

# RFP No: 4689

INVITATION: Proposals, subject to the attached conditions, will be received at this office until Wednesday, September 2, 2026 @ 3:00 p.m. Central Time for the acquisition of the products/services described below for Mississippi State Department of Health.

## WIC Text Messaging

NOTE: THIS RFP CONTAINS MANDATORY REQUIREMENTS TO WHICH NO EXCEPTION MAY BE TAKEN. SEE SECTION VII, ITEM 1, FOR DETAILS.

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

Brittany Porter  
Technology Consultant  
Information Technology Services  
3771 Eastwood Drive  
Jackson, MS 39211  
(601) 432-8051  
Brittany.Porter@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. 4689  
Due Wednesday, September 2, 2026 @ 3:00 p.m. Central Time  
ATTENTION: Brittany Porter

Signed by:  
  
F577530FD3CA425...

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

### ITS RFP Response Checklist

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RFP Response Checklist: These items should be included in your response to RFP No. 4689.

- 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* (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 \_\_\_\_\_

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**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: Brittany Porter, 3771 Eastwood Drive, Jackson, MS 39211, 601-432-8051, [Brittany.Porter@its.ms.gov](mailto:Brittany.Porter@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](mailto: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**

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

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

The Vendor is not required to include the price of a performance bond or irrevocable bank letter of credit with its RFP proposal.

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 .

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](mailto: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. **Mandatory Provisions or No Mandatory Provisions in Technical Requirements for this RFP**

1.1 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.

1.2 Mandatory requirements are those classified as **MANDATORY** in this Section of the RFP and/or Attachment A document. 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.

2. **Procurement Project Schedule**

<b>Task</b>	<b>Date</b>
First Advertisement Date for RFP	06/02/2026
Second Advertisement Date for RFP	06/09/2026
Deadline for Vendor’s Written Questions	3:00 p.m. Central Time on 06/26/2026
Deadline for Questions Answered and Posted to ITS Website	07/07/2026
Open Proposals	09/02/2026
Evaluation of Proposals	09/02/2026
Contract Negotiation	October
Proposed Project Implementation Start-up	11/02/2026
Proposed Project Go-Live Deadline	12/31/2026

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.

<b>Question</b>	<b>RFP Item</b>	<b>RFP Page</b>	<b>Vendor Question</b>
1)			
2)			
3)			
4)			
5)			

- 3.1.2 Vendor must deliver a written document to Brittany Porter at ITS by Friday, June 26, 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 Brittany Porter to verify the receipt of their document. Documents received after the deadline will be rejected.
- 3.1.3 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 Tuesday, July 7, 2026.

**4. Technical Requirements**

- 4.1 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. 4689 and the link is located directly beneath the link to RFP No. 4689.

**5. Scoring Methodology**

- 5.1 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.
  - 5.1.1 Each category included in the scoring mechanism is assigned a weight between one and 100.
  - 5.1.2 The sum of all categories equals 100 possible points.
  - 5.1.3 For the evaluation of this RFP, the Evaluation Team will use the following categories and possible points:

Category	Possible Points
<b>Non-Cost Categories:</b>	
<b>Functional/Technical Requirements:</b> System Requirements/Capabilities: Administrative Management; Access; Reports and Dashboard; Archival; Audit Functions	30
<b>Support and Maintenance:</b> Customer Support; Issue Tracking; Service Level Agreements; Remedies for Failure to Meet Service Levels	20
<b>General;</b> Vendor Qualifications; <b>Implementation Requirements-Statement of Work:</b> Vendor Acknowledgement, Project Management Plan, Acceptance Test Plan,	10

Training Requirements	
<b>Hosting Environment:</b> General; Business Continuity/Disaster Recovery, State of Mississippi Enterprise Cloud and Offsite Hosting Security Policy	5
<b>Total Non-Cost Points</b>	<b>65</b>
<b>Cost Categories:</b>	
Lifecycle Cost	35
<b>Total Cost Points</b>	<b>35</b>
<b>Maximum Possible Points</b>	<b>100</b>

5.2 The evaluation will be conducted as follows:

5.2.1 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.

5.2.2 Non-cost Evaluation (all requirements excluding cost)

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

Non-Cost Categories	Possible Points
<b>Functional/Technical Requirements:</b> System Requirements/Capabilities; Administrative Management; Access; Reports and Dashboard; Archival: Audit Functions	30
<b>Support and Maintenance:</b> Customer Support; Issue Tracking; Service Level Agreements; Remedies for Failure to Meet Service Levels	20
<b>General;</b> Vendor Qualifications <b>Implementation Requirements-Statement of Work:</b> Vendor Acknowledgement, Project Management Plan, Acceptance Test Plan, Training Requirements	10
<b>Hosting Environment:</b> General; Business Continuity/Disaster Recovery, State of Mississippi Enterprise Cloud and Offsite Hosting Security Policy	5
<b>Maximum Possible Points</b>	<b>65</b>

5.2.2.2 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.

5.2.3 Cost Evaluation

5.2.3.1 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

5.2.3.2 Cost categories and maximum point values are as follows:

Cost Category	Possible Points
Lifecycle Cost	35
<b>Maximum Possible Points</b>	<b>35</b>

5.2.4 Selection of the successful Vendor

5.2.4.1 Demonstrations and Interviews

5.2.4.1.1 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.

5.2.4.1.2 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.

5.2.4.1.3 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.

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

5.2.5 Site Visits

5.2.5.1 At the State's option, Vendors that remain within a competitive range must be prepared to provide a reference site within seven calendar days of notification. If possible, the reference site should be in the Southeastern region of the United States. Vendor must list potential reference sites in the proposal.

5.3 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.

Description	Quantity	Unit Cost
Implementation Services (fully loaded with travel, subsistence and associated per diem costs)		
<b>Base Offering: Product Customization, Implementation, Data Conversion/Migration, Interfaces, Integrations, Testing, Maintenance, Auto-populating Templates, etc. as described in RFP 4689</b>	1	\$
Itemize the cost for any deliverable not included in base offering as a separate line item below. Known need costs deliverables are included below. Vendor can add as many line items as needed.		
<b>Training</b>		\$
<b>Other Costs (specify)</b>		\$
<b>Implementation Costs Total</b>		\$

Annual Costs		
Annual Subscription and Hosting Fees - (including maintenance/support costs for 5 years to be paid)	Unit Price (if applicable)	Combined Subscription and Hosting Fee
Year 1		\$
Year 2		\$
Year 3		\$
Year 4		\$
Year 5		\$
Miscellaneous Costs (must specify)		\$
<b>Total Subscription and Hosting:</b>		\$
<b>GRAND TOTAL (Implementation and Subscription/Hosting):</b>		\$

## 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 two (2) 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.

## 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 two (2) 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 TWO (2) 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 TWO (2) 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:

RFP No. 4689  
Exhibit A: Standard Contract  
Project No.: 48935  
Revised: 07/01/2013

## 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 48935 SOFTWARE AS A SERVICE AGREEMENT BETWEEN VENDOR AND MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES AS CONTRACTING AGENT FOR THE MISSISSIPPI DEPARTMENT OF HEALTH

This Software as a Service 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 "Licensor"), and Mississippi Department of Information Technology Services having its principal place of business at 3771 Eastwood Drive, Jackson, Mississippi 39211 (hereinafter referred to as "ITS"), as contracting agent for the Mississippi Department of Health located at 570 East Woodrow Wilson Drive, Jackson, Mississippi 39216 (hereinafter referred to as "Licensee" and/or "MSDH"). ITS and MSDH are sometimes collectively referred to herein as "State". ITS, Purchaser, and Seller are sometimes collectively referred to herein as "Parties".

**WHEREAS**, MSDH, pursuant to Request for Proposals ("RFP") No. 4689 requested proposals for the services of a contractor to provide a Software as a Service ("SaaS") solution for a WIC Automated text messaging & two-way texting service; and

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

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

#### ARTICLE 1 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE 2 PERIOD OF PERFORMANCE**

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

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

### **ARTICLE 3 SCOPE OF SERVICES**

**3.1** The Licensor agrees to provide to MSDH a SaaS based WIC Automated text messaging & two-way texting service and associated deliverables as described in this Agreement. While the scope of work for this project is defined by the contract documents set forth herein in the article titled "Entire Agreement", a summary of such work is outlined in Article 3.2 below.

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

- A.** Ensuring that all deliverables are complete and accepted by MSDH pursuant to a mutually agreed upon project work plan;
- B.** Tracking date sensitive items to ensure timely updates;
- C.** Acknowledging that the Content is and shall remain the sole and exclusive property of MSDH. Further, Licensor acknowledges that the Content may contain PII and Licensor agrees to maintain the confidentiality of the Content and shall not make the Content publicly available except as may be necessary in performing the SaaS Services or to comply with applicable laws. Upon the termination or expiration of this Agreement, Licensor shall provide such Content in its possession to MSDH pursuant to a mutually agreed upon release schedule and in a format acceptable to MSDH;
- D.** Working with MSDH to achieve access rates that meet MSDH's needs;
- E.** Providing security for the site that is agreeable to MSDH with Licensor responsible for all necessary equipment and software related to security;
- F.** Maintaining the accessibility of the site twenty-four (24) hours a day, seven (7) days a week at an uptime rate of 99.98% or greater, subject to the limitations set forth in this Agreement, including but not limited to, those in Article 4.4;
- G.** Completing daily backups of the site;
- H.** Notifying MSDH at least three (3) business days prior to any anticipated service interruption, with said notice containing a general description of the reason for the service interruption;
- I.** Proposing and adhering to a disaster recovery plan and providing access to such plan to the State, all at Licensor's expense;
- J.** Participating with MSDH in disaster recovery planning and testing based on a mutually agreed upon schedule;
- K.** Maintaining the confidentiality of the information entered;
- L.** Providing MSDH access to all of the technical information concerning operation of the WIC Automated text messaging & two-way texting service, including but not limited to, server specifications, Internet connection information, personnel requirements, and software implementations;
- M.** Identifying any commercially available software, by vendor and version number, integrated into the Applications and describing the particular functionality of any software that is proprietary to the Licensor;
- N.** Maintaining the host site, with the cost for such support, maintenance, and hosting for years following the initial five (5)-year period not increasing annually beyond three percent (3%)

or the percent increase in the consumer price index for all Urban Consumers, US City Average (C.P.I.-U) for the preceding year, whichever is less;

- O.** Providing 24x7x365 support of the site;
- P.** Providing redundant internet connections;
- Q.** Providing Transport Layer Security (“TLS”) secure server support;
- R.** Maintaining sufficient bandwidth and server capacity to meet MSDH’s and Active Users’ demand as it may fluctuate and increase during the term of this Agreement, and;
- S.** Ensuring that all Licensee data remains within the continental United States;
- T.** Partitioning Licensee’s data from other customer data so Licensee’s access is not impaired due to e-discovery, seizure, or the like, and
- U.** Ensuring that upon termination or expiration of this Agreement that transition from the Licensor to MSDH or to a successor host will be accomplished at no expense to MSDH.

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

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

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

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

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

**4.4** The Applications and Services will be accessible at least ninety-nine percent (99%) of the time, twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of the SaaS Services due to causes beyond the control of Licensor. In the event that MSDH or an Active User is unable to achieve the 99% application availability during any given month, excluding scheduled maintenance, required repairs, and unavailability due to causes beyond the control of Licensor, the Licensor shall reimburse MSDH twenty-five percent (25%) of the monthly SaaS hosting fees for each twenty-four (24) hour day during which there were any incidents of unavailability. Licensor shall maintain the server at a secured location with restricted access.

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

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

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

#### **ARTICLE 5 ACCEPTANCE**

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

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

#### **ARTICLE 6 CONSIDERATION AND METHOD OF PAYMENT**

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

**6.2** Licensor shall submit invoices with the appropriate documentation to MSDH monthly for any month in which SaaS Services and/or other services are rendered. Licensor shall submit invoices and supporting documentation to MSDH electronically during the term of this Agreement using the processes and procedures identified by the State. MSDH 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 MSDH within forty-five (45) days of receipt of the invoice. Licensor understands and agrees that MSDH is exempt from the payment of taxes. All payments shall be in United States currency. Payments by state agencies using Mississippi's Accountability System for Government Information and Collaboration (MAGIC) shall be made and remittance information provided electronically as directed by the State. The payments by these agencies shall be deposited into the bank account of the Licensor's choice. No payment, including final payment, shall be construed as acceptance of defective products or incomplete work, and the

Licensor shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the article herein titled "Entire Agreement."

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

## **ARTICLE 7 WARRANTY**

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

**7.2** Licensor represents and warrants that the Applications provided by Licensor shall meet or exceed the minimum specifications set forth in RFP No. 4689 and Licensor's Proposal, as accepted by the State, in response thereto.

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

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

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

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

**7.7** Licensor represents and warrants that the WIC Automated text messaging & two-way texting service provided by the Licensor shall be reasonably expandable and scalable so MSDH can add and support additional business functions and users over time. It is understood and agreed that any standard revisions, enhancements, improvements, and upgrades to the Applications and host site equipment during the term of this Agreement, including operating system, database management system, and other software, shall be provided by Licensor to MSDH at no additional cost to MSDH.

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

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

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

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

**7.12** The Licensor represents and warrants that no elected or appointed officer or other employee of the State of Mississippi, nor any member of or delegate to Congress has or shall

benefit financially or materially from this Agreement. No individual employed by the State of Mississippi shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom. The State of Mississippi may, by written notice to the Licensor, terminate the right of the Licensor to proceed under this Agreement if it is found, after notice and hearing by the ITS Executive Director or his/her designee, that gratuities in the form of entertainment, gifts, jobs, or otherwise were offered or given by the Licensor to any officer or employee of the State of Mississippi with a view toward securing this Agreement or securing favorable treatment with respect to the award, or amending or making of any determinations with respect to the performing of such contract, provided that the existence of the facts upon which the ITS Executive Director makes such findings shall be in issue and may be reviewed in any competent court. In the event this Agreement is terminated under this article, the State of Mississippi shall be entitled to pursue the same remedies against the Licensor as it would pursue in the event of a breach of contract by the Licensor, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

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

#### **ARTICLE 8 INFRINGEMENT INDEMNIFICATION**

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

**8.2** Licensor shall have no obligation for infringement claims caused by: (a) an unauthorized modification of the Applications or Service by MSDH or a third party; (b) use of the Service other than in accordance with the Documentation for the Service or as authorized herein; (c) use of the Services in conjunction with any data, equipment or software not provided by Licensor where the

Services would not otherwise be infringing except for such combination; or (d) use of the Services or Application by MSDH other than in accordance with this Agreement.

## **ARTICLE 9 DATA SECURITY**

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

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

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

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

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

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

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

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

## **ARTICLE 10 EMPLOYMENT STATUS**

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

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

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

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

## **ARTICLE 11 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS**

Licensor will be responsible for the behavior of all its employees and subcontractors while on the premises of any Licensee location. Any employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive, or offensive to any of the staff will

be asked to leave the premises and may be suspended from further work on the premises. All Licensor employees and subcontractors who will be working at such locations shall be covered by Licensor's comprehensive general liability insurance policy.

#### **ARTICLE 12 MODIFICATION OR RENEGOTIATION**

This Agreement may be modified only by written agreement signed by the parties hereto, and any attempt at oral modification shall be void and of no effect. The parties agree to renegotiate the Agreement if federal and/or state revisions of any applicable laws or regulations make changes in this Agreement necessary.

#### **ARTICLE 13 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS**

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

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

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

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

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

#### **ARTICLE 14 AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of Licensee to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds for the performances required under this Agreement. If the funds anticipated for the fulfillment of this Agreement are not forthcoming, or are insufficient,

either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to Licensee for the payments or performance due under this Agreement, Licensee shall have the right to immediately terminate this Agreement, in whole or in part, without damage, penalty, cost or expense to Licensee of any kind whatsoever, except for payment for work completed by Licensor and accepted by Licensee prior to termination. The effective date of termination shall be as specified in the notice of termination. Licensee shall have the sole right to determine whether funds are available for the payments or performances due under this Agreement.

#### **ARTICLE 15 TERMINATION**

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

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

#### **ARTICLE 16 GOVERNING LAW**

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

#### **ARTICLE 17 WAIVER**

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

#### **ARTICLE 18 SEVERABILITY**

If any term or provision of this Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law provided that the State's purpose

for entering into this Agreement can be fully achieved by the remaining portions of the Agreement that have not been severed.

#### **ARTICLE 19 CAPTIONS**

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

#### **ARTICLE 20 HOLD HARMLESS**

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

#### **ARTICLE 21 THIRD PARTY ACTION NOTIFICATION**

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

#### **ARTICLE 22 AUTHORITY TO CONTRACT**

Licensor warrants that it is a validly organized business with valid authority to enter into this Agreement; that entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual or other agreement of any kind, and notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

#### **ARTICLE 23 NOTICE**

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their business address listed herein. ITS' address for notice is: 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, State Health Officer, Mississippi Department of Health, 570 East Woodrow Wilson Drive, 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 24 RECORD RETENTION AND ACCESS TO RECORDS**

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

#### **ARTICLE 25 INSURANCE**

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

#### **ARTICLE 26 DISPUTES**

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

#### **ARTICLE 27 COMPLIANCE WITH LAWS**

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

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

#### **ARTICLE 28 CONFLICT OF INTEREST**

Licensor shall notify Licensee of any potential conflict of interest resulting from the provision of

services to other customers. If such conflict cannot be resolved to Licensee's satisfaction, Licensee reserves the right to terminate this Agreement.

#### **ARTICLE 29 SOVEREIGN IMMUNITY**

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

#### **ARTICLE 30 CONFIDENTIAL INFORMATION**

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

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

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

#### **ARTICLE 31 EFFECT OF SIGNATURE**

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

#### **ARTICLE 32 NON-SOLICITATION OF EMPLOYEES**

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

#### **ARTICLE 33 ENTIRE AGREEMENT**

This contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings,

and agreements, written or oral, between the parties relating thereto, including all terms of any “shrink-wrap”, “click-wrap” or “browse-wrap” license of the Software. The RFP No. 4689 and Licensor’s Proposal, as accepted by the State, in response thereto are hereby incorporated into and made a part of this Agreement.

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

- A. This Agreement signed by the parties hereto;
- B. Any exhibits attached to this Agreement;
- C. RFP No. 4689 and written addenda, and
- D. Licensor’s Proposal, as accepted by the State, in response to the RFP.

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

#### **ARTICLE 34 STATE PROPERTY**

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

#### **ARTICLE 35 SURVIVAL**

Articles 7; 16; 20; 24; 29; 30; 32; 33; 39, and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this Agreement.

#### **ARTICLE 36 DEBARMENT AND SUSPENSION CERTIFICATION**

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

of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

#### **ARTICLE 37 SPECIAL TERMS AND CONDITIONS**

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

#### **ARTICLE 38 STATUTORY AUTHORITY**

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

#### **ARTICLE 39 COMPLIANCE WITH ENTERPRISE SECURITY POLICY**

As applicable, Licensor and Licensee understand and agree that all products and/or services provided under this Agreement must allow Licensee 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 Licensor and Licensee 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 Vendor shall be paid for all products and/or services rendered prior to the date of termination, and Vendor shall refund any and all applicable unexpended prorated fees previously paid by Licensor and Licensee.

#### **ARTICLE 40 SOFTWARE SUPPORT AND MAINTENANCE**

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

**40.2** Licensor shall also provide unlimited email and toll-free telephone technical support in the operation of the Applications and Service twenty-four (24) hours a day, seven (7) days a week. Licensor shall respond by telephone within one (1) hour to requests for support services. Licensee shall be given priority placement in the support queue for all system locking situations or problems claimed by Licensee to be a mission critical process. Upon receipt of Licensee's call, Licensor will (a) create an error report, (b) assign a severity level and (c) attempt to resolve the problem in accordance with the procedures and processes for problem resolution detailed below. It is understood by the parties that the Licensee and Licensor must mutually agree on whether an error is classified as a Severity Level 1, 2, 3, or 4 error.

**40.3** Severity Level 1 implies that the Application system is down (unscheduled downtime) or is practically down. Some examples of Severity Level 1 problems are as follows: (a) The Application has an extremely slow response time; and/ or (b) The Application does not function at all, as determined by the State (c) There is no way to circumvent the problem; (d) A significant number of State users, including distributors and recipient agencies, are affected; (e) A production business system is inoperable. Licensor shall resolve Severity Level 1 Errors within eight (8) consecutive hours from intake, with a response time of one (1) hour from intake.

**40.4** Severity Level 2 implies that the Application is not performing in accordance with the specifications. Some examples of Severity Level 2 problems are as follows: (a) Slow response time, creating significant State business impact; (b) It's core functionality is not available, or one of the system requirements is not met, as determined by the state. Licensor shall resolve Severity Level 2 Errors within ten (10) consecutive hours from intake, with a response time of one (1) hour from intake.

**40.5** Severity Level 3 implies that the Application is not performing in accordance with the specifications. Some examples of Severity Level 3 problems are as follows: (a) Unexpected results; (b) Moderate or minor operational impact, as determined by the State. Licensor shall resolve Severity Level 3 within seven (7) days from intake, with a response time of one (1) hour from intake.

**40.6** Severity Level 4 implies that the Application is a low impact problem, that is not significant to operations or is related to education as determined by the State. Some examples of Severity Level 4 problems are as follows: (a) General how to or informational solution software questions; (b) Understanding of reports; (c) General how to create reports, and/or documentation requests. Licensor shall resolve Severity Level 4 by the next version release, or within a mutually agreed upon time frame by the State and Licensor. The response time should be within one (1) hour from intake.

#### **ARTICLE 41 FORCE MAJEURE**

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war or terrorism, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"). When such a cause arises, the Licensor shall notify the Licensee immediately in writing of the cause of its inability to perform; how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate this Agreement.

#### **ARTICLE 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>

## **ARTICLE 43 FEDERAL TERMS AND CONDITIONS**

The Seller understands and agrees that any supplemental agreement and/or purchase order made through this EPL Agreement may be paid in whole or in part federal funds. Therefore, Seller, including any subcontractor at any tier, must comply with all rules and regulations governing federal awards, including, but not limited to, 2 C.F.R. Part 200, the below terms and conditions of Appendix II to 2 C.F.R. Part 200 (as applicable), and any other additional funding terms and conditions provided by Purchaser in a supplemental agreement and/or purchase order.

### **43.1 Equal Employment Opportunity.**

As applicable, the Seller agrees to abide by the terms provided under 41 C.F.R. Part 60, including, 41 CFR Part §§ 60-1.3 & 1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 C.F.R. 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 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

### **43.2 Davis-Bacon Act, as amended (40 U.S.C. §§3141-3148).**

As applicable, the Seller agrees to comply with the Davis-Bacon Act (40 U.S.C. §§3141-3144, and §§3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination.

### **43.3 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).**

Where applicable, Seller must include comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

### **43.4 Rights to Inventions Made Under a Contract or Agreement.**

As applicable, the Seller must comply with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government

Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

**43.5 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.**

The Seller agrees 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).

**43.6 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 governmentwide 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. Seller certifies that it is not currently federally debarred, and further that it will not subcontract any portion of the services under this EPL Agreement or purchase order/supplement, to any party that is debarred in accordance with this provision.

**43.7 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).**

Sellers that apply or bid for an award exceeding \$ 100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**43.8 Procurement of Recovered Materials.**

Seller agrees to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**43.9 Prohibition On Certain Telecommunications And Video Surveillance Services Or Equipment.**

The Seller agrees it will comply with 2 C.F.R. 200.216 and will not obtain, provide or use covered telecommunications equipment or services in the performance of this EPL Agreement or any

supplemental agreement and/or purchase order. Covered telecommunications equipment or services has the meaning provided in Public Law 115-232, Section 889.

**43.10 Domestic preferences for procurements.**

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(c) Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 C.F.R. Part 184.

**43.11 Contracting With Small And Minority Businesses, Women's Business Enterprises, And Labor Surplus Area Firms.**

(a) The [Seller, and, Purchaser \(as applicable\)](#), must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

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(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

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

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

**VENDOR**

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

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

**Authorized Signature**

**Authorized Signature**

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

Printed Name: \_\_\_\_\_

Title: **Executive Director**

Title: \_\_\_\_\_

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

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

**Mississippi Department of Health**

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

**Authorized Signature**

Printed Name: **Dr. Daniel Edney**

Title: **State Health Officer**

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

**EXHIBIT A**

**EXHIBIT B  
 MISSISSIPPI STATE DEPARTMENT OF HEALTH  
 BUSINESS ASSOCIATE AGREEMENT (BAA)**

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 non- permitted 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.

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.

## **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.

## VI. 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  
Health 570 East Woodrow Wilson  
Suite O-400  
P. O. Box 1700  
Jackson, MS 39215  
601-576-7847

IT Security Officer  
Mississippi State Department of  
570 East Woodrow Wilson  
Suite O-450  
P.O. Box 1700  
Jackson, MS 39215  
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: \_\_\_\_\_ By: \_\_\_\_\_

(Authorized Signature)

(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: \_\_\_\_\_