

## ATTACHMENT D

# AGREEMENT BETWEEN THE STATE OF MISSISSIPPI DEPARTMENT OF CORRECTIONS AND WORKERS' COMPENSATION THIRD PARTY ADMINISTRATION AND LOSS CONTROL/RISK MANAGEMENT SERVICES CONTRACT

### DRAFT CONTRACT - DO NOT SIGN!!

This contract between the Mississippi Department of Corrections, 633 North State Street, Jackson, MS 39202, (hereinafter referred to as "MDOC") and \_\_\_\_\_, address, hereinafter referred to as "\_\_\_\_\_", is entered into as this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

#### WITNESSETH

**WHEREAS**, MDOC is responsible for the safety, professional development, and well-being of an estimated 2,200 employees that are located statewide at the Central Office in Jackson, MS, Mississippi State Penitentiary (MSP), Parchman, MS, Central Mississippi Correctional Facility (CMCF), Pearl, MS, South Mississippi Correctional Institution (SMCI), Leakesville, MS, fifteen (15) Regional Facilities, four (4) private prisons, fifteen (15) Community Work Centers, four (4) Restitution Centers, Classifications and Records, and numerous Probation/Paroles offices across the state. (hereinafter referred to as "Sites");

**WHEREAS**, \_\_\_\_\_ is in the business of providing workers' compensation, loss control, and risk management services and desires to provide such service to the MDOC at the aforementioned Sites under the terms and conditions of the RFP;

**WHEREAS**, MDOC desires to engage \_\_\_\_\_ to serve as the Third Party Administrator (TPA) and perform the necessary workers' compensation and loss and risk management services necessary within the aforementioned Sites;

**NOW, THEREFORE**, for and in consideration of the mutual covenants, obligations, benefits and agreements herein contained, MDOC and \_\_\_\_\_ do hereby agree as follows:

#### **ARTICLE I: WORKER'S COMPENSATION AND LOSS CONTROL AND RISK MANAGEMENT REQUIREMENTS**

**1.1 Effective Date of Contract:** This Contract is entered into upon the date of execution of the agreement by both parties and shall be effective on \_\_\_\_\_ and end on \_\_\_\_\_. The contract term will be for three (3) years, with an option to renew for two (2) additional years, based solely on the Commissioner of MDOC's discretion. This contract shall be governed by the applicable provisions of the Mississippi Personal Service Contract Review Board Regulations, a copy of which is available for inspection from the Mississippi State Personnel Board located at 210 East Capitol Street, Suite 800, Jackson, Mississippi, 39201, or to download at [www.mspb.ms.gov](http://www.mspb.ms.gov).

**1.2 Scope of Service:** \_\_\_\_\_ agrees to provide prompt and accurate adjudication of workers' compensation claims filed by MDOC and/or their employees. \_\_\_\_\_ services

will include claims investigations, compensability determinations, claim and expense payments, litigation management, medical case management, and overall management of claim files to include completion and timely filing of reports required by the Mississippi Workers' Compensation Commission, as well as statistical and management reports to MDOC. \_\_\_\_\_ will also provide safety/risk control services, at MDOC's discretion. MDOC reserves the right to unbundle specific elements of service associated with MDOC workers' compensation claims. These can include, but are not limited to: medical case management, bill review, utilization review, and pharmacy benefit management. \_\_\_\_\_ duties and responsibilities shall include, but are not limited to, the following:

1. Provide a dedicated claims unit composed of professionally trained, appropriately licensed claims staff to ensure excellence in all areas of service required under this contract and meeting the minimum experience requirements specified in MDOC's Request for Proposal (RFP 18-001) (which will be attached to the contract) and the TPA's response to the Request for Proposals (which will likewise be attached to the contract).
2. As needed, perform a complete and timely implementation of third party claims administration services from MDOC's incumbent third party claims administration vendor, to meet the July 1, 2018 contract effective date.
3. Agree to cooperate with all other contractors of MDOC in the on-going coordination and delivery of services to MDOC, and in any transfer of responsibility.
4. Manage, administer, and review each claim filed by an employee, or a member for personal injury, sickness disease, or death incurred, or alleged to have occurred, in the course of employment. This review will include a thorough investigation of any claim or loss that is questionable in nature, to determine any compensation.
5. All compensable claims will be processed in accordance with applicable statutory and administrative procedures and professional adjusting techniques.
6. Prepare, file and furnish all reports, as required by the Mississippi Workers' Compensation Commission, to the Human Resources Department. The selected TPA must be able to provide to MDOC access to comprehensive industry standard and customized reports to ensure the optimal management of the program. The TPA should provide web-based or similar electronic reporting tools and access that will allow MDOC the ability to run selected management statistical reports as needed. The TPA should likewise have the capability to allow telephonic and/or electronic claim submission.
7. Prepare thoroughly documented notes to the file with respect to liability, reserve history, expected settlement/closure date, telephone conversations, etc. Provide read-only, on-line access to MDOC, to include any required software. The online access shall include, but is not limited to, access by claim to the claim historical

data, supervisory and adjuster note screens, diary screen, all payment detail, and notes on system confirming file review frequency. Optimally, the online access should also provide MDOC the ability to run selected management and statistical reports and provide ongoing training of software as needed.

8. Conduct a thorough investigation of each reported incident, claim or loss to the extent necessary, which may include but not be limited to, photographs, diagrams, police reports, statements, from involved parties and all witnesses to determine MDOC's liability, etc.
9. Pay all legitimate claims for medical benefits, death benefits, and temporary or permanent disability benefits in a timely manner. This is to include, but is not necessarily limited to, all orders or benefits specifically directed by the administrative judge or full commission.
  - a. When the first report of injury is received a three (3) point contact will be conducted within twenty-four (24) hours.
  - b. When the employee is temporarily totally or permanently totally disabled, the benefits are paid in a timely manner according to the Mississippi Workers' Compensation Act. Benefits are paid in accordance to SB 2977 (2008 Regular Session of the Mississippi Legislature). **All calculations are completed by \_\_\_\_\_.**
  - c. All other legitimate expenses to a claim are paid within the time frame of the fee schedule (45 days).
  - d. Take all actions required to negotiate settlements on appropriate claims. No settlement will be offered without the prior approval of MDOC.
10. The TPA will provide defense of litigated claims, in the negotiation of settlements for litigated claims, and in the preparation of subrogation or contribution actions. The Third Party Administrator representation at workers' compensation hearings shall be expected. MDOC shall have the final approval of any settlement and/or compromises.
11. Take an active role in monitoring lost time cases thereby controlling temporary disability cases.
12. Monitor the treatment programs recommended for employees by physicians, specialists, and other health care providers by reviewing all reports prepared by them and maintaining such contact with these providers as may be appropriate.
13. Assist with the interpretation of medical reports to evaluate the circumstances under which an ill or injured employee could return to work in the shortest period of time. Arrange for medical cost containment services, to include access and channeling to

Preferred Provider Organization (services, supplies/equipment, and pharmacy) networks and other preferred providers, medical bill review, and provider fee negotiation. This may also include as needed hospital bill review and prompt payment negotiations.

14. Coordinate all efforts in arranging for vocational rehabilitation of employees, when appropriate, to lower exposure of any loss of wage earning capacity.
15. Assist in arranging for rehabilitation or retraining of employees as appropriate. Included in this assistance is working with and advising the employee and MDOC's Human Resources Director or designee in "return to work" efforts.
16. Analyze each claim for the purpose of establishing an estimated cost for medical and disability expenses. This estimate will be reviewed each time additional information is received to insure appropriateness. The process of establishing an appropriate dollar amount, includes a professional, experience tested, review of claim specifics and evaluation of the legal and current costs associated with the current legal trends.
17. Arrange for independent investigators, medical professionals, or other experts to the extent deemed necessary by the TPA in connection with processing any incident, claim, or loss. If it is mutually deemed necessary to assign an independent, third party claims investigator (fee adjuster) to handle a portion of the investigation of a qualified claim or loss, the fee for services of such fee adjuster will be paid by the TPA, not out of MDOC's funds, if those are services that the TPA staff is equally capable and qualified to handle. The fee adjuster will be mutually agreed upon and determined by geography and the type of claim/injury involved.
18. Perform administrative clerical work in connection with the process of reporting claims, including the following:
  - a. Maintain a current and complete file on each claim, or loss, reported to be available for review and/or audit by MDOC. This file will include the following, at a minimum:
    - Copies of the first report of injury and any other Mississippi Workers' Compensation Commission required forms
    - Copies of bills received
    - Copies of lost time reports
    - Copies of expenditures for bills received with documentation for differences
    - Computer generated pay history
    - Calculation of workers' compensation benefits and paid leave should employee receive both benefits simultaneously not to exceed 100% of wages earned in state government at the time of injury
    - Copies of all medical reports, letters, and other communications pertaining

- to the claim
    - Copies of all legal documents, or communications, pertaining to the claim
    - Computer generated notes of the claim file
  - b. Prepare all checks, or drafts drawn in the account established for same.
  - c. Obtain quotes and provide documentation for excess loss insurance coverage.
19. Cost containment systems and practices are expected such as coordination of provider networking discounts, pharmacy benefit management, utilization review and bill review. Financial reports shall be provided to MDOC at least quarterly which identify total charges processed, reductions achieved and associated fees for a final net percent reductions calculation. Given national concerns regarding opioid abuse within the workers' compensation claims system, the Third Party Administrator shall establish protocols for identifying cases with high-risk of opioid abuse and dependency and take appropriate action on cases where abuse and/or dependency is evident.
20. Provide Loss Control/Risk Management services. The services will include the following as a minimum:
- a. Provide investigations as requested by the MDOC and as deemed necessary to prevent frivolous claims.
  - b. Monitor MDOC's claims reporting and management process and provide recommendations for improvements.
  - c. Monitor for repetitive injuries and make recommendations for curtailment.
  - d. Provide reports to the MS Workers' Compensation Commission as required.
  - e. Assist the MDOC in evaluating Medical Providers to determine the effectiveness in treating MDOC's Workers' Compensation Injuries.
  - f. Provide twenty-four (24) hour contact for MDOC's Human Resources and Loss Prevention Department.
  - g. Conduct Risk/Loss Control Audits and Visits as requested by MDOC.
  - h. Provide Loss Control Analysis Reports with recommendations for corrective measures and improvements.
  - i. Provide assistance with the Return to Work Program by instituting medical case management services.

- j. Assist with Safety Training as requested by the MDOC.
  - k. Lend assistance to special projects for the Loss Prevention Department.
  - l. Attend Human Resources Department and other staff meetings as required by the Human Resources Director and/or the Commissioner of MDOC.
- 21. Safety/loss personnel must make on-site contact within one business day of the notice to the TPA of the incident, claim, or loss, in the event of notification of an incident, claim, or loss involving death of an employee, or a serious injury with an initial indemnity and medical reserve over \$50,000.
  - 22. All files, records, and other work products incidental to the services provided are to be the sole property of MDOC and shall be surrendered upon expiration of the contract. All files and records will be accessible only to Respondents personnel, MDOC's personnel, and to appropriate legal and medical personnel, during normal business hours.
  - 23. Handle, to their conclusion, all claims and their obligations incurred during the contract period.
  - 24. Excess coverage/reinsurance for MDOC will be marketed to providers within the industry on an annual basis.
  - 25. Notify and coordinate with excess insurers of all claims that may exceed MDOC's retention and provide such excess insurers with necessary information on the current status of those claims and losses, to include appropriate funds recovery for MDOC on claims made to the excess insurers.
  - 26. Process all compensable claims in accordance with applicable statutory and administrative procedures and professional adjusting techniques.

## **ARTICLE II: INSURANCE COVERAGE**

- 2.1 Copies of insurance certificates shall be filed with the MDOC Deputy Commissioner of Administration and Finance within ten (10) days of award notice, and before the effective date of the contract. \_\_\_\_\_ shall maintain, at their expense, the established levels of insurance as shown below for Workers' Compensation, Comprehensive General Liability and Property, Blanket Fidelity, and Professional Liability/Errors and Omissions Insurance coverage.
  - 1. Workers' Compensation as required by the State of Mississippi.
  - 2. Employee Dishonesty or Fidelity Bond Insurance with third party coverage and with limits of \$1,000,000.00.



3. Comprehensive General (Public) Liability or Professional General Liability with minimum \$1,000,000.00 per occurrence that includes, but not limited to:
  - a. Premises/Operations
  - b. Independent Contractors
  - c. Personal Injury
  - d. Contractual Liability-Bodily Injury \$1,000,000.00 per occurrence
  - e. Property damage \$1,000,000.00 per occurrence
4. Prior to the effective date of the contract, the successful contractor shall furnish the MDOC with an appropriately executed certificate of insurance. Such certificate shall identify the Contract and contain provisions that coverage afforded under the policies shall not be canceled, terminated or materially altered. All insurance certificates will provide coverage to the MDOC as an additional insured.
5. Failure on the part of the successful contractor to procure and maintain the required insurance and provide proof thereof to the MDOC, shall constitute a material breach of the Contract, upon which the MDOC may immediately terminate the Contract.
6. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Mississippi, meaning insurance carriers must be licensed or hold a certificate of authority from the Mississippi Department of Insurance.

### **ARTICLE III: MINIMUM REQUIREMENTS**

- 3.1 \_\_\_\_\_ must currently provide workers' compensation third party administrator services to at least one large client, individual employer or group, with 2,000 or more employees. Provide the client name, address, contact, title, phone number, fax number, size of group, and type of service(s) provided (be specific), and number of years the contract has been in place with your organization.
- 3.2 \_\_\_\_\_ must have experience as an organization providing the type and scope of TPA services to be procured through this competitive process.
- 3.3 \_\_\_\_\_ agrees to assign Claims Manager(s) to this account with experience in investigation, evaluation and settlement negotiation of workers' compensation claims, as well as a minimum of five (5) years of workers' compensation claims supervisory experience.
- 3.4 \_\_\_\_\_ agrees to assign Risk Control Consultant(s) with experience in recognition, evaluation, assessment, analysis and reporting of potential workers' compensation loss exposures. The Risk Control Consultant(s) provided will have experience in development, implementation, and monitoring of safety programs, as well as experience in conducting safety training and/or workshops.

- 3.5** \_\_\_\_\_ agrees that it is properly licensed and will maintain proper licensure to perform workers' compensation and risk control services in the State of Mississippi.
- 3.6** \_\_\_\_\_ agrees that it has or will open within three (3) months of the award of the award date of this contract a claims office within the State of Mississippi. (Section 71-3-125 of the Mississippi Code.)
- 3.7** \_\_\_\_\_ agrees that all services performed on behalf of MDOC will be provided within the Continental United States.
- 3.8** \_\_\_\_\_ agrees to provide a performance guarantee in the amount of \$ \_\_\_\_\_
- 3.9** \_\_\_\_\_ agrees to provide an online claims processing system and to provide a minimum of three (3) sessions of initial training to MDOC Human Resources staff prior to the start date of the contract, as well as annual refresher or introductory training as necessary throughout the contract.
- 3.10** \_\_\_\_\_ agrees that the administrative and cost containment fees contained herein are fully guaranteed for the term of the contract.
- 3.11** \_\_\_\_\_ agrees to guarantee a return on investment (ROI) for the medical cost containment services as follows: \_\_\_\_\_  
\_\_\_\_\_
- 3.12** \_\_\_\_\_ agrees that it will maintain throughout the life of this contract a toll-free number for calls from claimants, employer units, providers, and MDOC.
- 3.13** \_\_\_\_\_ must agree to provide a performance guarantee to ensure timely and complete establishment of the contract and related services in the amount of seven hundred fifty thousand dollars (\$750,000). If the vendor chooses to make this guarantee in the form of a performance bond, MDOC must be named as exclusive beneficiary. Any failure of the \_\_\_\_\_ to perform timely and complete establishment of such services shall result in damages recoverable by MDOC against the \_\_\_\_\_ and/or his performance bond. Upon MDOC's agreement that the \_\_\_\_\_ has fulfilled its implementation and transition responsibilities and related administrative services, any such performance bond shall be released.
- 3.14** \_\_\_\_\_ agrees to pay a flat bundled fee for claims administration services and understands that MDOC will not accept a fee based on a percentage of payroll, number of claims, or any other variable statistic.
- 3.15** \_\_\_\_\_ agrees that unit rates are to be charged for actual hours worked only and shall not include travel time. No additional compensation will be provided by MDOC for any expense, cost, or fee not specifically authorized by the contract, or by written authorization from MDOC.



- 3.16 \_\_\_\_\_ agrees that MDOC will not provide any prepayments or initial deposits in advance of services being rendered. Only those services agreed to by contract shall be considered for reimbursement or compensation by MDOC. Payment for any and all services provided by \_\_\_\_\_ to the Board and/or the Trust shall be made only after said services have been duly performed and properly invoiced.
- 3.17 \_\_\_\_\_ agrees to submit all invoices in a form acceptable to MDOC with all of the necessary supporting documentation prior to the payment of allowable costs. Such invoices will, at a minimum, include the appropriate descriptions of the services being billed or other bases for charges included in **Section 8 of the RFP**.
- 3.18 \_\_\_\_\_ agrees that the payment of an invoice by the Board shall not prejudice MDOC's right to object or question any invoice or matter in relation thereto. Such payment by MDOC shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any costs invoiced therein.
- 3.19 \_\_\_\_\_ agrees that their invoice or payment shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by MDOC, on the basis of audits, not to constitute allowable costs. Any payment shall be reduced for overpayment, or increased for underpayment on subsequent invoices. For any amounts which are or shall become due and payable to MDOC by the \_\_\_\_\_, MDOC reserves the right to (1) deduct from amounts which are or shall become due and payable to MDOC under contract between the parties; or (2) request and receive payment directly from \_\_\_\_\_ within fifteen (15) days of such request, at MDOC's sole discretion.

#### **ARTICLE IV: REQUIRED CONTRACT TERMS AND CLAUSES**

(The use of \_\_\_\_\_ Vendor is replaced by Contractor)

- 4.1 ***Applicable Law:** The 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. Contractor shall comply with applicable federal, state, and local laws and regulations.*
- 4.2 ***Availability of Funds:** It is expressly understood and agreed that the obligation of the MDOC 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 MDOC, the MDOC 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 State of Mississippi of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.*

- 4.3 Anti-Assignment/Subcontracting:** Contractor acknowledges that it was selected by the MDOC to perform the services required hereunder based, in part, upon Contractor's special skills and expertise. Contractor shall not assign, subcontract or otherwise transfer this agreement in whole or in part without the prior written consent of the MDOC, which the MDOC may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the MDOC of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the MDOC may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.
- 4.4 Antitrust:** By entering into a contract, Contractor conveys, sells, assigns, and transfers to the MDOC 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 MDOC under said contract.
- 4.5 Attorney's Fees and Expenses:** Subject to other terms and conditions of this agreement, in the event Contractor defaults in any obligations under this agreement, Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees, court costs, and attorney's fees) incurred by the State in enforcing this agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the customer be obligated to pay any attorney's fees or costs of legal action to Contractor.
- 4.6 Approval:** It is understood that the Contract is void and no payment shall be made in the event that the Personal Service Contract Review Board does not approve this contract.
- 4.7 Acknowledgment of Amendments:** Contractors shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the proposal(s), by identifying the amendment number and date in the space provided for this purpose on the proposal form, or by letter. The acknowledgment must be received by the MDOC by the time and at the place specified for receipt of proposal(s).
- 4.8 Authority to Contract:** Contractor warrants: (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) 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, (d) 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.
- 4.9 RFP Investigations:** Before submitting a response to a Request for Proposal, each contractor shall make all investigations and examinations necessary to ascertain all site conditions and requirements affecting the full performance of the contract and to verify any representation made by MDOC upon which the contractor will rely. If the contractor

receives an award as a result of its response to a proposal, failure to have made such investigations and examinations will in no way relieve the bidder from its obligation to comply in every detail with all provisions and requirements of the contract documents, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim whatsoever for additional compensation.

- 4.10 Books and Records:** **Contractor** shall retain and shall require all of its Subcontractors to retain for inspections and audit by MDOC of all books, accounts, reports, files and other records relating to performance of this contract for a period of five (5) years after its completion.

Upon request by MDOC, a legible copy of all such records shall be produced by the **Contractor** at the administrative office of MDOC or at the office of the MDOC's Auditor. The original of all such records shall also be available and produced for inspection and audit when requested by the State Auditor or MDOC to verify the authenticity of copy.

- 4.11 Change in Scope of Work:** The MDOC 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 **Contractor** that the scope of the project or of **Contractor's** services has been changed, requiring changes to the amount of compensation to **Contractor** or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the MDOC and **Contractor**.

If **Contractor** believes that any particular work is not within the scope of the project, is a material change, or will otherwise require more compensation to **Contractor**, **Contractor** must immediately notify the MDOC in writing of this belief. If the MDOC believes that the particular work is within the scope of the contract as written, **Contractor** will be ordered to and shall continue with the work as changed and at the cost stated for the work within the scope of service.

- 4.12 Compliance with Laws:** ***Contractor** understands that the MDOC 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.*

- 4.13 Confidentiality:** Notwithstanding any provision to the contrary contained herein, it is recognized that MDOC is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act, Mississippi Code Annotated §§25-21-1 et seq. (1932, as amended). If a public records request is made for any information provided to MDOC pursuant to the agreement, MDOC shall promptly notify the disclosing party of such request and will respond to the request only in accordance with the procedures and

limitations set forth in applicable law. The disclosing party shall promptly institute appropriate legal proceedings to protect its information. No party to the agreement shall be liable to the other party for disclosures of information required by court order or required by law.

**4.14 Contract Personnel:** MDOC shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by **Contractor**. If the Agency reasonably rejects staff or subcontractors, **Contractor** must provide replacement staff or subcontractors satisfactory to the Agency in a timely manner and at no additional cost to the Agency. The day-to-day supervision and control of **Contractor's** employees and subcontractors is the sole responsibility of the **Contractor**.

**4.15 Debarment and Suspension:** **Contractor** certifies to the best of its knowledge and belief, that it:

1. 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;
2. 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;
3. 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;
4. 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 (2) and (3) of this certification; and
5. 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.

**4.16 Disclosure of Confidential Information:** In the event that either party to this agreement 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 law. This section shall survive the termination or completion of this agreement. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq.*

**4.17 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.



**4.18 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:*

- 1. 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;*
- 1. 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,*
- 2. both. In the event of such cancellations/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.*

**4.19 Exceptions to Confidential Information:** Contractor and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party (“disclosing party”) which:

- (1) is rightfully known to the recipient prior to negotiations leading to this agreement, other than information obtained in confidence under prior engagements;
- (2) is generally known or easily ascertainable by nonparties of ordinary skill in the business of the customer;
- (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 State or Contractor from any nonparty; or,

(6) is disclosed with the disclosing party's prior written consent.

- 4.20 Failure to Deliver:** In the event of failure of Contractor to deliver services in accordance with the contract terms and conditions, the MDOC, after due oral or written notice, may procure the services from other sources and hold Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the MDOC may have.
- 4.21 Failure to Enforce:** Failure by the MDOC 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 MDOC to enforce any provision at any time in accordance with its terms.
- 4.22 Financial Audit:** Contractor shall maintain such financial records and other records as may be prescribed by MDOC or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of three (3) years after final payment, or until they are audited by MDOC, 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.
- 4.23 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 ("force majeure events"). When such a cause arises, Respondent shall notify the MDOC 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 MDOC determines it to be in its best interest to terminate the agreement.
- 4.24 HIPAA Compliance:** The Contractor agrees to comply with the Administrative Simplifications provisions of the Health Insurance Portability and Accountability Act of 1996, revised June 2003, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the services under this contract.
- 4.25 Indemnification:** To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the MDOC, its commissioners, board members, officers, 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 Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement. In the State's sole discretion, Contractor may be



allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the State.

Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc. without the State's concurrence, which the State shall not unreasonably withhold.

- 4.26 Independent Contractor Status:** Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the MDOC. Nothing contained herein shall be deemed or construed by the MDOC, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the MDOC and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the MDOC or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the MDOC and Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the MDOC; and the MDOC shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees.

The MDOC shall not withhold from the contract payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, the MDOC shall not provide to Contractor or Contractor's personnel any insurance coverage or other benefits, including Workers' Compensation, normally provided by the State for its employees.

- 4.27 Information Designated By Contractor as Confidential:** Any disclosure of those materials, documents, data, and other information which Contractor has designated in writing as proprietary and confidential shall be subject to the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1. As provided in the contract, the personal or professional services to be 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. Any liability resulting from the wrongful disclosure of confidential information on the part of Contractor or its subcontractor shall rest with Contractor. Disclosure of any confidential information by Contractor or its subcontractor without the express written approval of MDOC shall result in the immediate termination of this agreement.
- 4.28 Legal Action:** The MDOC will be responsible for all legal actions filed which name the MDOC as a defendant, when MDOC personnel are involved or when applicable MDOC rules and regulations are at issue. Responsibility of defense of legal actions against the vendor will be that of the vendor.

- 4.29 Modification or Renegotiations:** This agreement may be modified only by written agreement signed by the parties hereto. 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.
- 4.30 No Limitation of Liability:** Nothing in this agreement shall be interpreted as excluding or limiting any tort liability of Contractor for harm caused by the intentional or reckless conduct of Contractor or for damages incurred through the negligent performance of duties by Contractor or the delivery of products that are defective due to negligent construction.
- 4.31 Notices:** All notices required or permitted to be given under this agreement 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.
- For Contractor:        *name, title, Contractor, address*  
For the Agency:        *name, title, agency, address*
- 4.32 Oral Statements:** No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by MDOC and agreed to by Contractor.
- 4.33 *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.*
- 4.34 Record Retention and Access To Records:** Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this agreement shall be retained by Contractor for three (3) years after final payment is made under this agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project 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.
- 4.35 *Procurement Regulations:*** *The agreement 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>.*

- 4.36 Recovery of Money:** Whenever, under the contract, any sum of money shall be recoverable from or payable by Contractor to MDOC, the same amount may be deducted from any sum due to Contractor under the contract or under any other contract between Contractor and MDOC. The rights of MDOC are in addition and without prejudice to any other right MDOC may have to claim the amount of any loss or damage suffered by MDOC on account of the acts or omissions of Contractor.
- 4.37 Renewal of Contract:** The contract may be renewed at the discretion of the agency upon written notice to Contractor at least [number] days prior to each contract anniversary date for a period of [number] successive one-year periods under the same prices, terms, and conditions as in the original contract. The total number of renewal years permitted shall not exceed [number].
- 4.38 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 or proposal.*
- 4.39 Representation Regarding Gratuities:** *The 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.*
- 4.40 Right to Audit:** Contractor shall maintain such financial records and other records as may be prescribed by MDOC or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of three years after final payment, or until they are audited by MDOC, 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.
- 4.41 Severability:** If any part of this agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement 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 agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.
- 4.42 Stop Work Order**
- 1. 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:*

- (a) Cancel the stop work order; or,*
- (b) Terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.*

**2. *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 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.*

**3. *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.*

#### **4.43 Termination Clauses**

**1. *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.*

## **2. 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 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 (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.

### 3. Termination Upon Bankruptcy

This contract may be terminated in whole or in part by MDOC 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 price.

**4.44 Third Party Action Notification:** Contractor shall give the customer 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 agreement.



- 4.45 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.*
- 4.46 Transparency:** *This agreement, 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.*
- 4.47 Unsatisfactory Work:** If, at any time during the contract term, the service performed or work done by Contractor is considered by MDOC to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, Contractor shall, on being notified by MDOC, immediately correct such deficient service or work. In the event Contractor fails, after notice, to correct the deficient service or work immediately, MDOC shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of Contractor.
- 4.48 Waiver:** No delay or omission by either party to this agreement 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 agreement 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 agreement will void, waive, or change any other term or condition. No waiver by one party to this agreement of a default by the other party will imply, be construed as or require waiver of future or other defaults.

Witness our signatures, on the first written.

(Insert TPA)

Mississippi Department of Corrections

By: \_\_\_\_\_  
Name  
Title

By: \_\_\_\_\_  
Name  
Executive Director

## **ARTICLE V: COST QUOTATION FORMS**

**ADMINISTRATIVE/CONSULTATIVE SERVICES:** MDOC prefers a guaranteed flat “bundled” administration fee for Claims Administration Services and a flat (hourly) fee for Safety/Loss Control Services. Explain what services are included, as well as what services are not included, in your proposed bundled administrative fee. Your proposed fee for Claims Administration Services should assume the following conditions: (1) the TPA selected will administer all claims still open as of 12/31/2017, as well as any run-out claims (IBNR) incurred prior to 12/31/2017.

SERVICE	CY 2018	CY 2019	CY 2020	CY 2021	CY 2022
<b>Claims Administration</b>					
<b>Includes:</b>					

SERVICE	CY 2018	CY 2019	CY 2020	CY 2021	CY 2022
<b>Safety/Loss Control</b>					
<b>Includes:</b>					

**MEDICAL COST CONTAINMENT SERVICES:** Provide the following information concerning the allocated fees you will charge to each file for the services listed below. Fully describe how the fee will be charged, and what savings guarantee/ROI pertains to the service. Please indicate by asterisk (\*), any of these fees which are not guaranteed. Indicate by two asterisks (\*\*), with a short explanation below the chart, any of the services you do not offer, and any services to be performed outside your organization by contract with another party. Provide full names and addresses of any vendors you will contract with to provide certain services. If there

is no double asterisk (\*\*) beside any service, we will assume this service is to be provided by you “in house”.

SERVICE	CY 2018	CY 2019	CY 2020	CY 2021	CY 2022
<b>Comprehensive Bill Review and Audit (Physician Services, Inpatient Services, Outpatient, DME, etc)</b>					
<b>Treatment Authorization (pre-certification and retrospective review)</b>					
<b>Utilization/Case Management</b>					
<b>Pharmacy Benefit</b>					
<b>PPO and Other Network Services</b>					
<b>Other:</b>					