

MISSISSIPPI BOARD OF PHARMACY



REQUEST FOR PROPOSALS

PHARMACY BENEFIT MANAGER AUDIT SERVICES

SEPTEMBER 5, 2023

Contact Information for this Request for Proposals:

Pharmacy Benefit Manager Audit Services RFP
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Draft Pharmacy Benefit Manager Audit Review Services Contract

SECTION 1. INTRODUCTION

1.1 Overview and Process

Mississippi Pharmacy Board (hereinafter “Board”) is seeking a contractor to provide a qualified, experienced Pharmacy Benefit Manager (PBM) audit review of a specified PBM licensed in Mississippi to determine compliance with relevant state and federal laws and regulations. The contractor should be capable of providing independent audit review of regulatory requirements for payment, referrals, audits and appeals conducted by the PBMs. The Board seeks to enter into a fixed price contract for one audit which shall expire upon conclusion of Phase 6 of the Contract, submission of Final Report and Presentation of such Final Report to the Board, but no later than June 30, 2024. There will be an option to renew the contract for one (1) additional year, at the discretion of the Board, where during this term one (1) additional audit shall be performed. A draft contract has been included as Appendix A in this RFP for your review and comment. The effective date of this contract will be November 1, 2023.

A copy of this RFP, including any subsequent amendments, along with a copy of all questions from Offerors and responses to those questions, will be posted on the Board’s website under the heading “MBP Proposals Announcements” at <https://www.mbp.ms.gov/news> . Before the award of any contract, the Offeror will be required to document to the Board that it has the necessary capabilities to provide the services specified in this RFP. The Offeror may also be required to provide additional client references, as well as related project experience detail in order to satisfy the Board that the Offeror is qualified. The Board may make reasonable investigations, as it deems necessary and proper, to determine the ability of the Offeror to perform the work, and the Offeror shall be required to furnish to the Board all information that may be requested for this purpose. The Board reserves the right to reject any Proposals if the Offeror fails to provide the requested information and/or fails to satisfy the Board that the Offeror is properly qualified to carry out the obligations of the contract and to complete the work described in this RFP.

The Mississippi Board of Pharmacy is charged by the Legislature to regulate pharmacy benefit managers that administer services on behalf of plan sponsors, insurance companies, third-party payors, unions and health maintenance organizations.

1.2 Purpose and Goals

The purpose of this solicitation is to contract with a Offeror to provide an audit review of pharmacy benefit management services of PBMs licensed by the Board to include regulatory compliance analysis for timely payment of pharmacy claims, denial or reduction of pharmacy payments after adjudication, potential referrals, audits instigated by PBMs and appeals management.

The Board’s goal is to have an independent audit conducted to provide documentation of legal compliance regarding the operations and business practices of a PBM licensed by the Board and doing business in Mississippi. The Board expects to receive a final report that includes data samples and volumes as well as areas of needed improvement and recommended further investigation, if any. The final report shall also provide an analysis of compliance with both Mississippi and federal laws and regulations in a statistically meaningful manner.

SECTION 2. SCOPE OF SERVICES

This section contains information on services and procedures that the Offeror must provide, or adhere to, in servicing the Board's proposed services.

For the services, please respond by restating each service listed, including the number, and confirm your intention to provide the service as described, respond by stating, "*Confirmed*". If your company can provide the service, but not exactly as described, respond by stating, "*Confirmed, but with exceptions*", and state the specific exceptions. Any exceptions should also be noted in *Section 4 – Statement of Compliance*. If your company is currently unable to provide a listed service, respond by stating, "*Unable to provide this service*". Any additional details regarding these services should be provided in your responses to the questionnaire, or as additional information included as an appendix to your Proposals.

2.1 Audit Services

- A. The Contractor must assign a dedicated, but not necessarily exclusive, project manager with at least five (5) years of pharmacy benefit manager audit experience to participate in activities relative to all aspects of the contract between the Board and the Contractor. This individual will meet with Board staff as required to provide analytics, results and review audit samples and attend meetings (if requested) and make recommendations regarding compliance with regulations regarding the PBM audited. Please confirm that you agree to this.
- B. The Contractor must employ and assign a pharmacist with a minimum of five (5) years of pharmacy claims compliance to advise, consult, and participate in activities relative to all aspects of the contract between the Board and the Contractor. Duties of the pharmacist will include, but are not limited to, review of regulatory compliance by the PBM through analysis, conduct a sample survey of claims data, and provide a report to the Board of compliance with state and federal regulations.
- C. The Contractor must employ and assign a certified fraud examiner with a minimum of five (5) years' experience to perform services relative to the aspects of the contract between the Board and the Contractor.
- D. The Contractor shall review the policies and procedures of the PBM and interview key personnel to determine both statutory and regulatory requirements are met.
- E. The Contractor will review claims data and provide analysis regarding payments, under payments and over payments and any adjustments and report results to the Board to ensure that the PBM has accurately paid pharmacy claims using the nationally recognized references for the pricing calculations on the date of claims service.
- F. The Contractor will review data to determine the PBM update the nationally recognized reference prices or amounts used for calculation of reimbursement for prescription drugs and other products and supplies no less than every three (3) business days in accordance with Mississippi Code Annotated, Section 73-21-155(2).
- G. The Contractor will conduct a statistically meaningful sample analysis, from both chain and independent pharmacies located within the five (5) Congressional Districts set forth in Mississippi Code Annotated, Section 73-21-75(2), of paid claims in accordance with state and federal regulations to ensure timeliness, accuracy and compliance with the prompt

payment provisions of Mississippi law.

- H. The Contractor will conduct an examination of any claims found in the sample to have been subsequently denied or reduced after adjudication in violation of Mississippi Code Annotated, Section 73-21-155(6).
- I. The Contractor will conduct an examination of any PBM affiliate and any potential referral in violation of Mississippi Code Annotate, Section 73-21-161, including but not limited to the sharing of patient data among PBM affiliates, and offering or implementing plan designs that require patients to use PBM affiliates.
- J. The Contractor will conduct analysis to determine PBM compliance with the 95% payment of clean claims as noted in Mississippi Code Annotated, Section 73-21-155(4).
- K. The Contractor will conduct analysis to determine PBM compliance with the Pharmacy Audit Integrity Act, Mississippi Code Annotated, Section 73-21-175 *et seq.*
- L. The Contractor will provide to Board a report of the compliance of the PBM with the MAC appeals process. The report will include an analysis of a sample size of current appeals under review by the PBM. The sample will provide detailed dates, analysis, reports and results of the appeals for a variety of pharmacies located across the state of Mississippi to determine compliance with Section 73-21-156(4)(d).
- M. A PBM is required pursuant to Mississippi Code Annotated, Section 73-21-156 to provide an appeal process for claims partially or fully denied for payment upon the request of a pharmacy or pharmacist. The Contractor will review the policies and procedures of the PBM to determine compliance with this process.
- N. The Contractor shall provide analysis and independent review of the financial records of the PBM and audit pharmacy service provider payments pursuant to Section 73-21-156(5)(a) for same date of service.

SECTION 3. REFERENCES

It is a requirement for the Offeror to provide the following references as part of the Proposals. Failure to do so will result in disqualification of the Proposals submitted. References provided by the company must be familiar with the Offeror's abilities in the areas involved with this solicitation. Board staff will use these references to determine the Offeror's ability to perform the services. It is the responsibility of the Offeror to ensure that the reference contact information is correct and current. Board staff will not track down references. Offerors should verify before submitting their Proposals that the contact information provided is correct for each reference. Client references that cannot be contacted for verification will not be considered. The determination of the length of time an Offeror has provided these services will be based upon the initial date the Offeror established a contractual relationship to provide such services.

For each client provided pursuant to Subsections A-C please specify:

- 1) Client contact information, including the name, title, address, email address, and phone number of a person whom we may contact to confirm as needed,
- 2) The specific type of work your company provided to the client,
- 3) Contract effective dates (beginning and end dates) for the time period(s) your company provided services to the client.

If two or more of the following reference requirements are met by the same client, list additional clients so there are at least three (3) clients listed for each section. If you are unable to provide three (3) clients for each reference, provide as many as you have and indicate in the response additional references meeting this requirement are not available.

- A. List up to three clients for whom your company has provided services similar to those requested in this RFP. For each client, specify the type of pharmacy benefit management services provided by your client, the number of covered lives in the client's group, and the period of time retained as a client. One of the three must be the longest standing client and one must be the client with the largest covered lives population. For each client, the list must specify:
 - 1) Client name, include the name, title, address, e-mail address, and phone number of a person whom we may contact to confirm as needed,
 - 2) The type of work your company provided to the client,
 - 3) Contract effective dates for the time period(s) (beginning and end dates) your company provided services to the client.

- B. List up to three governmental clients for whom your company has provided one or more of the services requested in this RFP. If possible, please list three additional clients besides any previously listed references. For each client, specify the type of work performed by your company, the number of covered lives in the client's group, and the period of time retained as a client. For each client, the list must specify:
 - 1) Client name, include the name, title, address, e-mail address, and phone number of a person whom we may contact to confirm as needed,
 - 2) The type of work your company provided to the client,

- 3) Contract effective dates for the time period(s) (beginning and end dates) your company provided services to the client.
- C. List all clients that have discontinued use of your services since January 1, 2018 and your understanding of their discontinued use of your services. For each client, the list must specify:
- 1) Client name, include the name, title, address, e-mail address, and phone number of a person whom we may contact to confirm as needed,
 - 2) The type of work your company provided to the client,
 - 3) Contract effective dates for the time period(s) (beginning and end dates) your company provided services to the client,
 - 4) Reason discontinued.

SECTION 4. STATEMENT OF COMPLIANCE AND EXCEPTION(S) FORM

If an Offeror objects to any terms, conditions, or requirements listed in the Board's Invitation for Proposals for Pharmacy Benefit Manger Audit Services, dated September 5, 2023, including all RFP attachments and amendments, the Offeror must list and explain the exceptions taken. If no exceptions are taken, then the Offeror shall state on the form "No Exceptions Taken." Failure to indicate any exception will be interpreted as the Offeror's intent to comply fully with the requirements as written. Failure to complete and/or sign may result in Offeror being determined nonresponsive. Please carefully review the information located in **RFP Section 4, Statement of Compliance and Exception(s) Form**, and include a copy **signed by an officer, principal, or owner** of your company with your completed Proposals. Failure to submit a signed Statement of Compliance and Exception(s) form may result in your Proposals being eliminated from further consideration. If you object to any of the terms and conditions included in the Draft Pharmacy Benefit Manager Audit Services Contract (refer to **RFP Appendix A**), or any requirements listed in this RFP, please note and explain your objection(s) on the Statement of Compliance and Exception(s) form. Clauses in blue type in the Draft Contract are deemed mandatory and are nonnegotiable.

Conditional or qualified Proposals, unless specifically allowed, shall be subject to rejection in whole or in part. The Proposals must contain a high degree of acceptance of contract terms and conditions listed in the draft contract provided as **Appendix A** of this RFP. Refer to **RFP Section 10.3**.

A Proposals response that includes terms and conditions that do not conform to the terms and conditions in the RFP and draft contract is subject to rejection as non-responsive. The Board reserves the right to permit the Offeror to withdraw nonconforming terms and conditions from its Proposals response prior to a determination by the Board of non-responsiveness based on the submission of nonconforming terms and conditions. As a precondition to Proposals acceptance, the Board may request the Offeror to withdraw or modify those portions of the Proposals deemed non-responsive that do not affect quality, quantity, price, or delivery of the service.

Statement of Compliance and Exception(s) Form

Offeror taking exception to any part or section of the solicitation shall indicate such exceptions on the table below. If no exceptions are taken, then the Offeror shall state in this section “No Exceptions Taken.” Failure to indicate any exception will be interpreted as the Offeror’s intent to comply fully with the requirements as written. Conditional or qualified Proposals, unless specifically allowed, shall be subject to rejection in whole or in part.

We agree to adhere to all terms, conditions, and requirements as set forth in the Mississippi Board of Pharmacy Invitation for Proposals for Pharmacy Benefit Manager Audit Services, dated September 5, 2023, including all RFP amendments, and the conditions contained in the draft contract included as RFP Appendix A, Draft Pharmacy Benefit Manager Audit Services Contract, except as listed below:

Procurement Section and Page Number	Original Language	Requested Change/Exception	MBP Decision
1.			
2.			
3.			

An original signature is required below. This statement must be signed by an appropriate Offeror officer, principal, or owner and returned as part of your Proposals.

Company Name: _____

Printed Name of Representative, Title: _____

Date: _____

Signature: _____

Note: Failure to sign this form may result in the Proposals being rejected as non-responsive. Modifications or additions to any portion of this Proposals document may be cause for rejection of the Proposals.

SECTION 5. GENERAL QUESTIONNAIRE

Failure to answer the following general questionnaire completely will result in Offeror being determined nonresponsive. In preparing your written response to the narrative questionnaire below, you are required to repeat each question, including the number, or requirement followed by your response. Please provide complete answers and explain all issues in a concise, direct manner. If you cannot provide a direct response for some reason (e.g., your company does not collect or furnish certain information), please indicate the reason rather than providing general information that fails to answer the question. “Will discuss” and “will consider” are not appropriate answers.

5.1 Provide the name, title, mailing address, e-mail address, and telephone number of the contact person for this Proposals.

5.2 State the full name of your firm, and provide the address, and telephone number of your principal place of business.

5.3 List the office that will service the Board. If it is located at a different address than the home office, provide the complete address, phone number, and facsimile number for this office.

5.4 Describe your organizational structure. Indicate whether your firm operates as a corporation, partnership, individual, etc. If it is incorporated, include the state in which it is incorporated, and list the names and occupations of those individuals serving on your firm’s Board of Directors.

5.5 How long has the company been providing the equivalent or similar services described within this RFP? Indicate the month and year in which your company was established.

5.6 List the name and principal occupation or business of any person or entity owning 10% or more of your firm.

5.7 Describe any ownership or name changes your firm has been through in the past three years. Are any ownership or name changes planned?

5.8 Describe any changes in the organizational structure that have occurred within your firm over the past twenty-four months or are anticipated during the next twenty-four months including, but not limited to, addition or elimination of product or business lines, mergers, acquisitions, etc. State if the proposed account executive, any officers or principals and/or their immediate families are, or have been within the preceding twelve months, employees of the State of Mississippi.

5.9 Provide a brief description of any outside Contractors or subcontractors that will be involved in providing key services detailed within your Proposals. Please include the term of your current contract with each Contractor or subcontractor. Describe the nature of the relationship with the subcontractor, including any ownership interest.

5.10 Has your firm ever been involved in a lawsuit involving any area covered by this RFP? If yes, provide details including dates and outcomes.

5.11 During the past five (5) years, has your firm, related entities, principals or officers ever been a party in any material criminal litigation, whether directly related to this RFP or not? If so, provide details including dates and outcomes.

5.12 Has your firm been cited or threatened with citation within the last three years by federal or state regulators for violations of any federal, state, or local law or federal, state or local regulation? If the answer is yes, please describe the circumstances in detail.

5.13 Has your firm had any HIPAA breaches or incidents determined to be reportable to the U.S. Department of Health and Human Services (DHHS) within the last three years? If the answer is yes, please describe the circumstances and the corrective action in detail.

5.14 Confirm that your firm is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transaction by any federal department or agency, or by any political subdivision or agency of the State of Mississippi.

5.15 Does your firm currently perform any work for, services to or receive compensation from any PBM, third-party administration company or any insurance company?

5.16 Provide the names of any organizations of which you own or control more than five (5) percent.

5.17 Is your firm licensed or authorized to provide the proposed services in the State of Mississippi?

5.18 Confirm the Proposal is valid for one (1) year after the date of submission.

SECTION 6. TECHNICAL QUESTIONNAIRE

Failure to answer the following questionnaire completely will result in Offeror being determined nonresponsive. In preparing your written response to the narrative questionnaire below, you are required to repeat each question, including the number, or requirement followed by your response. Please provide complete answers and explain all issues in a concise, direct manner. If you cannot provide a direct response for some reason (e.g., your company does not collect or furnish certain information), please indicate the reason rather than providing general information that fails to answer the question. “Will discuss” and “will consider” are not appropriate answers.

6.1 Describe the team dedicated to providing the requested scope of services for the Board. Specifically,

- A. Identify the dedicated account manager who will serve as the primary contact for the Board along with a list of job duties and their experience with other audits similar to the audit services requested in this RFP. Include a resume(s) as an appendix to your Proposals in Section 10.
- B. Provide the name(s) and resumes of all key personnel who will oversee and provide the audit services rendered to the Board, a brief statement of all tasks and phases of the project each individual will be assigned, a brief statement as to why each person is qualified relative to this work and identify area(s) of expertise for each key person, detailed information on any special training or designation, and each person’s respective total number of years of experience related to the services being requested in this RFP. Include all resumes as an appendix to your Proposals in Section 10.

6.2 How many additional clients will the dedicated account manager assigned to this account routinely handle?

6.3 The Board must have prompt and direct access to the Offeror throughout the contract period. Describe in detail how your company will provide this access.

6.4 Provide your written procedures documenting the security and off-site storage of all data contained on tapes, discs, files, batch files, and other records pertinent to the audit services to be provided to and on behalf of the Board.

6.5 Describe your organizations’ confidentiality standards.

6.6 Confirm you have provided a copy of your implementation project plan that indicates a service start date of November 1, 2023. Identify tasks/actions, critical events, timelines, and the responsible parties during each phase.

6.7 Describe the most frequent problems you have encountered during previous contracts for service similar to those described in the RFP. How were these resolved?

6.8 Please confirm that your cost Proposals (fee schedule) includes all costs associated with implementation services.

6.9 The Board reserves the right to audit all records maintained by the contractor or its subcontractor's relative to the contractor's performance under this Contract. At least two (2) business days' notice by the Board will be given to the contractor of the intent to audit. The Board shall have the right to perform financial, performance, and other special audits on such records maintained by the contractor during regular business hours throughout the contract period. The contractor agrees that confidential information including, but not limited to, medical and other pertinent information relative to this contract, shall not be disclosed to any person or organization for any purpose without the expressed, written authority from the Board. The selected contractor will make available all records for review at no cost to the Board. Indicate your acceptance of this Proposals requirement and willingness to cooperate. For the purposes of this section, the term "audits" refers to financial, performance, and other special audits on such records maintained by the contractor and/or its subcontractors relative to the contractor's performance under this Contract. Confirm you will comply with this requirement.

6.10 What auditing standards does your organization adhere to?

6.11 Describe the activities required to implement your auditing services.

6.12 Include in your Proposals your suggested timeline for the audit services to be performed.

SECTION 7. FEE SCHEDULE

The Fee Schedule must be submitted as described herein. Modification or addition to any portion of the Fee Schedule may be cause for rejection of the Proposals. The fees quoted shall be inclusive of, but not limited to the following: all required labor; all required equipment/material; all required insurance, bond, or other surety; all required overhead/profit; all required applicable taxes; all required vehicles; all required fuel and mileage; all required travel; all required labor and supervision; all required training; all required business and professional certifications, licenses, permits, or fees; and, any and all other direct or indirect costs, incurred or to be incurred. All pricing shall include all associated costs with no additional or hidden fees. The Offeror shall provide an hourly rate for each category of personnel that will provide services requested in this RFP. All expenses shall be inclusive. The fees quoted shall constitute the entire compensation due to the Offeror for services rendered by each staff member. Pricing must be firm, flat dollar amounts, as percentage of other variable amounts will not be accepted. The Offeror shall also include a **total cost** for full performance of all services requested in the RFP.

The Fee Schedule shall be submitted as Section 7 of the Proposals. An example of the fee schedule is below:

Staff Category	Hourly Rate	Total Hours To Be Performed
Project Manager	\$xxx.xx	XXX
Pharmacist	\$xx.xx	XX
Certified Fraud Examiner	\$xxx.xx	XXX
Data/Financial Analyst	\$xxx.xx	XXX
Total Cost of Contract Services	\$XXXXX.XX	

The pricing quoted above shall constitute the entire compensation due to the selected Offeror for services performed by its staff and all of the selected Offeror’s obligations hereunder regardless of the difficulty, materials, or equipment required. No additional compensation will be provided by the Board for any expense, cost, or fee not specifically authorized by the resulting contract. The Board shall not provide any prepayments or initial deposits in advance of services being rendered. Fees for services provided by the selected Offeror shall be billable to the Board in six (6) installments, in arrears, upon completion of services of each of the six (6) phases of the Contract by the deliverable date set forth in the awarded Contract. The Deliverables and Due Date Schedule shall be submitted by Offeror as Section 8 of the Proposals.

The Schedule to be completed and submitted as Section 8 of the proposals is below:

Deliverables	Services Performed	Due Date
Phase 1	Planning & Preparation; Pre-Audit Work	
Phase 2	Audit Start and Data Requests	
Phase 3	Data Compilation and Integrity Testing	
Phase 4	Audit Field Work; PBM Interaction	
Phase 5	Draft Audit Report Summarizing Findings provided to the Board Staff	

Phase 6	Review any PBM Responses; Presentation of Final Audit Report to the Board at May Board Meeting	
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Only those services agreed to by contract shall be considered for reimbursement/compensation by the Board. Payment for any and all services provided by the selected Offeror to the Board shall be made only after said services have been duly performed and properly invoiced. The fees listed above are firm for the duration of resulting contract and are not subject to escalation for any reason unless resulting contract is duly amended.

The selected Offeror shall submit all invoices in a form acceptable to the Board with all of the necessary supporting documentation prior to the payment of allowable costs. Such invoices will, at a minimum, include the appropriate descriptions of the services being billed or other bases for charges included in RFP Section 7, Fee Schedule. Details will be determined during contract negotiations.

The payment of an invoice by the Board shall not prejudice the Board's right to object or question any invoice or matter in relation thereto. Such payment by the Board shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any costs invoiced therein. The selected Offeror's invoice or payment shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Board, on the basis of audits, not to constitute allowable costs. Any payment shall be reduced for overpayment or increased for underpayment on subsequent invoices. For any amounts which are or shall become due and payable to the Board and/or the Board by the selected Offeror, the Board reserves the right to (1) deduct from amounts which are or shall become due and payable to the Board under contract between the parties; or (2) request and receive payment directly from the selected Offeror within fifteen (15) days of such request, at the Board's sole discretion.

The Board reserves the right to deduct from amounts which are or shall become due and payable to the selected Offeror under the Contract between the parties. Notwithstanding anything to the contrary herein, any reduction of payments to shall be made only with the prior agreement of both parties. In addition, in the event of termination of the Contract for any reason, the selected Offeror shall be paid for services rendered and allowable expenses incurred up to the effective date of termination.

SECTION 8. SUBMISSION OF PROPOSALS AND PROPOSALS OPENING

8.1 Proposals must be received in the Board in Jackson, Mississippi by 2:00 p.m. CT on October 3, 2023.

8.2 Proposals may be submitted electronically or by paper format as outlined below. Offerors are only required to submit Proposals in one manner.

A. Submission of Paper Proposals

- 1) Paper copies of the original signed Proposals package and one copy of the signed Proposals package may be submitted in a sealed envelope or package to:

**Mississippi Board of Pharmacy
Attn: Todd Dear, Associate Director
6311 Ridgewood Road
Suite E401
Jackson, Mississippi 39211**

- 2) The sealed envelope or package must be labeled:
**SEALED PROPOSALS– DO NOT OPEN
Pharmacy Benefit Manager Audit Services**
- 3) Proposals are subject to rejection unless submitted with the information included on the outside the sealed Proposals envelope or package.
- 4) The time and date of receipt will be indicated on the sealed Proposals envelope or package by Board staff. The only acceptable evidence to establish the time of receipt at the office identified for Proposals opening is the time and date stamp of that office on the Proposals wrapper or other documentary evidence of receipt used by that office.
- 5) All Offerors are urged to take the possibility of delay into account when submitting a Proposals. Timely submission of the Proposals package is the responsibility of the Offeror. Proposals received after the specified time will not be considered. It is suggested that if a Proposals is mailed to the Board, it should be posted in certified mail with a return receipt requested. The Board will not be responsible for mail delays or lost mail. All risk of late arrival due to unanticipated delay – whether delivered by hand, U.S. Postal Service, courier or other delivery service or method – is entirely on the Offeror.

B. Submission of Proposals Electronically

- 1) Electronic submissions of proposals shall be sent to TDear@mbp.ms.gov and PCulbertson@mbp.ms.gov
- 2) The subject line of the email must read:
SEALED PROPOSALS Pharmacy Benefit Manager Audit Services 10/03/23
- 3) The time and date stamp on the email as received by the Board will be considered the time and date of receipt. It is the sole responsibility of the Proposal to ensure the email containing the Proposals package is received by the Board prior to the submission deadline.

8.3 Timely submission of the Proposals package is the sole responsibility of the Offeror. Proposals received after the specified time shall be rejected and remain unopened in the procurement file. The Offeror assumes all risk regarding delivery of the Proposals. The Board

will not be responsible for delivery delays, packages which are lost in the delivery process, misdirected emails, or other deliver errors.

8.4 Offerors shall identify each page of the Proposals package with the Offeror's name.

8.5 Failure to submit a Proposals in the Proposals form provided will be considered cause for rejection of the Proposals. Modifications or additions to any portion of the Proposals document may be cause for rejection of the Proposals. The Board reserves the right to decide, on a case-by-case basis, whether to reject a Proposals with modifications or additions as non-responsive. As a precondition to Proposals acceptance, the Board may request the Offeror to withdraw or modify portions deemed non-responsive that do not affect the service's quality, quantity, price, or delivery.

8.6 Proposals submitted by facsimile (fax) machine will not be accepted/considered.

8.7 Submission Format –Each Offeror must submit their Proposals in the style and format outlined herein.

A. The Proposals should be labeled and submitted as applicable per file version:

Section 1 – Introduction/Signed Proposals Cover Letter

Section 2 – Scope of Services Confirmation

Section 3 – References

Section 4 – Signed Statement of Compliance and Exception(s) Form

Section 5 – General Questionnaire

Section 6 – Technical Questionnaire

Section 7 – Fee Schedule

Section 8 – Deliverable Dates

Section 9 - Signed Acknowledgement

Section 10 – Résumés for Key Staff: Provide a complete résumé of key Offeror staff who will be assigned to render services to the Board, including detailed information on any special training or designations and each person's respective total number of years of experience related to the services being requested in this RFP.

Section 11 – Any Additional Information Not Specifically Requested: If you have additional information you would like to provide, include it as Section 11 of your Proposals. It is the Offeror's sole responsibility to submit information relative

to the evaluation of its Proposals and the Board is under no obligation to solicit such information if it is not included in the Proposals.

- B. Each page of the Proposals should be numbered. Multiple page attachments and samples should be numbered internally within each document, and not necessarily numbered in the overall page number sequence of the entire Proposals. The intent of this requirement is for the Offeror to submit all information in a manner that is clearly referenced and easily located.

8.8 Any Offeror claiming that its response contains information exempt from the Mississippi Public Records Act (Mississippi Code Annotated §§ 25-61-1 et seq. and 79-23-1), shall segregate and mark the information as confidential and provide the specific statutory authority for the exemption. If the Proposals contains confidential information, one (1) redacted electronic copy of the complete Proposals including all attachments shall be submitted in a searchable Microsoft Office® format, preferably in Word ® or PDF® .

- A. **If a redacted copy is not submitted, the Board shall consider the entire Proposals to be public record.** The redacted copy should identify which section or information has been redacted and the Offeror shall provide the specific statutory authority for the exemption. Per Mississippi Code Annotated § 25-61-9(7), the type of service to be provided, the price to be paid, and the term of the Contract cannot be deemed confidential.
- B. The redacted copy shall be considered public record and immediately released, without notification to the Offeror, pursuant to any request under the Mississippi Public Records Act, Mississippi Code Annotated §§ 25-61-1 *et seq.* and 79-23-1. Redacted copies shall also be used/released for any reason deemed necessary by the Board, including but not limited to, submission to the PPRB, posting to the Transparency Mississippi website, etc.
- C. In accordance with *PPRB OPSCR Rules and Regulations Section 1-301*, “Any party seeking a protective order on a procurement contract awarded by state agencies shall give notice to and provide the reasons for the protective order to the party requesting the information in accordance with the Mississippi Rules of Civil Procedure. The notice and reasons for the protective order must also be posted on the Mississippi Procurement Portal for a minimum of seven (7) days before filing the petition seeking the protective order in a chancery court. Any party seeking a protective order in violation of this subsection may be barred by a state agency from submitting Proposals, Proposals or qualifications for state procurements for a period not to exceed five (5) years.” Any records requested through a public records request shall be released no later than twenty-one (21) days from the date the third parties are given notice by the public body unless the third parties have followed the notification requirements and also filed in chancery court a petition seeking a protective order on or before the expiration of the twenty-one (21) daytime period.

8.9 All documentation submitted in response to this RFP and any additional information submitted in response to subsequent requests for information pertaining to this RFP shall become the property of the Board and will not be returned to the Offeror.

8.10 All information requested is considered important. Failure to provide all requested information and in the required format may result in disqualification of the Proposals. The Board has no obligation to locate or acknowledge any information in the Proposals that is not presented under the appropriate outline and in the proper location according to the instructions herein.

8.11 If determined that the Offeror has altered any language in the original RFP, the Board may, at its sole discretion, disqualify the Offeror from further consideration. The RFP issued by the Board is the official version and will supersede any conflicting language subsequently submitted in Proposals.

8.12 Important Dates and Deadlines

September 5, 2023	Invitation for Proposals Released
September 19, 2023	Questions and Request for Clarification due to the Board
September 25, 2023	Anticipated responses to Offeror questions to be posted
October 3, 2023 2:00 pm	Proposals submission deadline
October 10, 2023	Presentation of Finalist, if Required by Board
October 13, 2023	Notice of Intent to Award
1 Business day following Special Called Board Meeting	Notice of Contract Award Published
November 1, 2023	Contract Effective Date

*Adjustments to the schedule may be made as deemed necessary by the Board. Any Offerors selected as finalists will make presentations in Jackson, Mississippi. The Board shall not be responsible for any expenses incurred by the Offeror for such presentation. **Due to the constraints of the RFP timeline and the relative importance of presentations in the evaluation process, interested Offerors are encouraged to be prepared to accommodate this schedule.**

8.13 Contact, Questions/Request for Clarification, and Acknowledgement of Responses/RFP Amendments

A. Offerors must carefully review this solicitation, the Contract, risk management provisions, and all attachments for defects, questionable, or objectionable material. Following review, Offerors may have questions to clarify or interpret the RFP to submit the best Proposals possible. To accommodate the questions and requests for clarifications, Offerors shall submit any such question via email by the deadline reflected in RFP Section 9.2. All questions and requests for clarifications must be directed by email to:

Todd Dear, Associate Director
 Email: TDear@mbp.ms.gov

B. Offerors should enter “RFP Pharmacy Benefit Manager Audit Services - Questions” as the subject for the email. Question submittals should include a reference to the applicable RFP section and be submitted in the format shown below:

	RFP Section, Page Number	Offeror Question/Request for Clarification
1.		

- C. Official responses will be provided only for questions submitted as described above and only to clarify information already included in the RFP. The identity of the organization submitting the question(s) will not be revealed. All questions and answers will be published on the Board's website as an amendment to the RFP by the date and time reflected in RFP Section 8.2.
- D. The Board will not be bound by any verbal or written information that is not contained within this RFP unless formally noticed and issued by the contact person as an RFP amendment. Offerors are cautioned that any statements made by Board personnel that materially change any portion of the Proposals document shall not be relied upon unless subsequently ratified by a formal written amendment to the Proposals document.
- E. All Offeror communications regarding this RFP must be directed to Todd Dear, Associate Director. Unauthorized contact regarding the RFP with other employees of the Board may result in the Offeror being disqualified, and the Offeror may also be suspended, disbarred, or removed from consideration for award of contracts with the State of Mississippi for a period of two (2) years. At no time shall any Offeror or its personnel contact, or attempt to contact, any Board staff regarding this RFP except the contact person as set forth and, in the manner, prescribed herein.
- F. No pre-Proposals conference will be held for this RFP.
- G. The Board reserves the right to amend this RFP at any time. Should an amendment to the RFP be issued, it will be posted on the Board's website under the heading at "MBP Proposals Announcements" at <https://www.mbp.ms.gov/news> in a manner that all Offerors will be able to view. Offerors must acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the Proposals package, by identifying the amendment number and date in the space provided for this purpose on the RFP amendment, or by letter. The acknowledgment should be received by the Board by the time, date, and at the place specified for receipt of Proposals. It is the Offeror's sole responsibility to monitor the website for any updates or amendments to the RFP. Questions and Answer document(s), if any are issued/posted on the Board's website, must be treated the same as an RFP Amendment, meaning they will require acknowledgement.
- H. The RFP is comprised of the base RFP document, any attachments, any amendments issued prior to the submission deadline, and any other documents released before contract award.

8.14 Corrections and Clarifications

The Board reserves the right to request clarifications or corrections to Proposals. Any Proposals received which does not meet any of the requirements of this RFP, including clarification or correction requests, may be considered non-responsive and eliminated from further consideration.

8.15 Modification, Withdrawal, or Rejection of a Proposals

- A. Modifications or additions to any portion of the procurement document may be cause for rejection of the Proposals. The Board reserves the right to decide, on a case-by-case basis, whether to reject a Proposals with modifications or additions as non-responsive. As a precondition to Proposals acceptance, The Board may request the Offeror to withdraw or modify those portions of the Proposals deemed non-responsive that do not affect quality, quantity, price, or delivery of the service. The RFP issued by the Board

- is the official version and will supersede any conflicting RFP language subsequently submitted in Proposals.
- B. An Offeror may withdraw a submitted Proposals by submitting a written notification for its withdrawal to the Board, signed by the Offeror, and emailed, or mailed to the addresses provided within RFP Section 8.1 prior to the time and date set for Proposals opening. The Board shall not accept any amendments, revisions, or alterations to Proposals after the due date unless requested by the Board. Late Proposals shall not be considered for award and the Offeror shall be notified as soon as practicable.
 - C. If the price proposed/offered is substantially lower than those of other Offerors, a mistake may have been made. An Offeror may withdraw its Proposal from consideration if certain conditions are met:
 - 1) The Proposal is submitted in good faith;
 - 2) The price proposed/offered is substantially lower than those of other Offerors because of a mistake;
 - 3) The mistake is a clerical error, not an error of judgment; and,
 - 4) Objective evidence drawn from original work papers, documents, and other materials used in the preparation of the Proposal demonstrates clearly that the mistake was an unintentional error in arithmetic or an unintentional omission of a quantity of labor or material.
 - D. To withdraw a Proposal that includes a clerical error after Proposal's opening, the Offeror must give notice in writing to the Board of claim of right to withdraw a Proposal. Within two (2) business days after the Proposal's opening, the Offeror requesting withdrawal must provide to the Board all original work papers, documents, and other materials used in the preparation of the Proposal.
 - E. An Offeror may also withdraw a Proposal, prior to the time set for the opening of Proposal, by simply making a request in writing to the Board. No explanation is required.
 - F. No Offeror who is permitted to withdraw a Proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work for the person to whom the Contract is awarded, or otherwise benefit from the Contract.
 - G. No partial withdrawals of a Proposal is permitted after the time and date set for the Proposal's opening; only complete withdrawals are permitted.
 - H. A Proposal that includes terms and conditions that do not conform to the terms and conditions in the RFP document is subject to rejection as non-responsive. Further, submission of a Proposal that is not complete and/or signed is subject to rejection as non-responsive. The Board reserves the right to permit the Offeror to withdraw nonconforming terms and conditions from its Proposal prior to a determination by the Board staff of non-responsiveness based on the submission of nonconforming terms and conditions.

8.16 Right to Consider Historical Information

The Board reserves the right to consider historical information regarding the Offeror, whether gained from the Offeror's Proposal, conferences with the Offeror, references, or any other source during the evaluation process. This may include, but is not limited to, information from any state or federal regulatory entity.

8.17 Right to Reject, Cancel and/or Issue Another RFP

The Board specifically reserves the right to reject any or all Proposals received in response to the RFP, cancel the RFP in its entirety, or issue another RFP.

8.18 Cost of Proposals Preparation

All costs incurred by the Offeror in preparing and delivering its Proposal, making presentations, and any subsequent time and travel to meet with the Board regarding its Proposal shall be borne exclusively by the Offeror.

8.19 Registration with Mississippi Secretary of State

By submitting a Proposal, the Offeror certifies that it is registered to do business in the State of Mississippi as prescribed by Mississippi law and the Mississippi Secretary of State or, if not already registered, that it will do so within seven (7) business days of being notified by the Board that it has been selected for contract award. Sole proprietors are not required to register with the Mississippi Secretary of State.

8.20 Offeror Investigations and Certifications

- A. Before submitting a Proposal, each Offeror shall make all investigations and examinations necessary to ascertain all site conditions and requirements affecting the full performance of the Contract and to verify any representations made by the Board upon which the Offeror will rely. If the Offeror receives an award because of its Proposals submission, failure to have made such investigations and examinations will in no way relieve the Offeror from its obligation to comply in every detail with all provisions and requirements of the Contract documents, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim whatsoever for additional compensation.
- B. By submitting a Proposal, the Offeror certifies the following:
 - 1) That he/she has thoroughly read and understands the RFP and all attachments thereto;
 - 2) That the company meets all requirements and acknowledges all certifications contained in the RFP and attachments thereto;
 - 3) That it is not currently debarred from submitting Proposals for contracts issued by any political subdivision or agency of the State of Mississippi and that it is not an agent of a person or entity that is currently debarred from submitting Proposals for contracts issued by any political subdivision or agency of the State of Mississippi;
 - 4) 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, or agreement with any other Offeror or competitor relating to those prices, the intention to submit a Proposal, or the methods or factors used to calculate the prices proposed/offered; and,
 - 5) That such Offeror has not retained any person or agency on a percentage, commission, or other contingent arrangement to secure this Contract.
- C. The Offeror agrees that submission of a signed Proposal, fee schedule and deliverable date forms is certification that the Offeror will accept an award made to it because of the

submission. Under no circumstances, shall the maximum time for Proposal acceptance by the State extend beyond one (1) year from the date of opening.

8.21 State Approval

It is understood that the resulting contract may require approval by the PPRB. If required and if this contract is not approved, it is void and no payment shall be made hereunder. Every effort shall be made by the Board to facilitate rapid approval and a start date consistent with the proposed schedule.

SECTION 9. PROPOSALS EVALUATION AND AWARD

9.1 All Proposals received in response to this RFP by the stated deadline will receive a comprehensive, fair, and impartial evaluation. A formal scoring methodology comprised of two phases – compliance, analysis – will be utilized, with each Proposal required to pass the previous phase to qualify for further evaluation in the next phase. The Board, at its discretion, may require a finalist phase during which a presentation will be made by Offerors reaching such phase. The Board will use an evaluation committee to review and evaluate the Proposals using a 100-point scale as well as consensus scoring. Consensus scoring involves a solidarity or general agreement of opinion among evaluators, based on information and data contained in the RFP Proposals. The evaluation of any Proposals may be suspended and/or terminated at the Board’s discretion at any point during the evaluation process at which time the Board determines that said Proposals and/or Offeror fails to meet any of the mandatory requirements as stated in this RFP, the Proposal is determined to contain fatal deficiencies to the extent that the likelihood of selection for contract negotiations is minimal, or the Board receives reliable information that would make contracting with the Offeror impractical or otherwise not in the best interests of the Board and/or the State of Mississippi.

9.2 Evaluation Process

- A. Compliance Phase - In this initial phase of the evaluation process, all Proposals received are reviewed by the Board’s Associate Director and/or designee to determine if mandatory RFP requirements have been satisfied, meaning whether a Proposals/Offeror is responsive, responsible, and/or acceptable. Compliance requirements are not assigned a point percentage or score but are simply recorded as Pass or Fail.
- 1) Every statement containing “must,” “shall,” “will,” etc., is a mandatory requirement. Failure to respond leads to mandatory Proposals disqualification. Such mandatory requirements are to be clear and (preferably) standing alone.
 - 2) Every statement containing “may,” “can,” “should,” etc., is a desirable requirement. Offerors may ignore these if they wish. The only penalty for doing so is a possible loss of scoring points if the requirement has scoring points tied to it.
 - 3) A Pass score is assigned to each factor for which the response to the question(s) defined is “Yes.” If any factor receives a Fail score or for some reason cannot be evaluated, an explanation of the problem or concern and the corresponding question must be evaluated and made part of the record, to include any allowable waivers.
 - 4) Proposals with errors that do not alter the substance of the Proposals can be accepted, and the Board Associate Director may allow the Offeror to correct the problem prior to review if the irregularities are insignificant mistakes that can be waived or corrected without prejudice to other Offerors. The Board has the right to waive minor defects or variations of a Proposals from the exact requirements of the specifications that do not affect the price, quality, quantity, delivery, or performance time of the services being procured. If insufficient information is submitted by an Offeror with the Proposals for the Board to properly evaluate the Proposals, the Board has the right to require such additional information as it may deem necessary after the time set for receipt of Proposals, provided that the information requested does not change the price, quality, quantity, delivery, or performance time of the services being procured. Discussions may be conducted with Offerors who submit Proposals determined to be reasonably

susceptible of being selected for the award, but Proposals may also be accepted without such discussions. If any component received a Fail score (a “No” response) on any item or contains an item which for some reason cannot be evaluated, it shall be deemed as non-responsive and/or non-responsible. Failure to comply with these RFP requirements may result in the Proposals being eliminated from further consideration. All Proposals which are determined to be responsive, responsible, and/or acceptable will continue to next phase.

B. Analysis Phase - In this phase of the evaluation process, the evaluation committee will utilize consensus scoring to determine numerical scores for each Proposals. The evaluation factors are listed in order of their relative importance and weight:

- 1) Relevant firm experience (35%)
- 2) Team experience and qualifications (25%)
- 3) Project (RFP) understanding and approach (15%)
- 4) Plan for project management (15%)
- 5) Other factors (such as ability to proceed immediately, length of time to be completed, etc). (10%)

Eligible proposals will be ranked per these evaluation criteria. Proposal will also be ranked from least costly to mostly. Award will be based on the overall evaluation score and the proposer’s bid price will be considered to select the proposal that meets the RFP needs effectively with consideration given to proposal pricing.

C. Finalist Phase - Upon completion of the Analysis Phase, the Board reserves the right to conduct a finalist phase. At the Board’s discretion, all finalists may be required to make a presentation to the evaluation committee. If scheduled, individual finalist presentations shall be held either in Jackson, Mississippi, or virtually, to allow the evaluation committee the opportunity to conduct technical interviews of the finalists, and to confirm/clarify information provided in the submitted Proposals or otherwise gathered during the evaluation process. Any substantial oral clarification shall be reduced to writing by the Offeror. The Board will provide at least five (5) days advance notice to the impacted Offerors. Due to the constraints of the RFP timeline and the relative importance of presentations and site visits in the evaluation process, interested Offerors are encouraged to be prepared to accommodate this schedule.

9.3 Upon completion of the evaluation of Proposals, the evaluation committee will determine the top scoring Proposals and provide a recommendation to the Board. The Board will decide as to the Proposals deemed most advantageous to the Board and will authorize the issuance of (an) intent to award the contract(s) to the selected Offeror(s) and authorize contract negotiations with selected Offeror(s). After such authorization by the Board, all participating Offerors will be notified in writing of the contract award(s) and will be afforded the opportunity to participate in a post-award debriefing.

9.4 The Board intends to award one contract to provide the services described within this RFP to a responsible and responsive Offeror whose Proposals is determined in writing to be the most advantageous to the State taking into consideration the price and the evaluation factors set forth in this RFP. No other factors or criteria shall be used in the evaluation. Award for this procurement will be posted on the agency website under the heading “MBP Proposals Announcements” at <https://www.mbp.ms.gov/news> . Offerors will be notified via email of the awards.

9.5 The Board reserves the right to further clarify and/or negotiate with selected Offeror(s) evaluated best following completion of the evaluation of Proposals but prior to contract execution if deemed necessary. The Board reserves the right to further clarify and/or negotiate with selected Offeror(s) on any matter submitted to facilitate arriving at contract(s). The Board also reserves the right to move to the next best Offeror if negotiations do not lead to executed contract(s) with the best Offeror(s).

SECTION 10. POST-AWARD AND OFFEROR DEBRIEFING

10.1 An Offeror, successful or unsuccessful, may request a post-award Offeror debriefing, in writing, by email Tdear@mbp.ms.gov. Offerors should enter “RFP Pharmacy Benefit Manger Audit Services– Debriefings” as the subject for the email. The written request must be received by Todd Dear, Board Associate Director, within three (3) business days of notification of contract award(s). A post-award Offeror debriefing is a meeting and not a hearing; therefore, legal representation is not required. A debriefing typically occurs within three (3) business days of receipt of the request. If a Offeror prefers to have legal representation present, the Offeror must notify Todd Dear, Board Associate Director, in writing and identify its attorney by name, address, and telephone number. The Board will schedule and/or suspend and reschedule the meeting at a time when a Representative of the Office of the Mississippi Attorney General can be present. For additional information regarding Post-Award Offeror Debriefing, as well as the information that may be provided and excluded, please see Section 7-113 through 7-113.07, Post-Award Offeror Debriefing, of the PPRB OPSCR Rules and Regulations as updated and replaced by PPRB.

10.2 Protest

Any actual or prospective Offeror who is aggrieved in connection with this solicitation or the outcome of this RFP may file a protest with Todd Dear, Board Associate Director. The protest shall be submitted within seven (7) calendar days of notification of contract award(s) at or before 5:00 PM CST, in writing after such aggrieved person or entity knows or should have known of the facts giving rise thereto. The written protest letter shall contain an explanation of the specific basis for the protest. All protests must be in writing, dated, signed by the Offeror or an individual authorized to sign contracts on behalf of the protesting Offeror, and contain a statement of the reason(s) for protest, citing the law(s), rule(s) and regulation(s) or procedure(s) on which the protest is based. The protesting Offeror must provide facts and evidence to support the protest. A protest is considered filed when received by Todd Dear, Board Associate Director, via either U.S. mail, postage prepaid, or by personal delivery. Protests filed after 5:00 PM CST will not be considered.

10.3 Required Contract Terms and Conditions

A draft contract has been included as Appendix A to this RFP for your review and comment. Any contract entered into with the Board pursuant to this RFP shall have the clauses in blue font as these are required pursuant to the PPRB OPSCR Rules and Regulations as updated and replaced by PPRB. These required clauses are mandatory and are non-negotiable. The Board discourages exceptions from the draft contract content, regardless of content being required or not. Such exceptions may cause a Proposals to be rejected as non-responsive. Proposals which condition the Proposals based upon the State accepting other terms and conditions not found in the RFP, or which take exception to the State’s terms and conditions, may be found non-responsive, and no further consideration of the Proposals will be given.

10.4 Agency Website

This RFP, any amendment thereto, such as Questions and Answer document(s) and Summary of Pre-Proposals Conference, Tour, or Site Visit, if any were issued, the Notice of Intent To Award, and the Evaluation Report will be posted on the agency website at <https://www.mbp.ms.gov/news>

10.5 Attachments

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

10.6 Measurement of Performance

The Contractor will use industry standards, PBM contracts, claims data, audit request information, and state and federal regulations to determine compliance with performance measures. The report and determination of the Contractor shall be final, binding and conclusive as to an audit review of the PBM; provided, however, that before a final report and determination is issued, the PBM shall have a reasonable opportunity to review the non-proprietary supporting documentation and proposed report of the independent reviewer and to provide any comments to the independent reviewer.

10.7 Measurement Period

Quarterly and Annual Measurement Periods are measured based on the calendar year.

Appendix A
Contractor Services Contract

PHARMACY BENEFIT MANAGER AUDIT SERVICES CONTRACT

This Pharmacy Benefit Manager Audit Services Contract (Contract) is made by and between the Mississippi Board of Pharmacy (Board) and [Insert Company Name] (Contractor), effective November 1, 2023, under the following terms and conditions under which the Contractor agrees to provide pharmacy benefit manager audit services to the Board.

1. Scope of Services

The primary function of the Contractor is to provide an independent audit review of a PBM licensed by the Board. These services include statutory and regulatory compliance analysis for timely payment of pharmacy claims, denial or reduction of pharmacy payments after adjudication, potential referrals, PBM audits of pharmacies, and appeals management. The Board shall receive a final report that includes data samples and volumes, as well as areas of improvement and recommended further investigation, if any. The final report shall include an analysis of compliance with all state and federal laws and regulations in a statistically meaningful manner. The Contractor will provide all services and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

Audit Services

- A. The Contractor must assign a dedicated, but not necessarily exclusive, project manager with at least five (5) years of pharmacy benefit manager audit experience to participate in activities relative to all aspects of the contract between the Board and the Contractor. This individual will meet with Board staff as required to provide analytics, results and review audit samples and attend meetings (if requested) and make recommendations regarding compliance with regulations regarding the PBM audited. Please confirm that you agree to this.
- B. The Contractor must employ and assign a pharmacist with a minimum of five (5) years of pharmacy claims compliance to advise, consult, and participate in activities relative to all aspects of the contract between the Board and the Contractor. Duties of the pharmacist will include, but are not limited to, review of regulatory compliance by the PBM through analysis, conduct a sample survey of claims data, and provide a report to the Board of compliance with state and federal regulations.
- C. The Contractor must employ and assign a certified fraud examiner with a minimum of five (5) years' experience to perform services relative to the aspects of the contract between the Board and the Contractor.
- D. The Contractor shall review the policies and procedures of the PBM and interview key personnel to determine both statutory and regulatory requirements are met.
- E. The Contractor will review claims data and provide analysis regarding payments, under payments and over payments and any adjustments and report results to the Board to ensure that the PBM has accurately paid pharmacy claims using the nationally recognized references for the pricing calculations on the date of claims service.
- F. The Contractor will review data to determine the PBM update the nationally recognized reference prices or amounts used for calculation of reimbursement for prescription drugs and other products and supplies no less than every three (3) business days in accordance

with Mississippi Code Annotated, Section 73-21-155(2).

- G. The Contractor will conduct a statistically meaningful sample analysis, from both chain and independent pharmacies located within the five (5) Congressional Districts set forth in Mississippi Code Annotated, Section 73-21-75(2), of paid claims in accordance with state and federal regulations to ensure timeliness, accuracy and compliance with the prompt payment provisions of Mississippi law.
- H. The Contractor will conduct an examination of any claims found in the sample to have been subsequently denied or reduced after adjudication in violation of Mississippi Code Annotated, Section 73-21-155(6).
- I. The Contractor will conduct an examination of any PBM affiliate and any potential referral in violation of Mississippi Code Annotated, Section 73-21-161, including but not limited to the sharing of patient data among PBM affiliates, and offering or implementing plan designs that require patients to use PBM affiliates.
- J. The Contractor will conduct analysis to determine PBM compliance with the 95% payment of clean claims as noted in Mississippi Code Annotated, Section 73-21-155(4).
- K. The Contractor will conduct analysis to determine PBM compliance with the Pharmacy Audit Integrity Act, Mississippi Code Annotated, Section 73-21-175 *et seq.*
- L. The Contractor will provide to Board a report of the compliance of the PBM with the MAC appeals process. The report will include an analysis of a sample size of current appeals under review by the PBM. The sample will provide detailed dates, analysis, reports and results of the appeals for a variety of pharmacies located across the state of Mississippi to determine compliance with Section 73-21-156(4)(d).
- M. A PBM is required pursuant to Mississippi Code Annotated, Section 73-21-156 to provide an appeal process for claims partially or fully denied for payment upon the request of a pharmacy or pharmacist. The Contractor will review the policies and procedures of the PBM to determine compliance with this process.
- N. The Contractor shall provide analysis and independent review of the financial records of the PBM and audit pharmacy service provider payments pursuant to Section 73-21-156(5)(a) for same date of service.

2. Contract Term

- A. This Contract is effective November 1, 2023 and will end upon deliverable of Phase 6 of the Contract, including submission of the Final Report and Presentation of such Final Report to the Board, but will be no later than June 30, 2024. There will be an option to renew the contract for one (1) additional year, at the discretion of the Board, where during this term one (1) additional audit shall be performed.
- B. All records and information provided by the Board or through its Licensees to the Contractor are the sole property of the Board and will be returned to the Board within thirty (30) days of the termination date of this Contract.

3. Consideration

The Board agrees to compensate the Contractor for services approved by the Board and performed by the Contractor under the terms of this Contract in an amount as follows:

- A. The hourly rates of service as applicable, listed in Exhibit A, Fee Schedule for Pharmacy Benefit Manager Audit Services (including the total cost of contract services sum), of this Contract will constitute the entire compensation due to the Contractor for services and all the Contractor's obligations hereunder regardless of the difficulty, materials, or equipment required. The total fees include all associated costs with no additional or hidden fees. The hourly rates include, but are not limited to, all required labor; all required equipment/material; all required insurance, bond, or other surety; all required overhead/profit; all required applicable taxes, fees, and general office expense; all required vehicles; all required fuel and mileage; all required travel; all required labor and supervision; all required training; all required business and professional certifications, licenses, permits, or fees; and any and all other direct and indirect costs, incurred or to be incurred, by the Contractor. The fees and rates listed in Exhibit A, Fee Schedule for Pharmacy Benefit Manager Audit Services, of this Contract are firm for the duration of this Contract and are not subject to escalation for any reason, unless otherwise provided for within this Contract, or unless this Contract is duly amended.
- B. The Contractor will be paid in six (6) installments in arrears upon completion of services at each deliverable date set forth in Exhibit B, Deliverables and Due Date Schedule.
- C. The Contractor will submit all invoices, in a form acceptable to the Board (provided that such acceptance will not be unreasonably withheld) with all the necessary supporting documentation, prior to any payment to the Contractor of any allowable fees. Fees will be invoiced in sufficient detail and format as determined by the Board. Such invoices will include, at a minimum, a description of the service(s) provided, the compensation rate, the time period in which services were provided, and total fees requested for the period being invoiced. The Board shall not provide any prepayments or initial deposits in advance of services being rendered. Fees for services provided by the Contractor shall be billable to the Board in arrears at the end of each deliverable date. Payment for any and all services provided by the Contractor to the Board shall be made only after said services have been duly performed and properly invoiced. Only those services agreed to by contract shall be considered for reimbursement/compensation by the Board. No additional compensation will be provided by the Board for any expense, cost, or fee not specifically authorized by this Contract, or by written authorization from the Board.
- D. Upon the effective date of termination of this Contract, the Contractor will remain liable for any obligations arising hereunder prior to the effective date of such termination. In addition, in the event of termination of the Contract for any reason, the Contractor shall be paid for services rendered and allowable expenses incurred up to the effective date of termination.

4. Anti-Assignment/Subcontracting

Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Contractor's special skills and expertise. The Contractor shall not assign, subcontract, or otherwise transfer this Contract, in whole or in part, without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer 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 Contract.

Subcontracts shall be subject to the terms and conditions of this Contract and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this Contract shall be binding upon the respective successors and assigns of the parties.

5. Applicable Law

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

6. Approval

It is understood that if this Contract requires approval by the Public Procurement Review Board (PPRB) and/or the MDFA Office of Personal Service Contract Review (OPSCR), and this Contract, if not approved by the PPRB and/or OPSCR, is void and no payment shall be made hereunder.

7. Attorney's Fees and Expenses

Subject to other terms and conditions of this agreement, in the event Contractor defaults in any obligations under this agreement, Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees, court costs, and attorney's fees) incurred by the State in enforcing this agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the customer be obligated to pay any attorney's fees or costs of legal action to Contractor.

8. Authority to Contract

Contractor warrants: (a) that it is a validly organized business with valid authority to enter into this Contract; (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 Contract is not restricted or prohibited by any loan, security, financing, contractual, or other contract of any kind; and, (d) notwithstanding any other provision of this Contract to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Contract.

9. Availability of Funds

It is expressly understood and agreed that the obligation of the Board to proceed under this Contract 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 time fulfillment of the Contract are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the Board, the Board shall have the right upon ten (10) working days

written notice to the Contractor, to terminate this Contract without damage, penalty, cost or expenses to the Board of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

10. Change in Scope of Work

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

11. Compliance with Laws

The Contractor understands that the Board 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 the Contractor agrees during the term of the Contract that the Contractor shall strictly adhere to this policy in its employment practices and provision of services. The Contractor shall comply with, and all activities under this Contract 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.

12. Confidentiality

Notwithstanding any provision to the contrary contained herein, it is recognized that Board is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Mississippi Code Annotated § 25-61-1 et seq. If a public records request is made for any information provided to the Board pursuant to the Contract and designated by the Contractor in writing as trade secrets or other proprietary confidential information, the Board shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The Board shall not be liable to the Contractor for disclosure of information required by court order or required by law.

13. Contractor Personnel

The Board shall, throughout the life of the Contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by the Contractor. If the Board reasonably rejects staff or subcontractors, the Contractor shall provide replacement staff or subcontractors satisfactory to the Board in a timely manner and at no additional cost to the Board . The day-to-

day supervision and control of the Contractor's employees and subcontractors is the sole responsibility of the Contractor.

14. Debarment and Suspension

The Contractor certifies to the best of its knowledge and belief, that it: (i) 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; (ii) Has not, within a three-year period preceding this Proposals, 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; (iii) Has not, within a three-year period preceding this Proposals, 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; (iv) Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of these offenses enumerated in paragraphs two (ii) and three (iii) of this certification; and, (v) Has not, within a three-year period preceding this Proposals, had one or more public transactions (federal, state, or local) terminated for cause or default.

15. Disclosure of Confidential Information

In the event that either party to this Contract receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall, within 2 days of receipt of such request, 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 Contract. The parties agree that this section is subject to and superseded by Mississippi Code Annotated § 25-61-1 et seq.

16. Disputes

Any dispute concerning the Contract which is not disposed of by agreement shall be decided by the President of the Board who shall reduce such decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the President of the Board shall be final and conclusive. Nothing in this paragraph shall be construed to relieve the Contractor of full and diligent performance of the Contract.

17. E-Payment

The Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The Board 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 the invoice. Mississippi Code Annotated § 31-7-301, et seq.

18. E-Verification

If applicable, the Contractor represents and warrants that it shall ensure its compliance with the Mississippi Employment Protection Act of 2008, and shall 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. The Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, the Contractor agrees to provide a copy of each such verification. The Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject the Contractor to the following:

- A. termination of this Contract for services and ineligibility for any State or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public; or
- B. the loss of any license, permit, certification, or other document granted to the Contractor by an agency, department, or governmental entity for the right to do business in Mississippi for up to one (1) year; or
- C. both.

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

19. Failure to Deliver

Failure by the Board at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the Board to enforce any provision at any time in accordance with its terms.

20. Failure to Enforce

Failure by the Board at any time to enforce the provisions of the Contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the Contract or any part thereof or the right of the Board to enforce any provision at any time in accordance with its terms.

21. Force Majeure

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such

acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (“force majeure events”). When such a cause arises, the Contractor shall notify the Board 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 Board determines it to be in its best interest to terminate the Contract.

22. Indemnification

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

23. Independent Contractor Status

The Contractor shall at all times, be regarded as, and shall be legally considered an Independent Contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, the Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the State and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or the Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Contractor. The Contractor’s personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the Board , and the Board shall be at no time be legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. The Board shall not withhold from the Contract payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the Board shall not provide to the Contractor any insurance coverage or other benefits, including Worker’s Compensation, normally provided by the State for its employees.

24. Information Designated by Contractor as Confidential

Any disclosure of those materials, documents, data, and other information which Contractor has designated in writing as proprietary and confidential shall be subject to the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1. As provided in the Contract, the personal or professional services to be provided, the price to be paid, and the term of the Contract shall not be deemed to be a trade secret, or confidential commercial or financial information.

Any liability resulting from the wrongful disclosure of confidential information on the part of the Contractor or its subcontractor shall rest with Contractor. Disclosure of any confidential information by the Contractor or its subcontractor without the express written approval of the Board shall result in the immediate termination of this Contract.

25. Integrated Agreement/Merger

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

26. Modification or Renegotiation

This Contract may be modified, altered or changed only by written agreement signed by the parties hereto. The parties agree to renegotiate the Contract if federal, State and/or the Board revisions of any applicable laws or regulations make changes in this Contract necessary.

27. Oral Statements

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Contract. All modifications to the Contract shall be made in writing by the Board and agreed to by the Contractor.

28. Ownership of Documents and Work Papers

The Board 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 Contract, except for the Contractor's internal administrative and quality assurance files and internal project correspondence. The Contractor shall deliver such documents and work papers to the Board upon termination or completion of the Contract. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. The Contractor shall be entitled to use such work papers only after receiving written permission from the Board and subject to any copyright protections.

29. 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 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 Contract. The Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

30. 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 <http://www.dfa.ms.gov/dfa-offices/personal-service-contract-review/opsr>.

31. Record Retention and Access to Records

The Contractor agrees that the Board or any of its duly authorized representatives at any time during the term of this Contract shall have unimpeded, prompt access to and the right to audit and examine any pertinent books, documents, papers, and/or records of the Contractor related to the Contractor's charges and performance under this Contract. The Board agrees to provide the Contractor with reasonable advance notice for any standard audits or reviews, with the expectation that such reviews shall be made during normal business hours of the Contractor. The parties shall cooperate to schedule and conduct such audit or inspection to prevent disruption to Contractor's performance of the services hereunder and for Contractor's other customers. All records related to this Contract shall be retained by the Contractor for a period of three (3) years after final payment under this Contract and all pending matters are closed. However, if any litigation, claim, negotiation, audit or other action arising out of or related in any way to this Contract has been started before the expiration 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. The Contractor agrees to refund to the Board any overpayment disclosed by any such audit arising out of or related in any way to this Contract.

32. Recovery of Money

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

33. Representation Regarding Contingent Fees

The Contractor represents that it has not retained a person to solicit or secure a State Contract upon

an agreement or understanding for a commission, percentage, brokerage, or contingent fee except as disclosed in the Contractor's Proposals.

34. Representation Regarding Gratuities

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

35. Right to Audit

Contractor shall maintain such financial records and other records as may be prescribed by the Board or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of three years after final payment, or until they are audited by the Board, whichever event occurs first. These records shall be made available for inspection during regular business hours and with reasonable advance notice during the term of the Contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi Office of the State Auditor, its designees, or other authorized bodies.

36. Right to Inspect

The Board, the Mississippi Office of the State Auditor, or any other auditing agency prior-approved by the Board, 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 the work being performed. The Contractor shall provide access to all facilities and assistance for the Board and Mississippi Office of the State Auditor's representatives. All inspections and evaluations shall be performed in such a manner as to not 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 Board staff shall be coordinated through the Board and its staff.

37. Severability

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

38. Standards of Care/Remedies

The Contractor shall exercise reasonable care and due diligence consistent with standards in the industry in the performance of its obligations under this Contract.

39. Stop Work Order

- A. Order to Stop Work. The Board, 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 90 days after the order is delivered to the Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Board shall either:
 - 1) cancel the stop work order; or,
 - 2) terminate the work covered by such order as provided in the “Termination for Default” clause or the “Termination for Convenience” clause of this Contract.
- B. Cancellation or Expiration of the Order. If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, 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, if:
 - 1) the stop work order results in an increase in the time required for, or in the Contractor's costs properly allocable to, the performance of any part of this Contract; and,
 - 2) the Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Board decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- C. Termination of Stopped Work. If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

40. Termination for Convenience

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

41. Termination for Default

- A. Default. If the Contractor refuses or fails to perform any of the provisions of this Contract with such diligence as shall ensure its completion within the time specified within 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 Board may notify the Contractor in writing of the delay or nonperformance and if not cured within ten (10) days or any longer time specified in writing by the Board, the Board may terminate the Contractor's right to proceed with the contract or such part of the Contract as to which there has been delay or failure to properly perform. In the event of termination in whole or in part, the Board may procure similar supplies or services in a manner and upon terms deemed appropriate by the Board. The Contractor shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- B. Contractor's Duties. Notwithstanding termination of the Contract and subject to any directions from the Board, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the State has an interest.
- C. Compensation. Payment for completed services delivered and accepted by the State shall be at the Contract price. The State may withhold from amounts due the Contractor such sums as the Board deems to be necessary to protect the State against loss because of outstanding lien holders or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
- D. Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers performance) if the Contractor has notified the Board 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 make progress, and if such failure arises out of causes similar to those set forth above, the Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the Contractor to meet the Contract requirements. Upon request of the Contractor, the Board shall ascertain the facts and extent of such failure, and, if the Board determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Contractor's progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause of this Contract entitled "Termination for Convenience". (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).
- E. Erroneous Termination for Default. If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contract was not in default under the provisions of this clause, or that the delay was

excusable under the provisions of Paragraph D (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the Contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to a termination for convenience. F. Additional Rights and Remedies. The rights and remedies provided under this clause are in addition to any other rights and remedies provided by law or under this Contract.

42. Termination Upon Bankruptcy

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

43. Third Party Action Notification

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

44. 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.

45. 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 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 Board’s independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential Contractor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, shall be redacted.

46. 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.

47. Notices

All notices required or permitted to be given under this Contract shall be in writing and personally delivered or sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

If to the Board:

Attention: Susan McCoy, Executive Director
Mississippi Board of Pharmacy
6311 Ridgewood Road
Suite E401
Jackson, Mississippi 39211

If to the Contractor:

[Name, Title]
[Contractor Name]
[Address]
[City, State, Zip]

48. Incorporation of Documents

This Contract consists of and precedence is hereby established by the order of the following documents incorporated herein:

- A. This Contract signed by the parties including Exhibit A - Fee Schedule for Pharmacy Benefit Manager Audit Services and Exhibit B – Deliverable Dates of Services Performed.
- B. The Mississippi Board of Pharmacy’s Request for Proposals for Pharmacy Benefit Manager Audit Services, dated September 5, 2023, and attached hereto as Exhibit C and incorporated fully herein by reference; and
- C. The Contractor’s Response to the Mississippi Board of Pharmacy’s Request for Proposals for Pharmacy Benefit Manager Audit Services, dated _____, 2023, attached hereto as Exhibit D and incorporated fully herein by reference.

CONTRACT EXHIBIT A

FEE SCHEDULE FOR
PHARMACY BENEFIT MANAGER AUDIT SERVICES

CONTRACT EXHIBIT B

DELIVERABLE DATES OF SERVICES PERFORMED

DELIVERABLES	SERVICES PERFORMED	DUE DATE
Phase 1	Planning&Preparation; Pre-Audit Work	
Phase 2	Audit Start and Data Requests	
Phase 3	Data Compilation and Integrity Testing	
Phase 4	Audit Field Work; PBM Interaction	
Phase 5	Draft Audit Report Summarizing Findings provided to the Board Staff	
Phase 6	Review any PBM Responses; Presentation of Final Audit Report to the Board at May Board Meeting	

CONTRACT EXHIBIT C

**MISSISSIPPI BOARD OF PHARMACY'S
REQUEST FOR PROPOSALS FOR
PHARMACY BENEFIT MANAGER AUDIT SERVICES**

CONTRACT EXHIBIT D

**CONTRACTOR'S RESPONSE TO
THE MISSISSIPPI BOARD OF PHARMACY'S
REQUEST FOR PROPOSALS FOR
PHARMACY BENEFIT MANAGER AUDIT SERVICES**