is located directly beneath the link to RFP No. 4631.

4. Scoring Methodology

4.1 An Evaluation Team composed of MSDH 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.

4.1.1 Each category included in the scoring mechanism is assigned a weight between one and 100.

4.1.2 The sum of all categories equals 100 possible points.

4.1.3 For the evaluation of this RFP, the Evaluation Team will use the following categories and possible points:

Category	Possible Points
Non-Cost Categories:	
Corporate Background and Experience (J. Vendor Qualifications)	10
Project Staffing (K. Vendor Implementation Team/L. Managers and Key Staff)	15
Vendor Tasks/Requirements Responses (All remaining sections in Attachment A)	45
Total Non-Cost Points	70
Cost Categories:	
Lifecycle Cost	30
Total Cost Points	30
Maximum Possible Points	100

4.2 The evaluation will be conducted as follows:

4.2.1 Validation – 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 including, but not limited to; content, organization/format, Vendor experience, mandatory requirements (if applicable), bond requirement (if applicable), timely delivery, and must be considered in competitive range (as detailing in the ITS Procurement Handbook). No evaluation points will be awarded in this stage. Failure to submit a complete proposal may result in rejection of the proposal.

4.2.2 Non-cost Evaluation (all requirements excluding cost)

4.2.2.1 Non-cost categories and possible point values are as follows:

Non-Cost Categories	Possible Points
Corporate Background and Experience (J. Vendor Qualifications)	10
Project Staffing (K. Vendor Implementation Team/L. Managers and Key Staff)	15
Vendor Tasks/Requirements Responses (All remaining sections in Attachment A)	45
Maximum Possible Points	70

4.2.2.2 ITS scores the non-cost categories on a 10-point scale. Proposals receiving fewer than 80% of the total points allocated for the non-cost categories will be eliminated from further consideration.

4.2.3 Cost Evaluation

4.2.3.1 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

4.2.3.2 Cost categories and maximum point values are as follows:

Cost Category	Possible Points
Lifecycle Cost	30
Maximum Possible Points	30

4.2.4 Selection of the successful Vendor

4.2.4.1 Demonstrations and Interviews

4.2.4.1.1 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.

4.2.4.1.2 If requested, Vendors must be prepared to make demonstrations (on-site or virtual, at the sole discretion of the State) of system functionality and/or proposal clarifications to the evaluation team and its affiliates within seven calendar days of notification. Each presentation must be made by the project manager being proposed by the Vendor to oversee implementation of this project.

4.2.4.1.3 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 onsite visit.

4.2.4.1.4 Although demonstrations may be requested, the demonstration will not be allowed in lieu of a written proposal.

4.3 Final Quantitative Evaluation - Following any requested clarifications, BAFOs, 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 must 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. 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.

Costs – Cost Per Case Month (CPCM)				
	Estimated Active Cases	CPCM	Monthly CPCM	Annual CPCM
Example Year	41,000	\$0.51	20,910	250,920
Year 1	42,000			
Year 2	43,050			
Year 3	44,126			
Year 4	45,229			
Year 5	46,359			
Total Costs for CPCM				

Costs – Equipment						
Equipment	Brand/ Model	Estimated Quantity	Purchase Price Per Unit	Lease Price Per Unit	Monthly Lease Cost	Annual Lease Cost
Card reader (Swipe) Device		220				
Stand-Beside POS device with scanner and integrated PIN pad		15				
Stand beside Device with a scanner and a hand-held PIN pad		15				
Total Costs for Devices						

NOTES: MSDH-WIC reserves the right to either purchase or lease the equipment above. The unit cost will govern but state reserves the right to increase/decrease quantities to purchase what is actually needed.

Costs – Implementation Deliverables	
Deliverable	Total Fixed Cost
DRAFT Project Management Plan	
FINAL Project Management Plan	
DRAFT Project Schedule and Work Plan	
FINAL Project Schedule and Work Plan	
Status Reports	
Communication and Coordination Plan	
Kick-Off Meeting	
Joint Application Design (JAD) Sessions	
Card Design	
IVR and Help Desk Flow Design	
Cardholder Web Portal Design	
Vendor Web Portal Design	
Integrated Vendor Interface Specifications	
UAT Testing Plan	
Performance Testing Plan	
Operations and Interface Procedures Manual	
Disaster Recovery Plan	
Security Plan	
Training Plan and Training Materials	
Reports Manual	
Vendor Enablement and Certification Plan	
Stand- Beside Vendor Contracts	
Third Party Processor (TPP) Contracts	
Settlement and Reconciliation Manual	
Administrative Functions Manual	
Customer Service Manual	
System Design Documents	
Business Continuation and Contingency Plan	
Transition- In Plan	
End-of-Contract Transition Plan	
Performance Bond:	
Total Costs for Deliverables:	

Costs – Change Order (fully loaded)		
Item	Description of costs	Hourly Rate
Change Order (remote)		
Change Order (on-site)		

Grand Total	
Total Costs for CPCM	
Total Costs for Devices	
Total Costs for Deliverables	
Grand Total	

Pricing Table for Optional Items

*Note: This table is provided for informational purposes only. Any items or costs listed on this table will not be included in the Grand Total and will not be evaluated. Vendors may list any optional items and must indicate whether each cost is one-time or annual.

Description	Unit	Cost

SECTION IX REFERENCES

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

1. References

- 1.1 The Vendor must provide at least 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.
- 1.2 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:
 - 1.2.1 Failure to provide reference information in the manner described;
 - 1.2.2 Inability of the State to substantiate minimum experience or other requirements from the references provided;
 - 1.2.3 Non-responsiveness of references to the State's attempts to contact them; or
 - 1.2.4 Unfavorable references that raise serious concerns about material risks to the State in contracting with the Vendor for the proposed products or services.
- 1.3 References should be based on the following profiles and be able to substantiate the following information from both management and technical viewpoints:
 - 1.3.1 The reference installation must be for a project similar in scope and size to the project for which this RFP is issued;
 - 1.3.2 The reference installation must have been operational for at least six (6) months.
- 1.4 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.
- 1.5 Unless otherwise indicated in the Scoring Methodology in Section VII, reference information available to the State will be used as follows:
 - 1.5.1 As documentation supporting mandatory experience requirements for companies, products, and/or individuals, as required in this RFP;

- 1.5.2 To confirm the capabilities and quality of a Vendor, product, or individual for the proposal deemed lowest and best, prior to finalizing the award.
- 1.6 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.
- 1.7 The submitted references must be from separate clients for whom the Vendor has completed similar projects within the last five (5) years.

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) 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

COMPLETE THREE (3) REFERENCE FORMS.

Contact Name: _____
Company Name: _____
Address: _____
Phone Number: _____
Email: _____
Project Start Date: _____
Project End Date: _____

Description of product/services/project, including start and end dates:

SUBCONTRACTOR REFERENCE FORM

COMPLETE THREE (3) REFERENCE FORMS FOR EACH SUBCONTRACTOR.

Contact Name: _____
Company Name: _____
Address: _____
Phone Number: _____
Email: _____
Project Start Date: _____
Project End Date: _____

Description of product/services/project, including start and end dates:

**EXHIBIT A
 STANDARD CONTRACT**

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 46796
 ELECTRONIC BENEFITS TRANSFER AGREEMENT
 BETWEEN
 VENDOR
 AND
 MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES
 AS CONTRACTING AGENT FOR THE
 MISSISSIPPI STATE DEPARTMENT OF HEALTH**

This Electronic Benefits Transfer ("EBT") Agreement (hereinafter referred to as "Agreement") is entered into by and between VENDOR, a STATE OF INCORPORATION corporation having its principal place of business at VENDOR ADDRESS (hereinafter referred to as "Contractor"), 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 State Department of Health located at 570 East Woodrow Wilson, Jackson, Mississippi 39216 (hereinafter referred to as "Customer" and/or "MSDH"). ITS and MSDH are sometimes collectively referred to herein as "State". ITS, Customer, and Contractor are sometimes collectively referred to herein as "Parties".

WHEREAS, ITS, on behalf of MSDH and pursuant to Request for Proposals ("RFP") No. 4631 requested proposals for the acquisition of an Electronic Benefit Transfer ("EBT") system for the delivery of public assistance benefits and services; and

WHEREAS, Contractor was the successful proposer in an open, fair and competitive procurement process to provide the services described herein;

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

ARTICLE 1 PERIOD OF PERFORMANCE

1.1 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 for a period of five (5) years after successful implementation and acceptance by MSDH (hereinafter referred to as "Initial Term"). At the end of the Initial Term, this Agreement may, upon the written agreement of the parties, be renewed for an additional term(s), the length of which will be agreed upon by the parties. Sixty (60) days prior to the expiration of the Initial Term or any renewal term of this Agreement, Contractor shall notify Customer and ITS of the impending

expiration and Customer shall have thirty (30) days in which to notify Contractor of its intention to either renew or permit the Agreement to expire.

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

ARTICLE 2 SCOPE OF SERVICES AND ACCEPTANCE OF DELIVERABLES

2.1 Contractor shall provide all deliverables, equipment and software, and perform all services as specified in this Agreement and in RFP No. 4631 and Contractor's Proposal, as accepted by Customer, in response thereto. Also, for purposes of this Agreement, the Contractor shall be responsible for the acts and omissions of any subcontractors engaged for this project and for ensuring that all deliverables, equipment, software and services that are required to be provided under this Agreement shall be provided in accordance with the terms of this Agreement. Contractor shall also agree to provide to the Customer any technical services or enhancements related to their program or system that have been implemented for commercial customers or other governmental entities at no charge should the Customer decide to acquire the services.

2.2 Contractor acknowledges that Customer will be actively involved in the day-to-day operations of the project. The Contractor agrees to (a) obtain Customer's approval of all tasks and the time schedule for completion of said tasks prior to commencing performance, if not already contained in the approved project work plan; (b) notify Customer's technical and project managers of all meetings related to the project so as to allow their participation in said meetings, and (c) meet with Customer on a regular basis and as otherwise requested by Customer to discuss the status of the project. The Contractor agrees that all activities for the Transition-in/Conversion Phase as referenced in the mutually agreed upon project work plan shall be completed within 9 months after an executed agreement.

2.3 Customer shall have fifteen (15) working days to review each deliverable and to either notify Contractor of acceptance or to provide Contractor a detailed list of deficiencies that must be remedied prior to payment being made. In the event the Customer notifies the Contractor of deficiencies, the Contractor shall correct such deficiencies within fifteen (15) calendar days unless the Customer consents in writing to a longer period of time.

2.4 In the event the Contractor fails to correct any deficiencies in the deliverable within the fifteen (15) day period, or such longer period as the parties may mutually agree upon, the Customer, at its option, may do any one or more of the following: (a) extend the period of time for the Contractor to make corrections; (b) directly or by use of a third party contractor make the necessary corrections or otherwise furnish the deliverable and charge the Contractor an amount equal to the costs incurred by Customer in making such correction or furnishing the deliverable itself or through a third party contractor; or (c) terminate this Agreement in whole or in part for cause, as of a date specified in a written notice of termination from the Customer to the Contractor with no obligation to provide the Contractor any further opportunity to cure. The remedies set forth herein are in addition to and not in lieu of any other legal and equitable remedies available to the Customer.

ARTICLE 3 CONSIDERATION AND METHOD OF PAYMENT

3.1 The total compensation to be paid to the Contractor by Customer for all products, services, deliverables, travel, performances and expenses under this Agreement shall not exceed the specified sum of \$**TOTAL COMPENSATION** for the Initial Term. The parties understand and

agree that all such costs are included in the cost per case month ("CPCM") fees set forth in the attached Exhibit A, which is incorporated herein by reference, and that Contractor will derive payment solely from the CPCM fees, equipment, and deliverables specified in Exhibit A. It is understood and agreed that both the CPCM fees, the implementation deliverables, and equipment costs specified in Exhibit A are effective for a period of five (5) years from the Initial Term.

3.2 Contractor shall submit invoices with the appropriate documentation monthly to Customer for any month in which services are rendered and/or equipment is being leased, if applicable. Contractor shall submit invoices and supporting documentation electronically to Customer during the term of this Agreement using the processes and procedures identified by the State. Customer 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 Customer within forty-five (45) days of receipt of the invoice. Contractor understands and agrees that Customer 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 Contractor's choice. No payment, including final payment, shall be construed as acceptance of defective or incomplete work, and the Contractor shall remain responsible and liable for full performance.

3.3 If payment of undisputed amounts is not made to Contractor within forty-five (45) days of Customer's receipt of the invoice, Customer shall be liable to Contractor for interest at a rate of one and one-half percent (1%) per month (or such lesser rate as may be the maximum permissible rate under the law) on the unpaid balance from the expiration of such forty-five (45) day period until such time as payment is made. This provision for late payments shall apply only to undisputed amounts for which payment has been authorized.

3.4 Acceptance by the Contractor of the last payment from the Customer shall operate as a release of all claims against the State by the Contractor and any subcontractors or other persons supplying labor or materials used in the performance of the work under this Agreement.

ARTICLE 4 WARRANTIES

4.1 The Contractor 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, the Contractor shall, for a period of ninety (90) days from performance of the service, perform the services again, at no cost to Customer, or if Contractor is unable to perform the services as warranted, Contractor shall reimburse Customer the fees paid to Contractor for the unsatisfactory services.

4.2 Contractor 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 Contractor to the consequences set forth under Miss. Code Ann §71-11-3.

4.3 Contractor represents and warrants that it has title to, or the right to allow the Customer to use, any equipment, software, services and information being provided and that the Customer

will have use of those items without suit, trouble or hindrance so long as the Customer is performing its obligations.

4.4 The Contractor represents and warrants that it has not employed any company or person other than a bona fide employee working solely for the Contractor or for a company regularly employed as its marketing agent, to solicit or secure this Agreement. The Contractor also warrants that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor or for a company regularly employed by the Contractor as its marketing agency, any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award of this Agreement. For breach or violation of this warranty, the Customer shall have the right to cancel this Agreement without liability, or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fees.

4.5 Contractor represents and warrants that no official or employee of Customer 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 Contractor 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 Contractor also warrants that in the performance of this Agreement no person having any such known interests shall be employed.

4.6 The Contractor 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 Contractor, terminate the right of the Contractor to proceed under this Agreement if it is found, after notice and hearing by the Executive Directors or the duly authorized representatives of ITS and Customer, that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor 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 Executive Directors of ITS and Customer make 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 Contractor as it would pursue in the event of a breach of contract by the Contractor, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

4.7 The Contractor further represents and warrants that it will: (a) use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the services hereunder; (b) maintain all equipment and software for which it has maintenance responsibilities in good operating condition and will undertake all repairs and preventive maintenance in accordance with applicable manufacturer's recommendations; (c) use its best efforts to use efficiently any resources or services necessary to provide the services that are separately chargeable to Customer, and (d) use its best efforts to perform the services in the most cost effective manner consistent with the required level of quality and performance.

4.8 Contractor represents and warrants that as federal regulations are changed, the EBT system will be modified by Contractor to meet the new requirements, with said modifications being done at no cost to Customer.

ARTICLE 5 EMPLOYMENT STATUS

5.1 Contractor 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.

5.2 Contractor 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 Customer.

5.3 Any person assigned by Contractor to perform the services hereunder shall be the employee of Contractor, who shall have the sole right to hire and discharge its employee. Customer may, however, direct Contractor to replace any of its employees providing services pursuant to this Agreement.

5.4 Contractor 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 Contractor nor employees of Contractor are entitled to state retirement or leave benefits.

ARTICLE 6 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS

Contractor will be responsible for the behavior of all its employees and subcontractors while on the premises of any Customer 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 Contractor employees and subcontractors who will be working at such locations shall be covered by Contractor's comprehensive general liability insurance policy.

ARTICLE 7 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 8 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS

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

8.2 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.

8.3 Contractor must obtain the written approval of Customer before subcontracting any portion of this Agreement. No such approval by Customer of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of Customer 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 Customer may deem necessary.

8.4 Contractor represents and warrants that any subcontract agreement Contractor 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 Customer, and that the subcontractor acknowledges that no privity of contract exists between the Customer and the subcontractor and that the Contractor is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with the Contractor. The Contractor 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 Contractor's failure to pay any and all amounts due by Contractor to any subcontractor, materialman, laborer or the like.

8.5 All subcontractors shall be bound by any negotiation, arbitration, appeal, adjudication or settlement of any dispute between the Contractor and the Customer, where such dispute affects the subcontract.

ARTICLE 9 AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of Customer 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 Customer for the payments or performance due under this Agreement, Customer shall have the right to immediately terminate this Agreement, without damage, penalty, cost or expense to Customer of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Customer shall have the sole right to determine whether funds are available for the payments or performances due under this Agreement.

ARTICLE 10 TERMINATION

10.1 Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be terminated, in whole or in part, as follows: (a) due to unavailability of funds as set forth in the "Availability of Funds" article herein; (b) upon the mutual, written agreement of the parties; (c) 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) days' written notice unless the breach is cured within said thirty (30) day period; (d) Customer may terminate the Agreement in whole or in part without the assessment of any penalties upon thirty (30) days' written notice to Contractor if Contractor becomes the subject of bankruptcy, reorganization, liquidation or receivership proceedings, whether voluntary or involuntary, or (e) Customer may terminate the Agreement for any reason without the assessment of any penalties after giving thirty (30) days' written notice

specifying the effective date thereof to Contractor. The provisions of this Article do not limit either party's right to pursue any other remedy available at law or in equity.

10.2 Default by Contractor: If the Contractor fails to fulfill in a timely manner its obligations under this Agreement, or if the Contractor violates any of the material terms of this Agreement, the Contractor shall be deemed in default and the State shall have the right to terminate this Agreement, in whole or in part and without the assessment of any penalties for cause. The Contractor agrees to forgo any payments in excess of fair compensation for work already completed and accepted by the State. The Contractor shall repay to the State any funds expended in violation of such conditions.

10.3 Rights Upon Termination: In the event the Customer terminates this Agreement in whole or in part, the Customer may procure, upon such terms and in such manner, as the Customer may deem appropriate, services similar to those so terminated. The Contractor shall be liable to the Customer for any excess costs for such similar services, provided that the Contractor shall continue the performance of this Agreement to the extent not terminated under the provisions of this article. The Customer shall have the right to assume, at its option, any and all subcontracts for services and materials provided exclusively under this agreement with the Customer and may further pursue completion of the work as set forth in this Agreement by replacement contract or as the Customer may in its sole judgment deem expedient. Further, the Customer may withhold from amounts otherwise due the Contractor for such completed work, any sum as the State determines necessary to protect the State against loss. The rights and remedies provided for in this article shall not be exclusive and are in addition to any other rights and remedies that may be available to it in law or in equity.

10.4 In the event Customer terminates this Agreement, Contractor shall be paid for satisfactory work completed by Contractor and accepted by Customer prior to the termination. Such compensation shall be based upon the amounts set forth in the Article herein on "Consideration and Method of Payment", but in no case shall said compensation exceed the total fixed price of this Agreement, and in no event, shall the Contractor be paid for loss of anticipated profits.

10.5 Notwithstanding the above, Contractor shall not be relieved of liability to Customer for damages sustained by Customer by virtue of any breach of this Agreement by Contractor, and Customer may withhold any payments to Contractor for the purpose of set off until such time as the exact amount of damages due Customer from Contractor are determined.

10.6 Termination Assistance: If this Agreement is terminated for any reason, the Contractor shall provide for up to one (1) year after the expiration or termination of the Agreement, all reasonable termination assistance requested by the Customer to allow the services provided by the Contractor to continue without interruption or adverse effect and to facilitate the orderly transfer of such services to the Customer or its designee. Such termination assistance will be as further detailed in RFP No. 4631. If the Customer terminates this Agreement for cause, then the Customer will not be required to pay the Contractor for providing termination assistance.

ARTICLE 11 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. Contractor 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 Contractor. Further,

nothing in this Agreement shall affect any statutory rights either party may have that cannot be waived or limited by contract.

ARTICLE 12 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 the State, 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 the State.

ARTICLE 13 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 14 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 15 HOLD HARMLESS

To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect and exonerate Customer, 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 Contractor and/or its partners, principals, agents, employees or subcontractors in the performance of or failure to perform this Agreement.

ARTICLE 16 THIRD PARTY ACTION NOTIFICATION

Contractor shall notify Customer in writing within five (5) business days of Contractor's 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 Contractor or Customer by any entity that may result in litigation related in any way to this Agreement and/or which may affect the Contractor's performance under this Agreement. Failure of the Contractor to provide such written notice to Customer shall be considered a material breach of this Agreement and the Customer 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 17 AUTHORITY TO CONTRACT

Contractor 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 18 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: Craig P. Orgeron, Ph.D., Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. Licensee's address for notice is: Dr. Daniel Edney, M.D., State Health Officer, Mississippi State Department of Health, 570 East Woodrow Wilson, Jackson, Mississippi 39216. 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 19 RECORD RETENTION AND ACCESS TO RECORDS

Contractor 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 Customer, ITS, any state or federal agency authorized to audit Customer, and/or any of their duly authorized representatives, shall, during normal business hours, have unimpeded, prompt access to this Agreement and to any of the Contractor'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 Contractor's office as applicable where such records are kept during normal business hours. All records relating to this Agreement shall be retained by the Contractor for four (4) 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 four (4) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the four (4) year period, the records shall be retained until resolution.

ARTICLE 20 INSURANCE

20.1 Contractor and all subcontractors shall maintain, at their own expense, the following insurance coverages in the amounts specified, insuring the Contractor, its employees, agents, designees, subcontractors, and any indemnities as required herein:

- A.** Professional liability insurance in an amount not less than five million dollars (\$5,000,000.00) per claim, including personal injury, bodily injury (including both disease or death), property damages, and blanket contractual liability; and
- B.** Comprehensive general liability insurance in an amount not less than two million dollars (\$2,000,000.00) per occurrence, including coverage for blanket contractual liability, broad form property damage, personal injury and bodily injury (including illness, disease, and death); and
- C.** Comprehensive automobile liability insurance, including hired and non-owned vehicles, in an amount not less than one million dollars (\$1,000,000.00), covering bodily injury and property damage; and
- D.** Employee fidelity bond insurance in an amount not less than three hundred thousand dollars (\$300,000.00); and
- E.** Workers' compensation insurance in the amounts required pursuant to the laws of the State of Mississippi.

20.2 DURATION: All insurance policies required herein shall be issued by an insurance company or companies registered/qualified and licensed to do business in the State of Mississippi

and acceptable to the State and shall be written on an occurrence basis. The Contractor/subcontractor shall provide coverage to the State during the term of this Agreement. The Contractor/subcontractor shall name ITS, the Customer, and the State of Mississippi as additional insured on all insurance policies and coverages, excepting only the professional liability coverage, and all such policies shall include the following endorsement: "It is hereby agreed and understood that ITS, the Customer, and the State of Mississippi are named as additional insured and that the coverage afforded to ITS, the Customer, and the State of Mississippi under this policy shall be primary insurance. If ITS, the Customer, and the State of Mississippi have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the Insurer's liability under this policy shall not be reduced by the existence of such other insurance."

20.3 NO CANCELLATION: No policy of insurance may be canceled, modified, or reduced during the course of this Agreement.

20.4 DEDUCTIBLES: Contractor/subcontractor shall be liable for payment of all deductibles and for any inadequacy or absence of coverage, and the Contractor/subcontractor shall have no claim or other recourse against the State for any costs or loss attributable to such deductibles or to coverage limitations, exclusions, or unavailability, all of which shall be borne solely by the Contractor/subcontractor.

20.5 CERTIFICATE OF INSURANCE: At the time of the execution of this Agreement, and at the beginning of each renewal period, the Contractor/subcontractor shall deliver to the State a Certificate or Certificates of Insurance certifying the types and the amounts of coverage, certifying that said insurance is in force before the Contractor/subcontractor starts work, certifying that said insurance applies to the Project and to all activities and liability of the Contractor/subcontractor pursuant to this Agreement, and certifying that ITS, the Customer, and the State of Mississippi are named as additional insureds on the Contractor/subcontractor's policies of insurance by endorsement as required herein. The Contractor/subcontractor shall simultaneously deliver to ITS, the Customer, and the State of Mississippi one duplicate original of each entire insurance policy.

20.6 NON-DELEGABLE: The insurance and indemnity obligations of this Agreement are non-delegable. The Contractor shall not subcontract any part of this Agreement without retaining absolute responsibility for requiring the same insurance coverage from its subcontractors.

20.7 PAYMENT OF PREMIUMS: The Contractor/subcontractor shall be responsible for payment of all premiums for insurance required by this Agreement, but the Contractor's/subcontractor's obligations shall not be limited to the purchase of insurance. The Contractor's indemnity obligations under this Agreement shall not be restricted to amounts available under insurance, whether actually obtained or which should have been obtained, but shall extend to the fullest extent, as set forth in Article 15 of this Agreement.

20.8 The Contractor's and any subcontractor's failure to maintain complete insurance shall be a material breach of this Agreement authorizing the State, at the State's sole election, either to terminate this Agreement for cause or to provide full insurance coverage at the Contractor's sole expense; however, in neither case shall the Contractor's liability be lessened.

20.9 In the event the Contractor or any subcontractors fail to obtain and maintain insurance required by this Agreement, the State shall be entitled, at its sole discretion and without waiving

any rights hereunder, to purchase said insurance and deduct the premium costs from any amounts owed the Contractor; however, the State shall have no obligation to purchase said insurance, and failure to do so shall not constitute a waiver of the Contractor's and/or subcontractor's obligations with respect to insurance as set forth in this Agreement.

20.10 The State shall not be required to purchase any insurance under this Agreement.

ARTICLE 21 DISPUTES

21.1 Any claim, counterclaim, or dispute between the Customer and Contractor arising out of or relating to this Agreement shall be resolved as set forth herein. Any claim not submitted by the Contractor within ten (10) calendar days from the occurrence of the event which gives rise to the dispute, shall be deemed waived.

21.2 Should disputes arise with respect to this Agreement, Contractor and Customer agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes. Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Agreement. Should the Contractor fail to continue without delay to perform its responsibilities under this Agreement in the accomplishment of all work, any additional costs incurred by the Contractor or Customer as a result of such failure to proceed shall be borne by the Contractor and the Contractor shall make no claim against Customer for such costs.

21.3 If the Contractor and Customer cannot resolve a dispute within ten (10) calendar days following written notification by either party of the existence of said dispute, then the following procedure shall apply:

- A.** The parties agree to resolve such matters through submission of their dispute to the Executive Director of ITS, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the parties within ten (10) business days after presentation of such dispute for his/her decision.
- B.** Customer may withhold payments on disputed items pending resolution of the dispute. The withholding of such payments shall not constitute cause for termination or suspension of the contract by the Contractor.
- C.** Disagreement with the ITS Executive Director's decision by either party shall not constitute a breach under the terms of the contract. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.

ARTICLE 22 COMPLIANCE WITH LAWS

22.1 Contractor shall comply with, and all activities under this Agreement shall be subject to, all Customer policies and procedures, 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, Contractor 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.

22.2 It is understood and agreed that Contractor shall comply with the following federal laws:

- a) Drug-free Workplace regulations, Section 7 CFR 3021;
- b) Clean Air, Clean Water, and EPA regulations, Section 7 CFR 277.14(j)(8);

- c) Electronic Benefit Transfer Issuance System Approval Standards, Section 7 CFR 274.8;
- d) Energy Policy and Conservation Act (P.L. 94-163), as amended by the National Energy Conservation Policy Act (Public Law 95-619);
- e) Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and the
- f) Anti-Lobbying laws (45 CFR 93).

ARTICLE 23 CONFLICT OF INTEREST

Contractor shall notify the Customer of any potential conflict of interest resulting from the representation of or service to other customers. If such conflict cannot be resolved to the Customer's satisfaction, the Customer reserves the right to terminate this Agreement.

ARTICLE 24 SOVEREIGN IMMUNITY

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

ARTICLE 25 CONFIDENTIAL INFORMATION

25.1 Contractor shall treat all Customer and recipient 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 Customer. In the event that Contractor receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, Contractor shall promptly inform Customer and thereafter respond in conformity with such subpoena 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 Contractor 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 Contractor following any termination or completion of this Agreement.

25.2 Neither the State nor the Contractor shall be obligated to treat as confidential and proprietary any information disclosed by the other party ("the Disclosing Party") which: (a) is or becomes known to the public without fault or breach of the party receiving confidential information of the Disclosing Party ("the Recipient"); (b) is furnished by the Disclosing Party to third parties without restriction on subsequent disclosure; (c) the Recipient obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation; (d) is already in the Recipient's possession without an obligation of confidentiality, or (e) is independently developed by Recipient without reliance on the confidential information.

25.3 With the exception of any attached exhibits which are labeled as "confidential", the parties understand and agree that this Agreement, including any Amendments or Change Orders thereto, does not constitute confidential information, and may be reproduced and distributed by the State without notification to Contractor. ITS will provide third party notice to Contractor of any requests received by ITS for documents marked confidential in Contractor's response to the RFP so as to allow Contractor the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

25.4 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 26 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 Contractor on the basis of draftsmanship or preparation hereof.

ARTICLE 27 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS

All software developed specifically under this Agreement and all data, electronic or otherwise, developed or collected by Contractor specifically under this Agreement and all documents, notes, programs, data bases (and all applications thereof), files, reports, studies, and/or other material collected and prepared by Contractor in connection with this Agreement, whether completed or in progress, shall be the property of Customer upon completion of this Agreement or upon termination of this Agreement. Customer hereby reserves all rights to the databases and all applications thereof developed specifically under this Agreement and to any and all information and/or materials developed specifically under this Agreement. Contractor is prohibited from use of the above described information and/or materials without the express written approval of Customer. It is understood and agreed that the United States Department of Agriculture ("USDA") Food and Nutrition Service ("FNS") shall be and hereby is granted a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications, and documentation developed specifically under this Agreement pursuant to 7 CFR 277.18 (1)(ii).

ARTICLE 28 NON-SOLICITATION OF EMPLOYEES

Contractor agrees not to employ or to solicit for employment, directly or indirectly, any of the Customer's employees until at least one (1) year after the expiration/termination of this Agreement unless mutually agreed to the contrary in writing by the Customer and the Contractor 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 29 ENTIRE AGREEMENT

29.1 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. The RFP No. 4631 and Contractor's Proposal in response thereto are hereby incorporated into and made a part of this Contract.

29.2 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. 4631 and written addenda; and
- D.** Contractor's Proposal, as accepted by Customer, in response to RFP No. 4631.

29.3 The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by the Contractor. 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. Contractor's Proposal").

ARTICLE 30 STATE PROPERTY AND NEWS RELEASES

30.1 Contractor shall be responsible for the proper custody of any Customer-owned property furnished for Contractor's use in connection with work performed pursuant to this Agreement. Contractor shall reimburse the Customer for any loss or damage, normal wear and tear excepted.

30.2 News releases pertaining to this project will not be made without prior written approval from the Customer.

ARTICLE 31 SURVIVAL

Articles 4, 11, 15, 19, 24, 25, 27, 28, 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 32 DEBARMENT AND SUSPENSION CERTIFICATION

Contractor 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/or (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 33 SPECIAL TERMS AND CONDITIONS

Exhibits C and D are hereby attached and incorporated herein.

ARTICLE 34 COMPLIANCE WITH ENTERPRISE SECURITY POLICY

As applicable, Contractor and Customer understand and agree that all products and services provided by Contractor under this Agreement must allow Customer to be and remain in compliance with the State of Mississippi's Enterprise Policies and Standards, copies of which can be found on the ITS website. Any required contract terms and conditions of these policies are herein expressly incorporated by reference. The State reserves the right to update existing policy and/or introduce a new policy during the term of the Agreement. The Parties agree to work in good faith to resolve any compliance gaps identified with any new or revised policies applicable after the execution of this Agreement. If, at any time during the term of the Agreement, the products and/or services provided under this Agreement do not allow Customer to be and remain

in compliance with the State of Mississippi's Enterprise Policies and Standards (new, revised, and/or existing), the State shall have the right to terminate the Agreement without assessment of any penalties or fees, and Contractor shall be paid for all products and/or services rendered prior to the date of termination, and Contractor shall refund any and all applicable unexpended prorated fees previously paid by Customer.

ARTICLE 35 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 Customer's or Contractor'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 Customer's funding source.

ARTICLE 36 FORCE MAJEURE

36.1 Neither party will be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, acts of terrorism, rebellions or revolutions in any country which affect the provisions of this Agreement; or any other cause beyond the reasonable control of such party; provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligations so affected for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the force majeure occurrence, and also of its abatement or cessation. If any of the above-enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than three (3) consecutive days, then at the State's option:

- a) The State may procure such services from an alternate source, and the Contractor will be liable for payment for such services for so long as the delay in performance shall continue;
- b) The State may terminate any portion of this Agreement so affected and the charges payable thereunder shall be equitably adjusted to reflect those terminated services; or
- c) The Agreement will terminate without liability of the State to the Contractor as of a date specified by the State in a written notice of termination to the Contractor.

36.2 The Contractor shall not have the right to any additional payments from the State as a result of any force majeure occurrence or to payments for services not rendered as a result of the force majeure condition. Defaults or delays in performance by the Contractor which are caused by acts or omissions of its subcontractors will not relieve the Contractor of its obligations under this Agreement except to the extent that a subcontractor is itself subject to a force majeure condition described above and the Contractor cannot reasonably circumvent the effect of the

subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

ARTICLE 37 PERSONNEL ASSIGNMENT GUARANTEE

37.1 Contractor guarantees that the key personnel assigned to this project will remain a part of the project through the completion of EBT system implementation as long as the key personnel are employed by the Contractor and are not replaced by Contractor pursuant to the third paragraph of the Article herein titled "Employment Status". Contractor further agrees that the assigned key personnel will function in the capacity for which their services were acquired throughout the life of the Agreement, and any failure by Contractor to so provide these persons shall be grounds for the State to terminate this Agreement for cause in accordance with Article 10 herein. Contractor agrees to pay the Customer \$100,000.00 for each occurrence of Contractor removing any of the assigned key personnel from the project prior to the completion of statewide rollout for reasons other than departure from Contractor's employment or replacement by Contractor pursuant to the third paragraph of the Article herein titled "Employment Status". Subject to the State's written approval, the Contractor may substitute qualified persons in the event of the separation of the incumbents therein from employment with Contractor 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 Customer within thirty (30) calendar days or within such other mutually agreed upon period of time, or the Customer 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 Customer. The Contractor shall not permanently divert any staff member from meeting work schedules developed and approved under this Agreement unless approved in writing by the Customer. In the event of Contractor personnel loss or redirection, the services performed by the Contractor shall be uninterrupted and the Contractor shall report in required status reports its efforts and progress in finding replacements and the effect of the absence of those personnel.

37.2 The Customer shall have the right to approve the assignment and replacement by the Contractor of key personnel assigned to the development, implementation and operational phase of the Mississippi EBT project or to provide on-site Contractor representation for the project, including, without limitation, the overall project manager, individuals named or described in a schedule to the Agreement, and individuals assigned significant managerial responsibilities as mutually agreed by the parties. Before assigning an individual to any of these positions, the Contractor will notify the Customer of the proposed assignment, will introduce the individual to the appropriate Customer representatives, and will provide the Customer with a resume and any other information about the individual reasonably requested by the Customer. The Customer reserves the right to interview the individual before granting approval.

37.3 The Customer reserves the right to notify and require the Contractor to replace Contractor employees whom the Customer judges to be unqualified, unsuitable or otherwise objectionable, or whose continued use is deemed contrary to the best interests of the State. Before a written request is issued, authorized representatives of the Customer and the Contractor will discuss the circumstance. Upon receipt of a written request from an authorized representative of the Customer, the Contractor shall be required to proceed with the replacement. The replacement request will include the desired replacement date and the reason for the request. The Contractor shall use its best efforts to effect the replacement in a manner that does not degrade service quality. This provision is intended to give only the Customer the right to require that the Contractor discontinue using an employee in the performance of services for the Customer.

ARTICLE 38 LIQUIDATED DAMAGES & PERFORMANCE STANDARDS

It is agreed by the parties hereto that time is of the essence, and that in the event of a delay in the satisfactory completion and acceptance of the services provided for herein, damage shall be sustained by Customer. The liquidated damages and performance standards are set forth in Exhibit B, which is attached hereto and incorporated herein by reference. Customer may offset amounts due it as liquidated damages against any monies due Contractor under this Agreement. Customer will notify Contractor in writing of any claim for liquidated damages pursuant hereto on or before the date Customer deducts such sums from money payable to Contractor. Any liquidated damages assessed are in addition to and not in limitation of any other rights or remedies of Customer.

ARTICLE 39 PERFORMANCE BOND

As a condition precedent to the formation of this Agreement, the Contractor shall provide a performance bond as herein described. To secure the Contractor's performance, the Contractor shall procure, submit to the State with this executed Agreement, and maintain in effect at all times from execution of this Agreement through the Initial Term, a performance bond for the total amount (one hundred percent (100%)) of the Agreement. Thereafter, Contractor shall maintain a performance bond for one hundred percent (100%) of the total amount of the Agreement for any renewal term. The Customer may, at any time during the Agreement, review Contractor's performance and performance of the products/services delivered and determine whether or not the Contractor's performance bond may be reduced. 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 Customer is required to take action against the bond. The performance bond shall be procured at Contractor's expense and be payable to the Customer. Prior to approval of the performance bond, the State reserves the right to review the bond and require Contractor to substitute an acceptable bond in such form as the State may reasonably require. The premiums on such bond shall be paid by Contractor. The bond must specifically refer to this Agreement and shall bind the surety to all of the terms and conditions of this Agreement. The Customer may make a claim by contacting the bonding company issuing the performance bond and making a written claim for payment. The bonding company is required to respond to any written claim made by the Customer, or provide notice to the Customer it is disputing claims made by the Customer, or cure the Contractor's default within sixty (60) days of its receipt of written notification from the Customer. Further, if the Agreement is terminated due to Contractor's failure to comply with the terms thereof, Customer may claim against the performance bond.

ARTICLE 40 MOST FAVORED NATIONS

40.1 In the event that the Contractor's charges to any commercial customer, or to any other federal, state or local governmental entity, which purchases Comparable Levels or Types of Services (as those terms are defined herein) from the Contractor are more favorable to such other commercial customer or other governmental entity than the Contractor's charges to Customer under this Agreement, the Contractor shall immediately notify Customer of same and reduce its charges to the same level as the charges to such commercial customer or other governmental entity. Such reduction in charges shall be retroactive to the date on which the more favorable charges to such commercial customer or other governmental entity became effective. Any failure by the Contractor to comply with this Article shall be considered a material breach of the Agreement. The Contractor shall furnish the Customer annually, on or before February 15 of each year, with a certification of its compliance with this Article, which certification shall be signed by

an officer of the Contractor.

40.2 Types of Services include, but are not limited to, the following services:

- a) account set-up and maintenance;
- b) benefit/deposit maintenance;
- c) transaction processing (i.e., with retailers, merchants, gateways, Third Party Processors (TPPs) and other entities that provide transaction processing and support);
- d) card management (i.e., card generation, embossing, encoding and mailing);
- e) retailer management (i.e., retailer agreement and EBT Only POS Device management services); and
- f) help desk management ((i.e., Interactive Voice Response (IVR) system administration and Customer Service Representative (CSR) assistance for clients requesting new cards; filing disputes; retailers requesting information/assistance, manual voucher authorizations; etc.).

40.3 Comparable Levels include, but are not limited to, the following:

- (a) entities that have a comparable WIC Caseload volume (i.e., in the range of 80% - 120% of the Mississippi WIC Caseload volume); or
- (b) entities that have a comparable WIC transaction volume (i.e., in the range of 80% - 120% of the Mississippi WIC Transaction volume).

ARTICLE 41 CHANGE ORDER RATE AND PROCEDURE

41.1 It is understood that the Customer 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 Contractor except by the express written approval of the Customer. The Contractor shall be obligated to perform all changes requested by the Customer which have no price or schedule effect.

41.2 The Contractor 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 Customer nor the Contractor shall be obligated to execute such a change order; if no such change order is executed, the Contractor 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.

41.3 With respect to any change orders issued in accordance with this Article, the Contractor shall be compensated for work performed under a change order according to the hourly change-order rate specified in Contractor's Proposal in response to RFP No. 4631. If there is a service that is not defined in the change order rate, the Contractor and the Customer will negotiate the rate. The Contractor shall be compensated for work performed under a change order based on one of the following rates: (1) a "fully loaded" rate that includes the cost of all materials, travel expenses, per diem, and all other expenses and incidentals incurred by the Contractor in the performance of the change order; and (2) a non "fully loaded" rate that includes only the cost of all materials incurred by the Contractor in the performance of the change order (i.e., rate does not include travel related expenses when travel is not required). The Contractor shall invoice the Customer upon acceptance by the Customer of all work documented in the change order, and the Customer shall pay invoice amounts on the terms set forth in this Agreement.

41.4 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 Contractor to complete the work required by that change order. The project work plan will be revised as necessary.

41.5 The Contractor shall include in the progress reports delivered under this Agreement the status of work performed under all then current change orders.

41.6 In the event the Contractor and the Customer 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 Contractor shall submit to the Customer a revised version of the project work plan, clearly indicating all changes, at least five (5) working days prior to implementing any such changes.

41.7 The Customer shall promptly review all revised project work plans submitted under this Agreement and shall notify the Contractor 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 Contractor. If the Customer fails to respond in such time period or any extension thereof, the Customer shall be deemed to have approved the revised project work plan.

41.8 If the Customer requests or directs the Contractor to perform any service or function that is consistent with and similar to the services being provided by the Contractor under this Agreement, but which the Contractor reasonably and in good faith believes is not included within the scope of the Contractor's responsibilities and charges as set forth in this Agreement, then prior to performing such services or function, the Contractor shall promptly notify the Customer in writing that it considers the services or function to be an "Additional Service" for which the Contractor should receive additional compensation. If the Contractor does not so notify the Customer, the Contractor shall have no right to claim thereafter that it is entitled to additional compensation for performing such services or function. If the Contractor does so notify the Customer, then such service or function shall be governed by the change order request procedure as set forth in this Article 41.

ARTICLE 42 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>.

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

**State of Mississippi, Department of
Information Technology Services, on
behalf of the Mississippi State Department
of Health**

VENDOR

By: _____
Authorized Signature

By: _____
Authorized Signature

Printed Name: **Craig P. Orgeron, CPM, Ph.D.**

Printed Name: _____

Title: **Executive Director**

Title: _____

Date: _____

Date: _____

*RFP No.: 4631
Exhibit A: Standard Contract
Project No.: 46796
Revised: 04/22/2025*

EXHIBIT A

EXHIBIT B

eWIC Service Level Requirements

General Requirements
<p>Remedying Deficiencies (Attachment A, Item 361)</p> <p>Performance deficiencies in any performance standard, regardless of whether the deficiency was caused by the eWIC Processor or one of its subcontractors, shall be subject to remedy. If the deficiency is noted by the eWIC Processor, the eWIC Processor shall notify the State Agency.</p>
<p>Remedying Deficiencies (Attachment A, Item 362)</p> <p>The State Agency will notify the eWIC Processor of any deficiency in meeting one (1) or more of the defined performance standards. It may be necessary for the eWIC Processor to correct a deficiency immediately through a remedial change. For all other deficiencies, the State Agency will request a corrective action plan and will set a due date for submission of the plan.</p>
<p>Remedying Deficiencies (Attachment A, Item 363)</p> <p>If the State Agency receives the plan by the due date, it will work with the eWIC Processor to mutually agree on the final corrective action plan and a schedule to correct the deficiency. If the State Agency does not receive the plan by its due date, the eWIC Processor must provide justification for the delay. The State Agency will determine next steps with the eWIC Processor based on the justification.</p>
<p>Remedying Deficiencies (Attachment A, Item 364)</p> <p>The State Agency will notify the eWIC Processor when it is satisfied that the problem has been corrected. If the State Agency determines that the deficiency has not been corrected according to the schedule specified in the corrective action plan, the State Agency will determine next steps with the eWIC Processor.</p>

SLR #	Requirement	Deficiency	Invoicing	Penalty	Measurement Frequency	Data Used	Holdback Notes
1	<p>eWIC System Availability Total System Uptime (Attachment A, Item 365)</p> <ul style="list-style-type: none"> The eWIC central computer (host) shall be available 99.9% of scheduled uptime, 24 x 7. The eWIC system shall have an uptime of 99.9% of the time on an hourly basis, not including maintenance (scheduled downtime). 	System is not available 99.9% of scheduled uptime, 24 x 7 for more than 1 time within a 3-month period.	Via the Monthly invoice the month after which the deficiency is identified.	\$5,000 for each full percentage point below the tolerance level.	Reported Monthly, Assessed Quarterly	Metrics Reported on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.
2	<p>eWIC System Availability Scheduled Down Time (Attachment A, Item 366)</p> <ul style="list-style-type: none"> Scheduled downtime shall not exceed two (2) hours per month unless other timeframes are agreed upon with the State Agency. Scheduled downtime shall be scheduled during early morning hours only, i.e., during a time to be determined by the State Agency as part of project initiation. 	More than two (2) hours of planned downtime per month not approved for the State Agency more than 3 times within a 6 month period.	Via the Monthly invoice the month after which the deficiency is identified.	<ul style="list-style-type: none"> \$2,000 per occurrence for failure to notify the WIC Director and EBT Systems Director of any unscheduled downtime. Additional \$1,000 per hour exceeding 2 hours of unscheduled downtime in a calendar month. 	Reported Monthly, Assessed bi-annually.	Metrics related to Scheduled Down Time reported on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.
3	<p>eWIC System Availability System Availability (Attachment A, Item 367)</p> <ul style="list-style-type: none"> The eWIC system shall be available to accept account set-up messages/files 24 x 7. The eWIC system shall be available to accept benefit issuance messages/files 24 x 7. The eWIC system shall be available to card issuance messages/files 24 x 7. 	System is not available 99.9% of scheduled uptime, 24 X 7 for more than 1 time within a calendar month.	Via the Monthly invoice the month after which the deficiency is identified.	\$2,000 for each full percentage point below the tolerance level.	Assessed Monthly.	Metrics related to System Availability reported on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.

SLR #	Requirement	Deficiency	Invoicing	Penalty	Measurement Frequency	Data Used	Holdback Notes
4	<p>eWIC System Availability (Attachment A, Item 367. d.)</p> <p>The eWIC system shall post outbound files (see Attachment A, Section VIII, B. WIC Benefit Data Files) at a consistent time daily for the MIS to download and process.</p>	Daily outbound files are not posted for the MIS to download by the specified time daily.	Via the Monthly invoice the month after which the deficiency is identified.	\$2,000 for each occurrence above three (3) times within a calendar month.	Assessed Monthly.	Metrics related to availability of outbound files reported on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.
5	<p>eWIC System Performance (Attachment A, Item 368)</p> <p>The eWIC system shall process all message-based system interface messages from the MIS, on average, within two (2) seconds from the point of sending the message from the MIS.</p>	Messages are not processed within two (2) seconds on average 100% of the time.	Via the Monthly invoice the month after which the deficiency is identified.	\$2,000 for each full percentage point below the tolerance level.	Assessed Monthly.	Metrics related to eWIC System Performance reported on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.
6	<p>eWIC System Performance (Attachment A, Item 369)</p> <p>The eWIC system shall initiate a response to a request to transmit or retrieve a file within two (2) seconds from the time such request is received by the eWIC system, 99% of the time, on a monthly average basis. Scheduled downtime shall be excluded provided a minimum of two (2) weeks of notice is provided to all network participants prior to the scheduled outage.</p>	Responses to requests to transmit or retrieve a file are not within two (2) seconds 99% of the time on a monthly average.	Via the Monthly invoice the month after which the deficiency is identified.	\$2,000 for each full percentage point below the tolerance level.	Assessed Monthly.	Metrics related to eWIC System Performance reported on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.

SLR #	Requirement	Deficiency	Invoicing	Penalty	Measurement Frequency	Data Used	Holdback Notes
7	<p>eWIC System Performance (Attachment A, Item 370)</p> <p>The eWIC system shall initiate a response to a transaction request within two (2) seconds from the time such request is received by the eWIC system, 98% of the time on a monthly basis. This does not include data transmission time between the eWIC system and a TPP.</p> <p>Scheduled downtime shall be excluded provided a minimum of two (2) weeks of notice is provided to all network participants prior to the scheduled outage.</p>	Responses to transaction requests are not initiated within two (2) seconds 98% of the time on a monthly average.	Via the Monthly invoice the month after which the deficiency is identified.	\$2,000 for each full percentage point below the tolerance level.	Assessed Monthly.	Metrics related to eWIC System Performance reported on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.
8	<p>eWIC System Performance (Attachment A, Item 371)</p> <p>For direct connect Vendors, the eWIC system shall process a WIC transaction within five (5) seconds from the point of sending the transaction from the WIC Vendor.</p>	The time to process a transaction from a direct connect WIC Vendor is greater than five (5) seconds more than 99% of the time.	Via the Monthly invoice the month after which the deficiency is identified.	\$2,000 for each full percentage point below the tolerance level.	Assessed Monthly.	Metrics related to eWIC System Performance reported on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.
9	<p>Benefit Availability (Attachment A, Item 372)</p> <p>The eWIC system shall ensure benefits are available on availability date and time (12:00 AM) 100% of the time.</p>	Benefits are not available 100% of the time on the availability date and time.	Via the Monthly invoice the month after which the deficiency is identified.	\$2,000 for each full percentage point below the tolerance level.	Assessed Monthly.	Metrics related to benefit availability reported on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.
10	<p>Settlement and Transactions (Attachment A, Item 373)</p> <p>The eWIC system shall meet the timeframe for ACH settlement window 100% of time, measured on a monthly basis.</p>	The timeframe for ACH settlement is met less than 100% of the time on a monthly basis.	Via the Monthly invoice the month after which the deficiency is identified.	\$2,000 for each full percentage point below the tolerance level.	Assessed Monthly.	Metrics related to ACH settlement reported on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.

SLR #	Requirement	Deficiency	Invoicing	Penalty	Measurement Frequency	Data Used	Holdback Notes
11	Settlement and Transactions (Attachment A, Item 374) The eWIC system or eWIC Processor shall notify the State Agency of settlement or reconciliation discrepancies within twelve (12) hours of occurrence.	The State Agency is not notified within twelve (12) hours of a discrepancy more than 3 times monthly.	Via the Monthly invoice the month after which the deficiency is identified.	\$2,000 per daily occurrence above three (3) times per month.	Assessed Monthly.	Metrics related to ACH settlement reported on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.
12	Settlement and Transactions (Attachment A, Item 375) No more than two (2) inaccurate transactions per every 10,000 eWIC transactions processed by the eWIC system shall result in an adjustment resulting from eWIC system error.	More than two (2) inaccurate transactions per every 10,000 processed.	Via the Monthly invoice the month after which the deficiency is identified.	\$5,000 for each occurrence above the tolerance level.	Assessed Monthly.	Metrics related to inaccurate transactions reported on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.
13	Cardholder Portal (Attachment A, Item 376) The Cardholder Portal shall have an uptime of 99.9%, not including maintenance (scheduled downtime), measured over a one (1) month period.	Cardholder Portal is not available 99.9% of the time more than three (3) times in a six (6) month period.	Via the Monthly invoice the month after which the deficiency is identified.	\$2,000 for each full percentage point above the tolerance level more than three (3) times in a six (6) month period.	Reported Monthly, Assessed Bi-annually.	Metrics related to Cardholder Portal on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.
14	WIC Vendor Portal (Attachment A, Item 377) The WIC Vendor Portal shall have an uptime of 99.9%, not including maintenance (scheduled downtime), measured over a one (1) month period.	WIC Vendor Portal is not available 99.9% of the time more than three (3) times in a six (6) month period.	Via the Monthly invoice the month after which the deficiency is identified.	\$2,000 for each full percentage point above the tolerance level more than three (3) times in a six (6) month period.	Reported Monthly, Assessed Bi-annually.	Metrics related to WIC Vendor Portal on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.
15	IVR and Help Desks (Attachment A, Item 378) IVR shall have an average answer time of less than fifteen (15) seconds, measured monthly.	Requirement not met monthly.	Via the Monthly invoice the month after which the deficiency is identified.	\$2,000 for each occurrence above the tolerance level.	Assessed Monthly.	Metrics related to IVR and Help Desks on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.

SLR #	Requirement	Deficiency	Invoicing	Penalty	Measurement Frequency	Data Used	Holdback Notes
16	IVR and Help Desks (Attachment A, Item 379) The eWIC Processor shall ensure that 95% of all cardholder and WIC Vendor help desk calls are answered within two (2) rings and 15 seconds measured monthly.	Requirement not met monthly.	Via the Monthly invoice the month after which the deficiency is identified.	\$1,000 for each percentage point below the tolerance level.	Assessed Monthly.	Metrics related to IVR and Help Desks on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.
17	IVR and Help Desks (Attachment A, Item 380) The eWIC Processor shall ensure that 95% of all cardholder and WIC Vendor help desk calls are not placed on hold or within a queue for more than two (2) minutes.	Requirement not met monthly.	Via the Monthly invoice the month after which the deficiency is identified.	\$1,000 for each percentage point below the tolerance level.	Assessed Monthly.	Metrics related to IVR and Help Desks on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.
18	IVR and Help Desks (Attachment A, Item 381) No more than 5% of calls to the WIC Vendor help desks or cardholder Customer service line shall be met with a busy signal or be put in a queue, measured monthly.	Requirement not met monthly.	Via the Monthly invoice the month after which the deficiency is identified.	\$1,000 for each percentage point above the tolerance level.	Assessed Monthly.	Metrics related to IVR and Help Desks on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.
19	IVR and Help Desks (Attachment A, Item 382) The WIC Vendor help desks or cardholder Customer service line shall have an abandoned call rate of less than 3%, measured monthly.	Requirement not met monthly.	Via the Monthly invoice the month after which the deficiency is identified.	\$1,000 for each percentage point above the tolerance level.	Assessed Monthly.	Metrics related to IVR and Help Desks on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.
20	IVR and Help Desks (Attachment A, Item 383) The eWIC Processor shall have an 95% rate of resolution with the first customer service representative (CSR).	Requirement not met monthly.	Via the Monthly invoice the month after which the deficiency is identified.	\$1,000 for each percentage point below the tolerance level.	Assessed Monthly.	Metrics related to IVR and Help Desks on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.

SLR #	Requirement	Deficiency	Invoicing	Penalty	Measurement Frequency	Data Used	Holdback Notes
21	<p>Stand-Beside Support (Attachment A, Item 384)</p> <p>The eWIC Processor shall ensure that 100% of all stand-beside terminals are shipped via overnight express to vendors within five (5) business days of receipt of the signed vendor contract.</p>	Stand-beside terminals are not shipped via overnight express within five (5) business days of receipt of the signed vendor contract.	Via the Monthly invoice the month after which the deficiency is identified.	\$1,000 per day for failure to ship POS equipment via overnight express within five (5) business days of receipt of the signed vendor contract.	Assessed Monthly.	Metrics related to Stand-beside support on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.
22	<p>Stand-Beside Support (Attachment A, Item 385)</p> <p>The eWIC Processor shall ensure installation and training is completed within fourteen (14) calendar days of a WIC vendor contacting the eWIC Processor for installation support and training.</p>	Stand-beside terminal installation support and training is not completed within fourteen (14) calendar days of a WIC vendor contacting the eWIC Processor.	Via the Monthly invoice the month after which the deficiency is identified.	\$1,000 per day for failure to install POS and train WIC vendor within fourteen (14) calendar days of a WIC vendor contacting the eWIC Processor.	Reported Monthly, Assessed Quarterly.	Metrics related to Stand-beside support on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.
23	<p>Stand-Beside Support (Attachment A, Item 386)</p> <p>The eWIC Processor shall ship via overnight express replacement POS equipment within one (1) business day of a request for replacement.</p>	A replacement POS is not shipped via overnight express within one (1) business day of a request.	Via the Monthly invoice the month after which the deficiency is identified.	\$1,000 per day for failure to ship replacement POS equipment via overnight express within one (1) business day of a request.	Assessed Monthly.	Metrics related to Stand-beside support on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.
24	<p>Dispute Resolution (Attachment A, Item 387)</p> <p>The eWIC Processor shall, for a transaction adjustment, respond to the State Agency within the timeframes outlined below:</p> <ul style="list-style-type: none"> Escalated transaction adjustment within twenty-four (24) hours Standard transaction adjustment within forty-eight (48) hours 	Transaction adjustments submitted by the State Agency are not responded to within twenty-four (24) hours for escalated transaction adjustments and forty-eight (48) hours for standard transaction adjustments.	Via the Monthly invoice the month after which the deficiency is identified.	\$2,000 for each occurrence above the tolerance level.	Assessed Monthly.	Metrics related to transaction adjustments on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.

SLR #	Requirement	Deficiency	Invoicing	Penalty	Measurement Frequency	Data Used	Holdback Notes
25	<p>Dispute Resolution (Attachment A, Item 388)</p> <p>For non-transaction disputes, the eWIC Processor shall investigate and respond to a WIC Program, State Agency or Vendor initiated dispute within ten (10) processing days of the notification of a dispute.</p>	The State Agency is not notified within ten (10) processing days of a dispute.	Via the Monthly invoice the month after which the deficiency is identified.	\$2,000 for each occurrence above the tolerance level.	Assessed Monthly.	Metrics related to disputes will be included on a Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.
26	<p>Dispute Resolution (Attachment A, Item 389)</p> <p>For non-transaction disputes, the eWIC Processor shall resolve disputes between the eWIC Processor and a WIC Vendor within forty-five (45) days of the dispute being submitted by the WIC Vendor.</p>	The eWIC Processor does not resolve a dispute within forty-five (45) days of initiation of the dispute.	Via the Monthly invoice the month after which the deficiency is identified.	\$2,000 for each occurrence above the tolerance level.	Assessed Monthly.	Metrics related to disputes will be included on a Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.
27	<p>Maintain Transaction History (Attachment A, Item 390)</p> <p>The eWIC system shall maintain data and purge data as detailed in the Administrative Functionality section of Attachment A in this agreement.</p>	Data is not maintained or purged following details in Attachment A of this agreement.	Via the Monthly invoice the month after which the deficiency is identified.	\$5,000 if access to six (6) years of historical data is not available, and \$5,000 if criteria for purging is not met.	Yearly.	Yearly report of completion of Data purge provided to State Agency by eWIC Processor.	Not recoverable.
28	<p>Business Continuation (Attachment A, Item 391)</p> <p>The eWIC system shall have provisions for back up processing and telecommunications by maintaining a remote hot site with equivalent processing capability to production.</p>	eWIC Processor does not maintain a remote hot site that is available for emergency backup needs.	Via the Monthly invoice the month after which the deficiency is identified.	\$1,000 per hour (At 1 hour and 1 second (AFTER first hour)) the backup site is not operational.	Assessed Monthly.	Any issues regarding back up site will be communicated via the Monthly Report card provided to the State Agency by eWIC Processor.	Not recoverable.

SLR #	Requirement	Deficiency	Invoicing	Penalty	Measurement Frequency	Data Used	Holdback Notes
29	<p>Business Continuation (Attachment A, Item 392)</p> <p>The eWIC system shall have provisions for 24 x 7 system monitoring and problem correction.</p>	eWIC Processor does not have 24 x 7 monitoring on the eWIC system 100% of the time.	Via the Monthly invoice the month after which the deficiency is identified.	\$1,000 per occurrence.	Monthly.	Any issues regarding system monitoring and problems corrected will be communicated via the Monthly Report card provided to the State Agency by eWIC Processor.	Not recoverable.
30	<p>Business Continuation (Attachment A, Item 393)</p> <p>The eWIC Processor shall communicate any issues with system availability, benefit availability, or system performance within one (1) hour of identification of the issue and continue with updates until issue is resolved.</p>	eWIC Processor does not communicate regarding any issues with system availability, benefit availability, or system performance within one (1) hour of identification of the issue 99% of the time.	Via the Monthly invoice the month after which the deficiency is identified.	\$2,000 per occurrence for failure to notify the WIC Director or EBT Systems Director of any issues with system availability, benefit availability or system performance.	Assessed Monthly.	Email communication that adequately keeps that State Agency aware of the state of the issue.	Not recoverable.
31	<p>Response to Enhancements / Change Requests (Attachment A, Item 394 a.)</p> <p>The eWIC Processor shall respond to system enhancement change requests with a proposal for level of effort, estimated hours and cost within two (2) weeks of receiving request.</p>	Failure to provide proposal within the specified timeframe or one mutually agreed upon by the MSDH WIC Program and eWIC Processor.	Via the Monthly invoice the month after which the deficiency is identified.	\$1,000 per day for failure below tolerance level.	Assessed Monthly.	Metrics reported on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.

SLR #	Requirement	Deficiency	Invoicing	Penalty	Measurement Frequency	Data Used	Holdback Notes
32	<p>Response to Enhancements / Change Requests (Attachment A, Item 394 b.)</p> <p>Once a change request is approved for implementation by the MSDH WIC Program, eWIC Processor shall develop and submit an initial project schedule within 45 calendar days of approval of change request. A definitive project schedule shall be developed by mutual agreement of the parties and may be finalized after the 45-day period.</p>	Failure to provide a preliminary implementation schedule for consideration within 45 calendar days from the date the change request was fully executed.	Via the Monthly invoice the month after which the deficiency is identified.	\$1,000 per day for failure to perform within tolerance level.	Assessed Monthly.	Metrics reported on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.
33	<p>Card Replacement (Attachment A, Item 395 a.)</p> <p>The eWIC Processor shall mail card replacements no later than the next business day after receipt of a card issuance replacement.</p>	Failure to mail cards in accordance with requirements 98% of the time measured on a monthly basis.	Via the Monthly invoice the month after which the deficiency is identified.	\$1,000 for each percentage point below the tolerance levels.	Assessed Monthly.	Metrics reported on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.
34	<p>Card Replacement (Attachment A, Item 395 b.)</p> <p>The eWIC Processor shall ensure card replacements are delivered/received by the WIC participant/ household within 10 business days.</p>	Failure to ensure cards are delivered/received in accordance with requirement 98% of the time measured on a monthly basis.	Via the Monthly invoice the month after which the deficiency is identified.	\$1,000 for each percentage point below the tolerance levels.	Assessed Monthly.	Metrics reported on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.
35	<p>End of Contract Transition Plan (Attachment A, Item 396)</p> <p>The eWIC Processor will submit an outgoing End-of-Contract Transition Plan in accordance with Attachment A of this agreement six (6) months prior to contract completion.</p>	Failure to provide an outgoing End of Transition Plan that includes all activities in Attachment A. Failure to provide End-of-Transition Plan six (6) months prior to contract completion.	Via the Monthly invoice the month after which the deficiency is identified.	\$1,000 per day.	Assessed Yearly.	Metrics reported on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.

SLR #	Requirement	Deficiency	Invoicing	Penalty	Measurement Frequency	Data Used	Holdback Notes
36	<p>Response to Reported Defects (Attachment A, Item 397)</p> <p>The eWIC Processor shall respond to reported defects/system issues in a timely manner based upon approved plan for defect tracking and resolution.</p>	Not responding to defects in a timely manner as specified by defect priority.	Via the Monthly invoice the month after which the deficiency is identified.	\$1,000 for each occurrence exceeding the approved timeline.	Assessed Monthly.	Metrics reported on Monthly Report Card provided to State Agency by eWIC Processor.	Not recoverable.

EXHIBIT C
MISSISSIPPI STATE DEPARTMENT OF HEALTH
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is entered into by and between the Mississippi State Department of Health (“MSDH”) the Covered Entity and (“Business Associate”), hereinafter referred to as the Parties, and modifies any other prior existing agreement or contract 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:

I. RECITALS

- a. MSDH is a state agency with a principal place of business at 570 East Woodrow Wilson, Jackson, MS 39215
- b. Business Associate is a corporation qualified to do business in Mississippi that will act to perform business services for MSDH with a principal place of business at

- c. This Business Associate Agreement (“Agreement”) is entered into 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, but not necessarily limited to, 45 C.F.R. Part 160, and 45 C.F.R. Part 164 Subparts A and C (“Security Rule”), and 45 C.F.R. Part 160 Subparts A and E (“Privacy Rule”). These statutes and regulations are hereinafter collectively referred to as HIPAA. MSDH, as a covered entity, is required to enter into this Agreement to obtain satisfactory assurances that Business Associate will comply with and appropriately safeguard all Protected Health Information (“PHI”) Used, Disclosed, created, or received by Business Associate on behalf of MSDH. Certain provisions of HIPAA and its implementing regulations apply to Business Associate in the same manner as they apply to MSDH, and such provisions must be incorporated into this Agreement.
- d. MSDH desires to engage Business Associate to perform certain functions for, or on behalf of, MSDH involving the Disclosure of PHI by MSDH to Business Associate, or the creation or Use of PHI by Business Associate on behalf of MSDH, and Business Associate desires to perform such functions, as set forth in the Underlying Agreement(s) which involve the exchange of information, and wholly incorporated herein.

II. DEFINITIONS

- a. "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.
- b. "Business Associate" shall mean _____, including all workforce members, representatives, agents, successors, heirs, and permitted assigns.
- c. "Covered Entity" shall mean the Mississippi State Department of Health, an agency of the State of Mississippi.
- d. "Data Aggregation" shall have the same meaning as the term "Data aggregation" in 45 C.F.R. §164.501.
- e. "Designated Record Set" shall have the same meaning as the term "Designated Record Set" in 45 C.F.R. §164.501.
- f. "Disclosure" shall have the same meaning as the term "Disclosure" in 45 C.F.R. § 160.103.
- g. "MSDH" shall mean the Mississippi State Department of Health, an agency of the State of Mississippi.
- h. "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).
- i. "Privacy Officer" shall mean the person designated by MSDH to oversee its implementation of and compliance with HIPAA.
- j. "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.
- k. "Protected Health Information" or "PHI" shall have the same meaning as the term "Protected health information" in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of MSDH.
- l. "Qualified Service Organization" shall have the same meaning as defined in 42 CFR § 2.11.
- m. "Required by Law" shall have the same meaning as the term "Required by law" in 45 C.F.R. § 164.103.
- n. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee

- o. "Security Incident" shall have the same meaning as the term "Security incident" in 45 C.F.R. §164.304.
- p. "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.
- q. "Standard" shall have the same meaning as the term "Standard" in 45 C.F.R. § 160.103.
- r. "Underlying 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 MSDH and Business Associate. Under this Business Associate Agreement, "Underlying Agreement" shall refer to the following:
- s. "Unsecured Protected Health Information" shall have the same meaning as the term "Unsecured protected health information" in 45 C.F.R. § 164.402.
- t. "Use" shall have the same meaning as the term "Use" in 45 C.F.R. § 160.103
- u. "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.

III. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a. Business Associate agrees to not Use or Disclose PHI other than as permitted or required by this Agreement and the Underlying Agreement(s), or as Required by Law.
- b. Business Associate agrees to utilize appropriate safeguards and comply, where applicable, with the HIPAA Privacy and Security Rules, to prevent Use or Disclosure of the PHI other than as permitted or provided for by this Agreement and shall: (i) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Protected Health Information and Electronic Protected Health Information that Business Associate creates, receives, maintains, or transmits on behalf of MSDH; (ii) ensure that any subcontractor to whom Business Associate provides such information agrees to implement reasonable and appropriate safeguards to protect it; and (iii) report to MSDH any Security Incident of which Business Associate becomes aware.
- c. Business Associate shall implement and maintain a comprehensive written information security program that:
 - Is aligned with NIST SP 800-53 Rev. 5 Moderate baseline controls, including but not limited to the Access Control (AC), Identification and Authentication (IA), Audit and Accountability (AU), System and Communications Protection (SC), Risk Assessment (RA), and Incident Response (IR) control families.

- Incorporates administrative, technical, and physical safeguards consistent with HIPAA, the HITECH Act, and Zero Trust Architecture principles.
 - Is reviewed at least annually and updated based on risk assessments, emerging threats, and regulatory changes.
- d. Business Associate shall implement and enforce the Principle of Least Privilege, ensuring that workforce members, systems, applications, and automated processes are granted only the minimum access necessary to perform authorized functions.
- Access rights shall be:
 - o Approved through documented authorization procedures
 - o Reviewed at least quarterly
 - o Immediately revoked upon termination or role change
 - o Technically enforced through centralized access control mechanisms.
- e. Business Associate shall implement:
- **Role-Based Access Control (RBAC)** to ensure access to PHI is provisioned based on defined job roles and responsibilities.
 - **Attribute-Based Access Control (ABAC)** or equivalent dynamic access controls where appropriate, incorporating contextual attributes such as:
 - o User Role
 - o Device trust level
 - o Geographic location
 - o Time of access
 - o Risk score or authentication strength
 - Access decisions shall be centrally managed and logged.
- f. 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 and/or state or federal laws and regulations.
- g. **Breaches and Security Incidents.** During the term of this Agreement, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any actual or suspected Breach or Security Incident. Business Associate agrees to take the following steps:

Notice to MSDH. (1) To notify their MSDH Point-of-Contact, MSDH IT Security Officer and MSDH Privacy Officer **without unreasonable delay, and no later than five (5) days after discovery, by telephone call and email or registered or certified mail** upon the discovery of an actual or suspected Breach of Unsecured PHI in electronic media or in any other media. (2) To notify their MSDH Point-of-Contact, MSDH IT Security Officer and

MSDH Privacy Officer **without unreasonable delay, and no later than five (5) days after discovery, by telephone call and email or registered or certified mail** of any actual or suspected Security Incident affecting this Agreement, including but not limited to an actual or suspected Security Incident that involves data provided to MSDH by the Social Security Administration. A Breach or Security Incident shall be treated as discovered by Business Associate as of the first day on which the Breach or Security Incident is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the Breach or Security Incident) who is a workforce member, officer, or other agent of Business Associate.

The notification shall include, to the extent possible and subsequently as the information becomes available, a reasonably detailed description of the actual or suspected Breach or Security Incident, the identification of all Individuals whose Unsecured PHI is reasonably believed by Business Associate to have been affected by the Breach or Security Incident 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 42 U.S.C. § 17932 and 45 C.F.R. Parts 160 and 164, Subparts A, D, and E, or any other applicable notification requirements.

Upon discovery of an actual or suspected Breach or Security Incident, Business Associate shall take:

- Prompt corrective action to mitigate any risks or damages involved with the Breach or Security Incident and to protect the operating environment; and
- Any action pertaining to such unauthorized Disclosure required by applicable Federal and State laws and regulations.

Investigation. To immediately investigate any such actual or suspected Breach or Security Incident upon discovery in order to determine if the actual or suspected Breach or Security Incident is a Violation of any applicable federal or state laws or regulations, and to submit updated information by email or registered or certified mail, as it becomes available, to the MSDH IT Security Officer and MSDH Privacy Officer.

Complete Report. To provide a complete written report by email or registered or certified mail of the investigation to the MSDH IT Security Officer and MSDH Privacy Officer within ten (10) working days of the discovery of any actual or suspected Breach or Security Incident. The report shall include:

- the identification of each Individual whose PHI was or is believed to have been involved;
- a reasonably detailed description of the types of PHI involved; and
- a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain any suspected or actual Breach of security, intrusion or unauthorized Use or Disclosure.

If MSDH requests information in addition to that provided in the written report, Business Associate shall make reasonable efforts to provide MSDH with such information. If

necessary, a supplemental report may be utilized to submit revised or additional information after the completed report is submitted.

Notification of Individuals. If the cause of an actual Breach of PHI is attributable to Business Associate or its subcontractors, agents or vendors, Business Associate shall notify each Individual of the Breach when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the Breach. The notifications shall comply with the requirements set forth in 42 U.S.C. § 17932 and its implementing regulations. The MSDH IT Security Officer and MSDH Privacy Officer shall approve the time, manner, and content of any such notifications and their review and approval must be obtained before the notifications are made.

Responsibility for Reporting of Breaches. If the cause of a Breach of PHI is attributable to Business Associate or its agents, subcontractors, or vendors, and Business Associate is a covered entity as defined under HIPAA and the HIPAA regulations, Business Associate is responsible for all required reporting of the Breach as specified in 42 U.S.C. § 17932 and its implementing regulations, including notification to media outlets and to the Secretary of the U.S. Department of Health and Human Services. If Business Associate has reason to believe that duplicate reporting of the same Breach or Security Incident may occur because its subcontractors, agents or vendors may report the Breach or Security Incident to MSDH in addition to Business Associate, Business Associate shall notify MSDH, and MSDH and Business Associate may take appropriate action to prevent duplicate reporting. The Breach reporting requirements of this paragraph are in addition to the reporting requirements set forth above.

- h. Business Associate agrees to ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions and conditions that apply to the Business Associate with respect to such information, all in accordance with 45 C.F.R. §§ 164.308 and 164.502.
- i. If Business Associate stores, processes, or transmits MSDH data in cloud environments:
 - Cloud providers must maintain SOC 2 Type II or FedRAMP Moderate (or higher) accreditation.
 - PHI must remain within the continental United States.
 - Cloud administrative access will be restricted and logged.
- j. Business Associate will be monitored by MSDH supply chain management systems and scored in UpGuard. Vendor shall maintain the appropriate score, for the risk category defined in the MSDH Vendor Risk Management Policy, which will be provided on request.
- k. Business Associate agrees to ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of Business Associate agree to comply with the applicable requirements of the Security Rule and Privacy Rule by entering into a Business Associate Agreement, in accordance with 45 C.F.R. §§ 164.308, 164.314, 164.502, and 164.504, and

Business Associate shall provide MSDH with a copy of all such executed agreements between Business Associate and Business Associate's subcontractors. Business Associate understands that submission of their subcontractors' Business Associate Agreement(s) to MSDH does not constitute MSDH approval of any kind, including of the utilization of such subcontractors or of the adequacy of such agreements.

- l. Business Associate agrees that nothing in this Agreement is meant to take the place of any HIPAA-mandated reporting duties that apply directly to the Business Associate as a covered entity under HIPAA and its implementing regulations.
- m. Business Associate agrees to provide access, at the request of MSDH, and in the time and manner designated by MSDH, to PHI in a Designated Record Set, to MSDH or, as directed by MSDH, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524.
- n. Business Associate agrees to document such Disclosures of PHI and information related to such Disclosures as would be required for MSDH to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 C.F.R. § 164.528. Business Associate agrees to retain such documentation for at least six (6) years after the date of Disclosure; the provisions of this Section shall survive termination of this Agreement for any reason.
- o. Where applicable, Business Associate agrees to retain and securely store all data and documents falling under this Agreement and the Underlying Agreement(s) in accordance with HIPAA, the HITECH Act, and their implementing regulations.
- p. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that MSDH directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of MSDH or an Individual, and in the time and manner designated by MSDH.
- q. Business Associate agrees to provide to MSDH or an Individual, in a time and manner designated by MSDH, information collected in accordance with Section (III) of this Agreement, to permit MSDH to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- r. 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, MSDH as specified in the Underlying Agreement(s). 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 MSDH.
- s. Routine transmission of PHI by fax is not recommended. If information must be faxed, Business Associate agrees PHI shall be limited to those recipients who have a need to gain access to the information. The information to be faxed shall be limited to the "minimum necessary" to accomplish the proposed function. A cover sheet must be utilized which includes a required confidential statement prohibiting unlawful redisclosure. In the event a fax is received by an unintended recipient, Business Associate should obtain the recipient's contact information, attempt to identify the misdirected document, and then contact MSDH Privacy Officer. Generally, Business Associate should instruct the recipient of the misdirected fax to await further instructions

from the Business Associate. Recipients should *not* be told to throw away a misdirected fax. MSDH may instruct the recipient to return or destroy the document, depending on the facts.

- t. Business Associate agrees that to the extent that Business Associate carries out MSDH's obligations under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to MSDH in the performance of such obligation.
- u. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the Use and Disclosure of PHI received from, or created or received by Business Associate on behalf of, MSDH available to the Secretary for purposes of determining MSDH's compliance with the Privacy Rule.
- v. 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 MSDH.
- w. Business Associate agrees that all MSDH data will be encrypted using industry standard algorithms.
 - At rest, data will be encrypted using FIPS 140-2 or 140-3 validated cryptographic modules with AES-256 or stronger algorithms.
 - In transit, TLS 1.2 or higher is required for the transmission of all MSDH data.
 - Encryption keys shall be managed in accordance with NIST SP 800-57 Part 1 Rev. 5 and NIST SP 800-53 Rev. 5 (SC-12, SC-28), including secure generation, storage, rotation, archival, and destruction. Cryptographic keys shall be protected using FIPS 140-2 or FIPS 140-3 validated modules and, where feasible, shall be stored separately from encrypted data.
- x. Business Associate agrees to comply with the State of Mississippi ITS Enterprise Security Policy, which will be provided by MSDH upon request.
- y. Business Associate agrees to make an executive summary of its most recent information security audit available to MSDH upon request by MSDH.
- z. The provisions of the HITECH Act that apply to Business Associate and are required to be incorporated by reference in a business associate agreement are hereby incorporated into this Agreement, including, without limitation, 42 U.S.C. §§ 17935(b), (c), (d) and (e), and 17936(a) and (b), and their implementing regulations.
- aa. 42 U.S.C. §§ 17931(b) and 17934(c), and their implementing regulations, each apply to Business Associate with respect to its status as a business associate to the extent set forth in each such section.

- bb. Business Associate shall be responsible for, and shall reimburse MSDH for costs and expenses associated with steps reasonably implemented by MSDH to mitigate any Breach or other nonpermitted Use or Disclosure of PHI or medical, health or personal information protected by other federal or state law, including, without limitation, the following: data analysis to determine appropriate mitigation steps in the event of a Breach, including assistance from Business Associate in the investigation of the Breach and, as needed, access to Business Associate's systems and records for purposes of Breach data analysis; preparation and mailing of notification(s) about the Breach to impacted Individuals, the media and regulators; costs associated with proper handling of inquiries from Individuals and other entities about the Breach (such as the establishment of toll-free numbers, maintenance of call centers for intake, preparation of scripts, questions/answers, and other communicative information about the Breach); credit monitoring and account monitoring services for impacted Individuals for a reasonable period (which shall be no less than 12 months); other mitigation action steps required of MSDH by federal or state regulators; and other reasonable mitigation steps required by MSDH.
- cc. Business Associate shall not, without written authorization from MSDH, perform marketing or fundraising on behalf of MSDH, or engage in the types of communications on behalf of MSDH that are excepted from the definition of "marketing" established at 45 C.F.R. §164.501. If MSDH requests and authorizes Business Associate to engage in these activities, Business Associate shall comply with the applicable provisions of the HITECH Act and the HIPAA Rules.
- dd. Business Associate shall not directly or indirectly receive remuneration in exchange for an Individual's PHI unless it is pursuant to specific written authorization by the Individual or subject to an exception established in the HIPAA Rules.
- ee. Without prior written approval from MSDH, Business Associate shall not publicly release any report, article, paper, graph, chart, or other product created, in whole or in part, using data provided or developed under this Agreement.
- ff. Business Associate agrees to utilize reasonable measures (including training) 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 MSDH data, and to discipline such employees who intentionally violate any provisions of this Agreement.

IV. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- a. General Use and Disclosure Provisions:
- i. If applicable, Covered Entity and Business Associate hereby agree that this Agreement constitutes a Qualified Service Organization Agreement ("QSOA") as required by 42 C.F.R. Part 2. Accordingly, information obtained by Business Associate relating to individuals who may have been diagnosed as needing, or who have received, substance use disorder treatment services shall be maintained and used only for purposes intended under this Agreement and in conformity with all

applicable provisions of 42 USC § 290dd-2 and the underlying federal regulations 42 CFR Part 2.

- ii. Business Associate may Use or Disclose PHI to perform functions, activities, or services for, or on behalf of, MSDH as specified in the Underlying Agreement(s), provided that such Use or Disclosure would not Violate what is Required by Law or the Privacy Rule if done by MSDH, except for the specific Uses and Disclosures set forth below, for the purpose of performing the Underlying Agreement(s).
- b. Specific Use and Disclosure Provisions:
- i. 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 Underlying Agreement(s) entered into between MSDH and Business Associate.
 - ii. Business Associate may Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that Disclosures are Required by Law and the person to whom the PHI was Disclosed notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - iii. If Business Associate must Disclose PHI pursuant to law or legal process, Business Associate shall notify MSDH by phone and in writing without unreasonable delay and at least five (5) days in advance of any Disclosure so that MSDH may take appropriate steps to address the Disclosure, if needed.
 - iv. In the event that Business Associate works for more than one covered entity, Business Associate may Use and Disclose PHI for Data Aggregation purposes, however, only in order to analyze data for permitted health care operations, and only to the extent that such is permitted under the Privacy Rule.
 - v. Business Associate may Use and Disclose de-identified health information if (a) the Use is communicated to MSDH and (b) the de-identified health information meets the implementation specifications for de-identification under the Privacy Rule.

V. OBLIGATIONS OF MSDH

- a. MSDH shall provide Business Associate with the Notice of Privacy Practices that MSDH produces in accordance with 45 C.F.R. § 164.520, as well as any changes to such Notice of Privacy Practices, upon request.
- b. MSDH 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.

- c. MSDH 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.
- d. MSDH shall notify Business Associate of any restriction to the Use or Disclosure of PHI that MSDH 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.
- e. Permissible Requests by MSDH: MSDH 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 MSDH, except as provided for in Section (IV) of this Agreement.

VI. TERM AND TERMINATION

- a. Term. For any new Underlying Agreement(s) entered into between MSDH and Business Associate, the effective date of this Agreement is the effective date of the Underlying Agreement(s) entered into between MSDH and Business Associate. For any ongoing Underlying Agreement(s) entered into between MSDH and Business Associate, the effective date of this Agreement is the date first herein written. This Agreement shall terminate when all of the PHI provided by MSDH to Business Associate or created or received by Business Associate on behalf of MSDH, is destroyed or returned to MSDH, or, if it is infeasible to return or destroy PHI, protections are extended to such information in accordance with the termination provisions in this Section. Termination of this Agreement shall automatically terminate the Underlying Agreement(s).
- b. Termination for Cause. Upon MSDH's knowledge of a material Violation by Business Associate, MSDH shall, at its discretion, either:
- i. provide an opportunity for Business Associate to cure or end the Violation within a time specified by MSDH, after which MSDH may in its discretion terminate this Agreement and the Underlying Agreement(s) if Business Associate does not cure or end the Violation within the time specified by MSDH; or
 - ii. immediately terminate this Agreement and the associated Underlying Agreement(s) if Business Associate has broken a material term of this Agreement and cure is not possible.
- c. Effect of Termination.
- i. Upon termination of this Agreement and the Underlying Agreement(s) for any reason, Business Associate shall return or destroy all PHI received from or created or received by Business Associate on behalf of, MSDH in accordance with State and Federal retention guidelines. This provision shall also apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

Upon expiration, non-renewal, or termination of the underlying Agreement for any reason (including lapse due to funding, procurement delays, or failure to renew) Business Associate's obligations under this BAA shall survive with respect to all Protected Health Information ("PHI") created, received, maintained, or transmitted on behalf of Covered Entity.

The obligations of Business Associate under this Agreement shall survive termination of this Agreement and shall continue until all such PHI has been destroyed or returned to MSDH, or, if it is infeasible to return or destroy PHI, protections are extended to such information in

accordance with the termination provisions in this Section.

- ii. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to MSDH 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.

VII. MISCELLANEOUS

- a. 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.
- b. Amendments/Changes in Law.
 - i. 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.
 - ii. 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.
 - iii. 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)(b) 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.

- c. Survival. The respective rights and obligations of Business Associate provided for in Sections (III)(j) and (VI)(c) of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit MSDH to comply with HIPAA, its implementing regulations, and other applicable law relating to the security and privacy of PHI.
- e. Indemnification. To the fullest extent allowed by law, Business Associate shall indemnify, defend, save and hold harmless, protect, and exonerate MSDH, 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 MSDH'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 utilize legal counsel acceptable to MSDH. Business Associate shall be solely responsible for all costs and/or expenses associated with such defense, and MSDH shall be entitled to participate in said defense. Business Associate shall not settle any claim, suit, etc. without MSDH's concurrence, which MSDH shall not unreasonably withhold. MSDH'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.
- f. Disclaimer. MSDH 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.
- g. 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:

MSDH: (Covered Entity)

Privacy Officer
Mississippi State Department of Health
570 East Woodrow Wilson
Suite O-400
P. O. Box 1700
Jackson, MS 39215

IT Security Officer
Mississippi State Department of Health
570 East Woodrow Wilson
Suite O-450
P.O. Box 1700
Jackson, MS 39215
601-576-7847/601-576-7821

Business Associate:

Name of Business: _____

Attn: _____

Title: _____

Address: _____

Phone: _____

Email:

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

- h. 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 this Agreement did not contain that particular part, term, or provision held to be invalid.
- i. 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.

- j. 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 MSDH. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by MSDH of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of MSDH 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 MSDH may deem necessary. Subject to the foregoing, this Agreement shall be binding upon the respective successors and assigns of the parties. MSDH may assign its rights and obligations under this Agreement to any successor or affiliated entity.
- k. 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.
- l. 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.
- m. 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 MSDH, at no cost to MSDH, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against MSDH, 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.

[Signature Page Follows]

Business Associate:

By: _____
(Authorized Signature)

By: _____
(Authorized Signature)

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Phone Number: _____

Phone Number: _____

Date: _____

Date: _____

Mississippi State Department of Health

By: _____
(Authorized Signature)

Print Name: Daniel P. Edney, MD, FACP, FASAM

Title: State Health Officer

Address: P.O. Box 1700, Jackson, MS 39215-1700

Phone Number: (601)-576-7634

Date: _____

EXHIBIT D FEDERAL CLAUSES

1. Equal Employment Opportunity

Equal Employment Opportunity Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of federally assisted construction contract in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60- 1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." (2 CFR 200, Subpart F, Appendix II)

2. Clean Air and Federal Water Pollution Control Act

Clean Air and Federal Water Pollution Control Act Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). (2 CFR 200, Subpart F, Appendix II)

3. Anti-Lobbying Act

This Act prohibits the recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. As required by Section 1352, Title 31 of the U.S. Code and implemented at 2 CFR 200, Subpart F, Appendix II, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 31 U.S.C. 1352, the applicant certifies that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement;
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- c. The undersigned shall require that the language of this certification be include in the award documents for all sub-awards at all tiers (including sub-grants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

4. Americans with Disabilities Act

This Act (28 CFR Part 35, Title II, Subtitle A) prohibits discrimination on the basis of disability in all services, programs, and activities provided to the public and State and local governments,

except public transportation services.

5. Drug-Free Workplace Statement

The Federal government implemented 41 U.S. Code § 8103, drug-free workplace requirements for federal grant recipients, in an attempt to address the problems of drug abuse on the job. It is a fact that employees who use drugs have less productivity, a lower quality of work, and a higher absenteeism and are more likely to misappropriate funds or services. From this perspective, the drug abuser may endanger other employees, the public at large, or themselves. Damage to property, whether owned by this entity or not, could result from drug abuse on the job. All these actions might undermine public confidence in the services this entity provides. Therefore, in order to remain a responsible source for government contracts, the following guidelines have been adopted:

- a. The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the work place.
- b. Violators may be terminated or requested to seek counseling from an approved rehabilitation service.
- c. Employees must notify their employer of any conviction of a criminal drug statute no later than five days after such conviction.
- d. Contractors of federal agencies are required to certify that they will provide drug-free workplaces for their employees.

Transactions subject to the suspension/debarment rules (covered transactions) include grants, subgrants, cooperative agreements, and prime contracts under such awards. Subcontracts are not included.

6. Royalty Free Rights to Use Software or Documentation Developed

2 CFR 200.315 Intangible property.

- (a) Title to intangible property (see §200.59 Intangible property) acquired under a federal award vests upon acquisition in the non-Federal entity. The non-Federal entity must use that property for the originally-authorized purpose and must not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in §200.313 Equipment paragraph (e).
- (b) The non-Federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a federal award. The Federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes and to authorize others to do so.
- (c) The non-Federal entity is subject to applicable regulations governing patents and inventions, including government wide regulations issued by the Department of Commerce at 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements."
- (d) The Federal government has the right to: (1) Obtain, reproduce, publish, or otherwise use the data produced under a federal award; and (2) Authorize others to receive, reproduce, publish, or otherwise use such data for federal purposes.

7. Debarment and Suspension

Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for

Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. (2 CFR 200, Subpart F, Appendix II) States to include in RFP and Contract a statement of certification by the vendor, such as "By signing this contract, the vendor certifies it is not suspended or debarred as specified by these rules."

8. Procurement by State

When conducting procurement transactions under a Federal award, a State or Indian Tribe must follow the same policies and procedures it uses for procurements with non-Federal funds. If such policies and procedures do not exist, States and Indian Tribes must follow the procurement standards in [§§ 200.318](#) through [200.327](#). In addition to its own policies and procedures, a State or Indian Tribe must also comply with the following procurement standards: [§§ 200.321](#), [200.322](#), [200.323](#), and [200.327](#). All other recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow the procurement standards in [§§ 200.318](#) through [200.327](#).

9. Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

The Civil Rights Assurance must also be included in the contract:

Assurance of Civil Rights Compliance

The State Agency hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189) as implemented by Department of Justice regulations at (28 CFR Parts 35 and 36); Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000), all provisions required by the implementing regulations of the U.S. Department of Agriculture (7 CFR Part 15 et seq); and FNS directives and guidelines to the effect that no person shall, on the ground of race, color, national origin, age, sex, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the Agency receives Federal financial assistance from FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this agreement. By providing this assurance, the State Agency agrees to compile data, maintain records and submit records and reports as required to permit effective enforcement of the nondiscrimination laws, and to permit Department personnel during normal working hours to review and copy such records, books and accounts, access such facilities, and interview such personnel as needed to ascertain compliance with the non-discrimination laws. If there are any violations of this assurance, the Department of Agriculture shall have the right to seek judicial enforcement of this assurance. This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures,

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grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the State Agency, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from the Department. The person or persons whose signatures appear below are authorized to sign this assurance on the behalf of the State Agency.