



MISSISSIPPI STATE DEPARTMENT OF HEALTH

## Project No: 44274

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INVITATION: Sealed proposals, subject to the attached conditions, will be received at this office until **8/31/2018 @ 3:00 p.m. Central Time** for the acquisition of the products/services described below for Mississippi State Department of Health.

WIC Tele-Lactation System

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

Angela Armstead  
IT Project Analyst  
MS State Department of Health  
570 East Woodrow Wilson  
Jackson, MS 39215  
(601) 576-7066  
Angela.Armstead@msdh.ms.gov

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

PROPOSAL, SUBMITTED IN RESPONSE TO  
PROJECT NO. 44274  
due 8/31/2018 @ 3:00 p.m.,  
ATTENTION: Angela Armstead

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**Mary Currier, MD, MPH**  
**State Health Officer, MSDH**

## MSDH RFP Response Checklist

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RFP Response Checklist: These items should be included in your response to Project No. 44274.

- \_\_\_\_\_ 1) One clearly marked original response and four (4) identical copies of the complete proposal. Label the front and spine of the three-ring loose-leaf binder with the Vendor name and Project number. Include the items listed below inside the binder. Please DO NOT include a copy of the RFP in the binder.
- \_\_\_\_\_ 2) *Submission Cover Sheet*, signed and dated. (Section I)
- \_\_\_\_\_ 3) *Proposal Bond*, if applicable (Section I)
- \_\_\_\_\_ 4) *Proposal Exception Summary*, if applicable (Section V)
- \_\_\_\_\_ 5) Vendor response to *RFP Questionnaire* (Section VI)
- \_\_\_\_\_ 6) Point-by-point response to *Technical Specifications* (Section VII)
- \_\_\_\_\_ 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 should also be the person the Mississippi State Department of Health, (**MSDH**), should contact for questions and/or clarifications.

Name \_\_\_\_\_ Phone # \_\_\_\_\_  
Address \_\_\_\_\_ Fax # \_\_\_\_\_  
\_\_\_\_\_ E-mail \_\_\_\_\_

Subject to acceptance by **MSDH**, 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), 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 **MSDH** 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 **MSDH** by the date and time specified. **MSDH** is not responsible for any delays in delivery or expenses for the development or delivery of proposals. Any proposal received after proposal opening time will be returned unopened. Any proposal received with insufficient postage will be returned unopened.
4. Proposals or alterations by fax, e-mail, or phone will not be accepted.
5. Original signatures are required on one copy of the Submission Cover Sheet and Configuration Summary, and the Vendor's original submission must be clearly identified as the original. The Vendor's original proposal must include the Proposal Bond, (if explicitly required in Section IV).
6. **MSDH** reserves the right to reject any proposals, including those with exceptions, prior to and at any time during negotiations.
7. **MSDH** 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 **MSDH** 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 clearly marked original response and four (4) identical copies of the complete proposal, including all sections and exhibits, in three-ring binders.
  - 9.2 To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the package. 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 and tab the responses to 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. **MSDH** reserves the right to request additional information or clarification of a Vendor's proposal. The Vendor's cooperation during the evaluation process in providing **MSDH** 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 **MSDH**.
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 one clearly marked original and four (4) copies of the clarification.
  - 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 MSDH web site. Vendors failing to comply with this requirement will be subject to disqualification.

  - 14.1 The State's contact person for the selection process is: Angela Armstead, IT Project Analyst, 570 East Woodrow Wilson, Jackson, MS 39215, 601-576-7066, Angela.Armstead@msdh.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 respond to the RFP successfully.

1. **Interchangeable Designations**

The terms "Vendor" and "Contractor" are referenced throughout this RFP. Generally, references to the "Vendor" are used in conjunction with the proposing organization and procurement process leading up to the final RFP selection and award. The term "Contractor" denotes the role assumed, post-award, by the winning Vendor. Additionally, the terms "State of Mississippi," "State" or "MSDH" may be used interchangeably throughout this RFP to denote the political entity issuing the RFP and requesting responses from Vendors throughout these specifications.

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 **MSDH** 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 **MSDH** website, together with the associated RFP specification. Vendors are required to check the **MSDH** website periodically for RFP amendments before the proposal opening date at:

[https://msdh.ms.gov/msdhsite/\\_static/19,0,205.html](https://msdh.ms.gov/msdhsite/_static/19,0,205.html)

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 **MSDH** website, you may contact the **MSDH** IT Project Analyst listed on page one of this RFP and request a copy.

5. **Oral Communications Not Binding**

Only transactions which are in writing from **MSDH** 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 *Technical Specifications*.

8. **Multiple Awards**  
**MSDH** reserves the right to make multiple awards.
9. **Right to Award in Whole or Part**  
**MSDH** 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 the 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. Vendors that remain in a competitive range within an evaluation may be requested to tender Best and Final Offers, at the sole discretion of the State. All such Vendors will be provided an equal opportunity to respond with a Best and Final Offer under a procedure to be defined by the State that encompasses the specific, refined needs of a project, as part of the BAFO solicitation. The State may re-evaluate and amend the original project specifications should it be deemed necessary in order to improve the opportunity for attaining Best Value scenarios from among the remaining competing Vendors. All BAFO proceedings will be uniformly conducted, in writing and subject to solicitation by the State and receipt from the Vendors under a precise schedule.

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 **MSDH** contracts if it is in its best interest to do so. If this option is exercised, then the awarded Vendor must be willing to integrate the acquisition and implementation of such products within the schedule and system under contract.

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 complete a contract or agreement with **MSDH** successfully.

1. **Acknowledgment Precludes Later Exception**

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

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 and *MSDH Business Associates Agreement* in Exhibit B, if applicable, shall contractually obligate the Vendor to comply with that item.

3. **Contract Documents**

**MSDH** 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 **MSDH** and the Vendor:

- 3.1 The Proposal Exception Summary Form as accepted by MSDH;
- 3.2 Contracts which have been signed by the Vendor and MSDH;
- 3.3 MSDH' Request for Proposal, including all addenda;
- 3.4 Official written correspondence from MSDH to the Vendor;
- 3.5 Official written correspondence from the Vendor to MSDH when clarifying the Vendor's proposal; and
- 3.6 The Vendor's proposal response to the MSDH 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 **MSDH** 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. Mandatory Legal Provisions**

- 6.1 The State of Mississippi is self-insured; all requirements for the purchase of casualty or liability insurance are deleted.
- 6.2 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.
- 6.3 The Vendor shall have no limitation on liability for claims related to the following items:
  - 6.3.1 Infringement issues;
  - 6.3.2 Bodily injury;
  - 6.3.3 Death;
  - 6.3.4 Physical damage to tangible personal and/or real property; and/or
  - 6.3.5 The intentional and willful misconduct or negligent acts of the Vendor and/or Vendor's employees or subcontractors.
- 6.4 All requirements that the State pay interest (other than in connection with lease-purchase contracts not exceeding five years) are deleted.
- 6.5 Any contract negotiated under this RFP will be governed by and construed according to the laws of the State of Mississippi. Venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi.
- 6.6 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.
- 6.7 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.
- 6.8 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.

6.9 The State shall not pay any attorney's fees, prejudgment interest or the cost of legal action to or for the Vendor.

7. **Approved Contract**

7.1 Award of Contract - A contract is considered to be awarded to a proposer once the proposer's offering has been approved as lowest and best proposal through:

7.1.1 Written notification made to proposers on **MSDH** letterhead, or

7.1.2 Notification posted to the **MSDH** website for the project, or

7.1.3 CP-1 authorization executed for the project.

7.2 A contract is not deemed final until five (5) working days after either the award of contract or post procurement review. In the event of a valid protest, the State may, at its sole discretion, continue the procurement or stay the procurement. If the procurement is stayed, the contract is not deemed final until the protest is resolved.

8. **Contract Validity**

All contracts are valid only if signed by the State Health Officer of **MSDH**.

9. **Order of Contract Execution**

Vendors will be required to sign contracts and to initial all contract changes before the State Health Officer of **MSDH** signs.

10. **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.

11. **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 **Information Technology Services (ITS)**.

12. **Requirement for Electronic Payment and Invoicing**

12.1 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).

- 12.2 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.
- 12.3 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.

13. **Time For Negotiations**

- 13.1 All contractual issues must be successfully negotiated within fifteen (15) working days from the Vendor's initial receipt of the project contract from MSDH, unless MSDH 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. MSDH may withdraw the proposal award and begin negotiations with the next ranked Vendor immediately or pursue any other option.
- 13.2 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 MSDH consents to a different period.

14. **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.

15. **Sole Point of Contact**

**MSDH** 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.

- 15.1 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.
- 15.2 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.
- 15.3 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.

16. **MSDH 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. **MSDH** 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.

17. **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.

18. **Negotiations with Subcontractor**

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

19. **References to Vendor to Include Subcontractor**

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

20. **Outstanding Vendor Obligations**

20.1 Any Vendor who presently owes the State of Mississippi money pursuant to any contract for which MSDH is the contracting agent and who has received written notification from MSDH 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, MSDH 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.

- 20.2 Any Vendor who is presently in default on existing contracts for which MSDH 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.
- 20.3 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.
21. **Equipment Condition**  
For all RFPs requiring equipment, the Vendor must furnish only new equipment in response to **MSDH** specifications, unless an explicit requirement for used equipment is otherwise specified.
22. **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.
23. **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.
24. **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.
25. **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.
26. **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.
27. **Ownership of Developed Software**
- 27.1 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.

- 27.2 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.
28. **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.
29. **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.
30. **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.
31. **Compliance with Enterprise Security Policy**  
Any solution 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 covers the following topics: web servers, email, virus prevention, firewalls, data encryption, remote access, passwords, servers, physical access, traffic restrictions, wireless, laptop and mobile devices, disposal of hardware/media, and application assessment/certification. 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 comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi. Vendors wanting to view the Enterprise Security Policy should contact the IT Project Analyst listed on the cover page of this RFP.
33. **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.
34. **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.
35. **Proposal Bond**  
The Vendor is not required to include a proposal bond with its RFP proposal

36. **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.
37. **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.
38. **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. **MSDH** has no obligation to accept any exception. During the proposal evaluation and/or contract negotiation process, the Vendor and **MSDH** 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 MSDH 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 MSDH 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 MSDH either disqualifies the Vendor's proposal or withdraws the award and proceeds to the next ranked Vendor.
3. Should **MSDH** and the Vendor reach a successful agreement, **MSDH** 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 **MSDH**, 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 and *MSDH Business Associates Agreement* in Exhibit B, 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 **MSDH** in the past, **MSDH** 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 **MSDH** or participated in contract negotiations with **MSDH** 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.

<b>MSDH RFP Reference</b>	<b>Vendor Proposal Reference</b>	<b>Brief Explanation of Exception</b>	<b>MSDH Acceptance (sign here only if accepted)</b>
(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)	
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://sus.magic.ms.gov/sap/bc/webdynpro/sapsrm/wda\\_e\\_suco\\_sreg?sap-client=100](https://sus.magic.ms.gov/sap/bc/webdynpro/sapsrm/wda_e_suco_sreg?sap-client=100)

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 below.

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

All Vendors must furnish **MSDH** with their MAGIC Vendor code.

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:

[http://www.mississippi.org/assets/docs/minority/minority\\_Vendor\\_selfcertform.pdf](http://www.mississippi.org/assets/docs/minority/minority_Vendor_selfcertform.pdf)

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**

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

3. **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:

3.1 Does there exist any possible conflict of interest in the sale of items to any institution within MSDH jurisdiction or to any governing authority? (A yes or no answer is required.)

3.2 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.

4. **Pending Legal Actions**

4.1 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.)

4.2 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.)

4.3 If your answer to either of the above is "yes", provide a copy of same and state with specificity the current status of the proceedings.

4.4 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.

5. **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.

6. **Order and Remit Address**

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

Order Address:

Remit Address (if different):

7. **Taxpayer Identification Number**

Vendor must specify their taxpayer identification number.

8. **Web Amendments**

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

<https://msdh.ms.gov/msdhsite/ static/19,0,205.html>

**MSDH** 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 **MSDH** amendments for RFPs as above stated? (A yes or no answer is required.)

9. **Certification of Liability Insurance**

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

10. **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 38 for additional information.

11. **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. How to Respond to this Section

- 1.1 Beginning with Item 2.1 of this section, label and respond to each outline point in this section as it is labeled in the RFP.
- 1.2 The Vendor must respond with “ACKNOWLEDGED,” “WILL COMPLY” or “AGREED” to each point in this section. In addition, many items in this RFP require detailed and specific responses to provide the requested information. Failure to provide the information requested will result in the Vendor receiving a lower score for that item, or, at the State’s sole discretion, being subject to disqualification.
- 1.3 “ACKNOWLEDGED” should be used when no Vendor response or Vendor compliance is required. “ACKNOWLEDGED” simply means the Vendor is confirming to the State that he read the statement. This is commonly used in the RFP sections where the agency’s current operating environment is described or where general information is being given about the project.
- 1.4 “WILL COMPLY” or “AGREED” are used interchangeably to indicate that the Vendor will adhere to the requirement. These terms are used to respond to statements that specify that a Vendor or Vendor’s proposed solution must comply with a specific item or must perform a certain task.
- 1.5 If the Vendor cannot respond with “ACKNOWLEDGED,” “WILL COMPLY,” or “AGREED,” then the Vendor must respond with “EXCEPTION.” (See Section V, for additional instructions regarding Vendor exceptions.)
- 1.6 Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
- 1.7 In addition to the above, Vendor must provide explicit details as to the manner and degree to which the proposal meets or exceeds each specification.

### 2. Mandatory Provisions in Technical Requirements for this RFP

2.1.1 **Mandatory** – The proposed system must be an app-based solution that works with Apple and Android smartphones and tablets

2.1.2 **Mandatory** – The proposed system must have unlimited, 24-hour live video access to professional lactation consultants with no appointment necessary

2.1.2.1 **Mandatory** – The lactation consultants must be International Board Certified Lactation consultants (IBCLC)

2.1.2.2 **Mandatory** – The lactation consultants must be trained on the WIC Peer Counseling Model or the Loving Support Model

2.1.3 **Mandatory** – The proposed system must be in line with the US Department of Agriculture (USDA) Food and Nutrition’s Southeastern Regional Office (SERO) guidelines 5 and 7

2.1.4 **Mandatory** – The proposed system must be able to generate unique user identification numbers

2.1.5 **Mandatory** – The proposed system must be able to offer lactation support in English and Spanish

### 3. **General Overview and Background**

Breastfeeding is an important part of nutrition for infants and young children. The Mississippi State Department of Health Women, Infants, and Children’s (WIC) nutrition program provides services and support for mothers who are breastfeeding. Breastfeeding mothers receive one-on-one and group support through peer counselors. Breastfeeding mothers can receive breast pumps, breast shells, and/ or nursing supplements to help support breastfeeding. Mothers who exclusively breastfeed their infants receive an enhanced food package. Breastfeeding mothers are eligible to participate in WIC longer than non-breastfeeding mothers. With all of the breastfeeding support provided by WIC, there remains a significant gap in provision of lactation services across the state. Professional lactation support from the International Board Certified Lactation Consultants (IBCLC) has been challenging to provide in-person at local WIC agencies and virtually impossible to provide around the clock. Mississippi only has 1.93 IBCLCs per 1,000 live births, compared to the Surgeon General’s recommendation of 8.6. Because of the extreme variation in levels of urbanization and socioeconomic development, many WIC participants live hours from in-person lactation support. Telehealth technology makes around the clock support for breastfeeding support easier and more cost effective. The purpose of this project is to leverage cutting-edge smartphone and tablet technology, community partnerships, and innovative social marketing strategies to improve breastfeeding rates within the Mississippi Women, Infants, and Children (MS WIC) population. The project also aims to improve the quality of breastfeeding promotion and support provided by MS WIC through the continued provision of 24-hour live video access to professional lactation support from IBCLCs. Continuous access to IBCLCs through a tele-lactation app has proved an effective strategy for increasing breastfeeding rates and ensuring peer counselors can yield appropriately to IBCLCs when necessary. Social marketing and community partnerships are evidence-based strategies recommended by the Centers for Disease Control (CDC) for improving breastfeeding rates in the United States. Innovative interventions aimed at improving breastfeeding rates have been prioritized in Mississippi due to extremely low breastfeeding rates and a stark shortage of lactation professionals across the state. Breastfeeding rates in Mississippi are dramatically lower than the national average. Only 11.3% of infants are breastfed for 12 months, as recommended by the American Academy of Pediatrics, and over 90% of infants receive formula in the first six months of life.

4. **Procurement Project Schedule**

<b>Task</b>	<b>Date</b>
First Advertisement Date for RFP	8/13/2018
Second Advertisement Date for RFP	8/20/2018
Deadline for Vendor’s Written Questions	3:00 p.m. CST 8/22/2018
Deadline for Questions Answered and Posted to MSDH Web Site	08/23/2018
Open Proposals	3:00 p.m. CST 8/31/2018
Begin Evaluation of Proposals	8/31/2018
Notification of Award posted to MSDH Web Site	9/6/2018
Begin Contract Negotiation	9/6/2018

5. **Statement of Understanding**

- 5.1 Vendors may request additional information or clarifications to this RFP using the following procedure:
  - 5.1.1 Vendors must clearly identify the specified paragraph(s) in the RFP that is in question.
  - 5.1.2 Vendor must deliver a written document to Angela Armstead at **MSDH** by Friday, 8/31/2018, 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) 576-7230. **MSDH 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 **MSDH** on time. Vendors may contact Angela Armstead to verify the receipt of their document. Documents received after the deadline will be rejected.
- 5.2 The Vendor must carefully detail the manner and degree by which the proposal meets or exceeds each specification. Vague or inconclusive responses may be judged as non-responses within the context of this evaluation.
- 5.3 The State deems performance of the Vendor on existing contracts and support after the sale to be of critical importance. Therefore, in the evaluation process for contract award of this RFP, Vendors with good performance ratings on existing accounts will be at a decided advantage, while Vendors with poor performance ratings will be at a decided disadvantage or be subject to disqualification at the discretion of the State.
- 5.4 The Vendor must understand and provide information in his response to support a deliverable-based project. The Project Work Plan should define and denote

milestones and deliverables, both paid and unpaid, for the entirety of the project. *Section VIII: Cost Information Submission* should define and denote deliverables for which, upon acceptance, Vendor expects to be paid.

- 5.5 The Vendor is requested to provide details on what features, functions, or other considerations exclusive of the specified requirements are available in the proposed system that may provide a distinct value to MSDH. In the event that that MSDH agrees that such features, functions, or other considerations do provide a distinct benefit, the State reserves the right to give the Vendor additional consideration.
- 5.6 The Vendor must provide all software components and implementation services (data conversion, installation, training, support and other services) with sufficient knowledge transfer to MSDH personnel as necessary for turnkey implementation of the proposed solution.
- 5.7 MSDH requires a Commercial-Off-the-Shelf (COTS) approach to this procurement, placing strong emphasis on acquiring a field-proven, mature product with a good client base from an experienced Vendor. Although the Vendor should be prepared to customize the proposed system to meet the requirements detailed in this RFP, MSDH does not anticipate a major customization effort.
- 5.8 While a mature, field-proven product is being sought, MSDH also requires a system that is not at the end of its product life cycle and that also reflects the best practices of the industry. Additionally, the technology platform (database engine, operating platform, etc.) for the proposed product must not be at or nearing the end of its life cycle.
- 5.9 MSDH desires that the Electronic Health Record System be hosted by the Vendor. Vendors must be able to provide multiple references demonstrating experience providing the proposed solution in a hosted environment.
  - 5.9.1 Vendor must indicate whether the proposed solution will be hosted based on the Application Service Provider (ASP) or Software-as-a-Service (SaaS) model.
  - 5.9.2 Vendor must indicate all costs associated with the appropriate model in *Section VIII, Cost Information Submission*, including licensing costs if applicable.

## 6. WIC Tele-Lactation System Requirements

### 6.1 General System Requirements

6.1.1 **Mandatory** – The proposed application must be an app-based solution that works with Apple and Android smartphones and tablets

6.1.2 **Mandatory** – The proposed application must have unlimited, 24-hour live video access to professional lactation consultants with no appointment necessary

- 6.1.2.1 **Mandatory** – The lactation consultants must be International Board-Certified Lactation consultants (IBCLC)
- 6.1.2.2 **Mandatory** – The lactation consultants must be trained on the WIC Peer Counseling Model or the Loving Support Model
- 6.1.3 **Mandatory** – The proposed application must be in line with the US Department of Agriculture (USDA) Food and Nutrition’s Southeastern Regional Office (SERO) guidelines 5 and 7
- 6.1.4 **Mandatory** – The proposed application must be able to generate unique user identification numbers
- 6.1.5 **Mandatory** – The proposed application must be able to offer lactation support in English and Spanish
- 6.1.6 The proposed application must allow the users to contact a MS WIC clinic, a Peer Counselor or an IBCLC
- 6.1.7 The proposed application must have password protection
- 6.1.8 The proposed application must have encryption and decryption available
  - 6.1.8.1 The proposed application must be able to deliver encrypted reports to MS WIC staff
- 6.1.9 The proposed application must be able to track the number of participants who access and use the application
- 6.1.10 The proposed application must have user authentication requirements
- 6.1.11 The proposed application must be able to support an enterprise license with unlimited users for a flat fee
- 6.1.12 The proposed application must be able to generate email notifications
- 6.1.13 The proposed application must be able to send out customizable push notifications to users based on the due date or birth date of an infant
- 6.1.14 The proposed application must be able to provide technical support
- 6.1.15 The proposed application must be available 24/7 with the exception of pre-notified and scheduled system maintenance
  - 6.1.15.1 The vendor will be responsible for all system updates
  - 6.1.15.2 The vendor will be responsible for all software updates



- 6.1.15.3 The vendor will be responsible for regular scheduled maintenance
- 6.1.16 The proposed application must be able to generate reports
  - 6.1.16.1 The reports must contain participant enrollment information
  - 6.1.16.2 The reports must contain participant utilization of the system
  - 6.1.16.3 The reports must be sent to MS Women, Infants, and Children (MS WIC) staff
- 6.1.17 The proposed application must be able to track the following within the application
  - 6.1.17.1 Participants and peer counselors access to IBCLCs
  - 6.1.17.2 Quality of breastfeeding support services with MS WIC
  - 6.1.17.3 Quality of customer service experience with MS WIC
  - 6.1.17.4 Awareness of MS WIC breastfeeding support services
- 6.1.18 The proposed application must provide training to IBCLCs on MS WIC breastfeeding policies and guidelines
  - 6.1.18.1 The proposed application must provide annual training to IBCLCs
  - 6.1.18.2 The proposed application must provide training and refresher courses to MS WIC staff
- 6.1.19 The proposed application must be able to collect WIC participant's feedback after each visit
  - 6.1.19.1 The proposed application must send the information collected to MS WIC staff
- 6.1.20 The proposed application must be able to design custom, co-branded marketing materials with MS WIC
  - 6.1.20.1 The marketing materials must be distributed through the application
  - 6.1.20.2 The marketing materials must be in printable format
  - 6.1.20.3 The marketing materials must be shipped to various locations
- 6.1.21 The proposed application must have multiple printing options (e.g. full-page printing, truncated printing, etc.). List the different printing options

## 7. Technical Requirements

- 7.1 The proposed solution must comply with PHIN IT Security and Critical Infrastructure Protection requirements found at [www.cdc.gov/PHIN](http://www.cdc.gov/PHIN).
- 7.2 The proposed database must be Microsoft SQL Server.
- 7.3 The client must be browser-based. The solution must be compliant with Microsoft Internet Explorer 7 or higher.
- 7.4 Any functions requiring e-mail (e.g. alerts) must be compatible with SMTP.
- 7.5 The Vendor solution must integrate with automatic job scheduling capabilities that will allow Server Administration to define (add), modify, disable, and delete scheduled reports or utility programs.
- 7.6 Rapid Solution Simulations will take place in the MSDH environment and be delivered to MSDH Office of Health Informatics (OHI) for Test, QA, and Production Deployments.
  - 7.6.1 Vendor will supply their own licenses (e.g. development tools).
- 7.7 If any component(s) necessary for operation of the requested system is omitted from the Vendor's proposal, the Vendor must be willing to provide the component(s) at no additional cost.
- 7.8 The proposed solution must comply with the following state and federal standards:
  - Health Insurance Portability and Accountability Act (HIPAA) <http://www.hhs.gov/ocr/hipaa/>
  - Health Level Seven (HL7) version 2.5 Standards for Messaging and the Reference Information Model (RIM) <http://www.hl7.org/>
  - Logical Observation Identifiers Names and Codes (LOINC) laboratory terminology standards <http://www.regenstrief.org/loinc/>
  - The Systematized Nomenclature of Medicine (SNOMED) <http://www.snomed.org/>

## 8. Security Management Requirements

These standards cover the HIPAA Security Rule, the Mississippi Department of Information Technology Services Enterprise Security Policy, and the National Institute of Standards and Technology security requirements, as required by State and Federal standards. The Vendor must comply with these standards.

### 9.1 Password Management Requirements

The following policies apply to passwords used on MSDH platforms. Each user must have his or her unique userid and password; generic userid/passwords will not be allowed.

- 8.1.1 Will be composed of a minimum of an eight (8) character string that includes a combination of lower and upper case alphanumeric characters, the numerals 0-9, and at least 1 special character;
- 8.1.2 Will be restricted from using the userid as the password;
- 8.1.3 Will be encrypted;
- 8.1.4 Will only allow OHI Security Administration to control all aspects of password management;
- 8.1.5 Will allow the user to change his or her password without intervention from Security Administration, except in the case of password revocation;
- 8.1.6 Will not allow either the use of the user's full name or the same password when prompted for a new password;
- 8.1.7 Will provide for automatic notification of expiration of passwords. Security Administration must be able to set a temporary password that will expire after the initial use, forcing the user to set a new password;
- 8.1.8 Will ensure that passwords cannot be reused by a single individual within a specified time period to be defined by the Database Administrator (DBA);
- 8.1.9 Will have a configurable expiration period and lead time period; however, both the expiration period and the lead time period must be configurable by the Security Administrator;
- 8.1.10 Will only allow a configurable number of attempts to log in with an invalid password after which the application will revoke it. At that point, the user will be notified by the application that his/her password has been revoked and the user must contact the Security Administrator to be reinstated;
- 8.1.11 Access to password-protected systems must be timed out after an inactivity period of thirty (30) minutes or less;
- 8.1.12 Will log and record change history keeping at least a configurable number of prior passwords; and
- 8.1.13 Will be restricted from being reused.

## 8.2 Security Administration Requirements

The proposed system must permit MSDH Security Administrator(s) to perform the following security configuration functions.

- 8.2.1 Specify privileges, access, and capability for each user;
- 8.2.2 Create roles/groups to define each user's data access based on job function in order to restrict user access at all system levels;

- 8.2.3 Associate a set of functions to a group and to a user (i.e., the system must be flexible enough to go to the lowest level of defining a user's access);
- 8.2.4 Provide security and access controls that do not depend on 'hard-coded' program logic;
- 8.2.5 Reset a password;
- 8.2.6 Account option of 'User must change password at next login';
- 8.2.7 Inactivate a terminated user; which is separate from the locked status when a user has revoked their password after a set number of attempts;
- 8.2.8 Perform all necessary tasks to manage users, security, and security configuration parameters from within the application itself without the use of native database administration utilities or changing system files; and
- 8.2.9 Present the user with only the menu options/features to which he or she has the security rights/privileges to access (i.e., the user must not see any menu items they do not have the authorization to access, even if they are "grayed out").

### 8.3 Web Portal Requirements

The following policies are required for Web-based applications.

- 8.3.1 A "Forgot Your Password" link should be displayed on the log in window;
- 8.3.2 A randomly selected security question must be answered before a password is sent to the email address that is recorded in the user profile account;
- 8.3.3 An email notification window is displayed notifying the user that the password has been emailed;
- 8.3.4 The email should contain a new default password that must be changed upon log in;
- 8.3.5 Data Privacy statement should be displayed and the user must agree to in order to continue the log in process;
- 8.3.6 A set of security questions will be displayed at the initial login and a configurable number must be answered. The answers should be masked so that they are not displayed; and
- 8.3.7 The user should be able to change the security answers.

- 8.4 The administration of security in all lifecycles of the application (Test, QA, and Production) will be handled by the MSDH Security Administrator(s).

**9. Warranty/Maintenance**

- 9.1 The Vendor must specify warranty period for the proposed software products during which time maintenance need not be paid. The State mandates a minimum of a one year warranty after acceptance of the product. If the system fails during warranty due to a bug, the Vendor will offer a workaround solution within 24 hours and a full fix within 5 working days.
- 9.2 Vendor must fully describe other features offered by the proposed warranty plan.
- 9.3 Warranty coverage must also include provision for enhancements, fixes, and upgrades at no cost. Vendor must acknowledge the inclusion of all requested warranty features.
- 9.4 Support for the system should be proposed at two levels. Support must be available during normal business hours via 800 number and email from 7 AM through 6 PM Central Standard Time.
- 9.5 First line support should be proposed for the initial year after system implementation. This cost will be valid for the remainder of the one-year contract. At this level, the Vendor will take all support calls from State, Regional, and local levels. All support calls must be logged and documented. These logs are to be provided to the State Trauma Coordinator monthly.
- 9.6 Second line support should be proposed at a yearly cost valid for one year. At this level, the Vendor will provide support to the MSDH Administrator and their staff. Initial support calls will be taken by personnel and forwarded to the Vendor, if necessary. In both situations, documented resolution of support issues will be provided to the MSDH Administrator for future reference.
- 9.7 Vendor must identify the cost to provide ongoing software support after the warranty period. At minimum, support must be provided Monday through Friday, 7 AM through 7 PM Central Standard Time and must include provision of enhancements, fixes, and upgrades. If field devices are used, Vendor must provide 7 x 24 support for critical calls and also a response to a critical call within 30 minutes. Vendor must fully describe the proposed software support.
- 9.8 Vendor must provide support necessary to assist customers with recovering from a crash or down time situation.
- 9.9 Vendor must specify costs to provide the proposed software support on an annual basis, for up to 2 years. Vendor must include the following support avenues, if available:
  - 9.9.1 Toll-free telephone support (specify number); and
  - 9.9.2 Online Web support (specify address)
- 9.10 Vendor must describe its standard update/enhancement cycle. Vendor must detail how often the product is updated and how the updates are distributed.

- 9.11 Vendor must specify the annual support increase ceiling to which Vendor is willing to agree. Vendor must understand that at no time can maintenance/support increase more than the lesser of 5% increase or an increase consistent with the percent increase in the consumer price index, all Urban Consumer US City Average (C.P.I. –u) for the preceding year.
- 9.12 Vendors must also identify any other support offerings available to MSDH for optional consideration. Briefly describe the plan.
- 9.13 Online help must be included with the proposed system.
- 9.14 Support must be available by phone, fax, email, and the Internet.
- 9.15 Support calls must be tracked via the Internet.
- 9.16 Support knowledge base must be available via the Internet.
- 9.17 Support metrics must be available via the Internet.
- 9.18 Software support must be provided internally by the Vendor.
- 9.19 Vendor must specify the number of support personnel on staff for the proposed product.
- 9.20 Software support for Vendor customizations must be provided internally by Vendor.
- 9.21 Customer must be able to establish support call priority.
- 9.22 Monthly reports must be sent to the customer to document support usage frequency.
- 9.23 Vendor must explain how go-live issues are supported.
- 9.24 Vendor must specify their escalation policy for support calls deemed unresolved or unsatisfactorily resolved by the customer.
- 9.25 Vendor must notify customers in advance when software updates are to be released to allow for upgrade/update planning.
- 9.26 Customers must be notified via email or mail when software updates are available.
- 9.27 Product updates must be available for downloading via the Internet.

**10. Vendor Qualifications**

- 10.1 The Vendor must provide a description of the organization with sufficient information to substantiate proven expertise in the products and services being requested in this RFP for all phases of the project. Vendor must address each of the elements specified below.

- 10.2 The Vendor must disclose any company restructurings, mergers, and acquisitions over the past three (3) years.
- 10.3 The Vendor must specify the location of the organization's principal office and the number of executive and professional personnel employed at this office.
- 10.4 The Vendor must state the number of years the Vendor has been providing the products and services being proposed.
- 10.5 The Vendor must specify the organization's size in terms of the number of full time employees, the number of contract personnel used at any one time, the number of offices and their locations, and structure (for example, state, national, or international organization).
- 10.6 The Vendor must specify the Vendor's relationship to any parent firms, sister firms, or subsidiaries.
- 10.7 The Vendor must provide the name and the state of incorporation, if incorporated.
- 10.8 The Vendor must describe the products and services being provided and the stage of development of those products and services.
- 10.9 The Vendor must indicate the number of clients for which his company is currently providing maintenance and support. Discuss the geographic distribution of these clients.
- 10.10 The Vendor must provide a copy of their company's most recent annual report, including consolidated balance sheets and related statements of income, stockholders' or partners' equity and changes in financial position, for each of the three (3) fiscal years preceding the end of the most recent fiscal year. The financial information listed above should be compiled, reviewed, and/or audited by a Certified Public Accountant. Annual reports can be submitted via electronic format – USB or DVD/CD.
- 10.11 Vendor must provide an organizational chart identifying all personnel proposed for this project.
- 10.12 Vendor must provide a resume for each of their staff members participating on this project. Resumes must reflect qualifications and recent experience relevant to the scope of the work indicated in this RFP. Resumes must include at least three (3) references that can be directly contacted to verify the individual's qualifications and experience.
- 10.13 Vendor must ensure that each staff member assigned to this project has the ability to communicate clearly in the English language both verbally and in written form.
- 10.14 Vendor must disclose if any of the personnel proposed for this project are independent consultants, subcontractors, or acting in a capacity other than an employee of the Vendor submitting the proposal.

11. **Additional Requirements**

- 11.1 **MSDH** acknowledges that the specifications within this RFP are not exhaustive. Rather, they reflect the known requirements that must be met by the proposed system. Vendors must specify, here, what additional components may be needed and are proposed in order to complete each configuration.



**12. Scoring Methodology**

12.1 An Evaluation Team composed of Mississippi State Department of Health 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.

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

12.1.2 The sum of all categories, other than Value-Add, equals 100 possible points.

12.1.3 Value-Add is defined as product(s) or service(s), exclusive of the stated functional and technical requirements and provided to the State at no additional charge, which, in the sole judgment of the State, provide both benefit and value to the State significant enough to distinguish the proposal and merit the award of additional points. A Value-Add rating between 0 and 5 may be assigned based on the assessment of the evaluation team. These points will be added to the total score.

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

<b>Category</b>	<b>Possible Points</b>
Non-Cost Categories:	
WIC Tele-Lactation System Requirements	25
Technical Requirements; Vendor Qualifications	20
Security Management Requirements	15
Warranty/Maintenance	10
Total Non-Cost Points	70
Cost	30
Total Base Points	100
Value Add	5
<b>Maximum Possible Points</b>	<b>105</b>

12.2 The evaluation will be conducted in four stages as follows:

12.2.1 Stage 1 – Selection of Responsive/Valid Proposals – Each proposal will be reviewed to determine if it is sufficiently responsive to the RFP requirements to permit a complete evaluation. A responsive proposal must comply with the instructions stated in this RFP with regard to content, organization/format, Vendor experience, number of copies, bond requirement, timely delivery, and must be responsive to all mandatory

requirements. No evaluation points will be awarded in this stage. Failure to submit a complete proposal may result in rejection of the proposal.

12.2.2 Stage 2 – Non-cost Evaluation (all requirements excluding cost)

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

<b>Non-Cost Categories</b>	<b>Possible Points</b>
WIC Tele-Lactation System Requirements	25
Technical Requirements; Vendor Qualifications	20
Security Management Requirements	15
Warranty/Maintenance	10
<b>Maximum Possible Points</b>	<b>70</b>

12.2.2.2 Proposals meeting fewer than 80% of the requirements in the non-cost categories may be eliminated from further consideration.

12.2.2.3 MSDH scores the non-cost categories on a 10-point scale, with 9 points for meeting the requirement. The ‘Meets Specs’ score for each category is 90% of the total points allocated for that category. For example, the WIC Tele-Lactation System Requirements/Vendor Qualifications’ category was allocated 30 points; a proposal that fully met all requirements in that section would have scored 36 points. The additional 10% is used for a proposal that exceeds the requirement for an item in a way that provides additional benefits to the state.

12.3 Stage 3 – Cost Evaluation

12.3.1 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

12.3.2 Cost categories and maximum point values are as follows:

<b>Cost Category</b>	<b>Possible Points</b>
Lifecycle Cost	30
<b>Maximum Possible Points</b>	<b>30</b>

12.4 Stage 4 – Selection of the successful Vendor

12.4.1 On-site Demonstrations and Interviews

12.4.1.1 At the discretion of the State, evaluators may request interviews, on-site 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.

12.4.1.2 If requested, Vendors must be prepared to make on-site demonstrations 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.

12.4.1.3 Proposed key team members must be present at the on-site demonstration. The evaluation team reserves the right to interview the proposed key team members during this onsite visit.

12.4.1.4 Although on-site demonstrations may be requested, the demonstration will not be allowed in lieu of a written proposal.

12.4.2 Site Visits

12.4.2.1 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.

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

**SECTION VIII  
 COST INFORMATION SUBMISSION**

Vendors must propose a summary of all applicable project costs in the matrix that follows. The matrix 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 in this section may result in the Vendor providing those products or services at no charge to the State or face disqualification.

Description	Quantity	Unit Cost	15% Retainage	Extended Cost
Implementation Services (fully loaded with travel, subsistence and associated per diem costs) Break out costs by:				
Pre-installation (Requirements Analysis, System Design, and other related costs)		\$	\$	\$
Database Conversion		\$	\$	\$
User Licenses (Enterprise licenses)		\$	\$	\$
Marketing Materials		\$	\$	\$
Training/Knowledge Transfer Costs:				
Internal-User Training (Enterprise users)		\$	\$	\$
Administrator Training – system controls, security, configuration (3 administrators)		\$	\$	\$
Travel Costs		\$	\$	\$
System Set-up Costs		\$	\$	\$
Other Costs (specify)		\$	\$	\$
<b>Implementation Costs Total</b>		\$	\$	\$

<b>Annual Costs</b>		
Annual Subscription and Hosting Fees (including maintenance/support costs for one year)	Combined Subscription and Hosting Fees	
Year 1		\$
Miscellaneous Costs (must specify)		\$
<b>Total Subscription and Hosting:</b>		\$
<b>GRAND TOTAL (Implementation and Subscription/Hosting):</b>		\$
If Change Order Rate varies depending on the level of support, Vendor should specify the Change Order Rate according to position.		
Fully-loaded Change Order Rate	\$	\$

## 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 five (5) 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 three (3) references for whom the subcontractor has performed work that the State may contact. Forms for providing subcontractor information and references are included at the end of this section.

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

## REFERENCE FORM

**Complete five (5) Reference Forms.**

Contact Name:

Company Name:

Address:

Phone #:

E-Mail:

Project Start Date:

Project End Date:

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

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### SUBCONTRACTOR REFERENCE FORM

**Complete a separate form for each subcontractor proposed.**

Contact Name:  
Company name:  
Address:  
Phone #:  
E-Mail:

Scope of services/products to be provided by subcontractor:

**Complete three (3) Reference Forms for each Subcontractor.**

Contact Name:  
Company name:  
Address:  
Phone #:  
E-Mail:  
Description of product/services/project, including start and end dates:

## EXHIBIT A

### STANDARD CONTRACT

A properly executed contract is a requirement of this RFP. After an award has been made, it will be necessary for the winning Vendor to execute a contract with MS State Department of Health (**MSDH**). The inclusion of this contract does not preclude **MSDH** 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.

**RFP PROJECT NUMBER Enter Project No. here**  
**SOFTWARE LICENSE AND APPLICATION SERVICE PROVIDER AGREEMENT**  
**BETWEEN**  
**VENDOR NAME**  
**AND**  
**MISSISSIPPI STATE DEPARTMENT OF HEALTH**

This Software License and Application Service Provider Agreement (hereinafter referred to as "Agreement") is entered into by and between, VENDOR NAME, a STATE OF INCORPORATION corporation having its principal place of business at VENDOR ADDRESS, (hereinafter referred to as "Licensor"), and Mississippi State Department of Health having its principal place of business at 570 East Woodrow Wilson, Jackson, Mississippi 39215 (hereinafter referred to as "Licensee" and/or "MSDH"). MSDH is sometimes referred to herein as "State."

**WHEREAS**, MSDH, pursuant to Request for Proposals (hereinafter referred to as "RFP") Project Number Enter Project No. here requested proposals for the services of a contractor to host and maintain an Application Service Provider ("ASP") solution for a Enter the name of the system here; and

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

**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 employees, Add the names of all groups that will be using the system, etc. providers, and 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** "Available Date" means the date upon which Licensor notifies MSDH that the Software may be accessed on the Licensor's ASP server and MSDH may begin acceptance testing.

**1.3** "Content" means any content provided by or through Active Users for use with the Software.

**1.4** “Documentation” means the published user and technical manuals and documentation that Licensor makes generally available for the Software; the help files included within the Software, 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 Software.

**1.5** “Enhancements” means the corrections, updates, upgrades or new versions of the Software or Documentation that Licensor may provide to Licensee under this Agreement.

**1.6** “Licensee” means the MSDH, 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.

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

**1.8** “Products” means the Software, Documentation, Corrections, Enhancements and any copy of the Software, Documentation, Corrections, or Enhancements provided by the Licensor.

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

**1.10** “Software” means the machine-readable object code version of the computer programs whether embedded on disc, tape or other media used for the management of the **web or other type-based Enter System name here** and Supported Interfaces (and any Documentation and help files within the Software), including any Enhancements provided pursuant to the maintenance and support terms identified herein.

**1.11** “Software Error” means a reproducible defect or combination thereof in the Software that results in a failure of the Software when used in accordance with the Documentation. Software Errors do not include those errors caused by (a) Licensee’s negligence, (b) any unauthorized modification or alteration Licensee makes to the Software, (c) data that does not conform to Licensor’s specified data format, (d) operator error, or (e) use not conforming to the Licensor’s supported technical environment specified in the Documentation.

**1.12** “Supported Interfaces” means application-based interfaces (API), network protocols, data formats, database schemas, and file formats used in the Software 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 until the Licensor completes all tasks required herein pursuant to the **project work plan, including services during the Enter no. of years here** year hosting term. The **web or other type-based Enter name of system here**, as customized for the State of Mississippi, must be implemented; fully functional; accepted by MSDH, and all tasks (excluding hosting) required herein, including but not limited to development of required interfaces and training, completed on or before **Enter date here**, unless a change in this date is mutually agreed to in writing by the State and the Licensor. At the end of the **Enter no. of years here** year initial ASP services term, the ASP services may, upon the written agreement of the parties, be renewed under the same terms and conditions for **Enter no. of terms here** terms. One hundred and eighty (180) days prior to the expiration of the initial hosting term or any renewal hosting term of this Agreement, Licensor

shall notify MSDH 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 ASP services.

**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 an ASP based **Enter name of system here** and Services and associated deliverables required to provide, host and maintain a **web or other type** based application for MSDH 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 3.5 below.

**3.2** The Licensor acknowledges that MSDH intends to be actively involved in the day-to-day progress of the project. The Licensor agrees to (a) obtain MSDH's approval of all tasks and the time schedule for completion of said tasks prior to commencing performance, if not already contained in the approved project work plan; (b) make available to the State project team members all project work papers and work-in-progress for review; (c) ensure that the Licensor Project Manager works closely together with the State Project Manager, (d) provide MSDH access to the host website; (e) meet with MSDH on a regular basis at a mutually agreeable time, and as otherwise requested by MSDH, to discuss the status of the project, and (f) if required by MSDH, submit written project status reports.

**3.3** The parties understand and agree that the project shall be structured with interim deliverables as set forth in the agreed upon project work plan so as to allow MSDH an opportunity to accept or reject the deliverables, including but not limited to, specifications, requirement definitions, process designs, data analyses, web layouts, screen layouts, and report layouts. The actual customizations shall not begin until after MSDH has communicated its conceptual approval of the results the Licensor plans to provide. MSDH shall have ten (10) business days to review interim materials, which review period can only be reduced by mutual agreement of the Licensor and MSDH.

**3.4** It is understood by the parties that the project work plan must be in place within fifteen (15) business days of execution of this Agreement and prior to any other work being performed. Once this mutually agreed upon project work plan, which will identify specific time frames and deliverable target dates for this project, has been developed, it will be incorporated into and made a part of this Agreement. The dates in the project work plan will define the agreed upon period of performance. The parties acknowledge that the project work plan will evolve and change from time to time upon the mutual written agreement of both parties. The parties agree that the deliverables and schedule set forth in the latest version of the project work plan will take precedence over any prior plans.

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

- A.** Ensuring that all deliverables are complete and accepted by MSDH pursuant to the mutually agreed upon project work plan;
- B.** Ensuring that the host site complies with PriorityOne of the World Wide Web Consortium's (W3C's) Web Accessibility Initiative and guidelines in Section 508 of the Rehabilitation Act that are not covered in W3C Priority;
- C.** Ensuring that the site is accessible through MSDH's published universal resource locator ("URL") rather than through Licensor's site address;

- D. Reviewing with MSDH the Content a minimum of once a quarter to ensure that the Content remains timely and accurate and reaching an agreement with MSDH as to reasonable timelines for implementing Content updates delivered to the Licensor that will be posted on the site;
- E. Tracking date sensitive items to ensure timely updates;
- F. All Content provided by the Licensee and collected by the Software shall remain the sole and exclusive property of the Licensee. Upon the termination or expiration of this Agreement, Licensor shall provide such Content in its possession to the Licensee pursuant to a mutually agreed upon release schedule;
- G. Working with MSDH to achieve access rates that meet MSDH's needs;
- H. Providing security for the host site that is agreeable to MSDH with Licensor responsible for all necessary equipment and software related to security;
- I. Maintaining the accessibility of the site twenty-four (24) hours a day, seven (7) days a week at an uptime rate of 99% or greater, subject to the limitations set forth in this Agreement, including but not limited to, those in Article 4.4;
- J. Completing daily backups of the site;
- K. 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;
- L. Proposing and adhering to a disaster recovery plan and providing access to such plan to the State, all at Licensor's expense;
- M. Participating with MSDH in disaster recovery planning and testing based on a mutually agreed upon schedule;
- N. Maintaining the confidentiality of the data entered;
- O. Providing MSDH access to all of the technical information concerning operation of the site, including but not limited to, server specifications, Internet connection information, personnel requirements and software implementations;
- P. Identifying any commercially available software, by Vendor and version number, integrated into the Products and describing the particular functionality of any software that is proprietary to the Licensor;
- Q. Maintaining the host site, with the cost for such support, maintenance, and hosting for years following the initial **Enter the no. of years here** year period not increasing annually beyond five percent (5%) 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;
- R. Providing 24x7x365 support of the web site, including sub-domain support;
- S. Providing redundant internet connections;
- T. Providing Dual T1 or greater connectivity;
- U. Providing FTP and remote configuration access;
- V. Providing SSL secure server support;
- W. Providing monthly reports containing line utilization, site availability statistics, network usage, security user access reports and system performance data to MSDH;
- X. Maintaining sufficient bandwidth and server capacity to meet MSDH and Active Users' demand as it may fluctuate and increase during the term of this Agreement, and
- Y. Ensuring that upon termination or expiration of this Agreement that transition of the site from the Licensor to MSDH or to a successor host will be accomplished at no expense to MSDH, and with minimal interruption of the site's accessibility and insignificant changes in the site's appearance and functionality.

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

#### **ARTICLE 4 SCOPE OF LICENSE AND HOSTING SERVICES**

**4.1** Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee a non-exclusive and non-transferable license to access the Software 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 hosting 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 Software, Products 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 Software via the Internet and provide Internet access to the Software to the Active Users through Licensor's site ("ASP Services").

**4.3** In connection with the ASP Services, Licensor will provide and maintain all Software 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 Software.

**4.4** The Software 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 ASP 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 ASP 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 application 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 Software by Active Users will be governed solely by the terms and conditions of this Agreement.

**4.7** Licensor acknowledges that the Content is and shall remain the sole and exclusive property of Licensee. Further, Licensor acknowledges that the Content may contain valuable trade secrets of Licensee 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 ASP Services.

**4.8** Licensee acknowledges that the Software Products shall remain the exclusive property of Licensor. Licensee agrees that except as noted herein, it will not otherwise copy, translate, modify, adapt, decompile, disassemble or reverse engineer any of the Software without the prior written consent of Licensor.

#### **ARTICLE 5 DELIVERY; RISK OF LOSS, AND ACCEPTANCE**

**5.1** Licensor shall deliver, install, and make available the Software and Documentation to the

Licensor's hosting environment, except as otherwise specified, and pursuant to the delivery schedule mutually agreed to by the parties.

**5.2** Licensor shall assume and bear the entire risk of loss and damage to the Products from any cause whatsoever while in transit and at all times throughout Licensor's possession thereof.

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

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

**6.1** The total compensation to be paid to the Licensor by MSDH for all development, maintenance and ASP services, customizations, products, travel, performances and expenses under this Agreement shall not exceed the specified sum of **\$INSERT 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 ASP 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 Contractor 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**

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

**7.2** Licensor represents and warrants that the Products provided by Licensor shall meet or exceed the minimum specifications set forth in RFP Project No. **Enter Project No. here** 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 Software 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 neither the Software, nor Enhancements shall 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 Software, or Enhancements 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, deliver Products to Licensee that are free of such disabling code, lockup program or device.

**7.6** Licensor represents and warrants that neither the Software, nor Enhancements delivered to Licensee contain a computer virus. For purposes of this provision, a computer virus shall be defined as code intentionally inserted in the Software or Enhancements that will damage or destroy Licensee's applications or data. For any breach of this warranty, Licensor at its expense shall, within five (5) business days after receipt of notification of the breach, deliver Products to Licensee that are free of any virus, and shall be responsible for repairing, at Licensor's expense, any and all damage done by the virus to Licensee's site.

**7.7** The Licensor represents and warrants that, upon completion of the project, the Licensor, and all subcontractors, if any, shall convey to MSDH copies of all interim reports, cost records, data collection forms, and any working papers that support the final acceptance.

**7.8** Licensor represents and warrants that it has obtained all necessary rights to permit use of the graphics on the site and that the Licensor shall provide MSDH with evidentiary proof of graphic licenses and releases. Further, the Licensor represents and warrants that all Licensor-supplied graphics and content contains no scandalous or libelous material.

**7.9** The Licensor represents and warrants that the deliverables provided to MSDH under this Agreement, and their use by Active Users, will not infringe or constitute an infringement of any copyright, patent, trademark, servicemark, trade secret or other proprietary right of any person or



entity. Licensee agrees that it will promptly notify Licensor in writing of any such claim or action of which it has knowledge, and that it will cooperate fully in the defense and investigation of the claim by supplying Licensor all relevant information currently available and in its possession, all at Licensor's expense. Licensor shall, to the extent authorized by Mississippi law, have sole control over the defense or settlement of any such claim or action. Licensor, at its own expense, shall defend or settle any and all infringement actions filed against Licensor or the State which involve the deliverables or other items provided under this Agreement and shall pay all settlements, as well as all costs, attorney fees, damages and judgment finally awarded against 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) procure for the State the right to continue using such items, or (b) modify or replace them with non-infringing items with equivalent functionality, or, to the extent (a) or (b) cannot be done despite Licensor's commercially reasonable efforts, (c) refund to the State the fees previously paid by the State for the infringing Products. Said refund shall be paid within ten (10) business days of notice to the State to discontinue said use. In addition to the foregoing, the Licensor shall indemnify the State in accordance with the provisions of Article 18 herein.

**7.10** Licensor represents and warrants that the host site 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 licensed Software 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.

**7.11** 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.

**7.12** If applicable under the given circumstances, Licensor represents and warrants that 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. Licensor agrees 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. Licensor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Licensor understands and agrees that any breach of these warranties may subject Licensor to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Licensor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Licensor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

**7.13** 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.

**7.14** Licensor represents and warrants that no official or employee of Licensee, 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.

**7.15** 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 MSDH State Health Officer 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 MSDH State Health Officer 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.

## **ARTICLE 8 EMPLOYMENT STATUS**

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

**8.2** 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.

**8.3** 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.

**8.4** 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.

**8.5** Any final billings shall be submitted to MSDH no later than thirty (30) days after the close of the contract. Failure to submit final billings within the stated timeframe for this contract may be grounds for MSDH to reject such reimbursements. It is agreed by both parties that the following items will be provided only when approved by both parties (a) reimbursement in excess of the amount budgeted for any item; or (b) reimbursement of items not included in the budget; or (c) the transfer of monies between items within the budget.

**8.6** It is agreed by both parties that no reimbursement will be made by MSDH until this contract has been signed by the appropriate personnel of both parties and until a budget for expenditures pursuant to the contract has been approved by MSDH.

#### **ARTICLE 9 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 and/or students 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 10 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 11 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS**

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

**11.2** 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.

**11.3** Licensor must obtain the written approval of MSDH before subcontracting any portion of this Agreement. 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 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 MSDH may deem necessary.

**11.4** 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.

**11.5** 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 12 AVAILABILITY OF FUNDS**

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

#### **ARTICLE 13 TERMINATION**

**13.1** Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be terminated, in whole or in part, as follows: (a) upon the mutual, written agreement of the parties; (b) If either party fails to comply with the terms of this Agreement, the non-defaulting party may terminate the Agreement upon the giving of thirty (30) calendar days written notice unless the breach is cured within said thirty (30) day period; (c) MSDH 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) MSDH 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 Agency Head or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective. The provisions of this Article 13 do not limit either party's right to pursue any other remedy available at law or in equity.

**13.2** In the event MSDH terminates this Agreement, Licensor shall receive just and equitable compensation for Services rendered by Licensor and accepted by MSDH prior to the termination. Further, upon termination of this Agreement, Licensor shall refund any and all applicable unexpended prorated annual ASP fees previously paid by Licensee.

#### **ARTICLE 14 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 15 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 16 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 17 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 18 HOLD HARMLESS**

To the fullest extent allowed by law, Licensor shall indemnify, defend, save and hold harmless, protect and exonerate Licensee 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 19 THIRD PARTY ACTION NOTIFICATION**

Licensor shall notify MSDH 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 MSDH 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 MSDH shall be considered a material breach of this Agreement and MSDH 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 20 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 21 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. MSDH' address for notice is: Mr. Kevin Gray, Health Informatics Director, Mississippi State

Department of Health, 570 East Woodrow Wilson, Jackson, Mississippi 39215. 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 22 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, 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 23 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 with a certificate of conformity providing the aforesaid coverage.

#### **ARTICLE 24 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 State Health Officer of MSDH 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 25 COMPLIANCE WITH LAWS**

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

**25.2** As a recipient of Federal funds, directly or indirectly through payments from MSDH, the Contractor agrees that no person(s) who are otherwise qualified shall be denied employment, funds, education, or care in the program(s) funded in whole or in part by MSDH on account of affliction with Acquired Immune Deficiency Syndrome (AIDS)-related conditions, or on the basis of their infection with the Human Immunodeficiency Virus (HIV). This non-discrimination agreement and policy shall likewise apply to those individuals or groups who may be perceived as having AIDS or the aforementioned AIDS-related conditions, or who are perceived as being infected with HIV.

**25.3** 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 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 26 CONFLICT OF INTEREST**

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

#### **ARTICLE 27 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 28 CONFIDENTIAL INFORMATION**

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

**28.2** With the exception of any attached exhibits which are labeled as "confidential", 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. MSDH will provide third party notice to Licensor of any requests received by MSDH for any such confidential exhibits so as to allow Licensor the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

**28.3** 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 29 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 30 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS**

All Content collected by the Software shall be the property of Licensee. Licensor may use the

Content only in the performance of this Agreement, unless otherwise agreed upon between the parties. Licensee acknowledges that the Products shall remain the exclusive property of Licensor and are excluded from this Article.

#### **ARTICLE 31 NON-SOLICITATION OF EMPLOYEES**

Licensor agrees not to employ or to solicit for employment, directly or indirectly, any of MSDH's employees until at least one (1) year after the expiration/termination of this Agreement unless mutually agreed to the contrary in writing by MSDH 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 32 ENTIRE AGREEMENT**

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

**32.2** 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 Project No. **Enter Project No. here** and written addenda, and
- D.** Licensor's Proposal, as accepted by the State, in response to RFP Project No. **Enter Project No. here**.

**32.3** 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 33 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 34 SURVIVAL**

Articles 7, 14, 18, 22, 27, 28, 30, 31, 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 35 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 36 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 37 STATUTORY AUTHORITY**

By virtue of Section 25-53-21 of the Mississippi Code Annotated, as amended, the State Health Officer of MSDH 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.

#### **ARTICLE 38 COMPLIANCE WITH ENTERPRISE SECURITY POLICY**

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

#### **ARTICLE 39 SOFTWARE SUPPORT AND MAINTENANCE**

**39.1** As part of the Software support and maintenance services, Licensor will maintain the Products in an operable condition according to the specifications contained in the technical manuals and as outlined in the Licensor's Proposal in response thereto. Licensor shall provide Licensee with Enhancements to the Software as they are made generally available from time to time. Notwithstanding any other provisions of this Agreement, Licensor shall provide support only with respect to the then-current generally available version of the Software.

**39.2** Licensor shall also provide unlimited email and toll-free telephone technical support in the operation of the Software Products 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 Software 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, or 3 error.

**39.3** Severity Level 1 implies that the Software is not functioning. Some examples of Severity

Level 1 Software problems are as follows: (a) Software is down and will not restart; (b) Software is not able to communicate with external systems; and (c) Software is generating a data corruption condition. Licensor shall resolve Severity Level 1 Software Errors within one (1) business day, or within a mutually agreed upon time frame. When a Severity Level 1 Software Error is reported, Licensor will assign resources necessary to correct the Software Error. If access to the Software is required, Licensee will provide a contact available to Licensor and access to Licensee's system and other software for the duration of the error correction procedures.

**39.4** Severity Level 2 implies that (a) an essential function does not work as documented, or (b) testing and usage can continue but the task cannot be completed, and no workarounds exist. Licensor shall assign at least one (1) dedicated person to the problem and shall resolve Severity Level 2 Software Errors within two (2) business days, or within a mutually agreed upon time frame.

**39.5** Severity Level 3 implies a Software Error such that implementations of function do not match specification and/or technical Documentation, and a workaround may exist. Licensor shall resolve Severity Level 3 Software Errors within ten (10) business days, or within a mutually agreed upon time frame.

#### **ARTICLE 40 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 41 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.mississippi.gov>. Prior to MSDH posting the Agreement and any subsequent amendments and change orders to the website, any attached exhibits which contain trade secrets or other proprietary information and are labeled as "confidential" will be redacted by MSDH. Notwithstanding the preceding, however, it is understood and agreed 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 a trade secret or confidential commercial or financial information and shall thus not be redacted.

#### **ARTICLE 42 CHANGE ORDER RATE AND PROCEDURE**

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

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

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

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

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

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

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

#### **ARTICLE 43 RETAINAGE**

To secure the Licensor's performance under this Agreement, the Licensor agrees that the Licensee shall hold back as retainage fifteen percent (15%) of each amount payable, including amounts payable under Change Orders, under this Agreement. The retainage amount will continue to be held until final acceptance of all deliverables by the Licensee.

#### **ARTICLE 44 REPRESENTATION REGARDING CONTINGENT FEES**

Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except

as disclosed in Contractor's bid proposal.

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 Health**

**VENDOR NAME**

By: \_\_\_\_\_  
**Authorized Signature**

By: \_\_\_\_\_  
**Authorized Signature**

**Printed Name: Mary Currier, MD, MPH**

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

**Title: State Health Officer**

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

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

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

**EXHIBIT A  
PAYMENT SCHEDULE**

## EXHIBIT B

### MSDH BUSINESS ASSOCIATE AGREEMENT

#### MISSISSIPPI STATE DEPARTMENT OF HEALTH BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is entered into by and between the Mississippi State Department of Health ("MSDH") the Covered Entity and \_\_\_\_\_ ("Business Associate"), hereinafter referred to as the Parties, and modifies any other prior existing agreement or contract for this purpose. In consideration of the mutual promises below and the exchange of information pursuant to this Agreement and in order to comply with all legal requirements for the protection of this information, the Parties therefore agree as follows:

#### I. RECITALS

- a. MSDH is a state agency with a principal place of business at 570 East Woodrow Wilson, Jackson, MS 39215
- b. Business Associate is a corporation qualified to do business in Mississippi that will act to perform business services for MSDH with a principal place of business at \_\_\_\_\_.
- c. This Business Associate Agreement ("Agreement") is entered into pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") of 1996, as amended by the Genetic Information Nondiscrimination Act ("GINA") of 2008 and the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), Title XIII of Division A, and Title IV of Division B of the American Recovery and Reinvestment Act ("ARRA") of 2009, and its implementing regulations, including 45 C.F.R. Parts 160, and 45 C.F.R. 164 Subparts A and C ("Security Rule"), and 45 C.F.R. 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 Agreements 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. "Required by Law" shall have the same meaning as the term "Required by Law" in 45 C.F.R. § 164.103.
- m. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- n. "Security Incident" shall have the same meaning as the term "Security Incident" in 45 C.F.R. §164.304.
- o. "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.
- p. "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.
- q. "Standard" shall have the same meaning as the term "Standard" in 45 C.F.R. §160.103.
- r. "Use" shall have the same meaning as the term "Use" in 45 C.F.R. §160.103.
- 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. "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, or as Required by Law.
- b. Business Associate agrees to use appropriate safeguards and comply, where applicable, with the Security Rule, 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 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.
  - d. Business Associate shall notify MSDH's Privacy and/or Information Security Officer in writing without unreasonable delay and in no event later than five (5) business days from discovery of any suspected or actual breach of security, intrusion or unauthorized Use or Disclosure of PHI of which Business Associate becomes aware, and/or any actual or suspected Use or Disclosure of data in violation of any applicable federal or state laws or regulations, including Breaches of Unsecured PHI, as required by 45 C.F.R. § 164.410, incidents that pose a risk of constituting Breaches and any Security Incident of which Business Associate becomes aware.
  - e. Upon the discovery of any Impermissible Use or Disclosure, Business Associate shall immediately commence conducting a preliminary risk assessment in order to determine if the Impermissible Use or Disclosure is a violation of any applicable federal or state laws or regulations. Business Associate shall deliver the initial notification of such Impermissible Uses or Disclosures, in writing, which must include a reasonably detailed description of the Impermissible Uses or Disclosures and the steps Business Associate is taking and would propose to mitigate or terminate the Impermissible Uses or Disclosures. Furthermore, Business Associate shall supplement the initial notification no more than ten (10) days following discovery (or following the date additional information becomes reasonably available to Business Associate) with information including:
    - (i) the identification of each individual whose PHI was or is believed to have been involved;
    - (ii) a reasonably detailed description of the types of PHI involved;
    - (iii) all other information reasonably requested by MSDH, including all information necessary to enable MSDH to perform and document a risk assessment in accordance with 45 C.F.R. § 164 subpart D; and
    - (iv) all other information necessary for MSDH to provide notice to individuals, the U.S. Department of Health and Human Services and any applicable federal or state regulatory body, or the media, if required.An initial notification to MSDH shall not be delayed because Business Associate has not confirmed an Impermissible Use or Disclosure and has not completed an investigation or does not have all the information needed to provide a complete report. Business Associate shall also notify MSDH's Privacy and/or Information Security Officer, in writing, within ten (10) days outlined in this Agreement, of any use or disclosure of PHI by its subcontractor(s) (or subcontractors' agent(s)) not provided for by this Agreement or the Underlying Agreement.
- The parties agree that Business Associate shall not be required to notify MSDH of any



Unsuccessful Security Incident. For purposes of this Agreement, “Unsuccessful Security Incident” means activities such as pings and other broadcast attacks on firewalls, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of Protected Health Information.

- f. 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.
- g. 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 use of such subcontractors or of the adequacy of such agreements.
- h. 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.
- i. 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.
- j. 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.
- k. 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)(j) 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.
- l. 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 Agreements. Business Associate agrees to comply with any guidance issued by the Secretary on what constitutes “minimum necessary” for purposes of the Privacy Rule, and any minimum necessary policies and procedures communicated to Business Associate by MSDH.
- m. 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.
- n. 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.
- o. 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.
- p. Business Associate agrees that all MSDH data shall not be co-mingled with other trading partner's data, and shall be easily identifiable and exportable. MSDH Data shall be stored in an individual structure in accordance with the following: Business Associate shall create an instance (single-tenant) of the particular database software utilized by Business Associate, and only MSDH data shall reside in that instance of the database. The intent of this Section is not to require separate procurement of hardware specific to MSDH; however MSDH data must not reside in a database that contains other entities' data.
  - q. Business Associate agrees that all MSDH data will be encrypted using industry standard algorithms Triple DES/DESK, AES and/or SSL/TLS.
  - r. Business Associate agrees to comply with the State of Mississippi ITS Enterprise Security Policy, which will be provided upon request.
  - s. 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.
  - t. Without limitation of the foregoing:
    - i. 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.
    - ii. 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.
  - u. 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.
  - v. 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.
  - w. 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.

#### **IV. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

- a. General Use and Disclosure Provisions: Subject to the terms of this Agreement, Business Associate may Use or Disclose PHI to perform functions, activities, or services for, or on behalf of, MSDH as specified in the Underlying Agreements, 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 Agreements.
- 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 Agreements 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 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 use is permitted under the Privacy Rule.
  - v. Business Associate may use and disclose de-identified health information if (a) the use is disclosed 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, attached hereto as Attachment "A" and wholly incorporated herein, as well as any changes to such Notice of Privacy Practices.
- 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) (b) of this Agreement.

## **VI. TERM AND TERMINATION**

- a. Term. For all new Underlying Agreements entered into between MSDH and Business Associate, the effective date of this Agreement is the effective date of the Underlying Agreements entered into between MSDH and Business Associate. For any ongoing Underlying Agreements 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 Agreements.
- b. Termination for Cause. Upon MSDH's knowledge of a material Breach or Violation by Business Associate, MSDH shall, at its discretion, either:
  - i. provide an opportunity for Business Associate to cure the Breach or end the Violation within a time specified by MSDH, after which MSDH may in its discretion terminate this Agreement and the Underlying Agreement if Business Associate does not cure the Breach or end the Violation within the time specified by MSDH; or
  - ii. immediately terminate this Agreement and the associated Service Agreements if Business Associate has Breached a material term of this Agreement and cure is not possible.
- c. Effect of Termination.
  - i. Upon termination of this Agreement and the Underlying Agreement 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 apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
  - ii. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to MSDH notification of the conditions that make return or destruction infeasible. Upon notification in writing that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further Uses and Disclosures to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

## **VII. MISCELLANEOUS**

- a. Statutory and Regulatory References. A reference in this Agreement to a section in HIPAA, its implementing regulations, or other applicable law means the section as in effect or as amended, and for which compliance is required.
- b. Amendments/Changes in Law.
  - i. General. Modifications or amendments to this Agreement may be made upon

- mutual agreement of the Parties, in writing signed by the Parties hereto and approved as required by law. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Agreement. Such modifications or amendments signed by the Parties shall be attached to and become part of this Agreement.
- ii. Amendments as a Result of Changes in the Law. The Parties agree to take such action as is necessary to amend this Agreement as is necessary to effectively comply with any subsequent changes or clarifications of statutes, regulations, or rules related to this Agreement. The Parties further agree to take such action as is necessary to comply with the requirements of HIPAA, its implementing regulations, and other applicable law relating to the security and privacy of PHI.
- iii. Procedure for Implementing Amendments as a Result of Changes in Law. In the event that there are subsequent changes or clarifications of statutes, regulations or rules relating to this Agreement, or the Parties' compliance with the laws referenced in Section (VII)(c)(ii) of this Agreement necessitates an amendment, the requesting party shall notify the other party of any actions it reasonably deems are necessary to comply with such changes or to ensure compliance, and the Parties promptly shall take such actions. In the event that there shall be a change in the federal or state laws, rules or regulations, or any interpretation of any such law, rule, regulation, or general instructions which may render any of the material terms of this Agreement unlawful or unenforceable, or materially affects the financial arrangement contained in this Agreement, the Parties may, by providing advanced written notice, propose an amendment to this Agreement addressing such issues.
- c. Survival. The respective rights and obligations of Business Associate provided for in Sections (III)(i) 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 use 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

- g. the safeguarding of PHI.  
Notices. Any notice from one party to the other under this Agreement shall be in writing and may be either personally delivered, emailed, or sent by registered or certified mail in the United States Postal Service, Return Receipt Requested, postage prepaid, addressed to each party at the addresses which follow or to such other addresses provided for in this Agreement or as the Parties may hereinafter designate in writing:

**MSDH: (Covered Entity)**

Privacy Officer  
Mississippi State Department of Health  
570 East Woodrow Wilson  
Suite O-150  
P. O. Box 1700  
Jackson, MS 39215  
(601) 576-8116  
[nicole.litton@msdh.ms.gov](mailto:nicole.litton@msdh.ms.gov)

Security Officer  
Mississippi State Department of Health  
570 East Woodrow Wilson  
Suite O-110  
P.O. Box 1700  
Jackson, MS 39215  
(601)576-8152  
[sharon.rouser@msdh.ms.gov](mailto:sharon.rouser@msdh.ms.gov)

**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 the Agreement did not contain that particular part, term, or provision held to be invalid.
- i. Applicable Law. This Agreement shall be construed broadly to implement and comply with the requirements relating to HIPAA and its implementing regulations. All other aspects of this Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. Business Associate shall comply with applicable federal, state, and local laws, regulations, policies, and procedures as now existing and as may be amended or modified. Where provisions of this Agreement differ from those mandated by such laws and regulations, but are nonetheless permitted by such laws and regulations, the provisions of this Agreement shall control.
- j. Non-Assignment and Subcontracting. Business Associate shall not assign, subcontract, or otherwise transfer this Agreement, in whole or in part, without the prior written consent of MSDH. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by MSDH of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of MSDH in addition to the total compensation agreed upon in this Agreement. Subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that MSDH may deem necessary. Subject to the foregoing, this Agreement shall be binding upon the

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

[Signature Page Follows]

**Business Associate:**

\_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Signature)

By: \_\_\_\_\_  
(Authorized Signature)

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Phone Number: \_\_\_\_\_

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

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

**Mississippi State Department of Health**

By: \_\_\_\_\_  
(Authorized Signature)

Print Name: Mary Carrier, MD, MPH

Title: State Health Officer

Address: 570 E. Woodrow Wilson,  
Jackson, MS 39215

Phone Number: 601-576-7634

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



**Instructions for  
MISSISSIPPI STATE DEPARTMENT OF HEALTH BUSINESS ASSOCIATE AGREEMENT  
Form # 1063**

**PURPOSE**

The Health Insurance Portability and Accountability Act (“HIPAA”) of 1996 requires Covered Entities, such as MSDH, enter into a Business Associate Agreement (“BAA”) with their business associates to ensure the business associate will appropriately safeguard Protected Health Information (“PHI”). The BAA also serves to clarify and limit the permissible uses and disclosures of PHI by the business associate based on the relationship between the parties and the activities or services being performed by the business associate.

A business associate is a person or entity (other than a member of the workforce of MSDH) who performs functions or activities on behalf of, or provides certain services to, MSDH that involve access by the business associate to PHI.

**INSTRUCTIONS**

Prior the disclosure of PHI, Office Directors who want to enter into a contractual relationship with an entity to perform a function, service, or activity that involves the entity accessing PHI shall contact the MSDH Privacy Officer for assistance in determining whether a BAA is needed. Once the MSDH Privacy Officer determines a BAA is needed, please complete the following steps:

**Step 1:** On page 1, please insert the name of the entity that will be covered by the BAA in the blank labeled “Business Associate”.

**Step 2:** On page 1, Section I.b., please insert the BAA’s principal place of business (i.e. address).

**Step 3:** On page 1, Section II.b., please insert the name of the entity that will be covered by the BAA.

**Step 4:** On page 10, Section VII.g., please insert the name of the business associate, as well as, the name, title, address, phone number, and email of the individual who shall receive notice from MSDH on behalf of the business associate.

**Step 5:** On page 12, please insert the name, title, address, and phone number of the authorized signatory for the business associate and MSDH.

**Step 6:** Please upload the BAA to Q-Pulse in the same file as the underlying agreement.

**Step 7:** Please print the BAA and the underlying agreement to which the BAA is to attach and have both agreements signed and dated.

**OFFICE MECHANICS AND FILES**

The BAA must be filed in the same place as the underlying agreement for record keeping purposes.

**RETENTION PERIOD**

The BAA must remain on file for six (6) years following termination of the underlying agreement