



## IFB No: 4166

**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 Tuesday, March 12, 2019, and then publicly opened for furnishing the products and/or services as described below for the **MISSISSIPPI DEPARTMENT OF HUMAN SERVICES (MDHS)**.

For Kofax License Maintenance and Support

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### Bidder Information

Attachment A: Bid Form

Attachment B: IFB Questionnaire

Attachment C: References

Attachment D: Bid Exceptions

Attachment E: Standard Contract

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Bidder must submit bid and attachments to:

Jamekia Hilliard  
Technology Consultant  
Information Technology Services  
3771 Eastwood Drive  
Jackson, MS 39211  
(601) 432-8219  
Jamekia.Hilliard@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 IFB NUMBER 4166  
due Tuesday, March 12, 2019 @ 3:00 p.m.  
ATTENTION: Jamekia Hilliard

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

**INVITATION FOR BID NO. 4166  
BIDDER RESPONSE INFORMATION  
PROJECT NUMBER 44360**

This document contains general information for bidders responding to an Invitation for Bid issued by ITS.

1. Bidders are expected to examine all documents, forms, specifications, standard provisions, and all instructions. Failure to do so may result in the disqualification of the bidder's IFB response.
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 the date and time specified 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. ITS reserves the right to reject any bids, including those with exceptions, prior to and at any time during negotiations.
6. ITS reserves the right to waive any defect or irregularity in any bid procedure.
7. The Bidder may intersperse their response following each IFB specification but must not otherwise alter or rekey any of the original text of this IFB. If the State determines that the Bidder has altered any language in the original IFB, the State may, in its sole discretion, disqualify the Bidder from further consideration. The IFB issued by ITS is the official version and will supersede any conflicting IFB language submitted by the Bidder.
8. The Bidder must conform to the following standards in the preparation of the Bidder's bid:
  - 8.1 The Bidder is required to submit three (3) identical copies of his bid, including copies of each Attachment to formulate one response.
  - 8.2 The Bidder should note that original signatures are required on each copy of the bid.
  - 8.3 To prevent opening by unauthorized individuals, all copies of the bid must be sealed in the package. A label containing the information on the IFB cover page must be clearly typed and affixed to the package in a clearly visible location.
  - 8.4 If the Bidder does not agree with any item in any section of this IFB, then the Bidder must list the item on the Exception Summary Form in Attachment D.
  - 8.5 Where an outline point asks a question or requests information, the Bidder must respond with the specific answer or information requested.

- 8.6 When an outline point/attachment is a statement provided for the Bidder's information only, the Bidder need only read that point. The Bidder acknowledges having read and accepting, or taking exception to, all sections by signing the Bid Form and providing an Exception Summary Form.
- 8.7 The Bidder must respond to each requirement by fully describing the manner and degree by which the bid meets or exceeds said requirements. If a Bidder is unable to meet or exceed any requirement, then the Bidder will be disqualified.
9. ITS reserves the right to request additional information or clarification of a Bidder's bid. The Bidder'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 Bidder'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 Bidder's bid.
10. Unsolicited clarifications and updates submitted after the deadline for bids will be accepted or rejected at the sole discretion of ITS.
11. Unsolicited clarifications in the evaluation and selection of best bid will be considered only if all the following conditions are met:
  - 11.1 A clarification to a bid 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.
  - 11.2 Information provided must be in effect nationally and have been formally and publicly announced through a news medium that the Bidder normally uses to convey customer information.
  - 11.3 Clarifications must be received early enough in the evaluation process to allow adequate time for re-evaluation.
  - 11.4 The Bidder must follow procedures outlined herein for submitting updates and clarifications.
  - 11.5 The Bidder must submit a statement outlining the circumstances for the clarification.
  - 11.6 The Bidder must be specific about which part of the original bid is being changed by the clarification (i.e., must include exact IFB reference to section and outline point).
12. From the issue date of this IFB until a Bidder is selected and the selection is announced, responding Bidders or their representatives may not communicate, either orally or in writing regarding this IFB 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 Bidder, all questions regarding this IFB 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 Bidder questions provided in this IFB. All such

questions will be answered officially by the State in writing. All such questions and answers will become addenda to this IFB, and they will be posted to the ITS web site. Bidders failing to comply with this requirement will be subject to disqualification.

- 12.1 The State's contact person for the selection process is: Jamekia Hilliard, Technology Consultant, 3771 Eastwood Drive, Jackson, MS 39211, 601-432-8219, Jamekia.Hilliard@its.ms.gov.
- 12.2 Bidder may consult with State representatives as designated by the State's contact person identified in 12.1 above in response to State-initiated inquiries. Bidder may consult with State representatives during scheduled oral presentations and demonstrations excluding site visits.
13. Any interpretation of an ITS IFB will be made by written amendment only. The State will not be responsible for any other explanation of this IFB. A copy of any amendment will be posted on the ITS website, together with the associated IFB specification. Bidders are required to check the ITS website periodically for IFB amendments before the bid 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 bid opening date listed on the cover page of this IFB. If you are unable to access the ITS website, you may contact the ITS technology consultant listed on page one of this IFB and request a copy.
14. 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.
15. Bidders must ensure proper compliance with, and fulfillment of all schedules and deliverables specified within the body of this IFB. The State will not be responsible for the failure of any delivery medium for submission of information to or from the Bidder, including but not limited to, public and private carriers, U.S. mail, Internet Service Providers, facsimile, or e-mail.
16. Expenses for the development and delivery of bids are entirely the responsibility of the bidder and shall not be chargeable to the State.
17. All bid material submitted in writing shall become the property of the State.
18. ITS reserves the right to make multiple awards.
19. 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.
20. The State reserves the right to evaluate the awarded bid from this IFB, 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 Bidder is willing to extend a cost less than or equal to that specified in

the awarded bid and resulting contract. A decision concerning the utilization of a Bidder's bid for future projects is solely at the discretion of the State and requires the agreement of the proposing Bidder. The State's decision to reuse an awarded bid 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 Bidder, market, and technical environments since the initial award.

21. The State reserves the right to offer the awarded bid from this IFB, including all products and services proposed therein, along with the resulting contractual terms, for possible use in future projects by governmental entities outside Mississippi (i.e., "piggyback option"), if (a) it is deemed to be in the best interest of the governmental entity desiring to do so; and (b) the Bidder is willing to extend a cost less than or equal to that specified in the awarded bid and resulting contract. A decision concerning the utilization of a Bidder's bid for future projects outside Mississippi is solely at the discretion of the State, and requires the desire of the governmental entity outside Mississippi and the agreement of the proposing Bidder. The State's decision to consent to the reuse of an awarded bid outside Mississippi will be based upon such criteria as: (1) the governmental entity's business requirements; (2) elapsed time since the award of the original project; and/or (3) research on changes in the Bidder, market, and technical environments since the initial award.
22. 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.
23. All submitted bids must show the net bid price after any and all allowable discounts have been deducted.
24. State sales tax and federal excise taxes shall not be included as the MDHS is tax exempt for materials sold directly to them.
25. 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.
26. The State reserves the right to solicit Best and Final Offers (BAFOs) from Bidders, principally in situations in which bid costs eclipse available funding or the State believes none of the competing bids presents a Best Value. Because of the time and expense incurred by both the Bidder community and the State, BAFOs are not routinely conducted. Bidders should offer their best pricing with the initial solicitation. Situations warranting solicitation of a BAFO will be considered an exceptional practice for any procurement. Bidders 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 Bidders 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 Bidders. All BAFO proceedings will be uniformly conducted, in writing and subject to solicitation by the State and receipt from the Bidders under a precise schedule.

27. The successful Bidder should not commence any billable work until a valid contract has been executed. Any work done by the successful Bidder prior to the execution of the contract is done at the Bidder's sole risk. The State is under no obligation to pay for work done prior to the execution of a contract.
28. Bidders may request additional information or clarifications to this IFB using the following procedure:
  - 28.1 Bidders must clearly identify the specified paragraph(s) in the IFB that is in question.
  - 28.2 Bidder must deliver a written document to Jamekia Hilliard at ITS by Friday, February 22, 2019 at 3:00 p.m. Central Time. This document may be delivered by hand, mail, e-mail, or fax. Address information is given on page one of this IFB. 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 Bidder that the clarification document reaches ITS on time. Bidders may contact Jamekia Hilliard to verify the receipt of their document. Documents received after the deadline will be rejected.
  - 28.3 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 Thursday, February 28, 2019.

**INVITATION FOR BID NO. 4166  
LEGAL AND CONTRACTUAL INFORMATION  
PROJECT NUMBER 44360**

**1. Failure to Respond as Prescribed**

Failure to respond as described to any item in the sections and attachments of this IFB, including the *Standard Contract* attached as Attachment E, if applicable, shall contractually obligate the Bidder to comply with that item.

**2. Mandatory Legal Provisions**

- 2.1 The State of Mississippi is self-insured; all requirements for the purchase of casualty or liability insurance are deleted.
- 2.2 Any provisions disclaiming implied warranties shall be null and void. See Mississippi Code Annotated Sections 11-7-18 and 75-2-719(4). The Bidder shall not disclaim the implied warranties of merchantability and fitness for a particular purpose.
- 2.3 The Bidder shall have no limitation on liability for claims related to the following items:
  - 2.3.1 Infringement issues;
  - 2.3.2 Bodily injury;
  - 2.3.3 Death;
  - 2.3.4 Physical damage to tangible personal and/or real property; and/or
  - 2.3.5 The intentional and willful misconduct or negligent acts of the Bidder and/or Bidder's employees or subcontractors.
- 2.4 All requirements that the State pay interest (other than in connection with lease-purchase contracts not exceeding five years) are deleted.
- 2.5 Any contract negotiated under this IFB 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.
- 2.6 Any contract negotiated under this IFB is cancelable in the event the funding authority does not appropriate funds. Notice requirements to Bidder cannot exceed sixty (60) days.
- 2.7 The State of Mississippi does not waive its sovereign immunities or defenses as provided by law by entering into this contract with the Bidder, Bidder agents, subcontractors, or assignees.

- 2.8 The State will deliver payments to the Bidder within forty-five (45) days after receipt of invoice and receipt, inspection, and approval of Bidder'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.
- 2.9 The State shall not pay any attorney's fees, prejudgment interest or the cost of legal action to or for the Bidder.

**3. Approved Contract**

- 3.1 Award of Contract - A contract is considered to be awarded to a proposer once the proposer's offering has been approved through:
  - 3.1.1 Written notification made to proposers on ITS letterhead, or
  - 3.1.2 Notification posted to the ITS website for the project, or
  - 3.1.3 CP-1 authorization executed for the project, or
  - 3.1.4 The ITS Board's approval of same during an open session of the Board.
- 3.2 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.
- 3.3 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.

**4. Contract Validity**

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

**5. Order of Contract Execution**

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

**6. Availability of Funds**

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

**7. CP-1 Requirement**

All purchase orders issued for goods and services acquired from the awarded Bidder under this IFB 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.

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

- 8.1 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](mailto:mash@dfa.ms.gov).
- 8.2 For state agencies that make payments through MAGIC, the awarded Bidder is required to submit electronically all invoices for goods and services acquired under this IFB, along with appropriate supporting documentation, as directed by the State.
- 8.3 Items 8.1 and 8.2 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.

**9. Prime Contractor**

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

**10. Sole Point of Contact**

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

- 10.1 The Bidder must acknowledge and agree that in matters of bids, clarifications, negotiations, contracts and resolution of issues and/or disputes, the Bidder represents all contractors, third parties and/or subcontractors the Bidder has assembled for this project. The Bidder's commitments are binding on all such parties and consequently the State is only required to negotiate with the Bidder.
- 10.2 Furthermore, the Bidder 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.
- 10.3 Should a proposing Bidder wish to assign payment of any or all charges resulting from this contract to a third party, Bidder must disclose that fact in his/her bid, along

with the third party's name, address, nature of business, and relationship to the proposing Bidder, 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 Bidder, and the third party. Such assignments will be accepted or rejected at the sole discretion of the State. Bidder must clearly and definitively state in his/her bid whether the bid is contingent upon the requested assignment of payments. Whenever any assignment of payment is requested, the bid, contract, and assignment document must include language specifically guaranteeing that the proposing Bidder 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 Bidder's bid and subsequently accepted by the State.

**11. Outstanding Bidder Obligations**

- 11.1 Any Bidder 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 bid, a certified check in the amount due and owing in order for the bid in response to this IFB to be considered. For a Bidder currently in bankruptcy as of the IFB 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 Bidder. If the Bidder has emerged from bankruptcy by the IFB submission date, the Bidder must pay in full any amount due and owing to the State, as directed in the court-approved reorganization plan, prior to any bid being considered.
- 11.2 Any Bidder 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 bid to be considered.
- 11.3 The State, at its sole discretion, may reject the IFB response from a Bidder with any significant outstanding financial or other obligations to the State or who is in bankruptcy at the time of bid submission.

**12. Equipment Condition**

For all IFBs requiring equipment, the Bidder must furnish only new equipment in response to **ITS** specifications, unless an explicit requirement for used equipment is otherwise specified.

**13. Shipping Charges**

For all IFBs 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 IFB bid or LOC quotation. Destination is the point of use.

**14. Ownership of Developed Software**

14.1 When specifications require the Bidder to develop software for the State, the Bidder 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.

14.2 The State may be willing to grant the Bidder a nonexclusive license 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.

**15. Ownership of Custom Tailored Software**

In installations where the Bidder's intellectual property is modified and custom-tailored to meet the needs of the State, the Bidder 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.

**16. Terms of Software License**

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

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

The Bidder 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 Bidder must ensure that the State is properly licensed for all software that is proposed for use in a project.

**18. Compliance with Enterprise Security Policy**

Any solution or service proposed in response to this IFB 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 IFB and require the Bidder 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. Bidders wanting to view the Enterprise Security Policy should contact the Technology Consultant listed on the cover page of this IFB.

**19. Compliance with Cloud and Offsite Hosting Enterprise Security Policy**

Any cloud or vendor-hosted solution proposed in response to this IFB 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 IFB and require the Bidder 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. Bidders wanting to view the Enterprise Cloud and Offsite Hosting Security Policy should contact the Technology Consultant listed on the cover page of this IFB.

**20. Negotiating with Next-Ranked Bidder**

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

**21. Disclosure of Proposal Information**

Bidders should be aware that any information in a bid 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 bid 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 Bidder of a request to view or reproduce the Bidder's bid 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 Bidder's bid, 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 IFB.

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.

Bidders should further be aware that requests for disclosure of bid information are sometimes received by ITS significantly after the bid opening date. ITS will notify the signatory "Officer in Bind of Company" provided in Section I of this IFB 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, Bidder should provide the alternative contact information in response to this IFB item.

**22. Responsibility for Behavior of Bidder Employees/Subcontractors**

The Bidder will be responsible for the behavior of all its employees and subcontractors while on the premises of any State agency or institution. Any Bidder 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.

23. **Protests**

The Executive Director of ITS and/or the Board Members of ITS or their designees shall have the authority to resolve Bidder protests in connection with the selection for award. 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.

24. **Protest Bond**

Potential Bidders may protest any of the specifications of this IFB 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 IFB, as defined in the ITS Protest Procedure and Policy. The outside of the envelope must be marked "Protest" and must specify IFB number 4166.

As a condition precedent to filing any protest related to this procurement, the Bidder 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 Bidder until the protest is finally resolved and the time for appealing said protest has expired. The protest bond shall be procured at the protesting Bidder'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 Bidder 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 Bidder. 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 Bidder 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.

25. **Mississippi Employment Protection Act**

Effective July 1, 2008, Bidder 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. Bidder 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.

Bidder 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.

Bidder acknowledges that violating the E-Verify Program (or successor thereto) requirements subjects Bidder 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 Bidder by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. Bidder would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

## ATTACHMENT A BID FORM

### I. Procurement Schedule

Task	Date
First Advertisement Date for IFB	02/12/19
Second Advertisement Date for IFB	02/19/19
Deadline for Bidder's Written Questions	3:00 p.m. Central Time on 02/22/19
Deadline for Questions Answered and Posted to ITS Web Site	02/28/19
Open Bids	3:00 p.m. Central Time on 03/12/19
Begin Evaluation of Bids	03/12/19
Contract Negotiation	03/18/19
Support Begins	04/01/19

### II. Clarification and Updates After Bid Opening

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.

### III. Background and Overview

On May 9, 2013, ITS issued a Letter of Configuration 40331, based on General RFP No. 3707, on behalf of the Mississippi Department of Human Services (MDHS), for Kofax licenses and maintenance for five years. BCS Systems, Inc. was the awarded vendor and current licenses and maintenance expire March 31, 2019. MDHS is requesting to renew the licenses and maintenance.

Carahsoft assisted with the details for the IFB. Therefore, Carahsoft is precluded from responding to this IFB.

### IV. Specifications

Bidders must fully respond to each requirement by fully describing the manner and degree

by which the bid meets or exceeds the following specifications. If a Bidder is unable to meet or exceed these specifications, then the Bidder will be disqualified.

1. Vendors must propose pricing for the items listed in the table beginning on page 20. Any cost not listed in this section may result in the Bidder providing those products or services at no charge to the State or face disqualification. The State reserves the right to purchase all, a portion of, or none of these items.
2. Vendor must provide pricing for **1 year, 2 years prepaid, and 3 years prepaid.**

## **V. Cloud or Offsite Hosting Requirements**

### **1. Data Ownership**

The State shall own all right, title and interest in all data used by, resulting from, and collected using the services provided. The Bidder shall not access State User accounts, or State Data, except (i) in the course of data center operation related to this solution; (ii) response to service or technical issues; (iii) as required by the express terms of this service; or (iv) at State's written request.

### **2. Data Protection**

Protection of personal privacy and sensitive data shall be an integral part of the business activities of the Bidder to ensure that there is no inappropriate or unauthorized use of State information at any time. To this end, the Bidder shall safeguard the confidentiality, integrity, and availability of State information and comply with the following conditions:

- All information obtained by the Bidder under this contract shall become and remain property of the State.
- At no time shall any data or processes which either belong to or are intended for the use of State or its officers, agents, or employees be copied, disclosed, or retained by the Bidder or any party related to the Bidder for subsequent use in any transaction that does not include the State.

### **3. Data Location**

The Bidder shall not store or transfer State data outside of the United States. This includes backup data and Disaster Recovery locations. The Bidder will permit its personnel and contractors to access State data remotely only as required to provide technical support.

### **4. Encryption**

The Bidder shall encrypt all non-public data in transit regardless of the transit mechanism. For engagements where the Bidder stores non-public data, the data shall be encrypted at rest. The key location and other key management details will be discussed and negotiated by both parties. Where encryption of data at rest is not possible, the Bidder must describe existing security measures that provide a similar level of protection. Additionally, when the Bidder cannot offer encryption at rest, it must maintain, for the duration of the contract, cyber security liability insurance



coverage for any loss resulting from a data breach. The policy shall comply with the following requirements:

- The policy shall be issued by an insurance company acceptable to the State and valid for the entire term of the contract, inclusive of any term extension(s).
- The Bidder and the State shall reach agreement on the level of liability insurance coverage required.
- The policy shall include, but not be limited to, coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, and liability assumed under an insured contract.
- At a minimum, the policy shall include third party coverage for credit monitoring, notification costs to data breach victims; and regulatory penalties and fines.
- The policy shall apply separately to each insured against whom claim is made or suit is brought subject to the Bidder's limit of liability.
- The policy shall include a provision requiring that the policy cannot be cancelled without thirty (30) days written notice.
- The Bidder shall be responsible for any deductible or self-insured retention contained in the insurance policy.
- The coverage under the policy shall be primary and not in excess to any other insurance carried by the Bidder.
- In the event the Bidder fails to keep in effect at all times the insurance coverage required by this provision, the State may, in addition to any other remedies it may have, terminate the contract upon the occurrence of such event, subject to the provisions of the contract.

5. Breach Notification and Recovery

Unauthorized access or disclosure of non-public data is considered to be a security breach. The Bidder will provide immediate notification and all communication shall be coordinated with the State. When the Bidder or their sub-contractors are liable for the loss, the Bidder shall bear all costs associated with the investigation, response and recovery from the breach including but not limited to credit monitoring services with a term of at least 3 years, mailing costs, website, and toll free telephone call center services. The State shall not agree to any limitation on liability that relieves a Bidder from its own negligence or to the extent that it creates an obligation on the part of the State to hold a Bidder harmless.

6. Notification of Legal Requests

The Bidder shall contact the State upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to the data of the State. The Bidder shall not respond to subpoenas, service of process, and other legal requests related to the State without first notifying the State unless prohibited by law from providing such notice.

7. Termination and Suspension of Services

In the event of termination of the contract, the Bidder shall implement an orderly return

of State data in CSV or XML or another mutually agreeable format. The Bidder shall guarantee the subsequent secure disposal of State data.

- Suspension of services: During any period of suspension of this Agreement, for whatever reason, the Bidder shall not take any action to intentionally erase any State data.
- Termination of any services or agreement in entirety: In the event of termination of any services or of the agreement in its entirety, the Bidder shall not take any action to intentionally erase any State data for a period of 90 days after the effective date of the termination. After such 90 day period, the Bidder shall have no obligation to maintain or provide any State data and shall thereafter, unless legally prohibited, dispose of all State data in its systems or otherwise in its possession or under its control as specified in section 7(d) below. Within this 90 day timeframe, Bidder will continue to secure and back up State data covered under the contract.
- Post-Termination Assistance: The State shall be entitled to any post-termination assistance generally made available with respect to the Services unless a unique data retrieval arrangement has been established as part of the Service Level Agreement.
- Secure Data Disposal: When requested by the State, the provider shall destroy all requested data in all of its forms, for example: disk, CD/DVD, backup tape, and paper. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST) approved methods. Certificates of destruction shall be provided to the State.

#### 8. Background Checks

The Bidder warrants that it will not utilize any staff members, including sub-contractors, to fulfill the obligations of the contract who have been convicted of any crime of dishonesty. The Bidder shall promote and maintain an awareness of the importance of securing the State's information among the Bidder's employees and agents.

#### 9. Security Logs and Reports

The Bidder shall allow the State access to system security logs that affect this engagement, its data, and/or processes. This includes the ability to request a report of the activities that a specific user or administrator accessed over a specified period of time as well as the ability for an agency customer to request reports of activities of a specific user associated with that agency. These mechanisms should be defined up front and be available for the entire length of the agreement with the Bidder.

#### 10. Contract Audit

The Bidder shall allow the State to audit conformance including contract terms, system security and data centers as appropriate. The State may perform this audit or contract with a third party at its discretion at the State's expense.

#### 11. Sub-contractor Disclosure

The Bidder shall identify all of its strategic business partners related to services

provided under this contract, including but not limited to, all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Bidder, who will be involved in any application development and/or operations.

12. Sub-contractor Compliance

The Bidder must ensure that any agent, including a Bidder or subcontractor, to whom the Bidder provides access agrees to the same restrictions and conditions that apply through this Agreement.

13. Processes and Procedures

The Bidder shall disclose its non-proprietary security processes and technical limitations to the State so that the State can determine if and how adequate protection and flexibility can be attained between the State and the Bidder. For example: virus checking and port sniffing — the State and the Bidder shall understand each other's roles and responsibilities.

14. Operational Metrics

The Bidder and the State shall reach agreement on operational metrics and document said metrics in the Service Level Agreement. At a minimum the SLA shall include:

- Advance notice and change control for major upgrades and system changes
- System availability/uptime guarantee/agreed-upon maintenance downtime
- Recovery Time Objective/Recovery Point Objective
- Security Vulnerability Scanning

## Products and/or Services

It is the responsibility of the Bidder to clearly identify all costs associated with any item or series of items in this IFB. The Bidder 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' 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.

Kofax Software License						
MFG	MFG#	Serial #	Description	QTY	Year 1 Cost	2 Year Prepaid Cost
Kofax	AE#T023-0000	VL27223	Capture Scan/QC/Import only License	1		3 Year Prepaid Cost
Kofax	EE#Y024-005M	VL27223	Capture IMAGE VOL 5M/YR-ENT License	1		
Kofax	AE#VY01-012M	VL27223	Capture IMG 12M/YR CNV License	1		
Kofax	AE#VY10-005M	VL27223	Kofax Capture PDFImg+Txt 5M/Yr License	1		
Kofax	AE#VY10-010M	VL27223	Capture PDFImg+Txt 10M/Yr License	1		
Kofax	AE#VY10-002M	VL27223	Capture PDFImg+Txt 2M/Yr License	1		
Kofax	EE#T024-001U	VL27223	Capture CONCURRENT STATION License	1		
Kofax	EE#T024-001U	YK20641	Capture CONCURRENT STATION License	4		
Kofax	EE#T024-001U	VL27223	Capture CONCURRENT STATION License	3		
Kofax	AE#T024-0000	VL27223	Capture Full Station License	2		
Kofax	AE#T024-0000	VL27223	Capture Full Station License	1		
Kofax	EE#T023-0000	VL27223	Capture Scan/QC/Import only- ENT License	9		

Kofax Software License						
MFG	MFG#	Serial #	Description	QTY	Year 1 Cost	3 Year Prepaid Cost
Kofax	AE#T024-0000	VL27223	Capture Full Station License	1		
				<b>Total Cost</b>		

Software Support and Maintenance Renewal						
MFG	MFG#	Serial #	Description	QTY	Year 1 Cost	3 Year Prepaid Cost
Kofax	MR-1800-0110	VL27223	Capture Scan/QC/Import only License	1		
Kofax	MR-1800-0110	VL27223	Capture IMAGE VOL 5M/YR-ENT License	1		
Kofax	MR-1800-0110	VL27223	Capture IMG 12M/YR CNV License	1		
Kofax	MR-1800-0110	VL27223	Kofax Capture PDFImg+Txt 5M/Yr License	1		
Kofax	MR-1800-0110	VL27223	Capture PDFImg+Txt 10M/Yr License	1		
Kofax	MR-1800-0110	VL27223	Capture PDFImg+Txt 2M/Yr License	1		
Kofax	MR-1800-0110	VL27223	Capture CONCURRENT STATION License	1		
Kofax	MR-1800-0110	YK20641	Capture CONCURRENT STATION License	4		
Kofax	MR-1800-0110	VL27223	Capture CONCURRENT STATION License	3		
Kofax	MR-1800-0110	VL27223	Capture Full Station License	2		
Kofax	MR-1800-0110	VL27223	Capture Full Station License	1		

Software Support and Maintenance Renewal						
MFG	MFG#	Serial #	Description	QTY	Year 1 Cost	2 Year Prepaid Cost
Kofax	MR-1800-0110	VL27223	Capture Scan/QC/Import only- ENT License	9		3 Year Prepaid Cost
Kofax	MR-1800-0110	VL27223	Capture Full Station License	1		
				<b>Total Cost</b>		

Grand Total for 1 Year Cost: \_\_\_\_\_

Grand Total for 2-Years Prepaid Cost: \_\_\_\_\_

Grand Total for 3-Years Prepaid Cost: \_\_\_\_\_

By signing below, the Bidder 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 Bidder is indicating that he takes no exceptions. Bidders 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.

\_\_\_\_\_  
**Original Signature of Officer in Bind of Company**

Name (Print) \_\_\_\_\_

Title \_\_\_\_\_

Company Name \_\_\_\_\_

Date \_\_\_\_\_

## ATTACHMENT B IFB 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 Bidder 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)

Bidders 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 Bidders 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 Bidder 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 Bidder will be chosen for the project. Any Bidder 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 bid. 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 Bidder is claiming status as a Minority Business Enterprise or Woman Business Enterprise, the Bidder must include a copy of their Minority Vendor Self-Certification Form with their IFB response.

2. **Certification of Authority to Sell**

The Bidder must certify Bidder 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 Bidder 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 Bidder 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 bid. The Bidder 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 Bidder that pertain to any of the software, hardware, or other materials and/or services which are a part of the Bidder's bid? (A yes or no answer is required.)
- 4.2 Are there any criminal or civil proceedings (federal or state) pending against the Bidder 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 bid of a Bidder 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 Bidder's bid.

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

Does the Bidder agree that any information system proposed, developed, or modified under this IFB 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. **Taxpayer Identification Number**

Bidder must specify their taxpayer identification number.

7. **Certification of Liability Insurance**

Bidder must provide a copy of their Certificate of Liability Insurance with their IFB response.



8. **Order and Remit Address**

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

Order Address:

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Remit Address (if different):

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9. **Web Amendments**

ITS will use the ITS website to post amendments regarding IFBs before the bid 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 bid opening date listed on the cover page of this IFB or the posted extension date, if applicable.

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

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

10. **E-Verify Registration Documentation**

Bidder 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. Bidder must provide documentation of their E-Verify compliance with their IFB response.

## **ATTACHMENT C REFERENCES**

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

### **1. References**

- 1.1 The Bidder must provide three (3) verifiable references consisting of Bidder accounts that the State may contact. Required information includes customer contact name, address, telephone number, e-mail address, and engagement starting and ending dates. Forms for providing reference information are included in this IFB Attachment. 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.
- 1.2 Any of the following may subject the Bidder's bid 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 Bidder 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 product/service must be for a project similar in scope and size to the project for which this IFB is issued;
  - 1.3.2 The reference product/service must have been operational for at least six (6) months.
- 1.4 The State reserves the right to request information about the Bidder from any previous customer of the Bidder 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 Bidder's list of references, and to utilize such information in the evaluation of the Bidder's proposal.
- 1.5 Unless otherwise indicated, 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 IFB;
- 1.5.2 To confirm the capabilities and quality of a Bidder, product, or individual for the bid, 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 Bidder are known to the State.

## 2. **Subcontractors**

The Bidder's bid 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 Attachment.

Unless otherwise noted, the requirements found in the References Attachment may be met through a combination of Bidder and subcontractor references and experience. Bidder's bid should clearly indicate any mandatory experience requirements met by subcontractors. NOTE: The State reserves the right to eliminate from further consideration bids in which the prime Bidder 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 bids in which the prime Bidder is only a brokering agent).

## BIDDER 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:

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## **SUBCONTRACTOR REFERENCE FORM**

**Complete three (3) separate forms for each subcontractor proposed.**

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

Scope of services/products to be provided by subcontractor:

--

## **ATTACHMENT D BID EXCEPTIONS**

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

1. Unless specifically disallowed on any specification herein, the Bidder may take exception to any point within this IFB, 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 bid still meets the intent of the IFB;
  - 1.3 An *Exception Summary Form* is included with Bidder's proposal; and
  - 1.4 The exception is clearly explained, along with any alternative or substitution the Bidder proposes to address the intent of the specification, on the *Exception Summary Form*.
2. The Bidder has no liability to provide items to which an exception has been taken. ITS has no obligation to accept any exception. During the bid evaluation and/or contract negotiation process, the Bidder and ITS will discuss each exception and take one of the following actions:
  - 2.1 The Bidder 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 IFB and will accept the exception;
  - 2.3 ITS and the Bidder 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 Bidder's bid or withdraws the award and proceeds to the next ranked Bidder.
3. Should ITS and the Bidder reach a successful agreement, ITS will sign adjacent to each exception which is being accepted or submit a formal written response to the *Exception Summary* responding to each of the Bidder's exceptions. The *Exception Summary*, with those exceptions approved by ITS, will become a part of any contract on acquisitions made under this IFB.
4. An exception will be accepted or rejected at the sole discretion of the State.
5. The State desires to award this IFB to a Bidder or Bidders with whom there is a high probability of establishing a mutually agreeable contract, substantially within the standard

terms and conditions of the State's IFB, including the *Standard Contract* in Attachment E, if included herein. As such, Bidders whose bids, in the sole opinion of the State, reflect a substantial number of material exceptions to this IFB, may place themselves at a comparative disadvantage in the evaluation process or risk disqualification of their bids.

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

### EXCEPTION SUMMARY FORM

**List and clearly explain any exceptions, for all Bid Sections and Attachments, including the Standard Contract, in the table below.**

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



## **ATTACHMENT E STANDARD CONTRACT**

A properly executed contract is/is not 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.

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 D. 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.

### **PROJECT NUMBER 44360 SOFTWARE LICENSE AND MAINTENANCE AGREEMENT BETWEEN VENDOR NAME AND MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES AS CONTRACTING AGENT FOR THE MISSISSIPPI DEPARTMENT OF HUMAN SERVICES**

This Software License and Maintenance Agreement (hereinafter referred to as "Agreement") is entered into by and between VENDOR NAME, a STATE OF INCORPORATION corporation having its principal place of business at VENDOR 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 Department of Human Services located at 200 South Lamar Street, Jackson, Mississippi 39201 (hereinafter referred to as "Licensee"). ITS and Licensee are sometimes collectively referred to herein as "State."

**WHEREAS**, Licensee, pursuant to Information for Bid ("IFB") Number 4166, requested proposals for the acquisition of Kofax software licenses, services, and technical support as described in the IFB; and

**WHEREAS**, Licensor 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, consideration, and agreements set forth, the parties hereto agree as follows:

#### **ARTICLE 1 DEFINITIONS**

The following terms as used herein shall have the following meanings:

**1.1 "Documentation"** means the published user and technical manuals and documentation that Licensor makes generally available for the Software.

**1.2 “Enhancements”** means the fixes, updates, upgrades, or new versions of the Software or Documentation that Licensor may provide to Licensee under this Agreement.

**1.3 “Licensee”** means the Mississippi Department of Human Services, its employees, and any third party consultants or Outsourcers engaged by Licensee who have a need to know and who shall be bound by the terms and conditions of this Agreement.

**1.4 “Licensor”** means **VENDOR NAME** and its successors and assigns.

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

**1.6 “Software”** means the machine-readable object code version of the computer programs described in and specifically identified in the attached Exhibit A, whether embedded on disc, tape, or other media.

## **ARTICLE 2 TERM OF AGREEMENT**

**2.1** The effective date of this Agreement shall be the date it is signed by all parties and, provided that Licensee has paid all applicable fees, its term is perpetual, unless terminated as prescribed elsewhere in this Agreement. The Products must be delivered, installed, accepted by Licensee, and all training and other tasks required under this Agreement, with the exception of warranty service or software maintenance, completed on or before March 31, 2020, unless a change in this date is mutually agreed to in writing by the Licensee and the Licensor. Software, as used herein, also includes future updates/revisions and new releases of the Software that Licensor may provide to Licensee under this Agreement.

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

## **ARTICLE 3 SCOPE OF LICENSE**

Licensor hereby grants to Licensee a non-exclusive, non-transferable, and perpetual license to use the Products for Licensee's business operations subject to the terms of this Agreement. Licensee may license additional Software Products by executing a written amendment to this Agreement and paying an additional license fee.

## **ARTICLE 4 DELIVERY, RISK OF LOSS, AND ACCEPTANCE**

**4.1** Licensor shall deliver and install the Software and Documentation to the location specified by Licensee and pursuant to the delivery schedule mutually agreed to by the parties.

**4.2** Licensor shall assume and bear the entire risk of loss and damage to the Products from any cause whatsoever while in transit and at all times throughout Licensor's possession thereof.

**4.3** Licensee shall have thirty (30) calendar days after installation of the Software by Licensor to evaluate and test the Software to confirm that it performs without any defects and in accordance with Licensor's user Documentation. Licensee shall immediately thereafter notify Licensor in writing of any defects in the Software, which must be corrected prior to payment being made. Thereafter, Licensor shall have ten (10) working days in which to either repair or replace the

defective Software, all at Licensor's expense. In the event Licensor is unable to repair or replace the Software, Licensee may terminate this Agreement pursuant to the Termination Article herein.

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

The cost of the Software and services to be provided by Licensor is specified in the attached Exhibit A, which is incorporated herein by reference. In no event will the total compensation to be paid hereunder exceed the specified sum of **INSERT TOTAL COMPENSATION**, unless prior written authorization from ITS has been obtained. Upon acceptance of the Software by Licensee, Licensor shall invoice Licensee for the Software, and the services will be invoiced as they are rendered. Licensor shall submit invoices and supporting documentation to Licensee electronically at any time during the term of this Agreement using the processes and procedures identified by the State. Licensee shall make payment hereunder in accordance with Mississippi law on "Timely Payment 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 Licensee within forty-five (45) days of receipt of the invoice. Licensor understands and agrees that Licensee is exempt from the payment of taxes. All payments should be made 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 for full performance in strict compliance with the contract documents specified in the article herein titled "Entire Agreement."

## **ARTICLE 6 OWNERSHIP, USE, AND RESTRICTIONS ON USE**

**6.1** Licensee acknowledges that the Software Products shall remain the exclusive property of Licensor. Licensee acknowledges that it has no right to or interest in the Software Products other than as expressly granted herein. Licensee shall not remove any identification notices affixed to the Software Products or their packaging.

**6.2** Licensee is granted the right to make sufficient copies of the Products to support its use and for archival and disaster recovery purposes. Licensee shall include Licensor's confidentiality and proprietary rights notices on any copies made of the Products.

**6.3** Licensee acknowledges that the Software Products are trade secrets and confidential information of Licensor. Neither the Software Products nor any physical media containing the Software may be used, copied, disclosed, broadcast, sold, re-licensed, distributed, or otherwise published by Licensee except as expressly permitted by this Agreement. Licensee shall use reasonable efforts to maintain the confidential nature of the Software Products.

**6.4** Licensee is granted the right to customize the Software for its use. Licensee may not resell or sub-license the original Software or the customized version.

**6.5** Licensee agrees that, except as noted herein, it will not otherwise copy, translate, modify, adapt, decompile, disassemble, or reverse engineer any of the Software without the prior written consent of Licensor.

## **ARTICLE 7 WARRANTIES**

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

**7.2** Licensor represents and warrants that all work performed hereunder, including but not limited to consulting, training, and Software maintenance, 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, the Licensor shall, for a period of ninety (90) days from the performance of service, perform the services again at no cost to the Licensee, or if the Licensor is unable to perform the services as warranted, the Licensor shall reimburse the Licensee the fees paid to the Licensor for the unsatisfactory services.

**7.3** Licensor represents and warrants that neither the Software nor Enhancements shall contain disabling code or a lockup 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 lockup program or device, or (b) take any step which would in any manner interfere with Licensee's licensed use of the Software or Enhancements and/or which would restrict Licensee from accessing its data files or in any way interfere with the transactions of Licensee's business. For any breach of this warranty, Licensor, at its expense, shall, within five (5) working days after receipt of notification of the breach, deliver Products to Licensee that are free of such disabling code or a lockup program or device.

**7.4** In addition, Licensor represents and warrants that neither the Software nor Enhancements delivered to Licensee contain a computer virus. For purposes of this provision, a computer virus shall be defined as code intentionally inserted in the Software or Enhancements that will damage or destroy Licensee's applications or data. For any breach of this warranty, Licensor, at its expense, shall, within five (5) working days after receipt of notification of the breach, deliver Products to Licensee that are free of any virus and shall be responsible for repairing, at Licensor's expense, any and all damage done by the virus to Licensee's site.

**7.5** Licensor represents and warrants that the Software will operate free from defects for a period of one (1) year after acceptance and will provide Licensee complete functionality necessary for the operation of the system. Licensor's obligations pursuant to this warranty shall include, but are not limited to, the repair of all defects or the replacement of the Software at the expense of Licensor. In the event Licensor is unable to repair or replace the Software within ten (10) working days after receipt of notice of the defect, Licensee shall be entitled to a full refund of fees paid and shall have the right to terminate this Agreement in whole or in part. Licensee's rights hereunder are in addition to any other rights Licensee may have.

**7.6** 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.

**7.7** 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, maintenance and/or 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.

**7.8** 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.

**7.9** 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.

**7.10** Licensor represents and warrants that it will comply with all of the requirements defined in IRS Publication 1075 and the provisions as set forth in Exhibit B which is attached to Agreement and incorporated herein by reference.

## **ARTICLE 8 INFRINGEMENT INDEMNIFICATION**

Licensor represents and warrants that neither the Products and their elements nor the use thereof violates or infringes on any copyright, patent, trademark, servicemark, trade secret, or other proprietary right of any person or entity. Licensee shall notify Licensor promptly of any infringement claim of which it has knowledge and shall cooperate with Licensor in the defense of such claim by supplying information, all at Licensor's expense. Licensor, at its own expense, shall defend or settle any and all infringement actions filed against Licensor or Licensee which involve the Products provided under this Agreement and shall pay all settlements, as well as all costs, attorney fees, settlements, damages, and judgment finally awarded against Licensee. If the continued use of the Products for the purpose intended is threatened to be enjoined or is enjoined by any court of competent jurisdiction, Licensor shall, at its expense: (a) first procure for Licensee the right to continue using the Products, or upon failing to procure such right; (b) modify or replace the Products, or components thereof, with non-infringing Products so it becomes non-infringing, or upon failing to secure either such right; (c) refund the license fees previously paid by Licensee for the Products Licensee may no longer use. Said refund shall be paid within ten (10) working days of notice to Licensee to discontinue said use.

## **ARTICLE 9 MODIFICATION**

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 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.

**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** 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.

**10.4** 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, 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 Licensors failure to pay any and all amounts due by Licensors to any subcontractor, 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 Licensors and the Licensee, where such dispute affects the subcontract.

#### **ARTICLE 11 AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of the 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. If the funds anticipated for the continuing fulfillment of this Agreement are, at any time, not forthcoming or insufficient through the failure of the federal government to provide funds, the State of Mississippi to appropriate funds, the discontinuance or material alteration of the program under which funds were provided, or if funds are not otherwise available to the Licensee, the Licensee shall have the right to immediately terminate this Agreement without damage, penalty, cost, or expense to the Licensee of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. In the event of termination, Licensors shall be entitled to receive just and equitable compensation for satisfactory work completed or services rendered by Licensors in connection with this Agreement as of the date of receipt of notification of termination.

#### **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) by Licensee upon thirty (30) days written notice to Licensors without the assessment of any penalties if Licensors becomes the subject of bankruptcy, reorganization, liquidation, or receivership proceedings, whether voluntary or involuntary; (c) by Licensee upon thirty (30) days written notice to Licensors without the assessment of any penalties in the event Licensee determines it is in the best interest of the State of Mississippi to terminate this Agreement; or (d) by either party in the event of a breach of a material term or provision of this Agreement where such breach continues for thirty (30) days after the breaching party receives written notice from the other party. Upon termination, Licensee will be entitled to a refund of applicable unexpended prorated annual Software maintenance fees/charges, if any. In the event of termination, Licensors shall be entitled to receive just and equitable compensation for satisfactory work completed or services rendered by Licensors in connection with this Agreement as of the date of receipt of notification of termination. In no case shall said compensation exceed the total contract price. The provisions of this article do not limit either party's right to pursue any other remedy available at law or in equity.

**12.2** Purchaser has the option, without assessment of any penalties, of terminating all or part the services upon a thirty (30) day notice to Seller. Upon termination, Seller shall refund any and all applicable unexpended prorated annual service fees previously paid by the Purchaser.

#### **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. Licensors expressly agrees that under no circumstances shall Licensee 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 Licensee 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 the State, 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 the State.

#### **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 section of this Agreement.

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

To the fullest extent allowed by law, Licensor shall indemnify, defend, save and hold harmless, protect, and exonerate Licensee, 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 18 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 the 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 19 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 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. Licensee's address for notice is: Mr. Mark Allen, Chief Information Systems Officer, Mississippi Department of Human Services, 200 South Lamar Street, Jackson, Mississippi 39201. The Licensors' 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**

Licensors 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 Licensors' 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 Licensors' office as applicable where such records are kept during normal business hours. All records relating to this Agreement shall be retained by the Licensors 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**

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

## **ARTICLE 23 DISPUTES**

Any dispute concerning a question of fact under this Agreement, which is not disposed of by agreement of the Licensors and Licensee, shall be decided by the Executive Director of Mississippi Department of Information Technology Services or his/her designee. Licensors agrees to continue to provide such service, maintenance, and updates as Licensee may contract for and pay for pending the resolution of any dispute hereunder. The decision of the Executive Director 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. Nothing in this Article shall abridge the right of either party to seek such other rights and remedies it may have at law or in equity.

## **ARTICLE 24 COMPLIANCE WITH LAWS**

**24.1** Licensors shall comply with, and all activities under this Agreement shall be subject to, all Licensee policies and procedures 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, 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.

**24.2** 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 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 25 CONFLICT OF INTEREST**

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

#### **ARTICLE 26 SOVEREIGN IMMUNITY**

By entering into this Agreement with Licensor, the Licensee in no way waives its sovereign immunities or defenses as provided by law.

#### **ARTICLE 27 CONFIDENTIAL INFORMATION**

**27.1** 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 subpoena or other validly issued administrative or judicial process ordering divulgence of such information, Licensor shall promptly inform Licensee and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules, and regulations. This Article shall survive the termination or completion of this Agreement, 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.

**27.2** 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.

**27.3** 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 28 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 Licensee or the Licenser on the basis of draftsmanship or preparation hereof.

## **ARTICLE 29 ENTIRE AGREEMENT**

**29.1** This Agreement 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 hereto, including any “shrink-wrap” version of the Software Product or any “click-wrap” or “browse-wrap” license presented in connection with a license via the Internet.

**29.2** The Agreement 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 both parties;
- B. Any exhibits attached to this Agreement;
- C. IFB No. 4166; and
- D. Licenser's Proposal, as accepted by Licensee, in response to IFB No. 4166.

**29.3** The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by the Licenser. 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. Licenser's Proposal”).

## **ARTICLE 30 SURVIVAL**

Articles 7, 8, 13, 17, 21, 26, 27, 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 31 DEBARMENT AND SUSPENSION CERTIFICATION**

Licenser 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, including violation of federal or state anti-trust statutes, commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, and 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, including violation of federal or state anti-trust statutes, 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 (federal, state, or local) transactions terminated for cause or default.

#### **ARTICLE 32 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 33 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 34 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 Licensor understands and agrees that ITS as contracting agent is not responsible or liable for the performance or non-performance of any of Licensee'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 35 SOFTWARE MAINTENANCE**

**35.1** Prior to expiration of the warranty period, Licensor shall notify Licensee in writing of the impending warranty expiration, and Licensee shall in turn notify Licensor of its decision to either obtain Software maintenance or to forgo Software maintenance. Upon notification of intent to obtain Software maintenance, Licensor shall provide Licensee, for the annual fee specified in the attached Exhibit A, the Software maintenance services as herein described.

**35.2** Licensor shall provide the following Software maintenance services: As part of the Software maintenance services, Licensor will maintain the Products in an operable condition according to the specifications contained in the technical manuals. Licensor shall make available to Licensee during each annual maintenance period at least one (1) update to the Software Products that will incorporate any new features or enhancements to the licensed Products.

Licensors shall also provide direct modem support and unlimited toll-free telephone support in the operation of the Software Products Monday through Friday, 8:00 A.M. to 5:00 P.M. (Central Time), with a guaranteed one (1) hour response time. Priority placement in the support queue shall be given to all system locking situations or problems claimed by Licensee to be mission critical processes. Finally, Licensors shall provide on-site support in the operation of the Software Products if reasonably convenient or necessary in the opinion of the Licensors.

**35.3** Sixty (60) days prior to the expiration of the initial Software maintenance period or any renewal term thereof, Licensors shall notify Licensee in writing of the impending expiration, and Licensee shall have thirty (30) days in which to notify Licensors of its intentions to either renew or cancel any further Software maintenance. In no event shall the cost for Software maintenance increase by more than three percent (3%) per year.

#### **ARTICLE 36 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 37 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 Licensors 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.

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

**State of Mississippi, Department of  
Information Technology Services, on  
behalf of Mississippi Department of  
Human Services**

**VENDOR NAME**

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

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

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

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

**Title: Executive Director**

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

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

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

**State of Mississippi,  
Department of Human Services**

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

**Printed Name: John Davis**

**Title: Executive Director**

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

## **EXHIBIT A**

**EXHIBIT B  
CONTRACT LANGUAGE FOR GENERAL  
SERVICES**

**I. PERFORMANCE**

In performance of this Agreement, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be performed under the supervision of the Contractor or the Contractor's employees.
- (2) The Contractor and the Contractor's employees with access to or who use Federal tax information must meet the background check requirements defined in IRS Publication 1075.
- (3) Any Federal tax return or return information (hereafter referred to as returns or return information) made available in any format shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Agreement. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.
- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
- (5) No work involving returns and return information furnished under this Agreement will be subcontracted without prior written approval of the IRS.
- (6) The Contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- (7) The agency will have the right to void the Agreement if the Contractor fails to provide the safeguards described above.
- (8) (Include any additional safeguards that may be appropriate.)

**II. CRIMINAL/CIVIL SANCTIONS:**

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000.00 or imprisonment for as long as five (5) years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000.00 with respect to



each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

(2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Agreement. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as one (1) year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee (United States for Federal employees) in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

(3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.00.

(4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the Contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

### **III. INSPECTION:**

The IRS and the Customer, with twenty-four (24) hour notice, shall have the right to send its inspectors into the offices and plants of the Contractor to inspect the facilities and operations performing any work with FTI under this Agreement for compliance with requirements defined in

IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with contract safeguards.