



IFB No: 4134

MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES
3771 Eastwood Drive
Jackson, Mississippi 39211
(601) 432-8000

INVITATION: Sealed bids, subject to the conditions herein stated and attached hereto, will be received at this office **until 3:00 p.m. Central Time on Thursday, October 25, 2018** and then publicly opened for the system and services as described below for the Mississippi Department of Transportation (MDOT).

DESCRIPTION

Mass Notification Management System for the Mississippi Department of Transportation (MDOT):

Bidder Information

- Attachment A: Bid and Specifications
 - Attachment B: Reference Form
 - Attachment C: Exception Summary Form
 - Attachment D: Standard Software as a Service Agreement
-

Bidder must submit bid and attachments to:

Attn: Jordan Barber
Technology Consultant
Dept. of Information Technology Services
3771 Eastwood Drive
Jackson, MS 39211
(601) 432-8005
jordan.barber@its.ms.gov

To prevent opening by unauthorized individuals, your bid should be placed in a sealed envelope and plainly identified as follows:

SUBMITTED IN RESPONSE TO INVITATION FOR BID NUMBER 4134.

Craig P. Orgeron, Executive Director

Invitation for Bid No. 4134
Bidder Information
Project No. 44354

A. General Terms and Provisions

1. Bidders are expected to examine all documents, forms, specifications, standard provisions, special provisions and all instructions. Failure to do so will be at the bidder's risk.
2. Any bid not received in writing at this office by the date and time specified will be declared a late bid. The State will not be responsible for any delays in delivery. It is solely the responsibility of the bidder that bids reach the opening on time. Any bid received after closing time will be returned unopened.
3. Bids or alterations by fax, e-mail, or phone will not be accepted.
4. All bid openings are open to the public. The ITS staff will read the name of bidder responding, along with the total bid price.
5. All disclosures of bid information to interested parties will be made in compliance with ITS policies and procedures established in accordance with the Mississippi Public Records Act of 1983 defined in Section 25-61-1 et seq. of the Mississippi Code.
6. No negotiations, decisions, or actions shall be executed by any bidder as a result of any discussions with any state employee. Only transactions which are in writing from ITS may be considered official.
7. ITS reserves the right to reject any and all bids, including those with exceptions, and to waive any defect or informality in any bid or bid procedure.
8. Bidder must provide three (3) verifiable references for projects of similar size and scope. Required information includes name, address, telephone number, and length of time the account has been a reference. A Reference Form for providing reference information is included in Attachment B. The Bidder 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 Bidder intercession. Failure to provide this information in the manner described may subject the Bidder's proposal to being rated unfavorably relative to these criteria or disqualified altogether at the State's sole discretion.

References should be based on the following profiles and be able to substantiate the following information from both management and technical viewpoints:

- a. The reference installation product/service must be configured similarly or identically to this IFB; and
 - b. The reference installation must have been operational for at least six (6) months.
9. All bid material submitted in writing shall become the property of the State of Mississippi.
 10. Expenses for the development and delivery of bids are entirely the responsibility of the bidder and shall not be chargeable to the State.

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11. All submitted bids must show the net bid price after any and all allowable discounts have been deducted.
12. State sales tax and federal excise taxes shall not be included as MDOT is tax exempt for materials sold directly to them.
13. When errors are found in the extension of bid prices, the unit price will govern. Bids having erasures or corrections must be initialed in ink by the bidder.
14. The successful bidder will immediately replace missing or damaged items and will be responsible for making any and all claims against carriers.
15. Bidder certifies that all material, equipment, etc., contained in the bid meets all Occupational Safety and Health Act (OSHA) requirements.
16. A properly executed contract is a requirement of this IFB. After an award has been made, it will be necessary for the winning Bidder 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 Bidder(s) specific to the projects covered by this IFB.
17. If Bidder cannot comply with any term or condition of this Standard Contract, Bidder must list and explain each specific exception on the Exception Summary Form included in Attachment C. If no Exception Summary Form is included, the Bidder is indicating that he takes no exceptions. Bidders who fail to take exception to any point in the IFB or the Standard Contract may not later do so during contract negotiations.
18. Any solution or service proposed in response to this bid 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 is established to safeguard the State's information technology (IT) assets from unauthorized use, access, disclosure, modification, or destruction. 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 bid and require the Vendor to ensure the solution or service complies 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 in Item 20 below.
19. Any cloud or vendor-hosted solution proposed in response to this Bid must be in compliance with the State of Mississippi's Enterprise Cloud and Offsite Hosting Security Policy. The Enterprise Cloud and Offsite Hosting Security Policy is based on industry-standard best practices, policy, and guidelines and augments the Enterprise Security Policy. 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 bid and require the Vendor to ensure the cloud or vendor-hosted solution complies 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 Cloud and Offsite Hosting Security Policy should contact the Technology Consultant listed in Item 20 below.

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20. The State contact person for the selection process is: Jordan Barber, Technology Consultant, 3771 Eastwood Drive, Jackson, Mississippi 39211, 601-432-800, jordan.barber@its.ms.gov
21. Bidder must provide an order address.
22. Bidder must provide a remit address.
23. Bidder must provide taxpayer identification number.
24. Payments to the awarded Bidder for all goods and services acquired under this IFB 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 Bidder's choice. The awarded Bidder 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 Bidder to enroll or receive payments via PayMode. For additional information on PayMode, including registration instructions, Bidders should visit the following website: <http://portal.paymode.com/ms/>. Bidders may also request assistance from the Mississippi Management and Reporting System (MMRS) Call Center regarding PayMode registration by contacting mash@dfa.ms.gov.
 - a. For state agencies that make payments through MAGIC, the awarded Bidder is required to electronically submit all invoices for goods and services acquired under this IFB, along with appropriate supporting documentation, as directed by the State.
 - b. MAGIC Bidder Code: Any Bidder who has not previously done business with the State and has not been assigned a MAGIC Bidder code should visit the following link to register:

https://sus.magic.ms.gov/sap/bc/webdynpro/sapsrm/wda_e_suco_sreg?sap-client=100

B. Format and Content of Bid

1. The Bidder is required to submit three (3) identical copies of his bid.
2. The Bidder should note that original signatures are required on each copy of the bid.
3. The Bidder must complete all Attachments included in this IFB in their entirety.
4. The State reserves the right to reject bids from bidders who submit incomplete bids.

C. Clarifications Prior to Bid Opening

Clarifications or questions must be submitted in writing to Jordan Barber no later than 3:00 p.m. (Central Time) on Wednesday, October 17, 2018. Clarifications or questions may be delivered by hand, via mail, by e-mail to jordan.barber@its.ms.gov or by fax to (601)713-6380. The response to all timely submitted clarifications or questions will be posted on the ITS website by close of business on Monday, October 22, 2018.

D. Clarifications and Updates After the Bid Opening Date and Time

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Bid clarifications and updates submitted after the bid opening date and time will be accepted or rejected at the sole discretion of ITS. ITS will accept no price increases for a 90-day period after the bid opening. However, the State will always take advantage of price decreases. ITS will consider updates in the evaluation and selection of lowest bid only if: (a) The update provided is in effect nationally and has been publicly announced; and (b) the update is received early enough in the evaluation process to allow adequate time for re-evaluation. Bidders must follow the procedure outlined below in submitting updates to bids:

1. The Bidder must submit a statement outlining the circumstances under which he is submitting a clarification or update to the original bid.
2. The Bidder must submit updates in three (3) copies and in the format of the specifications of only those pages in the bid document that should replace the old pages or that should be added. The revised pages must be marked as a bid clarification or update, dated, and page numbered.

E. Project Schedule

Task	Date
First Advertisement Date for IFB	Tuesday, October 2, 2018
Second Advertisement Date for IFB	Tuesday, October 9, 2018
IFB Posted to ITS Website	Thursday, October 4, 2018
Deadline for Bidder's Written Questions	Wednesday, October 17, 2018 at 3:00 p.m. Central Time
ITS Addendum with Bidder's Questions and Answers Posted to ITS Web Site	Monday, October 22, 2018
Proposals Due	Thursday, October 25, 2018 at 3:00 p.m. Central Time
Begin Proposal Evaluation	Thursday, October 25, 2018
Notification of Award	Tuesday, October 30, 2018

Attachment A Bid Form and Specifications

I. Functional Requirements

For the past three years, MDOT has utilized Onsolve MIR3 in place to send mass notifications with important information via email, SMS text messaging, phone call, and desktop alerting. The information that can be sent with the notification system includes but is not limited to: active shooter notifications, updates with further instructions during an active shooter event, close of business notifications due to extreme weather. MIR3 also provides reporting statistics. Reporting is necessary during an event, after an event, and for testing. During an event reporting can be used to drill down to an employee level to see who received a notification and if a response was captured. After an event, reporting will be necessary for statistical purposes. Reporting is also used in testing to ensure that employees are receiving the notifications in a timely manner.

1. The system should provide a means to send information to 2,500+ employees through multiple notification platforms including:
 - a. Phone Call – Landline
 - b. Phone Call – Cellular
 - c. SMS Text Messaging
 - d. E-mail
 - e. Desktop Alerting
2. The system should provide desktop alerting functionality that supersedes all other open windows of each employee's networked computer.
3. The system should provide System Initiators with the ability to send broadcast notifications to target groups or employees based on specific criteria.
4. System Initiators should have the ability to send pre-set or on-the-fly notifications.
5. The system should allow Initiators to specify the order in which the notification platforms send notifications.
6. System Initiators should be able to specify the timing between the notification platforms.
7. The system should allow for a configurable duration period of notifications.
8. The system should provide multiple notification initiation methods including:
 - a. Web Application
 - b. iOS and/or Android Phone Application
 - c. E-mail
 - d. Phone Call (Initiated by Vendor or User)
9. The system should allow Administrators and Initiators to track real-time notification delivery and responses.
10. The system should provide a dashboard view of notifications with real-time and past notification data.

Attachment A Bid Form and Specifications

11. The system needs to possess Open Authorization (OAuth) functionality for seamless authentication of administrators.
12. The system needs to support Active Directory integration and sync via LDAP Sync.
13. The system needs to allow for dynamic or static employee groups.
14. The system needs to be web based and cloud hosted.
15. The system needs to allow System Administrators and System Initiators to export and print notification reports.

II. Reporting Requirements

1. A report should be available for all notifications that are initiated. A System Administrator should see a high level view of each notification with the following data available:
 - a. Notification name/ description
 - b. Issue date/ time
 - c. Number of employees that responded
 - d. Type of notification sent
 - e. Date/ time of when notification duration was completed.
2. Notifications must be able to be configured with canned response
3. MDOT must be able to set the canned response
4. System Administrators should be able to select completed notifications to see details of the including:
 - a. Notification title
 - b. View notification type
 - c. Who initiated the notification
 - d. Issue date/time
 - e. Completed date/time
 - f. The notification message
 - g. Total number of recipients
 - h. Total number of recipients contacted
 - i. Total number of recipients that responded
5. System Administrators should be able to see the details for each recipient including
 - a. Issue time/ date
 - b. Response received – User should have the ability to select a canned response
 - c. Date/ time of response received
 - d. Notification platform in which the employee responded
6. The Bidder support representative should have the ability to launch existing notifications on behalf of MDOT/customer upon authentication that the caller is a legitimate system initiator (“Initiation/ Activation”).

Attachment A Bid Form and Specifications

7. The system should provide a way for System Administrators to see the total of responses for each notification platform per each notification including:
 - a. Total responses
 - b. Total calls
 - c. Total emails
 - d. Total SMS text messages
 - e. Total hang ups
 - f. Total no answer
 - g. Total busy signals
 - h. Total voicemails left

III. Security Requirements

1. The system should allow System Administrators full control of the system.
2. The system should allow for System Initiators to create and initiate notifications.
3. Template notifications should be able to be created with duration periods configured. Once the duration has passed, the notification should automatically expire.
4. The system should allow give recipients the ability to receive notifications.

IV. Integration/Interfaces Requirements

1. Active Directory integration and sync via LDAP Sync must be compatible with Windows 2012R2 or Windows 2016.
2. A daily sync exported from AD and sent through the Bidders intermediary process to the cloud-based mass notification system.

V. Support Requirements

1. Bidder must describe in detail what support is offered with their proposed system.
2. Bidder must include how to contact support and put in a trouble ticket.
3. Bidder must provide 24-7 unlimited email and 24-7 toll-free telephone technical support.
4. Bidder telephone and email technical support response time for tickets opened should be within 24 hours.

VI. Training Requirements for Web-Based and Online System

1. Bidder must describe in detail what training is offered with their proposed system.
2. MDOT may require optional training services for up to 10 System Administrators on an as needed basis.
3. MDOT may require optional training services for up to 10 of System Initiators on an as needed basis.

**Attachment A
Bid Form and Specifications**

It is the responsibility of the Bidder to clearly identify all costs associated with any item or series of items in this IFB. 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 Bidders's cost proposal may be grounds for rejection of the bid. Costs that are not clearly identified will be borne by the Bidder.** The Bidders must complete the table below, which outlines the minimum requirements for providing cost information. The Bidder should supply supporting details as described.

PART#	DESCRIPTION	QTY	YEAR 1	YEAR 2	YEAR 3	EXTENDED COST
	Mass Notification Services					
	Mass Notification System Name: _____					
	Implementation fees (If Applicable)					
	On-Site Training (If Applicable)					
	Web Based Training (If Applicable)					
	Support (If Applicable)					
	Any additional services (please add rows)					
3-Year Grand Total:						

Fully Loaded Change Order Rate (Onsite): _____

Fully Loaded Change Order Rate (Remote): _____

Attachment A
Bid Form and Specifications

BIDDER CERTIFICATION

By signing below, the Vendor is contractually obligated to comply with all items in this IFB, including the Standard Contract in Attachment E, if included herein, except those specifically listed as exceptions on the Exception Summary Form. If no Exception Summary Form is included, the Vendor is indicating that he takes no exceptions. Vendors who respond to this IFB by signing below may not later take exception to any item in the IFB 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.

We hereby propose to furnish the products and services described in IFB# 4134 as offered in our bid response.

Company Name: _____
**Original Signature of
Officer in Bind of
Company:** _____
Name: _____
Title: _____
Date: _____

**Attachment B
Reference Form**

Complete three (3) Reference Forms

Contact Name:	
Company Name:	
Address:	
Phone #:	
E-Mail:	
Description of product/services/project, including start and end dates:	

**Attachment C
Exception Summary Form**

List and clearly explain any exceptions, for Articles in the Standard Contract, in the table below.

ITS Standard Contract Article	Bidder Proposal Reference	Brief Explanation of Exception	ITS Acceptance (sign here only if accepted)
(Reference specific contract article to which exception is taken)	(Page, section, items in Bidder's proposal where exception is explained)	(Short description of exception being made)	

ATTACHMENT D

A properly executed contract is a requirement of this IFB. After an award has been made, it will be necessary for the winning Bidder 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 IFB.

**PROJECT NUMBER 44354
SOFTWARE AS A SERVICE AGREEMENT
BETWEEN
BIDDER NAME
AND
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES
AS CONTRACTING AGENT FOR THE
MISSISSIPPI TRANSPORTATION COMMISSION**

This Software as a Service Agreement (hereinafter referred to as "Agreement") is entered into by and between, BIDDER NAME, a STATE OF INCORPORATION corporation having its principal place of business at BIDDER ADDRESS (hereinafter referred to as "Licensor"), and Mississippi Department of Information Technology Services having its principal place of business at 3771 Eastwood Drive, Jackson, Mississippi 39211 (hereinafter referred to as "ITS"), as contracting agent for the Mississippi Transportation Commission for the benefit of its Department of Transportation Bidated at 401 North West Street, Jackson, Mississippi 39201 (hereinafter referred to as "Licensee" and/or "MDOT"). ITS and MDOT are sometimes collectively referred to herein as "State."

WHEREAS, MDOT, pursuant to Invitation for Bid ("IFB") No. 4134 requested bids for the services of a contractor to provide a Software as a Service ("SaaS") solution for a Mass Notification Management system; and

WHEREAS, Licensor was the successful proposer in an open, fair and competitive procurement process to provide the Applications to MDOT pursuant to this Agreement;

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 MDOT, its employees, and any third party consultants or outsourcers engaged by MDOT actively participating on the system in any given month of operation, who shall be bound to the terms and conditions of this Agreement. Licensor does not impose a limit on the number of Active Users accessing or registering to use the system.

1.2 "Application(s)" or "SaaS Application(s)" means those Licensor software application programs which are made accessible for MDOT to use under the terms of this Agreement.

1.3 "Available Date" means the date upon which Licensor notifies MDOT that the Applications may be accessed on the Licensor's SaaS server and MDOT may begin acceptance testing.

1.4 “Cloud Services” or “SaaS Services” means those services related to Licensor’s private cloud environment provided to MDOT, including but not limited to, infrastructure, equipment, bandwidth, server monitoring, backup services, disaster recovery services, storage area network (SAN) services, security services, system administration, connectivity services, performance tuning, update installation and maintenance services related thereto.

1.5 “Content” means any content MDOT or Active Users post or otherwise input into the Services.

1.6 “Documentation” means the user and technical manuals and documentation published by Licensor relating to the use of the Services or Applications; the help files included within the Applications, and any files containing presentation materials or manuals or other related materials to train and educate Licensee and the Active Users on the use of the Applications.

1.7 “Initial Term” means the three (3) year term of Services as indicated in Article 2.

1.8 “Licensee” means the Mississippi Department of Transportation, its employees, and any third party consultants or outsourcers engaged by MDOT who have a need to know and who shall be bound by the terms and conditions of this Agreement.

1.9 “Licensor” means **BIDDER NAME**, and its successors and assigns.

1.10 “Personally Identifiable Information (“PII”) means information concerning individually identifiable Active Users that is protected against disclosure under applicable law or regulation.

1.11 “Services” means any Cloud Services, on-line user access, customizations, interface development, consulting, education, SaaS installation, system administration, training, maintenance, support, and Help Desk services provided by Licensor to Licensee.

1.12 “Supported Interfaces” means application-based interfaces (API), network protocols, data formats, database schemas, and file formats used in the Applications as described in the Documentation.

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 for three (3) years thereafter (“Initial Term”). At the end of the Initial Term, the Agreement may, upon the written agreement of the parties, be renewed under the same terms and conditions for an additional term, the length of which will be agreed upon by the parties. One hundred and eighty (180) days prior to the expiration of the Initial Term or any renewal term of this Agreement, Licensor shall notify MDOT and ITS of the impending expiration and MDOT shall have sixty (60) days in which to notify Licensor of its intention to either renew or cancel the Agreement.

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

ARTICLE 3 SCOPE OF SERVICES

3.1 The Licensor agrees to provide to MDOT a SaaS based Mass Notification Management system and associated deliverables 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 Licensor shall be responsible for the following:

- A.** Ensuring that all deliverables are complete and accepted by MDOT pursuant to a mutually agreed upon project work plan;
- B.** Tracking date sensitive items to ensure timely updates;
- C.** Acknowledging that the Content is and shall remain the sole and exclusive property of MDOT. Further, Licensor acknowledges that the Content may contain PII and Licensor agrees to maintain the confidentiality of the Content and shall not make the Content publicly available except as may be necessary in performing the SaaS Services or to comply with applicable laws. Upon the termination or expiration of this Agreement, Licensor shall provide such Content in its possession to MDOT pursuant to a mutually agreed upon release schedule and in a format acceptable to MDOT;
- D.** Working with MDOT to achieve access rates that meet MDOT's needs;
- E.** Providing security for the site that is agreeable to MDOT with Licensor responsible for all necessary equipment and software related to security;
- F.** 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;
- G.** Completing daily backups of the site;
- H.** Notifying MDOT 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;
- I.** Proposing and adhering to a disaster recovery plan and providing access to such plan to the State, all at Licensor's expense;
- J.** Participating with MDOT in disaster recovery planning and testing based on a mutually agreed upon schedule;
- K.** Maintaining the confidentiality of the information entered;
- L.** Providing MDOT access to all of the technical information concerning operation of the Mass Notification Management system, including but not limited to, server specifications, Internet connection information, personnel requirements and software implementations;
- M.** Identifying any commercially available software, by Bidder and version number, integrated into the Applications and describing the particular functionality of any software that is proprietary to the Licensor;
- N.** Maintaining the host site, with the cost for such support, maintenance, and hosting for years following the initial 3 year period not increasing annually beyond three percent (3%) 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;
- O.** Providing 24x7x365 support of the site;
- P.** Providing redundant internet connections;
- Q.** Providing Transport Layer Security ("TLS") secure server support;
- R.** Maintaining sufficient bandwidth and server capacity to meet MDOT's and Active Users' demand as it may fluctuate and increase during the term of this Agreement, and;

- S. Ensuring that all Licensee data remains within the continental United States;
- T. Partitioning Licensee's data from other customer data so Licensee's access is not impaired due to e-discovery, seizure, or the like, and
- U. Ensuring that upon termination or expiration of this Agreement that transition from the Licensor to MDOT or to a successor host will be accomplished at no expense to MDOT.

3.3 In the event Licensor creates any revisions to or upgrades of the system, Licensor shall provide MDOT thirty (30) days written notification of such revision or upgrade, and shall, upon request of MDOT, furnish such revision or upgrade to MDOT free of charge as part of the SaaS fees.

ARTICLE 4 SCOPE OF LICENSE AND RIGHT TO USE

4.1 Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee a non-exclusive and non-transferable license to access the Applications over the Internet and to use it for Licensee's business operations and use it on the Licensor's host server for the Initial Term of the Agreement and any subsequent renewal terms in accordance with, and subject to, the terms and conditions set forth in this Agreement. Licensee and Active Users are granted access to the Applications and 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 or additional software products Licensee may procure from Licensor.

4.2 Licensor will provide Licensee storage space on and access to Licensor's Applications via the Internet and provide Internet access to the Applications and Cloud Services to the Active Users through Licensor's site ("SaaS Services").

4.3 In connection with the SaaS Services, Licensor will provide and maintain all Applications and hardware, including, but not limited to, the server hardware and software, telecommunications hardware and software, security hardware and software and other software that is reasonably necessary to operate and maintain the Services.

4.4 The Applications and 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 SaaS Services due to causes beyond the control of Licensor. In the event that MDOT 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 Licensor, the Licensor shall reimburse MDOT twenty-five percent (25%) of the monthly SaaS hosting fees for each twenty-four (24) hour day during which there were any incidents of unavailability. Licensor shall maintain the server at a secured Bidation with restricted access.

4.5 Licensor shall provide the Licensee with its standard managed firewall service, which shall enable secure delivery of Licensor's Services using fully redundant hardware-based firewalls. Licensor's managed firewall service will be available twenty-four (24) hours a day, seven (7) days a week.

4.6 The use of the Services by Active Users will be governed solely by the terms and conditions of this Agreement.

4.7 MDOT acknowledges that Licensor retains ownership of all right, title and interest to the Services, all of which are protected by copyright and other intellectual property rights, and that, other than the express rights granted herein and under any other agreement in writing with MDOT, MDOT shall not obtain or claim any rights in or ownership interest to the Services or Applications or any associated intellectual property rights in any of the foregoing. MDOT agrees to comply with all copyright and other intellectual property rights notices contained on or in any information obtained or accessed by MDOT through the Services.

ARTICLE 5 ACCEPTANCE

5.1 Licensor shall make the Applications and Documentation available through its Services pursuant to the delivery schedule mutually agreed to by the parties.

5.2 MDOT shall have thirty (30) calendar days after the Available Date to evaluate and conduct the final acceptance testing of the Applications and Services to confirm that they perform without any defects and perform in accordance with the requirements of this Agreement. MDOT shall immediately thereafter notify Licensor of any defects in the Applications or Services which must be corrected. Thereafter, unless both parties agree to extend this period, Licensor shall have ten (10) business days in which to repair the Service or repair or replace the defective Applications, all at Licensor's expense, and MDOT shall have an additional thirty (30) calendar days to evaluate the Applications and Services. In the event Licensor is unable to repair the defect within this ten (10) day period, MDOT may terminate this Agreement pursuant to the Termination Article herein.

ARTICLE 6 CONSIDERATION AND METHOD OF PAYMENT

6.1 The total compensation to be paid to the Licensor by MDOT for all Applications, development, maintenance and SaaS Services, customizations, products, travel, performances and expenses under 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.

6.2 Licensor shall submit invoices with the appropriate documentation to MDOT monthly for any month in which SaaS Services and/or other services are rendered. Licensor shall submit invoices and supporting documentation to MDOT electronically during the term of this Agreement using the processes and procedures identified by the State. MDOT 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 MDOT within forty-five (45) days of receipt of the invoice. Licensor understands and agrees that MDOT 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 Licensor's choice. No payment, including final payment, shall be construed as acceptance of defective products or incomplete work, and the Licensor shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the article herein titled "Entire Agreement."

6.3 Acceptance by the Licensor of the last payment due from MDOT under this Agreement shall operate as a release of all claims for money against the State by the Licensor and any

subcontractors or other persons supplying labor or materials used in the performance of the work under this Agreement.

ARTICLE 7 WARRANTY

7.1 Licensor represents and warrants that it has the right to license the Applications provided under this Agreement.

7.2 Licensor represents and warrants that the Applications provided by Licensor shall meet or exceed the minimum specifications set forth in IFB No. 4134 and Licensor's Bid, as accepted by the State, in response thereto.

7.3 During the term of this Agreement, the Licensor 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 Licensor of its responsibilities to correct any Defect during the warranty period. The Licensor 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 MDOT consents in writing to a longer period of repair time. In the event Licensor is unable to repair or replace the Application within the mutually agreed upon time frame after receipt of notice of the Defect, MDOT shall be entitled to a full 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. Licensee's rights hereunder are in addition to any other rights Licensee may have.

7.4 During the term of this Agreement, the Licensor 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, Licensor shall perform the Services again, at no cost to the State, or if Licensor is unable to perform the Services as warranted, Licensor shall reimburse the State the fees paid to Licensor for the unsatisfactory Services.

7.5 Licensor represents and warrants that the Application shall not contain a disabling code, Bidkup program or device. Licensor further agrees that it will not, under any circumstances including enforcement of a valid contract right, (a) install or trigger a Bidkup program or device, or (b) take any step which would in any manner interfere with Licensee's licensed use of the Applications and/or which would restrict Licensee from accessing its data files or in any way interfere with the transaction of Licensee's business. For any breach of this warranty, Licensor at its expense shall, within ten (10) business days after receipt of notification of the breach, remove any such disabling code, Bidkup program or device.

7.6 Licensor represents and warrants that it has tested and will test (not less than on a daily basis) the Applications using commercially reasonable methods to ensure that the Applications provided to MDOT do not and will not contain or incorporate any computer code, programs, procedures, mechanisms or programming devices (including but not limited to, viruses, trojan horses, or worms) that are designed to, or would enable Licensor or any third-party to, disrupt,

modify, delete, damage, deactivate, disable, harm or otherwise impede the operation of the Licensor's system, or any other associated software, firmware, hardware, computer system or network, including MDOT's applications and MDOT's Content. For any breach of this warranty, Licensor at its expense shall, within five (5) business days after receipt of notification of the breach, be responsible for repairing, at Licensor's expense, any and all damage done by the virus or such to MDOT's applications and MDOT's Content.

7.7 Licensor represents and warrants that the Mass Notification Management system provided by the Licensor shall be reasonably expandable and scalable so MDOT can add and support additional business functions and users over time. It is understood and agreed that any standard revisions, enhancements, improvements, and upgrades to the Applications and host site equipment during the term of this Agreement, including operating system, database management system, and other software, shall be provided by Licensor to MDOT at no additional cost to MDOT.

7.8 Licensor 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 Licensor uses in the performance of this Agreement.

7.9 If applicable under the given circumstances, Licensor 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. Licensor 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. Licensor 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. Licensor understands and agrees that any breach of these warranties may subject Licensor 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 Licensor 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, Licensor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

7.10 Licensor represents and warrants that the system provided pursuant to this Agreement will pass both internal security audits and 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, Licensor shall, at its own expense and at no cost to Licensee, 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.

7.11 Licensor represents and warrants that no official or employee of Licensee 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 Licensor 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 Licensor also warrants that in the performance of this Agreement no person having any such known interests shall be employed.

7.12 The Licensor 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 Licensor, terminate the right of the Licensor 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 Licensor 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 Licensor as it would pursue in the event of a breach of contract by the Licensor, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

7.13 Licensor will not knowingly (a) introduce into the Services any virus or other code or routine intended to disrupt or damage the Services, or alter, damage, delete, retrieve or record information about the Services or its users; (b) use the Content for any purpose other than needed to provide the Services to MDOT hereunder; or (c) otherwise act in a fraudulent, malicious or negligent manner when providing the Services.

ARTICLE 8 INFRINGEMENT INDEMNIFICATION

8.1 Licensor represents and warrants, to the best of its knowledge, that neither the Applications and Services provided to MDOT under this Agreement nor their use by MDOT will violate or infringe on any copyright, patent, trade secret or other proprietary right of any person or entity. Licensor, at its own expense, shall defend or settle any and all infringement actions filed against Licensor or MDOT which involve the Applications, Services or other items provided under this Agreement and shall pay all costs, attorney fees, damages and judgment finally awarded against MDOT provided that: (a) MDOT notifies Licensor in writing of any such claim of which it has knowledge; (b) Licensor has, to the extent authorized by Mississippi law, sole control of the defense of any actions or negotiations related to the defense or settlement of any such claim, and (c) MDOT cooperates in the defense of the claim by supplying Licensor all relevant information currently available and in its possession, all at Licensor's expense. In no event shall the State compromise, settle or adversely impact the defense of any actions or negotiations without the prior, written consent of Licensor. Further, in no event shall Licensor compromise or settle any such actions or negotiations without the prior written consent of MDOT if such compromise or settlement would create an obligation or liability upon MDOT or 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, Licensor shall, at its expense: (a) first procure for MDOT the right to continue using such Applications or Services, or upon failing to procure such right; (b) modify or replace them with non-infringing items with equivalent functionality, or upon failing to secure either such right at Licensor's reasonable expense, (c) issue a pro-rata refund to MDOT for the fees previously paid by MDOT for the infringing Applications and Services MDOT may no longer use. Said refund shall be paid within ten (10) business days of notice to MDOT to discontinue said use.

8.2 Licensor shall have no obligation for infringement claims caused by: (a) an unauthorized modification of the Applications or Service by MDOT or a third party; (b) use of the Service other than in accordance with the Documentation for the Service or as authorized herein; (c) use of the Services in conjunction with any data, equipment or software not provided by Licensor where the Services would not otherwise be infringing except for such combination; or (d) use of the Services or Application by MDOT other than in accordance with this Agreement.

ARTICLE 9 DATA SECURITY

9.1 As part of the Services, Licensor shall provide administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of MDOT Content. Licensor agrees to comply with all applicable privacy or data protection statutes, rules, or regulations governing the respective activities of the parties under this Agreement.

9.2 Prior to initiation of the Services under this Agreement and on an ongoing basis thereafter, MDOT agrees to provide notice to Licensor of any extraordinary privacy or data protection statutes, rules, or regulations which are or become applicable to MDOT's industry and which could be imposed on Licensor as a result of provision of the Services. MDOT will ensure that: (a) the transfer to Licensor and storage of any PII by Licensor is permitted under applicable data protection laws and regulations; and, (b) MDOT will obtain consents from individuals for such transfer and storage to the extent required under applicable laws and regulations.

9.3 Licensor shall maintain a hosting environment that undergoes examinations from an independent auditor in accordance with the American Institute of Certified Public Accounts SSAE 16 (i.e. SOC 1) and the AICPA Trust Services Principles Section 100a, Trust Services for Security, Availability, Processing Integrity, Confidentiality and Privacy (i.e. SOC 2). Licensor's private cloud shall be evaluated for the principles of Security, Availability and Confidentiality by the independent auditor. The data center in which Licensor's private cloud is Bidated shall undergo pertinent security examinations. Management access to Licensor's private cloud shall be limited to Licensor's authorized support staff and MDOT's authorized staff. The Applications shall provide MDOT with the ability to configure application security and logical access per MDOT's business processes. In the event MDOT identifies a security issue, MDOT will notify Licensor.

9.4 At a minimum, Licensor's safeguards for the protection of PII shall include: (i) limiting access of PII to authorized employees; (ii) securing business facilities, data centers, paper files, servers, back-up systems and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (iii) implementing network, device application, database and platform security; (iv) securing information transmission, storage and disposal; (v) implementing authentication and access controls within media, applications, operating systems and equipment; (vi) encrypting PII stored on any mobile media; (vii) encrypting PII transmitted over public or wireless networks; (viii) strictly segregating PII from information of

Licensor or its other customers so that PII is not commingled with any other types of information; (ix) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law; and (x) providing appropriate privacy and information security training to Licensor's employees. Any and all subcontractors shall adhere to the aforementioned protection and encryption (in transit and at rest) of PII, as well as follow the stated breach policy.

9.5 Licensor will comply with all applicable federal and state laws to resolve security breaches, and, to the extent Licensor is responsible for such security breaches, will cover the cost of remedial measures as required by such laws and otherwise consistent with this Agreement. MDOT may seek equitable relief including a restraining order, injunctive relief, specific performance, and such other relief that may be available from a court in addition to any other remedy to which MDOT may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity.

9.6 At any time during the term of this Agreement at MDOT's request or upon the termination or expiration of this Agreement for any reason, Licensor shall promptly return to MDOT all copies, whether in written, electronic or other form or media, of PII in its possession, or securely dispose of all such copies, and certify in writing to MDOT that such has been returned to MDOT or disposed of securely. Licensor shall comply with all reasonable directions provided by MDOT with respect to the return or disposal of PII.

9.7 Upon MDOT's request, to confirm Licensor's compliance with this Agreement, as well as any applicable laws, regulations and industry standards, Licensor grants MDOT or, upon MDOT's election, a third party on MDOT's behalf, permission to perform an assessment, audit, examination or review of all controls in Licensor's physical and/or technical environment in relation to all PII being handled and/or services being provided to MDOT pursuant to this Agreement. Licensor shall fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, Documentation, infrastructure and application software that processes, stores or transports PII for MDOT pursuant to this Agreement.

9.8 It is understood and agreed that at least once per year, Licensor shall conduct site audits of the information technology and information security controls for all facilities used in complying with its obligations under this Agreement, including but not limited to, obtaining a network-level vulnerability assessment performed by a recognized third-party audit firm based on the recognized industry best practices. Licensor shall make the reports available to MDOT for review. Any exceptions noted on the Statement on Standards for Attestation Engagements (SSAE) report or other audit reports will be promptly addressed with the development and implementation of a corrective action plan by Licensor's management and resolved, at Licensor's sole expense, within thirty (30) calendar days of the audit.

ARTICLE 10 EMPLOYMENT STATUS

10.1 Licensor 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.

10.2 Licensor 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 Licensee.

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

10.4 Licensor 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 Licensor nor employees of Licensor are entitled to state retirement or leave benefits.

ARTICLE 11 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS

Licensor will be responsible for the behavior of all its employees and subcontractors while on the premises of any Licensee Bidation. Any employee or subcontractor acting in a manner determined by the administration of that Bidation 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 Licensor employees and subcontractors who will be working at such Bidations shall be covered by Licensor's comprehensive general liability insurance policy.

ARTICLE 12 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 13 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS

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

13.2 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.

13.3 Licensor must obtain the written approval of Licensee before subcontracting any portion of this Agreement. No such approval by Licensee of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of Licensee 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 Licensee may deem necessary.

13.4 Licensor represents and warrants that any subcontract agreement Licensor 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 Licensee, and that the subcontractor

acknowledges that no privity of contract exists between the Licensee and the subcontractor and that the Licensor is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with the Licensor. The Licensor 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 Licensor's failure to pay any and all amounts due by Licensor to any subcontractor, third party licensor, materialman, laborer or the like.

13.5 All subcontractors shall be bound by any negotiation, arbitration, appeal, adjudication or settlement of any dispute between the Licensor and the Licensee, where such dispute affects the subcontract.

ARTICLE 14 AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of Licensee 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 Licensee for the payments or performance due under this Agreement, Licensee shall have the right to immediately terminate this Agreement, in whole or in part, without damage, penalty, cost or expense to Licensee of any kind whatsoever, except for payment for work completed by Licensor and accepted by Licensee prior to termination. The effective date of termination shall be as specified in the notice of termination. Licensee shall have the sole right to determine whether funds are available for the payments or performances due under this Agreement.

ARTICLE 15 TERMINATION

15.1 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) Licensee may terminate the Agreement in whole or in part without the assessment of any penalties upon ten (10) calendar days written notice to Licensor if Licensor becomes the subject of bankruptcy, reorganization, liquidation or receivership proceedings, whether voluntary or involuntary, or (d) Licensee 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 Licensor. The provisions of this Article do not limit either party's right to pursue any other remedy available at law or in equity.

15.2 In the event Licensee terminates this Agreement, Licensor shall be paid for Services rendered by Licensor and accepted by Licensee prior to the termination. Further, upon termination of this Agreement, Licensor shall refund any and all applicable unexpended prorated annual SaaS fees previously paid by Licensee.

ARTICLE 16 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. Licensor 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 Licensor. Further, nothing in this Agreement shall affect any statutory rights the parties may have that cannot be waived or limited by contract.

ARTICLE 17 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 18 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 19 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 20 HOLD HARMLESS

To the fullest extent allowed by law, Licensor shall indemnify, defend, save and hold harmless, protect and exonerate Licensee, 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 Licensor and/or its partners, principals, agents, employees or subcontractors in the performance of or failure to perform this Agreement.

ARTICLE 21 THIRD PARTY ACTION NOTIFICATION

Licensor shall notify Licensee in writing within five (5) business days of Licensor 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 claim being made against Licensor or Licensee by any entity that may result in litigation related in any way to this Agreement and/or which may affect the Licensor's performance under this Agreement. Failure of the Licensor to provide such written notice to Licensee shall be considered a material breach of this Agreement and Licensee 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 22 AUTHORITY TO CONTRACT

Licensor 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.

ARTICLE 23 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. Licensee's address for notice is: Mr. Mike Roberts, Information Systems Procurement Manager, Mississippi Department of Transportation, 401 North West Street, Jackson, Mississippi 39201. The Licensor's address for notice is: **BIDDER 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 24 RECORD RETENTION AND ACCESS TO RECORDS

Licensor 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 Licensee, ITS, any state or federal agency authorized to audit Licensee, and/or any of their duly authorized representatives, shall have unimpeded, prompt access to this Agreement and to any of the Licensor's bids, 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 Licensor's office as applicable where such records are kept during normal business hours. All records relating to this Agreement shall be retained by the Licensor 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 25 INSURANCE

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

ARTICLE 26 DISPUTES

Any dispute concerning a question of fact under this Agreement which is not disposed of by agreement of the Licensor and Licensee, shall be decided by the Executive Director of ITS or his/her designee. This decision shall be reduced to writing and a copy thereof mailed or furnished to the parties. Disagreement with such decision by either party shall not constitute a breach under the terms of this Agreement. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.

ARTICLE 27 COMPLIANCE WITH LAWS

27.1 Licensor shall comply with, and all activities under this Agreement shall be subject to, all Licensee policies and procedures which Licensor has received copies of, and all applicable federal, state, and Bidal laws, regulations, policies and procedures as now existing and as may be amended or modified. Specifically, but not limited to, Licensor 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. Further, if applicable, Licensor shall comply with the provisions of the Davis-Bacon Act including, but not limited to, the wages, recordkeeping, reporting and notice requirements set forth therein.

27.2 Licensor represents and warrants that it will comply with the state's data breach notification laws codified at Section 75-24-29 of the Mississippi Code Annotated (Supp. 2012). Further, to the extent applicable, Licensor represents and warrants that it will comply with the applicable provisions of the Family Educational Rights & Privacy Act (FERPA) of 1974 (34 CFR Part 99); HIPAA Privacy Rule and Security Regulations (45 CFR Parts 160, 162 and 164) ("Privacy Rule" and "Security Regulations", individually; or "Privacy and Security Regulations", collectively); and the provisions of the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (the "HITECH Act").

ARTICLE 28 CONFLICT OF INTEREST

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

ARTICLE 29 SOVEREIGN IMMUNITY

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

ARTICLE 30 CONFIDENTIAL INFORMATION

30.1 Licensor shall treat all Licensee 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 Licensee. In the event that Licensor 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, Licensor shall promptly inform Licensee 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 Licensor 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 Licensor following any termination or completion of this Agreement.

30.2 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 Licensor. ITS will provide third party notice to Licensor of any requests received by ITS for any such confidential exhibits so as to allow Licensor the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

30.3 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 31 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 Licensor on the basis of draftsmanship or preparation hereof.

ARTICLE 32 NON-SOLICITATION OF EMPLOYEES

Licensor agrees not to employ or to solicit for employment, directly or indirectly, any of Licensee's employees until at least one (1) year after the expiration/termination of this Agreement unless mutually agreed to the contrary in writing by Licensee and the Licensor 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 33 ENTIRE AGREEMENT

33.1 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 relating thereto, including all terms of any "shrink-wrap", "click-wrap" or "browse-wrap" license of the Software. The IFB No. 4134 and Licensor's Bid, as accepted by the State, in response thereto are hereby incorporated into and made a part of this Agreement.

33.2 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.** IFB No. 4134 and written addenda, and
- D.** Licensor's Bid, as accepted by the State, in response to the IFB.

33.3 The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by the Licensor. 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. Licensor's Bid").

ARTICLE 34 STATE PROPERTY

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

ARTICLE 35 SURVIVAL

Articles 7, 8, 16, 20, 24, 29, 30, 32, and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this Agreement.

ARTICLE 36 DEBARMENT AND SUSPENSION CERTIFICATION

Licensor 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 Bidal) 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 Bidal) 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 Bidal) terminated for cause or default.

ARTICLE 37 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 38 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 Licensee's or Licensor's contractual obligations, financial or otherwise, contained within this Agreement. The parties further acknowledge that ITS is not responsible for ensuring compliance with any guidelines, conditions, or requirements mandated by Licensee's funding source.

ARTICLE 39 COMPLIANCE WITH ENTERPRISE SECURITY POLICY

Licensor and Licensee understand and agree that all products and services provided by Licensor under this Agreement must be and remain in compliance with the State of Mississippi's Enterprise Security Policy. The parties understand and agree that the State's Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines at the time of contract execution. The State reserves the right to introduce a new policy during the term of this Agreement and require the Licensor 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.

ARTICLE 40 COMPLIANCE WITH ENTERPRISE CLOUD AND OFFSITE HOSTING SECURITY

If applicable, Licensor and Licensee understand and agree that all products and services provided by the Licensor under this Agreement must be and remain in compliance with the State of Mississippi's Enterprise Cloud and Offsite Hosting Security Policy. The parties understand and agree that the State's Enterprise Cloud and Offsite Hosting Security Policy is based on industry-standard best practices, policy, and guidelines at the time of contract execution and augments the Enterprise Security Policy. The State reserves the right to introduce a new policy during the

term of this Agreement and require the Licensor 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.

ARTICLE 41 SOFTWARE SUPPORT AND MAINTENANCE

41.1 As part of the maintenance services, Licensor will maintain the Applications and Services in an operable condition according to the specifications contained in the technical manuals and as outlined in the IFB and Licensor's Bid in response thereto. Licensor shall provide Licensee with enhancements to the Applications as they are made generally available from time to time.

41.2 Licensor shall also provide unlimited email and toll-free telephone technical support in the operation of the Applications and Service twenty-four (24) hours a day, seven (7) days a week. Licensor shall respond by telephone within one (1) hour to requests for support services. Licensee shall be given priority placement in the support queue for all system Bidding situations or problems claimed by Licensee to be a mission critical process. Upon receipt of Licensee's call, Licensor will (a) create an error report, (b) assign a severity level and (c) attempt to resolve the problem in accordance with the procedures and processes for problem resolution detailed below. It is understood by the parties that the Licensee and Licensor must mutually agree on whether an error is classified as a Severity Level 1, 2, or 3 error.

41.3 Severity Level 1 implies that the Application is not functioning. Some examples of Severity Level 1 problems are as follows: (a) Application is down and will not restart; (b) Application is not able to communicate with external systems; and (c) Application is generating a data corruption condition. Licensor shall resolve Severity Level 1 Errors within one (1) business day, or within a mutually agreed upon time frame. When a Severity Level 1 Error is reported, Licensor will assign resources necessary to correct the Error.

41.4 Severity Level 2 implies that (a) an essential function does not work as documented, or (b) testing and usage can continue but the task cannot be completed, and no workarounds exist. Licensor shall assign at least one (1) dedicated person to the problem and shall resolve Severity Level 2 Errors within two (2) business days, or within a mutually agreed upon time frame.

41.5 Severity Level 3 implies an Application Error such that implementations of function do not match specification and/or technical Documentation, and a workaround may exist. Licensor shall resolve Severity Level 3 Errors within ten (10) business days, or within a mutually agreed upon time frame.

ARTICLE 42 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, Bidkouts, 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 Licensor shall notify the Licensee immediately in writing of the cause of its inability to perform; how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate this Agreement.

ARTICLE 43 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.

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
Transportation**

INSERT BIDDER NAME

By: _____
Authorized Signature

By: _____
Authorized Signature

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

Printed Name: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____