

**Sole Source Determination**

Miss. Code Ann. § 27-104-7(2)(o) and (4)

Section 3-206 of the PPRB Rules and Regulations

**THE PROPOSED CONTRACT TERMS ARE ATTACHED TO THIS DETERMINATION.**

Agency: Mississippi Public Health Department  
Proposed Sole Source Vendor: Gold Standard Diagnostics, Corp  
Intended Contract Term: 5 Year Term  
Anticipated Contract Amount: 41,250.00

The personal or professional service offered in the contract is:

Mississippi Department of Health (MSDH) intends to award Gold Standard Diagnostics, Corp, as the sole source provider of preventative services, parts, reagents, and software for the AIX1000 system.

The personal or professional service described above is the only one that can meet the needs of the agency because:

Gold Standard Diagnostics is the only certified service vendor, and the sole source vendor for certified parts used in servicing the AIX1000. Per 21 CFR 21 CFR 820.70(g), the equipment manufacturer alone can provide installation, operational and performance qualifications. To maintain compliance with CMS CLIA regulations, the MPHL must maintain a preventative maintenance agreement with each instrument manufacturer.

Per 21 CFR 21 CFR 820.70(g), Each manufacturer shall ensure that all equipment used in the manufacturing process meets specified requirements and is appropriately designed, constructed, placed, and installed to facilitate maintenance, adjustment, cleaning, and use.

(1) Maintenance schedule. Each manufacturer shall establish and maintain schedules for the adjustment, cleaning, and other maintenance of equipment to ensure that manufacturing specifications are met. Maintenance activities, including the date and individual(s) performing the maintenance activities, shall be documented.

(2) Inspection. Each manufacturer shall conduct periodic inspections in accordance with established procedures to ensure adherence to applicable equipment maintenance schedules. The inspections, including the date and individual(s) conducting the inspections, shall be documented.

(3) Adjustment. Each manufacturer shall ensure that any inherent limitations or allowable tolerances are visibly posted on or near equipment requiring periodic adjustments or are readily available to personnel performing these adjustments.

The proposed sole source vendor is the only person or entity that can provide the required personal or professional service because:

Gold Standard Diagnostics, Corp is the sole manufacturer of the AIX1000. To meet regulatory requirements, the MPHL must purchase preventative maintenance services from the instrument manufacturer.

Sole Source Determination

The Agency conducted the following market analysis in order to ensure that the service required was practicably available from only one source (any documentation relevant to the market analysis conducted should be attached to this determination):

The Sole Source Vendor letter is attached.

The amount to be expended for the personal or professional service is reasonable because:

Instrument Value New: \$71,417.00

The cost of the preventative service maintenance agreement is only 11% of the cost of purchasing a new instrument. An automated microplate analyzer is a very complex instrument and must be maintained by the instrument manufacturer to meet regulatory requirements associated with a CLIA Certificate of Accreditation.

The Agency conducted a noncompetitive negotiation with the proposed sole source vendor to obtain the best possible price on the personal or professional service by:

Gold Standard Diagnostics, Corp is the sole manufacturer and sole certified service vendor of the AIX1000. All applicable discounts were explored and applied.

Based on the foregoing, I have determined the intended vendor is the sole provider of the personal or professional services needed by the Agency. Pursuant to Miss. Code Ann. § 27-104-7(2)(o) and (4) and Section 3-206 of the PPRB Rules and Regulations, the Agency intends to award this contract through a sole source procurement.

Agency Head Name: Daniel Edney, MD Title: State Health officer

Signature: Daniel Edney, MD Date: 1/13/2025 | 1:52 PM CST

The Agency Head must sign this determination and cannot delegate that authority to other Agency personnel.

Sole Source Determination

**Instructions to File an Objection to this Sole Source Determination:**

Any person or entity who objects to the determination that the proposed vendor is the sole provider of the personal or professional services described herein should file an objection with the Agency and the Public Procurement Review Board (PPRB).

The objection must provide a detailed explanation of why the personal or professional service provider is not a sole source; identify the Agency; identify the proposed Sole Source Vendor; state the RFIN Number for the sole source determination and the date that determination was first published (if available); and identify the objecting party to include valid contact information by which the objecting party can be immediately reached by the Agency or the PPRB (or its staff).

The Agency is required to publicize the sole source determination for 14 days, after which parties who object to that determination have 7 days to file their objections. Timely submission of the objection is the sole responsibility of the objecting party, and the objecting party bears all risk regarding delivery of the objection. Objections received after the deadline will not be considered by the Agency or the PPRB.

Any such objection should be clearly labelled "OBJECTION TO SOLE SOURCE DETERMINATION" and should be submitted to the following persons:

**For the Agency:**

**For the PPRB:**

Public Procurement Review Board  
c/o Brittney Thompson, Director  
Office of Personal Service Contract Review  
Mississippi Department of Finance and Administration

**Hand Delivery:**

501 North West Street, 7<sup>th</sup> Floor  
Jackson, Mississippi 39201

**U.S. Mail:**

Post Office Box 267  
Jackson, Mississippi 39205

**Electronic Mail:**

Brittney.Thompson@dfa.ms.gov  
cc: OPSCR@dfa.ms.gov

Once an objection to the sole source determination is filed, the Agency may withdraw the sole source determination and competitively procure the service or appeal the objection to the PPRB. The Agency will have the burden to prove the proposed vendor is a sole source provider of the personal or professional services needed by the Agency. If the PPRB has any reasonable doubt as to whether the personal or professional service can only be provided by one source, then the Agency must competitively procure the service.





# Maintenance and Support Agreement – Gold

## Scope and Purpose

Gold Standard Diagnostics (“GSD”) agrees to provide maintenance and support services on behalf of Mississippi Public Health Laboratory \_\_\_\_\_, located at 570 East Woodrow Wilson Avenue | Jackson, MS 39216 \_\_\_\_\_ (“Customer”), in accordance with and subject to the terms and conditions specified in this document (“Agreement”).

Upon execution of this Agreement by an authorized representative of Customer, GSD agrees to provide the Services set forth in this Agreement for the equipment and dates outlined in **APPENDIX A COVERED PRODUCTS**. GSD reserves the sole right to determine the designation and allocation of GSD personnel, or third parties authorized by GSD, to provide Services in this Agreement.

## Defined Terms

Term	Definition
<b>Covered Parts</b>	Replacement components incorporated into a Covered Product in connection with Services provided under this Agreement.
<b>Covered Products</b>	Equipment for which Services are provided under this Agreement, and are contained in <b>APPENDIX A COVERED PRODUCTS</b> .
<b>Covered Software</b>	All unmodified, generally available and commercially released Software distributed by GSD as part of a Covered Product.
<b>Customer</b>	Purchaser of Services.
<b>Disposables</b>	Any items required for continued use of the system, but not an indication of an Error of any Covered Products or Software. Purchase of Disposables are the responsibility of the Customer.
<b>Error</b>	Any material failure of the commercially unmodified Covered Products to substantially conform to the functional specifications as published in the Instruction Manual accompanying Covered Products at the location designated by Customer under this Agreement. However, any nonconformity resulting from Customer’s misuse, improper use, neglect, alteration or damage of the Covered Products, or Customer’s combining or merging the Covered Products with any hardware or software not certified by GSD or the Manufacturer shall not be considered an Error.
<b>Modification</b>	Required technical service bulletins that modify any of the Covered Products.

SOPF-210  
Rev C

QA RELEASED

Effective Date: 06/19/2023

Page 2 of 9

## Maintenance and Support Agreement - Gold

Term	Definition
<b>Response Time</b>	<p>For Service Calls, the interval between the time a Service Call from a Customer is received by GSD and a response call from a GSD representative is made to the Customer.</p> <p>For Service Visits, the interval between the time a GSD representative and Customer agree that on-site service is needed and the arrival of a GSD representative at Customer Site for Repair Services.</p>
<b>Repair Services</b>	Services performed at Customer's location under an applicable Service Program to identify performance problems, troubleshooting and repair of the Covered Products to comply with published specifications shipped with Instruction Manual accompanying Covered Products at the location designated by Customer under this Agreement.
<b>Preventive Maintenance</b>	An on-site scheduled visit to the location identified in this Agreement for the purpose of performing preventive maintenance per manufacturer's recommendations for Covered Products. PM Calls may be performed in conjunction with service calls.
<b>Services</b>	Technical support and maintenance tasks GSD is obligated to perform as part of the Service Program defined in this Agreement, as well as technical support and maintenance tasks provided by GSD outside of the Service Program defined in this Agreement, on a time and materials basis.
<b>Service Call</b>	A phone call or on-line communication to the Technical Support or Field Service teams.
<b>Service Program</b>	A standardized combination of Services and/or Parts offered by GSD as defined in this Agreement.
<b>Service Visit</b>	An on-site visit for the purpose of performing Repair Services. Also known as a Site Visit.
<b>Updates</b>	Any software service pack generally released by manufacturer to Customer for Covered Software.



SOPF-210  
Rev C



**QA RELEASED**  
Effective Date: 06/19/2023  
Page 3 of 9

## Maintenance and Support Agreement - Gold

### Services

This Agreement entitles the Customer to the following services and conditions:

1. This Agreement provides for on-line/telephone support during normal business hours from 6AM PST to 5PM PST excluding weekends and company holidays as defined in Service Call Support. All costs associated with Service Call Support are covered under this Agreement.
2. This Agreement provides for three Service Visits for repair of technical issues. All costs associated with these Service Visits (travel, Covered Parts, labor) are covered under this Agreement. Service Visits will be scheduled and performed as described in **SERVICE VISIT SUPPORT**. Any Service Visits beyond this are subject to conditions and pricing provided in **UNCOVERED ADDITIONAL SERVICES** unless otherwise specified in **APPENDIX B ADDITIONAL AND MODIFIED SERVICES**.
3. This Agreement provides for one Service Visit for Preventative Maintenance per year. All costs associated with this Service Visit for Preventative Maintenance (travel, Covered Parts, labor) are covered under this Agreement.
4. This Agreement provides for priority scheduling for requests for Service Visits. Service Visits associated with this Agreement will be scheduled ahead of any other Silver Service Visits or other Service Visits not associated with a Service Agreement.
5. This Agreement provides for Updates and Modifications of Covered Products (including software updates) as deemed necessary by the instrument Manufacturer at no additional charge. Such Updates and Modifications will be performed during Service Visits for Preventative Maintenance.

After a Service Visit or Preventative Maintenance, verification of acceptable performance will be determined by the GSD Service Technician through successful system checks. Results will be documented in the Site Visit Report.

### Parts

At GSD's discretion, Parts supplied may be new or remanufactured to original specifications. Customer agrees to return any defective or used Parts, which shall become the property of GSD.

SOPF-210  
Rev C



QA RELEASED

Effective Date: 06/19/2023

Page 4 of 9

## Maintenance and Support Agreement - Gold

### Uncovered Additional Services

The Customer may request additional maintenance and/or repair Services beyond the terms and conditions defined in this Agreement. This includes requests for additional Preventative Maintenance Service Visits beyond those provided by this Agreement. In the event GSD agrees to provide such Services, Customer agrees to pay GSD a base rate of \$1,000 per day which includes any parts required to repair machine, labor, and travel costs for GSD personnel.

### Uncovered Non-Contract Services

Customers who do not purchase a Service Agreement may request maintenance and/or repair Services. This includes requests for Preventative Maintenance Service Visits. In the event GSD agrees to provide such Services, Customer agrees to pay GSD a base rate of 35% of a Gold level Agreement per day per instrument, or \$2,500 per day per instrument, whichever is greater. This includes any parts required to repair machine, labor, and travel costs for GSD personnel.

### Term, Pricing and Payment Terms

The pricing and duration of this Agreement for each covered product is provided in **APPENDIX A COVERED PRODUCTS**. Payments made under this Agreement shall be due net thirty (30) days of the date of the GSD invoice. Taxes may be applicable for Services, depending on the location where the Services are performed. Failure to pay the service invoices within 15 days of the due date will result in the disruption to the Services provided by GSD under this Agreement.

### Exclusions

Excluded from this Agreement are maintenance and service due to damage or instrument failure related to 1) any nonconformity resulting from Customer's misuse, improper use, neglect, alteration or damage of the Covered Products 2) accident, misuse, neglect, fire, war, power outages or electrical problems that are external to the Covered Products or failure to use the Covered Products in compliance with published user instructions, 3) acts of God, 4) Relocation or transportation of the Covered Products, 5) unauthorized alterations of the Covered Products, 6) use of chemicals that are not used for normal operation of the Covered Products, or 7) use of third party hardware or software.

Consultation and support regarding the installation or use of software not provided by GSD is not covered in this Agreement.



SOPF-210  
Rev C



**QA RELEASED**  
Effective Date: 06/19/2023  
Page 5 of 9

## Maintenance and Support Agreement - Gold

In the event services are provided due to one or more of the above reasons, Customer will be charged according to the terms and conditions described in **UNCOVERED ADDITIONAL SERVICES** or **UNCOVERED NON-CONTRACT SERVICES** as appropriate.

### Service Hours & Access Points

#### Service Call Support

Phone/On-line support will be provided 24 Hours a Day, 7 Days a Week, 365 Days a Year.

Technical Support Business Hours are defined as Monday-Friday from 6AM-5PM PST excluding weekends and GSD designated holidays.

During Technical Support Business Hours, the Response Time for Service Calls will be within 2 hours.

Outside of Technical Support Business Hours, the Response Time for Service Calls will be Next Day.

Time	Contact Number	Call Response Time
<b>Technical Support Business Hours</b> 6AM TO 5PM Pacific Time Zone	888-977-4739	Within 2 hours
<b>Outside Technical Support Business Hours</b>	888-977-4739	Next Day

#### Service Visit Support

Repair Service Business Hours for Service Visits are defined as Monday-Friday from 8:00AM-6:00PM (Lab Local Time Zone), excluding GSD designated holidays.

On-site visits for the purpose of performing Repair Services will be provided within 2 Business Days of GSD and Customer agreement that an on-site visit is required.

### Access and Customer Responsibilities

To perform Services hereunder, Customer shall provide GSD with full on-site access when requested to the Covered Products, and provide at no charge for GSD's use, all facilities such as working space, electricity and telephone services and shall provide any other facilities and support reasonably necessary to enable GSD to perform the Services. Customer shall also make available to GSD for consultation employees of Customer having familiarity with the Covered Products. GSD shall not be liable for any failure or delay in performance due to any cause beyond its control. Customer agrees to

SOPF-210  
Rev C



QA RELEASED

Effective Date: 06/19/2023

Page 6 of 9

## Maintenance and Support Agreement - Gold

indemnify and hold GSD harmless from any claim of injury to person or property arising under this Agreement or from unauthorized use of the Covered Products.

### Warranty and Limitations

GSD warrants that for ninety (90) days from delivery to you any Parts provided hereunder will conform to or exceed the manufacturer's written specifications as set forth in the "Instruction Manual" shipped with the Product into which the Parts have been installed ("Specifications") and that Services provided to you will be provided in a workmanlike manner. Your sole and exclusive remedy with respect to Parts and/or Services proved to GSD's satisfaction to be defective or nonconforming to this warranty shall be replacement of such Parts and/or re-performance of Services without charge.

**GSD MAKES NO OTHER WARRANTY OF ANY KIND UNDER THIS AGREEMENT, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE RESPECTING THIS AGREEMENT OR THE SERVICES, MATERIALS AND DOCUMENTATION PROVIDED HEREUNDER.**

**NEITHER PARTY SHALL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES OF ANY KIND, RESULTING ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, INCLUDING, WITHOUT LIMITATION, ANY CLAIM THAT USE OF COVERED DEVICES CAUSED AN INACCURATE TEST RESULT OR MISDIAGNOSIS. IN NO EVENT SHALL GSD'S MAXIMUM LIABILITY EXCEED THE TOTAL AMOUNTS PAID BY CUSTOMER HEREUNDER.**

SOPF-210  
Rev C



**QA RELEASED**  
Effective Date: 06/19/2023  
Page 7 of 9

### Maintenance and Support Agreement - Gold

#### Miscellaneous

The terms and conditions of this Agreement, and any document referred to on the face hereof, constitute the entire agreement between Customer and GSD regarding the subject matter hereof. Either party's failure to strictly enforce any term or condition of this Agreement or to exercise any right, power or privilege arising hereunder shall not constitute a waiver of that party's right to strictly enforce such terms or conditions or exercise such right, power or privilege thereafter. In the event GSD is precluded from performing its obligations under this Agreement due to circumstances beyond its control ("Force Majeure"), including without limitation war, acts of terrorism, flood, earthquake, government actions and labor unrest, GSD's failure to perform shall not constitute a breach of this Agreement for so long as such conditions persist. This Agreement and its terms are confidential. Customer shall not make any public statements regarding GSD or the Services provided under this Agreement without the prior consent of GSD. All rights and remedies under this Agreement are cumulative and are in addition to any other rights and remedies each party may have at law or in equity. If any provision of this Agreement shall be held invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions, rights, powers, and privileges shall not be affected or impaired thereby. GSD may assign this Agreement to a third party who acquires a controlling equity interest in GSD or who acquires all or substantially all its assets. The paragraph headings herein are for convenience only and form no part of this Agreement and shall not affect its interpretation.

This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their representatives, agents and permitted successors and assigns.

\_\_\_\_\_  
*Customer Name*

Gold Standard Diagnostics  
\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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

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

\_\_\_\_\_  
Date

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Date



SOPF-210  
Rev C



**QA RELEASED**  
Effective Date: 06/19/2023  
Page 9 of 9

### Maintenance and Support Agreement - Gold

## Appendix B Additional and Modified Services

This appendix lists any additional or modified services to be included in this Agreement. All items listed in this appendix are to be considered services provided under the pricing and terms defined in

### APPENDIX A COVERED PRODUCTS.

Additional/Modified Service Item	Description

## Appendix C GOLD - Services Summary

1. Telephone/On-line support Monday to Friday 6AM to 5PM PST excluding company holidays and weekends.
2. On-site Service Visits with 2 Business Day Response Time
3. Three Service Visits for emergency repair for any errors
4. All costs associated with repair (includes travel, Covered Parts, and labor)
5. One preventative maintenance visit per year.
6. Priority scheduling for requests for service
7. Product Updates and Modifications as needed.

**MISSISSIPPI STATE  
DEPARTMENT OF HEALTH  
STANDARD ADDENDUM**

This standard addendum (“Addendum”) is an integral part of any contracts, terms of service, terms and conditions, subscription agreements, purchase agreements or agreements of any kind (hereinafter, “Agreement”) entered into by the Mississippi State Department of Health (“MSDH”) and shall become a part of any the Agreement(s) with **Gold Standard Diagnostics, Corp.** (hereinafter, “Contracting Party”), and is applicable whether Contracting Party has entered into an agreement to provide any services, products, health care services, or receive the same from MSDH.

Where applicable, the following terms shall control over any and all conflicting parts of the Agreement:

1. MSDH is a governmental entity of the State of Mississippi and is afforded the protection of limited sovereign immunity pursuant to the Mississippi Tort Claims Act (Mississippi Code Annotated, Section §11-46-1, et seq. as amended) and the Mississippi Constitution, including Article 4, Section 100. Any action against MSDH shall be subject to the limitations contained in those and other applicable laws, including interpretations by the Mississippi Attorney General’s Office of the laws applicable to MSDH and/or the Agreement, none of which are waived by MSDH by entering into the Agreement.
2. All MSDH contracts and/or agreements (including said Agreement) are governed by and interpreted under the laws of the State of Mississippi and the jurisdiction/venue for any litigation, special proceeding or other proceeding as between the parties that may be brought, or arise out, in connection with, or by reason of the Agreement shall be in Hinds County, Mississippi, unless otherwise specified by Mississippi law. *U.S. Const. Amend XI; Miss. Code Ann. § 11-11-3; Miss. Code Ann. § 11-45-1;*
3. It is expressly understood and agreed that the fulfillment of the conditions of the Agreement by MSDH is conditioned upon the receipt of governmental funding. If funds anticipated for the fulfillment of this agreement are, at any time, not forthcoming or insufficient, MSDH shall have the right to terminate this agreement, without damage, penalty, cost, or expense to MSDH of any kind whatsoever upon sixty (60) days written notice.
4. No contract or agreement (including said Agreement) may be for a term of more than three (3) years unless it is an agreement regarding physical property (i.e., lease agreement for buildings, property, etc.).
5. Any reference to MSDH limiting damages, remedies or waiving any common law warranty are deleted. *Const. Art. 4, § 100; Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct. 18, 2002).*
6. Any references to attorney’s fees to be paid by MSDH are deleted. Each party shall be responsible for its own defense against all claims, liabilities, losses and expenses, including reasonable costs, collection expenses and attorney’s fees, which may arise because of the negligence, misconduct, or other fault of its own agents or employees in the performance of its obligations under this Agreement. MSDH does not agree to and any provision providing for mandatory arbitration is hereby deleted. *Miss. AG Op., Nowak (January 23, 2009); Miss. AG Op., Stringer (January 25, 2006).*
7. All references to interest, penalties, and/or late fees to be paid by MSDH other than lease-purchase contracts not exceeding five years are deleted. MSDH will pay forty-five (45) days of invoice, receipt, inspection and approval of goods and services as provided in §31-7-305(3) of the Mississippi Code Annotated. *Miss. AG Op., Pearson (Nov. 22, 1993).*
8. Pursuant to §§27-65-1, et seq., and 27-67-1, et seq., of the *Mississippi Code of 1972* (“Code”) MSDH and other state institutions are exempt from state sales and use taxes. Likewise, MSDH will not pay excise or personal property taxes. If the vendor is liable for such taxes, Vendor shall take such into consideration in



pricing. It is the vendor's responsibility to contact local taxing authorities in the state and county where equipment will be located to determine possible tax liabilities in connection therewith.

9. With the exception of any expressed limitation of remedies for breach of implied warranties of merchantability and fitness for a particular purpose concerning computer software and services performed on computer hardware and computer software, which are sold between merchants, any provisions which would limit the Contractor's liability to MSDH or allow Contractor to waive any applicable warranties (express or implied) are deleted. *Miss. Const. Art. 4, § 100; Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct. 18, 2002); Miss. AG Op., Long (February 27, 2009).*
10. In the event Contracting Party does not furnish products or services as agreed upon in the Agreement, including any stated time period to cure, MSDH may, at its discretion, declare the Agreement null and void by written notice to the Party or may require the Party, at its expense, to make such modification as necessary to make the products or services satisfactory.
11. As an entity of the State of Mississippi, MSDH maintains professional and general liability coverage (or equivalent self-insurance) in the amounts set forth by Mississippi Tort Claims Act under Mississippi Code Annotated, §11-46-1, et seq., and does not name others as additional insureds.
12. In the event of any conflict between the terms of the Agreement and the terms of this Standard Addendum, the terms of this Addendum shall control. This Addendum and the Agreement constitute the entire agreement of the Parties with regard to the subject matter of the Agreement. In all other respects, the Agreement shall remain unchanged. No modification to the Agreement or any term thereof may be amended except pursuant to in writing signed by the State Health Officer or his duly authorized designee. Contracting Party hereby acknowledges that no other person has authority to bind MSDH to any change in any terms of the Agreement, and specifically agrees that the terms of the Agreement may not be varied by invoice, purchase order, memo or otherwise, unless it secures the signature of the State Health Officer or his designee, acknowledging and expressing agreeing to the change. No acceptance or payment of an invoice by MSDH where the terms of the invoice that vary from the Agreement shall constitute an amendment to the Agreement, but to the contrary shall be treated as mutual mistake and Contractor shall refund any payment received from MSDH which is not in compliance with the price terms and other provisions of the Agreement.
13. Any reference to MSDH waiving its right to a trial by jury are deleted. *Miss. AG Op., Chamberlin (Oct. 18, 2002).*
14. MSDH is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act, Miss. Code Ann. §25-61-1, et seq., and the Mississippi Accountability and Transparency Act of 2008, Miss. Code Ann. § 27-104-151, et seq.
15. Any reference to MSDH indemnifying or holding harmless the Contractor or any other party are deleted. *Miss. AG Op., Chamberlin (Oct. 18, 2002).*
16. Any provisions limiting the time for MSDH to pursue legal action are deleted. *Miss. AG Op., Chamberlin (Oct. 18, 2002).*
17. Any reference to submitting to arbitration are deleted. *Miss. AG Op., Clark (June 7, 2002).*
18. MSDH does not make any warranty. *Miss. Const. Art. 4, § 100; Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct. 18, 2002).*
19. Any reference to automatic renewals is deleted. *Miss. AG Op., Mayo (January 5, 2018).*

20. MSDH does not agree to pay extra compensation, fees, or allowances after service rendered or contract made, or for any payment not authorized by law. *Miss. Const. Art. 4, § 96; Miss. AG Op., Stringer (January 25, 2006).*
21. Any provisions giving the Contractor exclusive control over litigation are deleted. MSDH does not agree that Contractor may represent, prosecute or defend legal actions in the name of MSDH. *Miss. Code Ann. § 7-5-1*
22. Software Licenses and Subscription Services. Upon termination of the Agreement, MSDH will be entitled to a refund of applicable unexpended prorated annual software maintenance and/or subscription service fees/charges. In the event of termination, Contracting Party shall be entitled to receive just and equitable compensation for satisfactory work completed, or services rendered in connection with this Agreement as of the date of receipt of notification of termination. In no case shall said compensation exceed the total price set forth in the Agreement. The provisions of this article do not limit either party's right to pursue any other remedy available at law or in equity.
23. Maintenance/Services. Upon termination of Agreement, MSDH will be entitled to a refund of applicable unexpended prorated annual maintenance/service fees/charges, if any. In the event of termination, Contracting Party shall be entitled to receive just and equitable compensation for satisfactory work completed or services rendered by Contracting Party in connection with this Agreement as of the date of receipt of notification of termination. In no case shall said compensation exceed the total contract price. The provisions of this article do not limit either party's right to pursue any other remedy available at law or in equity.
24. Access. Where applicable, MSDH agrees to grant Contracting Party access to MSDH software, hardware, networks, and/or other IT equipment and resources to the extent necessary to fulfill the terms of Agreement. This applies to both on-site and remote access capabilities in accordance with MSDH and Mississippi Department of Information Technology Services (ITS) policies, regulations, and/or instructions. Access rights will only be granted to employees and/or other designated representatives of the Contracting Party ("the Authorized Users") as agreed upon with MSDH. The Authorized Users must have been made expressly aware of, and agree to, all their duties resulting from Agreement with respect to use, maintenance, security and confidentiality requirements set forth by state and federal law, regulations, and guidelines when accessing MSDH software, hardware, networks, and/or other IT equipment and resources.

For remote access, Contracting Party must:

- in accordance with Enterprise Security Policy (ESP) rule 10.1F, not use MSDH personnel or resources to connect remotely across the Internet into a device located on the Enterprise State Network ("the Network") if such connection does not require real-time interaction by the MSDH end-user device;
- unless remote access is initiated and supervised by authorized MSDH personnel using agency approved software allowing real-time interaction (e.g., WebEx), request right of entry/use from MSDH at least forty-eight (48) hours in advance of the anticipated service period except in emergency situations.
  - Emergency situations include events in which access must be granted to Contracting Party to avoid or mitigate eminent or present:
    - critical equipment malfunction which would hinder performance of MSDH's mission;
    - damage or loss of MSDH or Contracting Party data, records, and/or property;
    - illegal release of MSDH or Contracting Party data, records and/or other protected information;

- physical harm or danger to employees or representatives of MSDH or Contracting Party, or other parties; or
  - harm or danger to public health.
- ensure that the equipment used to remote access MSDH end-user device is subject to physical access control and is not shared with a third party;
  - ensure that only Authorized Users communicate with MSDH and only with the authorized MSDH resources and/or other resources agreed upon by Contracting Party and MSDH;
  - set up mechanisms for individual identification and authentication of Authorized Users for use of Contracting Party's equipment to perform remote access;
  - maintain resources used for remote access or interconnection up to date in terms of security and upgrades of the operating system and software installed on these resources;
  - take all measures as deemed appropriate to ensure the security of its software, data and other assets integrated to the Network as well as for the security of Contracting Party's own concerned network and equipment;
  - acknowledge that MSDH may immediately suspend or terminate Contracting Party's remote access if the Contracting Party uses or attempts to use the Network or MSDH resources for any prohibited use or purpose and/or does not respect the terms of this Agreement, or if MSDH has reasonable grounds to suspect that the Contracting Party has used or attempted to use the Network or MSDH resources for any prohibited use or purpose and/or has not respected the terms of this Agreement.
25. Where applicable, Contracting Party agrees to abide by the requirements of the Mississippi Employment Protection Act (E-Verify Program), as amended, by registering to do business with the Mississippi Department of Employment Security. Contracting Party fully agrees that it shall only employ persons who are legal citizens of the United States or are legal aliens, properly documented and verified by Contracting Party in compliance with all applicable statutes, regulations and other laws.
26. Where applicable, if providing services on-site, Contracting Party agrees to comply with fingerprinting and criminal history record checks requirements in accordance with Sections 37-29-232 and 43-11-13, Mississippi Code of 1972, as amended, to the extent applicable to Contracting Party. Contracting Party shall be responsible for ascertaining the application of those laws to it and its employees providing services under the Agreement.
27. Where applicable, if providing on-site patient care or on-site services in close proximity to patients, Contracting Party agrees to ensure its on-site staff have been drug screened not more than thirty (30) days prior to beginning the on-site assignment, using a drug screen procedure that is comparable to the drug screen currently used by MSDH in its post-offer pre-employment drug screening process.
28. Mississippi law limits those who can bind MSDH to any contractual provision and Contracting Party understands and agrees to this. Any changes in the Agreement, as to price or other terms, shall not be effective unless approved in writing signed by the State Health Officer, or his authorized designee.
29. Contracting Party certifies that it has not been disqualified in any manner from any federally funded program, is in compliance with all state, federal, and local laws applicable to it and its performance of the Agreement, and has never been debarred or limited in any manner from participating in the Matters relevant to the Agreement.

- 30. Until expiration of three (3) years after the furnishing of any Services hereunder, Contractor shall make available upon written request of the Department of Health and Human Services, or upon request of the Comptroller General of the United States, or of their duly authorized representatives this Agreement and the books, documents and records that are necessary to certify the nature and extent of the costs of the Agreement.
- 31. MSDH, as an entity of the State of Mississippi, consents to this agreement to the extent permitted by Mississippi law, and makes no representation as to the legality of any such provision pursuant to Mississippi law; further, its agreement to this provision shall not be construed as a waiver of any right to contest the extent to which any such provision may be enforceable.
- 32. Contractor acknowledges that the individual executing the contract on behalf of MSDH is doing so only in his/her official capacity only, and to the extent that any provision contained in the contract exceeds his/her authority, Contractor agrees that it will not look to that individual in his/her personal capacity or otherwise seek to hold him/her individually liable for exceeding such authority.

In witness whereof, the parties hereto have affixed, on duplicate originals, their signatures on the date indicated below, after first being authorized so to do.

FOR MSDH

BY \_\_\_\_\_  
 Daniel Edney, MD, FACP, FASAM  
 State Health Officer  
 Mississippi State Department of Health

\_\_\_\_\_  
DATE

FOR CONTRACTING PARTY

BY \_\_\_\_\_  
 SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
NAME

\_\_\_\_\_  
TITLE