



## IFB No: 4301

**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 Friday, June 5, 2020**, and then publicly opened for furnishing the products and/or services as described below for the **MISSISSIPPI DEPARTMENT OF EDUCATION (MDE)**.

<b>FileX Software Maintenance and Support</b>
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**Bidder Information**

Attachment A: Bid Form  
Attachment B: Cost Submission  
Attachment C: IFB Questionnaire  
Attachment D: References  
Attachment E: Contract Exceptions  
Attachment F: 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 Alec.Shedd@its.ms.gov
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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 4301 due June 5, 2020 @ 3:00 p.m. ATTENTION: Alec Shedd
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**Craig P. Orgeron, Ph.D.**  
**Executive Director, ITS**

**INVITATION FOR BID NO. 4301  
BIDDER RESPONSE INFORMATION  
PROJECT NUMBER 45472**

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. The State is under the impression that responding Bidders have read and agree to all items in this IFB.
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. Bidders wishing to attend the bid opening at 3:00p.m. on the day bids are due may do so via telephone. Bidders may dial 1-888-822-7517 and use Access Code 2321387.
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 one response of the complete bid, including all Attachments, on a USB flash drive. Bidder's documents must be in Microsoft Office 2010 or higher format and/or PDF format, as appropriate. If PDF format is submitted, the file must be searchable.
  - 8.2 The Bidder should note that original signatures in blue ink are required on Attachment B. Attachment B should be printed and included in the package/envelope with the Bidder's USB response. Bidders that do not have a printed copy of Attachment B included within their bid package may be subject to disqualification.

- 8.3 To prevent opening by unauthorized individuals, the bid must be sealed in a package/envelope. 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 All items in this IFB must be met by the Bidder with the exception of the contract in Attachment F. If the Bidder does not agree with any item in Attachment F, then the Bidder must list the item on the Exception Summary Form in Attachment E.
- 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 all sections and Attachments by signing Attachment B.
- 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.
- 8.8 If the Bidder includes confidential, proprietary, or trade secret information, they must also submit a complete redacted version of the bid. This redacted version may be submitted as a separate USB flash drive and must be included as a searchable PDF. Vendors shall only redact (black out) language that is exempt from disclosure pursuant to the Mississippi Public Records Act of 1983. (See Legal and Contractual Information, Item 21 for additional information regarding *Disclosure of Bid Information*)
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 submit unsolicited clarifications via USB in the same manner as detailed in Item 8 above.
  - 11.7 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 MDE 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, May 22, 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 Friday, May 29, 2020.

**INVITATION FOR BID NO. 4301  
LEGAL AND CONTRACTUAL INFORMATION  
PROJECT NUMBER 45472**

**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 F, if applicable, shall contractually obligate the Bidder to comply with that item.

**2. 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. Destination is the point of use. No itemized shipping charges will be accepted.

**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 Bid 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. The redacted version, as submitted, will be available for inspection and released in response to public records requests. If a redacted version of the Vendor's bid is not submitted, the original bid will be provided in response to a public records request. 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 Attachment A 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 website - 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 4301.

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	05/12/20
Second Advertisement Date for IFB	05/19/20
Deadline for Bidder’s Written Questions	3:00 p.m. Central Time on 05/22/20
Deadline for Questions Answered and Posted to ITS Web Site	05/29/20
Open Bids	3:00 p.m. Central Time on 06/05/20
Begin Evaluation of Bids	06/05/20
Begin Contract Negotiation	06/12/20
Support Start Date	07/01/20

**II. Background and Overview**

The Mississippi Department of Education (MDE) purchased a perpetual license of the FileX software in 2019 with support ending June 30, 2020. MDE uses the software for document imaging, workflow automation, reporting, and tracking. MDE is now seeking to procure software support and ongoing enhancements/updates to keep the latest version of this software current from July 1, 2020 through June 30, 2025.

**III. Specifications**

Bidders must fully respond to each requirement by fully describing the manner and degree by which the bid meets or exceeds the following specifications. If a Bidder is unable to meet or exceed these specifications, then the Bidder will be disqualified.

1. Bidders must provide pricing for the software maintenance and ongoing enhancements for the software licensees listed in Attachment B, Cost Submission. Bidders must detail (by part number and/or description) any items that are functionally equivalent and substituted for the item listed in the table below.

### ATTACHMENT B COST SUBMISSION

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 Bidder'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.

**THIS FORM IS TO BE PRINTED AND INCLUDED WITHIN THE BID ENVELOPE. BIDDERS THAT DO NOT COMPLY COULD FACE AUTOMATIC ELIMINATION.**

MFG	MFG #*	DESCRIPTION	QTY	Year 1 Cost (07/01/20 - 06/30/21)	Year 2 Cost (07/01/21 - 06/30/22)	Year 3 Cost (07/01/22 - 06/30/23)	Year 4 Cost (07/01/23 - 06/30/24)	Year 5 Cost (07/01/24 - 06/30/25)
FileX Annual License Renewal includes the following items:								
		FileX Server License	1					
		FileX View License	5					
		FileX Scan Licenses	17					
		FileX Network Scan License	1					
		FileX Workflow License	1					
		FileX Forms Interface	12					
		Online Reports System (includes 10 Index Reports)	1					
		Web Interface	1					
		Bar Code Module	1					
		Tracking System / Report Writer	1					
		Mobile Access (Tablet / Phone)	1					
		Red Hat Automatic Update Service Subscription	1					
<b>Annual Total Cost:</b>								
							<b>Grand Total:</b>	



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By signing below, the Bidder is contractually obligated to comply with all items in this IFB, including the Standard Contract in Attachment F, 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 C 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:

<https://mississippi.org/services/minority/>

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. **Compliance with National Defense Authorization Act**

The Bidder must state if the equipment provided is in compliance with the National Defense Authorization Act, Section 889. (A yes or no answer is required.)

4. **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:

4.1 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.)

4.2 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.

5. **Pending Legal Actions**

5.1 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.)

5.2 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.)

5.3 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.

5.4 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.

6. **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 D 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 E CONTRACT EXCEPTIONS

Please return the *Exception Summary Form* at the end of this Attachment with all exceptions to the Standard Contract, attached as Attachment E, 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 herein, the Bidder may take exception to any item within the Standard Contract, as long as the following are true:
  - 1.1 The item 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 agree to the language 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 F, if included herein. As such, Bidders whose bids, in the sole opinion of the State, reflect a

substantial number of 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 the Standard Contract in the table below.**

ITS Contract Reference (Reference specific outline point to which exception is taken)	Brief Explanation of Exception (Short description of exception being made)	ITS Acceptance (sign here only if accepted)
1.		
2.		
3.		
4.		
5.		
6.		
7.		

**ATTACHMENT F  
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 E. 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 Standard Contract may not later do so during contract negotiations.

**PROJECT NUMBER 45472  
PURCHASE AGREEMENT  
BETWEEN  
VENDOR NAME  
AND  
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES  
AS CONTRACTING AGENT FOR THE  
MISSISSIPPI DEPARTMENT OF EDUCATION**

This Purchase Agreement (hereinafter referred to as "Agreement") is entered into by and between **VENDOR NAME**, a **STATE OF INCORPORATION** corporation having its principal place of business at **VENDOR ADDRESS** (hereinafter referred to as "Seller"), and Mississippi Department of Information Technology Services having its principal place of business at 3771 Eastwood Drive, Jackson, Mississippi 39211 (hereinafter referred to as "ITS"), as contracting agent for the Mississippi Department of Education located at 359 North West Street, Jackson, Mississippi 39201 (hereinafter referred to as "Purchaser"). ITS and Purchaser are sometimes collectively referred to herein as "State".

**WHEREAS**, Purchaser, pursuant to Invitation for Bid ("IFB") No. 4301, requested proposals for the acquisition of certain software and services (hereinafter referred to as "Products") as listed in Exhibit A which is attached hereto and incorporated herein; and

**WHEREAS**, Seller was the successful proposer in an open, fair and competitive procurement process;

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

**ARTICLE 1 TERM OF AGREEMENT**

**1.1** Unless this Agreement is extended by mutual agreement or terminated as prescribed elsewhere herein, the period of performance of the Products under this Agreement shall begin on July 1, 2020, and shall continue until the close of business on June 30, 2025 (hereinafter referred to as "Initial Term").

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

## **ARTICLE 2 FURNISHING OF SOFTWARE AND SERVICES**

**2.1** Subject to the terms and conditions set forth herein, Seller agrees to provide and Purchaser agrees to buy as needed, the Products listed in the attached Exhibit A and at the purchase price set forth therein, but in no event will the total compensation to be paid hereunder exceed the specified sum of **\$INSERT AMOUNT** unless prior written authorization from ITS has been obtained. Purchaser shall submit a purchase order signed by a representative of Purchaser itemizing the Products to be purchased. The purchase order shall be subject to the terms and conditions of this Agreement. The parties agree that Purchaser reserves the right to adjust the quantities of purchases based upon the availability of funding or as determined necessary by Purchaser. Seller guarantees pricing for the Initial Term of this Agreement. In the event there is a national price decrease of the Products bid during this time, Seller agrees to extend the new, lower pricing to Purchaser.

**2.2** The Products provided by Seller shall meet or exceed the minimum specifications set forth in IFB No. 4301 and the Seller's Proposal in response thereto.

## **ARTICLE 3 TITLE TO SOFTWARE**

Title to the software provided under this Agreement shall at all times remain with the applicable software manufacturer.

## **ARTICLE 4 CONSIDERATION AND METHOD OF PAYMENT**

**4.1** Once the Products have been ordered by Purchaser, Seller shall submit an invoice for the cost and shall certify that the billing is true and correct. Services will be invoiced as they are rendered. Seller shall submit invoices and supporting documentation to Purchaser electronically during the term of this Agreement using the processes and procedures identified by the State. Purchaser agrees to pay Seller in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Sections 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the State within forty-five (45) days of receipt of the invoice. Seller understands and agrees that Purchaser 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 Seller's choice. No payment, including final payment, shall be construed as acceptance of defective Products or incomplete work, and the Seller shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the article herein titled "Entire Agreement".

**4.2** Acceptance by the Seller of the last payment from the Purchaser shall operate as a release of all claims against the State by the Seller and any subcontractors or other persons supplying labor or materials used in the performance of any work under this Agreement.

## **ARTICLE 5 WARRANTIES**

**5.1** Seller represents and warrants that Seller has the right to sell the equipment and license the software provided under this Agreement.

**5.2** Seller represents and warrants that it has and will obtain and pass through to Purchaser any and all warranties obtained or available from the licensor of software or the manufacturer of the equipment.

**5.3** Seller represents and warrants that the Products provided by Seller shall meet or exceed the minimum specifications set forth in IFB No. 4301 and Seller's Proposal in response thereto.

**5.4** Seller 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, the Seller shall, for a period of ninety (90) days from performance of the service, perform the services again, at no cost to Purchaser, or if Seller is unable to perform the services as warranted, Seller shall reimburse Purchaser the fees paid to Seller for the unsatisfactory services.

**5.5** Seller represents and warrants that, to the extent applicable, it will ensure its compliance with the Mississippi Employment Protection Act, Miss. Code Ann. 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. Seller 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. Seller 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. Seller understands and agrees that any breach of these warranties may subject Seller 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 Seller 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, Seller would also be liable for any additional costs incurred by the State due to contract termination or loss of license or permit.

**5.6** Seller represents and warrants that no official or employee of Purchaser 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 Seller 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 Seller also warrants that in the performance of this Agreement no person having any such known interests shall be employed.

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

**5.8** Sellers understands and agrees that pursuant to Section 11-7-18, Section 75-2-315.1, and Section 75-2-719 of the Mississippi Code Annotated, there is no disclaimer of the implied warranties of merchantability and fitness for a particular purpose.

#### **ARTICLE 6 INFRINGEMENT INDEMNIFICATION**

**6.1** Seller represents and warrants, to the best of its knowledge, that neither the software, its elements nor the use thereof violates or infringes upon any copyright, patent, trademark, servicemark, trade secret or other proprietary right of any person or entity. The software manufacturer or third party licensor, as applicable, in accordance with its contract with Purchaser and at its own expense, shall defend or settle any and all infringement actions filed against Seller or Purchaser which involve the software or other items provided under this Agreement and shall pay all settlements, as well as all costs, attorney fees, damages and judgment finally awarded against Purchaser. If the continued use of the Products for the purpose intended is threatened to be enjoined or is enjoined by any court of competent jurisdiction, the software manufacturer or third party licensor, as applicable shall, at its expense: (a) first procure for Purchaser the right to continue using such Products, or upon failing to procure such right; (b) modify or replace them with non-infringing products, or upon failing to secure either such right, (c) refund to Purchaser the purchase price or software license fees previously paid by Purchaser for the Products Purchaser may no longer use. Said refund shall be paid within ten (10) business days of notice to Purchaser to discontinue said use.

**6.2** The parties understand and agree that pursuant to Section 100 of the Mississippi Constitution, the State can't agree to indemnify Seller or any third party.

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

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

**7.2** Seller 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 Purchaser. Seller 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 Seller nor employees of Seller are entitled to state retirement or leave benefits.

**7.3** Any person assigned by Seller to perform the services hereunder shall be the employee of Seller, who shall have the sole right to hire and discharge its employee. Purchaser may, however, direct Seller to replace any of its employees under this Agreement. If Seller is notified within the first eight (8) hours of assignment that the person is unsatisfactory, Seller will not charge Purchaser for those hours.

**7.4** It is further understood that the consideration expressed herein constitutes full and complete compensation for all services and performances hereunder, and that any sum due and payable to Seller shall be paid as a gross sum with no withholdings or deductions being made by Purchaser for any purpose from said contract sum.

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

Seller will be responsible for the behavior of all its employees and subcontractors while on the premises of any Purchaser 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 and/or student body, will be asked to leave the premises and may be suspended from further work on the premises. All Seller employees and subcontractors who will be working at such locations to install or repair Products shall be covered by Seller's comprehensive general liability insurance policy.

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

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

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

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

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

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



**10.4** Seller represents and warrants that any subcontract agreement Seller 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 Purchaser, and that the subcontractor acknowledges that no privity of contract exists between the Purchaser and the subcontractor and that the Seller is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with the Seller. The Seller 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 Seller's failure to pay any and all amounts due by Seller to any subcontractor, materialman, laborer or the like.

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

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

It is expressly understood and agreed that the obligation of Purchaser 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 Purchaser for the payments or performance due under this Agreement, Purchaser shall have the right to immediately terminate this Agreement, without damage, penalty, cost or expense to Purchaser of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Purchaser shall have the sole right to determine whether funds are available for the payments or performances due under this Agreement. In the event of termination, Seller shall be paid for services rendered by Seller in connection with this Agreement and accepted by Purchaser as of the date of receipt of notification of termination.

#### **ARTICLE 12 TERMINATION**

**12.1** Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be terminated, in whole or in part, as follows: (a) upon the mutual, written agreement of the parties; (b) 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) days written notice unless the breach is cured within said thirty (30) day period; (c) Purchaser may terminate the Agreement in whole or in part without the assessment of any penalties upon thirty (30) days written notice to Seller if Seller becomes the subject of bankruptcy, reorganization, liquidation or receivership proceedings, whether voluntary or involuntary, or (d) Purchaser may terminate the Agreement without the assessment of any penalties for any reason after giving thirty (30) days written notice specifying the effective date thereof to Seller. The provisions of this Article do not limit either party's right to pursue any other remedy available at law or in equity.

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

#### **ARTICLE 13 GOVERNING LAW**

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

#### **ARTICLE 14 WAIVER**

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

#### **ARTICLE 15 SEVERABILITY**

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

#### **ARTICLE 16 CAPTIONS**

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

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

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

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

Seller shall notify Purchaser in writing within five (5) business days of Seller 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 Seller or Purchaser by any entity that may result in litigation related in any way to this Agreement and/or which may affect the Seller's performance under this Agreement. Failure of the Seller to provide such written notice to Purchaser shall be considered a material breach of this Agreement and the Purchaser may, at its sole discretion, pursue its rights as set forth in the Termination Article herein and any other rights and remedies it may have at law or in equity.

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

Seller warrants that it is a validly organized business with valid authority to enter into this Agreement; that entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual or other agreement of any kind, and notwithstanding

any other provision of this Agreement to the contrary, that there are no existing legal proceedings, or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

## **ARTICLE 20 NOTICE**

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their business address listed herein. ITS' address for notice is: Craig P. Orgeron, Ph.D., Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. Purchaser's address for notice is: John Kraman, Chief Information Officer, Mississippi Department of Education, 359 North West Street, Jackson, Mississippi 39201. The Seller's address for notice is: **VENDOR NOTICE INFORMATION**. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

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

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

## **ARTICLE 22 INSURANCE**

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

## **ARTICLE 23 DISPUTES**

Any dispute concerning a question of fact under this Agreement which is not disposed of by agreement of the Seller and Purchaser 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 24 COMPLIANCE WITH LAWS**

**24.1** Seller shall comply with, and all activities under this Agreement shall be subject to, all Purchaser policies and procedures, and all applicable federal, state and local laws, regulations, policies and procedures as now existing and as may be amended or modified. Specifically, but

not limited to, Seller 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, Seller shall comply with the provisions of the Davis-Bacon Act including, but not limited to, the wages, recordkeeping, reporting and notice requirements set forth therein.

**24.2** Seller 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, Seller represents and warrants that it will comply with the applicable provisions of the HIPAA Privacy Rule and Security Regulations (45 CFR Parts 160, 162 and 164) ("Privacy Rule" and "Security Regulations", individually; or "Privacy and Security Regulations", collectively); and the provisions of the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (the "HITECH Act").

#### **ARTICLE 25 CONFLICT OF INTEREST**

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

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

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

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

**27.1** Seller shall treat all Purchaser 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 Purchaser. In the event that Seller receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, Seller shall promptly inform Purchaser and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive the termination or completion of this Agreement, shall continue in full force and effect, and shall be binding upon the Seller 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 Seller following any termination or completion of this Agreement.

**27.2** 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 Seller. ITS will provide third party notice to Seller of any requests received by ITS for documents marked confidential in Seller's response to a IFB or LOC (if applicable) so as to allow Seller the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

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

## **ARTICLE 28 EFFECT OF SIGNATURE**

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

## **ARTICLE 29 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS**

All data, electronic or otherwise, collected by Seller and all documents, notes, programs, data bases (and all applications thereof), files, reports, studies, and/or other material collected and prepared by Seller in connection with this Agreement, whether completed or in progress, shall be the property of Purchaser upon completion of this Agreement or upon termination of this Agreement. Purchaser hereby reserves all rights to the databases and all applications thereof and to any and all information and/or materials prepared in connection with this Agreement. Seller is prohibited from use of the above described information and/or materials without the express written approval of Purchaser.

## **ARTICLE 30 NON-SOLICITATION OF EMPLOYEES**

Seller agrees not to employ or to solicit for employment, directly or indirectly, any of the Purchaser's employees until at least one (1) year after the expiration/termination of this Agreement unless mutually agreed to the contrary in writing by the Purchaser and the Seller 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 31 ENTIRE AGREEMENT**

**31.1** This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating hereto, including all terms of any unsigned or "shrink-wrap" license included in any package, media or electronic version of Seller-furnished software, or any "click-wrap" or "browse-wrap" license presented in connection with a purchase via the internet. The IFB No. 4301 and Seller's Proposal in response to IFB No. 4301 are hereby incorporated into and made a part of this Agreement.

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

- A.** This Agreement signed by both parties;
- B.** Any exhibits attached to this Agreement;
- C.** IFB No. 4301 and written addenda, and
- D.** Seller's Proposal, as accepted by Purchaser, in response to IFB No. 4301.

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

### **ARTICLE 32 SURVIVAL**

Articles 5, 6, 13, 17, 21, 26, 27, 29, 30, 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 33 DEBARMENT AND SUSPENSION CERTIFICATION**

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

### **ARTICLE 34 COMPLIANCE WITH ENTERPRISE SECURITY POLICY**

Seller and Purchaser understand and agree that all products and services provided by Seller under this Agreement must allow Purchaser to 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 Seller 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 35 COMPLIANCE WITH ENTERPRISE CLOUD AND OFFSITE HOSTING SECURITY**

If applicable, Seller and Purchaser understand and agree that all products and services provided by the Seller under this Agreement must allow Purchaser to 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 Seller 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 36 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 Purchaser's or Seller'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 Purchaser's funding source.

#### **ARTICLE 37 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>.

#### **ARTICLE 38 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 Seller shall notify the Purchaser immediately in writing of the cause of its inability to perform; how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate this Agreement.

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

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

**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**