

**CONTRACTUAL AGREEMENT
BETWEEN THE
DIVISION OF MEDICAID
IN THE OFFICE OF THE GOVERNOR
AND
[CONTRACTOR NAME]**

(Description – for easy identification purposes)

THIS AGREEMENT, made and entered into by and between **the DIVISION OF MEDICAID** in the **OFFICE OF THE GOVERNOR**, an administrative agency of the **STATE OF MISSISSIPPI**, hereinafter referred to as “DOM,” and _____, an entity qualified to do business in Mississippi, hereinafter referred to as “Contractor,” for the performance of professional services.

WHEREAS, DOM has a need for professional services

_____.

_____.

WHEREAS, Contractor agrees to render said services.

NOW THEREFORE, in consideration of the mutual covenants contained herein and subject to the terms and conditions hereinafter stated, it is hereby understood and agreed by the Parties hereto as follows:

I. SCOPE OF WORK: Contractor agrees to perform the following services for DOM:

- A. (Detailed scope of work)
- B. (Specific Deliverables)
- C. (Include any conditions/standards that apply to work)

II. PERIOD OF PERFORMANCE: The term of this Agreement shall commence on _____, and shall expire on _____, unless this Agreement is terminated pursuant to paragraph XI (Termination).

III. COORDINATION OF SERVICES: Contractor shall coordinate the performance of the services to be provided hereunder with and through the **(Bureau/Deputy/Office**

Director/etc.) of DOM, and consult with **(Bureau/Deputy/Office)** on specific courses of action which should be pursued.

IV. COST FOR SERVICES: As full and complete compensation for the services to be provided hereunder, DOM will pay Contractor at the rates listed below:

- A. Total reimbursement shall not exceed _____ **dollars and** _____ **cents** (\$ _____) for the term of this Agreement. This total reimbursement includes the maximum reimbursement amounts described in paragraphs IV.B (professional services) and IV.C (travel expenses) below.
- B. The reimbursement rate for professional services shall be _____ **dollars and** _____ **cents** (\$ _____) per hour. The reimbursement rate for professional services includes operating supplies and an amount not to exceed ten percent (10%) for administrative overhead. Reimbursement shall not exceed _____ **dollars and** _____ **cents** (\$ _____) for professional services for the term of this Agreement.
- C. Contractor shall be reimbursed for official DOM travel at the same reimbursement rate as provided by State statute for the employees of DOM. Reimbursement for travel expenses shall not exceed _____ **dollars and** _____ **cents** (\$ _____) for the term of this Agreement.
- D. (Any other conditions on payment)

V. BILLING AND DOCUMENTATION OF TIME: Billing for the number of hours worked at the cost specified in paragraphs IV.A.-D above will be made by Contractor on a form prescribed by DOM for such purposes. It is further provided that the form must be approved by the (Contact for Bureau if necessary), prior to its submission to the appropriate DOM unit for payment. The Contractor payment voucher shall be submitted monthly and include all services rendered for the identified month.

VI. E-PAYMENT AND PAYMODE:

- A. E-PAYMENT: Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. DOM 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 state agencies within forty-five (45) days of receipt of invoice. Miss. Code Ann. § 31-7-305 (1972, as amended).
- B. PAYMODE: Payments by state agencies shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the 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 for the payment of taxes. All payments shall be made in United States currency.

As such, Contractor shall submit invoices electronically throughout the term of the Agreement, and Contractor invoices shall be submitted to DOM using the processes and procedures identified by DOM.

VII. RELATIONSHIP OF PARTIES: It is expressly understood and agreed that Contractor is an independent contractor and that the purchase of professional services is not based on an employer-employee relationship. For all purposes under this Agreement:

- A. Contractor is not deemed to be an employee with classified service or subject to the State's state-wide Personnel System.
- B. It is further understood that the compensation expressed herein constitutes full and complete compensation, and in view of the fact that DOM is entering into this Agreement with said Contractor as an independent contractor, no withholding or deductions are being made for any purpose from said contracted amount. Contractor shall be solely responsible for any Social Security, Federal Income Tax, State Income Tax, and other insurance contributions and payments.

VIII. NON-ASSIGNMENT AND SUBCONTRACTING: Contractor acknowledges that it was selected by DOM 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 DOM, which DOM shall not unreasonably withhold. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by DOM of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of DOM in addition to the total compensation agreed upon in this Agreement. Subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that DOM may deem necessary. Subject to the foregoing, this Agreement shall be binding upon the respective successors and assigns of the Parties.

IX. AUTHORITY TO CONTRACT: Contractor warrants: (a) that it has valid authority to enter into this Agreement; (b) that it is qualified to do business and in good standing with all applicable regulatory and/or licensing agencies 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.

X. MODIFICATION/AMENDMENT AND CHANGE ORDERS:

- A. **MODIFICATIONS OR AMENDMENTS:** Modifications or amendments to this Agreement may be made upon mutual Agreement of the parties, in

writing signed by the parties hereto and approved as required by law. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Agreement.

- B. **CHANGE ORDERS:** DOM may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the Agreement. 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 DOM 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 DOM in writing of this belief. If DOM 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 Agreement.
- C. **CLAIMS BASED ON DOM'S ACTIONS OR OMISSIONS:**

1. **Notice of Claim.** If any action or omission on the part of the Office of Community Based Services requiring performance changes within the scope of the Agreement constitutes the basis for a claim by Contractor for additional compensation, damages, or an extension of time for completion, Contractor shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, Contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- a. Contractor shall have given written notice to the Office of Community Based Services:
 - i. prior to the commencement of the work involved, if at that time Contractor knows of the occurrence of such action or omission;
 - ii. within thirty (30) days after Contractor knows of the occurrence of such action or omission, if Contractor did not have such knowledge prior to the commencement of the work; or,
 - iii. within such further time as may be allowed by the Office of Community Based Services in writing.

This notice shall state that Contractor regards the act or omission as a reason which may entitle Contractor to additional compensation, damages, or an extension of time. The Office of Community Based Services, upon receipt of such notice, may rescind such action, remedy such omission, or take such other

steps as may be deemed advisable in the discretion of the Office of Community Based Services;

b. the notice required by subparagraph (a) of this paragraph describes, as clearly as practicable at the time, the reasons why Contractor believes that additional compensation, damages, or an extension of time may be remedies to which Contractor is entitled; and,

c. Contractor maintains and, upon request, makes available to the Office of Community Based Services within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

2. Limitation of Clause. Nothing contained herein shall excuse Contractor from compliance with any rules of law precluding state officers and Contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

3. Adjustment of Price. Any adjustment in the contract price made pursuant to this clause is subject to paragraph IV (Cost for Services) above.

XI. TERMINATION: Any party may terminate this Agreement at any time, with or without cause, by giving written notice to the other parties of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In the event of such termination, Contractor shall be entitled to receive just and equitable compensation for any specific services completed in a manner satisfactory to DOM prior to the date of termination. Such compensation shall be determined by DOM.

XII. AVAILABILITY OF FUNDS: It is expressly understood and agreed that the obligation of DOM 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 DOM, DOM shall have the right upon ten (10) working days written notice to Contractor, to terminate this Agreement without damage, penalty, cost or expenses to DOM of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Notice of termination under this paragraph need not comply with the thirty (30) day requirement set forth in paragraph XI (Termination) above.

XIII. SEVERABILITY: It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the courts or other judicial body held to be

illegal or in conflict with any law of the State of Mississippi or any federal law, the validity of the remaining portions or provisions shall not be affected and the obligations of the parties shall be construed in full force as if the Agreement did not contain that particular part, term, or provision held to be invalid.

- XIV. CONFIDENTIALITY:** Contractor agrees that it shall not use or disclose for any purpose any information concerning any recipient of services or provider of services that it may have access to or have knowledge of as a result of providing services to DOM. However, the obligation of confidentiality shall not apply to information that is required to be disclosed pursuant to law or the legal process. This confidentiality agreement survives the term of the Agreement between DOM and Contractor.
- XV. APPLICABLE LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations, policies, and procedures as now existing and as may be amended or modified.
- XVI. COMPLIANCE WITH LAWS:** Contractor understands that DOM 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, political affiliation, ancestry, limited English proficiency, religion, 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, including, but not limited to, hiring, termination/discharge, promotion/demotion, or other terms and conditions of employment. Contractor shall comply with, and all activities under this Agreement shall be subject to, all applicable federal, State of Mississippi, and local laws, regulations, policies, and procedures related to unlawful discrimination, as now existing and as may be amended or modified.
- XVII. COPYRIGHTS:** If applicable, Contractor agrees that DOM shall determine the disposition of the title to and the rights under any copyright by Contractor or employees on copyrightable material first produced or composed under this Agreement. Further, Contractor hereby grants to DOM a royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use, and dispose of, and to authorize others to do so, all copyrighted (or copyrightable) work not first produced or composed by Contractor in the performance of this Agreement, but which is incorporated into the material furnished under the Agreement. This grant is provided that such license shall be only to the extent Contractor now has, or prior to the completion of full final settlements of agreement may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

- XVIII. OWNERSHIP OF DOCUMENTS AND WORK PAPERS:** DOM shall own all documents, files, reports, work papers, and working documentation, electronic or otherwise, created in connection with the work that is the subject of this Agreement, except for Contractor's internal administrative and quality assurance files and internal project correspondence. Contractor shall deliver such documents and work papers to DOM, and in a manner or format specified by DOM, upon termination or completion of the Agreement. The foregoing notwithstanding, 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 DOM and subject to any copyright protections.
- XIX. RESOLUTION OF FACTUAL DISPUTES:** If possible, any dispute concerning a question of fact arising under this Agreement shall be resolved through good faith negotiations between duly authorized representatives of DOM and Contractor.
- XX. NON-WAIVER OF BREACH:** No assent, expressed or implied, by the parties hereto to the breach of the provisions or conditions of this Agreement shall be deemed or taken to be a waiver of any succeeding breach of the same or any other provision or condition and shall not be construed to be a modification of the terms of this Agreement.
- XXI. NON-WAIVER OF OTHER RIGHTS, POWERS, AND REMEDIES:** 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.
- XXII. 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 DOM all costs and expenses (including, without limitation, investigative fees, court costs, and attorney's fees) incurred by DOM in enforcing this Agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall DOM or the State be obligated to pay any attorney's fees or costs of legal action to Contractor.
- XXIII. INDEMNIFICATION:**
- A. **GENERAL INDEMNIFICATION:** To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate DOM, its employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions,

damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorney's fees, arising out of or caused by Contractor and/or its partners, principals, agents, and employees in the performance of or failure to perform this Agreement. In DOM'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 DOM. Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and DOM shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc. without DOM's concurrence, which DOM shall not unreasonably withhold.

B. **INFRINGEMENT INDEMNIFICATION:** Contractor warrants that the materials and deliverables provided to the customer under this Agreement, and their use by DOM, will not infringe or constitute an infringement of any copyright, patent, trademark, or other proprietary right. Should any such items become the subject of an infringement claim or suit, Contractor shall defend the infringement action and/or obtain for DOM the right to continue using such items. Should Contractor fail to obtain for DOM the right to use such items, Contractor shall suitably modify them to make them non-infringing or substitute equivalent software or other items at Contractor's expense. In the event the above remedial measures cannot possibly be accomplished, and only in that event, Contractor may require DOM to discontinue using such items, in which case Contractor will refund to DOM the fees previously paid by DOM for the items DOM may no longer use, and shall compensate DOM for the lost value of the infringing part to the phase in which it was used, up to and including the contract price for said phase. Said refund shall be paid within ten (10) working days of notice to DOM to discontinue said use. Provided that DOM promptly notifies Contractor in writing of any alleged infringement claim of which it has knowledge, Contractor shall defend, at its own expense, DOM against, and pay all costs, damages, and attorney fees that a court finally awards for infringement based on the programs and deliverables provided under this Agreement.

XXIV. THIRD PARTY ACTION NOTIFICATION: Contractor shall give DOM 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.

XXV. NOTICES: Any notice from one party to the other under this Agreement shall be in writing and shall be sent to the other party by U.S. Mail, postage prepaid, at its principal business address, unless changed by either party hereto by written notice similarly given.

XXVI. STRICT PERFORMANCE: It is expressly understood and agreed that strict performance of the terms and provisions of this Agreement shall be deemed the essence of this Agreement.

XXVII. 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. 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, Contractor shall notify DOM 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 DOM determines it to be in its best interest to terminate the Agreement.

XXVIII. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996: All activities under this Agreement shall be performed in accordance with any applicable Business Associate Agreement(s), Nondisclosure Agreement(s), and/or Data Use Agreement(s) entered into between the parties and all applicable federal and/or State of Mississippi laws, rules, and/or regulations including the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (as amended by the Genetic Information Nondiscrimination Act (GINA) of 2008 and the Health Information Technology for Economic and Clinical Health Act (HITECH Act), Title XIII of Division A, and Title IV of Division B of the American Recovery and Reinvestment Act (ARRA) of 2009) and their implementing regulations at 45 C.F.R. Parts 160, 162, and 164, involving electronic data interchange, code sets, identifiers, and the security and privacy of protected health information, as may be applicable to the services under this Agreement. Each party to this Agreement shall treat all data and information to which it has access under this Agreement as confidential information to the extent that confidential treatment of same is required under federal and State of Mississippi law and all applicable Business Associate Agreement(s), Nondisclosure Agreement(s), and/or Data Use Agreement(s) entered into between the parties, and shall not disclose same to a third party without specific written consent of the other party. In the event that either party receives notice that a third party requested divulgence of the confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of the confidential or otherwise protected information, the party shall promptly inform the other party, and thereafter respond in conformity with such subpoena as required by applicable State of Mississippi and/or federal law, rules, regulations, and all applicable Business Associate Agreement(s), Nondisclosure Agreement(s), and/or Data Use Agreement(s) entered into between the parties. The provision herein shall survive the termination of the Agreement for any reason and shall continue in full force and effect and shall be binding upon both parties and their agents, employees, successors, assigns, subcontractors, or any party claiming an interest in the Agreement on behalf of, or under, the rights of the parties following termination.

- XXIX. INSPECTIONS:** Contractor agrees that representatives of the Comptroller General, CMS, the General Accounting Office, the State Auditor, DOM and their authorized representatives shall have the right during regular business hours to inspect and copy Contractor's books and records pertaining to the extent and cost of services furnished to DOM or eligible recipients. Contractor shall cooperate fully with the request from any of the agencies listed above and shall furnish free of charge copies of all requested records.
- XXX. RECORDS RETENTION AND AUDIT PROCEDURES:** Contractor shall maintain financial records, supporting documents, statistical reports, and all other records pertinent to this program for a period of six (6) years from the day of the last payment made by DOM to Contractor. However, if audit, litigation, or other legal action by or on behalf of the State or Federal Government has begun that is not completed at the end of the six (6) year period, or if audit findings, litigation, or other legal action has not been resolved at the end of the six (6) year period, the records shall be retained until resolution.
- XXXI. OTHER PROVISIONS:** Contractor hereby agrees to all of the provisions and requirements as set forth in the State Plan for Medical Assistance approved by the State of Mississippi and by the Secretary of the United States Department of Health and Human Services, pursuant to Title XIX of the Social Security Act, and understands those provisions and requirements are also incumbent on Contractor.
- XXXII. 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. Miss. Code Ann. §§ 71-11-1 *et seq.* (1972, as amended). 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 hereunder meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:
- (1) termination of this Agreement 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;

- (2) 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,
- (3) 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.

XXXIII. REPRESENTATION REGARDING CONTINGENT FEES: If applicable, 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.

XXXIV. 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*.

XXXV. PROCUREMENT REGULATIONS: If not exempt, this 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, MS, 39201 for inspection, or downloadable at <http://www.mspb.ms.gov>.

XXXVI. APPROVAL: It is understood that this contract requires approval by the Personal Service Contract Review Board. If this contract is not approved, it is void and no payment shall be made hereunder.

XXXVII. 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 Agreement. This order shall be for a specified period not exceeding ninety (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:

- 1. cancel the stop work order; or
- 2. terminate the work covered by such order as provided in paragraph XI (Termination) above.

- 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 price, or both, and the Agreement 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 Agreement; and
 2. Contractor asserts a claim for such an adjustment within thirty (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 Agreement.
- 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 is subject to paragraph IV (Cost for Services) above.

XXXVIII. TRANSPARENCY MISSISSIPPI: This Agreement, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Miss. Code Ann. §§ 25-61-1 *et seq.* (1972, as amended) and Miss. Code Ann. § 79-23-1 (1972, as amended). In addition, this Agreement is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151 *et seq.* (1972, as amended). Where applicable, this Agreement is also subject to the American Accountability and Transparency Act of 2009 (P.L. 111-5), and Section 31-7-13 of the Mississippi Code of 1972, as amended. Unless exempted from disclosure due to a court-issued protective order, a copy of this executed Agreement 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.

XXXIX. PUBLIC RECORDS ACT: Notwithstanding any provision to the contrary contained herein, it is recognized that DOM is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Miss. Code Ann. §§ 25-61-1 *et seq.* (1972, as amended). If a public records request is made for any information provided to DOM pursuant to the Agreement, DOM shall promptly notify the disclosing party of such request and will respond to the request in accordance with the procedures and

limitations set forth in applicable law. The disclosing party may 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.

XL. OWNERSHIP AND FINANCIAL DISCLOSURE:

A. In accordance with 42 C. F. R. § 455. 104(b), Contractor shall disclose the following:

1. The name and address of any person (individual or corporation) with an ownership or control interest in the disclosing entity, DOM's fiscal agent, or managed care entity. The address for corporate entities must include, as applicable, primary business, every business location, and P. O. Box address;
2. Date of birth and Social Security Number (in the case of an individual);
3. Other tax identification number (in the case of a corporation) with an ownership or control interest in the disclosing entity (or DOM's fiscal agent or managed care entity) or in any subcontractor in which the disclosing entity (or DOM's fiscal agent or managed care entity) has a five (5) percent or more interest;
4. Whether the person (individual or corporation) with any ownership or control interest in the disclosing entity (or DOM's fiscal agent or managed care entity) is related to another person with ownership or control interest in the disclosing entity as a spouse, parent, child, or sibling; or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the disclosing entity (or DOM's fiscal agent or managed care entity) has a five (5) percent or more interest is related to another person with ownership or control interest in the disclosing entity as a spouse, parent, child, or sibling;
5. The name of any other disclosing entity (or DOM's fiscal agent or managed care entity) in which an owner of the disclosing entity (or DOM's fiscal agent or managed care entity) has an ownership or control interest; and,
6. The name, address, date of birth, and Social Security Number of any managing employee of the disclosing entity (or DOM's fiscal agent or managed care entity).

B. In accordance with 42 C. F. R. § 455. 104(c), disclosures from Contractor are due at any of the following times:

1. Upon Contractor submitting a proposal in accordance with the State's procurement process;

2. Annually, including upon the execution, renewal, and extension of the contract with the State; and,
 3. Within thirty-five (35) days after any change in ownership of Contractor.
- C. In accordance with 42 C. F. R. § 455. 104(d), all disclosures must be provided to DOM, the State's designated Medicaid agency.
- D. In accordance with 42 C. F. R. § 455. 104(e), federal financial participation (FFP) is not available in payments made to a disclosing entity that fails to disclose ownership or control information as required by said section.
- E. In accordance with 42 C. F. R. § 455. 105, Contractor must fully disclose all information related to business transactions. Contractor must submit, within thirty-five (35) days of the date on a request by the Secretary or DOM, full and complete information about:
1. The ownership of any subcontractor with whom Contractor has had business transactions totaling more than \$25,000 during the twelve (12) month period ending on the date of the request; and,
 2. Any significant business transactions between Contractor and any wholly owned supplier, or between Contractor and any subcontractor, during the five (5) year period ending on the date of the request.
- F. In accordance with 42 C. F. R. § 455. 106(a), Contractor must disclose to DOM the identity of any person who:
1. Has ownership or control interest in Contractor, or is an agent or managing employee of Contractor; and,
 2. Has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid, or the Title XX services program since the inception of those programs.
- G. In accordance with 42 C. F. R. § 455. 106(b), DOM must notify the Inspector General of the Department of any disclosures under § 455. 106(a) within 20 working days from the date it receives the information. DOM must also promptly notify the Inspector General of the Department of any action it takes on Contractor's agreement and participation in the program.
- H. In accordance with 42 C. F. R. § 455. 106(c), DOM may refuse to enter into or renew an agreement with Contractor if any person who has an ownership or control interest in Contractor, or who is an agent or managing employee of Contractor, has been convicted of a criminal offense related to that person's involvement in any program established under Medicare, Medicaid, or the Title XX Services Program. Further, DOM may refuse to enter into or may terminate a Contractor's agreement if it determines that Contractor did not fully and accurately make any disclosure required under 42 C. F. R. § 455. 106(a).

- I. In accordance with 42 C. F. R. § 455. 436, DOM and all Medicaid contractors shall do the following:
 - 1. Confirm the identity and determine the exclusion status of contractors/subcontractors and any person with an ownership or control interest or who is an agent or managing employee of the contractor/subcontractor through routine checks of federal databases; and,
 - 2. Consult appropriate databases to confirm identity of the above-mentioned persons and entities by searching the List of Excluded Individuals/Entities (LEIE) and the System for Award Management (SAM) upon enrollment, re-enrollment, credentialing, or re-credentialing, and no less frequently than monthly thereafter, to ensure that the State does not pay federal funds to excluded persons or entities.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the ___ day of _____, 2014.

**FOR DOM:
DIVISION OF MEDICAID
IN THE OFFICE OF THE GOVERNOR
STATE OF MISSISSIPPI**

BY: _____
(name) _____
EXECUTIVE DIRECTOR

FOR CONTRACTOR:

BY: _____
(name) _____
(title) _____

STATE OF MISSISSIPPI
COUNTY OF _____

THIS DAY personally came and appeared before me, the undersigned authority, in and for the aforesaid jurisdiction, the within named, **(name)**, in his/her official capacity as the duly appointed **Executive Director** of the **Division of Medicaid** in the **Office of the Governor**, an administrative agency of the **State of Mississippi**, who acknowledged to me, being first duly authorized by said **agency** that he/she signed and delivered the above and foregoing written **Contractual Agreement** for and on behalf of said **agency**, and as its official act and deed on the day and year therein mentioned.

GIVEN under my hand and official seal of office on this the ___ **day of** _____,
A. D. , 2014.

NOTARY PUBLIC

MY COMMISSION EXPIRES:

STATE OF _____
COUNTY OF _____

THIS DAY personally came and appeared before me, the undersigned authority, in and for the aforesaid jurisdiction, the within named, **(name)**, in his/her official capacity as the duly appointed **(title and entity name)**, who acknowledged to me, being first duly authorized by said _____ that he/she signed and delivered the above and foregoing written **Contractual Agreement** for and on behalf of said _____, and as its official act and deed on the day and year therein mentioned.

GIVEN under my hand and official seal of office on this the ___ **day of** _____,
A. D. , 2014.

NOTARY PUBLIC

MY COMMISSION EXPIRES:
