



## RFP No: 4060

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INVITATION: Sealed proposals, subject to the attached conditions, will be received at this office until **February 28, 2018 @ 3:00 p.m.** Central Time for the acquisition of the products/services described below for the **Mississippi Department of Marine Resources**.

**Implementation, hosting, support, and maintenance of Tails n' Scales Red Snapper Landing Application.**

NOTE: THIS RFP CONTAINS MANDATORY REQUIREMENTS TO WHICH NO EXCEPTION MAY BE TAKEN. SEE SECTION VII, ITEM 2, FOR DETAILS.

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**The Vendor must submit proposals and direct inquiries to:**

Jeannie Williford  
Technology Consultant  
Information Technology Services  
3771 Eastwood Drive  
Jackson, MS 39211  
(601) 432-8052  
jeannie.williford@its.ms.gov

To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the package. The following must be clearly typed on a label affixed to the package in a clearly visible location:

PROPOSAL, SUBMITTED IN RESPONSE TO  
RFP NO. 4060  
Due February 28, 2018 @ 3:00 p.m.,  
ATTENTION: Jeannie Williford

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**Craig P. Orgeron, Ph.D.**  
**Executive Director, ITS**

## ITS RFP Response Checklist

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RFP Response Checklist: These items should be included in your response to RFP No. 4060.

- \_\_\_\_\_ 1) One clearly marked original response and nine identical copies of the complete proposal. Label the front and spine of the three-ring loose-leaf binder with the Vendor name and RFP number. Include the items listed below inside the binder. Please DO NOT include a copy of the RFP in the binder.
- \_\_\_\_\_ 2) *Submission Cover Sheet*, signed and dated. (Section I)
- \_\_\_\_\_ 3) *Proposal Bond*, if applicable (Section I)
- \_\_\_\_\_ 4) *Proposal Exception Summary*, if applicable (Section V)
- \_\_\_\_\_ 5) Vendor response to *RFP Questionnaire* (Section VI)
- \_\_\_\_\_ 6) Point-by-point response to *Technical Specifications* (Section VII)
- \_\_\_\_\_ 7) Vendor response to *Cost Information Submission* (Section VIII)
- \_\_\_\_\_ 8) *References* (Section IX)

## Table of Contents

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SECTION I .....	4
SUBMISSION COVER SHEET & CONFIGURATION SUMMARY .....	4
PROPOSAL BONDS .....	5
SECTION II .....	6
PROPOSAL SUBMISSION REQUIREMENTS .....	6
SECTION III .....	10
VENDOR INFORMATION.....	10
SECTION IV .....	14
LEGAL AND CONTRACTUAL INFORMATION .....	14
SECTION V.....	25
PROPOSAL EXCEPTIONS .....	25
PROPOSAL EXCEPTION SUMMARY FORM.....	27
SECTION VI.....	28
RFP QUESTIONNAIRE .....	28
SECTION VII.....	32
TECHNICAL SPECIFICATIONS.....	32
SECTION VIII.....	38
COST INFORMATION SUBMISSION .....	38
SECTION IX.....	39
REFERENCES .....	39
REFERENCE FORM .....	41
SUBCONTRACTOR REFERENCE FORM.....	42
EXHIBIT A.....	43
STANDARD CONTRACT .....	43
ATTACHMENT A	
RFP 4060 TECHNICAL REQUIREMENTS	

**SECTION I  
SUBMISSION COVER SHEET & CONFIGURATION SUMMARY**

Provide the following information regarding the person responsible for the completion of your proposal. This person should also be the person the Mississippi Department of Information Technology Services, (ITS), should contact for questions and/or clarifications.

Name	_____	Phone #	_____
Address	_____	Fax #	_____
	_____	E-mail	_____

Subject to acceptance by **ITS**, the Vendor acknowledges that by submitting a proposal AND signing in the space indicated below, the Vendor is contractually obligated to comply with all items in this Request for Proposal (RFP), including the Standard Contract in Exhibit A if included herein, except those listed as exceptions on the Proposal Exception Summary Form. If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions. This acknowledgement also contractually obligates any and all subcontractors that may be proposed. Vendors who sign below may not later take exception to any point during contract negotiations. The Vendor further certifies that the company represented here is an authorized dealer in good standing of the products/services included in this proposal.

\_\_\_\_\_/\_\_\_\_\_  
**Original signature** of Officer in Bind of Company/Date

Name (typed or printed) \_\_\_\_\_  
Title \_\_\_\_\_  
Company name \_\_\_\_\_  
Physical address \_\_\_\_\_  
State of Incorporation \_\_\_\_\_

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**CONFIGURATION SUMMARY**

The Vendor must provide a summary of the main components of products/services offered in this proposal using 100 words or less.

**PROPOSAL BONDS**

A Proposal Bond is not required for this procurement.

## SECTION II PROPOSAL SUBMISSION REQUIREMENTS

The objective of the Proposal Submission Requirements section is to provide Vendors with the information required to submit a response to this Request for Proposal (RFP). A Vendor who has responded to previous RFPs issued by **ITS** should not assume that the requirements are the same, as changes may have been made.

1. Failure to follow any instruction within this RFP may, at the State's sole discretion, result in the disqualification of the Vendor's proposal.
2. The State has no obligation to locate or acknowledge any information in the Vendor's proposal that is not presented under the appropriate outline according to these instructions and in the proper location.
3. The Vendor's proposal must be received, in writing, by the office of **ITS** by the date and time specified. **ITS** is not responsible for any delays in delivery or expenses for the development or delivery of proposals. Any proposal received after proposal opening time will be returned unopened. Any proposal received with insufficient postage will be returned unopened.
4. Proposals or alterations by fax, e-mail, or phone will not be accepted.
5. Original signatures are required on one copy of the Submission Cover Sheet and Configuration Summary, and the Vendor's original submission must be clearly identified as the original. The Vendor's original proposal must include the Proposal Bond, (if explicitly required in Section IV).
6. **ITS** reserves the right to reject any proposals, including those with exceptions, prior to and at any time during negotiations.
7. **ITS** reserves the right to waive any defect or irregularity in any proposal procedure.
8. The Vendor may intersperse their response following each RFP specification but must not otherwise alter or rekey any of the original text of this RFP. If the State determines that the Vendor has altered any language in the original RFP, the State may, in its sole discretion, disqualify the Vendor from further consideration. The RFP issued by **ITS** is the official version and will supersede any conflicting RFP language submitted by the Vendor.
9. The Vendor must conform to the following standards in the preparation of the Vendor's proposal:
  - 9.1 The Vendor is required to submit one clearly marked original response and nine identical copies of the complete proposal, including all sections and exhibits, in three-ring binders.
  - 9.2 To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the package. A label containing the information on the RFP cover

- page must be clearly typed and affixed to the package in a clearly visible location.
- 9.3 Number each page of the proposal.
  - 9.4 Respond to the sections and exhibits in the same order as this RFP.
  - 9.5 Label and tab the responses to each section and exhibit, using the corresponding headings from the RFP.
  - 9.6 If the Vendor does not agree with any item in any section, then the Vendor must list the item on the *Proposal Exception Summary Form*. (See Section V for additional instructions regarding Vendor exceptions.)
  - 9.7 Occasionally, an outline point in an attachment requests information which is not applicable to the products/services proposed. If the Vendor is certain the point does not apply to the given RFP, the Vendor should respond with "NOT APPLICABLE."
  - 9.8 Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
  - 9.9 When an outline point/attachment is a statement provided for the Vendor's information only, the Vendor need only read that point. The Vendor acknowledges having read and accepting, or taking exception to, all sections by signing the *Submission Cover Sheet* and providing a *Proposal Exception Summary Form*.
  - 9.10 Where a minimum requirement has been identified, respond by stating the item (e.g., device name/model number, guaranteed response time) proposed and how it will meet the specifications.
  - 9.11 The Vendor must fully respond to each requirement within the *Technical Specifications* by fully describing the manner and degree by which the proposal meets or exceeds said requirements.
10. It is the responsibility of the Vendor to clearly identify all costs associated with any item or series of items in this RFP. The Vendor must include and complete all parts of the cost proposal in a clear and accurate manner. **Omissions, errors, misrepresentations, or inadequate details in the Vendor's cost proposal may be grounds for rejection of the Vendor's proposal. Costs that are not clearly identified will be borne by the Vendor.** The Vendor must complete the *Cost Information Submission* in this RFP, which outlines the minimum requirements for providing cost information. The Vendor should supply supporting details as described in the *Cost Information Submission*.
  11. **ITS** reserves the right to request additional information or clarification of a Vendor's proposal. The Vendor's cooperation during the evaluation process in providing **ITS** staff with adequate responses to requests for clarification will be considered a factor in the evaluation of the Vendor's overall responsiveness. Lack of such cooperation or failure to

provide the information in the manner required may, at the State's discretion, result in the disqualification of the Vendor's proposal.

12. Unsolicited clarifications and updates submitted after the deadline for proposals will be accepted or rejected at the sole discretion of **ITS**.
13. Unsolicited clarifications in the evaluation and selection of lowest and best proposal will be considered only if all the following conditions are met:
  - 13.1 A clarification to a proposal that includes a newly announced product line or service with equal or additional capability to be provided at or less than the proposed price will be considered.
  - 13.2 Information provided must be in effect nationally and have been formally and publicly announced through a news medium that the Vendor normally uses to convey customer information.
  - 13.3 Clarifications must be received early enough in the evaluation process to allow adequate time for re-evaluation.
  - 13.4 The Vendor must follow procedures outlined herein for submitting updates and clarifications.
  - 13.5 The Vendor must submit a statement outlining the circumstances for the clarification.
  - 13.6 The Vendor must submit one clearly marked original and nine copies of the clarification.
  - 13.7 The Vendor must be specific about which part of the original proposal is being changed by the clarification (i.e., must include exact RFP reference to section and outline point).
14. **Communications with State**

From the issue date of this RFP until a Vendor is selected and the selection is announced, responding Vendors or their representatives may not communicate, either orally or in writing regarding this RFP with any statewide elected official, state officer or employee, member of the legislature or legislative employee except as noted herein. To ensure equal treatment for each responding Vendor, all questions regarding this RFP must be submitted in writing to the State's contact person for the selection process, and not later than the last date for accepting responding Vendor questions provided in this RFP. All such questions will be answered officially by the State in writing. All such questions and answers will become addenda to this RFP, and they will be posted to the ITS web site. Vendors failing to comply with this requirement will be subject to disqualification.

  - 14.1 The State's contact person for the selection process is: Jeannie Williford, Technology Consultant, 3771 Eastwood Drive, Jackson, MS 39211, 601-432-8052, jeannie.williford@its.ms.gov.



- 14.2 Vendor may consult with State representatives as designated by the State's contact person identified in 14.1 above in response to State-initiated inquiries. Vendor may consult with State representatives during scheduled oral presentations and demonstrations excluding site visits.

## **SECTION III VENDOR INFORMATION**

The objective of the Vendor Information section of this RFP is to provide Vendors with information required to respond to the RFP successfully.

1. **Interchangeable Designations**

The terms "Vendor" and "Contractor" are referenced throughout this RFP. Generally, references to the "Vendor" are used in conjunction with the proposing organization and procurement process leading up to the final RFP selection and award. The term "Contractor" denotes the role assumed, post-award, by the winning Vendor. Additionally, the terms "State of Mississippi," "State" or "ITS" may be used interchangeably throughout this RFP to denote the political entity issuing the RFP and requesting responses from Vendors throughout these specifications. References to a specific agency, institution or other political entity represent the client or customer on whose behalf ITS is issuing the RFP.

2. **Vendor's Responsibility to Examine RFP**

Vendors must examine all documents, forms, specifications, standard provisions, and instructions.

3. **Proposal as Property of State**

All written proposal material becomes the property of the State of Mississippi.

4. **Written Amendment to RFP**

Any interpretation of an **ITS** RFP will be made by written amendment only. The State will not be responsible for any other explanation of this RFP. A copy of any amendment will be posted on the **ITS** website, together with the associated RFP specification. Vendors are required to check the **ITS** website periodically for RFP amendments before the proposal opening date at:

[http://www.its.ms.gov/Procurement/Pages/RFPs\\_Awaiting.aspx](http://www.its.ms.gov/Procurement/Pages/RFPs_Awaiting.aspx)

Any and all amendments will be posted no later than noon, seven days prior to the proposal opening date listed on the cover page of this RFP. If you are unable to access the **ITS** website, you may contact the **ITS** technology consultant listed on page one of this RFP and request a copy.

5. **Oral Communications Not Binding**

Only transactions which are in writing from **ITS** may be considered official. No negotiations, decisions, or actions shall be executed by any Vendor as a result of any discussions with any State employee.

6. **Vendor's Responsibility for Delivery**

Vendors must ensure, through reasonable and sufficient follow-up, proper compliance with, and fulfillment of all schedules and deliverables specified within the body of this RFP. The State will not be responsible for the failure of any delivery medium for submission of information to or from the Vendor, including but not limited to, public and private carriers, U.S. mail, Internet Service Providers, facsimile, or e-mail.

7. **Evaluation Criteria**

The State's intent in issuing this RFP is to award a contract to the lowest and best responsive Vendor who meets specifications, considering price and other factors. The Vendor's past performance, cooperation, and ability to provide service and training are general factors that will be weighed in the selection process. More specific information concerning evaluation criteria is presented in *Technical Specifications*.

8. **Multiple Awards**

**ITS** reserves the right to make multiple awards.

9. **Right to Award in Whole or Part**

**ITS** reserves the right to approve an award by individual items or in total, whichever is deemed to be in the best interest of the State of Mississippi.

10. **Right to Use Proposals in Future Projects**

The State reserves the right to evaluate the awarded proposal from this RFP, including all products and services proposed therein, along with the resulting contractual terms, for possible use in future projects if (a) it is deemed to be in the best interest of the State to do so; and (b) the Vendor is willing to extend a cost less than or equal to that specified in the awarded proposal and resulting contract. A decision concerning the utilization of a Vendor's proposal for future projects is solely at the discretion of the State and requires the agreement of the proposing Vendor. The State's decision to reuse an awarded proposal will be based upon such criteria as: (1) the customer's business requirements; (2) elapsed time since the award of the original project; and/or (3) research on changes in the Vendor, market, and technical environments since the initial award.

11. **Price Changes During Award or Renewal Period**

A price increase will not be accepted during the award period or the renewal period, unless stipulated in the contract. However, the State will always take advantage of price decreases.

12. **Right to Request Information**

The State reserves the right to request information relative to a Vendor's references and financial status and to visit a Vendor's facilities during normal working hours. The State also reserves the right to request a current financial statement, prepared and certified by an independent auditing firm, and reserves the right to require that Vendors document their financial ability to provide the products and services proposed up to the total dollar amount of the Vendor's cost proposal. The State reserves the right to request information about the Vendor from any previous customer of the Vendor of whom the State is aware, even if that customer is not included in the Vendor's list of references.

13. **Vendor Personnel**

For RFPs including professional services specifications, the Vendor will be required to provide and/or certify the following for each individual included in the Vendor's proposal:

- 13.1 A direct telephone number at which the individual may be contacted for a telephone interview. The State will pay toll charges in the continental United States. The Vendor must arrange a toll-free number for all other calls.

- 13.2 That, if onsite interviews are required, the individual can be at the specified location in Mississippi within the timeframe specified. All costs associated with onsite interviews will be the responsibility of the Vendor.
- 13.3 That the individual is proficient in spoken and written English;
- 13.4 That the individual is a U.S. citizen or that the individual meets and will maintain employment eligibility requirements in compliance with all United States Citizenship and Immigration Services (USCIS) regulations. The Vendor must provide evidence of identification and employment eligibility prior to the award of a contract that includes any personnel who are not U. S. citizens.
- 13.5 That the personnel assigned to a project will remain a part of the project throughout the duration of the contract as long as the personnel are employed by the Vendor, unless replaced by the Vendor at the request of the State. This requirement includes the responsibility for ensuring all non-citizens maintain current USCIS eligibility throughout the duration of the contract.

14. **Vendor Imposed Constraints**

The Vendor must specifically document what limitations, if any, exist in working with any other Contractor acting in the capacity of the State's business partner, subcontractor or agent who may be managing any present or future projects; performing quality assurance; integrating the Vendor's software; and/or providing web-hosting, hardware, networking or other processing services on the State's behalf. The project relationship may be based on roles as either equal peers; supervisory – subordinate; or subordinate – supervisory, as determined by the State. The State recognizes that the Vendor may have trade secrets, intellectual property and/or business relationships that may be subject to its corporate policies or agreements. The State must understand these issues in order to decide to what degree they may impact the State's ability to conduct business for this project. These considerations will be incorporated accordingly into the proposal evaluation and selection process. The understanding reached between the Vendor and the State with regard to this business relationship precludes the Vendor from imposing any subsequent limitations of this type in future project undertakings by the State.

15. **Best and Final Offer**

The State reserves the right to solicit Best and Final Offers (BAFOs) from Vendors, principally in situations in which proposal costs eclipse available funding or the State believes none of the competing proposals presents a Best Value (lowest and best proposal) opportunity. Because of the time and expense incurred by both the Vendor community and the State, BAFOs are not routinely conducted. Vendors should offer their best pricing with the initial solicitation. Situations warranting solicitation of a BAFO will be considered an exceptional practice for any procurement. Vendors that remain in a competitive range within an evaluation may be requested to tender Best and Final Offers, at the sole discretion of the State. All such Vendors will be provided an equal opportunity to respond with a Best and Final Offer under a procedure to be defined by the State that encompasses the specific, refined needs of a project, as part of the BAFO solicitation. The State may re-evaluate and amend the original project specifications should it be deemed necessary in order to improve the opportunity for attaining Best Value scenarios from among the remaining competing Vendors. All BAFO proceedings will be uniformly

conducted, in writing and subject to solicitation by the State and receipt from the Vendors under a precise schedule.

16. **Restriction on Advertising**

The Vendor must receive written approval from the State before advertising or referencing the award of the contract or the services being provided. The Vendor must agree not to refer to awards in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the State of Mississippi.

17. **Rights Reserved to Use Existing Product Contracts**

The State reserves the right on turnkey projects to secure certain products from other existing **ITS** contracts if it is in its best interest to do so. If this option is exercised, then the awarded Vendor must be willing to integrate the acquisition and implementation of such products within the schedule and system under contract.

18. **Additional Information to be Included**

In addition to answering each specification within this RFP, the Vendor must include complete product/service information, including product pictorials and technical/descriptive literature relative to any product/service offered with the proposal. Information submitted must be sufficiently detailed to substantiate that the products/services offered meet or exceed specifications.

19. **Valid Contract Required to Begin Work**

The successful Vendor should not commence any billable work until a valid contract has been executed. Any work done by the successful Vendor prior to the execution of the contract is done at the Vendor's sole risk. The State is under no obligation to pay for work done prior to the execution of a contract.

## SECTION IV LEGAL AND CONTRACTUAL INFORMATION

The objective of the *Legal and Contractual Information* section is to provide Vendors with information required to complete a contract or agreement with **ITS** successfully.

1. **Acknowledgment Precludes Later Exception**

By signing the *Submission Cover Sheet*, the Vendor is contractually obligated to comply with all items in this RFP, including the *Standard Contract* in Exhibit A if included herein, except those specifically listed as exceptions on the *Proposal Exception Summary Form*. If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions. Vendors who respond to this RFP by signing the *Submission Cover Sheet* may not later take exception to any item in the RFP during contract negotiations. This acknowledgement also contractually obligates any and all subcontractors that may be proposed. No exceptions by subcontractors or separate terms and conditions will be entertained after the fact.

2. **Failure to Respond as Prescribed**

Failure to respond as described in Section II: *Proposal Submission Requirements* to any item in the sections and exhibits of this RFP, including the *Standard Contract* attached as Exhibit A, if applicable, shall contractually obligate the Vendor to comply with that item.

3. **Contract Documents**

**ITS** will be responsible for all document creation and editorial control over all contractual documentation related to each procurement project. The following documents will normally be included in all contracts between **ITS** and the Vendor:

3.1 The Proposal Exception Summary Form as accepted by **ITS**;

3.2 Contracts which have been signed by the Vendor and **ITS**;

3.3 **ITS'** Request for Proposal, including all addenda;

3.4 Official written correspondence from **ITS** to the Vendor;

3.5 Official written correspondence from the Vendor to **ITS** when clarifying the Vendor's proposal; and

3.6 The Vendor's proposal response to the **ITS** RFP.

4. **Order of Precedence**

When a conflict arises regarding contract intent due to conflicting statements in documents included in the contract, the order of precedence of each document is as listed above unless modification of order is negotiated and agreed upon by both **ITS** and the winning Vendor.

5. **Additional Contract Provisions**

The contract will also include such additional provisions, which are not inconsistent or incompatible with the material terms of this RFP, as may be agreed upon by the parties. All of the foregoing shall be in such form and substance as prescribed by the State.

6. **Contracting Agent by Law**

The Executive Director of **ITS** is, by law, the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of computer and telecommunications equipment, systems, software, and services (Section 25-53-1, et seq., of the Mississippi Code Annotated). **ITS** is issuing this RFP on behalf of the procuring agency or institution. **ITS** and the procuring agency or institution are sometimes collectively referred to within this RFP as "State."

7. **Mandatory Legal Provisions**

- 7.1 The State of Mississippi is self-insured; all requirements for the purchase of casualty or liability insurance are deleted.
- 7.2 Any provisions disclaiming implied warranties shall be null and void. See Mississippi Code Annotated Sections 11-7-18 and 75-2-719(4). The Vendor shall not disclaim the implied warranties of merchantability and fitness for a particular purpose.
- 7.3 The Vendor shall have no limitation on liability for claims related to the following items:
- 7.3.1 Infringement issues;
  - 7.3.2 Bodily injury;
  - 7.3.3 Death;
  - 7.3.4 Physical damage to tangible personal and/or real property; and/or
  - 7.3.5 The intentional and willful misconduct or negligent acts of the Vendor and/or Vendor's employees or subcontractors.
- 7.4 All requirements that the State pay interest (other than in connection with lease-purchase contracts not exceeding five years) are deleted.
- 7.5 Any contract negotiated under this RFP will be governed by and construed according to the laws of the State of Mississippi. Venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi.
- 7.6 Any contract negotiated under this RFP is cancelable in the event the funding authority does not appropriate funds. Notice requirements to Vendor cannot exceed sixty (60) days.

- 7.7 The State of Mississippi does not waive its sovereign immunities or defenses as provided by law by entering into this contract with the Vendor, Vendor agents, subcontractors, or assignees.
- 7.8 The State will deliver payments to the Vendor within forty-five (45) days after receipt of invoice and receipt, inspection, and approval of Vendor's products/services. No late charges will exceed 1.5% per month on any unpaid balance from the expiration of said period until payment is delivered. See Section 31-7-305 of the Mississippi Code Annotated. Seller understands and agrees that Purchaser is exempt from the payment of taxes.
- 7.9 The State shall not pay any attorney's fees, prejudgment interest or the cost of legal action to or for the Vendor.

8. **Approved Contract**

- 8.1 Award of Contract - A contract is considered to be awarded to a proposer once the proposer's offering has been approved as lowest and best proposal through:
  - 8.1.1 Written notification made to proposers on **ITS** letterhead, or
  - 8.1.2 Notification posted to the **ITS** website for the project, or
  - 8.1.3 CP-1 authorization executed for the project, or
  - 8.1.4 The **ITS** Board's approval of same during an open session of the Board.
- 8.2 **ITS** statute specifies whether **ITS** Director approval or **ITS** Board approval is applicable for a given project, depending on the total lifecycle cost of the contract.
- 8.3 A contract is not deemed final until five (5) working days after either the award of contract or post procurement review, as stipulated in the **ITS** Protest Procedure and Policy. In the event of a valid protest, the State may, at its sole discretion, continue the procurement or stay the procurement in accordance with the **ITS** Protest Procedure and Policy. If the procurement is stayed, the contract is not deemed final until the protest is resolved.

9. **Contract Validity**

All contracts are valid only if signed by the Executive Director of **ITS**.

10. **Order of Contract Execution**

Vendors will be required to sign contracts and to initial all contract changes before the Executive Director of **ITS** signs.



11. **Availability of Funds**

All contracts are subject to availability of funds of the acquiring State entity and are contingent upon receipt by the winning Vendor of a purchase order from the acquiring State entity.

12. **CP-1 Requirement**

All purchase orders issued for goods and services acquired from the awarded Vendor under this RFP must be encoded by the Customer agency with a CP-1 approval number assigned by **ITS**. This requirement does not apply to acquisitions that by policy have been delegated to State entities.

13. **Requirement for Electronic Payment and Invoicing**

13.1 Payments to the awarded Vendor for all goods and services acquired under this RFP by state agencies that make payments through the Mississippi State Government's Enterprise Resource Planning (ERP) solution ("MAGIC") will be made electronically, via deposit to the bank account of the Vendor's choice. The awarded Vendor must enroll and be activated in PayMode™, the State's current vehicle for sending and receiving electronic payments, prior to receiving any payments from state agencies. There is no charge for a Vendor to enroll or receive payments via PayMode. For additional information on PayMode, including registration instructions, Vendors should visit the following website: <http://portal.paymode.com/ms/>. Vendors may also request assistance from the Mississippi Management and Reporting System (MMRS) Call Center regarding PayMode registration by contacting [mash@dfa.ms.gov](mailto:mash@dfa.ms.gov).

13.2 For state agencies that make payments through MAGIC, the awarded Vendor is required to submit electronically all invoices for goods and services acquired under this RFP, along with appropriate supporting documentation, as directed by the State.

13.3 Items 13.1 and 13.2 only apply to state agencies that make payments through MAGIC. Payments and invoices for all other entities will conform to their standard methods of payment to contractors.

14. **Time For Negotiations**

14.1 All contractual issues must be successfully negotiated within fifteen (15) working days from the Vendor's initial receipt of the project contract from **ITS**, unless **ITS** consents to extend the period. Failure to complete negotiations within the stated time period constitutes grounds for rejection of the Vendor's response to this RFP. **ITS** may withdraw the proposal award and begin negotiations with the next ranked Vendor immediately or pursue any other option.

14.2 Negotiations shall be limited to items to which the Vendor has noted as exceptions on their Proposal Exception Summary Form, as well as any new items that the State may require. All contract changes requested by the Vendor related to such exceptions noted in Vendor's proposal shall be submitted three

(3) working days prior to scheduled negotiations, unless **ITS** consents to a different period.

15. **Prime Contractor**

The selected Vendor will be designated the prime contractor in the proposal, and as such, shall be solely responsible for all products/services offered in the proposal and for the fulfillment of the contract with the State.

16. **Sole Point of Contact**

**ITS** will consider the selected Vendor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

16.1 The Vendor must acknowledge and agree that in matters of proposals, clarifications, negotiations, contracts and resolution of issues and/or disputes, the Vendor represents all contractors, third parties and/or subcontractors the Vendor has assembled for this project. The Vendor's commitments are binding on all such parties and consequently the State is only required to negotiate with the Vendor.

16.2 Furthermore, the Vendor acknowledges and agrees to pass all rights and/or services related to all general consulting, services leasing, software licensing, warranties, hardware maintenance and/or software support to the State from any contractor, third party or subcontractor without the State having to negotiate separately or individually with any such parties for these terms or conditions.

16.3 Should a proposing Vendor wish to assign payment of any or all charges resulting from this contract to a third party, Vendor must disclose that fact in his/her proposal, along with the third party's name, address, nature of business, and relationship to the proposing Vendor, the reason for and purpose of the assignment, and all conditions of the assignment, including but not limited to a copy of an assignment document to be executed by the State, the Vendor, and the third party. Such assignments will be accepted or rejected at the sole discretion of the State. Vendor must clearly and definitively state in his/her proposal whether the proposal is contingent upon the requested assignment of payments. Whenever any assignment of payment is requested, the proposal, contract, and assignment document must include language specifically guaranteeing that the proposing Vendor is solely and fully liable and responsible for the performance of its obligations under the subject contract. No assignment of payment will be considered at the time of purchase unless such assignment was fully disclosed in the Vendor's proposal and subsequently accepted by the State.

17. **ITS Approval of Subcontractor Required**

Unless provided in the contract, the Vendor shall not contract with any other party for furnishing any of the contracted work or services without the consent, guidance, and written approval of the State. **ITS** reserves the right of refusal and the right to request replacement of a subcontractor due to unacceptable work or conduct. This provision should not be interpreted as requiring the approval of individual contracts of employment between the Vendor and personnel assigned for services under the contract.
18. **Inclusion of Subcontract Agreements**

Copies of any agreements to be executed between the Vendor and any subcontractors must be included in the Vendor's proposal.
19. **Negotiations with Subcontractor**

In order to protect the State's interest, **ITS** reserves the right to attempt to resolve the contractual disagreements that may arise between the Vendor and its subcontractor after award of the contract.
20. **References to Vendor to Include Subcontractor**

All references in the RFP to "Vendor" shall be construed to encompass both the Vendor and its subcontractors.
21. **Outstanding Vendor Obligations**
  - 21.1 Any Vendor who presently owes the State of Mississippi money pursuant to any contract for which **ITS** is the contracting agent and who has received written notification from **ITS** regarding the monies owed, must submit, with the proposal, a certified check in the amount due and owing in order for the proposal in response to this RFP to be considered. For a Vendor currently in bankruptcy as of the RFP submission date, this requirement is met, if and only if, **ITS** has an active petition before the appropriate bankruptcy court for recovery of the full dollar amount presently owed to the State of Mississippi by that Vendor. If the Vendor has emerged from bankruptcy by the RFP submission date, the Vendor must pay in full any amount due and owing to the State, as directed in the court-approved reorganization plan, prior to any proposal being considered.
  - 21.2 Any Vendor who is presently in default on existing contracts for which **ITS** is the contracting agent, or who otherwise is delinquent in the performance of any such contracted obligations, is in the sole judgment of the State required to make arrangement for fulfilling outstanding obligations to the satisfaction of the State in order for the proposal to be considered.
  - 21.3 The State, at its sole discretion, may reject the proposal of a Vendor with any significant outstanding financial or other obligations to the State or who is in bankruptcy at the time of proposal submission.

22. **Equipment Condition**  
For all RFPs requiring equipment, the Vendor must furnish only new equipment in response to **ITS** specifications, unless an explicit requirement for used equipment is otherwise specified.
23. **Delivery Intervals**  
The Vendor's proposal must specify, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, delivery and installation intervals after receipt of order.
24. **Pricing Guarantee**  
The Vendor must explicitly state, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, how long the proposal will remain valid. Unless stated to the contrary in the *Technical Specifications*, pricing must be guaranteed for a minimum of ninety (90) days.
25. **Shipping Charges**  
For all RFPs requiring shipment of any product or component, all products must be delivered FOB destination to any location within the geographic boundaries of the State with all transportation charges prepaid and included in the RFP proposal or LOC quotation. Destination is the point of use.
26. **Amortization Schedule**  
For all RFPs requiring equipment, contracts involving the payment of interest must include an amortization schedule clearly documenting the amount of interest payable over the term of the contract.
27. **Americans with Disabilities Act Compliance for Web Development and Portal Related Services**  
All Web and Portal development work must be designed and implemented in compliance with the Electronic and Information Technology Accessibility Standards associated with Section 508 of the Rehabilitation Act and with the Web Accessibility Initiative (WAI) of the W3C.
28. **Ownership of Developed Software**
  - 28.1 When specifications require the Vendor to develop software for the State, the Vendor must acknowledge and agree that the State is the sole owner of such developed software with exclusive rights to use, alter, or distribute the software without restriction. This requirement applies to source code, object code, and documentation.
  - 28.2 The State may be willing to grant the Vendor a nonexclusive 12.2 to use the State's software subject to devising acceptable terms and license fees. This requirement is a matter of State Law, and not negotiable.
29. **Ownership of Custom Tailored Software**  
In installations where the Vendor's intellectual property is modified and custom-tailored to meet the needs of the State, the Vendor must offer the State an application license

entitling the State to use, and/or alter the software without restriction. These requirements apply to source code, object code and documentation.

30. **Terms of Software License**

The Vendor acknowledges and agrees that the term of all software licenses provided to the State shall be perpetual unless stated otherwise in the Vendor's proposal.

31. **The State is Licensee of Record**

The Vendor must not bypass the software contracting phase of a project by licensing project software intended for State use in its company name. Upon award of a project, the Vendor must ensure that the State is properly licensed for all software that is proposed for use in a project.

32. **Compliance with Enterprise Security Policy**

Any solution proposed in response to this RFP must be in compliance with the State of Mississippi's Enterprise Security Policy. The Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines and covers the following topics: web servers, email, virus prevention, firewalls, data encryption, remote access, passwords, servers, physical access, traffic restrictions, wireless, laptop and mobile devices, disposal of hardware/media, and application assessment/certification. Given that information security is an evolving technology practice, the State reserves the right to introduce new policy during the term of the contract resulting from this RFP and require the Vendor to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi. Vendors wanting to view the Enterprise Security Policy should contact the Technology Consultant listed on the cover page of this RFP.

33. **Negotiating with Next-Ranked Vendor**

Should the State cease doing business with any Vendor selected via this RFP process, for any reason, the State reserves the right to initiate negotiations with the next ranked Vendor.

34. **Disclosure of Proposal Information**

Vendors should be aware that any information in a proposal may be subject to disclosure or reproduction under the Mississippi Public Records Act of 1983, defined in Section 25-61-1 et seq. of the Mississippi Code Annotated. All disclosures of proposal information will be made in compliance with the **ITS** Public Records Procedures established in accordance with the Mississippi Public Records Act. The **ITS** Public Records Procedures are available in Section 019-010 of the **ITS** Procurement Handbook, on the **ITS** Internet site at:

<http://www.its.ms.gov/Procurement/Documents/ISS%20Procurement%20Manual.pdf#page=155> or from **ITS** upon request.

As outlined in the Third Party Information section of the **ITS** Public Records Procedures, **ITS** will give written notice to any affected Vendor of a request to view or reproduce the Vendor's proposal or portion thereof. **ITS** will not, however, give such notice with respect to summary information prepared in connection with the State's review or evaluation of a Vendor's proposal, including, but not limited to, written presentations to the **ITS** Board or other approving bodies, and/or similar written documentation prepared for the project file.

In addition, **ITS** will not provide third-party notice for requests for any contract executed as a result of this RFP.

Summary information and contract terms, as defined above, become the property of **ITS**, who has the right to reproduce or distribute this information without notification.

Vendors should further be aware that requests for disclosure of proposal information are sometimes received by **ITS** significantly after the proposal opening date. **ITS** will notify the signatory "Officer in Bind of Company" provided in Section I of this RFP for Notification of Public Records Requests in the event information is requested that your company might wish to consider protecting as a trade secret or as confidential commercial or financial information. If the "Officer in Bind of Company" should not be used for notification of public records requests, Vendor should provide the alternative contact information in response to this RFP item.

35. **Risk Factors to be Assessed**

The State will assess risk factors that may initially exist within a given procurement and that may develop over the course of a procurement process as facts become known. The State, at its sole discretion, may employ the following mechanisms in mitigating these risks: proposal bonding, performance bonding, progress payment plan with retainage, inclusion of liquidated damages, and withholding payment for all portions of the products/services acquired until final acceptance. The Vendor must agree to incorporate any or all of the above terms and conditions into the customer agreement.

36. **Proposal Bond**

The Vendor is not required include a proposal bond with its proposal.

37. **Performance Bond/Irrevocable Bank Letter of Credit**

The Vendor is not required to include the price of a performance bond or irrevocable bank letter of credit with its proposal.

38. **Responsibility for Behavior of Vendor Employees/Subcontractors**

The Vendor will be responsible for the behavior of all its employees and subcontractors while on the premises of any State agency or institution. Any Vendor employee or subcontractor acting in a manner determined by the administration of any State agency or institution to be detrimental, abusive, or offensive to any of the staff or student body of any State agency or institution will be asked to leave the premises and can be suspended from further work on the premises.

39. **Protests**

The Executive Director of **ITS** and/or the Board Members of **ITS** or their designees shall have the authority to resolve Vendor protests in connection with the selection for award of a contract. Copies of the protest procedures are available on the **ITS** Internet site - **ITS** Protest Procedure and Policy, Section 019-020, **ITS** Procurement Handbook at:

<http://www.its.ms.gov/Procurement/Documents/ISS%20Procurement%20Manual.pdf#page=173> or from **ITS** upon request.

40. **Protest Bond**

Potential Vendors may protest any of the specifications of this RFP on the belief that the specification is unlawful, unduly restrictive, or unjustifiably restraining to competition. Any such protest must be in writing and submitted to the **ITS** Executive Director along with the appropriate protest bond within five (5) working days of the Official Release of the RFP, as defined in the **ITS** Protest Procedure and Policy. The outside of the envelope must be marked "Protest" and must specify RFP number **4060**.

As a condition precedent to filing any protest related to this procurement, the Vendor must procure, submit to the **ITS** Executive Director with its written protest, and maintain in effect at all times during the course of the protest or appeal thereof, a protest bond in the full amount of the total estimated project lifecycle cost or \$250,000.00, whichever is less. The total estimated project lifecycle cost will be the amount used by **ITS** in the computation of cost points, as the low cost in the denominator of the cost evaluation formula. The bond shall be accompanied by a duly authenticated or certified document evidencing that the person executing the bond is a licensed Mississippi agent for the bonding company. This certified document shall identify the name and address of the person or entity holding the protest bond and shall identify a contact person to be notified in the event that the State is required to take action against the bond. The protest bond shall not be released to the protesting Vendor until the protest is finally resolved and the time for appealing said protest has expired. The protest bond shall be procured at the protesting Vendor's expense and be payable to the Mississippi Department of Information Technology Services. Prior to approval of the protest bond, **ITS** reserves the right to review the protest bond and require the protesting Vendor to substitute an acceptable bond in such form as the State may reasonably require. The premiums on such bond shall be paid by the protesting Vendor. The State may claim against the protest bond as specified in Section 25-53-5 (n) of the Mississippi Code of 1972, as amended during the 1998 Mississippi legislative session, in addition to all other rights and remedies the State may have at law or in equity.

Should the written protest submitted by the Vendor fail to comply with the content requirements of **ITS'** protest procedure and policy, fail to be submitted within the prescribed time limits, or fail to have the appropriate protest bond accompany it, the protest will be summarily dismissed by the **ITS** Executive Director.

41. **Mississippi Employment Protection Act**

Effective July 1, 2008, Vendor acknowledges that if awarded, it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Vendor will agree to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State.

Vendor acknowledges and certifies that any person assigned to perform services

hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi.

Vendor acknowledges that violating the E-Verify Program (or successor thereto) requirements subjects Vendor to the following: (a) cancellation of any state or public contract and ineligibility for any state or public contract for up to three (3) years, with notice of such cancellation being made public, or (b) the loss of any license, permit, certification or other document granted to Vendor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. Vendor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.



## SECTION V PROPOSAL EXCEPTIONS

Please return the *Proposal Exception Summary Form* at the end of this section with all exceptions to items in any Section of this RFP listed and clearly explained or state "No Exceptions Taken." If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions to any item in this RFP document.

1. Unless specifically disallowed on any specification herein, the Vendor may take exception to any point within this RFP, including a specification denoted with "shall" or "must," as long as the following are true:
  - 1.1 The specification is not a matter of State law;
  - 1.2 The proposal still meets the intent of the RFP;
  - 1.3 A *Proposal Exception Summary Form* is included with Vendor's proposal; and
  - 1.4 The exception is clearly explained, along with any alternative or substitution the Vendor proposes to address the intent of the specification, on the *Proposal Exception Summary Form*.
2. The Vendor has no liability to provide items to which an exception has been taken. **ITS** has no obligation to accept any exception. During the proposal evaluation and/or contract negotiation process, the Vendor and **ITS** will discuss each exception and take one of the following actions:
  - 2.1 The Vendor will withdraw the exception and meet the specification in the manner prescribed;
  - 2.2 **ITS** will determine that the exception neither poses significant risk to the project nor undermines the intent of the RFP and will accept the exception;
  - 2.3 **ITS** and the Vendor will agree on compromise language dealing with the exception and will insert same into the contract; or
  - 2.4 None of the above actions is possible, and **ITS** either disqualifies the Vendor's proposal or withdraws the award and proceeds to the next ranked Vendor.
3. Should **ITS** and the Vendor reach a successful agreement, **ITS** will sign adjacent to each exception which is being accepted or submit a formal written response to the *Proposal Exception Summary* responding to each of the Vendor's exceptions. The *Proposal Exception Summary*, with those exceptions approved by **ITS**, will become a part of any contract on acquisitions made under this RFP.
4. An exception will be accepted or rejected at the sole discretion of the State.
5. The State desires to award this RFP to a Vendor or Vendors with whom there is a high probability of establishing a mutually agreeable contract, substantially within the standard terms and conditions of the State's RFP, including the *Standard Contract* in Exhibit A, if

included herein. As such, Vendors whose proposals, in the sole opinion of the State, reflect a substantial number of material exceptions to this RFP, may place themselves at a comparative disadvantage in the evaluation process or risk disqualification of their proposals.

6. For Vendors who have successfully negotiated a contract with **ITS** in the past, **ITS** requests that, prior to taking any exceptions to this RFP, the individual(s) preparing this proposal first confer with other individuals who have previously submitted proposals to **ITS** or participated in contract negotiations with **ITS** on behalf of their company, to ensure the Vendor is consistent in the items to which it takes exception.

**PROPOSAL EXCEPTION SUMMARY FORM**

List and clearly explain any exceptions, for all RFP Sections and Exhibits, in the table below.

ITS RFP Reference	Vendor Proposal Reference	Brief Explanation of Exception	ITS Acceptance (sign here only if accepted)
(Reference specific outline point to which exception is taken)	(Page, section, items in Vendor's proposal where exception is explained)	(Short description of exception being made)	
1.			
2.			
3.			
4.			
5.			
6.			
7.			

## SECTION VI RFP QUESTIONNAIRE

Please answer each question or provide the information as requested in this section.

1. **Mississippi's Accountability System for Government Information and Collaboration (MAGIC) Information for State of Mississippi Vendor File**

- 1.1 **MAGIC Vendor Code:** Any Vendor who has not previously done business with the State and has not been assigned a MAGIC Vendor code should visit the following link to register:

[https://sus.magic.ms.gov/sap/bc/webdynpro/sapsrm/wda\\_e\\_suco\\_sreg?sap-client=100](https://sus.magic.ms.gov/sap/bc/webdynpro/sapsrm/wda_e_suco_sreg?sap-client=100)

Vendors who have previously done business with the State may obtain their MAGIC Vendor code and all Vendors may access additional Vendor information at the link below.

<http://www.dfa.ms.gov/dfa-offices/mmrs/mississippi-suppliers-vendors/supplier-self-service/>

All Vendors must furnish **ITS** with their MAGIC Vendor code.

MAGIC Vendor Code: \_\_\_\_\_

- 1.2 **Vendor Self-Certification Form:** The State of Mississippi, in an effort to capture participation by minority Vendors, asks that each Vendor review the State of Mississippi Minority Vendor Self Certification Form. This information is for tracking/reporting purposes only, and will not be used in determining which Vendor will be chosen for the project. Any Vendor who can claim status as a Minority Business Enterprise or a Woman Business Enterprise in accordance with the definitions on this form and who has not previously submitted a form to the State of Mississippi should submit the completed form with the proposal. A copy of the Minority Vendor Self-Certification Form can be obtained at:

[http://www.mississippi.org/assets/docs/minority/minority\\_vendor\\_selfcertform.pdf](http://www.mississippi.org/assets/docs/minority/minority_vendor_selfcertform.pdf)

Please direct any questions about minority certification in Mississippi to the Minority Business Enterprise Division of the Mississippi Development Authority by telephone at (601) 359-3448 or via email at [minority@mississippi.org](mailto:minority@mississippi.org).

If Vendor is claiming status as a Minority Business Enterprise or Woman Business Enterprise, the Vendor must include a copy of their Minority Vendor Self-Certification Form with their RFP response.

2. **Certification of Authority to Sell**

The Vendor must certify Vendor is a seller in good standing, authorized to sell and able to deliver all items and related services proposed in the State of Mississippi in the time frame specified. Does the Vendor make these certifications? (A yes or no answer is required.)

3. **Certification of No Conflict of Interest**

Mississippi law clearly forbids a direct or indirect conflict of interest of a company or its employees in selling to the State. The Vendor must answer and/or provide the following:

3.1 Does there exist any possible conflict of interest in the sale of items to any institution within **ITS** jurisdiction or to any governing authority? (A yes or no answer is required.)

3.2 If the possibility of a conflict does exist, provide a list of those institutions and the nature of the conflict on a separate page and include it in your proposal. The Vendor may be precluded from selling to those institutions where a conflict of interest may exist.

4. **Pending Legal Actions**

4.1 Are there any lawsuits or other legal proceedings against the Vendor that pertain to any of the software, hardware, or other materials and/or services which are a part of the Vendor's proposal? (A yes or no answer is required.)

4.2 Are there any criminal or civil proceedings (federal or state) pending against the Vendor or its principals or employees that pertain to any public procurement within the State of Mississippi or elsewhere? (A yes or no answer is required.)

4.3 If your answer to either of the above is "yes", provide a copy of same and state with specificity the current status of the proceedings.

4.4 The State, at its sole discretion, may reject the proposal of a Vendor who (a) has criminal or civil proceedings pending that pertain to a public procurement within Mississippi or elsewhere, or (b) has lawsuits or other legal proceedings pending that pertain to any of the products or services which are part of the Vendor's proposal.

5. **Non-Disclosure of Social Security Numbers**

Does the Vendor agree that any information system proposed, developed, or modified under this RFP that disseminates, in any form or manner, information or material that contains the Social Security Number of an individual, has mechanisms in place to prevent the inadvertent disclosure of the individual's Social Security Number to members of the general public or to persons other than those persons who, in the performance of their duties and responsibilities, have a lawful and legitimate need to know the individual's Social Security Number? This agreement is required by Section 25-1-111 of the Mississippi Code Annotated.

6. **Order and Remit Address**

The Vendor must specify both an order and a remit address:

**Order Address:**

**Remit Address (if different):**

7. **Taxpayer Identification Number**

Vendor must specify their taxpayer identification number.

8. **Web Amendments**

As stated in Section III, **ITS** will use the **ITS** website to post amendments regarding RFPs before the proposal opening at:

[http://www.its.ms.gov/Procurement/Pages/RFPS\\_Awaiting.aspx](http://www.its.ms.gov/Procurement/Pages/RFPS_Awaiting.aspx)

**ITS** may post clarifications until noon seven days prior to the proposal opening date listed on the cover page of this RFP or the posted extension date, if applicable.

Vendors may list any questions or items needing clarification discovered in the week prior to the proposal opening in a written format at the beginning of the proposal binder or in the comment section for the individual offering.

Does the Vendor certify that they have reviewed a copy of the **ITS** amendments for RFPs as above stated? (A yes or no answer is required.)

9. **Certification of Liability Insurance**

Vendor must provide a copy of their Certificate of Liability Insurance with their RFP response.

10. **E-Verify Registration Documentation**

Vendor must ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008). Vendor must provide documentation of their E-Verify compliance with their RFP response. See Section IV, Item 41 for additional information.

## SECTION VII TECHNICAL SPECIFICATIONS

### 1. How to Respond to this Section

- 1.1 Beginning with Item 2.1 of this section, label and respond to each outline point in this section as it is labeled in the RFP.
- 1.2 The Vendor must respond with “ACKNOWLEDGED,” “WILL COMPLY” or “AGREED” to each point in this section. In addition, many items in this RFP require detailed and specific responses to provide the requested information. Failure to provide the information requested will result in the Vendor receiving a lower score for that item, or, at the State’s sole discretion, being subject to disqualification.
- 1.3 “ACKNOWLEDGED” should be used when no vendor response or vendor compliance is required. “ACKNOWLEDGED” simply means the vendor is confirming to the State that he read the statement. This is commonly used in the RFP sections where the agency’s current operating environment is described or where general information is being given about the project.
- 1.4 “WILL COMPLY” or “AGREED” are used interchangeably to indicate that the vendor will adhere to the requirement. These terms are used to respond to statements that specify that a vendor or vendor’s proposed solution must comply with a specific item or must perform a certain task.
- 1.5 If the Vendor cannot respond with “ACKNOWLEDGED,” “WILL COMPLY,” or “AGREED,” then the Vendor must respond with “EXCEPTION.” (See Section V, for additional instructions regarding Vendor exceptions.)
- 1.6 Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
- 1.7 In addition to the above, Vendor must provide explicit details as to the manner and degree to which the proposal meets or exceeds each specification.

### 2. Mandatory Provisions in Technical Requirements for this RFP

- 2.1 Certain items in the technical specifications of this RFP are MANDATORY. Vendors are specifically disallowed from taking exception to these mandatory requirements, and proposals that do not meet all mandatory requirements are subject to immediate disqualification.
- 2.2 Mandatory requirements are those features classified as **MANDATORY** in Attachment A, RFP 4060 Technical Requirements.

### 3. General Overview and Background

- 3.1 In December of 2014, the Mississippi Commission on Marine Resources adopted regulations that require recreational anglers to report all red snapper



harvested in Mississippi. In 2015, the Mississippi Department of Marine Resources, hereafter referred to as MDMR, implemented this directive through a vendor hosted, web-accessible solution known as Tails n’ Scales. This application facilitates the mandatory reporting of red snapper harvesting by recreational anglers.

- 3.2 MDMR is seeking a single vendor to assume the hosting, support, enhancement, and maintenance of the existing Tails n' Scales solution. MDMR owns and will provide to the awarded vendor, the source code and all other technical components necessary for the implementation and maintenance of the current solution.
- 3.3 For the remainder of this document, Tails n’ Scales will be referred to as current solution. The replacement system will be referred to as proposed solution.

4. **Procurement Project Schedule**

<b>Task</b>	<b>Date</b>
First Advertisement Date for RFP	01/23/18
Second Advertisement Date for RFP	01/30/18
Deadline for Vendor’s Written Questions	3:00 p.m. Central Time on 02/06/18
Deadline for Questions Answered and Posted to ITS Web Site	02/13/18
Open Proposals	02/28/18
Evaluation of Proposals	03/07/18
Contract Negotiation	03/14/18
Proposed Project Implementation Start-up	03/15/18
Project Go-Live Deadline	04/05/18

5. **Statement of Understanding**

- 5.1 Vendors may request additional information or clarifications to this RFP using the following procedure:
  - 5.1.1 Vendors must clearly identify the specified paragraph(s) in the RFP that is in question.
  - 5.1.2 Vendor must deliver a written document to Jeannie Williford at **ITS** by February 6, 2018 at 3:00 p.m. Central Time. This document may be delivered by hand, mail, email, or fax. Address information is given on page one of this RFP. The fax number is (601) 713-6380. **ITS WILL NOT BE RESPONSIBLE FOR DELAYS IN THE DELIVERY OF QUESTION DOCUMENTS.** It is solely the responsibility of the vendor that the clarification document reaches **ITS** on time. Vendors may contact Jeannie Williford to verify the receipt of their document. Documents received after the deadline will be rejected.

5.2 All questions will be compiled and answered, and a written document containing all questions submitted and corresponding answers will be posted on the **ITS** web site by close of business on February 13, 2018.

6. **Technical Requirements**

6.1 For the technical requirements relevant to this procurement, refer to Attachment A, which is incorporated herein by reference and is considered to integral to this RFP. Attachment A is posted on the same website location as this RFP, No. 4060, and the link is located directly beneath the link to RFP No. 4060.

7. **Scoring Methodology**

7.1 An Evaluation Team composed of MDMR and **ITS** staff will review and evaluate all proposals. All information provided by the Vendors, as well as any other information available to evaluation team, will be used to evaluate the proposals.

7.1.1 Each category included in the scoring mechanism is assigned a weight between one and 100.

7.1.2 The sum of all categories, other than Value-Add, equals 100 possible points.

7.1.3 Value-Add is defined as product(s) or service(s), exclusive of the stated functional and technical requirements and provided to the State at no additional charge, which, in the sole judgment of the State, provide both benefit and value to the State significant enough to distinguish the proposal and merit the award of additional points. A Value-Add rating between 0 and 5 may be assigned based on the assessment of the evaluation team. These points will be added to the total score.

7.1.4 For the evaluation of this RFP, the Evaluation Team will use the following categories and possible points:

<b>Category</b>	<b>Possible Points</b>
Non-Cost Categories:	
Technical Requirements	65
<b>Total Non-Cost Points</b>	65
Cost	35
<b>Total Base Points</b>	100
Value Add	5
<b>Maximum Possible Points</b>	<b>105</b>

7.2 The evaluation will be conducted in four stages as follows:

7.2.1 Stage 1 – Selection of Responsive/Valid Proposals – Each proposal will be reviewed to determine if it is sufficiently responsive to the RFP requirements to permit a complete evaluation. A responsive proposal must comply with the instructions stated in this RFP with regard to content, organization/format, Vendor experience, number of copies, bond requirement, timely delivery, and must be responsive to all mandatory requirements. No evaluation points will be awarded in this stage. Failure to submit a complete proposal may result in rejection of the proposal.

7.2.2 Stage 2 – Non-cost Evaluation (all requirements excluding cost)

7.2.2.1 Non-cost categories and possible point values are as follows:

<b>Non-Cost Categories</b>	<b>Possible Points</b>
Technical Requirements	65
<b>Maximum Possible Points</b>	<b>65</b>

7.2.2.2 Proposals meeting fewer than 80% of the requirements in the non-cost categories may be eliminated from further consideration.

7.2.2.3 ITS scores the non-cost categories on a 10-point scale, with 9 points for meeting the requirement. The ‘Meets Specs’ score for each category is 90% of the total points allocated for that category. For example, the Technical Requirements category was allocated 65 points; a proposal that fully met all requirements in that section would have scored 58.5 points. The additional 10% is used for a

proposal that exceeds the requirement for an item in a way that provides additional benefits to the state.

7.3 Stage 3 – Cost Evaluation

7.3.1 Points will be assigned using the following formula:

$$(1-((B-A)/A))*n$$

Where:

- A = Total lifecycle cost of lowest valid proposal
- B = Total lifecycle cost of proposal being scored
- n = Maximum number of points allocated to cost for acquisition

7.3.2 Cost categories and maximum point values are as follows:

<b>Cost Category</b>	<b>Possible Points</b>
Lifecycle Cost	35
<b>Maximum Possible Points</b>	<b>35</b>

7.4 Stage 4 – Selection of the successful Vendor

7.4.1 On-site Demonstrations and Interviews

7.4.2 At the discretion of the State, evaluators may request interviews, on-site presentations, demonstrations or discussions with any and all Vendors for the purpose of system overview and/or clarification or amplification of information presented in any part of the proposal.

7.4.3 If requested, Vendors must be prepared to make on-site demonstrations of system functionality and/or proposal clarifications to the evaluation team and its affiliates within seven calendar days of notification. Each presentation must be made by the project manager being proposed by the Vendor to oversee implementation of this project.

7.4.4 Proposed key team members must be present at the on-site demonstration. The evaluation team reserves the right to interview the proposed key team members during this onsite visit.

7.4.5 Although on-site demonstrations may be requested, the demonstration will not be allowed in lieu of a written proposal.

7.4.6 Site Visits

7.4.7 At the State's option, Vendors that remain within a competitive range must be prepared to provide a reference site within seven calendar days of notification. If possible, the reference site should be in the Southeastern region of the United States. Vendor must list potential reference sites in the proposal.

7.5 Final Quantitative Evaluation - Following any requested presentations, demonstrations, and/or site visits, the Evaluation Team will re-evaluate any technical/functional scores as necessary. The technical/functional and cost scores will then be combined to determine the Vendor's final score.

**SECTION VIII  
 COST INFORMATION SUBMISSION**

Vendors must propose a summary of all applicable project costs in the matrix that follows. The matrix must be supplemented by a cost itemization fully detailing the basis of each cost category. The level of detail must address the following elements as applicable: item, description, quantity, retail, discount, extension, and deliverable. Any cost not listed in this section may result in the Vendor providing those products or services at no charge to the State or face disqualification.

Service	Quantity	Cost
<b>Using MDMR provided source code, completely replicate existing functionality, including implementation of web hosting for mobile and non-mobile access, system maintenance, user training, and first year support of the current <i>Tails n' Scales</i> fisheries management solution.</b>	1	
<b>Design and implement known enhancements to the current solution as described in Attachment A to RFP 4060.</b>	1	
<b>Total Year One Lifecycle Cost</b>		
<b>Website hosting, management, maintenance, and technical support Year Two*</b>		
<b>Website hosting, management, maintenance, and technical support Year Three*</b>		
<b>Website hosting, management, maintenance, and technical support Year Four*</b>		
<b>Website hosting, management, maintenance, and technical support Year Five*</b>		
<b>Total Lifecycle Cost for Years Two Through Five</b>		
<b>Fully Loaded Change Order Rate for future fisheries management services that might be required by MDMR.</b>		
<b>Other (optional):</b>		

## SECTION IX REFERENCES

Please return the following Reference Forms, and if applicable, Subcontractor Reference Forms.

### 1. References

- 1.1 The Vendor must provide at least **three (3)** references consisting of Vendor accounts that the State may contact. Required information includes customer contact name, address, telephone number, email address, and engagement starting and ending dates. Forms for providing reference information are included later in this RFP section. The Vendor must make arrangements in advance with the account references so that they may be contacted at the Project team's convenience without further clearance or Vendor intercession.
- 1.2 Any of the following may subject the Vendor's proposal to being rated unfavorably relative to these criteria or removed from further consideration, at the State's sole discretion:
  - 1.2.1 Failure to provide reference information in the manner described;
  - 1.2.2 Inability of the State to substantiate minimum experience or other requirements from the references provided;
  - 1.2.3 Non-responsiveness of references to the State's attempts to contact them; or
  - 1.2.4 Unfavorable references that raise serious concerns about material risks to the State in contracting with the Vendor for the proposed products or services.
- 1.3 References should be based on the following profiles and be able to substantiate the following information from both management and technical viewpoints:
  - 1.3.1 The reference installation must be for a project similar in scope and size to the project for which this RFP is issued;
  - 1.3.2 The reference installation must have been operational for at least six (6) months.
- 1.4 The State reserves the right to request information about the Vendor from any previous customer of the Vendor of whom the State is aware, including the procuring agency and/or other agencies or institutions of the State, even if that customer is not included in the Vendor's list of references, and to utilize such information in the evaluation of the Vendor's proposal.
- 1.5 Unless otherwise indicated in the Scoring Methodology in Section VII, reference information available to the State will be used as follows:

- 1.5.1 As documentation supporting mandatory experience requirements for companies, products, and/or individuals, as required in this RFP;
- 1.5.2 To confirm the capabilities and quality of a Vendor, product, or individual for the proposal deemed lowest and best, prior to finalizing the award.
- 1.6 The State reserves the right to forego reference checking when, at the State's sole discretion, the evaluation team determines that the capabilities of the recommended Vendor are known to the State.

2. **Subcontractors**

The Vendor's proposal must identify any subcontractor that will be used and include the name of the company, telephone number, contact person, type of work subcontractor will perform, number of certified employees to perform said work, and three (3) references for whom the subcontractor has performed work that the State may contact. Forms for providing subcontractor information and references are included at the end of this section.

Unless otherwise noted, the requirements found in the References section may be met through a combination of Vendor and subcontractor references and experience. Vendor's proposal should clearly indicate any mandatory experience requirements met by subcontractors. NOTE: The State reserves the right to eliminate from further consideration proposals in which the prime Vendor does not, in the State's sole opinion, provide substantive value or investment in the total solution proposed. (i.e. the State does not typically accept proposals in which the prime Vendor is only a brokering agent.)



## REFERENCE FORM

### Complete three (3) Reference Forms.

Contact Name:

Company Name:

Address:

Phone #:

E-Mail:

Project Start Date:

Project End Date:

Description of product/services/project, including start and end dates:

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## SUBCONTRACTOR REFERENCE FORM

**Complete a separate form for each subcontractor proposed.**

Contact Name:  
Company name:  
Address:  
Phone #:  
E-Mail:

Scope of services/products to be provided by subcontractor:

**Complete three (3) Reference Forms for each Subcontractor.**

Contact Name:  
Company name:  
Address:  
Phone #:  
E-Mail:

Description of product/services/project, including start and end dates:

**EXHIBIT A  
STANDARD CONTRACT**

A properly executed contract is a requirement of this RFP. After an award has been made, it will be necessary for the winning Vendor to execute a contract with **ITS**. The inclusion of this contract does not preclude **ITS** from, at its sole discretion, negotiating additional terms and conditions with the selected Vendor(s) specific to the projects covered by this RFP.

If Vendor cannot comply with any term or condition of this Standard Contract, Vendor must list and explain each specific exception on the *Proposal Exception Summary Form* included in Section V.

**PROJECT NUMBER 43998  
APPLICATION SERVICE PROVIDER AGREEMENT  
BETWEEN  
INSERT VENDOR NAME  
AND  
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES  
AS CONTRACTING AGENT FOR THE  
MISSISSIPPI DEPARTMENT OF MARINE RESOURCES**

This Application Service Provider Agreement (hereinafter referred to as "Agreement") is entered into by and between, **INSERT VENDOR NAME**, a **STATE OF INCORPORATION** corporation having its principal place of business at **VENDOR ADDRESS** (hereinafter referred to as "Provider"), and Mississippi Department of Information Technology Services having its principal place of business at 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201 (hereinafter referred to as "ITS"), as contracting agent for the Mississippi Department of Marine Resources located at 1141 Bayview Drive, Suite 101, Biloxi, Mississippi 39530 (hereinafter referred to as "Customer" and/or "DMR"). ITS and DMR are sometimes collectively referred to herein as "State."

**WHEREAS**, DMR, pursuant to the Request for Proposals ("RFP") No. 4060 requested proposals for the implementation, hosting, support, and maintenance of the current Tails n' Scales Red Snapper Landing Application; and

**WHEREAS**, Provider was the successful proposer in an open, fair and competitive procurement process to provide the software and services described herein;

**NOW THEREFORE**, in consideration of the mutual understandings, promises and agreements set forth, the parties hereto agree as follows:

**ARTICLE 1 DEFINITIONS**

**1.1** "Active User" means DMR employees, and the general public actively participating on the system in any given month of operation, who shall be bound to the terms and conditions of this Agreement. Provider does not impose a limit on the number of Active Users accessing or registering to use the system.

**1.2** "Available Date" means the date upon which Provider notifies DMR that the Software may be accessed on the Provider's ASP server and DMR may begin acceptance testing.

**1.3** “Content” means any content provided by or through Active Users for use with the Software.

**1.4** “Enhancements” means the corrections, updates, upgrades or new versions of the Software or Documentation that Provider may provide to Customer under this Agreement.

**1.5** “Products” means the Software, Documentation, Corrections, Enhancements and any copy of the Software, Documentation, Corrections, or Enhancements.

**1.6** “Services” means any on-line user access, customizations, interface development, consulting, education, ASP installation, system administration, training, maintenance, support, and Help Desk services provided by Provider to Customer.

**1.7** “Software” means the source code as well as the machine-readable object code version of the computer programs whether embedded on disc, tape or other media used for the management of the web-based Tails n’ Scales Red Snapper Landing Application System and Supported Interfaces (and any Documentation and help files within the Software), including any Enhancements provided pursuant to the maintenance and support terms identified herein.

**1.8** “Supported Interfaces” means application-based interfaces (API), network protocols, data formats, database schemas, and file formats used in the Software.

## **ARTICLE 2 PERIOD OF PERFORMANCE**

**2.1** Unless this Agreement is extended by mutual agreement or terminated as prescribed elsewhere herein, this Agreement shall begin on the date it is signed by all parties and shall continue in effect until the Provider completes all tasks required herein pursuant to the project work plan, including services during the three (3) year hosting term. At the end of the three year initial ASP services term, the ASP services may, upon the written agreement of the parties, be renewed under the same terms and conditions for two successive one (1) year terms. One hundred and eighty (180) days prior to the expiration of the initial hosting term or any renewal hosting term of this Agreement, Provider shall notify DMR and ITS of the impending expiration and DMR shall have sixty (60) days in which to notify Provider of its intention to either renew or cancel the ASP services. DMR’s failure to notify Provider within said sixty (60) day period shall be considered a cancellation of the ASP services as of the expiration of the initial hosting term or any renewal thereof pursuant to this Agreement.

**2.2** This Agreement will become a binding obligation on the State only upon the issuance of a valid purchase order by DMR following contract execution and the issuance by ITS of the CP-1 Acquisition Approval Document.

## **ARTICLE 3 SCOPE OF SERVICES**

**3.1** The Provider agrees to provide to DMR an ASP based Tails n’ Scales Red Snapper Landing Application System and Services and associated deliverables required to provide, host and maintain a web based application for DMR as described in this Agreement. While the scope of work for this project is defined by the contract documents set forth herein in the article titled “Entire Agreement”, a summary of such work is outlined in Article 3.2 below.

**3.2** Provider shall be responsible for the following:

- A.** Ensuring that the host site substantially complies with PriorityOne of the World Wide Web Consortium's (W3C's) Web Accessibility Initiative in all material respects and guidelines in Section 508 of the Rehabilitation Act that are not covered in W3C Priority;
- B.** Ensuring that the site is accessible through DMR's published universal resource locator ("URL") through a link to the URL of Provider's hosted application;
- C.** At the request of DMR, reviewing with DMR the Content no more often than once a quarter unless necessary to ensure that the Content remains timely and accurate and reaching an agreement with DMR as to reasonable timelines for implementing Content updates delivered to the Provider that will be posted on the site;
- D.** All Software and Content collected by the Software shall remain the sole and exclusive property of the Customer. Upon the termination or expiration of this Agreement, Provider shall provide such Content in its possession to the Customer pursuant to a mutually agreed upon release schedule;
- E.** Working with DMR to achieve access rates that meet DMR's needs within the parameters provided in this Agreement;
- F.** Providing security for the host site within the parameters provided in this Agreement with Provider responsible for all necessary equipment and software related to security;
- G.** Maintaining the accessibility of the site twenty-four (24) hours a day, seven (7) days a week at an uptime rate of 99% or greater, subject to the limitations set forth in this Agreement, including but not limited to, those in Article 4.4;
- H.** Completing daily backups of the site;
- I.** Except for installing emergency fixes and patches or under other conditions as set forth in this Agreement, for which reasonable advance notice will be provided, after final acceptance by DMR, notifying DMR at least three (3) business days prior to any anticipated service interruption, with said notice containing a general description of the reason for the service interruption;
- J.** Proposing and adhering to a disaster recovery plan and providing access to such plan to the State, all at Provider's expense;
- K.** Maintaining the confidentiality of the data subject to the terms, conditions and limitations provided in this Agreement;
- L.** Exercising its best efforts to ensure that upon termination or expiration of this Agreement that transition of the site from the Provider to DMR or to a successor host will be accomplished at no expense to DMR, and with minimal interruption of the site's accessibility and insignificant changes in the site's appearance and functionality;
- M.** Providing DMR access to all of the non-confidential technical information concerning operation of the site, including but not limited to, server specifications, Internet connection information, personnel requirements and software implementations;
- N.** Identifying any commercially available software, by vendor and version number, integrated into the Products and describing the particular functionality of any software that is proprietary to the Provider;
- O.** Maintaining the host site, with the cost for such support, maintenance, and hosting for years following the initial three (3) year period not increasing annually beyond five percent (5%) or the percent increase in the consumer price index for all Urban Consumers, US City Average (C.P.I.-U) for the preceding year, whichever is less;
- P.** Except as otherwise provided in this Agreement, providing 24x7x365 access to the host site to Customer, and providing support Monday through Friday, 8:00 A.M. to 5:00 P.M.;
- Q.** Providing redundant internet connections;
- R.** Providing non-mobile and mobile web access, including IOS and Android users;
- S.** Providing secure FTP and remote configuration access;
- T.** Providing SSL secure server support;

**U.** Providing monthly reports containing server performance data to DMR in a form reasonably acceptable to the parties, and

**V.** Subject to the other provisions of this Agreement, maintaining sufficient bandwidth and server capacity to meet DMR and Active Users' demand as it may fluctuate and increase during the term of this Agreement.

#### **ARTICLE 4 SCOPE OF HOSTING SERVICES**

**4.1** Subject to the terms and conditions of this Agreement, Provider agrees to provide DMR an ASP based Tails n' Scales Red Snapper Landing Application for the initial term of the Agreement and any subsequent renewal hosting terms in accordance with, and subject to, the terms and conditions set forth in this Agreement. Customer and Active Users are granted access to the Services twenty-four (24) hours a day, seven (7) days a week, three hundred and sixty five (365) days a year, subject to regularly scheduled maintenance and required repairs. The terms and conditions of this Agreement will apply to any Enhancements.

**4.2** In connection with the ASP Services, Provider will provide and maintain all Software and server hardware, including, but not limited to, the server software, server telecommunications hardware and software, server security hardware and server software and other software that is reasonably necessary to operate and maintain the Software.

**4.3** The Services will be accessible at least ninety nine percent (99%) of the time, twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of the ASP Services due to causes beyond the control of Provider or which are not reasonably foreseeable by Provider, including but not limited to, interruption or failure of telecommunication or digital transmission links and Internet slowdowns or failures. In the event that DMR or an Active User is unable to achieve the 99% application availability during any given month, excluding scheduled maintenance, required repairs, and unavailability due to causes beyond the control of Provider or which are not reasonably foreseeable by Provider, including but not limited to, interruption or failure of telecommunication or digital transmission links and Internet slowdowns or failures, the Provider shall reimburse DMR twenty five percent (25%) of the monthly ASP hosting fees for each twenty-four (24) hour day during which there were any such incidents of unavailability. Provider shall maintain the server at a secured location of a third party vendor with restricted access.

**4.4** Provider shall provide the Customer with its standard managed firewall service, which shall enable secure delivery of Provider's application services using fully redundant hardware-based firewalls. Provider's managed firewall service will be available twenty-four (24) hours a day, seven (7) days a week while hosted at the request of the Customer at the Provider's site.

**4.5** The use of the Software by Active Users will be governed solely by the terms and conditions of this Agreement.

**4.6** Provider acknowledges that the Software and Content are and shall remain the sole and exclusive property of DMR. Further, Provider acknowledges that the Software and Content may contain valuable trade secrets of DMR and Provider agrees to maintain the confidentiality of the Software and Content and shall not make the Software or Content publicly available except as may be necessary in performing the ASP Services.

#### **ARTICLE 5 CONSIDERATION AND METHOD OF PAYMENT**

**5.1** The total compensation to be paid to the Provider by DMR for all maintenance and ASP services, customizations, products, travel, performances and expenses for the three (3) year term of this Agreement shall not exceed the specified sum of **\$INSERT TOTAL COMPENSATION**, and shall be payable as set forth in the Payment Schedule attached hereto as Exhibit A.

**5.2** Provider shall submit invoices with the appropriate documentation to DMR monthly for any month in which ASP services and/or other Services are rendered. The State may, at its sole discretion, require Provider to submit invoices and supporting documentation electronically at any time during the term of this Agreement. DMR agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Section 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by DMR within forty-five (45) days of receipt of the invoice. Provider understands and agrees that DMR is exempt from the payment of taxes. All payments shall be in United States currency. Payments by state agencies using Mississippi's Accountability System for Government Information and Collaboration (MAGIC) shall be made and remittance information provided electronically as directed by the State. The payments by these agencies shall be deposited into the bank account of the Provider's choice. No payment, including final payment, shall be construed as acceptance of defective products or incomplete work, and the Provider shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the article herein titled "Entire Agreement."

**5.3** Acceptance by the Provider of the last payment due from DMR under this Agreement shall operate as a release of all claims for money against the State by the Provider and any subcontractors or other persons supplying labor or materials used in the performance of the work under this Agreement.

## **ARTICLE 6 WARRANTY**

**6.1** Provider represents and warrants that it has the right to enter into this Agreement.

**6.2** Provider represents and warrants that the Services provided by Provider shall meet or exceed the minimum specifications set forth in RFP No. 4060 and Provider's Proposal, as accepted by the State, in response thereto.

**6.3** During the term of this Agreement, the Provider represents and warrants that all deliverables shall be free from any defect, deficiency, faultiness, imperfection, inadequacy, incompleteness or other condition (collectively referred to herein as "Defect") which would render any such deliverable inoperable in any way or which would prevent full performance in accordance with this Agreement. This warranty includes, without limitation, correction of errors, design deficiencies, performance deficiencies, and incorrect or defective Documentation, including those found during acceptance testing, implementation, and the warranty period. Acceptance testing shall not in any way relieve the Provider of its responsibilities to correct any Defect during the warranty period. The Provider shall repair any Defect at no cost to the State within ten (10) business days of receiving notice of the Defect from the State, unless DMR consents in writing to a longer period of repair time. In the event Provider is unable to repair the Defect within the mutually agreed upon time frame after receipt of notice of the Defect, DMR shall be entitled to a pro-rata refund of fees paid and shall have the right to terminate this Agreement in whole or in part as provided for in the Termination Article herein. Customer's rights hereunder are in addition to any other rights Customer may have.

**6.4** During the term of this Agreement, the Provider represents and warrants that its Services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such Services and shall comply in all respects with the requirements of this Agreement. For any breach of this warranty, Provider shall perform the Services again, at no cost to the State, or if Provider is unable to perform the Services as warranted, Provider shall reimburse the State the fees paid to Provider for the unsatisfactory Services.

**6.5** Provider represents and warrants that it will not, under any circumstances including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Customer's use of the Services and/or which would restrict Customer from accessing its data files or in any way interfere with the transaction of Customer's business.

**6.6** The Provider represents and warrants that, upon completion of the project, the Provider, and all subcontractors, if any, shall convey to DMR the source code of the Software, the Content, and copies of all interim reports, cost records, data collection forms, and any working papers that support the final acceptance.

**6.7** Provider represents and warrants that it has obtained all necessary rights to permit use of the graphics on the site and that the Provider shall provide DMR with evidentiary proof of graphic licenses and releases. Further, the Provider represents and warrants that all Provider-supplied graphics and content contains no scandalous or libelous material.

**6.8** The Provider represents and warrants that the deliverables provided to DMR under this Agreement, and their use by Active Users, will not infringe or constitute an infringement of any copyright, patent, trademark, servicemark, trade secret or other proprietary right of any person or entity. Customer agrees that it will promptly notify Provider in writing of any such claim or action of which it has knowledge, and that it will cooperate fully in the defense and investigation of the claim by supplying Provider all relevant information currently available and in its possession, all at Provider's expense. Provider shall, to the extent authorized by Mississippi law, have sole control over the defense or settlement of any such claim or action. Provider, at its own expense, shall defend or settle any and all infringement actions filed against Provider or the State which involve the deliverables or other items provided under this Agreement and shall pay all settlements, as well as all costs, attorney fees, damages and judgment finally awarded against the State. If, in any such suit arising from such claim, the continued use of the items for the purpose intended is enjoined or threatened to be enjoined by any court of competent jurisdiction, Provider shall, at its expense: (a) procure for the State the right to continue using such items, or (b) modify or replace them with non-infringing items with equivalent functionality, or, to the extent (a) or (b) cannot be done despite Provider's commercially reasonable efforts, (c) refund to the State the fees previously paid by the State for the infringing Products. Said refund shall be paid within ten (10) business days of notice to the State to discontinue said use. In addition to the foregoing, the Provider shall indemnify the State in accordance with the provisions of Article 18 herein.

**6.9** Provider represents and warrants that the host site provided by the Provider shall be reasonably expandable and scalable so DMR can add and support reasonable additional business functions and users over time. It is understood and agreed that any standard revisions, enhancements, improvements, and upgrades to the Software and host site equipment during the



term of this Agreement, including operating system, database management system, and other software, shall be provided by Provider to DMR at no additional cost to DMR.

**6.10** Provider represents and warrants that it presently has and will continue to maintain, at its own expense, throughout the term of this Agreement, valid licenses for all software, trademarks, service marks, patents and copyrighted material and any other proprietary information of a third party that it will deploy in support of all products Provider uses in the performance of this Agreement.

**6.11** If applicable under the given circumstances, Provider represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Provider agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security where required, to provide a copy of each such verification to the State. Provider further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Provider understands and agrees that any breach of these warranties may subject Provider to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Provider by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Provider would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

**6.12** Provider represents and warrants that the system provided pursuant to this Agreement will pass both reasonable internal security audits and reasonable independent security audits. For any breach of the preceding warranty at any time during which the system is covered by warranty and/or software support under this Agreement, Provider shall, at its own expense and at no cost to Customer, remediate any defect, anomaly or security vulnerability in the system by repairing and/or replacing any and all components of the system necessary in order for the system to be secure.

**6.13** Provider represents and warrants that no official or employee of Customer or of ITS, and no other public official of the State of Mississippi who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of said project, voluntarily acquire any personal interest, direct or indirect, in this Agreement. The Provider warrants that it has removed any material conflict of interest prior to the signing of this Agreement, and that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its responsibilities under this Agreement. The Provider also warrants that in the performance of this Agreement no person having any such known interests shall be employed.

**6.14** The Provider represents and warrants that no elected or appointed officer or other employee of the State of Mississippi, nor any member of or delegate to Congress has or shall benefit financially or materially from this Agreement. No individual employed by the State of Mississippi shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom. The State of Mississippi may, by written notice to the Provider, terminate the right of the Provider to proceed under this Agreement if it is found, after notice and hearing by the ITS Executive Director or his/her designee, that gratuities in the form of entertainment, gifts, jobs, or otherwise were offered or given by the Provider to any officer or employee of the State of Mississippi with a view toward securing this Agreement or securing favorable treatment with respect to the award, or amending or making of any determinations with respect to the performing of such contract, provided that the existence of the facts upon which the ITS Executive Director makes such findings shall be in issue and may be reviewed in any competent court. In the event this Agreement is terminated under this article, the State of Mississippi shall be entitled to pursue the same remedies against the Provider as it would pursue in the event of a breach of contract by the Provider, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

#### **ARTICLE 7 EMPLOYMENT STATUS**

**7.1** Provider shall, during the entire term of this Agreement, be construed to be an independent contractor. Nothing in this Agreement is intended to nor shall be construed to create an employer-employee relationship, or a joint venture relationship.

**7.2** Provider represents that it is qualified to perform the duties to be performed under this Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the duties required under this Agreement. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of Customer.

**7.3** Any person assigned by Provider to perform the Services hereunder shall be the employee of Provider, who shall have the sole right to hire and discharge its employee. Customer may, however, direct Provider to replace any of its employees under this Agreement.

**7.4** Provider shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Provider nor employees of Provider are entitled to state retirement or leave benefits.

#### **ARTICLE 8 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS**

Provider will be responsible for the behavior of all its employees and subcontractors while on the premises of any Customer location. Any employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive or offensive to any of the staff will be asked to leave the premises and may be suspended from further work on the premises. All Provider employees and subcontractors who will be working at such locations shall be covered by Provider's comprehensive general liability insurance policy.

#### **ARTICLE 9 MODIFICATION OR RENEGOTIATION**

This Agreement may be modified only by written agreement signed by the parties hereto, and any attempt at oral modification shall be void and of no effect. The parties agree to renegotiate the

Agreement if federal and/or state revisions of any applicable laws or regulations make changes in this Agreement necessary.

## **ARTICLE 10 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS**

**10.1** In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that Provider represents all contractors, third parties, and/or subcontractors Provider has assembled for this project. The Customer is only required to negotiate with Provider, as Provider's commitments are binding on all proposed contractors, third parties, and subcontractors.

**10.2** Neither party may assign or otherwise transfer this Agreement or its obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of its obligations without such consent shall be null and void. This Agreement shall be binding upon the parties' respective successors and assigns.

**10.3** Provider must obtain the written approval of DMR before subcontracting any portion of this Agreement other than to an affiliate of Provider. No such approval by DMR of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of DMR in addition to the total fixed price agreed upon in this Agreement. All subcontracts shall incorporate the terms of this Agreement and shall be subject to the terms and conditions of this Agreement and to any conditions of approval that DMR may deem necessary.

**10.4** Provider represents and warrants that any subcontract agreement Provider enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Customer, and that the subcontractor acknowledges that no privity of contract exists between the Customer and the subcontractor and that the Provider is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with the Provider. The Provider shall indemnify and hold harmless the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Provider's failure to pay any and all amounts due by Provider to any subcontractor, third party Provider, materialman, laborer or the like.

**10.5** All subcontractors shall be bound by any negotiation, arbitration, appeal, adjudication or settlement of any dispute between the Provider and the Customer, where such dispute affects the subcontract.

## **ARTICLE 11 AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of DMR to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds for the performances required under this Agreement. If the funds anticipated for the fulfillment of this Agreement are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to DMR for the payments or performance due under this Agreement, DMR shall have the right to immediately terminate this Agreement, in whole or in part, without damage, penalty, cost or expense to DMR of any kind whatsoever, except for payment for work completed by Provider and accepted by DMR prior to termination. The effective date of termination shall be

as specified in the notice of termination. DMR shall have the sole right to determine whether funds are available for the payments or performances due under this Agreement.

## **ARTICLE 12 TERMINATION**

**12.1** Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be terminated, in whole or in part, as follows: (a) upon the mutual, written agreement of the parties; (b) If either party fails to comply with the terms of this Agreement, the non-defaulting party may terminate the Agreement upon the giving of thirty (30) calendar days written notice unless the breach is cured within said thirty (30) day period; (c) DMR may terminate the Agreement in whole or in part without the assessment of any penalties upon ten (10) calendar days written notice to Provider if Provider becomes the subject of bankruptcy, reorganization, liquidation or receivership proceedings, that are voluntary or that are involuntary and not dismissed for a period of sixty (60) days, or (d) DMR may terminate this Agreement in whole or in part for any reason without the assessment of any penalties after giving thirty (30) calendar days written notice specifying the effective date thereof to Provider. The provisions of this Article 13 do not limit either party's right to pursue any other remedy available at law or in equity.

**12.2** In the event of termination by reason of the Provider's failure to comply with any part of this Agreement, or upon any act which shall give rise to Customer's right to terminate, within five (5) days after termination of this Agreement, Provider will return to Customer object code and source code with respect to the Software in the form provided by Customer pursuant to Article 39 herein or as modified by Provider, or upon request by Customer, destroy the object code and source code with respect to the Software and all copies, and certify in writing that they have been destroyed.

**12.3** In the event DMR terminates this Agreement, Provider shall receive just and equitable compensation for Services rendered by Provider and accepted by DMR prior to the termination.

## **ARTICLE 13 GOVERNING LAW**

This Agreement shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. Provider expressly agrees that under no circumstances shall the State be obligated to pay an attorney's fee, prejudgment interest or the cost of legal action to Provider. Further, nothing in this Agreement shall affect any statutory rights the parties may have that cannot be waived or limited by contract.

## **ARTICLE 14 WAIVER**

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Agreement. A waiver by either party, to be effective, must be in writing, must set out the specifics of what is being waived, and must be signed by an authorized representative of that party.

## **ARTICLE 15 SEVERABILITY**

If any term or provision of this Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law provided that the State's purpose for entering into this Agreement can be fully achieved by the remaining portions of the Agreement

that have not been severed.

#### **ARTICLE 16 CAPTIONS**

The captions or headings in this Agreement are for convenience only, and in no way define, limit or describe the scope or intent of any provision or Article in this Agreement.

#### **ARTICLE 17 HOLD HARMLESS**

To the fullest extent allowed by law, but in any case subject to the provisions of Article 42 herein, Provider shall indemnify, defend, save and hold harmless, protect and exonerate DMR, ITS and the State, its Board Members, officers, employees, agents and representatives from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever, including without limitation, court costs, investigative fees and expenses, attorney fees and claims for damages arising out of or caused by Provider and/or its partners, principals, agents, employees or subcontractors in the performance of or failure to perform this Agreement.

#### **ARTICLE 18 THIRD PARTY ACTION NOTIFICATION**

Provider shall notify DMR in writing within five (5) business days of Provider filing bankruptcy, reorganization, liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any written claim being made against Provider or DMR by any entity that may result in litigation related in any way to this Agreement and/or which may affect the Provider's performance under this Agreement. Failure of the Provider to provide such written notice to DMR shall be considered a material breach of this Agreement and DMR may, at its sole discretion, pursue its rights as set forth in the Termination Article herein and any other rights and remedies it may have at law or in equity.

#### **ARTICLE 19 AUTHORITY TO CONTRACT**

**19.1** Provider warrants that it is a validly organized business with valid authority to enter into this Agreement; that entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual or other agreement of any kind, and notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

**19.2** Customer warrants that it has valid authority to enter into this Agreement; that entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual or other agreement of any kind, and notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

#### **ARTICLE 20 NOTICE**

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their business address listed herein. ITS' address for notice is: Craig P. Orgeron, Ph.D., Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. Customer's name and address for notice is: Brian Sherwood, Director, Office of

Information Technology, Mississippi Department of Marine Resources, 1141 Bayview Drive, Suite 101, Biloxi, Mississippi 39530. The Provider's address for notice is: **VENDOR NOTICE INFORMATION**. 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.

#### **ARTICLE 21 RECORD RETENTION AND ACCESS TO RECORDS**

Provider shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Agreement. The Customer, ITS, any state or federal agency authorized to audit Customer, and/or any of their duly authorized representatives, shall have unimpeded, prompt access to this Agreement and to any of the Provider's proposals, books, documents, papers and/or records that are pertinent to this Agreement to make audits, copies, examinations, excerpts and transcriptions at the State's or Provider's office as applicable where such records are kept during normal business hours. All records relating to this Agreement shall be retained by the Provider for three (3) years from the date of receipt of final payment under this Agreement. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the three (3) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.

#### **ARTICLE 22 INSURANCE**

Provider represents that it will maintain workers' compensation insurance as prescribed by law which shall inure to the benefit of Provider's personnel, as well as comprehensive general liability insurance. Provider will, upon request, furnish DMR with a certificate of conformity providing the aforesaid coverage.

#### **ARTICLE 23 COMPLIANCE WITH LAWS**

Provider shall comply with, and all activities under this Agreement shall be subject to, all Customer policies and procedures which Provider has received copies of, and all applicable federal, state, and local laws, regulations, policies and procedures as now existing and as may be amended or modified. Specifically, but not limited to, Provider shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of this Agreement because of race, creed, color, sex, age, national origin or disability.

#### **ARTICLE 24 CONFLICT OF INTEREST**

Provider shall notify DMR of any potential conflict of interest resulting from the provision of services to other customers. If such conflict cannot be resolved to DMR's satisfaction, DMR reserves the right to terminate this Agreement.

#### **ARTICLE 25 SOVEREIGN IMMUNITY**

By entering into this Agreement with Provider, the State of Mississippi does in no way waive its sovereign immunities or defenses as provided by law.

#### **ARTICLE 26 CONFIDENTIAL INFORMATION**

**26.1** Provider shall treat all Customer data and information to which it has access by its performance under this Agreement as confidential and shall not disclose such data or information to a third party without specific written consent of Customer. In the event that Provider receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a validly issued judicial order requiring divulgence of such information, Provider shall promptly inform Customer and thereafter respond in conformity with such court

order to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive the termination or completion of this Agreement and shall continue in full force and effect and shall be binding upon the Provider and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in this Agreement on behalf of, or under the rights of the Provider following any termination or completion of this Agreement.

**26.2** With the exception of any attached exhibits which are labeled as "confidential", the parties understand and agree that this Agreement, including any amendments and/or change orders thereto, does not constitute confidential information, and may be reproduced and distributed by the State without notification to Provider. ITS will provide third party notice to Provider of any requests received by ITS for any such confidential exhibits so as to allow Provider the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

**26.3** The parties understand and agree that pursuant to §25-61-9(7) of the Mississippi Code of 1972, as amended, the contract provisions specifying the commodities purchased or the services provided; the price to be paid; and the term of this Agreement shall not be deemed confidential information.

#### **ARTICLE 27 EFFECT OF SIGNATURE**

Each person signing this Agreement represents that he or she has read the Agreement in its entirety, understands its terms, is duly authorized to execute this Agreement on behalf of the parties and agrees to be bound by the terms contained herein. Accordingly, this Agreement shall not be construed or interpreted in favor of or against the State or the Provider on the basis of draftsmanship or preparation hereof.

#### **ARTICLE 28 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS**

Provider understands and agrees that DMR owns all Software and Products attendant to this Agreement. Further, all Content, electronic or otherwise, collected/created by Provider or Provider's Services and all documents, notes, programs, databases (and all applications thereof), files, reports, studies, work papers, and all other materials collected and prepared by Provider in connection with this Agreement, whether completed or in progress, shall be the property of DMR upon completion or termination of this Agreement. DMR hereby reserves all rights to the databases and to any and all similar information and/or materials prepared in connection with this Agreement. Provider is prohibited from use of the above described information and/or materials without the express written approval of DMR.

#### **ARTICLE 29 NON-SOLICITATION OF EMPLOYEES**

Provider agrees not to employ or to solicit for employment, directly or indirectly, any of DMR's employees until at least one (1) year after the expiration/termination of this Agreement unless mutually agreed to the contrary in writing by DMR and the Provider and provided that such an agreement between these two entities is not a violation of the laws of the State of Mississippi or the federal government.

#### **ARTICLE 30 ENTIRE AGREEMENT**

**30.1** This contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties.

**30.2** The contract made by and between the parties hereto shall consist of, and precedence is hereby established by the order of the following:

- A. This Agreement signed by the parties hereto;
- B. Any exhibits attached to this Agreement;
- C. RFP No. 4060 and written addenda, and
- D. Provider's Proposal, as accepted by the State, in response to the RFP.

**30.3** The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by the Provider. The documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof; provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority, that is, the highest document begins with the first listed document ("A. This Agreement") and the lowest document is listed last ("D. Provider's Proposal").

#### **ARTICLE 31 STATE PROPERTY**

Provider shall be responsible for the proper custody of any Customer-owned property furnished for Provider's use in connection with Services performed pursuant to this Agreement. Provider shall reimburse the Customer for any loss or damage, normal wear and tear excepted.

#### **ARTICLE 32 SURVIVAL**

Articles 6, 12, 13, 17, 21, 25, 26, 28, 29, 40, and all other articles or sections which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this Agreement.

#### **ARTICLE 33 DEBARMENT AND SUSPENSION CERTIFICATION**

Provider certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

#### **ARTICLE 34 SPECIAL TERMS AND CONDITIONS**

It is understood and agreed by the parties to this Agreement that there are no special terms and conditions except as specifically provided in this Agreement.

#### **ARTICLE 35 STATUTORY AUTHORITY**



By virtue of Section 25-53-21 of the Mississippi Code Annotated, as amended, the executive director of ITS is the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of information technology equipment, software and services. The parties understand and agree that ITS as contracting agent is not responsible or liable for the performance or non-performance of any of the Customer's or Provider's contractual obligations, financial or otherwise, contained within this Agreement.

### **ARTICLE 36 NETWORK SECURITY**

Provider and DMR understand and agree that the State of Mississippi's Enterprise Security Policy mandates that all remote access to and/or from the State network must be accomplished via a Virtual Private Network (VPN). If remote access is required at any time during the life of this Agreement, Provider and DMR agree to implement/maintain a VPN for this connectivity. This required VPN must be IPSec-capable (ESP tunnel mode) and will terminate on a Cisco VPN-capable device (e.g., VPN concentrator, PIX firewall, etc.) on the State's premises. Provider agrees that it must, at its expense, implement/maintain a compatible hardware/software solution to terminate the specified VPN on the Provider's premises. The parties further understand and agree that the State protocol standard and architecture are based on industry-standard security protocols and manufacturer engaged at the time of contract execution. The State reserves the right to introduce a new protocol and architecture standard and require the Provider to comply with same, in the event the industry introduces a more secure, robust protocol to replace IPSec/ESP and/or there is a change in the manufacturer engaged.

### **ARTICLE 37 SUPPORT AND MAINTENANCE**

**37.1** As part of the support and maintenance services, Provider will maintain the system in an operable condition according to the specifications contained in the technical manuals and as outlined in RFP 4060 and the Provider's Proposal in response thereto.

**37.2** Provider shall also provide unlimited technical support for the operation of the Software Products and with respect to any defects via Provider's telephone support and Provider's Internet help desk. Provider shall also provide up to ten (10) hours per month for general questions and discussion, instruction/training, ad-hoc reports, and minor customizations by Provider's Support Staff.

**37.3** Provider shall maintain support for latest mobile and non-mobile operating systems and web browsers, with ongoing support as updates are released.

**37.4** In the case of critical issues, Provider shall grant DMR direct, prompt access to a representative during regular business hours, Monday-Friday, 8:00 a.m. CST – 5:00 p.m. CST.

**37.5** In the case of critical service issues, Provider shall respond within one hour of intake and provide resolution within four hours of intake.

**37.6** In the case of non-critical issues, Provider shall respond with four hours of intake and provide resolution within twenty-four hours.

### **ARTICLE 38 TITLE TO SOFTWARE SYSTEMS AND CONFIDENTIALITY**

**38.1** The Software and all programs developed hereunder and all copies thereof are proprietary to, and trade secrets of, DMR, and title thereto remains in DMR, whether or nor any portion thereof

is, or may be, the subject of a valid patent, copyright or trademark. All applicable rights to patents, copyrights, trademarks and trade secrets in the Software or any modifications made at Customer's request are and shall remain in Customer. Provider shall not sell, transfer, publish, disclose, display or otherwise make available the Software or copies thereof to others. Provider agrees to secure and protect each module, software product, documentation and copies thereof in a manner consistent with the maintenance of DMR's rights therein and to take appropriate action by instruction or agreement with its employees or consultants who are permitted access to each program or software product to satisfy its obligations hereunder. All copies made by the Provider of the Software and other programs developed hereunder, including translations, compilations, partial copies with modifications and updated works, are the property of DMR and are "confidential information" that are subject to the provisions of Article 27.2 herein.

**38.2** Provider shall ensure that all copies of the Software in Provider's possession or control incorporate copyright and other proprietary notices in the same manner that DMR incorporates such notices in the Software and Documentation or in any manner reasonably requested by DMR. Provider shall promptly notify DMR in writing upon its discovery of any unauthorized use of the Software or infringement of the Software or DMR's proprietary rights in the Software. Provider shall not provide access to the Software to any party, including any employee or agent of Provider, if Provider has notified DMR that such party may be involved in potential unauthorized use of the Software or other infringement of DMR's proprietary rights thereunder.

#### **ARTICLE 39 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 or terrorism, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"). When such a cause arises, the non-performing party shall notify the other party 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 such delay exceeds thirty (30) days and the other party determines it to be in its best interest to terminate this Agreement.

#### **ARTICLE 39 TRANSPARENCY**

In accordance with the Mississippi Accountability and Transparency Act of 2008, §27-104-151, et seq., of the Mississippi Code of 1972, as Amended, the American Accountability and Transparency Act of 2009 (P.L. 111-5), where applicable, and §31-7-13 of the Mississippi Code of 1972, as amended, where applicable, a fully executed copy of this Agreement and any subsequent amendments and change orders shall be posted to the State of Mississippi's accountability website at: <https://www.transparency.mississippi.gov>. Prior to ITS posting the Agreement and any subsequent amendments and change orders to the website, any attached exhibits which contain trade secrets or other proprietary information and are labeled as "confidential" will be redacted by ITS. Notwithstanding the preceding, however, it is understood and agreed that pursuant to §25-61-9(7) of the Mississippi Code of 1972, as amended, the contract provisions specifying the commodities purchased or the services provided; the price to be paid; and the term of this Agreement shall not be deemed a trade secret or confidential commercial or financial information and shall thus not be redacted.

#### **ARTICLE 40 CHANGE ORDER RATE AND PROCEDURE**

**40.1** It is understood that the State may, at any time by a written order, make changes in the scope of the project. No changes in scope are to be conducted or performed by the Contractor except by the express written approval of the State. The Contractor shall be obligated to perform all changes requested by the Customer, which have no price or schedule effect.

**40.2** The Contractor shall have no obligation to proceed with any change that has a price or schedule effect until the parties have mutually agreed in writing thereto. Neither the State nor the Contractor shall be obligated to execute such a change order; and if no such change order is executed, the Contractor shall not be obliged or authorized to perform services beyond the scope of this Agreement and the contract documents. All executed change orders shall be incorporated into previously defined deliverables.

**40.3** With respect to any change orders issued in accordance with this Article, the Contractor shall be compensated for work performed under a change order according to the hourly change order rate specified in the attached Exhibit A. If there is a service that is not defined in the change order rate, the Contractor and the State will negotiate the rate. The Contractor agrees that this change order rate shall be a "fully loaded" rate, that is, it includes the cost of all materials, travel expenses, per diem, and all other expenses and incidentals incurred by the Contractor in the performance of the change order. The Contractor shall invoice the Customer upon acceptance by the Customer of all work documented in the change order, and the Customer shall pay invoice amounts on the terms set forth in this Agreement. The Contractor acknowledges and agrees that the fully-loaded change order hourly rates in Exhibit A must remain valid for the duration of the Agreement, with annual increases not to exceed the lesser of a five percent increase or an increase in the consumer price index, all Urban Consumer U.S. City Average (C.P.I.-U).

**40.4** Upon agreement of the parties to enter into a change order, the parties will execute such a change order setting forth in reasonable detail the work to be performed thereunder, the revisions necessary to the specifications or performance schedules of any affected project work plan, and the estimated number of professional services hours that will be necessary to implement the work contemplated therein. The price of the work to be performed under any change order will be determined based upon the change order rate; however, the change order will be issued for a total fixed dollar amount and may not be exceeded regardless of the number of hours actually expended by the Contractor to complete the work required by that change order. The project work plan will be revised as necessary.

**40.5** The Contractor will include in the progress reports delivered under this Agreement, the status of work performed under all then current change orders.

**40.6** In the event the Contractor and the State enter into a change order which increases or decreases the time required for the performance of any part of the work under this Agreement, the Contractor shall submit to the Customer a revised version of the project work plan, clearly indicating all changes, at least five (5) working days prior to implementing any such changes.

**40.7** The Customer shall promptly review all revised project work plans submitted under this Agreement, and shall notify the Contractor of its approval or disapproval, in whole or in part, of the proposed revisions, stating with particularity all grounds for any disapproval, within ten (10)

working days of receiving the revisions from the Contractor. If the Customer fails to respond in such time period or any extension thereof, the Customer shall be deemed to have approved the revised project work plan.

For the faithful performance of the terms of this Agreement, the parties hereto have caused this Agreement to be executed by their undersigned authorized representatives.

**State of Mississippi, Department of  
Information Technology Services, on  
behalf of Mississippi Department of Marine  
Resources**

**INSERT VENDOR NAME**

By: \_\_\_\_\_  
**Authorized Signature**

By: \_\_\_\_\_  
**Authorized Signature**

**Printed Name: Craig P. Orgeron, Ph.D.**

**Printed Name:** \_\_\_\_\_

**Title: Executive Director**

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_