



## IFB No: 4268

**INVITATION:** Sealed bids, subject to the conditions herein stated and attached hereto, will be received at this office **until 3:00 p.m. Central Time on Thursday, February 20, 2020**, and then publicly opened for furnishing the products and services as described below for the **OFFICE OF STATE AID ROAD CONSTRUCTION (OSARC)**.

<b>Web-Based Construction Project Management Software Solution</b>
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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:

Alec Shedd Technology Consultant Information Technology Services 3771 Eastwood Drive Jackson, MS 39211 (601) 432-8162 <a href="mailto:Alec.Shedd@its.ms.gov">Alec.Shedd@its.ms.gov</a>
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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 4268 due February 20, 2020 @ 3:00 p.m. ATTENTION: Alec Shedd
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**Craig P. Orgeron, Ph.D.**  
**Executive Director, ITS**

**INVITATION FOR BID NO. 4268  
BIDDER RESPONSE INFORMATION  
PROJECT NUMBER 43417**

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 eight (8) 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: Alec Shedd, Technology Consultant, 3771 Eastwood Drive, Jackson, MS 39211, 601-432-8162, [Alec.Shedd@its.ms.gov](mailto:Alec.Shedd@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 OSARC 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 Alec Shedd at ITS by Friday, January 31, 2020 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 Alec Shedd 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 Tuesday, February 11, 2020.

**INVITATION FOR BID NO. 4268  
LEGAL AND CONTRACTUAL INFORMATION  
PROJECT NUMBER 43417**

**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 4268.

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

<b>Task</b>	<b>Date</b>
First Advertisement Date for IFB	01/22/20
Second Advertisement Date for IFB	01/28/20
Deadline for Bidder's Written Questions	3:00 p.m. Central Time on 01/31/20
Deadline for Questions Answered and Posted to ITS Web Site	02/11/20
Open Bids	3:00 p.m. Central Time on 02/20/20
Begin Evaluation of Bids	02/20/20
Begin Contract Negotiations	03/02/20
Proposed Project Implementation Start-up	04/01/20
Project Go-Live Deadline	05/29/20

### 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 eight (8) 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

The current applications utilized at the Office of State Aid Road Construction (OSARC) are dependent on very outdated technology (FoxPro) which requires a DOS emulator for the applications to function. Most of the processes are manual, redundant, and rely heavily on paper and spreadsheets. These external steps are more susceptible to mistakes. OSARC seeks an e-construction solution set as a multi-module Software as a Service (SaaS) platform that will allow OSARC and county constituents to effectively manage and track road and bridge bidding, construction contract administration, and construction inspections in the cloud and on mobile devices, hosted offsite using cloud services. The goal of this project is to have a system that will contain all project information, including financial data and project location mapping. Additionally, this system should include a paperless workflow and approval process, real time reporting, and an area for attachment

of documents that are produced outside of the system. County officials will access the system to produce documents, prepare estimates, view project information, run reports, and enter inspection reports. Contractors will also use the system to submit electronic bids on county construction projects.

#### **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.

##### **A. General Specifications**

1. The software solution must be compatible with Windows, Apple, and Android operating systems.
2. The software solution must allow OSARC to manage user accounts based on employee turnover and initially support up to 350 concurrent users who will need access to document reviews such as change order reviews, pay estimate reviews, project summary reports, and other documents.
3. The solution must provide a fully integrated module functionality with a single database and single sign-on access.
4. The solution must support the ability to manage a single contract ID through all system functionality.
5. The solution must provide on-line help for each application screen.
6. The solution must provide autocomplete fields with drop-down menus and keyed entry search of the first few characters.
7. The solution must utilize a user-friendly query tool (ad hoc reporting) to allow non-technical users to create, edit, delete, and share queries from the application database.
8. The solution must support the ability for an administrator to create ad hoc reports, available to users based on security settings.
9. The solution must support the ability to manage a variety of entities as "Organizations" in one system.
10. The solution must offer full-featured, configurable data search functions that can be scheduled to run automatically and/or as a result of an individual request from an authorized user.
11. The solution must provide global search functionality. At a minimum, this function should allow a user to search for any data or combination of data in the system. The results should be presented in a priorities structure determined by the relevance to the search criteria. All connected or relatable data based on the search criteria should be presented as within the priorities results.
12. The solution must offer E-signature functionality.
13. The vendor must be able to implement/configure the system proposed in their bid.
14. The State reserves the right to request demonstrations of any proposed solution.



#### B. Hosting/Infrastructure

1. The solution must be hosted in a tier 2 data center within the continental United States. Vendor must state the location of the data center and backup site.
2. The solution must have a 99.98% uptime of service.
3. The solution must be browser neutral.
4. The vendor must provide standard NIST features for backup/recovery, data retention, and disaster recovery.
5. The vendor must guarantee that OSARC can download, copy, and manage the Agency's data at any time.
6. The solution must support authentication via MS Active Directory services.
7. The solution must support role-based access to control access by individual users or user groups, including external users.
8. The solution must support user access rights managed by the Agency to the subsystem, page or field level.
9. The solution must support dashboards based on user roles and responsibilities, including tasks and status, if applicable.
10. The solution must support the ability to provide email notifications.
11. The solution must have audit trail functionality/logs.
12. The solution must support input validation.
13. The solution must provide project archive functionality.
14. The vendor must provide system maintenance and/or updates to ensure the continuing operation, performance, and security of the system after implementation.

#### C. Estimates

1. The solution must support historic item price lookup for estimating based on project/item search criteria.
2. The solution must support logging of all changes to an estimate including what change was made, by whom, and when.
3. The solution must utilize charting of historic item prices.
4. The solution must support alternates and options.
5. The solution must have the ability to group project level pay items by category.
6. The solution must provide historical tracking and reporting of all projects and contracts worked on by the Agency within the system.
7. The solution must support bid and non-bid items.
8. The solution must support multiple levels of project funding.
9. The solution must provide functionality to upload support documentation.

#### D. E-Bidding

1. The solution must have the ability to prepare a proposal-letting package including all forms, lists, documents, provisions, and files needed to be included as part of a proposal package.
  2. The solution must have the ability to develop projects from estimate data, including managing the category funding and other project specific information.
  3. The solution must have the ability to create a proposal from one or more projects.
  4. The solution must have the ability to maintain a list of pre-qualified vendors.
  5. The solution must have the ability to set up bid lettings for specific dates, including the ability to add, edit, and delete bid letting calls.
  6. The solution must have the ability to maintain a list of plan-holders.
  7. The solution must have the ability to maintain listing of approved bidders by contract.
  8. The solution must maintain all contractor insurance and bonding information within the system.
  9. The solution must support the management of documents and forms including templates/reports for Contract Award Letter, Contract Execution Letter, etc. Documents and reports related to a bid package must be supported as well.
  10. The solution must have the ability to cancel or re-advertise bid packages.
  11. The solution must have the ability for contractors to bid on packages securely, submit certifications and other bidding documentation, acknowledge addenda, etc., from a web-based application.
  12. The solution must support an automated addendum process, ensuring a smooth and timely flow of information between the enterprise system and contractors.
  13. The solution must have the ability for contractors to submit and withdraw bids as desired prior to the bid opening date.
  14. The solution must support contractor access to the system to look up qualification status.
  15. The solution must tabulate the unofficial bid opening results and create the bid analysis and unofficial results documentation.
  16. The solution must have the ability to determine apparent low bidder.
  17. The solution must validate a bid based on certain parameters including bidder prequalification, whether a bidder is bonded, alternates and options are bid properly, and any addendums have been acknowledged.
  18. The solution must keep electronic bids stored in a secure, non-accessible digital vault until bid opening.
  19. The solution must support standard reporting, including Plan Holder reports, bid open reports, bidder reports, bid tabulations, etc.
- E. Construction Management/Event Tracking/Cost Management/Testing
1. The solution must support contract accessibility for construction management upon contract award.

2. The solution functionality must ensure contract data established during pre-construction phases will be automatically populated.
3. The solution must support stockpile functionality.
4. The solution must support liquidated damages.
5. The solution must support the ability to upload material submittals and material certifications.
6. The solution must have the ability to view engineer's comments for submittals.
7. The solution must have the ability to upload RFI's.
8. The solution must have the ability to review and approve Change Orders.
9. The solution must have the ability to review and approve Pay Applications.
10. The solution must have the ability to perform keyword searches of inspector's diaries.
11. The solution must have the ability to review, comment on, approve, or reject material submittals.
12. The solution must have the ability to review and comment on Requests for Information (RFI).
13. The solution must have the ability to generate Change Orders and route for signatures electronically.
14. The solution must have the ability for the contract line items to adjust automatically once Change Orders are approved.
15. The solution must have the ability to auto-generate Pay Applications for a set timeframe based on inspectors' entered quantities. The quantities approved for payment must be limited to the authorized quantity approved for in the contract.
16. The solution must have the ability to document daily project activities on either a laptop computer or mobile device. This should be done without any concern of whether or not there is a connection to the internet. Once saved, these documents must be secure and unable to be edited in the future. The system must allow amendments to be made to diary entries at a later date, however, all amendments must be tracked and logged into the system.
17. The solution must have the ability to enter quantities constructed and tracked individual pay items.
18. The solution must support the ability to enter material certifications received in the field.
19. The solution must have the ability to access contract documents, material submittals, and shop drawings in the field.
20. The solution must be able to generate an archived version of all project documentation for viewing at a later date without the use of the project software.
21. The solution must have the ability to create daily work reports (DWR).
22. The solution must have the ability to view existing contract dates and manage construction-related dates, such as Work Began Date, Notice to Proceed Date,

Substantial Completion Date, etc.

23. The solution must have the ability to log on-site activities, general comments, weather, visitors to the site, safety concerns, etc. by category.
24. The solution must have the ability to log pay item related work.
25. The solution must have the ability to review and approve automatic calculations and override and enter manually when needed.
26. The solution must have the ability to attach supporting documentation (e.g. excel spreadsheets, images, invoices, etc.).
27. The solution must have the ability to generate a pay estimate for a date range.
28. The solution must have the ability to delete a pay estimate prior to final approval.
29. The solution must have the ability for unpaid items to roll over to the next pay estimate automatically.
30. The solution must have the ability to withhold payment for any installment where the prescribed material certifications/testing have not been authorized.
31. The solution must have the ability to manage price adjustments, such as for asphalt and fuel.
32. The solution must have the ability for the system to apply price adjustments automatically.
33. The solution must have the ability to modify automated adjustments as needed.
34. The solution must have the ability to establish a list of subcontractors (vendors) who will perform work related to a contract.
35. The solution must have the ability to view the entire list of subcontractors and their associated information.
36. The solution must have the ability to enter more than one subcontract for the same vendor per contract.
37. The solution must have the ability to review and approve each subcontract, including date of approval.
38. The solution must have the ability to prepare contract related subcontractor memos and run reports as needed.
39. The solution must have the ability to create Change Orders for contracts to add pay items and modify existing pay items.
40. The solution must have the ability to adjust contract provisions and/or zero-dollar changes.
41. The solution must have the ability to balance all final quantities on a contract.
42. The solution must have the ability to adjust contract time adjustments.
43. The solution must have the ability to adjust one or more attributes for the same Change Order.
44. The solution must have the ability for Change Orders to pre-populate with the project's data.

45. The solution must have the ability to include a detailed reason and explanation that answers who, what, when, where, and why.
46. The solution must have the ability to extend the contract date.
47. The solution must have the ability to attach supporting documentation and photos.
48. The solution must have the ability to categorize (e.g. amended design, unforeseeable conditions, etc.).
49. The solution must have the ability to establish approval personnel.
50. The solution must have the ability to organize samples, tests, and results by the project.
51. The solution must have the ability to pre-assign tests and test methods to certain materials/sample types.
52. The solution must have the ability to assign materials and material requirements to pay items at the global level (default) with the ability to modify as needed.
53. The solution must have the ability to establish and track material sampling frequency (quantity or time) based on the Agency's material sampling requirements.
54. The solution must have the ability to log samples, certifications, and other forms/records against contract line items.

#### F. Document Management

1. The solution must offer a full featured document management system (DMS) that accommodates generating, scanning, indexing, manipulating, editing, and storing paper and electronic documents.
2. The solution must provide scanning on demand, as well as bulk scanning of paper documents.
3. The solution must provide a robust, organized, and user-friendly document storage and retrieval structure.
4. The solution must accept and upload large gigabyte documents, including but not limited to all Microsoft Office formats, .pdf, and all photo formats including JPEG, TIFF, GIF, and PNG.
5. The solution must accommodate printing and/or exporting of maintained and managed documents, including but not limited to multiple documents in a single batch job.
6. The solution must allow mobile users to upload and attach documents to targeted project management records.
7. The solution must be able to accept approximately 550 GB of migrated documents as described above.

#### G. GIS/Mapping

1. The solution must have GIS Mapping capability or provide functionality (API) for integration with a 3<sup>rd</sup> party GIS application.

## 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 according to National Institute of Standards and Technology (NIST) approved memthods. 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's cost proposal may be grounds for rejection of the bid. Costs that are not clearly identified will be borne by the Bidder.** The Bidders must complete the table below, which outlines the minimum requirements for providing cost information. The Bidder should supply supporting details as described.

Name	Description	QTY	Unit Cost	Extended Cost
Software Name of Proposed Solution:	Annual Software Subscription	5 years		
Maintenance	Maintenance & Support	5 years		
Hosting	Software hosting	5 years		
Implementation	Software implementation and configuration	1		
<b>Total 5-Year Cost:</b>				

Change Order Rate: \_\_\_\_\_

---

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:

Remit Address (if different):

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:

**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 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 43417  
SOFTWARE AS A SERVICE AGREEMENT  
BETWEEN  
VENDOR NAME  
AND  
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES  
AS CONTRACTING AGENT FOR THE  
OFFICE OF STATE AID ROAD CONSTRUCTION**

This Software as a Service 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, CITY, STATE ZIP (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 Office of State Aid Road Construction located at 412 East Woodrow Wilson, Jackson, Mississippi 39216 (hereinafter referred to as "Licensee" and/or "OSARC"). ITS and OSARC are sometimes collectively referred to herein as "State."

**WHEREAS**, OSARC, pursuant to Invitation for Bids ("IFB") No. 4268 requested proposals for the services of a contractor to provide a Software as a Service ("SaaS") solution for a web-based construction project management system; and

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

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

### ARTICLE 1 DEFINITIONS

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

**1.2 "Application(s)" or "SaaS Application(s)"** means those Licensor software application

programs which are made accessible for OSARC to use under the terms of this Agreement.

**1.3 “Available Date”** means the date upon which Licensor notifies OSARC that the Applications may be accessed on the Licensor’s SaaS server and OSARC may begin acceptance testing.

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

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

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

**1.7 “Initial Term”** means the five (5) year term of Services as indicated in Article 2.

**1.8 “Licensee”** means the Office of State Aid Road Construction, its employees, and any third party consultants or outsourcers engaged by OSARC who have a need to know and who shall be bound by the terms and conditions of this Agreement.

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

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

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

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

## **ARTICLE 2 PERIOD OF PERFORMANCE**

**2.1** Unless this Agreement is extended by mutual agreement or terminated as prescribed elsewhere herein, this Agreement shall begin on the date it is signed by all parties and shall continue in effect for five (5) years thereafter (“Initial Term”). At the end of the Initial Term, the Agreement may, upon the written agreement of the parties, be renewed under the same terms and conditions for two (2) two-year terms. One hundred and eighty (180) days prior to the expiration of the Initial Term or any renewal term of this Agreement, Licensor shall notify OSARC and ITS of the impending expiration and OSARC shall have sixty (60) days in which to notify Licensor of its intention to either renew or cancel the Agreement.

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

### **ARTICLE 3 SCOPE OF SERVICES**

**3.1** The Licensor agrees to provide to OSARC a SaaS based web-based construction project management system and associated deliverables as described in this Agreement. While the scope of work for this project is defined by the contract documents set forth herein in the article titled "Entire Agreement", a summary of such work is outlined in Article 3.2 below.

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

- A.** Ensuring that all deliverables are complete and accepted by OSARC pursuant to a mutually agreed upon project work plan;
- B.** Tracking date sensitive items to ensure timely updates;
- C.** Acknowledging that the Content is and shall remain the sole and exclusive property of OSARC. Further, Licensor acknowledges that the Content may contain PII and Licensor agrees to maintain the confidentiality of the Content and shall not make the Content publicly available except as may be necessary in performing the SaaS Services or to comply with applicable laws. Upon the termination or expiration of this Agreement, Licensor shall provide such Content in its possession to OSARC pursuant to a mutually agreed upon release schedule and in a format acceptable to OSARC;
- D.** Working with OSARC to achieve access rates that meet OSARC's needs;
- E.** Providing security for the site that is agreeable to OSARC with Licensor responsible for all necessary equipment and software related to security;
- F.** Maintaining the accessibility of the site twenty-four (24) hours a day, seven (7) days a week at an uptime rate of 99% or greater, subject to the limitations set forth in this Agreement, including but not limited to, those in Article 4.4;
- G.** Completing daily backups of the site;
- H.** Notifying OSARC at least three (3) business days prior to any anticipated service interruption, with said notice containing a general description of the reason for the service interruption;
- I.** Proposing and adhering to a disaster recovery plan and providing access to such plan to the State, all at Licensor's expense;
- J.** Participating with OSARC in disaster recovery planning and testing based on a mutually agreed upon schedule;
- K.** Maintaining the confidentiality of the information entered;
- L.** Providing OSARC access to all of the technical information concerning operation of the web-based construction project management system, including but not limited to, server specifications, Internet connection information, personnel requirements and software implementations;
- M.** Identifying any commercially available software, by vendor and version number, integrated into the Applications and describing the particular functionality of any software that is proprietary to the Licensor;
- N.** Maintaining the host site, with the cost for such support, maintenance, and hosting for years following the initial five (5) year period not increasing annually beyond three



percent (3%) or the percent increase in the consumer price index for all Urban Consumers, US City Average (C.P.I.-U) for the preceding year, whichever is less;

- O.** Providing 24x7x365 support of the site;
- P.** Providing redundant internet connections;
- Q.** Providing Transport Layer Security (“TLS”) secure server support;
- R.** Maintaining sufficient bandwidth and server capacity to meet OSARC’s and Active Users’ demand as it may fluctuate and increase during the term of this Agreement, and;
- S.** Ensuring that all Licensee data remains within the continental United States;
- T.** Partitioning Licensee’s data from other customer data so Licensee’s access is not impaired due to e-discovery, seizure, or the like, and
- U.** Ensuring that upon termination or expiration of this Agreement that transition from the Licensor to OSARC or to a successor host will be accomplished at no expense to OSARC.

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

#### **ARTICLE 4 SCOPE OF LICENSE AND RIGHT TO USE**

**4.1** Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee a non-exclusive and non-transferable license to access the Applications over the Internet and to use it for Licensee’s business operations and use it on the Licensor’s host server for the Initial Term of the Agreement and any subsequent renewal terms in accordance with, and subject to, the terms and conditions set forth in this Agreement. Licensee and Active Users are granted access to the Applications and Services twenty-four (24) hours a day, seven (7) days a week, three hundred and sixty five (365) days a year, subject to regularly scheduled maintenance and required repairs. The terms and conditions of this Agreement will apply to any enhancements or additional software products Licensee may procure from Licensor.

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

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

**4.4** The Applications and Services will be accessible at least ninety-nine percent (99%) of the time, twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of the SaaS Services due to causes beyond the control of Licensor. In the event that OSARC or an Active User is unable to achieve the 99% application availability during any given month, excluding scheduled maintenance, required repairs, and unavailability due to causes beyond the control of Licensor, the Licensor shall reimburse OSARC twenty-five percent (25%) of the monthly SaaS hosting fees for each twenty-four (24) hour day during which there were any incidents of unavailability. Licensor shall maintain the server at a secured location with restricted access.

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

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

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

## **ARTICLE 5 ACCEPTANCE**

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

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

## **ARTICLE 6 CONSIDERATION AND METHOD OF PAYMENT**

**6.1** The total compensation to be paid to the Licensor by OSARC for all Applications, development, maintenance and SaaS Services, customizations, products, travel, performances and expenses under this Agreement shall not exceed the specified sum of **\$TOTAL COMPENSATION**, and shall be payable as set forth in the Payment Schedule attached hereto as Exhibit A.

**6.2** Licensor shall submit invoices with the appropriate documentation to OSARC monthly for any month in which SaaS Services and/or other services are rendered. Licensor shall submit invoices and supporting documentation to OSARC electronically during the term of this Agreement using the processes and procedures identified by the State. OSARC agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Section 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by OSARC within forty-five (45) days of receipt of the invoice. Licensor understands and agrees that OSARC is exempt from the payment of taxes. All payments shall be in United States currency. Payments by state agencies using

Mississippi's Accountability System for Government Information and Collaboration (MAGIC) shall be made and remittance information provided electronically as directed by the State. The payments by these agencies shall be deposited into the bank account of the Licensor's choice. No payment, including final payment, shall be construed as acceptance of defective products or incomplete work, and the Licensor shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the article herein titled "Entire Agreement."

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

## **ARTICLE 7 WARRANTY**

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

**7.2** Licensor represents and warrants that the Applications provided by Licensor shall meet or exceed the minimum specifications set forth in IFB No. 4268 and Licensor's Proposal, as accepted by the State, in response thereto.

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

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

**7.5** Licensor represents and warrants that the Application shall not contain a disabling OSARC, 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 Applications and/or which would restrict Licensee from accessing its data files or in any way interfere with the transaction of Licensee's business. For any breach of this warranty, Licensor at its expense shall, within ten (10) business days after receipt of notification of the breach, remove any such disabling OSARC, lockup program or device.

**7.6** Licensor represents and warrants that it has tested and will test (not less than on a daily basis) the Applications using commercially reasonable methods to ensure that the Applications provided to OSARC do not and will not contain or incorporate any computer OSARC, programs, procedures, mechanisms or programming devices (including but not limited to, viruses, trojan horses, or worms) that are designed to, or would enable Licensor or any third-party to, disrupt, modify, delete, damage, deactivate, disable, harm or otherwise impede the operation of the Licensor's system, or any other associated software, firmware, hardware, computer system or network, including OSARC's applications and OSARC's Content. For any breach of this warranty, Licensor at its expense shall, within five (5) business days after receipt of notification of the breach, be responsible for repairing, at Licensor's expense, any and all damage done by the virus or such to OSARC's applications and OSARC's Content.

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

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

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

governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Licensor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

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

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

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

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

## **ARTICLE 8 INFRINGEMENT INDEMNIFICATION**

**8.1** Licensor represents and warrants, to the best of its knowledge, that neither the Applications and Services provided to OSARC under this Agreement nor their use by OSARC will violate or infringe on any copyright, patent, trade secret or other proprietary right of any person or

entity. Licensor, at its own expense, shall defend or settle any and all infringement actions filed against Licensor or OSARC which involve the Applications, Services or other items provided under this Agreement and shall pay all costs, attorney fees, damages and judgment finally awarded against OSARC provided that: (a) OSARC notifies Licensor in writing of any such claim of which it has knowledge; (b) Licensor has, to the extent authorized by Mississippi law, sole control of the defense of any actions or negotiations related to the defense or settlement of any such claim, and (c) OSARC cooperates in the defense of the claim by supplying Licensor all relevant information currently available and in its possession, all at Licensor's expense. In no event shall the State compromise, settle or adversely impact the defense of any actions or negotiations without the prior, written consent of Licensor. Further, in no event shall Licensor compromise or settle any such actions or negotiations without the prior written consent of OSARC if such compromise or settlement would create an obligation or liability upon OSARC or the State. If, in any such suit arising from such claim, the continued use of the items for the purpose intended is enjoined or threatened to be enjoined by any court of competent jurisdiction, Licensor shall, at its expense: (a) first procure for OSARC the right to continue using such Applications or Services, or upon failing to procure such right; (b) modify or replace them with non-infringing items with equivalent functionality, or upon failing to secure either such right at Licensor's reasonable expense, (c) issue a pro-rata refund to OSARC for the fees previously paid by OSARC for the infringing Applications and Services OSARC may no longer use. Said refund shall be paid within ten (10) business days of notice to OSARC to discontinue said use.

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

## **ARTICLE 9 DATA SECURITY**

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

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

**9.3** Licensor shall maintain a hosting environment that undergoes examinations from an independent auditor in accordance with the American Institute of Certified Public Accounts SSAE 16 (i.e. SOC 1) and the AICPA Trust Services Principles Section 100a, Trust Services for Security, Availability, Processing Integrity, Confidentiality and Privacy (i.e. SOC 2). Licensor's private cloud shall be evaluated for the principles of Security, Availability and Confidentiality by the independent auditor. The data center in which Licensor's private cloud is located shall undergo pertinent

security examinations. Management access to Licensor's private cloud shall be limited to Licensor's authorized support staff and OSARC's authorized staff. The Applications shall provide OSARC with the ability to configure application security and logical access per OSARC's business processes. In the event OSARC identifies a security issue, OSARC will notify Licensor.

**9.4** At a minimum, Licensor's safeguards for the protection of PII shall include: (i) limiting access of PII to authorized employees; (ii) securing business facilities, data centers, paper files, servers, back-up systems and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (iii) implementing network, device application, database and platform security; (iv) securing information transmission, storage and disposal; (v) implementing authentication and access controls within media, applications, operating systems and equipment; (vi) encrypting PII stored on any mobile media; (vii) encrypting PII transmitted over public or wireless networks; (viii) strictly segregating PII from information of Licensor or its other customers so that PII is not commingled with any other types of information; (ix) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law; and (x) providing appropriate privacy and information security training to Licensor's employees. Any and all subcontractors shall adhere to the aforementioned protection and encryption (in transit and at rest) of PII, as well as follow the stated breach policy.

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

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

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

**9.8** It is understood and agreed that at least once per year, Licensor shall conduct site audits of the information technology and information security controls for all facilities used in complying with its obligations under this Agreement, including but not limited to, obtaining a network-level vulnerability assessment performed by a recognized third-party audit firm based on the

recognized industry best practices. Licensor shall make the reports available to OSARC for review. Any exceptions noted on the Statement on Standards for Attestation Engagements (SSAE) report or other audit reports will be promptly addressed with the development and implementation of a corrective action plan by Licensor's management and resolved, at Licensor's sole expense, within thirty (30) calendar days of the audit.

#### **ARTICLE 10 EMPLOYMENT STATUS**

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

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

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

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

#### **ARTICLE 11 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS**

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

#### **ARTICLE 12 MODIFICATION OR RENEGOTIATION**

This Agreement may be modified only by written agreement signed by the parties hereto, and any attempt at oral modification shall be void and of no effect. The parties agree to renegotiate the Agreement if federal and/or state revisions of any applicable laws or regulations make changes in this Agreement necessary.

#### **ARTICLE 13 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS**

**13.1** In matters of 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.

**13.2** Neither party may assign or otherwise transfer this Agreement or its obligations hereunder



without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of its obligations without such consent shall be null and void. This Agreement shall be binding upon the parties' respective successors and assigns.

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

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

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

#### **ARTICLE 14 AVAILABILITY OF FUNDS**

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

#### **ARTICLE 15 TERMINATION**

**15.1** Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be terminated, in whole or in part, as follows: (a) upon the mutual, written agreement of the parties; (b) If either party fails to comply with the terms of this Agreement, the non-defaulting party may terminate the Agreement upon the giving of thirty (30) calendar days written notice unless the breach is cured within said thirty (30) day period; (c) Licensee may terminate the Agreement

in whole or in part without the assessment of any penalties upon ten (10) calendar days written notice to Licensor if Licensor becomes the subject of bankruptcy, reorganization, liquidation or receivership proceedings, whether voluntary or involuntary, or (d) Licensee may terminate this Agreement in whole or in part for any reason without the assessment of any penalties after giving thirty (30) calendar days written notice specifying the effective date thereof to Licensor. The provisions of this Article do not limit either party's right to pursue any other remedy available at law or in equity.

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

#### **ARTICLE 16 GOVERNING LAW**

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

#### **ARTICLE 17 WAIVER**

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

#### **ARTICLE 18 SEVERABILITY**

If any term or provision of this Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law provided that the State's purpose for entering into this Agreement can be fully achieved by the remaining portions of the Agreement that have not been severed.

#### **ARTICLE 19 CAPTIONS**

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

#### **ARTICLE 20 HOLD HARMLESS**

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

**ARTICLE 21 THIRD PARTY ACTION NOTIFICATION**

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

**ARTICLE 22 AUTHORITY TO CONTRACT**

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

**ARTICLE 23 NOTICE**

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their business address listed herein. ITS' address for notice is: Craig P. Orgeron, Ph.D., Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. Licensee's address for notice is: Brandi Stuart, Director of Administrative Services, Office of State Aid Road Construction, 412 East Woodrow Wilson, Jackson, Mississippi 39216. The Licensor's address for notice is: **VENDOR NOTICE NAME, TITLE, VENDOR NAME, VENDOR ADDRESS, CITY, STATE ZIP**. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

**ARTICLE 24 RECORD RETENTION AND ACCESS TO RECORDS**

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

**ARTICLE 25 INSURANCE**

Licensor represents that it will maintain workers' compensation insurance as prescribed by law

which shall inure to the benefit of Licensor's personnel, as well as comprehensive general liability and employee fidelity bond insurance. Licensor will, upon request, furnish Licensee with a certificate of conformity providing the aforesaid coverage.

## **ARTICLE 26 DISPUTES**

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

## **ARTICLE 27 COMPLIANCE WITH LAWS**

**27.1** Licensor shall comply with, and all activities under this Agreement shall be subject to, all Licensee policies and procedures which Licensor has received copies of, and all applicable federal, state, and 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.

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

## **ARTICLE 28 CONFLICT OF INTEREST**

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

## **ARTICLE 29 SOVEREIGN IMMUNITY**

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

## **ARTICLE 30 CONFIDENTIAL INFORMATION**

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

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

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

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

#### **ARTICLE 31 EFFECT OF SIGNATURE**

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

#### **ARTICLE 32 NON-SOLICITATION OF EMPLOYEES**

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

#### **ARTICLE 33 ENTIRE AGREEMENT**

**33.1** This contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating thereto, including all terms of any "shrink-wrap", "click-wrap" or "browse-wrap" license of the Software. The IFB No. 4268 and Licensor's Proposal, as accepted by the State, in response thereto are hereby incorporated into and made a part of this Agreement.

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

- A.** This Agreement signed by the parties hereto;
- B.** Any exhibits attached to this Agreement;
- C.** IFB No. 4268 and written addenda, and
- D.** Licensor's Proposal, as accepted by the State, in response to the IFB.

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

#### **ARTICLE 34 STATE PROPERTY**

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

#### **ARTICLE 35 SURVIVAL**

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

#### **ARTICLE 36 DEBARMENT AND SUSPENSION CERTIFICATION**

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

#### **ARTICLE 37 SPECIAL TERMS AND CONDITIONS**

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

#### **ARTICLE 38 STATUTORY AUTHORITY**

By virtue of Section 25-53-21 of the Mississippi Code Annotated, as amended, the executive director of ITS is the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of information technology equipment, software and services. The parties understand and agree that ITS as contracting agent is not responsible or liable for the performance or non-performance of any of the Licensee’s or

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

### **ARTICLE 39 COMPLIANCE WITH ENTERPRISE SECURITY POLICY**

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

### **ARTICLE 40 COMPLIANCE WITH ENTERPRISE CLOUD AND OFFSITE HOSTING SECURITY**

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

### **ARTICLE 41 SOFTWARE SUPPORT AND MAINTENANCE**

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

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

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

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

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

#### **ARTICLE 42 FORCE MAJEURE**

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, 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 Licensor shall notify the Licensee immediately in writing of the cause of its inability to perform; how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate this Agreement.

#### **ARTICLE 43 TRANSPARENCY**

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

#### **ARTICLE 44 CHANGE ORDER RATE AND PROCEDURE**

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

**44.2** The Licensor shall have no obligation to proceed with any change that has a price or schedule effect until the parties have mutually agreed in writing thereto. Neither the State nor the Licensor shall be obligated to execute such a change order; and if no such change order is



executed, the Licensor shall not be obliged or authorized to perform services beyond the scope of this Agreement and the contract documents. All executed change orders shall be incorporated into previously defined deliverables.

**44.3** With respect to any change orders issued in accordance with this Article, the Licensor shall be compensated for work performed under a change order according to the hourly change order rate specified in the attached Exhibit A. If there is a service that is not defined in the change order rate, the Licensor and the State will negotiate the rate. The Licensor agrees that this change order rate shall be a “fully loaded” rate, that is, it includes the cost of all materials, travel expenses, per diem, and all other expenses and incidentals incurred by the Licensor in the performance of the change order. The Licensor shall invoice the Licensee upon acceptance by the Licensee of all work documented in the change order, and the Licensee shall pay invoice amounts on the terms set forth in this Agreement.

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

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

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

**44.7** The Licensee shall promptly review all revised project work plans submitted under this Agreement, and shall notify the Licensor of its approval or disapproval, in whole or in part, of the proposed revisions, stating with particularity all grounds for any disapproval, within ten (10) working days of receiving the revisions from the Licensor. If the Licensee fails to respond in such time period or any extension thereof, the Licensee shall be deemed to have approved the revised project work plan.

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

**State of Mississippi, Department of  
Information Technology Services, on  
behalf of Office of State Aid Road  
Construction**

**VENDOR NAME**

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

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

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

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

**Title: Executive Director**

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

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

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

**EXHIBIT A**