

Any other correspondence concerning this agreement shall be directed as follows:

For MSDH: Melody Winston, Director
Office of Communicable Diseases
Mississippi State Department of Health
Post Office Box 1700
Jackson, Mississippi 39215-1700
Melody.winston@msdh.ms.gov

- 9. Entire Agreement. This document and all incorporated attachments constitute the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating thereto.

In witness whereof, the parties hereto have affixed, on duplicate originals, their signatures on the date indicated below, after first being authorized so to do.

DATE

By: _____
Thomas Dobbs, MD, MPH
State Health Officer
Mississippi State Department of Health

DATE

By: _____
_____, _____
Name of Authorized Signer Title

Facility Name

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ATTACHMENT A: GENERAL TERMS AND CONDITIONS

1. Assignment and Receipt of Amounts Payable. This section applies only to a Provider which serves as a clinical or healthcare provider for MSDH, as follows:
 - a) No administration or office visit charge should be billed to the recipient or to the recipient's insurance/HRSA for testing administration.
 - b) The Provider agrees that no additional charges will be made to individuals to whom services are provided under the terms of this contract.
2. Anti-assignment/subcontracting. Provider acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Provider's special skills and expertise. Provider shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.
3. Applicable Law. The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws, provisions, and any litigation with respect thereto shall be brought in the courts of the State. Provider shall comply with applicable federal, state, and local laws and regulations.
4. Approval Clause. It is understood that if this contract requires approval by the Public Procurement Review Board and/or the Mississippi Department of Finance and Administration Office of Personal Service Contract Review and this contract is not approved by the PPRB and/or OPSCR, it is void and no payment shall be made hereunder.
5. Authority to Contract. Provider warrants:
 - a) that it is a validly organized business with valid authority to enter into this agreement;
 - b) that it is qualified to do business and in good standing in the State of Mississippi;
 - c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and,
 - d) notwithstanding any other provision of this agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.
6. Availability of Funds. It is expressly understood and agreed that the obligation of the Mississippi State Department of Health (MSDH) to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming, insufficient, or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if

funds are not otherwise available to MSDH, MSDH shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to MSDH of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

7. Compliance with Laws. Provider understands that the Mississippi State Department of Health (MSDH) is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful, and Provider agrees during the term of the agreement that Provider will strictly adhere to this policy in its employment practices and provision of services. Provider shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.
8. Confidential Information. Confidential Information shall be defined as
 - a) those materials, documents, data, and other information which the Provider has designated in writing as proprietary and confidential; and
 - b) all materials, documents, data and information which the Provider acquires as a result of its contact with and efforts on behalf of MSDH, and any other information designated in writing as confidential by MSDH or the State of Mississippi.

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

9. Confidentiality. Notwithstanding any provision to the contrary contained herein, it is recognized that MSDH is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Mississippi Code Annotated §§ 25-61-1 *et seq.* If a public records request is made for any information provided to MSDH pursuant to the agreement and designated by the Provider in writing as trade secrets or other proprietary confidential information, MSDH shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The MSDH shall not be liable to the Provider for disclosure of information required by court order or required by law.
10. Disclosure of Confidential Information. In the event that either party to this agreement receives notice that a third-party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this agreement. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq.*

11. Exceptions to Confidential Information. Provider and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party (“disclosing party”) which:
 - a) is rightfully known to the recipient prior to negotiations leading to this agreement, other than information obtained in confidence under prior engagements;
 - b) is generally known or easily ascertainable by nonparties of ordinary skill in the business of the customer; is released by the disclosing party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
 - c) is independently developed by the recipient without any reliance on confidential information;
 - d) is or later becomes part of the public domain or may be lawfully obtained by the State or Provider from any nonparty; or,
 - e) is disclosed with the disclosing party’s prior written consent.
12. Disputes. Any dispute concerning a question of fact arising under this Contract shall be disposed of by good faith negotiation between duly authorized representative of MSDH and the Provider. Disputes that cannot be resolved in this manner shall be determined by a court of competent jurisdiction in Hinds County, Mississippi. Pending final decision of a dispute, the Provider shall proceed diligently with the performance of its obligation in this agreement.
13. E-Payment. Provider agrees to accept all payments in United States currency via the State of Mississippi’s electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies,” which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 et seq.
14. E-Verification. If applicable, Provider represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008 and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 et seq. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Provider agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Provider agrees to provide a copy of each such verification. Provider further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Provider to the following:
 - a) termination of this contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
 - b) the loss of any license, permit, certification, or other document granted to Provider by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or,
 - c) both.

In the event of such cancellation/termination, Provider would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

15. Failure to Deliver. In the event of failure of Provider to deliver services in accordance with the contract terms and conditions, MSDH, after due oral or written notice, may procure the services from other sources and hold Provider responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that MSDH may have.
16. Failure to Enforce. Failure by MSDH at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of MSDH to enforce any provision at any time in accordance with its terms.
17. Force Majeure. Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its Provider. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (“force majeure events”). When such a cause arises, Provider shall notify the State immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate the agreement.
18. HIPAA Compliance. Provider agrees to comply with the “Administrative Simplification” provisions of the Health Insurance Portability and Accountability Act of 1996, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the services under this contract.
19. Indemnification.
 - a) If Provider is another agency or entity of the State of Mississippi, the following shall apply:

Provider’s tort liability, as an entity of the State of Mississippi, is determined and controlled in accordance with Mississippi Code Annotated §§ 11-46-1 *et seq.*, including all defenses and exceptions contained therein. Nothing in this agreement shall have the effect of changing or altering this liability or of eliminating any defense available to the State under statute.
 - b) For all other Providers, the following shall apply:

To the fullest extent allowed by law, Provider shall indemnify, defend, save and hold harmless, protect, and exonerate the agency, its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorney’s fees, arising out of or caused by Provider and/or its partners, principals, agents, employees and/or subcontractor in the performance of or failure to perform this agreement. In the State’s sole discretion, Provider may be allowed to control the defense of any such claim, suit, etc. In the event Provider defends said claim, suit, etc.,

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

20. Modification or Renegotiation. This agreement may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or state revisions of any applicable laws or regulations make changes in this agreement necessary.
21. No Limitation of Liability. Nothing in this agreement shall be interpreted as excluding or limiting any tort liability of Provider for harm caused by the intentional or reckless conduct of Provider or for damages incurred through the negligent performance of duties by Provider or the delivery of products that are defective due to negligent construction.
22. Non-Discrimination for HIV/AIDS. As a recipient of Federal funds, directly or indirectly through payments from the MSDH, the Provider agrees that no person(s) who are otherwise qualified shall be denied employment, funds, education, or care in the program(s) funded in whole or in part by the on account of affliction with Acquired Immune Deficiency Syndrome (AIDS)-related conditions, or on the basis of their infection with the Human Immunodeficiency Virus (HIV). This non-discrimination agreement and policy shall likewise apply to those individuals or groups who may be perceived as having AIDS or the aforementioned AIDS-related conditions, or who are perceived as being infected with HIV.
23. Ownership of Documents and Work Papers. MSDH shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the project, which is the subject of this agreement, except for Provider's internal administrative and quality assurance files and internal project correspondence. Provider shall deliver such documents and work papers to MSDH upon termination or completion of the agreement. The foregoing notwithstanding, Provider shall be entitled to retain a set of such work papers for its files. Provider shall be entitled to use such work papers only after receiving written permission from MSDH and subject to any copyright protections.

Additionally, Provider assures that any and all information regarding clients of MSDH will be kept strictly confidential and will become the property of MSDH. Provider assures that MSDH shall have full access to all information collected. The Provider is prohibited from use of the above-described information and/or materials without the express written approval of MSDH.

Paper documents and electronic devices and media containing Personally Identifiable Information must be returned or, if approved by MSDH, destroyed in a preapproved manner. Provider agrees to contact MSDH for further guidance on approved methods on destroying electronic devices and related media.

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

25. Personally Identifiable Information. Provider will not disclose or release any Personally Identifiable Information (PII) to which the Provider has access except as required to do so to authorized employees and officials within the scope of the Provider's duties under this contract. Furthermore, Provider acknowledges that any unauthorized disclosure of the information provided under this contract may violate Federal and/or State laws and subject the Provider to penalties.
26. Procurement Regulations. The contract shall be governed by the applicable provisions of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*, a copy of which is available at 501 North West Street, Suite 701E, Jackson, Mississippi 39201 for inspection, or downloadable at www.dfa.ms.gov.
27. Record Retention and Access to Records. Provided Provider is given reasonable advance written notice and such inspection is made during normal business hours of Provider, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Provider's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this agreement shall be retained by Provider for three (3) years after final payment is made under this agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later. Unless mandated by federal or state law for a longer retention period, all records related to this agreement that contain, or are associated with, protected health information (PHI) shall be retained by Provider for at least six (6) years after final payment is made under this agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the six (6) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the six (6) year period, whichever is later.
28. Recovery of Money. Whenever, under the contract, any sum of money shall be recoverable from or payable by Provider to MSDH, the same amount may be deducted from any sum due to Provider under the contract or under any other contract between Provider and MSDH. The rights of MSDH are in addition and without prejudice to any other right MSDH may have to claim the amount of any loss or damage suffered by MSDH on account of the acts or omissions of Provider.
29. Reimbursement. MSDH agrees to provide reimbursement for the contract period. Any final billings shall be submitted to MSDH no later than thirty (30) days after the close of the contract. Failure to submit final billings within the stated timeframe for this contract may be grounds for MSDH to reject such reimbursements.
It is agreed by both parties that no reimbursement will be made by MSDH until this contract has been signed by the appropriate personnel of both parties.
30. Requirements Contract. During the period of the contract, Provider shall provide all the service described in the contract. Provider understands and agrees that this is a requirement contract and that MSDH shall have no obligation to Provider if no services are required. Any quantities that are included in the scope of work reflect the current expectations of MSDH for the period of the contract. The amount is only an estimate and Provider understands and agrees that MSDH is under no obligation to Provider to buy any amount of the services as a result of having provided this estimate or of having any typical or measurable requirement in the past. Provider further understands and agrees that MSDH may require services in an amount less than or in excess of the estimated annual contract amount and that the quantity actually used, whether in excess of the estimate or less than the estimate, shall not give rise to any claim for

compensation other than the total of the unit prices in the contract for the quantity actually used.

31. Right to Audit. Provider shall maintain such financial records and other records as may be prescribed by MSDH or by applicable federal and state laws, rules, and regulations. Provider shall retain these records for a period of three (3) years after final payment, or until they are audited by MSDH, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies. Unless mandated by federal or state law for a longer retention period, Provider shall retain these records for a period of six (6) years after final payment if such records contain, or are associated with, PHI. These records shall be made available during the term of the contract and the subsequent six (6) year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.
32. Severability. If any part of this agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.
33. State Property. Provider will be responsible for the proper custody and care of any state-owned property furnished for Provider's use in connection with the performance of this agreement. Provider will reimburse the State for any loss or damage, normal wear and tear excepted.
34. Termination for Convenience.
 - a) *Termination.* The Agency Head or designee may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Agency Head or designee shall give written notice of the termination to Provider specifying the part of the contract terminated and when termination becomes effective.
 - b) *Provider's Obligations.* Provider shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Provider will stop work to the extent specified. Provider shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Provider shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency Head or designee may direct Provider to assign Provider's right, title, and interest under terminated orders or subcontracts to the State. Provider must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.
35. Termination for Default.
 - a) *Default.* If Provider refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Agency Head or designee may notify Provider in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate Provider's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. Provider shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

- b) *Provider's Duties.* Notwithstanding termination of the contract and subject to any directions from the Agency Head or designee, Provider shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Provider in which the State has an interest.
- c) *Compensation.* Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Provider such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
- d) *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractor, Provider shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Provider to make progress in the prosecution of the work hereunder which endangers such performance) if Provider has notified the Agency Head or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Provider shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Provider to meet the contract requirements. Upon request of Provider, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Provider's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).
- e) *Erroneous Termination for Default.* If, after notice of termination of Provider's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (d) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.
- f) *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.
36. Third Party Action Notification. Provider shall give the customer prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Provider by any entity that may result in litigation related in any way to this agreement.
37. Trade Secrets, Commercial and Financial Information. It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

38. Transparency. This contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983,” and its exceptions. See Mississippi Code Annotated §§ 25-61-1 et seq. and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 et seq. Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration’s independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Provider 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.
39. Unsatisfactory Work. If, at any time during the contract term, the service performed or work done by Provider is considered by MSDH to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, Provider shall, on being notified by MSDH, immediately correct such deficient service or work. In the event Provider fails, after notice, to correct the deficient service or work immediately, MSDH shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of Provider.
40. Waiver. No delay or omission by either party to this agreement in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this agreement shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this agreement will void, waive, or change any other term or condition. No waiver by one party to this agreement of a default by the other party will imply, be construed as, or require waiver of future or other defaults.

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ATTACHMENT B: ACKNOWLEDGEMENTS AND SPECIAL TERMS

The following acknowledgements and conditions shall be made a part of this agreement:

CONFLICT OF INTEREST. To the best of his or her knowledge, Provider certifies that no MSDH employee, or spouse, parent or child of an MSDH employee, serves as a member of its governing body, project staff or has an ownership or pecuniary interest in the Provider. Provider agrees that should this condition change during the period of this contract, Provider shall notify MSDH within 30 days. Notification should be sent by certified mail to the following:

Mississippi State Department of Health
 Attention: MSDH Legal Department
 Post Office Box 1700
 Jackson, Mississippi 39215-1700

Furthermore, Provider represents, to the best of his or her knowledge and belief, that this contract does not present the Provider with a conflict of interest with respect to any past, current, or potential contract or employment such that the Provider would be unable to perform impartially and without bias.

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

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

REPRESENTATION REGARDING CONTINGENT FEES. Provider represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Provider's bid or proposal.

REPRESENTATION REGARDING GRATUITIES. Provider represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations*.

SPECIAL TERMS

1. **Personal Confidentiality Commitment.** Ensuring the confidentiality of all health reports, records, and files containing patient or client names, and other individually identifying information is of critical importance to the Mississippi State Department of Health. Federal and state laws, including the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule and the MSDH privacy and security policies, provide for the protection, privacy, and security of individual health information and all other forms of protected personal data.

Provider agrees to abide by the laws and policies ensuring that the protection of certain individually identifiable health and/or personal information that is created, received, and maintained in any form or medium by the MSDH is safeguarded and protected. Additionally, Provider agrees to only use and disclose individually identifiable health or personal information as provided by and subject to all of the limitations and requirements specified in the MSDH Privacy and IT Security Policies and Procedures.

2. **Immunity.** A covered person as defined under PHS Act 317F-(i)(2), et seq. shall be immune from suit and liability under federal and state law with respect to all claims for loss caused by, arising out of, related to, or resulting from the administration or use of a covered countermeasure.

REQUIRED FEDERAL PROCUREMENT CLAUSES AS THIS CONTRACT MAY BE ELIGIBLE FOR REIMBURSEMENT FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY. The following clauses are applicable where MSDH will seek reimbursement for funds spent carrying out the purpose of this agreement.

- a) **Access.** MSDH, the subgrantees (counties and communities), FEMA, the Comptroller General of the United States, and any other duly authorized representatives to any of these bodies shall have access to any and all books, documents, papers, and records of the Provider which are directly pertinent to this specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- b) **Byrd Anti-Lobbying Amendment.** Provider shall certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. 1352. Contract shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal Award. Provider shall require all subcontractors to submit these same certifications. Provider shall adhere to mandatory standards and policies on energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- c) **Clean Air and Water Acts Compliance.**
 - (1) The Provider agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. and the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
 - (2) The Provider agrees to report each violation to MSDH and understands and agrees that the MSDH will, in turn, report each violation as required to assure notification to the Provider, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

- (3) The Provider agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
- d) **Energy Efficiency.** Provider shall adhere to mandatory standards and policies on energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- e) **Procurement of Recovered Materials.**
- (1) In the performance of this contract, the Provider shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired
 - (a) Competitively within a timeframe providing for compliance with the contract performance schedule;
 - (b) Meeting contract performance requirements; or
 - (c) At a reasonable price.
 - (2) Information about this requirement, along with the list of EPA designate items, is available at EPA's Independent Provider Agreement Revised May 2020 Comprehensive Procurement Guidelines website, <https://www.epa.gov/smm/comprehensiveprocurementguideline-cpg-program>.
- f) **Suspension and Debarment.**
- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Provider is required to verify that none of the Provider, its principals (defined at 2 C.F.R. 180.995), or its affiliates (defined at 2 C.F.R. 180.905) are excluded (defined at 2 C.F.R. 180.940) or disqualified (defined at 2 C.F.R. 180.935).
 - (2) The Provider must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 - (3) This certification is a material representation of fact relied upon by MSDH. If it is later determined that the Provider did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to MSDH, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
 - (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."
- g) **Retention of Records.** Provider shall retain all records associated with this contract for three (3) years after final payment is made under this agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later. Unless mandated by federal or state law for a longer retention period, all records related to this contract that contain, or are associated with, protected health information (PHI) shall be retained by Provider for at least six (6) years after final payment is made under this

agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the six (6) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the six (6) year period, whichever is later.

- h) **DHS seal, Logo, and Flags.** The Provider shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
- i) **Compliance with Federal Law, Regulations, and Executive Orders.** This is an acknowledgement that FEMA financial assistance will be used to fund the contract. The Provider will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- j) **No Obligation by Federal Government.** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Provider, or any other party pertaining to any matter resulting from the contract.
- k) **Program Fraud and False or Fraudulent Statements or Related Acts.** The Provider acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.
- l) **Compliance with the Contract Work Hours and Safety Standards Act.**
 - (1) Overtime requirements. No Provider or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - (2) Violation: liability for unpaid wages: liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Provider and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Provider and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District PAGE 17 OF 20 MSDH Independent Provider Agreement Revised May 2020 or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
 - (3) Withholding for unpaid wages and liquidated damages. The Mississippi State Department of Health shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from any moneys payable on account of work performed by the Provider or subcontractor under any such contract or any other Federal contract with the same prime Provider, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Provider, such sums as may be determined to be necessary to satisfy any liabilities of such Provider or subcontractor for unpaid wages and liquidated damages as provided in the clause

set forth in paragraph (2) of this section.

- (4) Subcontracts. The Provider or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and, also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime Provider shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

m) **Compliance with the Davis-Bacon Act.**

- (1) All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The Provider shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- (2) Providers are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- (3) Additionally, Providers are required to pay wages not less than once a week.

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ATTACHMENT C: SCOPE OF SERVICES

MSDH will provide BinaxNOW rapid antigen tests to the congregate/confinement facilities at no charge to test residents/inmates, patients, staff, and visitors

SCOPE OF SERVICES:

1. MSDH will provide Rapid Antigen Tests Kits to each facility based on unvaccinated staff and patient census.
2. Each facility will be required to receive a CLIA certificate of waiver to conduct the screening utilizing the tests provided. If the has already obtained a CLIA certificate of waiver, the facility does not need to reapply.
3. MSDH will facilitate CLIA waiver application.
4. MSDH will provide guidance on the recommended frequency and target population for screening.
5. Each facility will be required to report to MSDH aggregate testing data on the number of total tests conducted and total number of positive tests conducted weekly.
6. Each facility will be required to report to MSDH specific individual information for each positive and negative test conducted.
7. MSDH will provide support for both aggregate and individual test result reporting.
8. Each facility should identify individuals responsible for conducting the testing.
9. Each facility should identify individuals responsible for reporting to MSDH.
10. MSDH will provide access to training and training support on testing and mitigation strategies.

Aggregate Test Reporting

Each week, the facilities will report the total number of tests conducted and the total number of positives through an MSDH approved process. MSDH will provide specific reporting instructions to the Provider, separate from this agreement.

Individual Test Result Reporting

Reporting of individual results for all positive and negative tests is required and will be entered into the CDC data collection tool called Simple Report. <https://simplereport.gov/sign-up/>

CLIA Certificate of Waiver

In order for facilities to perform COVID-19 screening/testing with the BinaxNOW COVID-19 Ag Card test, a Clinical Laboratory Improvement Amendments (CLIA) certificate of waiver must be obtained for each participating facility in order to perform tests that are categorized as simple laboratory examinations(see information at [CLIA Waiver by Application | FDA](#)). If the facility has already obtained a CLIA certificate of waiver, the facility does not need to reapply.

REQUIREMENTS CONTRACT. During the period of the contract, Provider shall provide all the service described in the contract. Provider understands and agrees that this is a requirements contract and that the Mississippi State Department of Health shall have no obligation to Provider if no services are required. Services shall be provided on an as needed basis only.

Any quantities that are included in the scope of work reflect the current expectations of MSDH for the period of the contract. The amount is only an estimate and Provider understands and agrees that MSDH is under no obligation to Provider to utilize any amount of the services as a result of having provided this estimate or of having any typical or measurable requirement in the past.

ATTACHMENT D: COMPENSATION

In furtherance of the performance of the services referenced above, MSDH agrees to compensate the Provider at the rates and amounts provided in the Fee Schedule and Instructions for Billing MSDH for COVID-19 Testing in Congregate/Confinement Facilities. Provider agrees to ensure the funds subject to this Agreement are used in accordance with applicable conditions, requirements, and restrictions of federal, state, and local laws.

The Provider shall invoice MSDH monthly as needed.

The final invoice to MSDH shall be sent within thirty (30) days after the Agreement ending date. The invoice should have appropriate documentation substantiating actual expenses. MSDH will pay all invoices within forty-five (45) days following the approval of the same. All invoices should be submitted to the following:

Office of Communicable Diseases
Mississippi State Department of Health
Post Office Box 1700
Jackson, Mississippi 39215-1700
(601)576-7725

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COVID-19 Testing in Congregate/Confinement Facilities

Fee Schedule and Instructions for Billing MSDH for COVID-19 Testing

Department of Justice (“DOJ”) Grant Facilities participating will be responsible for following the instructions below for billing the MSDH Office of Epidemiology for testing.

- Invoices should be on facility letterhead.
- The number of tests administered must be listed on the invoice with the month administered and reported as follows:
 - Each COVID-19 test: \$10.00
This rate is structured to encompass expenses incurred for mitigation activities and conducting screening/diagnostic testing within the facility to prevent the spread of COVID-19 to include, but not limited to staff training to reduce transmission, isolation and quarantine, testing set up, staffing, collection supplies, consumables, and other necessary supplies for testing.

***NO CHARGE SHOULD BE BILLED TO THE INDIVIDUAL**

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