



MISSISSIPPI STATE DEPARTMENT OF HEALTH

INVITATION FOR BID

Issue Date: May 23, 2017

IFB # RFx 3160001534

The Mississippi State Department of Health plans to purchase the following, and invites your bid:

Statewide Courier Service

BID COORDINATOR

Jennifer Dotson, Purchasing Director
Mississippi State Department of Health
P. O. Box 1700
Jackson, MS 39215-1700
Telephone: 601-576-7627
E-Mail: Jennifer.Dotson@msdh.ms.gov

CLOSING DATE AND TIME

Bids must be received by 10:30 a.m., CST/DST, June 9, 2017

INVITATION/PURPOSE:

The Mississippi State Department of Health requests bids be submitted for courier service to District Offices, County Health Departments, and specified Public Health Clinics (Field Locations) throughout the state. Also, bids are being accepted for services from the same Field Locations back to the MS State Department of Health Central Office in Jackson, MS. Some County Health Departments are open (5) days a week and some are only open (2-4) days a week.

Approx. total number of locations is 87. The location of all pickup and delivery points/locations is available to interested parties. Pickup and delivery locations are subject to occasional change, but such change will not generally affect mileage or time required for delivery. If any new/additional locations are added or if any existing locations are closed/deleted the price schedule will be adjusted accordingly.

SPECIFICATIONS, GENERAL BID REQUIREMENTS:

General Bid Requirements – Prospective bidders must meet the following requirements:

- a. Must currently be in operation as a licensed and bonded company in the State of Mississippi
- b. Must have home office and warehouse facilities of sufficient size for the proper sorting of mail leaving the Jackson area for statewide distribution to locations and for sorting all incoming mail for delivery to all Jackson locations.
- c. Must maintain tracking capabilities for all merchandise.
- d. Must have a fleet of cargo vans capable of pickup and delivery on a statewide basis, and all courier drivers must be licensed and bonded to operate commercial vehicles throughout the State of Mississippi.
- e. Must have in force, Comprehensive General Liability or Professional General Liability insurance in the amount of \$1,000,000.00 of which proof must be submitted to this office by the contract start date, with the State of Mississippi, State Department of Health added as an additional insured. The successful bidder shall maintain at least the minimum level of workers' compensation insurance.
- f. Must have in force, a performance bond in the amount of the contract of which proof must be submitted to this office by the contract start date.

Detailed Specifications –

PICKUPS:

Pickups from the MS State Department of Health's Central Office area will be from the following locations:

1. Pharmacy, 3156 Lawson Street
2. Central Supply, 3146 Lawson Street
3. Central Office Mail Room, 570 E. Woodrow Wilson
4. Public Health Laboratory, 570 E. Woodrow Wilson

5. Hinds County Health Department, 350 W. Woodrow Wilson, Jackson Medical Mall

Pickups are to be made on a daily basis, Monday through Friday, after 5:00 p.m. except for the Pharmacy, Central Supply and the Hinds County Health Department where the pickups will be made between 3:00 p.m. and 4:30 p.m. each day.

Pickups will be made after 5:00 p.m. for all Field Locations.

Also, on the last working day of each month, payroll checks are mailed to all Field Locations from the Central Office Mail Room. Our payroll checks are computer generated by the State Department of Finance and Administration, and on some occasions, we do not get our checks for sorting until late in the afternoon. Therefore, we request a 6:00 p.m. Pickup time on this day.

DELIVERY:

Deliveries from the Central Office area to Field Locations will be made Monday through Friday before 8:00 a.m. Keys will be furnished to all delivery locations. However, the courier service cannot deliver to the Hinds County Health Department before 8:00 a.m. each day due to the overnight alarm system.

Deliveries coming from the Field Locations throughout the state on Tuesday through Friday must be made to the Central Office Mail Room not later than 7:00 a.m. on the following morning.

All incoming mail from the Field Locations on Friday nights must be delivered to the Public Health Laboratory on Saturday mornings by 7:00 a.m.

Drivers must be licensed, bonded and any losses or damages to commodities incurred by the courier will be reimbursable to the agency not to exceed the original purchase price.

Included in this bid is a gasoline surcharge/credit of .0075 per every \$.10 increase/decrease from a base price established at the time of the bid award. The base price will be established through the utilization of AAA's fuel indicator for Jackson, MS at this time and checked monthly thereafter. For example, if AAA's fuel indicator for Jackson, MS is \$1.25 per gallon at the time of bid award and upon checking AAA fuel indicator on a monthly basis, the indicator increases to \$1.35 per gallon then .0075 surcharge will be added to the daily rate. Also, if within the next month, the AAA fuel indicator should drop to \$1.15 in any given month, then a -.0075 surcharge would be deducted from the daily rate for service. The fuel surcharge will apply throughout the duration of the contract period.

TERMS AND CONDITIONS:

Term – The term of the contract shall be for a period of 24 months (two years) beginning on August 1, 2017. Upon written agreement of both parties at least (60) days prior to contract anniversary date, the contract may be renewed by the MS State Department of Health for a period of 12 months (one-year) period under the same prices, terms, and conditions as in the original contract subject to approval by the PSCRB.

Bid Acceptance Period – the original and zero (0) copies of the bid form shall be signed and submitted in a sealed envelope or package, along with any other required forms/documents no later than the time and date specified for receipt of bids. Timely submission of the bid form, etc. is the responsibility of the bidder. Bids received after the specified time shall be rejected and returned to the bidder unopened.

Expenses Incurred in Preparing Bid – The MS State Department of Health accepts no responsibility for any expenses incurred by the bidder in the preparation and presentation of a bid. Such expenses shall be borne exclusively by the bidder.

Bid Form – All pricing must be submitted on the bid form (Attachment B). Failure to complete and/or sign the bid form may result in the bidder being considered nonresponsive.

Bidder Certification – The bidder agrees that submission of a signed bid form is certification that the bidder will accept an award made to it as a result of the submission.

Registration with Mississippi Secretary of State – By submitting a bid, the bidder certifies that it is registered to do business in the State of Mississippi as prescribed by the Mississippi Secretary of State or, if not already registered, that it will do so within seven (7) business days of being offered an award. Sole proprietors are not required to register with the Mississippi Secretary of State.

Debarment – By submitting a bid, the bidder certifies that it is not currently debarred from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi or Federal government and that it is not an agent of a person or entity that is currently debarred from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi.

Payment Terms – MS Code Section 31-7-305(3) allows a state entity to pay invoices within 45 days without penalty.

Prospective bidders are to contact Jennifer Dotson, (601) 576-7627 by e-mail at Jennifer.Dotson@msdh.ms.gov with any questions regarding this bid. Questions shall be submitted in time to be received at least (5) days prior to the IFB closing time and date.

It is incumbent upon each bidder to carefully examine the specifications, terms, conditions, etc. As stated above, all inquiries, requests, etc. concerning

clarification or additional information shall be made in writing either by E-Mail or by mail to Jennifer Dotson, Purchasing Director, P. O. Box 1700, Jackson, MS 39215-1700 or 570 E Woodrow Wilson, Jackson, MS 39216.

The Mississippi State Department of Health (MSDH) will not be responsible for any oral representation(s) given by any employee, representative, or others. Bidders are cautioned that any statements made by contact persons that cause a material change to any portion of the bid document shall not be relied upon unless subsequently ratified by a formal written amendment to the bid document.

If it becomes necessary to revise or amend any part of this IFB, notice will be given to all prospective bidders who were sent a bid packet. Bidder must acknowledge receipt of amendments in their bid response. Each bidder should ensure that they have received all addenda and amendments to this IFB before submitting their response.

The Mississippi State Department of Health reserves the right to define equals, to reject any or all bids, and waive all informalities. The MSDH also reserves the right to request award of the IFB to the lowest and best overall bid.

Bid Submission Format – The bid package must be sealed and must contain the following:

- Bid Cover Sheet (Attachment A)**
- Bid Form (Attachment B)**
- Certifications and Assurances (Attachment C)**
- Copy of any/all Amendments issued to this IFB**

Prior to the time specified for the bid opening, sealed bids along with any other documentation required must be hand delivered or mailed to **Mississippi State Department of Health, PURCHASING DEPARTMENT, ROOM 137A, THE UNDERWOOD BUILDING, 570E. WOODROW WILSON, JACKSON, MISSISSIPPI 39216 OR POST OFFICE BOX 1700, JACKSON, MS 39215-1700.**

Bids must be received, dated and time stamped prior to 10:30 a.m., CST/DST, Friday, June 9, 2017 at which time bids will be opened. No bids will be accepted after the established bid opening time. **Bids will be opened and read at 10:30 a.m., CST/DST in Suite 134 Conference Room, Underwood Building, 570 E. Woodrow Wilson, Jackson, Mississippi.**

In addition, it is requested that bidders also submit a bid on-line in the State of Mississippi electronic procurement system, MAGIC, however, it is not mandatory. In order to submit bids, bidders must be registered as a vendor in MAGIC system and have an I.D. number and password assigned at the time of registration. Technical assistance may be found at <http://www.dfa.ms.gov/dfa-offices/mmrs/mississippi-suppliers-vendors/>

If a bidder submits both a paper bid and an on-line bid, the paper bid will take precedence if there is a discrepancy between the two.

No facsimile (FAX) bids will be accepted. This bid must be signed by a person with authority to bind the bidder. Failure to comply with this provision, any other provision

of this Invitation for Bid, or any provision of State or Federal Law or regulation regarding the submission of bids will cause the bid to be rejected.

Bid Opening – Bid opening will be open to the public, however, this will include opening, reading aloud, and listing the bid price on each bid only. No discussions will be entered into with any bidder as to the quality or provisions of the specifications and no award will be made, either stated or implied at the bid opening.

Award – The contract will be awarded by written notice to the lowest responsible bidder whose bid meets the requirements and criteria set forth in this Invitation for Bids.

Notification – All participating vendors will be notified of the MS State Department's intent to award a contract. In addition, the MS State Department of Health will identify the selected vendor. Notice of award is also made available to the public.

Personal Service Contract Review Board – It is understood that any contract resulting from this IFB requires approval by the Personal Service Contract Review Board. If any contract resulting from this IFB is not approved by the Personal Service Contract Review Board, it is void and no payment shall be made.

Post-Award Vendor Debriefing:

A bidder, successful or unsuccessful, may request a post-award debriefing, in writing, by U.S. mail or electronic submission. The written request must be received by the Director of the Mississippi State Department of Health within three (3) business days of notification of the contract award. A post-award debriefing is a meeting and not a hearing, therefore, legal representation is not required. A debriefing typically occurs within five (5) business days of receipt of the request. If a bidder prefers to have legal representation present, the bidder must notify the Director of the Mississippi State Department of Health in writing and identify its attorney by name, address, and telephone number. The Mississippi State Department of Health will schedule and/or suspend and reschedule the meeting at a time when a Representative of the Office of the Mississippi Attorney General can be present.

For additional information regarding Post-Award Debriefing, as well as the information that may be provided and excluded, please see Section 7-114 through 7-114.07, Post-Award Vendor Debriefing, of the Personal Service Contract Review Board's Rules and Regulations.

Protest of Award:

Any actual or prospective bidder or contractor who is aggrieved in connection with this solicitation or the outcome of the Invitation for Bids may file a protest with the Bid Coordinator, Jennifer Dotson, Purchasing Director. The protest shall be submitted on or before 5:00 p.m., Thursday, June 15, 2017 in writing after such aggrieved person or entity knows or should have known of the facts giving rise thereto. All protests must be in writing, dated, signed by the bidder or an individual authorized to sign contracts on behalf of the protesting bidder, and contain a statement of the reason(s) for protest, citing the law(s), rule(s), or regulation(s), and/or procedure(s) on which the protest is based. The written protest letter shall contain an explanation of the specific basis for the protest. The protesting bidder must provide facts and evidence to support the protest. A protest is considered filed when received by the Bid Coordinator, Jennifer Dotson, Purchasing Director, via either U. S. mail, postage prepaid, or personal delivery. Protests filed after 5:00 p.m., Thursday, June 15, 2017 will not be considered.

Required Contract Terms and Conditions:

Any contract entered into between a Contracting Agency and a vendor/bidder shall include the required clauses found in Attachment D and those required by the Personal Service Contract Review Board's Rules and Regulations as updated.

Mississippi Contract/Procurement Opportunity Search Portal:

This Invitation for Bids, and any Questions and Answers concerning this IFB and/or any Amendments to this IFB, are posted on the Contract/Procurement Opportunity Search Portal.

Procurement Regulation:

The contract shall be governed by the applicable provisions of the Personal Service Contract Review Board Rules and Regulations, a copy of which is available at 210 East Capitol Street, Suite 800, Jackson, MS 39201 or at Mississippi State Personnel Board's website at www.mspsb.ms.gov.

Mississippi State Department of Health Contract Between Department and Contractor:

For informational purposes only a blank copy of the Mississippi State Department of Health Contract Between Department and Contractor (Attachment E) is attached for your review. The approved/awarded contractor for Statewide Courier Service for the MSDH will be required to agree to and sign this contract along with the MSDH.

Attachments:

The attachments to this Invitation for Bids are made a part of this Invitation for Bids as if copied herein in words and figures.

(If the agency, MSDH, is closed for any reason, including but not limited to: acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"), which closure prevents the opening of bids at the advertised date and time, all bids received shall be publicly opened and read aloud on the next business day that the agency shall be open and at the previously advertised time. The new date and time of the bid opening, as determined in accordance with this paragraph, shall not be advertised, and all bidders, upon submission of a bid proposal, shall be deemed to have knowledge of and shall have agreed to the provisions of this paragraph. Bids shall be received by the agency until the new date and time of the bid opening as set forth herein. **The agency shall not be held responsible for the receipt of any bids for which the delivery was attempted and failed due to the closure of the agency as a result of a Force Majeure Event.** Each bidder shall be required to ensure the delivery and receipt of its bid by the agency prior to the new date and time of the bid opening.)

Attachment A

Bid Cover Sheet

The MS State Department of Health is seeking to establish a contract for Statewide Courier Services.

Bids are to be submitted as listed below, on or before 10:30 A.M,CST/DST, Friday June 9, 2017.

PLEASE MARK YOUR ENVELOPE:

IFB RFx #3160001534

Opening Date: 10:30 A.M., CST/DST, Friday June 9, 2017

MS State Department of Health

Attention: Jennifer Dotson, Director, Purchasing

570 E Woodrow Wilson, Ste 137A-UWB, Jackson, MS 39216

SEALD BID – DO NOT OPEN

Name of Company: _____

Quoted By: _____

Signature: _____

Address: _____

City/State/Zip Code: _____

Company Representative: _____

Telephone: _____

Fax: _____

E-Mail: _____

FBI/FIN # (if company, corporation, or partnership):	
SS# (if individual):	

In addition to providing the above contact information, please answer the following questions regarding your company:

What year was your company started? _____

How many years and/or months has your company been in the business of performing the services called for in this Invitation for Bids? _____

Please provide the physical location and mailing address of your company's home office, principal place of business, and place of incorporation. _____

If your company is not physically located in the region, how will you supply Statewide Courier Services to agencies in the region? _____

Is your company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please discuss the impact both in organizational and directional terms. _____

List all licenses or permits your company possesses that are applicable to performing the services required in this Invitation for Bids. _____

For how many customers has your company provided Statewide Courier service in the past two (2) years? Please include the dates, the size of the area maintained, and the annual amount of the billing to each customer. _____

What is the largest customer your company has provided Statewide Courier service for in the past two (2) years? Please include the annual amount of the billing. _____

Describe any specific services which your company offers along with any specialized experience, certification, and/or education of your current staff. _____

List all the equipment that your company has available or that is intended to be used to perform the services required in this Invitation for Bids. _____

OWNED EQUIPMENT					
Year	Make	Model	ID#	Capacity	Description

RENTED/LEASED EQUIPMENT					
Year	Make	Model	ID#	Capacity	Description

Attachment B

Bid Form for Statewide Courier Service

Company	Company Representative	Telephone

The pricing quoted must be inclusive of, but not limited to the following:

- All required equipment and materials
- All required insurance
- All required overhead
- All required profit
- All required transportation
- All required labor
- All required business and professional licenses, permits, fees, etc. (if any)
- Any and all other costs associated with performing the services

The pricing must include ALL associated costs with no additional or hidden fees.

Daily rate for each location from the MS State
Department of Health Central Office location
to all field locations

\$ _____

Daily rate from all field locations to the MS State
Department of Health Central Office location

\$ _____

By signing below, the Company Representative certifies that he/she has authority to bind the company, and further acknowledges on behalf of the company:

1. That he/she has thoroughly read and understands this Invitation for Bids, IFB RFx #3160001534, and the attachments herein;
2. That the company meets all requirements and acknowledges all certifications contained in this Invitation for Bids, IFB RFx #3160001534, and the attachments herein;
3. That the company agrees to all provisions of this Invitation for Bids, IFB RFx #3160001534, and the attachments herein;
4. That the company will perform, without delay, the services required at the prices quoted in this **Attachment B**; and
5. That, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of the submission date.
6. That the company has, or will secure, at its own expense, applicable personnel who shall be qualified to perform the duties required to be performed under this Invitation for Bids.

Printed Name: _____

Signature/Date: _____

Attachment C

Certifications and Assurances

I/We make the following certifications and assurances as a required element of the bid to which it is attached, of the understanding that the truthfulness of the facts affirmed here and the continued compliance with these requirements are conditions precedent to the award or continuation of the related contract(s) by circling the applicable word or words in each paragraph below:

1. REPRESENTATION REGARDING CONTINGENT FEES

Contractor represents that it **has/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.

2. REPRESENTATION REGARDING GRATUITIES

The bidder or Contractor represents that it **has/has not** violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi Personal Service Contract Review Board Rules and Regulations.

3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

The bidder certifies that the prices submitted in response to the solicitation **have/have not** been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate price.

4. PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES

The prospective Contractor represents as a part of such Contractor's bid that such Contractor **has/has not** retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

Name/Title: _____

Signature/Date: _____

Note: Please be sure to **circle the applicable word or words** provided above. Failure to circle the applicable word or words and/or to sign the bid form may result in the bid being rejected as nonresponsive. **Modifications or additions to any portion of this bid document may be cause for rejection of the bid.**

ATTACHMENT D

Required Clauses for Service Contracts Resulting from this Invitation for Bids

1. Applicable Law. The contract 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. Contractor shall comply with applicable federal, state, and local laws and regulations.
2. Availability of Funds. It is expressly understood and agreed that the obligation of the Agency 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. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the Agency, the Agency shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to the Agency of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
3. Compliance with Laws. Contractor understands that the Agency is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.
4. E-Payment. Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-305.
5. E-Verification. If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 *et seq.* 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. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:

- a. termination of this contract for services 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 Contractor 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 cancellation/termination, Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

6. Paymode. Payments by state agencies using the State's accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Contractor's choice. The State may, at its sole discretion, require Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.
7. Procurement Regulations. The contract shall be governed by the applicable provisions of the *Mississippi Personal Service Contract Review Board Rules and Regulations*, a copy of which is available at 210 East Capitol, Suite 800, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.mspb.ms.gov>.
8. 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.
9. Representation Regarding Gratuities. Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*.
10. Stop Work Order.
 - a. *Order to Stop Work:* The Procurement Officer, may, by written order to Contractor at

any time, and without notice to any surety, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Procurement Officer shall either:

- i. cancel the stop work order; or,
 - ii. terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.
- b. *Cancellation or Expiration of the Order:* If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:
 - i. the stop work order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this contract; and,
 - ii. Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.
- c. *Termination of Stopped Work:* If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

11. Termination for Convenience.

- a. *Termination.* The Agency Head or designee may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. 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.
- b. *Contractor's Obligations.* Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency Head or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the

State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

12. Termination for Default.

- a. *Default.* If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Agency Head or designee may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the procurement officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.
- c. *Compensation.* Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
- d. *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the Agency Head or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one (1) or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery

schedule shall be revised accordingly, subject to the rights of the State under the clause entitled in fixed-price contracts, "Termination for Convenience". (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

- e. *Erroneous Termination for Default.* If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.
 - f. *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.
13. Termination Upon Bankruptcy. This contract may be terminated in whole or in part by Agency upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.
14. Trade Secrets, Commercial and Financial Information. It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.
15. Transparency. This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 *et seq.* and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

**Mississippi State Department of Health
Contract Between Department and Contractor**

Attachment E

1. Contractual Agreement

This document and any other attachments, including but not limited to Attachment A, Terms of Contract, and Attachment B, Conflicts of Interest, are made a part of this document and incorporated herein by reference, and constitute a contract for personal or professional services or goods between the Mississippi State Department of Health (hereinafter referred to as the Department and/or Agency) and the Contractor as indicated below. In the space provided herein, provide a description of the purpose of this contract and/or services to be provided:

2. Contractor's Required Information

Contractor's Name: _____

Contractor's Contact Person(s): _____

ID #: _____ Program: _____
(SSN or EIN, as shown on attached IRS Form W-9)

Street: _____ Telephone #: _____

City: _____ State: _____ Zip Code: _____

3. Contract Supplemental Information (Note: If information below is not applicable, fill blank with "N/A")

Title of Contract or Service Provided: _____

Total Contract Amount: _____ Max. Contract Amount per year: _____
(applicable only if contract is multi-year)

Fee or Retainer: _____ Fee or Retainer Payment Basis: _____
(per clinic, hour, day, month, quarter, year, etc.)

Beginning Date: _____ Ending Date: _____

Org.: _____ Activity: _____

Project: _____

Reporting Category(ies): _____

Federal Grant: Yes ☐ No ☐ Stimulus Funds: Yes ☐ No ☐

Federal Grant Award #: _____ Federal Aid #: _____ CFDA #: _____

Occupation: _____

Specialty: _____

Program: _____

Total Personnel Services: _____ Total Travel/Subsistence: _____

Max. Hours Authorized per Month: _____ Assigned Travel Base: _____

Mileage/Meals Authorized:

None: ☐ Meals: _____ Mileage: _____ Lodging: _____

Statewide: ☐ Central Office: ☐ District (specify): _____

Hours (Daily or weekly, i.e., 8:00a-5:00p, 5 days per week): _____

If in a District(s), list all counties (List in decreasing order for amount of time spent in each county):

Certification/Licensure (Fill in certificate/license number, date of certification/licensure, and type of certification/licensure, as applicable. If a physician, state whether the contractor is board-certified in area of use by Department, non-board certified, or resident.):

Contractor's Experience/Degrees Earned (Fill in this blank if Contractor is an individual; use additional sheet if necessary):

Does Contractor currently receive Mississippi State Retirement System benefits? Yes ☐ No ☐

Will the Contractor be classified as an "Independent Contractor"? Yes ☐ No ☐

ATTACHMENT A: TERMS OF CONTRACT

1. Contracted Services: The Contractor agrees to provide _____

in accordance with the specifications set forth on the preceding page of this contract, titled "Contract Between Department and Contractor" and any other documents as set forth by the Department, and are hereby incorporated into and made a part of this contract. No oral statements of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. If other attachments or exhibits exist which are to be incorporated as part of this contract, the title of each document shall be listed here, as follows (use additional sheets, if necessary):

Attachment B – Conflicts of Interest

Attachment C - Additional Contract Terms

2. **ABILITY TO CONTRACT**

The Contractor warrants that he/she/it is qualified to provide the services, whether personal or professional, as outlined in this contract. The Contractor agrees to conform to existing policies, rules, and regulations of the Department. The Contractor agrees to maintain throughout the contract period such licensing and/or certification as may be required by law for the provision of services specified herein, if applicable. The Contractor warrants that it is a validly organized business with valid authority to enter into this contract; that it is qualified to do business and in good standing in the State of Mississippi; that entry into and performance under this contract is not restricted or prohibited by any loan, security, financing, contractual or other contract of any kind; and, notwithstanding any other provision of this contract 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 contract.

3. **APPLICABLE LAW**

The contract 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. Contractor shall comply with applicable federal, state, and local laws and regulations.

4. **COMPLIANCE WITH LAWS**

Contractor understands that the Department is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

5. **PROCUREMENT REGULATIONS AND APPROVAL**

The contract shall be governed by the applicable provisions of the *Mississippi Personal Service Contract Review Board ("PSCRB") Rules and Regulations*, a copy of which is available at 210 East Capitol, Suite 800, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.mspb.ms.gov>. It is understood that should this contract require approval by the PSCRB, and is not approved, it is void and no payment shall be made hereunder.

6. **PERS COMPLIANCE**

This section applies only to a Contractor who is an individual and presently receives retirement benefits from the Mississippi Public Employees' Retirement System (PERS), as follows:

- a. The Contractor certifies that the ninety day separation period required by PERS regulations has been met prior to the effective date of this contract.
- b. The Contractor is responsible for notifying PERS of re-employment and for submission of required documentation to PERS for review and concurrence of the Contractor's status as an independent contractor as required by PERS regulations.
- c. Contractor's date of retirement from state service: _____

7. **REPRESENTATION REGARDING CONTINGENT FEES**

Contractor represents that it has not retained 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

8. REPRESENTATION REGARDING GRATUITIES

The bidder, offeror, respondent, or contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*.

9. DEBARMENT AND SUSPENSION: Contractor certifies to the best of its knowledge and belief, that it:

- a. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
- b. has not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against it 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;
- c. has not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- d. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (b) and (c) of this certification; and,
- e. has not, within a three year period preceding this proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.

10. INTEGRATED AGREEMENT/MERGER

This contract, including all contract documents, represents the entire and integrated contractual agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, irrespective of whether they were written or oral. This contract may be altered, amended, or modified only by a written document executed by the Department and the Contractor. The Contractor acknowledges that it has thoroughly read all contract documents and attachments and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this contract shall not be construed or interpreted in favor or against the State, the Department, or the Contractor on the basis of draftsmanship or preparation.

11. MODIFICATIONS AND CHANGES IN SCOPE OF WORK

All modifications to the contract must be made in writing and signed by both parties to the contract. The Department may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by the Contractor that the scope of the contract or of the Contractor's services has been changed, requiring changes to the amount of compensation to the Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the Department and the Contractor. If the Contractor believes that any particular work is not within the scope of the contract, is a material change, or will otherwise require more compensation to the Contractor, the contractor must immediately notify the Department in writing of this belief. If the Department believes that the particular work is within the scope of the contract as written, the Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the scope.

12. AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of the Department 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. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the Department, the Department shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to the Department of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

13. E-PAYMENT

Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The Department agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the Department within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-305.

14. PAYMODE

Payments by state agencies using the State's accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Contractor's choice. The State may, at its sole discretion, require Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

15. E-VERIFICATION

If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 *et seq.* 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. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:

- A. termination of this contract for services 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;
- B. the loss of any license, permit, certification or other document granted to Contractor 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 cancellation/termination, Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

16. STOPWORKORDER

This section applies only to contracts that require approval from the Mississippi Personal Service Contract Review Board, as follows:

- A. *Order to Stop Work:* The Department, may, by written order to Contractor at any time, and without notice to any surety, require Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Department shall either:
 1. cancel the stop work order; or,
 2. terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.
- B. *Cancellation or Expiration of the Order:* If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:
 1. the stop work order results in an increase in the time required for, or in Contractor's cost properly allocable to, the performance of any part of this contract; and,
 2. Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Department decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.
- C. *Termination of Stopped Work:* If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.
- D. *Adjustments of Price:* Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this contract, if applicable.

17. TERMINATION FOR CONVENIENCE

- A. *Termination.* The Agency Head or designee may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. 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.
- B. *Contractor's Obligations.* Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency Head or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

18. TERMINATION FOR DEFAULT

- A. *Default.* If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Agency Head or designee may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- B. *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the Department, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.
- C. *Compensation.* Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
- D. *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the Agency Head or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).
- E. *Erroneous Termination for Default.* If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (d) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.
- F. *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

19. TERMINATION UPON BANKRUPTCY

This contract may be terminated in whole or in part by the Department upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

20. RECORDS AND AUDIT

The Contractor shall maintain such financial records and other records as may be prescribed by the Department or by applicable Federal and State laws, rules, and regulations. These may be kept according to the Contractor's usual method of recordkeeping, but must be sufficiently detailed to permit an accurate accounting of contract funds and program activities. The contract and the procurement of goods and services shall be governed by the applicable Mississippi statutes and the applicable provisions of the Mississippi Personal Service Contract Review Board Regulations. The Contractor shall retain these records for a period of three (3) years after final payment, or until they are audited by the Department, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.

Where audits are required to be submitted to the Department before funding can be released, the audits must be submitted within the required timeframe and must be acceptable; if a Contractor fails to submit an audit in a timely manner, or if the audit is unacceptable, the Department reserves the right to cancel or suspend the contract at the Department's discretion.

21. RECORDS RETENTION

The Contractor agrees to submit to the Department quarterly program activity reports thirty (30) days subsequent to the closing of each quarter. The Contractor agrees to submit to the Department quarterly fiscal reports thirty (30) days subsequent to the closing of each quarter, or other applicable period as made a part of this contract and agreed to by both parties. The Contractor agrees to permit reasonable program review and evaluation by the Department; to provide access to any pertinent records; arrange meetings with appropriate personnel; permit inspection of the premises; and to cooperate in any other reasonable requests for fiscal and/or program information. Provided the Contractor is given reasonable advance written notice and such inspection is made during normal business hours of the Contractor, the State or any duly authorized representatives shall have unimpeded, immediate access to any of the Contractor's books, documents, papers, and/or records which are maintained or produced as a result of this contract for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this contract shall be retained by the Contractor for three (3) years after final payment is made under this contract and all pending matters are closed. However, if any audit, litigation, or other action arising out of or related in any way to this contract is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

22. ASSIGNMENT AND RECEIPT OF AMOUNTS PAYABLE

This section applies only to a Contractor which serves as a clinical or healthcare provider for the Department, as follows:

1. The Contractor authorizes the Department to accept assignment and receive any amounts payable under Part B of Title XVII and Title XIX of the Social Security Act and/or any monies collected for service rendered by the Contractor under the terms of this contract, including but not limited to private insurance, third-party arrangements, or such other payment or reimbursement mechanisms as may be applicable or available. The Contractor agrees that the Department shall be the payor or financial reimbursement mechanism of last resort when other sources are mandated or are available.
2. The Contractor agrees that no additional charges will be made to patients/clients to whom services are provided under the terms of this contract.
3. The Contractor's payment records will be submitted to:
4. The Department agrees to assure physician supervision as required by law for the services to be provided under the terms of this contract.

23. REIMBURSEMENT

The Department agrees to provide reimbursement for the contract period. For contracts that include the use of Federal funds, the Department agrees to provide reimbursement for the contract period in accordance with the requirements set forth in OMB Circular A-87. Such reimbursement will be made upon receipt of the necessary billing listing salaries, Social Security, retirement, and other items provided in this contract, including copies of payroll requisitions and invoice copies for materials, equipment, or supplies. Any final billings shall be submitted to the

Department 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 the Department to reject such reimbursements. It is agreed by both parties that the following items will be made only when approved by both parties:

1. reimbursement in excess of the amount budgeted for any item; or
2. reimbursement of items not included in the budget; or
3. the transfer of monies between items within the budget.

It is agreed by both parties that no reimbursement will be made by the Department 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 the Department.

24. SALARIES AND FRINGE BENEFITS

If the contract provides for the payment of salaries and/or fringe benefits (identified as a line item in the contract's budget and/or budget narrative), it is understood by both parties that fringe benefits may be spent only for bona fide retirement programs and employee insurance plans. Before any retirement and/or insurance program is initiated or financed with funds received pursuant to this contract, approval must be obtained from the Department. Insurance plans shall be limited to health, life, unemployment, and workers' compensation. Documentation must be available to the Department of all fringe benefit payments. This clause does not apply where the contract may be used for the payment of salaries and/or fringe benefits, but such were not specifically itemized as budgetary items in the contract.

25. INDEPENDENT CONTRACTOR STATUS

This section applies only to contracts for which the Contractor shall serve solely on an Independent Contractor basis, as follows:

The Contractor, at all times, shall be regarded as an Independent Contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the Department, the Contractor, or any third party as creating the relationship of principal and agent, partners, joint ventures, or any similar such relationship between the Department and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the Department or the Contractor hereunder, creates or shall be deemed to create a relationship other than the independent relationship of the Department and the Contractor. The Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implications, to be employees of the Department. Neither the Contractor nor its employees, under any circumstances, shall be considered servants, agents, or employees of the Department; and the Department shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, or agents. The Department shall not withhold from the contract payments to the Contractor any Federal or State unemployment taxes, Federal or State income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the Department shall not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the Department for its employees. Furthermore, none of the work performed under this contract shall be subcontracted without prior approval of the Department. The Department, throughout the life of the contract, shall have the right of reasonable rejection and approval of staff of the Contractor or its Subcontractors assigned to the work by the Contractor. If the Department reasonably rejects staff of the Contractor or its Subcontractors, the Contractor must provide replacement staff or Subcontractors satisfactory to the Department in a timely manner and at no additional cost to the Department. The day-to-day supervision and control of the Contractor's employees and Subcontractors are the sole responsibility of the Contractor.

26. TRADE SECRETS, COMMERCIAL AND FINANCIAL INFORMATION

It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

27. CONFIDENTIAL INFORMATION

A. *Definition:* "Confidential Information" shall mean:

1. those materials, documents, data, and other information which the Contractor has designated in writing as proprietary and confidential; and
2. all data and information which the Contractor acquires as a result of its contact with and efforts on behalf of the Department, and any other information designated in writing as confidential by the Department or the State of Mississippi.

Each party to this contract agrees to protect all Confidential Information provided by one party to the other, to treat all such Confidential Information as confidential to the extent that confidential treatment is allowed under State and/or Federal law, and, except as otherwise required by law, not to publish or disclose such information to any third party without the other party's written permission, and to do so by using those methods and procedures normally used to protect the party's own confidential information. Any liability resulting from the wrongful disclosure of confidential information on the part of the Contractor or its Subcontractors shall rest with the Contractor. Disclosure of any confidential information by the Contractor or its Subcontractors without the express written approval of the Department shall result in the immediate termination of this contract.

- B. *Disclosure:* In the event that either party to this contract receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information, that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by State law. This section shall survive the termination or completion of this contract. The parties agree that this section is subject to and superseded by Mississippi Code of 1972, Annotated, Section 25-61-1, et. seq. regarding public access to public records.
- C. *Exceptions:* The Contractor and the Department shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("The Disclosing Party") which:
1. is rightfully known to the Contractor prior to negotiations leading to this contract, other than information obtained in confidence under prior engagements;
 2. is generally known or easily ascertainable to non-parties of ordinary skill in the business of the Contractor;
 3. is released by the Disclosing Party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
 4. is independently developed by the recipient without any reliance on confidential information;
 5. is, or later becomes, part of the public domain or may be lawfully obtained by the Department or the Contractor from any non-party; or
 6. is disclosed with the Disclosing Party's prior written consent.
- D. Contractor agrees to comply with the Administrative Simplifications provisions of the Health Insurance Portability and Accountability Act of 1996, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the services under this contract.
- E. Notwithstanding any provision to the contrary contained herein, it is recognized that the Department is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Mississippi Code Annotated §§ 25-61-1 *et seq.* If a public records request is made for any information provided to the Department pursuant to the agreement and designated by the Contractor in writing as trade secrets or other proprietary confidential information, the Department shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The Department shall not be liable to the Contractor for disclosure of information required by court order or law.

28. TRANSPARENCY

This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 *et seq.* and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

29. NON-DISCRIMINATION FOR HIV/AIDS

As a recipient of Federal funds, directly or indirectly through payments from the Department, 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 the Department 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.

30. OWNERSHIP OF DOCUMENTS AND WORK PAPERS

The Department shall own all documents, files, reports, work papers, and working documentation, electronic or otherwise, created under this contract, or in connection with the project which is the subject of this contract, except for the Contractor's internal administrative and quality assurance files and internal correspondence. The Contractor shall deliver such documents and work papers to the Department upon termination or completion of the contract. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from the Department and subject to any copyright protections. By entering into this contract, the Contractor conveys, sells, assigns, and transfers to the Department all rights, titles, and interest it may now have or hereafter acquire under the antitrust laws of the United States and the State of Mississippi that relate to the particular goods or services purchased or acquired by the Department under this contract.

31. FAILURE TO DELIVER

In the event of failure of the Contractor to deliver goods or services in accordance with the contract terms and conditions, the Department, after due written notice, may procure the services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the Department may have.

32. 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, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"). When such a cause arises, the Contractor shall notify the Department 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 Department determines it to be in its best interest to terminate the contract.

33. INDEMNIFICATION

To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the State of Mississippi, the Department, members of the Mississippi State Board of Health, and its officers, employees, agents, and representatives 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 attorneys' fees, arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or Subcontractors in the performance of or failure to perform this contract. In the State of Mississippi's sole discretion, the Contractor may be allowed to control the defense of any such claim, suit, etc. In the event the Contractor defends said claim or suit, etc. the Contractor shall use legal counsel acceptable to the State of Mississippi and to the Department; the Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State of Mississippi and the Department shall be entitled to participate in said defense. The Contractor shall not settle any claim or suit, etc. without the State of Mississippi and the Department's concurrence, which the State of Mississippi and the Department shall not unreasonably withhold.

34. NO LIMITATION OF LIABILITY

Nothing in this Contract shall be interpreted as excluding or limiting any tort liability of the Contractor for harm caused by the intentional or reckless conduct of the Contractor or for the damages incurred through the negligent performance of duties by the Contractor or the delivery of products that are defective due to negligent construction.

35. ATTORNEYS' FEES AND EXPENSES

Subject to other terms and conditions of this contract, in the event the Contractor defaults in any obligations under this contract, the Contractor shall pay to the Department all costs and expenses (including, without limitation, investigative fees, court costs, and attorneys' fees) incurred by the Department in enforcing this contract or otherwise reasonably related thereto. The Contractor agrees that under no circumstances shall the Department or the State of Mississippi be obligated to pay any attorneys' fees or costs of legal action to the Contractor. This clause shall not apply to any contracts entered into with another state agency, board, or commission.

36. RECOVERY OF MONEY

Whenever, under this contract, any sum of money shall be recoverable from or payable by the Contractor to

the Department, the same amount may be deducted from any sum due to the Contractor under the contract or under any other contract between the Contractor and the Department. The rights of the Department are in addition and without prejudice to any other right the Department may have to claim the amount of any loss or damage suffered by the Department on account of the acts or omissions of the Contractor.

37. SEVERABILITY

If any part of this Contract is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the contract that can be given effect without the invalid or unenforceable provision and to this end, the provisions hereof are severable. In such event, the parties shall amend the contract as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

38. WAIVER

No delay or omission by either party to this contract in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this contract shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this contract will void, waive, or change any other term or condition. No waiver by one party to this contract of a default by the other party will imply, be construed as, or require waiver of future or other defaults. Failure by the Department at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the Department to enforce any provision at any time in accordance with its terms.

39. STATE PROPERTY

The Contractor will be responsible for the proper custody and care of any State-owned or State-leased property furnished for the Contractor's use in connection with the performance of this contract. The Contractor will reimburse the Department for any loss or damage, normal wear and tear excepted.

40. UNSATISFACTORY WORK

If, at any time during the contract term, the service performed or work done by the Contractor is considered by the Department to create a condition that threatens the health, safety, or welfare of the general public, the Department, its property, or its employees, or for whom the contracted services are to be rendered, the Contractor shall, on being notified by the Department, immediately correct the deficient service or work. In the event the Contractor fails, after notice, to correct the deficient service or work immediately, the Department shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of the Contractor.

41. ANTI-ASSIGNMENT/SUBCONTRACTING

The Contractor acknowledges that it was selected by the Department to perform the services required hereunder based, in part, upon the Contractor's skills and expertise. The Contractor shall not assign, subcontract, or otherwise transfer this contract in whole or in part without the prior written consent of the Department, which the Department may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer by the Contractor of its obligations without such consent shall be null and void. No such approval by the Department of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the Department in addition to the total contractual price agreed upon in this contract. Subcontracts shall be subject to the terms and conditions of this contract and to any conditions of approval that the Department may deem necessary. Subject to the foregoing, this contract shall be binding upon the respective successors and assigns of the parties.

42. THIRD PARTY ACTION NOTIFICATION

The Contractor shall give the Department prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this contract.

43. NOTICES

All notices required or permitted to be given under this contract must be in writing and personally delivered or sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. 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 as shown below:

For the Contractor:	Name: _____
	Title: _____
	Organization: _____
	Street Address: _____
	City, State, Zip: _____
For the Department:	Name: _____
	Title: _____
	Agency: _____
	Street Address: _____
	City, State, Zip: _____

44. A.

Official Signatures for the contract on behalf of the Department are as follows:

_____ Program Director/Originator	_____ Date
_____ Office Director/District Health Officer/District Administrator, or Designee	_____ Date
_____ Director of Health Administration/Chief Administrative Officer	_____ Date

B. Official Signatures for the contract on behalf of the Contractor are as follows:

_____ Contractor's Signature and Title	_____ Date
_____ Contractor's Signature and Title (if applicable)	_____ Date

ATTACHMENT B: CONFLICTS OF INTEREST

1. List the names of Members of the Board of Directors or other Governing Body:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

2. Are any Members of the Governing Body or Project Staff also MSDH employees?

Check one, only: ☐ YES ☐ NO

3. If Yes, please list the name of the MSDH employee(s) and the position held within the MSDH.

_____	_____
_____	_____
_____	_____
_____	_____

4. Are any Members of the Governing Body or Project Staff also Spouses, Parents, or Children of MSDH Employees?

Check one, only: ☐ YES ☐ NO

5. If Yes, List the Name and Relationship to the MSDH employee:

_____	_____
_____	_____
_____	_____
_____	_____

6. List all other current contracts with MSDH (include \$ amount and contract beginning & ending dates):

_____	_____
_____	_____
_____	_____

7. Contractor's Signature:

Signature

Date

ATTACHMENT C: ADDITIONAL CONTRACTUAL TERMS
(Use additional pages, as necessary)

TO BE FILLED OUT ONLY FOR 300 LINE ITEM CONTRACTS

CONTRACT JUSTIFICATION

Detailed description of contractual services to be performed including location, program, purpose, and condition or regulatory agency establishing the requirement for contract personnel services (contract services which require regulatory agency action must have concurrence of regulatory agency prior to submission to the State Personnel Director):

Justification of request, including assessment of current personnel resources (i.e. utilization of current position vacancies, temporary increase in workload above capability of current workforce, level of expertise required, position classification not available to agency):

Qualifications that make this contractor the best suited to perform this task:

Justification of modification request (if applicable):

Consequence of contract being disapproved:

I have reviewed this contract request and determined that these services are needed and cannot be provided by current staff or through the staffing of a vacant position.

Agency Authorized Signature

Date