



# REQUEST FOR PROPOSALS

## Third Party Data Matching and Recovery Services RFP# 20130517

Contact:

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Procurement Officer

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Due Dates:

Questions & Letter of Intent

E-MAIL or MAIL or HAND DELIVERY

5:00 PM Central Daylight Time, Friday, June 7, 2013

Answers Posted to Internet [www.dom.state.ms.us](http://www.dom.state.ms.us)

5:00 PM Central Daylight Time, Friday, June 14, 2013

Sealed Proposals

MAIL or HAND DELIVERY ONLY

5:00 PM Central Daylight Time, Friday, June 28, 2013

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# **1. SCOPE OF WORK**

## **1.1 PURPOSE**

The State of Mississippi, Office of the Governor, Division of Medicaid (DOM) issues this Request for Proposals, hereafter referred to as the RFP, to solicit offers from responsible vendors to assist with various Third Party Data Matching and Recovery activities. DOM requests proposals from experienced, responsible and financially sound organizations, that have the capability and are prepared to provide the following services for Medicaid beneficiaries:

- Data matches with commercial and governmental insurers and databases proposed by the Offeror;
- Medicare data matches;
- Pharmacy data matches to be transmitted to pharmacy point of sale;
- Third party recovery activities on behalf of DOM;
- Medicare retroactive recovery;
- Casualty recovery;
- Provider credit balance recovery; and,
- Administration of the Health Insurance Premium Payment (HIPP) Program.

## **1.2 BACKGROUND**

Medicaid, by law, is the payor of last resort. All other health care coverage must be exhausted before Medicaid is billed. Identification and recovery of third party resources reduces the financial burden to the tax payers for Medicaid recipient's health care. In addition, Section 1902(a)(25) of the Social Security Act requires that States take all reasonable measures to ascertain the legal liability of third parties to pay for medical services furnished to a Medicaid recipient. It is DOM's responsibility to ensure that Medicaid fees are paid by appropriate liable third parties, including recovery of Medicaid claims paid when third party sources are not known at the time of payment. 42 CFR §433.135 defines a third party as an individual, entity or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under a State plan.

To fulfill third party liability (TPL) responsibilities for DOM's fee-for-service population, DOM has both contracted with an outside vendor and conducted TPL Recovery activities using DOM staff. The incumbent TPL contractor is Health Management Systems (HMS). The current contract with HMS ends September 30, 2013. TPL services for DOM's managed care population are provided by the DOM's contracted Managed Care Organizations.

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### 1.3 PROCUREMENT OVERVIEW

The following timetable is the estimated and anticipated timetable for the RFP and procurement process.

**Table 1: RFP and Procurement Timetable**

| Date                          | Process                                             |
|-------------------------------|-----------------------------------------------------|
| May 17, 2013                  | Release RFP for Bids                                |
| June 7, 2013                  | Deadline for Letter of Intent and Written Questions |
| June 14, 2013                 | Response to Questions Posted                        |
| June 28, 2013 (5:00 p.m. CDT) | Proposal Deadline                                   |
| July 1 – 31, 2013             | Evaluation of Technical Proposal                    |
| July 24 – 31, 2013            | Oral Presentations                                  |
| August 1 – 2, 2013            | Evaluation of Business Proposal                     |
| August 5 – 9, 2013            | Executive Review and Award                          |
| September 17, 2013            | PSCRB Meeting (proposed)                            |
| September 18 – 24, 2013       | Contracts Signed and Notarized                      |
| October 1, 2013               | Contract Start                                      |

#### 1.3.1 Mandatory Letter of Intent

The Offeror is required to submit a Letter of Intent to bid. The Letter of Intent is due by 5:00 p.m. CDT, June 7, 2013, and should be sent to:

Melanie Wakeland  
Procurement Officer  
Division of Medicaid  
Walter Sillers Building  
550 High Street, Suite 1000  
Jackson, Mississippi 39201  
Email: [melanie.wakeland@medicaid.ms.gov](mailto:melanie.wakeland@medicaid.ms.gov).

The Letter of Intent shall be on the official business letterhead of the Offeror and must be signed by an individual authorized to commit the Offeror to the work proposed. Submission of the Letter of Intent shall not be binding on the prospective Offeror to submit a proposal. However, an Offeror that does not submit a Letter of Intent by 5:00 p.m. CDT, June 7, 2013, will not thereafter be eligible for the procurement.

All RFP amendments will be posted on DOM's procurement Website, [www.medicaid.ms.gov/bids.aspx](http://www.medicaid.ms.gov/bids.aspx). After June 7, 2013, notification of RFP amendments will be sent to Offerors that have submitted a Letter of Intent.

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### **1.3.2 Procedure for Submitting Questions**

Multiple questions may be submitted using the template at [www.medicaid.ms.gov/bids.aspx](http://www.medicaid.ms.gov/bids.aspx). Written answers will be available no later than 5:00 PM CDT, Friday, June 14, 2013, via DOM's procurement Website, [www.medicaid.ms.gov/bids.aspx](http://www.medicaid.ms.gov/bids.aspx). Questions and answers will become part of the final Contract as an attachment. Written responses provided for the questions will be binding.

Questions should be sent to:

Melanie Wakeland  
Procurement Officer  
Division of Medicaid  
Walter Sillers Building  
550 High Street, Suite 1000  
Jackson, Mississippi 39201  
Email: [melanie.wakeland@medicaid.ms.gov](mailto:melanie.wakeland@medicaid.ms.gov)

### **1.3.3 Proposal Submission Requirements**

Proposals must be in writing and must be submitted in two parts: 1) Technical Proposal; and 2) Business Proposal. The format and content of each proposal are specified in Sections 5 and 6, respectively, of this RFP.

Technical Proposals for the RFP must be submitted in three-ring binders with components of the RFP clearly tabbed. An original and six (6) copies of the Technical Proposal under sealed cover and an original and three (3) copies of the Business Proposal under separate sealed cover must be received by DOM no later than 5:00 p.m. CDT, on Friday, June 28, 2013. The Offeror must also submit one (1) copy of the Technical Proposal on CD in a single document in a searchable Microsoft Word or Adobe Acrobat (PDF) format. Any proposal received after this date and time will be rejected and returned unopened to the Offeror. Proposals should be delivered to:

Melanie Wakeland  
Procurement Officer  
Division of Medicaid  
Walter Sillers Building  
550 High Street, Suite 1000  
Jackson, Mississippi 39201

The outside cover of the package containing the Technical Proposal shall be marked:

RFP # 20130517  
Technical Proposal  
(Name of Offeror)

The outside cover of the package containing the Business Proposal shall be marked:

RFP # 20130517  
Business Proposal  
(Name of Offeror)

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As the proposals are received, the sealed proposals will be date-stamped and recorded by DOM. The Offeror is responsible for ensuring that the sealed competitive proposal is delivered by the required time and to the required location and assumes all risks of delivery. A facsimile proposal will not be accepted. Each original proposal must be signed in blue ink by an official authorized to bind the Offeror to the proposal provisions. Proposals and modifications thereof received by DOM after the time set for receipt or at any location other than that set forth above will be considered late and will not be considered for award.

## **1.4 TECHNICAL REQUIREMENTS FOR DATA MATCHING**

### **1.4.1 Data Matching Work Plans**

The Contractor shall identify third party coverage for Mississippi's Medicaid recipient population with qualifying Medicaid coverage through data matches and other file searches with commercial and governmental carriers and other databases as approved by DOM. The Contractor should include all commercial insurance carriers operating in the State of Mississippi. Offerors are encouraged to present evidence of the carriers' willingness to participate.

Data matching activities will be conducted based on Data Matching Work Plans initially agreed upon by DOM and the Contractor which will be submitted for DOM approval for each calendar quarter during the contract period. Work plans should be submitted no later than fifteen (15) work days prior to the beginning of each quarter.

DOM reserves the right to modify the work plan to exclude specific carriers, types of coverage, and/or recipients as well as to modify time frames and match criteria for each match, in order to ensure non-duplication of effort and to maximize cost effectiveness. DOM will return the approved or modified work plan within ten (10) days of receipt from the Contractor.

Work plans must include the following information:

1. Names of all commercial carriers, governmental and other databases with which the Contractor intends to perform data matches and the rationale for the selections;
2. Types of coverage provided by each carrier;
3. Recipient population to be included for each carrier including uniquely identified demographic elements, such as name, date of birth, gender, address, zip code;
4. Time frames for each match;
5. Proposed process of identifying and verifying coverage for each carrier;
6. Criteria used to determine exact, suspect and other data match results;
7. Time frames for reporting information to DOM, description of reports, file formats, and data elements; and,
8. Contractor's method of billing and proposed method of payment.

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To ensure non-duplication of effort, Contractor shall not include in their data match/file searches of any individuals who have had less than five (5) months of qualifying Medicaid eligibility during the nine (9) months immediately prior to the data match.

Data match criteria must include recipient's full name, date of birth, sex, social security number, and period of coverage of recipient and family members for the identification of valid matches and present full criteria to DOM for approval prior to initiating any data matches.

### **1.4.2 Medicare Data Matches**

The Contractor shall provide Medicare updates described below.

1. Perform data matches with federal databases to verify Medicare entitlement for Medicaid beneficiaries.
2. Provide verified updated or new Medicare information to be added to the Medicare Resource File.
3. Establish MMIS system interface to load new or updated information to existing Medicaid beneficiary Medicare files.

## **1.5 TECHNICAL REQUIREMENTS FOR RECOVERY ACTIVITIES**

### **1.5.1 Recovery Activity Work Plans**

The Contractor shall provide a work plan to post recovery payments for claims identified by retrospective identification of primary insurance and Medicare. After the verified TPL information file has been used to successfully update the MMIS TPL file and following the receipt of the individual paid claims history data, the Contractor shall perform the following recovery activities:

1. Amounts recovered must be deposited to a depository account controlled by DOM upon receipt.
2. Establish, maintain, and update an accounts receivable file for claims which the Contractor identifies and bills to other insurance carriers. The accounts receivable file must be sufficient to provide an audit trail for State and Federal documentation requirements and shall be transferred to DOM at its request or at the termination of the contract resulting from this RFP. This accounts receivable file must be produced in a format compatible with interfacing to the MMIS TPL accounts receivable file for updates.
3. Post recoveries for receipt by DOM to the accounts receivable files within seven (7) calendar days after recovery to allow for independent reconciliation by DOM of deposits to recoveries recorded.
4. Send recovery and accounts receivable files to DOM within one hundred fifty (150) days following the effective date of the contract and subsequent receipts of recoveries at least every thirty (30) days thereafter.

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5. Transmit to DOM records of unidentifiable Third Party recoveries in a format acceptable to DOM within ninety (90) days after the effective date of the contract and at least every thirty (30) days thereafter. The data will be transmitted within thirty (30) days following discovery of the resource.
6. Investigate reasons for nonpayment by other insurers and resubmit claims when appropriate. Specific reasons for nonpayment will be included in the accounts receivable file.
7. Report to DOM all instances in which an insurance carrier has already paid an insured individual, a provider, or DOM for subsequent follow-up.
8. Deduct from its billings any refunds of previous recoveries made to DOM in instances where incorrect payments are made by third party resources. The total amount to be refunded should be shown on the Contractor's monthly billing statements as the amount to be deducted from the current month's bill. Each claim that results in incorrect payments made by Third Party Resources must be identified by billing cycle/month, State Claim TCN, recipient name, Medicaid number, date of service, provider number, amount billed to Medicaid, amount paid by Medicaid, amount paid by Third Party Resource, and amount to be refunded for the claim.
9. Identify all refunds owed by Medicaid to Third Party payors to correct recoveries or other overpayments with appropriate documentation. Upon receipt of this information, DOM will verify the accuracy of the recovery and will submit refund to the carrier.

### **1.5.2 Medicare Retroactive Recovery**

The Contractor shall provide a work plan to conduct post payment recoveries for claims identified by retrospective identification of Medicare. The Contractor shall perform the following recovery activities after verifying the MMIS TPL information has been successfully updated and receiving individual paid claims history data:

1. Require providers to submit claims to Medicare and reimburse DOM either directly or by provider payment adjustment, for newly identified Medicare beneficiaries whose eligibility with Medicaid overlaps.
2. Submit a proposed void/adjustment listing prior to preparing Medicaid claims and notifying providers of the impending void/adjustment process. DOM reserves the right to return for correction any claims presented which do not meet the appropriate coverage and/or void/adjustment criteria.
3. Prepare correspondence to providers advising them of the amount of Medicare Parts A and B ancillary Medicaid payments to be voided/adjusted. The correspondence must be approved by DOM and mailed to the providers no later than sixty (60) days prior to the end of the cycle or within five (5) days of the receipt of the data from the fiscal intermediary in order to allow timely claim submittal by the Provider to the Parts A and B intermediaries.
4. The Contractor shall prepare and submit data to DOM for manual audit recoupment of claims which failed to void or adjust electronically. The Contractor will be responsible for resolving and responding to provider inquiries and deleting the claims to be voided or adjusted if so indicated.

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### **1.5.3 Casualty Recoveries**

DOM shall provide the Contractor with correspondence from attorneys and insurers, trauma reports; and other documentation that indicates the possibility of a tort claim regarding Medicaid eligible individuals.

The Contractor shall provide casualty work plans to identify, validate and recover third party resources available for the reimbursement of claims paid by Medicaid regarding the tort claim. Third party resources include, but are not limited to, worker's compensation, court judgments against third parties, and commercial accident, property or automobile insurance policies.

Casualty work plans will be developed by DOM and the Contractor and will include schedules, proposed pricing methodologies and other details of work to be performed by the Contractor or DOM. DOM reserves the right to modify Casualty work plans to exclude specific cases as well as to modify timeframes in order to ensure non-duplication of effort and to maximize cost effectiveness. DOM will return the approved or modified work plan within ten (10) days of receipt from the Contractor.

DOM will provide specific instructions to the Contractor regarding its authority to reduce Medicaid's claim. In the event a third party requests a reduction greater than the Contract has authority to grant, then the Contractor shall return the file to DOM immediately.

Casualty cases not closed within one hundred eighty (180) days of referral to Contractor for action shall be returned to DOM for further action unless DOM provides written authorization to the Contractor to continue recovery efforts.

#### **1.5.3.1 Exclusions and Prohibitions**

The Attorney General's office has sole authority to effect the release of Medicaid's subrogation interest. DOM will provide specific instructions regarding the handling of releases.

Excluded from this RFP are all mass torts, litigation wherein DOM is actively involved or is a named party and wrongful death actions. If such files or documents are received by the Contractor, the Contractor must forward them immediately to DOM.

Contractor shall not take legal action to recover funds through litigation. In the event litigation becomes necessary, the entire file (regardless of form) shall be transferred to DOM immediately. The Contractor is expressly prohibited from litigating on behalf of DOM.

Attorneys employed by the Contractor may not represent themselves as attorneys for or representatives of DOM or the State of Mississippi.

### **1.5.4 Credit Balance Recoveries**

The Contractor will supplement DOM's efforts to identify provider credit balances due Medicaid. Contractors' efforts to identify and obtain reimbursement for credit balances will supplement not duplicate, other Agency credit balance edits/ audits and other activities.

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The Contractor shall submit for Agency prior approval a Credit Balance Audit work plan for each provider thirty (30) days prior to each provider audit. This work plan shall describe the Credit Balance Audit process including identification of the provider to be audited, audit criteria, provider correspondence, and procedures for identifying and reporting credit balances to the provider and Medicaid; method of recovery and distribution of credit balances, and a description of reports, including format and data, to be provided to DOM identifying credit balances. Contractor shall also describe proposed billing method. DOM shall notify Contractor of approval / disapproval of the Credit balance Audit work plan within ten (10) work days of receipt. DOM reserves the right to make modifications to the work plan to ensure non-duplication of effort and cost effectiveness.

**1.5.4.1 Contractor Responsibilities**

1. Contractor shall provide to DOM a file extract identifying claims for recoupment.
2. Contractor shall provide DOM with a written credit balance report no later than thirty (30) days following conclusion of each credit balance audit. The report shall be in a format and include data approved by DOM.
3. Contractor shall instruct providers to issue checks for credit balances identified by the Contractor payable to DOM and mailed to DOM with the central office address and to the attention of the Third Party Accounts Receivable.

**1.5.4.2 Agency Responsibilities**

1. DOM reserves the right to limit credit balance reviews to specific providers and/ or provider types and / or claim types.
2. DOM shall approve the file extract format and data content for reporting credit balances.
3. DOM shall provide minimum data element requirements for Credit Balance reporting. These shall include, but are not limited to, the following data elements:
  - Recipient Medicaid number (hard copy report sort order);
  - Recipient name;
  - Internal control number assigned to each claim by Medicaid;
  - Dates of service;
  - Reason for credit balance;
  - Total charge submitted to Medicaid for each claim;
  - Medicaid paid amount for each claim;
  - Amount of credit balance for each claim;
  - Amount due Medicaid for each claim (not to exceed the Medicaid paid amount);
  - Summary-Grand total number of Recipients;
  - Summary – Grand total Medicaid paid amount (for all claims); and,
  - Summary – Grand total of credit balance.

Fees contingency based upon actual amount received and deposited or recouped by DOM.

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### **1.6 HEALTH INSURANCE PREMIUM PAYMENT (HIPP) PROGRAM**

Contractor shall develop and manage a Health Insurance Premium Payment (HIPP) Program including, but not limited to, determining cost effectiveness, paying premiums, reimbursing recipients, producing and mailing all marketing materials at no additional cost to DOM. Contractor shall:

1. Provide DOM with monthly detailed report of all HIPP premiums paid.
2. Provide DOM with monthly detailed report of HIPP applications and outcomes (i.e. reason for denial).
3. Provide DOM with monthly detailed report of all HIPP adds posted to the TPL resource file.
4. Provide DOM with monthly detailed report of HIPP cost savings.
5. Produce and distribute at contractor cost, HIP brochures/applications to the Regional Medicaid offices.
6. Submit all HIPP letters and documents for public use to DOM for approval.

### **1.7 CONTRACTOR RESPONSIBILITIES**

1. Secure any necessary approvals and clearances required to conduct the tasks required by this RFP. These may include Data Match Agreements, CMS Waivers for timely filings, State Insurance Commission Approvals, etc.
2. Select and establish a site(s) at which all Contractor functions will be performed, permanently, and temporarily, if necessary. The Contractor's permanent location must be within 10 miles of DOM's High Street location. The contractor must obtain DOM acceptance of site selection in writing.
3. Provide a system for effective communication with a variety of entities including but not limited to employers, providers, recipients and insurance carriers. This communication should include a toll-free number to answer inquiries. The toll-free line must be operable and manned on business days from 8:00 a.m. - 5:00 p.m. CST.
4. The Contractor's project manager must be available and prepared to meet with DOM staff and other individuals as considered necessary for the discussion of the RFP and contract requirements. The project manager must also be prepared to answer pertinent inquiries regarding the program, its implementation, and operation. Meetings between the representatives of the Contractor and DOM shall be on an as-needed basis throughout the implementation phase and on a monthly basis, or as otherwise required by DOM during the operations phase.
5. Provide adequate cash control procedures in the Contractor's processes of deposit of funds and disposition of recoveries to the accounts receivable files. These procedures must include separation of staff deposit and disposition functions, security of receipts during working and non-working hours, and balancing deposits to the accounts receivable files with 7 days of receipt of recoveries. Any unresolved variances must be reported to DOM with seven days of receipt.

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6. Submit monthly invoices to DOM based on finalized recoveries (those that the provider does not challenge or that have completed administrative appeals process and that include the number of newly verified insurance policies added to MMIS by the Contractors).
7. The Contractor will be required to assist in the eventuality of an audit.

### **1.8 REPORTING REQUIREMENTS**

1. The Contractor shall provide DOM with written reports that are clear, concise, and useful for the audience for whom they are intended. The reports shall be composed in a manner consistent with DOM specifications and with the Contractor's stated criteria. All reports shall be provided in electronic formats compatible with software applications in use by DOM (i.e., MS WORD, Excel, SQL, Crystal, COGNOS, and others as appropriate) as well as in hard copy, as specified by DOM. All reports shall be made available to relevant DOM staff via web portal. Where required, the Contractor shall provide supporting documents such as report appendices.
2. Contractor shall obtain written approval from DOM for all form letters and form documents prior to issuance.
3. The Contractor must provide reports due on or before the fifth (5th) workday of the month following the report period, unless otherwise agreed to in writing by DOM.
4. Reports defined and approved by DOM to be generated by the Contractor shall meet all applicable State and federal reporting requirements. The needs of DOM and other appropriate agencies for planning, monitoring, and evaluation shall be taken into account when developing report formats and compiling data. Reports to be generated shall be agreed upon during the Contract Implementation Phase and shall include but not be limited to those listed below;
  1. Monthly Data Match Progress Reports. These are narrative reports by Carrier specifying benchmarks, problems and proposed solutions;
  2. Monthly Administration Project Report;
  3. Monthly Report of cost avoided claims and savings for Pharmacy claims, Medical claims and Medicare retroactive claims;
  4. Monthly Reports of Credit Balance and Casualty Recoveries;
  5. Monthly Report of HIPPA enrollment, issues, problems and proposed solutions;
  6. Detailed Report of Actual Recoveries, including date of check receipt, client name, Medicaid ID number, carrier, date of service, TCN number, Medicaid billed amount and date of deposit. This information should balance to the deposits made to the bank account for each date. If any unidentified payments remain as of a given date, they shall be included on the report. This report is due to DOM within ten (10) calendar days of

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check receipt. (NOTE: See Section 1.4.4, Item 3 which requires disposition within seven (7) calendar days of receipt, thus allowing three (3) days for delivery of the report.);

7. Annual Report of Collections. This report must include the total amount billed and recovered, percentage of recovery, and number of claims involved. These totals should not be duplicative;
8. Monthly Accounts Receivable Summaries. Report by carrier, detailed claims billed and re-billed, detailed claims and amounts paid, detailed claims and dollars outstanding, percentage of claims paid for initial and re-billings, with appropriate totals;
9. Monthly Report of Carrier Payments to Other entities. Detailed listings specifically identifying payee, recipient, and paid claims affected on a weekly basis. Additionally, DOM will require summary reporting which indicates by carrier, number and percentages of claims billed and dollar amounts requested and payments made. Outstanding claims should be reported in 30, 60, 90, 120 and over 120 day intervals;
10. Newly Identified Resources by Carrier. Verified data match results by carrier indicating number of recipients with newly identified coverage by type of coverage, due within thirty (30) days of match completion;
11. Comprehensive Recovery Report by Carrier. This will be a detailed report produced after all significant recoveries have been effected which will specify recoveries billed and paid, claims by procedure code, diagnosis and place of service;
12. Monthly Report of Recoveries. This report must include the total amount billed and recovered, and the number of unduplicated claims;
13. Monthly status report that includes the number of newly identified and verified health insurance periods of coverage;
14. Monthly Report of Medicare updates that include the number of newly identified and verified Medicare HIC numbers and Part A and B segments;
15. Monthly Report of Medicare Retroactive Recoveries that includes the number of newly identified and verified Medicare entitlement;
16. Quarterly and Year-to-Date Reports of above reports by calendar year and by fiscal year; and,
17. A limited number of Ad Hoc reports as required for Legislative Sessions, Budget Meetings and other similar events.

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### **1.9 INFORMATION TECHNOLOGY REQUIREMENTS**

#### **1.9.1 Data Exchange**

The Contractor shall work with DOM and existing DOM Contractors and Fiscal Agent in carrying out the work described in this RFP. The Contractor shall assure coordination between other Contractors' systems including, but not limited to DOM'S fiscal agent, ERISA health plans, Pharmacy Benefit Manager, and Decision Support System.

DOM will be replacing the current Medicaid Management Information System (MMIS) with a new Medicaid Enterprise System (MES) toward the end of the TPL contract period. The TPL contractor will be required to work with the incumbent and possible replacement vendor to establish interfaces to the new system and may be required to run concurrent interfaces during the transition period. Interfaces to the new MES will be required to be non-proprietary and based on CMS standards. The Contractor shall also be compliant with CMS' Health Plan ID requirements by the deadline date to be established by CMS.

The current MMIS does not integrate with other systems. Necessary updates are performed through interfaces with MMIS by DOM's Fiscal Agent.

The Contractor shall have the capacity (hardware, software and personnel) sufficient to fully manage and report on the project described in this RFP. The Contractor's information system must include a scalable database repository that supports large data sets and exponential growth in total database size over the life of the contract.

The Contractor shall fully comply with all HIPAA requirements and shall maintain compliance with federal HIPAA requirements throughout the term of the contract at no additional cost to DOM.

The Contractor shall have protocols and internal procedures for ensuring system security and the confidentiality of recipient identifiable data.

The Contractor shall provide to DOM their carrier-specific electronic data match formats used to identify other coverage for Mississippi Medicaid recipients. These file formats may be used by DOM in future data matches.

DOM will coordinate with the Contractor concerning which of DOM's data files will be shared and the frequency with which they will be made available to perform data matches and recover against previously unidentified Third Party Resources. DOM has the first right to pursue.

#### **1.9.2 Case Management System**

The Contractor shall maintain a case management system that provides DOM view access to real-time, up-to-date information on all cases. The Contractor shall allow web access to the system to DOM staff or any designated agents working on its behalf for audit purposes. The system should track at the minimum the following information:

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- Data match dates and results;
- Employer surveys; and,
- Individual insurance and Medicare entitlement verification results.

The Contractor must develop electronic and manual processes for verifying the accuracy of its matches, the individuals matched, and their complete coverage. When the data match is completed, the Contractor shall present, for DOM approval, full results of the verified data matches conducted, prior to initiating any recoveries or data transfer to the MMIS.

### **1.9.3 Updates to Existing TPL Resource File**

The Contractor is responsible for providing an automated interface to update the MMIS file with the new TPL information. TPL Resource File updates shall be provided in a separate file extract in a format approved by DOM and within a time frame specified by the Code of Federal Regulations. The new TPL information must be verified and validated by the Contractor and DOM prior to transmission.

The Contractor must also provide a method for correcting information in the event previously transmitted information is found to be erroneous.

## **1.10 IMPLEMENTATION, OPERATIONS AND TURNOVER PHASES**

### **1.10.1 Implementation Phase**

The Contractor shall be responsible for the preparation and execution of a final implementation plan. This plan shall be based upon the requirements of this RFP and coordinated with DOM to ensure readiness to complete required tasks by specified dates. The Contractor will develop an implementation plan to be approved by DOM that outlines in detail all steps necessary to begin program operations. It is anticipated that Phase I will begin October 1, 2013 and end December 31, 2013.

During the Implementation phase a written report of program progress shall be submitted to DOM every week. The progress report must specify accomplishments during the report period in a task-by-task format, including personnel hours expended, whether the planning tasks are being performed on schedule and any administrative problems encountered.

### **1.10.2 Operations Phase**

During the Operations phase, the Contractor must perform the responsibilities described in this RFP. It is expected that Operations will begin January 1, 2014.

The Contractor will be required to adhere to the performance requirements of the contract as well as the requirements of any revisions in federal and state legislation or regulations which may be enacted or implemented during the period of performance of this contract that are directly applicable to the performance requirements of this contract. Such requirements will become a part of this contract effort through execution of a written contract amendment.

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### **1.10.3 Turnover Phase**

During this phase the contractor will prepare DOM or other applicable parties to take over the operations of those initiatives implemented under this contract. The Contractor must put procedures in place and provide training so that DOM sustains the ability to continue each initiative even after the project is completed and after expiration of the contract. The contractor shall provide detailed written documentation of all new procedures implemented and any system changes made during the Operations Phase. Failure to properly prepare the state and provide written documentation will be cause for continued withholding of payment(s).

Upon receipt of notification of DOM's intent to transfer the contract functions, the Contractor must provide a Turnover Plan to DOM within the time frame specified by DOM. Time lines for turnover activities will be specified by DOM. The Turnover Plan must include, but is not limited to, the following:

1. Proposed approach to turnover;
2. Tasks and subtasks for turnover;
3. Schedule for turnover;
4. Detailed chart depicting the Contractor's total operation; and,
5. Transfer of Medicaid documents to DOM or its designated agent.

Deliverables must be produced in an organized manner according to reasonable and customary business standards. Deliverables must be turned over to DOM in a form and condition that is satisfactory to DOM and in the time frames specified by DOM. Deliverables include the following:

1. Turnover Plan;
2. Detailed organizational chart;
3. All Medicaid documents; and,
4. Turnover Results Report.

Upon termination of the contract, the contractor shall have one hundred twenty (120) days to complete recoveries initiated before the termination date. The Contractor may initiate no new collection claims during the one hundred twenty (120) day period. After one hundred twenty (120) days the contractor shall not be paid for further collection of outstanding claims and the full amount of subsequent recoveries shall revert to DOM.

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### **1.11 CONTRACTOR PAYMENT**

#### **1.11.1 Operations Price**

The Contractor shall be paid monthly in accordance with the Contractor's proposal set forth in Budget Summary (Appendix A). Payments will be based on DOM approved work plans, submitted invoices and progress reports. Progress reports must provide a description to sufficiently support payment by DOM.

#### **1.11.2 Payments for Data Matches**

DOM will pay a fee for each update to an existing policy when the following criteria have been verified by DOM to have been met.

1. Insurance is in force simultaneously with Medicaid eligibility.
2. Verified coverage not previously indicated on DOM's Policy File
3. Verified coverage meets the requirements of the RFP.

#### **1.11.3 Payments for Recovery Activities**

DOM will pay a percentage of all recoveries made in accordance with a DOM-approved Work Plan. The Offeror shall propose amounts in its Business/Cost Proposal payment amounts for recovery activities

#### **1.11.4 Turnover Price**

No specific or lump-sum payment shall be made by DOM for Turnover Phase services. Payment for such services shall be encompassed in the Operations Phase.

#### **1.11.5 Travel**

All travel performed in conjunction with performing the responsibilities of this Contract shall not include any profit for the Contractor. Travel costs should be included in the implementation and operations costs as necessary.

#### **1.11.6 Erroneous Issuance of Compensation**

In the event compensation to the Contractor of any kind is issued in error, the Contractor shall reimburse DOM the full amount of erroneous payment within thirty (30) days of written notice of such error. Interest shall accrue at the statutory rate upon any amounts determined to be due and not repaid within thirty (30) days following the notice. If payment is not made within thirty (30) days following notice, DOM may deduct the amount from the Contractor's monthly administrative invoice.

#### **1.11.7 Release**

Upon final payment of the amounts due under this Contract, the Contractor shall release DOM and its officers and employees from all liabilities and obligations whatsoever under or arising from this Contract.

Payment to the Contractor by DOM shall not constitute final release of the Contractor. Should audit or inspection of the Contractor's records or client complaints subsequently reveal outstanding Contractor

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liabilities or obligations, the Contractor shall remain liable to DOM for such liabilities and obligations. Any overpayments by DOM shall be subject to any appropriate recoupment to which DOM is lawfully entitled. Any payment under this Contract shall not foreclose the right of DOM to recover excessive or illegal payments as well as interest, attorney fees, and costs incurred in such recovery.

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## **2. AUTHORITY**

This RFP is issued under the authority of Title XIX of the Social Security Act, as amended, implementing regulations issued under the authority thereof and under the provisions of the Mississippi Code of 1972, as amended. All Offerors are charged with presumptive knowledge of all requirements of the cited authorities. The submission of a valid executed proposal by an Offeror shall constitute admission of such knowledge on the part of each Offeror. Any proposal submitted by an Offeror that fails to meet any published requirement of the cited authorities may, at the option of DOM, be rejected without further consideration.

Medicaid is a program of medical assistance for the needy administered by each state using state appropriated funds and matching federal funds within the provisions of Title XIX and Title XXI of the Social Security Act, as amended.

In addition, Section 1902(a)(30)(A) of the Social Security Act requires that state Medicaid agencies provide methods and procedures to safeguard against unnecessary utilization of care and services and to assure “efficiency, economy and quality of care.”

### **2.1 ORGANIZATIONS ELIGIBLE TO SUBMIT PROPOSALS**

To be eligible to submit a proposal, an Offeror must provide documentation for each requirement as specified below:

1. The Offeror has not been sanctioned by a state or federal government within the last 10 years.
2. The Offeror must have experience in contractual services providing the type of services described in this RFP.
3. The Offeror must be able to provide all required components detailed in the Scope of Work.

### **2.2 PROCUREMENT APPROACH**

The major steps of the procurement approach are described in detail in Section 3 of this RFP. Proposals must be submitted in two parts: 1) a Technical Proposal; and 2) a Business Proposal. Format and content requirements for each part are specified in Sections 5 and 6, respectively, of this RFP.

### **2.3 ACCURACY OF STATISTICAL DATA**

All statistical information provided by DOM in relation to this RFP represents the best and most accurate information available to DOM from DOM records at the time of the RFP preparation. DOM, however, disclaims any responsibility for the inaccuracy of such data. Should any element of such data later be discovered to be inaccurate, such inaccuracy shall not constitute a basis for contract rejection by any Offeror. Neither shall such inaccuracy constitute a basis for renegotiation of any payment rate after contract award. Statistical information is available on DOM’s Website.

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### **2.4 ELECTRONIC AVAILABILITY**

The materials listed below are on the Internet for informational purposes only. This electronic access is a supplement to the procurement process and is not an alternative to official requirements outlined in this RFP.

This RFP and RFP Questions and Answers (following official written release) will be posted on the bids/proposals page of DOM's Website at [www.medicaid.ms.gov/bids.aspx](http://www.medicaid.ms.gov/bids.aspx).

Information concerning services covered by Mississippi Medicaid and a description of DOM's organization and functions can also be found on the bids/proposals page of DOM's Website.

DOM's Website is <http://www.medicaid.ms.gov>. The Website contains information regarding Medicaid Eligibility, Guidelines, Programs, Beneficiary Services, Provider Policies, Bulletins, Pharmacy Services and other information.

State financial information is available at <http://merlin.state.ms.us> under the Public Access query section.

The State of Mississippi portal is <http://www.mississippi.gov>.

Regulations of the State Personnel Board/Personal Services Contract Review Board can be found at <http://www.mspb.ms.gov>.

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### **3. PROCUREMENT**

#### **3.1 APPROACH**

This RFP is designed to provide the Offeror the information necessary to prepare a competitive proposal. The RFP process is intended to provide DOM with necessary information to assist in the selection of a Contractor to provide the desired services. It is not intended to be comprehensive, and each Offeror is responsible for determining all factors necessary for submission of a comprehensive proposal.

DOM intends to ensure the fair and equitable treatment of all persons and Offerors in regards to the procurement process. The procurement process provides for the evaluation of proposals and selection of the winning proposal in accordance with federal law and regulations and state law and regulations, specifically, by appropriate provisions of the State Personal Service Contract Review Board Regulations which are available for inspection at 210 East Capitol Street, Suite 800, Jackson, Mississippi or downloadable at [www.mspb.ms.gov](http://www.mspb.ms.gov).

Separate technical and business proposals must be submitted simultaneously but will be opened at different stages of the evaluation process. Technical Proposals will be thoroughly evaluated in order to determine point scores for each evaluation factor. The evaluation and selection process is described in more detail in Section 7 of this RFP.

Submission of a proposal constitutes acceptance of the conditions governing the procurement, including the evaluation factors contained in Section 7 of this RFP, and constitutes acknowledgment of the detailed descriptions of the Mississippi Medicaid Program.

No public disclosure or news release pertaining to this procurement shall be made without prior written approval of DOM. FAILURE TO COMPLY WITH THIS PROVISION MAY RESULT IN THE OFFEROR BEING DISQUALIFIED.

#### **3.2 QUALIFICATION OF OFFERORS**

Each corporation shall report its corporate charter number in its transmittal letter or, if appropriate, have attached to its transmittal letter a signed statement to the effect that said corporation is exempt from the above described, and set forth the particular reason(s) for exemption. All corporations shall be in full compliance with all Mississippi laws regarding incorporation or formation and doing business in Mississippi and shall be in compliance with the laws of the state in which they are incorporated, formed, or organized.

DOM may make such investigations as necessary to determine the ability and commitment of the Offeror to adhere to the requirements specified within this RFP and its proposal, and the Offeror shall furnish to DOM all such information and data for this purpose as may be requested. DOM reserves the right to inspect Offeror's physical facilities prior to award to satisfy questions regarding the Offeror's capability to fulfill the requirements of the contract. DOM reserves the absolute right to reject any proposal if the evidence submitted by, or investigations of, such Offeror fail to satisfy DOM that such Offeror is properly

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qualified to carry out the obligations of the contract and to complete the work or furnish the items contemplated.

The State reserves the right to reject any and all proposals, to request and evaluate “best and final offers” from some or all of the respondents, to negotiate with the best proposed offeror to address issues other than those described in the proposal, to award a contract to other than the low Offeror, or not to make any award if it is determined to be in the best interest of the State.

Discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award. Proposals may also be accepted without such discussions.

### **3.3 RULES OF PROCUREMENT**

To facilitate DOM procurement, various rules have been established and are described in the following paragraphs.

#### **3.3.1 Restrictions on Communications with DOM Staff**

From the issue date of this RFP until a Contractor is selected and the contract is signed, Offerors and/or their representatives are not allowed to communicate with any DOM staff regarding this procurement except the RFP Issuing Officer, Melanie Wakeland.

For violation of this provision, DOM shall reserve the right to reject any proposal.

#### **3.3.2 Amendments to this Request for Proposals**

DOM reserves the right to amend the RFP at any time. All amendments will be posted to the DOM website at <http://www.medicaid.ms.gov>. After June 7, 2013, Offerors submitting a letter of intent will be notified when amendments are released.

Offerors shall acknowledge receipt of any amendment to the solicitation, by signing the form provided with the amendment, identifying the amendment number and date by letter. The acknowledgment must be received by DOM by the time and at the place specified for receipt of proposals.

#### **3.3.3 Cost of Preparing Proposal**

Costs of developing the proposals are solely the responsibility of the Offerors. DOM will provide no reimbursement for such costs. Any costs associated with any oral presentations to DOM will be the responsibility of the Offeror and will in no way be billable to DOM. If site visits are made, DOM's cost for such visits will be the responsibility of DOM and the Offeror's cost will be the responsibility of the Offeror and will in no way be billable to DOM.

#### **3.3.4 Certification of Independent Price Determination**

The Offeror certifies that the prices submitted in response to the solicitation have been arrived at independently and without, for the purpose of restricting competition, any consultation, communication,

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or agreement with any other bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate the prices bid.

### **3.3.5 Acceptance of Proposals**

After receipt of the proposals, DOM reserves the right to award the contract based on the terms, conditions, and premises of the RFP and the proposal of the selected Contractor without negotiation.

All proposals properly submitted will be accepted by DOM. However, DOM reserves the right to request necessary amendments from all Offerors, reject any or all proposals received, or cancel this RFP, according to the best interest of DOM and the State of Mississippi.

DOM also reserves the right to waive minor irregularities in bids providing such action is in the best interest of DOM and the State of Mississippi. A minor irregularity is defined as a variation of the RFP which does not affect the price of the proposal, or give one party an advantage or benefit not enjoyed by other parties, or adversely impact the interest of DOM.

Where DOM may waive minor irregularities as determined by DOM, such waiver shall in no way modify the RFP requirements or excuse the Offeror from full compliance with the RFP specifications and other contract requirements if the Offeror is awarded the contract.

DOM reserves the right to exclude any and all non-responsive proposals from any consideration for contract award. DOM will award a firm fixed price contract to the Offeror whose offer is responsive to the solicitation and is most advantageous to DOM and the State of Mississippi in price, quality, and other factors considered. DOM reserves the right to make the award to an Offeror other than the Offeror bidding the lowest price when it can be demonstrated to the satisfaction of DOM, the Governor, the State Personal Service Contract Review Board, and to CMS, if necessary, that award to the lowest price Offeror would not be in the best interest of DOM and the State of Mississippi.

### **3.3.6 Rejection of Proposals**

A proposal may be rejected for failure to conform to the rules or the requirements contained in this RFP. Proposals must be responsive to all requirements of the RFP in order to be considered for contract award. DOM reserves the right at any time to cancel the RFP, or after the proposals are received to reject any of the submitted proposals determined to be non-responsive. DOM further reserves the right to reject any and all proposals received by reason of this request. Reasons for rejecting a proposal include, but are not limited to, the following:

1. The proposal contains unauthorized amendments to the requirements of the RFP.
2. The proposal is conditional.
3. The proposal is incomplete or contains irregularities that make the proposal indefinite or ambiguous.
4. The proposal is not signed by an authorized representative of the party.

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5. The proposal contains false or misleading statements or references.
6. The Offeror is determined to be non-responsible as specified in Section 3-401 of the Personal Services Contract Review Board Regulations.
7. The proposal ultimately fails to meet the announced requirements of the State in some material aspect.
8. The proposal price is clearly unreasonable.
9. The proposal is not responsive, i.e., does not conform in all material respects to the RFP.
10. The supply or service item offered in the proposal is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the RFP.
11. The Offeror does not comply with the Procedures for Delivery of Proposal as set forth in the RFP.
12. The Offeror currently owes the State money.

### **3.3.7 Alternate Proposals**

Each Offeror, its subsidiaries, affiliates or related entities shall be limited to one Technical Proposal and one Business Proposal which is responsive to the requirements of this RFP. Failure to submit a responsive proposal will result in the rejection of the Offeror's proposal. Submission of more than one proposal by an Offeror may, at the discretion of DOM, result in the summary rejection of all proposals submitted. An Offeror's proposal shall not include variable or multiple pricing options.

### **3.3.8 Proposal Amendments and Withdrawal**

Prior to the proposal due date, a submitted proposal may be withdrawn by submitting a written request for its withdrawal to DOM, signed by the Offeror.

An Offeror may submit an amended proposal before the due date for receipt of proposals. Such amended proposal must be a complete replacement for a previously submitted proposal and must be clearly identified as such in the Transmittal Letter. DOM will not merge, collate, or assemble proposal materials.

Unless requested by DOM, no other amendments, revisions, or alterations to proposals will be accepted after the proposal due date.

Any submitted proposal shall remain a valid proposal for one hundred eighty (180) days from the proposal due date.

### **3.3.9 Disposition of Proposals**

The proposal submitted by the successful Offeror shall be incorporated into and become part of the resulting contract. All proposals received by DOM shall upon receipt become and remain the property of DOM. DOM will have the right to use all concepts contained in any proposal and this right will not affect the solicitation or rejection of the proposal.

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### **3.3.10 Responsible Contractor**

DOM shall contract only with a responsible contractor who possesses the ability to perform successfully under the terms and conditions of the proposed procurement and implementation. In letting the contract, consideration shall be given to such matters as Contractor's integrity, performance history, financial and technical resources, and accessibility to other necessary resources.

### **3.3.11 Best and Final Offers**

The Executive Director of DOM may make a written determination that it is in the State's best interest to conduct additional discussions or change the State's requirements and require submission of best and final offers. The Procurement Officer shall establish a date and time for the submission of best and final offers. Otherwise, no discussion of or changes in the proposals shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

## **3.4 ORAL PRESENTATION**

The oral presentation is part of the technical proposal evaluation. If desired by DOM, all Offerors receiving a minimum of 50 percent (350 points) of the total score on the Technical Phase of the evaluation may be given the opportunity to make an oral presentation. The purpose of the oral presentation is to provide an opportunity for the Offeror to present its proposal and credentials of proposed staff, and to respond to any questions from DOM. The original proposal cannot be supplemented, changed or corrected either in writing or orally. The oral presentation will not be scored, but will be used in determining the final technical score.

The presentation will occur at a State office location in Jackson, Mississippi. The determination of participants, location, order, and schedule for the presentations is at the sole discretion of DOM and will be provided during the Evaluation process. The presentation will occur at a State office location in Jackson, MS. The presentation may include slides, graphics and other media selected by the bidder to illustrate the Offeror's Proposal.

The presentations are tentatively scheduled for July 24 – 31, 2013. The Offeror's presentation team shall include, at a minimum, the proposed Project Manager and other key management staff necessary to implement the Contract requirements. However, DOM reserves the right to limit the number of participants in the Offeror's presentation. DOM reserves the right to limit the length of time allowed for each presentation.

## **3.5 STATE APPROVAL**

Approval from the State Personal Services Contract Review Board must be received before contract signing. Every effort will be made by DOM to facilitate rapid approval and an early start date.

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### **3.6 NOTICE OF INTENT TO AWARD**

Award shall be made to the responsible Offeror whose proposal is determined in writing to be the most advantageous to the State taking into consideration price and evaluation factors set forth in the RFP. The notice of intended contract award shall be sent by e-mail with reply confirmation to the winning Offeror. Unsuccessful Offerors will be notified in the same manner after the award has been accepted or declined.

Consistent with existing state law, no Offeror shall infer or be construed to have any rights or interest to a contract with DOM until final approval is received from all necessary entities and until both the Offeror and DOM have executed a valid contract.

### **3.7 PROTEST POLICY AND PROCEDURES**

#### **3.7.1 Form of the Protest**

Offerors who submit technical and business proposals in response to this RFP may protest the award of the contract resulting from this RFP. Protests must be made in writing and must be received no later than six (6) working days from the notice of non-award. Protests should be addressed to DOM's Executive Director and must contain specific grounds for the protest. Supporting documentation may be included with the protest.

A protest must state all grounds upon which the protesting party asserts that the solicitation or award was improper. Issues not raised by the protesting party in the protest are deemed waived.

Only the following are acceptable grounds for protest:

- Failure to follow any of the following: 1) DOM procedures established in the RFP, 2) DOM rules of procurement, or 3) PSCRB Rules and Regulations;
- Errors in computing scores which contributed to the selection of an Offeror other than the lowest and best bidder; or,
- Bias, discrimination, or conflict of interest on the part of an evaluator.

Disallowed grounds include:

- Evaluators' qualifications to serve on the Evaluation Committee;
- The professional judgment of the Evaluation Committee; and,
- DOM's assessment of its own needs regarding the solicitation.

A protest that is incomplete or not submitted within the prescribed time limits will be summarily dismissed.

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### **3.7.2 Protest Bond**

Protests must be accompanied by a \$50,000 bond. The protest bond must be maintained through final resolution, whether at the agency level or through a court of appropriate jurisdiction.

### **3.7.3 DOM's Responsibilities Regarding Protests**

The Notice of Non-Award shall be accompanied by redacted copies of the evaluation score sheets.

The Procurement Officer shall provide a copy of the protest documents to the successful Offeror within three (3) days of receipt of the protest. The successful Offeror shall have the right to provide documentation supporting the decision to award.

The Executive Director shall review all documentation concerning the procurement and may request additional documentation. He shall then determine whether or not the award of the contract shall be delayed or cancelled; or, if the protest is clearly without merit or that award of the contract without delay is necessary to protect the interests of the State. The Executive Director will provide written notice of the decision to the protesting Offeror. This written notice will be the final agency decision.

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### **4. TERMS AND CONDITIONS**

#### **4.1 GENERAL**

The contract between the State of Mississippi and the Contractor shall consist of 1) the contract and any amendments thereto; 2) this request for proposals (RFP) and any amendments thereto; 3) the Contractor's proposal submitted in response to the RFP by reference and as an integral part of this contract; 4) written questions and answers. In the event of a conflict in language among the four (4) documents referenced above, the provisions and requirements set forth and/or referenced in the contract and its amendments shall govern. After the contract, the order of priority shall be as follows: the RFP Bidder Questions and Answers, the Business Proposal, the Technical Proposal and its attachments, and the RFP. In the event that an issue is addressed in one document that is not addressed in another document, no conflict in language shall be deemed to occur.

However, DOM reserves the right to clarify any contractual relationship in writing, and such written clarification shall govern in case of conflict or ambiguity with the applicable requirements stated in the RFP or the Contractor's proposal. In all other matters not affected by the written clarification, if any, the RFP and its amendments shall govern.

The contract shall be governed by the applicable provisions of the Personal Service Contract Review Board Regulations, a copy of which is available at 201 East Capitol Street, Suite 800, Jackson, Mississippi, 39201, for inspection or on the web at [www.mspb.ms.gov](http://www.mspb.ms.gov).

No modification or change of any provision in the contract shall be made, or construed to have been made, unless such modification or change is mutually agreed upon in writing by the Contractor and DOM. The agreed upon modification or change will be incorporated as a written contract amendment and processed through DOM for approval prior to the effective date of such modification or change. In some instances, the contract amendment must be approved by CMS before the change becomes effective.

The only representatives authorized to modify this contract on behalf of DOM and the Contractor are shown below:

Contractor: Person(s) designated by the Contractor

Division of Medicaid: Executive Director

#### **4.2 PERFORMANCE STANDARDS, ACTUAL DAMAGES, LIQUIDATED DAMAGES, AND RETAINAGE**

DOM reserves the right to assess actual or liquidated damages, upon the Contractor's failure to provide timely services required pursuant to this contract. Actual or liquidated damages for failure to meet specific performance standards as set forth in the scope of work may be assessed as specifically set forth in each performance standard. The Contractor shall be given fifteen (15) days' notice to respond before

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DOM makes the assessment. The assessments will be offset against the subsequent monthly payments to the Contractor. Assessment of any actual or liquidated damages does not waive any other remedies available to DOM pursuant to this contract or state or federal law. If liquidated damages are known to be insufficient then DOM has the right to pursue actual damages.

If the Contractor's failure to perform satisfactorily exposes DOM to the likelihood of contracting with another person or entity to perform services required of the Contractor under this contract, upon notice setting forth the services and retainage, DOM may withhold from the Contractor payments in an amount commensurate with the costs anticipated to be incurred. If costs are incurred, DOM shall account to the Contractor and return any excess to the Contractor. If the retainage is not sufficient, the Contractor shall immediately reimburse DOM the difference or DOM may offset from any payments due the Contractor. The Contractor will cooperate fully with the retained Contractor and provide any assistance it needs to implement the terms of its agreement for services for retainage.

### **4.3 TERM OF CONTRACT**

DOM will award a Contract based on proposals. The Contract period begins October 1, 2013 and shall terminate on September 30, 2016. DOM may have, under the same terms and conditions as the existing contract, an option for two (2) one-year extensions, provided DOM obtains approval from the Personal Services Contract Review Board to allow an extension period.

#### **4.3.1 Stop Work Order**

1. Order to Stop Work - DOM Contract Administrator may, by written order to the Contractor at any time and without notice to any surety, require the 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 ninety (90) days after the order is delivered to the Contractor, unless the parties agree to an extension. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allowable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within an extension to which the parties shall have agreed, the Contract Administrator 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, the 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, only if:

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- a. The stop work order or extension results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
  - b. The Contractor asserts a claim for such an adjustment within thirty (30) days after the end of the stop work order or extension.
3. Termination of Work - If a stop work order or extension is not canceled and the work covered by such stop work order or extension is terminated for default or convenience, adjustment to the contract price will be negotiated between DOM and the Contractor.

#### **4.3.2 Termination of Contract**

The Contract resulting from this RFP may be terminated by DOM as follows:

1. For default by the Contractor;
2. For convenience;
3. For the Contractor's bankruptcy, insolvency, receivership, liquidation; and,
4. For non-availability of funds.

At DOM's option, termination for any reason listed herein may also be considered termination for convenience.

##### **4.3.2.1 Termination for Default by the Contractor**

DOM may immediately terminate this contract in whole or in part whenever DOM determines that the Contractor has failed to satisfactorily perform its contractual duties and responsibilities and is unable to resolve such failure within a period of time specified by DOM, after considering the gravity and nature of the default. Such termination shall be referred to herein as "Termination for Default."

Upon determination by DOM of any such failure to satisfactorily perform its contractual duties and responsibilities, DOM may notify the Contractor of the failure and establish a reasonable time period in which to resolve such failure. If the Contractor does not resolve the failure within the specified time period, DOM will notify the Contractor that the contract in full or in part has been terminated for default. Such notices shall be in writing and delivered to the Contractor by certified mail, return receipt requested, or in person.

If, after Notice of Termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or make progress in performance was due to causes beyond the control and without error or negligence on the part of the Contractor or any subcontractor, the Notice of Termination shall be deemed to have been issued as a termination for the convenience of DOM, and the rights and obligations of the parties shall be governed accordingly.

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In the event of Termination for Default, in full or in part as provided by this clause, DOM may procure, upon such terms and in such manner as DOM may deem appropriate, supplies or services similar to those terminated, and the Contractor shall be liable to DOM for any excess costs for such similar supplies or services for the remainder of the contract period. In addition, the Contractor shall be liable to DOM for administrative costs incurred by DOM in procuring such similar supplies or services.

In the event of a termination for default, the Contractor shall be paid for those deliverables which the Contractor has delivered to DOM. Payments for completed deliverables delivered to and accepted by DOM shall be at the contract price.

The rights and remedies of DOM provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

#### **4.3.2.2 Termination for Convenience**

DOM may terminate performance of work under the contract in whole or in part whenever for any reason DOM shall determine that such termination is in the best interest of DOM.

In the event that DOM elects to terminate the contract pursuant to this provision, it shall notify the Contractor by certified mail, return receipt requested, or delivered in person. Termination shall be effective as of the close of business on the date specified in the notice, which shall be at least thirty (30) days from the date of receipt of the notice by the Contractor.

Upon receipt of Notice of Termination for convenience, the Contractor shall be paid the following:

- The contract price(s) for completed deliverables delivered to and accepted by DOM; and,
- A price commensurate with the actual cost of performance for partially completed deliverables, which also requires acceptance by DOM.

#### **4.3.2.3 Termination for the Contractor Bankruptcy**

In the event that the Contractor shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or its assets, or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of the rights of creditors, DOM may, at its option, terminate this contract in whole or in part.

In the event DOM elects to terminate the contract under this provision, it shall do so by sending Notice of Termination to the Contractor by certified mail, return receipt requested, or delivered in person. The date of termination shall be the close of business on the date specified in such notice to the Contractor. In the event of the filing of a petition in bankruptcy by or against a principal subcontractor, the Contractor shall immediately so advise DOM.

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The Contractor shall ensure and shall satisfactorily demonstrate to DOM that all tasks related to the subcontract are performed in accordance with the terms of this contract.

**4.3.2.4 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 or the State of Mississippi to appropriate funds, or the discontinuance, or material alteration of the program under which the funds were provided or if funds are not otherwise available to the State, the State shall have the right upon ten (10) working days written notice to the Contractor, to terminate this agreement without damage, penalty, cost, or expense to the State of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

**4.3.3 Procedure on Termination**

**4.3.3.1 Contractor Responsibilities**

Upon delivery by certified mail, return receipt requested, or in person to the Contractor a Notice of Termination specifying the nature of the termination, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective, the Contractor shall:

Stop work under the contract on the date and to the extent specified in the Notice of Termination;

Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work in progress under the contract until the effective date of termination;

Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

Deliver to DOM within the time frame as specified by DOM in the Notice of Termination, copies of all data and documentation in the appropriate media and make available all records required to assure continued delivery of services to beneficiaries and providers at no cost to DOM;

Complete the performance of the work not terminated by the Notice of Termination;

Take such action as may be necessary, or as DOM may direct, for the protection and preservation of the property related to the contract which is in the possession of the Contractor and in which DOM has or may acquire an interest;

Fully train DOM staff or other individuals at the direction of DOM in the operation and maintenance of the process;

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Promptly transfer all information necessary for the reimbursement of any outstanding claims; and

Complete each portion of the Turnover Phase after receipt of the Notice of Termination. The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any allowable delay in determining or adjusting the amount of any item of reimbursable price under this clause.

The Contractor has an absolute duty to cooperate and help with the orderly transition of the duties to DOM or its designated contractor following termination of the contract for any reason.

#### **4.3.3.2 DOM Responsibilities**

DOM will make payment to the Contractor on termination and at contract price for completed deliverables delivered to and accepted by DOM. The Contractor shall be reimbursed for partially completed deliverables, accepted by DOM, at a price commensurate with actual cost of performance.

In the event of the failure of the Contractor and DOM to agree in whole or in part as to the amounts to be paid to the Contractor in connection with any termination described in this RFP, DOM shall determine on the basis of information available the amount, if any, due to the Contractor by reason of termination and shall pay to the Contractor the amount so determined.

The Contractor shall have the right of appeal, as stated under Disputes (Paragraph 4.9.6) from any such determination made by DOM.

#### **4.3.4 Assignment of the Contract**

The Contractor shall not sell, transfer, assign, or otherwise dispose of the contract or any portion thereof or of any right, title, or interest therein without prior written consent of DOM. Any such purported assignment or transfer shall be void. If approved, any assignee shall be subject to all terms and conditions of this contract and other supplemental contractual documents. No approval by DOM of any assignment may be deemed to obligate DOM beyond the provisions of this contract. This provision includes reassignment of the contract due to change in ownership of the Contractor. DOM shall at all times be entitled to assign or transfer its rights, duties, and/or obligations under this contract to another governmental agency in the State of Mississippi upon giving prior written notice to the Contractor.

#### **4.3.5 Excusable Delays**

The Contractor and DOM shall be excused from performance under this contract for any period that they are prevented from performing any services under this Contract as a result of an act of God, war, civil disturbance, epidemic, court order, government act or omission, or other cause beyond their reasonable control.

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### **4.3.6 Applicable Law**

The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflict of law provisions, and any litigation with respect thereto shall be brought in the courts of the State of Mississippi. The Contractor shall comply with applicable federal, state and local laws and regulations.

### **4.4 NOTICES**

Whenever, under this RFP, one party is required to give notice to the other, except for purposes of Notice of Termination under Section 4.3, such notice shall be deemed given upon delivery, if delivered by hand, or upon the date of receipt or refusal, if sent by registered or certified mail, return receipt requested or by other carriers that require signature upon receipt. Notice may be delivered by facsimile transmission, with original to follow by certified mail, return receipt requested, or by other carriers that require signature upon receipt, and shall be deemed given upon transmission and facsimile confirmation that it has been received. Notices shall be addressed as follows:

In case of notice to the Contractor:

Project Manager  
Contractor  
Street Address  
City, State Zip Code

In case of notice to DOM:

Executive Director  
Division of Medicaid  
550 High St., Suite 1000  
Jackson, Mississippi 39201

Copy to Contract Administrator, DOM

### **4.5 COST OR PRICING DATA**

If DOM determines that any price, including profit or fee, negotiated in connection with this RFP was increased because the Contractor furnished incomplete or inaccurate cost or pricing data not current as certified in the Contractor's certification of current cost or pricing data, then such price or cost shall be reduced accordingly and this RFP shall be modified in writing and acknowledged by the Contractor to reflect such reduction.

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### **4.6 SUBCONTRACTING**

The Contractor is solely responsible for fulfillment of the Contract terms with DOM. DOM will make Contract payments only to the Contractor.

The Contractor shall not subcontract any portion of the services to be performed under this Contract without the prior written approval of DOM. The Contractor shall notify DOM not less than thirty (30) days in advance of its desire to subcontract and include a copy of the proposed subcontract with the proposed subcontractor.

Approval of any subcontract shall neither obligate DOM nor the State of Mississippi as a party to that subcontract nor create any right, claim, or interest for the subcontractor against the State of Mississippi or DOM, their agents, their employees, their representatives, or successors.

Any subcontract shall be in writing and shall contain provisions such that it is consistent with the Contractor's obligations pursuant to this Contract.

The Contractor shall be solely responsible for the performance of any subcontractor under such subcontract approved by DOM.

The Contractor shall give DOM immediate written notice by certified mail, facsimile, or any other carrier that requires signature upon receipt of any action or suit filed and prompt notice of any claim made against the Contractor or Subcontractor which in the opinion of the Contractor may result in litigation related in any way to the Contract with DOM.

### **4.7 PROPRIETARY RIGHTS**

#### **4.7.1 Ownership of Documents**

Where activities supported by this contract produce original writing, sound recordings, pictorial reproductions, drawings, or other graphic representation and works of any similar nature, DOM shall have the right to use, duplicate, and disclose such materials in whole or in part, in any manner, for any purpose whatsoever and to have others do so. If the material is qualified for copyright, the Contractor may copyright such material, with approval of DOM, but DOM shall reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such materials, in whole or in part, and to authorize others to do so.

#### **4.7.2 Ownership of Information and Data**

DOM, The Department of Health and Human Services (DHHS), The Centers for Medicare and Medicaid Services (CMS), the State of Mississippi, and/or their agents shall have unlimited rights to use, disclose, or duplicate, for any purpose whatsoever, all information and data developed, derived, documented, or furnished by the Contractor under any contract resulting from this RFP.

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The Contractor agrees to grant in its own behalf and on behalf of its agents, employees, representatives, assignees, and subcontractors to DOM, DHHS, CMS and the State of Mississippi and to their officers, agents, and employees acting in their official capacities a royalty-free, non-exclusive, and irrevocable license throughout the world to publish, reproduce, translate, deliver, and dispose of all such information now covered by copyright of the proposed Contractor.

Excluded from the foregoing provisions in this Section 4.7.2, however, are any pre-existing, proprietary tools owned, developed, or otherwise obtained by Contractor independent of this Contract. Contractor is and shall remain the owner of all rights, title and interest in and to the Proprietary Tools, including all copyright, patent, trademark, trade secret and all other proprietary rights thereto arising under federal and state law, and no license or other right to the Proprietary Tools is granted or otherwise implied. Any right that DOM may have with respect to the Proprietary Tools shall arise only pursuant to a separate written agreement between the parties.

#### **4.7.3 Public Information**

Offerors must provide an electronic, single document version of proposals redacting those provisions of the proposal which contain trade secrets or other proprietary data which they believe may remain confidential in accordance with Sections 25-61-9 and 79-23-1, et seq. of the Mississippi Code Annotated of 1972, as amended.

#### **4.7.4 Right of Inspection**

DOM, the Mississippi Department of Audit, The Department of Health and Human Services (DHHS), The Centers for Medicare and Medicaid Services (CMS), the Office of Inspector General (OIG), the General Accounting Office (GAO), or any other auditing agency prior-approved by DOM, or their authorized representative shall, at all reasonable times, have the right to enter onto the Contractor's premises, or such other places where duties under this contract are being performed, to inspect, monitor, or otherwise evaluate (including periodic systems testing) the work being performed. The Contractor must provide access to all facilities and assistance for DOM and Mississippi Audit Department representatives. All inspections and evaluations shall be performed in such a manner as will not unduly delay work. Refusal by the Contractor to allow access to all documents, papers, letters or other materials, shall constitute a breach of contract. All audits performed by persons other than DOM staff will be coordinated through DOM and its staff.

#### **4.7.5 Licenses, Patents and Royalties**

DOM does not tolerate the possession or use of unlicensed copies of proprietary software. The Contractor shall be responsible for any penalties or fines imposed as a result of unlicensed or otherwise defectively titled software.

The Contractor, without exception, shall indemnify, save, and hold harmless DOM and its employees from liability of any nature or kind, including cost and expenses for or on account of

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any copyrighted, patented, or non-patented invention, process, or article manufactured by the Contractor. DOM will provide prompt written notification of a claim of copyright or patent infringement.

Further, if such a claim is made or is pending, the Contractor may, at its option and expense, procure for DOM the right to continue use of, replace or modify the article to render it non-infringing. If none of the alternatives are reasonably available, the Contractor agrees to take back the article and refund the total amount DOM has paid the Contractor under this contract for use of the article.

If the Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the proposed prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

### **4.7.6 Records Retention Requirements**

The Contractor shall maintain detailed records evidencing all expenses incurred pursuant to the Contract, the provision of services under the Contract, and complaints, for the purpose of audit and evaluation by DOM and other federal or State personnel. All records, including training records, pertaining to the Contract must be readily retrievable within three (3) workdays for review at the request of DOM and its authorized representatives. All records shall be maintained and available for review by authorized federal and State personnel during the entire term of the Contract and for a period of five (5) years thereafter, unless an audit is in progress or there is pending litigation. When an audit or pending litigation has not been completed at the end of the five (5) year period, records shall be retained until all issues are finally resolved.

### **4.8 REPRESENTATION REGARDING CONTINGENT FEES**

The Contractor represents by submission of its proposal that it has not retained a person or agency to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee except as disclosed in the contractor's bid or proposal.

### **4.9 INTERPRETATIONS/CHANGES/DISPUTES**

The RFP in its entirety is a part of the Contract. In the event of a dispute or conflict among any of the components of the contract, the Contract shall govern. After the Contract, the order of priority is: Att. D, Bidder Questions and Answers; Att. C or E, the Business Proposal or BAFO; Att. B, the Technical Proposal; and Att. A, the RFP. All the documents shall be read and construed as far as possible to be one harmonious whole; however, in the event of a conflict or dispute, the above list is the list of priority.

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DOM reserves the right to clarify any contractual relationship in writing and such clarification will govern in case of conflict with the requirements of the RFP. Any ambiguity in the RFP shall be construed in favor of DOM.

The contract represents the entire agreement between the Contractor and DOM and it supersedes all prior negotiations, representations, or agreements, either written or oral between the parties hereto relating to the subject matter hereof.

### **4.9.1 Conformance with Federal and State Regulations**

The Contractor shall be required to conform to all federal and state laws, regulations, and policies as they exist or as amended.

In the event that the Contractor requests that the Executive Director of DOM or his/her designee issue policy determinations or operating guidelines required for proper performance of the contract, DOM shall do so in a timely manner. The Contractor shall be entitled to rely upon and act in accordance with such policy determinations and operating guidelines unless the Contractor acts negligently, maliciously, fraudulently, or in bad faith.

### **4.9.2 Waiver**

No covenant, condition, duty, obligation, or undertaking contained in or made a part of this contract will be waived except by the written agreement of the parties, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply; and until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.

### **4.9.3 Severability**

If any part, term or provision of the contract (including items incorporated by reference) is 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 contract did not contain that particular part, term or provision held to be invalid.

### **4.9.4 Change Orders and/or Amendments**

The Executive Director of DOM or designated representative may, at any time, by written order delivered to the Contractor at least thirty (30) days prior to the commencement date of such change, make administrative changes within the general scope of the contract. If any such change causes an increase or decrease in the cost of the performance of any part of the work under the

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contract an adjustment commensurate with the costs of performance under this contract shall be made in the contract price or delivery schedule or both. Any claim by the Contractor for equitable adjustment under this clause must be asserted in writing to DOM within thirty (30) days from the date of receipt by the Contractor of the notification of change. Failure to agree to any adjustment shall be a dispute within the meaning of the Disputes clause of this Contract. Nothing in this clause, however, shall in any manner excuse the Contractor from proceeding diligently with the contract as changed.

If the parties are unable to reach an agreement within thirty (30) days of DOM receipt of the Contractor's cost estimate, the Executive Director of DOM shall make a determination of the revised price, and the Contractor shall proceed with the work according to a schedule approved by DOM subject to the Contractor's right to appeal the Executive Director's determination of the price pursuant to the Disputes clause.

The rate of payment for changes or amendments completed per contract year shall be at the rates specified by the Contractor's proposal.

At any time during the term of this contract, DOM may increase the quantity of goods or services purchased under this contract by sending the Contractor a written amendment or modification to that effect which references this contract and is signed by the Executive Director of DOM. The purchase price shall be the lower of the unit cost identified in the Contractor's proposal or the Contractor's then-current, published price. The foregoing shall not apply to services provided to DOM at no charge. The delivery schedule for any items added by exercise of this option shall be set by mutual agreement.

#### **4.9.5 Disputes**

Any dispute concerning the contract which is not disposed of by agreement shall be decided by the Executive Director of DOM who shall reduce such decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Executive Director shall be final and conclusive unless within thirty (30) days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Attorney General a written request to render an interpretation addressed to the Office of the Attorney General, 550 High St., Suite 1200, Jackson, Mississippi 39205. The interpretation of the Attorney General or his duly authorized representative shall be final and conclusive. The Contractor and DOM shall be afforded an opportunity to be heard and to offer evidence in support of their interpretations. Nothing in this paragraph shall be construed to relieve the Contractor of full and diligent performance of the contract.

#### **4.9.6 Cost of Litigation**

In the event that DOM deems it necessary to take legal action to enforce any provision of the contract, the Contractor shall bear the cost of such litigation, as assessed by the court, in which DOM prevails. Neither the State of Mississippi nor DOM shall bear any of the Contractor's cost

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of litigation for any legal actions initiated by the Contractor against DOM regarding the provisions of the contract. Legal action shall include administrative proceedings.

#### **4.9.7 Attorney Fees**

The Contractor agrees to pay reasonable attorney fees incurred by the State and DOM in enforcing this agreement or otherwise reasonably related thereto.

#### **4.10 INDEMNIFICATION**

The Contractor agrees to indemnify, defend, save, and hold harmless DOM, the State of Mississippi, their officers, agents, employees, representatives, assignees, and contractors from any and all claims and losses accruing or resulting to any and all the Contractor employees, agents, subcontractors, laborers, and any other person, association, partnership, entity, or corporation furnishing or supplying work, services, materials, or supplies in connection with performance of this contract, and from any and all claims and losses accruing or resulting to any such person, association, partnership, entity, or corporation who may be injured, damaged, or suffer any loss by the Contractor in the performance of the contract.

The Contractor agrees to indemnify, defend, save, and hold harmless DOM, the State of Mississippi, their officers, agents, employees, representatives, assignees, and contractors against any and all liability, loss, damage, costs or expenses which DOM may sustain, incur or be required to pay: 1) by reason of any person suffering personal injury, death or property loss or damage of any kind either while participating with or receiving services from the Contractor under this contract, or while on premises owned, leased, or operated by the Contractor or while being transported to or from said premises in any vehicle owned, operated, leased, chartered, or otherwise contracted for or in the control of the Contractor or any officer, agent, or employee thereof; or 2) by reason of the Contractor or its employee, agent, or person within its scope of authority of this contract causing injury to, or damage to the person or property of a person including but not limited to DOM or the Contractor, their employees or agents, during any time when the Contractor or any officer, agent, employee thereof has undertaken or is furnishing the services called for under this contract.

The Contractor agrees to indemnify, defend, save, and hold harmless DOM, the State of Mississippi, their officers, agents, employees, representatives, assignees, and contractors against any and all liability, loss, damages, costs or expenses which DOM or the State may incur, sustain or be required to pay by reason of the Contractor, its employees, agents or assigns: 1) failing to honor copyright, patent or licensing rights to software, programs or technology of any kind in providing services to DOM, or 2) breaching in any manner the confidentiality required pursuant to federal and state law(s) and regulations.

The Contractor agrees to indemnify, defend, save, and hold harmless DOM, the State of Mississippi, their officers, agents, employees, representatives, assignees, and contractors from all claims, demands, liabilities, and suits of any nature whatsoever arising out of the contract because

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of any breach of the contract by the Contractor, its agents or employees, including but not limited to any occurrence of omission or commission or negligence of the Contractor, its agents or employees.

If in the reasonable judgment of DOM a default by the Contractor is not so substantial as to require termination and reasonable efforts to induce the Contractor to cure the default are unsuccessful and the default is capable of being cured by DOM or by another resource without unduly interfering with the continued performance of the Contractor, DOM may provide or procure such services as are reasonably necessary to correct the default. In such event, the Contractor shall reimburse DOM for the cost of those services. DOM may deduct the cost of those services from the Contractor's monthly administrative invoices. The Contractor shall cooperate with DOM or those procured resources in allowing access to facilities, equipment, data or any other Contractor resources to which access is required to correct the default. The Contractor shall remain liable for ensuring that all operational performance standards remain satisfied.

### **4.10.1 No Limitation of Liability**

Nothing in this contract shall be interpreted as excluding or limiting any liability of the Contractor for harm caused by the intentional or reckless conduct of the Contractor, or for damages incurred in the negligent performance of duties by the Contractor, or for the delivery by the Contractor of products that are defective, or for breach of contract or any other duty by the Contractor. Nothing in the contract shall be interpreted as waiving the liability of the Contractor for consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense related to the Contractor's conduct or performance under this contract.

## **4.11 STATUS OF THE CONTRACTOR**

### **4.11.1 Independent Contractor**

It is expressly agreed that the Contractor is an independent Contractor performing professional services for DOM and is not an officer or employee of the State of Mississippi or DOM. It is further expressly agreed that the contract shall not be construed as a partnership or joint venture between the Contractor and DOM.

The Contractor shall be solely responsible for all applicable taxes, insurance, licensing and other costs of doing business. Should the Contractor default on these or other responsibilities jeopardizing the Contractor's ability to perform services effectively, DOM, in its sole discretion, may terminate this contract.

The Contractor shall not purport to bind DOM, its officers or employees nor the State of Mississippi to any obligation not expressly authorized herein unless DOM has expressly given the Contractor the authority to do so in writing.

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The Contractor shall give DOM immediate notice in writing of any action or suit filed, or of any claim made by any party which might reasonably be expected to result in litigation related in any manner to this contract or which may impact the Contractor's ability to perform.

No other agreements of any kind may be made by the Contractor with any other party for furnishing any information or data accumulated by the Contractor under this contract or used in the operation of this program without the written approval of DOM. Specifically, DOM reserves the right to review any data released from reports, histories, or data files created pursuant to this Contract.

In no way shall the Contractor represent itself directly or by inference as a representative of the State of Mississippi or the Division of Medicaid except within the confines of its role as a contractor for the Division of Medicaid. DOM's approval must be received in all instances in which the Contractor distributes publications, presents seminars or workshops, or performs any other outreach.

The Contractor shall not use DOM's name or refer to the contract, and the services provided therein, directly or indirectly in any advertisement, news release, professional trade or business presentation without prior written approval from DOM.

### **4.11.2 Employment of DOM Employees**

The Contractor shall not knowingly engage on a full-time, part-time, or other basis during the period of the contract, any professional or technical personnel who are or have been at any time during the period of the contract in the employ of DOM, without the written consent of DOM. Further, the Contractor shall not knowingly engage in this project, on a full-time, part-time, or other basis during the period of the contract, any former employee of DOM who has not been separated from DOM for at least one (1) year, without the written consent of DOM.

The Contractor shall give priority consideration to hiring interested and qualified adversely affected State employees at such times as requested by DOM to the extent permitted by this contract or state law.

### **4.11.3 Conflict of Interest**

No official or employee of DOM and no other public official of the State of Mississippi or the Federal Government who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of the project, voluntarily acquire any personal interest, direct or indirect, in the contract or proposed contract. A violation of this provision shall constitute grounds for termination of this contract. In addition, such violation will be reported to the State Ethics Commission, Attorney General, and appropriate federal law enforcement officers for review.

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The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants that in the performance of the contract no person having any such known interests shall be employed including subsidiaries or entities that could be misconstrued as having a joint relationship, and to employment by the Contractor of immediate family members of Medicaid providers.

#### **4.11.4 Personnel Practices**

All employees of the Contractor involved in the Medicaid function will be paid as any other employee of the Contractor who works in another area of their organization in a similar position. The Contractor shall develop any and all methods to encourage longevity in Contractor's staff assigned to this contract.

Employees of the Contractor shall receive all benefits afforded to other similarly situated employees of the Contractor.

The Contractor must agree to sign the Drug Free Workplace Certificate (Exhibit 1).

#### **4.11.5 No Property Rights**

No property rights inure to the Contractor except for compensation for work that has already been performed.

#### **4.12 EMPLOYMENT PRACTICES**

The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, age, marital status, political affiliations, disability, genetic information, or any other consideration made unlawful by federal, State or local laws. The Contractor must act affirmatively to ensure that employees, as well as applicants for employment, are treated without discrimination because of their race, color, religion, gender, national origin, age, marital status, political affiliations, disability, or genetic information.

Such action shall include, but is not limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment notices setting forth the provisions of this clause.

The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, national origin, age, marital status, political affiliations, disability, or genetic information, except where it relates to a bona fide occupational qualification or requirement.

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The Contractor shall comply with the non-discrimination clause contained in Federal Executive Order 11246, as amended by Federal Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex, or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor and with Title 41, Code of Federal Regulations, Chapter 60. The Contractor shall comply with related state laws and regulations, if any.

The Contractor shall comply with the Civil Rights Act of 1964, and any amendments thereto, and the rules and regulations thereunder, and Section 504 of Title V of the Rehabilitation Act of 1973, as amended, and the Mississippi Human Rights Act of 1977.

If DOM finds that the Contractor is not in compliance with any of these requirements at any time during the term of this contract, DOM reserves the right to terminate this contract or take such other steps as it deems appropriate, in its sole discretion, considering the interests and welfare of the State.

### **4.13 RISK MANAGEMENT**

The Contractor may insure any portion of the risk under the provision of the contract based upon the Contractor's ability (size and financial reserves included) to survive a series of adverse experiences, including withholding of payment by DOM, or imposition of penalties by DOM.

On or before beginning performance under this Contract, the Contractor shall obtain from an insurance company, duly authorized to do business and doing business in Mississippi, insurance as follows:

#### **4.13.1 Workers' Compensation**

The Contractor shall take out and maintain, during the life of this contract, workers' compensation insurance for all employees employed under the Contract in Mississippi. Such insurance shall fully comply with the Mississippi Workers' Compensation Law. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Workers' Compensation Statute, the Contractor shall provide adequate insurance satisfactory for protection of his or her employees not otherwise protected.

#### **4.13.2 Liability**

The Contractor shall ensure that professional staff and other decision making staff shall be required to carry professional liability insurance in an amount commensurate with the

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professional responsibilities and liabilities under the terms of this RFP and other supplemental contractual documents.

The Contractor shall obtain, pay for and keep in force during the contract period general liability insurance against bodily injury or death in an amount commensurate with the responsibilities and liabilities under the terms of this RFP; and insurance against property damage and fire insurance including contents coverage for all records maintained pursuant to this contract in an amount commensurate with the responsibilities and liabilities under the terms of this RFP. The Contractor shall furnish to DOM certificates evidencing such insurance is in effect after award of contract is accepted and annually thereafter.

### **4.14 CONFIDENTIALITY OF INFORMATION**

#### **4.14.1 Confidentiality of Beneficiary Information**

All information as to personal facts and circumstances concerning Medicaid beneficiaries or providers obtained by the Contractor shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of DOM and the written consent of the enrolled beneficiary, his attorney, or his responsible parent or guardian, except as may be required by DOM.

The use or disclosure of information concerning beneficiaries shall be limited to purposes directly connected with the administration of the contract.

All of the Contractor officers and employees performing any work for or on the contract shall be instructed in writing of this confidentiality requirement and required to sign such a document upon employment and annually thereafter.

The Contractor shall immediately notify DOM of any unauthorized possession, use, knowledge or attempt thereof, of DOM's data files or other confidential information. The Contractor shall immediately furnish DOM full details of the attempted unauthorized possession, use or knowledge, and assist in investigating or preventing the recurrence thereof.

#### **4.14.2 Confidentiality of Proposals and Contract Terms**

After award of the contract, all Offeror's proposals, including the Technical Proposal, the Business Proposal, and any accompanying exhibits, attachments and appendices are subject to disclosure under the "Mississippi Public Records Act of 1983", codified as section 25-61-1 et seq., Mississippi Code Annotated and exceptions found in Section 79-23-1 of the Mississippi Code Annotated (1972, as amended), and the Federal Freedom of Information Act. Information specified by an Offeror as proprietary information shall be available for disclosure as provided by State statute, unless an Offeror seeks and is granted a protective order for the proprietary information.

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In addition, a fully executed copy of the resultant contract, including the Technical and Business Proposals, shall be posted to the State of Mississippi's accountability website at <https://www.transparency.mississippi.gov>, in accordance with the Mississippi Accountability and Transparency Act of 2008, Section 27-104-151, et seq., of the Mississippi Code Annotated (1972, as amended), and the American Accountability and Transparency Act of 2009 (P.L. 111-5), where applicable. Unless exempted from disclosure due to a court-issued protective order, this contract is required to be posted to the Department of Finance and Administration's independent agency contract website for public access. Prior to posting the contract to the website, any information identified by the 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.

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 State law. This provision shall survive termination or completion of this agreement. The parties agree that this provision is subject to and superseded by Miss. Code Ann. Section 25-61-1, et seq. regarding Public Access to Public Records.

#### **4.15 THE CONTRACTOR COMPLIANCE ISSUES**

The Contractor agrees that all work performed as part of this contract will comply fully with administrative and other requirements established by federal and state laws, regulations and guidelines, and assumes responsibility for full compliance with all such laws, regulations and guidelines, and agrees to fully reimburse DOM for any loss of funds, resources, overpayments, duplicate payments or incorrect payments resulting from noncompliance by the Contractor, its staff, or agents, as revealed in any audit.

##### **4.15.1 Federal, State, and Local Taxes**

Unless otherwise provided herein, the contract price shall include all applicable federal, state, and local taxes.

The Contractor shall pay all taxes lawfully imposed upon it with respect to this contract or any product delivered in accordance herewith. DOM makes no representation whatsoever as to exemption from liability to any tax imposed by any governmental entity on the Contractor.

##### **4.15.2 License Requirements**

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The Contractor shall have, or obtain, any license/permits that are required prior to and during the performance of work under this contract.

### **4.15.3 HIPAA Compliance**

The Contractor must ensure that all work supports the HIPAA Security Rules and sign a HIPAA Business Associate Agreement, provided as Appendix “B” to this RFP.

### **4.15.4 Site Rules and Regulations**

The Contractor shall use its best efforts to ensure that its employees and agents, while on DOM premises, shall comply with site rules and regulations.

### **4.15.5 Environmental Protection**

The Contractor shall be in compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (45 USC 1857 [h]), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulation (40 CFR Part 15) which prohibit the use under non-exempt federal contracts, grants, or loans of facilities included on the EPA list of Violating Facilities. The Contractor shall report violations to the applicable grantor federal agency and the U. S. EPA Assistant Administrator for Enforcement.

### **4.15.6 Lobbying**

The Contractor certifies, to the best of its knowledge and belief, that no federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit “Disclosure Form to Report Lobbying,” in accordance with its instructions.

This certification is a material representation of fact upon which reliance is placed when entering into this contract. Submission of this certification is a prerequisite for making or entering into this contract imposed under Title 31, Section 1352, and U. S. Code. Failure to file the required certification shall be subject to civil penalties for such failure.

The Contractor shall abide by lobbying laws of the State of Mississippi.

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### **4.15.7 Bribes, Gratuities and Kickbacks Prohibited**

The receipt or solicitation of bribes, gratuities and kickbacks is strictly prohibited.

No elected or appointed officer or other employee of the Federal Government or of the State of Mississippi shall benefit financially or materially from this contract. No individual employed by the State of Mississippi shall be permitted any share or part of this contract or any benefit that might arise therefrom.

The Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibitions against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi Personal Service Contract Procurement Regulations.

### **4.15.8 Small and Minority Businesses**

DOM encourages the employment of small business and minority business enterprises. Therefore, the Contractor shall report, separately, the involvement in this contract of small businesses and businesses owned by minorities and women. Such information shall be reported on an invoice annually on the contract anniversary and shall specify the actual dollars contracted to-date with such businesses, actual dollars expended to date with such businesses, and the total dollars planned to be contracted for with such businesses on this contract.

### **4.15.9 Suspension and Debarment**

The Contractor certifies that it is not suspended or debarred under federal law and regulations or any other state's laws and regulations.

### **4.15.10 E-Payment**

The 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," Mississippi Code Annotated § 31-7-301, *et seq.*, which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice.

Payments by state agencies using the Statewide Automated Accounting System (SAAS) 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 the Contractor to submit invoices and supporting documentation electronically 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.

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**4.15.11 Compliance with the Mississippi Employment Protection Act**

The Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act Mississippi Code Annotated § 71-11-1 and 71-11-3, and will register and participate in the status verification system for all newly hired employees. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State. Contractor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Contractor understands and agrees that any breach of these warranties may subject Contractor to the following: (a) Termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public, or (b) The loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) Both.

In the event of such termination/cancellation, Contractor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

The Contractor certifies that it is not suspended or debarred under federal law and regulations or any other state’s laws and regulations.

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## **5. TECHNICAL PROPOSAL**

### **5.1 INTRODUCTION**

All proposals must be typewritten on standard 8 ½ x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) with tabs delineating each section. One copy of the proposal must be submitted on CD in a single searchable document in Microsoft Word or Adobe Acrobat (.PDF) format.

The Technical Proposal must include the following sections:

1. Transmittal Letter;
2. Executive Summary;
3. Corporate Background and Experience;
4. Project Organization and Staffing;
5. Methodology;
6. Project Management and Control; and,
7. Work Plan and Schedule.

Items to be included under each of these headings are identified in the paragraphs below. Each section within the Technical Proposal should include all items listed in the paragraphs below. The evaluation of proposals will be done on a section-by-section basis. A format that easily follows the requirements and order of the RFP should be used.

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

### **5.2 TRANSMITTAL LETTER**

The Transmittal Letter shall be in the form of a standard business letter on letterhead of the Offeror and shall be signed by an individual authorized to legally bind the Offeror. The transmittal letter should identify all material and enclosures being submitted in response to the RFP. The transmittal letter shall also include:

1. A statement indicating that the Offeror is a corporation or other legal entity;
2. A statement confirming that the Offeror is registered to do business in Mississippi and providing their corporate charter number to work in Mississippi, if applicable;
3. A statement identifying the Offeror's federal tax identification number;
4. A statement that, if the Offeror is awarded the contract, the Contractor agrees that any lost or reduced federal matching money resulting from unacceptable performance of a Contractor task or responsibility, as defined in this RFP, shall be accompanied by reductions in State payments to the Contractor;
5. A statement identifying any prior project where the Offeror was terminated before the final

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solution was operational;

6. A statement that no attempt has been made or will be made by the Offeror to induce any other person or firm to submit or not to submit a proposal;
7. A statement that the Contractor **has or has not** (*use applicable word*) retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract;
8. A statement that the Offeror has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 of the Mississippi Personal Service Contract Procurement Regulations;
9. A statement of Affirmative Action, that the Offeror does not discriminate in its employment practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin, or disability;
10. A statement that no cost or pricing information has been included in this letter or any other part of the technical proposal;
11. A statement identifying by number and date all amendments to this RFP issued by DOM which have been received by the Offeror. If no amendments have been received, a statement to that effect should be included;
12. A statement that the Offeror has read, understands and agrees to all provisions of this RFP without reservation;
13. Certification that the Offeror's proposal will be firm and binding for one hundred eighty (180) days from the proposal due date;
14. A statement naming any outside firms responsible for writing the proposal;
15. A statement agreeing that the Contractor and all subcontractors will sign the Drug Free Workplace Certificate (Exhibit 1);
16. A statement that the Offeror has included the signed DHHS Certification Regarding Debarment, Suspension, and Other Responsibility Matters for Primary Covered Transactions (Exhibit 2) with the Transmittal letter;
17. All proposals submitted by corporations must contain certifications by the secretary, or other appropriate corporate official other than the corporate official signing the corporate proposal, that the corporate official signing the corporate proposal has the full authority to obligate and bind the corporation to the terms, conditions, and provisions of the proposal;
18. All proposals submitted must include a statement that the Offeror presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services under this contract, and it shall not employ, in the performance of this contract, any person having such interest; and,
19. If the proposal deviates from the detailed specifications and requirements of the RFP, the transmittal letter must identify and explain these deviations. DOM reserves the right to reject any proposal containing such deviations or to require modifications before acceptance.

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### **5.3 EXECUTIVE SUMMARY**

The Executive Summary shall condense and highlight the contents of the Technical Proposal in such a way as to provide a broad understanding of the entire proposal. The Executive Summary shall include a summary of the proposed technical approach, the staffing structure, and the task schedule, including a brief overview of:

1. Proposed work plan;
2. Staff organizational structure;
3. Key personnel; and,
4. A brief discussion of the Offeror's understanding of the Mississippi environment and the Medicaid program requirements.

Also, Offerors may provide a redacted proposal removing those provisions of the proposal which contain trade secrets or other proprietary data which they believe may remain confidential in accordance with Section 25-61-9 and 79-23-1 of the Mississippi Code.

The Executive Summary should be no more than five (5) single-spaced typed pages in length.

### **5.4 CORPORATE BACKGROUND AND EXPERIENCE**

The Corporate Background and Experience Section shall include for the Offeror details of the background of the company, its size and resources, details of corporate experience relevant to the proposed contract, financial statements, and a list of all current or recent Medicaid or related projects. The time frame to be covered should begin, at a minimum, in January 2008 through present date.

#### **5.4.1 Corporate Background**

The details of the background of the corporation, its size, and resources, shall cover:

1. Date established;
2. Location of the principal place of business;
3. Location of the place of performance of the proposed Contract;
4. Ownership (e.g.: public company, partnership, subsidiary);
5. Total number of employees;
6. Number of personnel currently engaged in project operations;
7. Computer resources;
8. Performance history and reputation;
9. Current products and services; and
10. Professional accreditations pertinent to the services provided by this RFP.

#### **5.4.2 Financial Statements**

Financial statements for the contracting entity shall be provided for each of the last five (5) years, including, at a minimum:

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1. Statement of income;
2. Balance sheet;
3. Statement of changes in financial position during the last five (5) years;
4. Statement of cash flow;
5. Auditors' reports;
6. Notes to financial statements; and,
7. Summary of significant accounting policies.

The State reserves the right to request any additional information to assure itself of an Offeror's financial status.

### **5.4.3 Corporate Experience**

The corporate experience section must present the details of the Offeror's experience with the type of service to be provided by this RFP and Medicaid experience. A minimum of three (3) corporate references are required for this type of experience. DOM will check references during the evaluation process at its option. Each reference must include the client's name and address and the current telephone number of the client's responsible project administrator or of a senior official of the client who is familiar with the Offeror's performance and who may be contacted by DOM during the evaluation process. DOM reserves the right to contact officials of the client other than those indicated by the Offeror. Overlapping responsibilities on the same client's contract should be depicted so that they are easily recognized.

The Offeror must provide for each experience:

1. The client's name;
2. Client references (including phone numbers);
3. Description of the work performed;
4. Time period of contract;
5. Total number of staff hours expended during time period of contract;
6. Personnel requirements;
7. Publicly funded contract cost; and,
8. Any contractual termination within the past five (5) years.

## **5.5 PROJECT ORGANIZATION AND STAFFING**

The Project Organization and Staffing section shall include project team organization, charts of proposed personnel and positions, estimates of the staff-hours by major task(s) to be provided by proposed positions, and if known, résumés of all management and key professional personnel as required in this RFP.

The Offeror shall:

1. Provide experience and qualifications of each staff person proposed to work on this project;

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2. Describe how the Offeror will train, educate, and supervise staff regarding this project;
3. Describe how the Offeror will ensure inter-rater reliability among its staff for this project; and,
4. Discuss the Offeror's relationship with any proposed subcontractors, including how it will monitor these subcontractors; and its experience working with any proposed subcontractors. The Offeror shall provide references and qualifications of proposed subcontractors, and biographies of any subcontractor staff proposed to work on this project.

### **5.5.1 Organization**

The organization charts shall show:

1. Organization and staffing during each phase as described in the RFP; and,
2. Full-time, part-time and temporary status of all employees.

### **5.5.2 Résumés**

Offerors must submit résumés of all proposed key staff persons - Project Manager and other key management staff. Experience narratives shall be attached to the résumés describing specific experience with the type service to be provided by this RFP, a Medicaid program, and professional credentials, including any degrees, licenses and recent and relevant continuing education.

The résumés of proposed personnel shall include:

1. Duration and experience as an employee with the Offeror;
2. All experience in working with Medicaid programs;
3. Experience in the type of services to be provided by this RFP;
4. Relevant education and training, including college degrees, dates of completion, and institution name and address; and,
5. Names, positions, current addresses and current phone numbers of a minimum of three (3) persons who can give information on the individual's experience and competence. Current DOM staff shall not be submitted for any reference for the above requirements.

The résumés of proposed managers shall also include:

1. Experience in managing large-scale contractual services projects;
2. Other management experience; and,
3. Supervisory experience including details and number of people supervised.

If project management responsibilities will be assigned to more than one (1) individual during the project (i.e., management may be changed following implementation), résumés must be provided for all persons concerned.

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Each project referenced in a résumé should include the client name, the time period of the project, and the time period the person performed, as well as a brief description of the project and the person's responsibilities.

### **5.5.3 Responsibilities**

This section should discuss the anticipated roles of personnel during all phases of the contract. All proposed key technical team leaders, including definitions of their responsibilities during each phase of the contract, should be included.

### **5.5.4 Backup Personnel Plan**

If additional staff is required to perform the functions of the contract, the Offeror should outline specifically its plans and resources for adapting to these situations. The Offeror should also address plans to ensure the longevity of staff in order to allow for effective DOM support.

## **5.6 METHODOLOGY**

The Methodology Section should describe the Offeror's approach to providing the services described in the scope of work, Section 1, of the RFP. This section should contain a comprehensive description of the proposed work plan and specify how it will improve clinical quality, promote beneficiary and provider satisfaction, and achieve savings for the State. The narrative descriptions within this section must include the following:

1. The description shall encompass the requirements of this RFP as outlined in Scope of Work.
2. The Section must describe the methodology to be followed in accomplishing each requirement outlined in the Scope of Work in sufficient detail to demonstrate the Offeror's direction and understanding of this RFP.
3. The Section must include a high-level project plan for the project. This project plan must be at the level of major tasks and milestones and be submitted in Microsoft Project or comparable tool.
4. The Section must summarize how DOM staff will be used as resources in this project. It is DOM's desire that DOM staff be advised of all aspects of the engagement.
5. The Section should include information about past performance results and a plan for evaluating the proposed project.

## **5.7 PROJECT MANAGEMENT AND CONTROL**

The Project Management and Control Section shall include details of the methodology to be used in management and control of the project, project activities, and progress reports. This section will also supervise correction of problems. Specific explanation must be provided if solutions vary from one phase to another. This section covers:

1. Project management approach;
2. Project control approach;

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3. Manpower and time estimating methods;
4. Sign-off procedures for completion of all deliverables and major activities;
5. Management of performance standards, milestones and/or deliverables;
6. Assessment of project risks and approach to managing them;
7. Anticipated problem areas and the approach to management of these areas, including loss of key personnel and loss of technical personnel;
8. Internal quality control monitoring;
9. Approach to problem identification and resolution;
10. Project status reporting, including examples of types of reports; and,
11. Approach to DOM's interaction with contract management staff.

## **5.8 WORK PLAN AND SCHEDULE**

The Work Plan and Schedule must include a detailed work plan broken down by tasks and subtasks and a schedule for the performance of each task included in each phase of the contract. The schedule should allow fifteen (15) working days for DOM approval of each submission or re-submission of each deliverable. The work plan to be proposed should include all responsibilities, milestones, and deliverables outlined previously in this RFP. This section shall cover:

1. Any assumptions or constraints identified by the Offeror, both in developing the work plan and in completing the work plan.
2. Person-weeks of effort for each task or subtask, showing the Offeror's personnel and DOM personnel efforts separately.
3. A network diagram, showing the planned start and end dates for all tasks and subtasks, indicating the interrelationships of all tasks and subtasks, and identifying the critical path.
4. A Gantt chart, showing the planned start and end dates of all tasks and subtasks.
5. A discussion of how the work plan provides for handling of potential and actual problems.
6. A schedule for all deliverables providing a minimum of five (5) days' review time by DOM.

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## **6. BUSINESS/COST PROPOSAL**

### **6.1 GENERAL**

All Offerors must certify in the transmittal letter that their offer shall be binding upon the Offeror for a period of one hundred eighty (180) days following the proposal due date. Pricing will be considered as a separate criteria of the overall bid package.

Offerors shall propose a price to be paid per policy match and a percentage to be paid for amounts associated with recovery activities. This price shall be based on the Offeror's estimates for each type of match and recovery activity.

### **6.2 BID MODIFICATION IN THE EVENT OF A FEDERAL AND/OR STATE LAW, REGULATION OR POLICY**

In the event any change occurs in federal law, federal regulations, state law, state regulations, state policies, or state Medicaid plan coverage, and DOM determines that these changes impact materially on proposal pricing, DOM reserves the right to require the Offerors to amend their proposals. The failure of an Offeror to negotiate these required changes will exclude such Offeror from further consideration for contract award. All proposals shall be based upon the provisions of federal and state laws and regulations and DOM's approved Medicaid State Plan coverage in effect on the issuance date of this RFP, unless this RFP is amended in writing to include changes prior to the closing date for receipt of proposals.

### **6.3 PROPOSAL CONTENT**

The Business Proposal shall include only the following:

1. Appendix A – Budget Summary - A detailed worksheet by line item of all costs as it pertains to the Contractor Responsibilities and Deliverables as found in Section 1.0 of the RFP.
2. Additional pricing schedules to adequately explain method of cost determination including all assumptions (i.e. service or enrollment volume assumptions).
3. Each pricing schedule must be signed in blue and dated by an authorized corporate official.
4. All proposals submitted by corporations must contain certification by the secretary or other appropriate corporate official, other than the signer of the corporate proposal, that the corporate official signing the corporate proposal has the authority to obligate and bind the corporation to the terms, conditions and provisions of the proposal.

Proposals received that do not include the above items may be rejected at the discretion of DOM.

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## **7. PROPOSAL EVALUATION**

### **7.1 GENERAL**

An Evaluation Committee comprised of DOM staff will be established to evaluate the merits of eligible proposals. The committee will be appointed by the Executive Director of the Division of Medicaid and will include members who have extensive experience in the Medicaid program. The Committee will be responsible for the evaluation of the technical and business proposals.

### **7.2 EVALUATION OF PROPOSALS**

A standard evaluation form will be utilized by the Evaluation Committee to ensure consistency in evaluation criteria.

A maximum of 1,000 points will be available for each proposal which shall be comprised of a technical and a business proposal. The points awarded per phase by the evaluation committee will be totaled to determine the points awarded per proposal.

Evaluation of eligible proposals will be conducted in five (5) phases. The Procurement Officer will complete Phase One. The Technical Proposal Evaluation Committee will complete Phase Two. The Business Proposal Evaluation Committee will complete Phase Three. In Phase Four, the Procurement Officer will compile the results of the technical and business evaluations and make a recommendation to the Executive Director of DOM based on the results of the evaluation. In Phase Five the award decision will be made by the Executive Director.

At its option, the State may request an interview from Offerors in a competitive range in the evaluation. Offerors must be prepared to meet with DOM staff within five (5) days of notification. All costs associated with the interview will be the responsibility of the Offeror.

#### **7.2.1 Phase 1 - Evaluation of Offerors' Response to RFP**

In this phase, the Procurement Officer reviews each proposal to determine if each proposal is sufficiently responsive. Each proposal will be evaluated to determine if it is complete and whether it complies with the instructions to Offerors in the RFP. Each proposal that is incomplete will be declared non-responsive and may be rejected with no further evaluation.

The Procurement Officer will determine if an incomplete proposal is sufficiently responsive to continue to Phase Two.

#### **7.2.2 Phase 2 - Evaluation of Technical Proposal**

Only those proposals which meet the requirements in Phase One will be considered in Phase Two.

Any Technical Proposal that is incomplete or in which there are significant inconsistencies or inaccuracies may be rejected by the Division of Medicaid. The Division of Medicaid reserves the right to

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waive minor variances or reject any or all proposals. In addition, the Division of Medicaid reserves the right to request clarifications or enter into discussions with all Offerors.

The Evaluation Committee will review each Offeror's Technical Proposal in order to determine if the Offeror sufficiently addresses all of the RFP requirements and that the Offeror has developed a specific approach to meeting each requirement.

| TECHNICAL PROPOSAL SECTION                 | MAXIMUM SCORE |
|--------------------------------------------|---------------|
| Executive Summary/Understanding of Project | 15            |
| Corporate Background and Experience        | 55            |
| Organization and Staffing                  | 200           |
| Methodology                                | 310           |
| Project Management                         | 70            |
| Work Plan and Schedule                     | 50            |
| <b>TOTAL</b>                               | <b>700</b>    |

Proposals must score a minimum of 60% (420 points) of the total score in order to proceed to the Business/Cost phase of the evaluation. Proposals receiving less than 60% will not be considered for the Business/Cost evaluation or contract award.

Oral presentations may be held as part of the Technical Evaluation; however, they are not required. Oral presentations will be held solely if desired by DOM. If held, oral presentations will be used in determining the final technical score.

#### **7.2.2.1 Executive Summary**

The Evaluation Committee will review the Executive Summary to determine if it provides all information required in Section 5.3 of this RFP and is five (5) pages or less in length.

#### **7.2.2.2 Corporate Background and Experience**

The Evaluation Committee will evaluate the experience, performance on similar contracts, resources, and qualifications of the Offeror to provide the services required by the RFP. The evaluation criteria will address:

1. Experience of Offeror in providing the requested services.
2. Corporate experience providing similar services.
3. Amount and level of resources proposed by the Offeror.
4. Specific qualifications that evidence the Offeror's ability to provide the services requested.
5. Current financial position and cash flow of the Offeror and evidence that the Offeror has a history of financial solvency.
6. Any contract terminations or non-renewals within the past five (5) years.

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### **7.2.2.3 Methodology**

The Evaluation Committee will evaluate the approach and process offered to provide services as required by this RFP. In addition to the information required in Section 1.0 of this RFP, the evaluation criteria will address at a minimum the following (if applicable):

1. Processes and requirements for completion of the project.
2. Data management plan, including hardware, software, communications links, and data needs and proposed coordination plan.
3. Processes for maintaining confidentiality of protected health information.
4. Processes for development and submission of required deliverables.
5. Scope of services provided through partnerships or subcontractors.
6. Relevant experience that indicates your organizational qualifications for the performance of the potential contract.
7. Quality Assurance processes.

### **7.2.2.4 Organization and Staffing**

The Evaluation Committee will review this section of the Offeror's proposal to determine if the proposed organizational structure and staffing level are sufficient to accomplish the requirements of the RFP. The committee will review the organizational chart(s), time lines, the job descriptions including job qualifications, the resumes of staff and their qualifications for the positions they will hold, and the relationship of their past experience to their proposed responsibilities under this contract. The committee will evaluate the explanation of the Offeror regarding the relationship between the Offeror and the Project Manager to determine if they will have sufficient autonomy to make management decisions to improve the Offeror's delivery of services to DOM.

### **7.2.2.5 Project Management and Control**

The Evaluation Committee will evaluate the Offeror's proposal to determine if all of the elements required by Section 5.7 of the RFP are addressed. Specifically, the committee will evaluate:

1. Offeror's approach to the management of the project and ability to keep the project on target and to ensure that the requested services are provided;
2. Offeror's control of the project to ensure that all requests are being met and that the Offeror is able to identify and resolve problems which occur;
3. Offeror's methods for estimating and documenting personnel hours spent by staff on project activities to be sure they are sound and fair;
4. Offeror's plans to comply with the reporting requirements of the contract, including the provision of status reports to DOM, and whether the reports are appropriate and sufficient to keep DOM informed of all aspects of the implementation and operation of the project; and,
5. Offeror's understanding of the importance of interacting with DOM management staff and presenting a plan to do so appropriately.

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### **7.2.2.6 Work Plan and Schedule**

The Evaluation Committee will review and evaluate the work plan and schedule to determine if all tasks are included and if, for each task, a timeline and an identification of staff responsible for the task's accomplishment are indicated. The work plan must provide a logical sequence of tasks and a sufficient amount of time for their accomplishment.

### **7.2.3 Phase 3 - Evaluation of Business/Cost Proposal**

Only those proposals that satisfactorily completed Phase 2 will be considered for Phase 3. DOM reserves the right to waive minor variances or reject any or all proposals.

Any bid price determined by DOM to be unrealistically or unreasonably low may not be considered acceptable, as such a proposal has a high probability of not being accomplished for the cost proposed. The Offeror may be required to produce additional documentation to authenticate the proposal price.

The maximum 300 points will be assigned to the lowest and best acceptable proposal. All other proposals will be assigned points based on the following formula:

Scoring for Payments for Data Matches

$$\frac{X}{Y} * 150 = Z$$

X = lowest price per match  
Y = Offeror's price per match  
Z = assigned points

Scoring for Payments for Recovery Activities

$$\frac{X}{Y} * 150 = Z$$

X = lowest Percentage Charged for Recovery Activities  
Y = Offeror's Percentage Charged for Recovery Activities  
Z = Assigned Points

## **7.3 Phase 4 and 5 – SELECTION AND AWARD**

After the evaluation committee has completed the evaluation of the proposals, a summary report including all evaluations will be submitted to the Executive Director of DOM. The Executive Director will make the final decision regarding the winning proposal.

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**Appendix A - Budget Summary**

Section 6.0 addresses submission of the Budget Summary. Failure to follow the submittal instructions will immediately disqualify the Offeror.

| Budget Summary<br>Third Party Data Matching and Recovery Services<br>RFP #20130517                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                        |                                        |                                       |       |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|----------------------------------------|---------------------------------------|-------|
| <b>Name of Offeror:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                        |                                        |                                       |       |
| <b>Implementation Cost:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                        |                                        |                                       |       |
| Service                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Operations Year 1<br>1/1/14 – 12/31/14 | Operations Year 2<br>1/1/15 – 12/31/15 | Operations Year 3<br>1/1/16 – 9/30/16 | Total |
| Price Per Match                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                        |                                        |                                       |       |
| Estimated Matches                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                        |                                        |                                       |       |
| <b>Total Data Match Price</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                        |                                        |                                       |       |
| Estimated Recoveries                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                        |                                        |                                       |       |
| Percentage of Recovery Activities                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                        |                                        |                                       |       |
| <b>Total Price for Recoveries</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                        |                                        |                                       |       |
| Total:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                        |                                        |                                       |       |
| <ol style="list-style-type: none"><li>1. Offerors must submit a single proposed price per match, total contract price, percentage of recoveries and estimated recoveries for Contract year 1, 2 and 3 as outlined on the attached Budget Summary.<br/><u>DOM will not accept proposals broken down by type of insurance or service.</u></li><li>2. Offerors must provide, as an attachment to the Budget Summary, a detailed worksheet by line item of all cost as it pertains to the Contractor responsibilities outlined in Section 1.0 of the RFP.</li><li>3. Offerors may explain assumptions used to calculate their proposed price per match, total contract price, percentage of recoveries or estimated recoveries, or any other information regarding their cost proposal as an attachment to the Budget Summary.</li></ol> |                                        |                                        |                                       |       |
| <b>I certify that I am legally obligating the above named Offeror to the conditions of this contract.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                        |                                        |                                       |       |
| Signature:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                        | Date:                                  |                                       |       |
| Printed Name:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                        | Title:                                 |                                       |       |

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### Appendix B – HIPAA Business Associate Agreement

This Business Associate Agreement (“Agreement”) is entered into between Mississippi Division of Medicaid (“DOM”) and **(enter name of Contractor here)** (“Business Associate”), and modifies any other prior existing agreement or contract for this purpose.

The effective date of this Agreement is the effective date of the Service Agreements and contracts entered into between DOM and Business Associate.

#### I. RECITALS

- a. DOM is a State Agency that acts both as an employer and as a Health Plan for public benefit with a principal place of business at 550 High Street, Suite 1000, Jackson, MS 39201.
- b. Business Associate is a corporation qualified to do business in Mississippi that will act to perform consulting services for DOM with a principal place of business at **(enter address of Contractor here)**.
- c. Pursuant to the Health Insurance Portability and Accountability Act (“HIPAA”) of 1996; 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 of 2009; and their implementing regulations, including 45 C.F.R. Parts 160 and 164, Subparts A and E (“Privacy Rule”), and 45 C.F.R. Parts 160 and 164, Subparts A and C (“Security Rule”):
  - i. DOM, as a Covered Entity is required to enter into this Agreement to obtain satisfactory assurances that Business Associate will comply with and appropriately safeguard all Protected Health Information (“PHI”) Used, Disclosed, created or received by Business Associate on behalf of DOM, and
  - ii. Certain provisions of HIPAA, the HITECH Act, and their implementing regulations apply to Business Associate in the same manner as they apply to DOM and such provisions must be incorporated into this Agreement.
- d. DOM desires to engage Business Associate to perform certain functions for, or on behalf of, DOM involving the Disclosure of PHI by DOM to Business Associate, or the creation or Use of PHI by Business Associate on behalf of DOM, and Business Associate desires to perform such functions, as set forth in the Service Agreements or contracts which involve the exchange of information, and wholly incorporated herein.

In consideration of the mutual promises below and the exchange of information pursuant to this Agreement and in order to comply with all legal requirements for the protection of this information, the parties therefore agree as follows:

#### II. DEFINITIONS

- a. “Breach” shall mean the acquisition, access, Use or Disclosure of PHI in a manner not permitted by the Privacy rule which compromises the security or privacy of the PHI, and subject to the exceptions set forth in 45 C.F.R. § 164.402.

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- b. “Business Associate” shall mean **(enter name of Contractor here)**.
- c. “Covered Entity” shall mean DOM.
- d. “Data Aggregation” shall have the same meaning as the term “Data aggregation” in 45 C.F.R. § 164.501.
- e. “Designated Record Set” shall have the same meaning as the term “Designated record set” in 45 C.F.R. § 164.501.
- f. “Disclosure” shall have the same meaning as the term “Disclosure” in 45 C.F.R. § 160.103.
- g. “Health Plan” shall have the same meaning as the term “Health plan” in 45 C.F.R. § 160.103.
- h. “Individual” shall have the same meaning as the term “Individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- i. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- j. “Protected Health Information” shall have the same meaning as the term “Protected health information” in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of DOM.
- k. “Required by Law” shall have the same meaning as the term “Required by law” in 45 C.F.R. § 164.103.
- l. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.
- m. “Security Incident” shall have the same meaning as the term “Security incident” in 45 C.F.R. § 164.304.
- n. “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- o. “Service Agreement” shall mean the agreements and contracts entered into between DOM and Business Associate.
- p. “Standard” shall have the same meaning as the term “Standard” in 45 C.F.R. § 160.103.

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- q. “Subcontractor” shall have the same meaning as the term “Subcontractor” in 45 C.F.R. § 160.103.
- r. “Unsecured Protected Health Information” shall have the same meaning as the term “Unsecured protected health information” in 45 C.F.R. § 164.402.
- s. “Use” shall have the same meaning as the term “Use” in 45 C.F.R. § 160.103.
- t. “Violation” or “Violate” shall have the same meaning as the terms “Violation” or “violate” in 45 C.F.R. § 160.103.

All other terms not defined herein shall have the meanings assigned in HIPAA, the HITECH Act, and their implementing regulations.

**III. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

- a. Business Associate agrees to not Use or Disclose PHI other than as permitted or required by this Agreement or as Required by Law.
- b. Business Associate agrees to use appropriate safeguards and comply, where applicable, with the Security Rule, to prevent Use or Disclosure of the PHI other than as provided for by this Agreement.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of PHI by Business Associate in Violation of the requirements of this Agreement.
- d. Business Associate agrees to immediately report to DOM any Use or Disclosure of the PHI not provided for by this Agreement of which it becomes aware, including Breaches of Unsecured PHI as required by 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware.
- e. Business Associate agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions and conditions that apply to the Business Associate with respect to such information, all in accordance with 45 C.F.R. §§ 164.308 and 164.502.
- f. Business Associate agrees to ensure that any Subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of the Business Associate agree to comply with the applicable requirements of the Security Rule and Privacy Rule by entering into a Business Associate Agreement in accordance with 45 C.F.R. §§ 164.314, 164.502, and 164.504, and ensuring that any Subcontractor executes a separate Business Associate Agreement with DOM.
- g. Business Associate agrees to provide access, at the request of DOM, and in the time and manner designated by DOM, to PHI in a Designated Record Set, to DOM or, as directed by DOM, to an Individual in order to meet the requirements under 45 CFR § 164.524.

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- h. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that DOM directs or agrees to pursuant to 45 CFR § 164.526 at the request of DOM or an Individual, and in the time and manner designated by DOM.
- i. Business Associate agrees to document such Disclosures of PHI and information related to such Disclosures as would be required for DOM to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.
- j. Business Associate agrees to provide to DOM or an Individual, in a time and manner designated by DOM, information collected in accordance with paragraph (i) of Section III of this Agreement, to permit DOM to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.
- k. Business Associate agrees that to the extent that Business Associate carries out DOM's obligations under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to DOM in the performance of such obligation.
- l. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the Use and Disclosure of PHI received from, or created or received by Business Associate on behalf of, DOM available to the Secretary for purposes of determining DOM's compliance with the Privacy Rule.
- m. Business Associate agrees that all of DOM's data will not be co-mingled with other trading partner's data. Data will be stored in an individual structure and will be easily identifiable and exportable.
- n. The provisions of the HITECH Act that apply to Business Associate and are required to be incorporated by reference in a Business Associate Agreement are hereby incorporated into this Agreement, including, without limitation, 42 U.S.C. §§ 17935(b), (c), (d) and (e), and 17936(a) and (b), and their implementing regulations.
- o. Without limitation of the foregoing:
  - i. Pursuant to 42 U.S.C. § 17931(a), the following sections of the Security Rule shall apply to Business Associate in the same manner as they apply to DOM: 45 C.F.R. §§ 164.308 (Administrative Safeguards); 164.310 (Physical Safeguards); 164.312 (Technical Safeguard); and 164.316 (Policies and procedures and documentation requirements).
  - ii. 42 U.S.C. §§ 17931(b) and 17934(c), and their implementing regulations, each apply to Business Associate with respect to its status as a business associate to the extent set forth in each such Section.

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- iii. Pursuant to 45 C.F.R. § 164.410, without unreasonable delay, and no later than seventy-two (72) hours after discovery, Business Associate shall notify DOM of any Breach of Unsecured PHI. The notification shall include, to the extent possible and subsequently as the information becomes available, the identification of all Individuals whose Unsecured PHI is reasonably believed by Business Associate to have been Breached along with any other available information that is required to be included in the notification to the Individual, HHS and/or the media, all in accordance with the data Breach notification requirements set forth in 42 U.S.C. § 17932 and 45 C.F.R. Parts 160 and 164, Subparts A, D, and E.

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

- a. General Use and Disclosure Provisions: Except as otherwise limited in this Agreement, Business Associate may Use or Disclose PHI to perform functions, activities, or services for, or on behalf of, DOM as specified in the Service Agreements and contracts, provided that such Use or Disclosure would not Violate what is Required by Law, or the minimum necessary policies and procedures of DOM, or the Privacy Rule if done by DOM, except for the specific Uses and Disclosures set forth below, for the purpose of performing the Service Agreement.
- b. Specific Use and Disclosure Provisions:
  - i. Except as otherwise limited in this Agreement, Business Associate may Use PHI, if necessary, for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate under the Service Agreements and contracts entered into between DOM and Business Associate.
  - ii. Except as otherwise limited in this Agreement, Business Associate may Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that Disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that it will remain confidential and Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.
  - iii. Except as otherwise limited in this Agreement, Business Associate may Use PHI to provide Data Aggregation services exclusively to DOM as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).

#### **V. OBLIGATIONS OF DOM**

- a. DOM shall provide Business Associate with the Notice of Privacy Practices that DOM produces in accordance with 45 C.F.R. § 164.520, attached hereto as Exhibit “A” and wholly incorporated herein, as well as any changes to such Notice of Privacy Practices.
- b. DOM shall notify Business Associate of any limitation(s) in its Notice of Privacy Practices to the extent that such limitation may affect Business Associate's Use or Disclosure of PHI.

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- c. DOM shall notify Business Associate of any changes in, or revocation of, permission by Individual to Use or Disclose PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.
- d. DOM shall notify Business Associate of any restriction to the Use or Disclosure of PHI that DOM has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.
- e. Permissible Requests by DOM: DOM shall not request Business Associate to Use or Disclose PHI in any manner that would not be permissible under the Privacy Rule if done by DOM, except as provided for in paragraph (b) of section (IV) of this Agreement.

**VI. TERM AND TERMINATION**

- a. Term. The Term of this Agreement shall be effective as of the effective date of the Service Agreements and contracts entered into between DOM and Business Associate, and shall terminate when all of the PHI provided by DOM to Business Associate, or created or received by Business Associate on behalf of DOM, is destroyed or returned to DOM, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section. Termination of this Agreement shall automatically terminate the Service Agreement.
- b. Termination for Cause. Upon DOM's knowledge of a material Breach or Violation by Business Associate, Business Associate authorizes that DOM shall, at its discretion, either:
  - i. Provide an opportunity for Business Associate to cure the Breach or end the Violation and terminate this Agreement and the associated Service Agreements or contracts, if Business Associate does not cure the Breach or end the Violation within the time specified by DOM, or
  - ii. Immediately terminate this Agreement and the associated Service Agreements or contracts if Business Associate has Breached a material term of this Agreement and cure is not possible.
- c. Effect of Termination.
  - i. Except as provided in subsection (ii) of paragraph (c) of section (VI) of this Agreement, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from, or created or received by Business Associate on behalf of, DOM in accordance with State and Federal retention guidelines. This provision shall apply to PHI that is in the possession of Subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

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- ii. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to DOM notification of the conditions that make return or destruction infeasible. Upon notification in writing that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further Uses and Disclosures to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

**VII. MISCELLANEOUS**

- a. Regulatory References. A reference in this Agreement to a section of the implementing regulations of HIPAA or the HITECH Act means the section as in effect or as amended, and for which compliance is required.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement as is necessary to effectively comply with the terms of any Service Agreements or contracts, or for DOM to comply with the requirements of HIPAA, the HITECH Act, and their implementing regulations. Such modifications signed by the parties shall be attached to and become part of this Agreement.
- c. Survival. The respective rights and obligations of Business Associate under the Section, "Effect of Termination" of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit DOM to comply with HIPAA, the HITECH Act, and their implementing regulations.
- e. Indemnification. Business Associate will indemnify and hold harmless DOM to this Agreement from and against all claims, losses, liabilities, costs and other expenses incurred as a result of, or arising directly or indirectly out of or in conjunction with:
  - i. Any misrepresentation, breach of warranty or non-fulfillment of any undertaking on the part of the party under this Agreement, and
  - ii. Any claims, demands, awards, judgments, actions and proceedings made by any person or organization arising out of or in any way connected with the performance of the Business Associate under this Agreement.
- f. Business Associate's Compliance with HIPAA. DOM makes no warranty or representation that compliance by Business Associate with this Agreement, HIPAA, the HITECH Act, or related regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized Use or Disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- g. Notices. Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and may be either personally delivered or sent by registered or certified mail in the United States Postal Service, Return Receipt Requested, postage prepaid, addressed to each party at the addresses which follow or to such other addresses as the parties may hereinafter designate in writing:

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DOM: **Office of the Governor**  
**Division of Medicaid**  
**550 High Street, Suite 1000**  
**Jackson, MS 39201**

Business Associate: **(enter Contractor information here)**

Any such notice shall be deemed to have been given, if mailed as provided herein, as of the date mailed.

- h. Change in Law. In the event that there are subsequent changes or clarifications of statutes, regulations or rules relating to this Agreement, DOM shall notify Business Associate of any actions it reasonably deems are necessary to comply with such changes, and Business Associate promptly shall take such actions. In the event that there shall be a change in the federal or state laws, rules or regulations, or any interpretation or any such law, rule, regulation or general instructions which may render any of the material terms of this Agreement unlawful or unenforceable, or materially affects the financial arrangement contained in this Agreement, Business Associate may, by providing advanced written notice, propose an amendment to this Agreement addressing such issues.
- i. Severability. In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms.
- j. Governing Law. This Agreement shall be construed broadly to implement and comply with the requirements relating to the HIPAA and HITECH Act laws and regulations. All other aspects of this Agreement shall be governed under the laws of the State of Mississippi.
- k. Assignment/Subcontracting. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns. Except as otherwise provided in the Service Agreement or contract and any proposal or RFP related thereto and agreed upon between the parties, Business Associate may not assign or subcontract the rights or obligations under this Agreement without the express written consent of DOM, provided that any Subcontractor executes a separate Business Associate Agreement with DOM. DOM may assign its rights and obligations under this Agreement to any successor or affiliated entity.
- l. Entire Agreement. This Agreement contains the entire agreement between parties and supersedes all prior discussions, negotiations and services for like services.
- m. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than DOM, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- n. Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any agents, affiliates, assignees, subsidiaries, Subcontractors or employees assisting Business Associate in the fulfillment of its obligations under this Agreement, available to DOM, at no cost to DOM, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DOM, its directors, officers or employees based upon

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claimed Violation of HIPAA, the HITECH Act, their implementing regulations or other laws relating to security and privacy, except where Business Associate or its agents, affiliates, assignees, subsidiaries, Subcontractors or employees are a named adverse party.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement to be effective on the date first herein written.

DOM

BUSINESS ASSOCIATE

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Name:

Name:

Title: Executive Director

Title:

Date:

Date:

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EXHIBIT 1

DHHS CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS:

GRANTEES OTHER THAN INDIVIDUALS

Instructions for Certification

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

1) This certification is required by regulations implementing the Drug-Free Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990, Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

2) Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

3) Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

4) If the workplace identified to DOM changes during the performance of the grant, the grantee shall inform DOM of the change(s), if it previously identified the workplaces in question (see above).

5) Definitions of terms in the Non-procurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

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"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including (i) all direct charge employees; (ii) all indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of sub-recipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

b) Establishing an ongoing drug-free awareness program to inform employees about:

1) The dangers of drug abuse in the workplace; 2) the grantee's policy of maintaining a drug-free workplace; 3) any available drug counseling, rehabilitation, and employee assistance programs; and 4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

1) Abide by the terms of the statement; and 2) notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;

e) Notifying DOM in writing, within ten (10) calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted:

1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or 2) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

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The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments if needed):

Place of Performance (street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

---->NOTE: Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For HHS, the central receipt point is Division of Grants Management and Oversight, Office of Management and Acquisition, HHS, Room 517-D, 200 Independence Ave, S.W., Washington, D.C. 20201

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Organization

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EXHIBIT 2

DHHS Certification Regarding Debarment, Suspension, and Other Responsibility Matters  
Primary Covered Transactions  
45 CFR Part 76, Appendix A

(1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
- b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- d. Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Organization