



## RFP No: 4324

INVITATION: Proposals, subject to the attached conditions, will be received at this office until August 15, 2024 @ 3:00 p.m. Central Time for the acquisition of the products/services described below for **Mississippi State Department of Health**.

**WIC MIS Maintenance & Operations**

**VENDOR WEB CONFERENCE:** Tuesday, July 2, 2024 at 11:00 a.m. Central Time

**NOTE:** THIS RFP CONTAINS MANDATORY REQUIREMENTS TO WHILE NO EXCEPTION MAY BE TAKEN. SEE ATTACHMENT A, ITEM B FOR DETAILS

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

Solicitations Team  
Information Technology Services  
3771 Eastwood Drive  
Jackson, MS 39211  
RFP@its.ms.gov

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

PROPOSAL, SUBMITTED IN RESPONSE TO  
RFP NO. 4324  
due August 15, 2024 @ 3:00 p.m.,  
ATTENTION: Solicitations Team

A handwritten signature in blue ink that reads "David Johnson".

**David C. Johnson**  
Executive Director, ITS

## ITS RFP Response Checklist

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RFP Response Checklist: These items should be included in your response to RFP No. 4324.

- \_\_\_\_\_ 1) One USB flash drive that includes the Vendor's complete proposal. Label the USB with the Vendor name and RFP number. Include the items listed below on the USB.
- \_\_\_\_\_ 2) *Submission Cover Sheet*, signed and dated. (Section I)
- \_\_\_\_\_ 3) *Proposal Bond*, if applicable (Section I)
- \_\_\_\_\_ 4) *Proposal Exception Summary*, if applicable (Section V)
- \_\_\_\_\_ 5) Vendor response to *RFP Questionnaire* (Section VI)
- \_\_\_\_\_ 6) Point-by-point response to *Technical Specifications, if applicable* (Section VII)
- \_\_\_\_\_ 7) Vendor response to *Cost Information Submission* (Section VIII)
- \_\_\_\_\_ 8) *References* (Section IX)
- \_\_\_\_\_ 9) Point-by-point response to *Functional and Technical Specifications* (Attachment A)

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

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

Name \_\_\_\_\_ Phone # \_\_\_\_\_  
Address \_\_\_\_\_ Fax # \_\_\_\_\_  
\_\_\_\_\_ E-mail \_\_\_\_\_

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

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

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

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**CONFIGURATION SUMMARY**

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

## **PROPOSAL BONDS**

A Proposal Bond is not required for this procurement.

## SECTION II PROPOSAL SUBMISSION REQUIREMENTS

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

1. Failure to follow any instruction within this RFP may, at the State's sole discretion, result in the disqualification of the Vendor's proposal.
2. The State has no obligation to locate or acknowledge any information in the Vendor's proposal that is not presented under the appropriate outline according to these instructions and in the proper location.
3. The Vendor's proposal must be received, in writing, by the office of ITS by the date and time specified. ITS is not responsible for any delays in delivery or expenses for the development or delivery of proposals. Any proposal received after proposal opening time will be returned unopened. Any proposal received with insufficient postage will be returned unopened.
4. Proposals or alterations by fax, e-mail, or phone will not be accepted.
5. Original signatures in blue ink are required on the Submission Cover Sheet and Configuration Summary. The signed, original Submission Cover Sheet and Configuration Summary must be included in the sealed package/envelope. The Vendor must include the Proposal Bond within the proposal package, (if explicitly required in Section IV).
6. ITS reserves the right to reject any proposals, including those with exceptions, prior to and at any time during negotiations.
7. ITS reserves the right to waive any defect or irregularity in any proposal procedure.
8. The Vendor may intersperse their response following each RFP specification but must not otherwise alter or rekey any of the original text of this RFP. If the State determines that the Vendor has altered any language in the original RFP, the State may, in its sole discretion, disqualify the Vendor from further consideration. The RFP issued by ITS is the official version and will supersede any conflicting RFP language submitted by the Vendor.
9. The Vendor must conform to the following standards in the preparation of the Vendor's proposal:
  - 9.1 The Vendor is required to submit one response of the complete proposal, including all sections and exhibits, on a USB flash drive. Vendor's documents must be submitted in Microsoft Office 2010 or higher format and/or PDF format, as appropriate. If PDF format is submitted, the file must be searchable.
  - 9.2 To prevent opening by unauthorized individuals, the proposal must be sealed in a package/envelope. A label containing the information on the RFP cover page must be clearly typed and affixed to the package in a clearly visible location.

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

13. Unsolicited clarifications in the evaluation and selection of lowest and best proposal will be considered only if all the following conditions are met:
  - 13.1 A clarification to a proposal that includes a newly announced product line or service with equal or additional capability to be provided at or less than the proposed price will be considered.
  - 13.2 Information provided must be in effect nationally and have been formally and publicly announced through a news medium that the Vendor normally uses to convey customer information.
  - 13.3 Clarifications must be received early enough in the evaluation process to allow adequate time for re-evaluation.
  - 13.4 The Vendor must follow procedures outlined herein for submitting updates and clarifications.
  - 13.5 The Vendor must submit a statement outlining the circumstances for the clarification.
  - 13.6 The Vendor must submit unsolicited clarifications via USB in the same manner as detailed in Item 9 above.
  - 13.7 The Vendor must be specific about which part of the original proposal is being changed by the clarification (i.e., must include exact RFP reference to section and outline point).
  
14. **Communications with State**

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

  - 14.1 The State's contact person for the selection process is: Solicitations Team, 3771 Eastwood Drive, Jackson, MS 39211, RFP@its.ms.gov. Vendor must include the RFP number in the email's subject line.
  - 14.2 Vendor may consult with State representatives as designated by the State's contact person identified in 14.1 above in response to State-initiated inquiries.



### SECTION III VENDOR INFORMATION

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

1. **Interchangeable Designations**

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

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

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

3. **Proposal as Property of State**

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

4. **Written Amendment to RFP**

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

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

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

5. **Oral Communications Not Binding**

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

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

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

7. **Evaluation Criteria**

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

8. **Multiple Awards**

ITS reserves the right to make multiple awards.

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

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

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

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

11. **Right to Use Proposals in Future Projects by Entities Outside Mississippi**

The State reserves the right to offer the awarded proposal from this RFP, including all products and services proposed therein, along with the resulting contractual terms, for possible use in future projects 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 Vendor is willing to extend a cost less than or equal to that specified in the awarded proposal and resulting contract. A decision concerning the utilization of a Vendor's proposal for future projects 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 Vendor. The State's decision to consent to the reuse of an awarded proposal 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 Vendor, market, and technical environments since the initial award.

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

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

13. **Right to Request Information**

The State reserves the right to request information relative to a Vendor's references and financial status and to visit a Vendor's facilities during normal working hours. The State also reserves the right to request a current financial statement, prepared and certified by

an independent auditing firm, and reserves the right to require that Vendors document their financial ability to provide the products and services proposed up to the total dollar amount of the Vendor's cost proposal. The State reserves the right to request information about the Vendor from any previous customer of the Vendor of whom the State is aware, even if that customer is not included in the Vendor's list of references.

**14. Vendor Personnel**

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

- 14.1 A direct telephone number at which the individual may be contacted for a telephone interview. The State will pay toll charges in the continental United States. The Vendor must arrange a toll-free number for all other calls.
- 14.2 That, if onsite interviews are required, the individual can be at the specified location in Mississippi within the timeframe specified. All costs associated with onsite interviews will be the responsibility of the Vendor.
- 14.3 That the individual is proficient in spoken and written English;
- 14.4 That the individual is a U.S. citizen or that the individual meets and will maintain employment eligibility requirements in compliance with all United States Citizenship and Immigration Services (USCIS) regulations. The Vendor must provide evidence of identification and employment eligibility prior to the award of a contract that includes any personnel who are not U. S. citizens.
- 14.5 That the personnel assigned to a project will remain a part of the project throughout the duration of the contract as long as the personnel are employed by the Vendor, unless replaced by the Vendor at the request of the State. This requirement includes the responsibility for ensuring all non-citizens maintain current USCIS eligibility throughout the duration of the contract.

**15. Vendor Imposed Constraints**

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

16. **Best and Final Offer**

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

17. **Restriction on Advertising**

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

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

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

19. **Additional Information to be Included**

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

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

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

## SECTION IV LEGAL AND CONTRACTUAL INFORMATION

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

1. **Acknowledgment Precludes Later Exception**

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

2. **Failure to Respond as Prescribed**

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

3. **Contract Documents**

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

- 3.1 The Proposal Exception Summary Form as accepted by ITS;
- 3.2 Contracts which have been signed by the Vendor and ITS;
- 3.3 ITS' Request for Proposal, including all addenda;
- 3.4 Official written correspondence from ITS to the Vendor;
- 3.5 Official written correspondence from the Vendor to ITS when clarifying the Vendor's proposal; and
- 3.6 The Vendor's proposal response to the ITS RFP.

4. **Order of Precedence**

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

5. **Additional Contract Provisions**

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

6. **Contracting Agent by Law**

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

7. **Legal Provisions**

- 7.1 The State of Mississippi is self-insured; all requirements for the purchase of casualty or liability insurance are deleted.
- 7.2 Any provisions disclaiming implied warranties shall be null and void. See Mississippi Code Annotated Sections 11-7-18 and 75-2-719(4). The Vendor shall not disclaim the implied warranties of merchantability and fitness for a particular purpose.
- 7.3 The Vendor shall have no limitation on liability for claims related to the following items:
  - 7.3.1 Infringement issues;
  - 7.3.2 Bodily injury;
  - 7.3.3 Death;
  - 7.3.4 Physical damage to tangible personal and/or real property; and/or
  - 7.3.5 The intentional and willful misconduct or negligent acts of the Vendor and/or Vendor's employees or subcontractors.
- 7.4 All requirements that the State pay interest (other than in connection with lease-purchase contracts not exceeding five years) are deleted.
- 7.5 Any contract negotiated under this RFP will be governed by and construed according to the laws of the State of Mississippi. Venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi.
- 7.6 Any contract negotiated under this RFP is cancelable in the event the funding authority does not appropriate funds. Notice requirements to Vendor cannot exceed sixty (60) days.
- 7.7 The State of Mississippi does not waive its sovereign immunities or defenses as provided by law by entering into this contract with the Vendor, Vendor agents, subcontractors, or assignees.
- 7.8 The State will deliver payments to the Vendor within forty-five (45) days after receipt of invoice and receipt, inspection, and approval of Vendor's products/services. No late charges will exceed 1.5% per month on any unpaid

balance from the expiration of said period until payment is delivered. See Section 31-7-305 of the Mississippi Code Annotated. Seller understands and agrees that Purchaser is exempt from the payment of taxes.

7.9 The State shall not pay any attorney's fees, prejudgment interest or the cost of legal action to or for the Vendor.

## 8. **Approved Contract**

8.1 Award of Contract - A contract is considered to be awarded to a proposer once the proposer's offering has been approved as lowest and best proposal through:

- 8.1.1 Written notification made to proposers on **ITS** letterhead, or
- 8.1.2 Notification posted to the **ITS** website for the project, or
- 8.1.3 CP-1 authorization executed for the project, or
- 8.1.4 The **ITS** Board's approval of same during an open session of the Board.

8.2 **ITS** statute specifies whether **ITS** Director approval or **ITS** Board approval is applicable for a given project, depending on the total lifecycle cost of the contract.

8.3 A contract is not deemed final until five (5) working days after either the award of contract or post procurement review, as stipulated in the **ITS** Protest Procedure and Policy. In the event of a valid protest, the State may, at its sole discretion, continue the procurement or stay the procurement in accordance with the **ITS** Protest Procedure and Policy. If the procurement is stayed, the contract is not deemed final until the protest is resolved.

## 9. **Contract Validity**

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

## 10. **Order of Contract Execution**

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

## 11. **Availability of Funds**

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

## 12. **CP-1 Requirement**

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

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

- 13.1 Payments to the awarded Vendor for all goods and services acquired under this RFP by state agencies that make payments through the Mississippi State Government's Enterprise Resource Planning (ERP) solution ("MAGIC") will be made electronically, via deposit to the bank account of the Vendor's choice. The awarded Vendor must enroll and be activated in PayMode™, the State's current vehicle for sending and receiving electronic payments, prior to receiving any payments from state agencies. There is no charge for a Vendor to enroll or receive payments via PayMode. For additional information on PayMode, including registration instructions, Vendors should visit the following website: <http://www.paymode.com/mississippi/>. Vendors may also request assistance from the Mississippi Management and Reporting System (MMRS) Call Center regarding PayMode registration by contacting [mash@dfa.ms.gov](mailto:mash@dfa.ms.gov).
- 13.2 For state agencies that make payments through MAGIC, the awarded Vendor is required to submit electronically all invoices for goods and services acquired under this RFP, along with appropriate supporting documentation, as directed by the State.
- 13.3 Items 13.1 and 13.2 only apply to state agencies that make payments through MAGIC. Payments and invoices for all other entities will conform to their standard methods of payment to contractors.

**14. Time For Negotiations**

- 14.1 All contractual issues must be successfully negotiated within fifteen (15) working days from the Vendor's initial receipt of the project contract from ITS, unless ITS consents to extend the period. Failure to complete negotiations within the stated time period constitutes grounds for rejection of the Vendor's response to this RFP. ITS may withdraw the proposal award and begin negotiations with the next ranked Vendor immediately or pursue any other option.
- 14.2 Negotiations shall be limited to items to which the Vendor has noted as exceptions on their Proposal Exception Summary Form, as well as any new items that the State may require. All contract changes requested by the Vendor related to such exceptions noted in Vendor's proposal shall be submitted three (3) working days prior to scheduled negotiations, unless ITS consents to a different period.

**15. Prime Contractor**

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

**16. Sole Point of Contact**

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

- 16.1 The Vendor must acknowledge and agree that in matters of proposals, clarifications, negotiations, contracts and resolution of issues and/or disputes, the



Vendor represents all contractors, third parties and/or subcontractors the Vendor has assembled for this project. The Vendor's commitments are binding on all such parties and consequently the State is only required to negotiate with the Vendor.

- 16.2 Furthermore, the Vendor acknowledges and agrees to pass all rights and/or services related to all general consulting, services leasing, software licensing, warranties, hardware maintenance and/or software support to the State from any contractor, third party or subcontractor without the State having to negotiate separately or individually with any such parties for these terms or conditions.
- 16.3 Should a proposing Vendor wish to assign payment of any or all charges resulting from this contract to a third party, Vendor must disclose that fact in his/her proposal, along with the third party's name, address, nature of business, and relationship to the proposing Vendor, the reason for and purpose of the assignment, and all conditions of the assignment, including but not limited to a copy of an assignment document to be executed by the State, the Vendor, and the third party. Such assignments will be accepted or rejected at the sole discretion of the State. Vendor must clearly and definitively state in his/her proposal whether the proposal is contingent upon the requested assignment of payments. Whenever any assignment of payment is requested, the proposal, contract, and assignment document must include language specifically guaranteeing that the proposing Vendor is solely and fully liable and responsible for the performance of its obligations under the subject contract. No assignment of payment will be considered at the time of purchase unless such assignment was fully disclosed in the Vendor's proposal and subsequently accepted by the State.
17. **ITS Approval of Subcontractor Required**  
Unless provided in the contract, the Vendor shall not contract with any other party for furnishing any of the contracted work or services without the consent, guidance, and written approval of the State. ITS reserves the right of refusal and the right to request replacement of a subcontractor due to unacceptable work or conduct. This provision should not be interpreted as requiring the approval of individual contracts of employment between the Vendor and personnel assigned for services under the contract.
18. **Inclusion of Subcontract Agreements**  
Copies of any agreements to be executed between the Vendor and any subcontractors must be included in the Vendor's proposal.
19. **Negotiations with Subcontractor**  
In order to protect the State's interest, ITS reserves the right to attempt to resolve the contractual disagreements that may arise between the Vendor and its subcontractor after award of the contract.
20. **References to Vendor to Include Subcontractor**  
All references in the RFP to "Vendor" shall be construed to encompass both the Vendor and its subcontractors.

21. **Outstanding Vendor Obligations**

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

22. **Equipment Condition**

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

23. **Delivery Intervals**

The Vendor's proposal must specify, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, delivery and installation intervals after receipt of order.

24. **Pricing Guarantee**

The Vendor must explicitly state, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, how long the proposal will remain valid. Unless stated to the contrary in the *Technical Specifications*, pricing must be guaranteed for a minimum of ninety (90) days.

25. **Shipping Charges**

For all RFPs requiring shipment of any product or component, all products must be delivered FOB destination to any location within the geographic boundaries of the State with all transportation charges prepaid and included in the RFP proposal or LOC quotation. Destination is the point of use.

26. **Amortization Schedule**

For all RFPs requiring equipment, contracts involving the payment of interest must include an amortization schedule clearly documenting the amount of interest payable over the term of the contract.

27. **Americans with Disabilities Act Compliance for Web Development and Portal Related Services**  
All Web and Portal development work must be designed and implemented in compliance with the Electronic and Information Technology Accessibility Standards associated with Section 508 of the Rehabilitation Act and with the Web Accessibility Initiative (WAI) of the W3C.
28. **Ownership of Developed Software**
- 28.1 When specifications require the Vendor to develop software for the State, the Vendor must acknowledge and agree that the State is the sole owner of such developed software with exclusive rights to use, alter, or distribute the software without restriction. This requirement applies to source code, object code, and documentation.
- 28.2 The State may be willing to grant the Vendor a nonexclusive 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.
29. **Ownership of Custom Tailored Software**  
In installations where the Vendor's intellectual property is modified and custom-tailored to meet the needs of the State, the Vendor must offer the State an application license entitling the State to use, and/or alter the software without restriction. These requirements apply to source code, object code and documentation.
30. **Terms of Software License**  
The Vendor acknowledges and agrees that the term of all software licenses provided to the State shall be perpetual unless stated otherwise in the Vendor's proposal.
31. **The State is Licensee of Record**  
The Vendor must not bypass the software contracting phase of a project by licensing project software intended for State use in its company name. Upon award of a project, the Vendor must ensure that the State is properly licensed for all software that is proposed for use in a project.
32. **Compliance with Enterprise Security Policy**  
Any solution or service proposed in response to this RFP must be in compliance with the State of Mississippi's Enterprise Security Policy. The Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines and 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 RFP and require the Vendor to ensure the solution or service complies with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi. Vendors wanting to view the Enterprise Security Policy should contact the Technology Consultant listed on the cover page of this RFP.

33. **Compliance with Enterprise Cloud and Offsite Hosting Security Policy**  
Any cloud or vendor-hosted solution proposed in response to this RFP 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 RFP and require the Vendor to ensure the cloud or vendor-hosted solution complies with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi. Vendors wanting to view the Enterprise Cloud and Offsite Hosting Security Policy should contact the Technology Consultant listed on the cover page of this RFP.
34. **Negotiating with Next Ranked Vendor**  
Should the State cease doing business with any Vendor selected via this RFP process, for any reason, the State reserves the right to initiate negotiations with the next ranked Vendor.
35. **Disclosure of Proposal Information**  
Vendors should be aware that any information in a proposal may be subject to disclosure or reproduction under the Mississippi Public Records Act of 1983, defined in Section 25-61-1 et seq. of the Mississippi Code Annotated. All disclosures of proposal information will be made in compliance with the ITS Public Records Procedures established in accordance with the Mississippi Public Records Act. The ITS Public Records Procedures are available in Section 019-010 of the ITS Procurement Handbook, on the ITS Internet site at:

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

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

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

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

records requests, Vendor should provide the alternative contact information in response to this RFP item.

36. **Risk Factors to be Assessed**

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

37. **Proposal Bond**

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

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

The Vendor must include the price of a performance bond or irrevocable bank letter of credit with its RFP proposal. The cost of the bond or letter of credit must be shown as a separate line item in the *Cost Information Submission*. The performance bond or letter of credit must be procured at the Vendor's expense prior to the execution of the contract and may be invoiced to **Mississippi State Department of Health** after contract initiation only if itemized in the *Cost Information Submission* and in the executed contract. **The final decision as to the requirement for a Performance Bond or Irrevocable Bank Letter of Credit will be made upon contract award and is at the State's sole discretion.**

If a Performance Bond /Irrevocable Bank Letter of Credit is required, the Vendor must procure and submit to ITS, on behalf of **Mississippi State Department of Health**, with the executed contract, (a) a performance bond from a reliable surety company authorized to do business in the State of Mississippi or (b) an irrevocable bank letter of credit that is acceptable to the State. The Performance Bond or the Irrevocable Letter of Credit shall be for the total amount of the contract or an amount mutually agreed upon by the State and the successful Vendor and shall be payable to **Mississippi State Department of Health**, to be held by their contracting agent, the Mississippi Department of Information Technology Services. No contract resulting from this RFP will be valid until the required Performance Bond or Irrevocable Bank Letter of Credit has been received and found to be in proper form and amount. The Vendor agrees that the State has the right to request payment for a partial amount or the full amount of the Irrevocable Letter of Credit/Performance bond should the products/services being procured hereunder not be provided in a manner consistent with this RFP and the Vendor's proposal by the delivery dates agreed upon by the parties. The State may demand payment by contacting the bank issuing the letter of credit or the bonding company issuing the performance bond and making a written request for full or partial payment. The issuing bank/bonding company is required to honor any demand for payment from the State within fifteen (15) days of notification. The letter of credit/performance bond shall cover the entire contract period, with the exception of post-warranty maintenance and support, and shall not be released until final acceptance of all products and deliverables required herein or until the warranty period, if any, has expired, whichever occurs last. If applicable, and at the State's sole discretion, the State may, at any time during the warranty period, review Vendor's performance and performance of the products/services delivered and determine that the

letter of credit/performance bond may be reduced or released prior to expiration of the full warranty period.

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

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

40. **Protests**

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

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

41. **Protest Bond**

Potential Vendors may protest any of the specifications of this RFP on the belief that the specification is unlawful, unduly restrictive, or unjustifiably restraining to competition. Any such protest must be in writing and submitted to the **ITS** Executive Director along with the appropriate protest bond within five (5) working days of the Official Release of the RFP, as defined in the **ITS** Protest Procedure and Policy. The outside of the envelope must be marked "Protest" and must specify RFP Number **4324**.

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

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

42. **Mississippi Employment Protection Act**

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

Vendor acknowledges and certifies that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi.

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

## SECTION V PROPOSAL EXCEPTIONS

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

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



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

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

**PROPOSAL EXCEPTION SUMMARY FORM**

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

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

## SECTION VI RFP QUESTIONNAIRE

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

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

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

<https://www.dfa.ms.gov/vendors>

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

All Vendors must furnish ITS with their MAGIC Vendor code. (begins with the number 3)

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

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

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

### 2. **Certification of Authority to Sell**

- 2.1 Vendors must provide proof, in its response to this procurement, from the Office of the Mississippi Secretary of State demonstrating that the Vendor is in good standing to do business in Mississippi. Failure to comply with this requirement may subject the Vendor's response being deemed non-responsive and subject to disqualification.

- 2.2 The Vendor must certify Vendor is authorized to sell and able to deliver all items and related services proposed in the State of Mississippi in the time frame specified. Does the Vendor make these certifications? (A yes or no answer is required.)
3. **Compliance with National Defense Authorization Act**  
The Vendor must state if Vendor equipment being provided is in compliance with the National Defense Authorization Act, Section 889. (A yes or no answer is required.)
4. **Compliance with National Security on State Devices and Networks Act**  
Vendors shall not provide or propose to provide any prohibited technology as defined under the National Security on State Devices and Networks Act, Mississippi Code Ann. Section 25-53-193. Failure to meet this requirement may disqualify vendor from consideration. (Vendor must state if they can meet this requirement.)
5. **Certification of No Conflict of Interest**  
Mississippi law clearly forbids a direct or indirect conflict of interest of a company or its employees in selling to the State. The Vendor must answer and/or provide the following:
  - 5.1 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.)
  - 5.2 If the possibility of a conflict does exist, provide a list of those institutions and the nature of the conflict on a separate page and include it in your proposal. The Vendor may be precluded from selling to those institutions where a conflict of interest may exist.
6. **Pending Legal Actions**
  - 6.1 Are there any lawsuits or other legal proceedings against the Vendor that pertain to any of the software, hardware, or other materials and/or services which are a part of the Vendor's proposal? (A yes or no answer is required.)
  - 6.2 Are there any criminal or civil proceedings (federal or state) pending against the Vendor or its principals or employees that pertain to any public procurement within the State of Mississippi or elsewhere? (A yes or no answer is required.)
  - 6.3 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.
  - 6.4 The State, at its sole discretion, may reject the proposal of a Vendor who (a) has criminal or civil proceedings pending that pertain to a public procurement within Mississippi or elsewhere, or (b) has lawsuits or other legal proceedings pending that pertain to any of the products or services which are part of the Vendor's proposal.
7. **Non-Disclosure of Social Security Numbers**  
Does the Vendor agree that any information system proposed, developed, or modified under this RFP that disseminates, in any form or manner, information or material that

contains the Social Security Number of an individual, has mechanisms in place to prevent the inadvertent disclosure of the individual's Social Security Number to members of the general public or to persons other than those persons who, in the performance of their duties and responsibilities, have a lawful and legitimate need to know the individual's Social Security Number? This agreement is required by Section 25-1-111 of the Mississippi Code Annotated. (A yes or no answer is required.)

8. **Web Amendments**

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

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

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

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

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

9. **Order and Remit Address**

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

Order Address:

Remit Address (if different):

10. **Taxpayer Identification Number**

Vendor must specify their taxpayer identification number.

11. **Certification of Liability Insurance**  
Vendor must provide a copy of their Certificate of Liability Insurance with their RFP response.
12. **E-Verify Registration Documentation**  
Vendor must ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008). Vendor must provide documentation of their E-Verify compliance with their RFP response. See Section IV, Item 42 for additional information.
13. **System for Award Management (SAM) Registration Documentation**  
Vendor must include a copy of their registration with the Federal Government's System for Award Management (SAM) with their RFP response.

## SECTION VII TECHNICAL SPECIFICATIONS

### 1. Procurement Project Schedule

<b>Task</b>	<b>Date</b>
First Advertisement Date for RFP	06/18/24
Second Advertisement Date for RFP	06/25/24
Vendor Web Conference	11:00 a.m. Central Time on 07/02/24
Deadline for Vendor's Written Questions	3:00 p.m. Central Time on 07/09/24
Deadline for Questions Answered and Posted to ITS Web Site	07/24/24
Open Proposals	08/15/24
Evaluation of Proposals Begin	08/15/24
ITS Board Presentation	09/19/24
Contract Negotiation	September - October 2024
FNS Contract Review	October - December 2024
Proposed Project Implementation Start-up	01/02/2025

### 2. Statement of Understanding

2.1 Attendance at the Vendor Web Conference on Tuesday, July 2, 2024 at 11:00 a.m. Central Time is optional for any Vendor who intends to submit an RFP response.

2.1.1 To access the conference, Vendors must contact Solicitations Team via e-mail no later than Monday, July 1, 2024 at 12:00 p.m. to receive dial-in instructions.

2.2 Vendors may request additional information or clarifications to this RFP using the following procedure:

2.2.1 Vendors must clearly identify the specified paragraph(s) in the RFP that is in question. The following table should be used to format Vendor questions.

<b>Question</b>	<b>RFP Item</b>	<b>RFP Page</b>	<b>Vendor Question</b>
1)			
2)			
3)			

2.2.2 Vendor must deliver a written document to RFP@its.ms.gov by Tuesday, July 9, 2024 at 3:00 p.m. Central Time. This document may be delivered by hand, mail, email, or fax. Address information is given on page one of this RFP. The fax number is (601) 713-6380. **ITS WILL NOT BE RESPONSIBLE FOR DELAYS IN THE DELIVERY OF QUESTION DOCUMENTS.** It is solely the responsibility of the vendor that the clarification document reaches ITS on time. Vendors may contact RFP@its.ms.gov to verify the receipt of their document. Documents received after the deadline will be rejected.

2.3 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 Wednesday, July 24, 2024.

2.4 When the RFP uses the term *State*, it is referring to staff from ITS, MSDH, and any other authorized State employee or agent.

**3. Functional and Technical Requirements**

3.1 For the functional and technical requirements relevant to this procurement, refer to Attachment A, which is incorporated herein by reference and is considered integral to this RFP. Attachment A is posted on the same website location as this RFP No. 4534, and the link is located directly beneath the link to RFP No. 4534.

3.2 If any component(s) necessary for operation of the requested system is omitted from Vendor’s proposal, Vendor must be willing to provide the component(s) at no additional cost.

**4. Scoring Methodology**

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

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

4.1.2 The sum of all categories equals 100 possible points.

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

<b>Category</b>	<b>Possible Points</b>
<b>Non-Cost Categories:</b>	
M&O Contractor/Key Personnel; Project/Resource Management	20
Maintenance & Operations SPIRIT Services;	30
Customer Support – General; Performance Management	15
<b>Total Non-Cost Points</b>	<b>65</b>



<b>Cost Categories:</b>	
Lifecycle Costs	30
Change Order Rates	5
<b>Total Cost Points</b>	<b>35</b>
<b>Maximum Possible Points</b>	<b>100</b>

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

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

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

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

<b>Non-Cost Categories</b>	<b>Possible Points</b>
M&O Contractor/Key Personnel; Project/Resource Management	20
Maintenance & Operations SPIRIT Services;	30
Customer Support – General; Performance Management	15
<b>Maximum Possible Points</b>	<b>65</b>

4.2.2.2 Proposals meeting fewer than 90% of the requirements in the non-cost categories may be eliminated from further consideration.

4.2.2.3 ITS scores the non-cost categories on a 10-point scale, with 9 points for meeting the requirement. The 'Meets Specs' score for each category is 90% of the total points allocated for that category. For example, the Maintenance & Operations SPIRIT Services category was allocated 30 points; a proposal that fully met all requirements in that section would have scored 27 points. The additional 10% is used for a proposal that exceeds the requirement for an item in a way that provides additional benefits to the state.

4.2.3 Stage 3 – Cost Evaluation

4.2.3.1 Points will be assigned using the following formula:

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

Where:

A = Total lifecycle cost of lowest valid proposal

B = Total lifecycle cost of proposal being scored

n = Maximum number of points allocated to cost for acquisition

4.2.3.2 Cost categories and maximum point values are as follows:

<b>Cost Category</b>	<b>Possible Points</b>
Lifecycle Cost	30
Change Order Rates	5
<b>Maximum Possible Points</b>	<b>35</b>

4.2.4 Stage 4 – Selection of the successful Vendor

4.2.4.1 Demonstrations and Interviews

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

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

4.2.4.1.3 Proposed key team members must be present at the demonstration. The evaluation team reserves the right to interview the proposed key team members during this visit/demonstration.

4.2.4.1.4 Although demonstrations may be requested, the demonstration will not be allowed in lieu of a written proposal.

4.2.5 Site Visits

4.2.5.1 At the State's option, Vendors that remain within a competitive range must be prepared to provide a reference site within seven calendar days of notification. If possible, the reference site

should be in the Southeastern region of the United States.  
Vendor must list potential reference sites in the proposal.

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

**SECTION VIII  
 COST INFORMATION SUBMISSION**

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

Description	Quantity	Extended Cost
M&O Services (fully loaded with travel, subsistence and associated per diem costs)		
<b>Base Offering: Best practice maintenance, operations, and database support as described in RFP 4534</b>	1	\$
Itemize the cost for any deliverable not included in base offering as a separate line item below.		
<b>Year 1 Maintenance</b>	1	\$
<b>Year 2 Maintenance</b>	1	\$
<b>Year 3 Maintenance</b>	1	\$
<b>Year 4 Maintenance</b>	1	\$
<b>Year 5 Maintenance</b>	1	\$
<b>Year 6 Maintenance</b>	1	\$
<b>Total Base Offering and Maintenance</b>		\$

<b>Development of Standard Reports:</b> Itemize the cost of each standard report as a separate line item below. Report IDs listed are as shown in Appendix 1 from the Attachment A document.	<b>Total Amount Due</b>	<b>15% Retainage</b>	<b>Amount Due Less Retainage</b>
<b>1 Standard Daily Report - CLN020</b>	\$	\$	\$
<b>3 Standard Weekly Reports</b>			
Standard Weekly Report - CLD019	\$	\$	\$
Standard Weekly Report - CLN008	\$	\$	\$
Standard Weekly Report - CLN009	\$	\$	\$
<b>12 Standard Monthly Reports</b>			
Standard Monthly Report - CAS001	\$	\$	\$
Standard Monthly Report - CAS006	\$	\$	\$
Standard Monthly Report - CLD005	\$	\$	\$
Standard Monthly Report - CLD007	\$	\$	\$
Standard Monthly Report - CLD021	\$	\$	\$
Standard Monthly Report - CLD022	\$	\$	\$
Standard Monthly Report - CLD029	\$	\$	\$
Standard Monthly Report - CLN005	\$	\$	\$
Standard Monthly Report - OPR025	\$	\$	\$
Standard Monthly Report - OPR028	\$	\$	\$
Standard Monthly Report - OPR30	\$	\$	\$
Standard Monthly Report - CAS016	\$	\$	\$
<b>Training MSDH Staff on Report Production/Usage</b>	\$	\$	\$

Miscellaneous Costs (must specify)	\$	\$	\$
<b>Total Development of Standard Reports</b>	\$	\$	\$
<b>Total Base Offering, Maintenance, Development of Standard Reports, and Miscellaneous Costs</b>			\$

**CHANGE ORDER RATES COST INFORMATION SUBMISSION**

The Vendor must propose all possible personnel/subject matter experts (SME's) that may be needed for future enhancements in the table below with their fully loaded hourly rates. Along with the fully loaded hourly rates, the Vendor must propose a fully loaded blended rate. The table lists possible roles but is not all inclusive and the Vendor may add additional roles. If the Vendor does not foresee a particular role being proposed, the Vendor must mark the hourly rate as N/A. Vendor must completely fill in the matrix listed below. The fully loaded fixed hourly rate will remain the same for the entire duration of the contract. These rates shall be used in pricing of any subsequent change orders. Fully loaded rates include hourly rate plus travel, per diem, and lodging.

Role	Fully Loaded Fixed Hourly Off-site Rate
<b>Project/Operations/Systems Manager</b>	
<b>Reporting Manager/Systems Development</b>	
<b>Quality Assurance Specialist</b>	
<b>Business Analyst</b>	
<b>Blended Change Order Rate</b>	

## SECTION IX REFERENCES

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

### 1. References

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



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

## 2. **Subcontractors**

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

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

### VENDOR REFERENCE FORM

**Services sought by the State:** The State seeks responses from vendors experienced in providing system maintenance and operations (M&O) for Management Information Systems (MIS) to support the provision of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Through this RFP, the State of Mississippi is accepting proposals for operations, maintenance, and support as required and approved by the State for the State-hosted WIC MIS known as SPIRIT. The State also seeks Vendors that will provide the State with the ability to run standard reports on-demand in the MIS system.

Copy this form to be used for each of the references.

<b>Reference Information</b>	
Contact Name:	
Contact Title:	
Company Name:	
Address:	
Phone #:	
E-Mail:	
<b>Project Information</b>	
Vendor's Name:	
Project Description:	
Project Start Date:	
Project End Date:	

**SUBCONTRACTOR REFERENCE FORM**

**Services sought by the State:** The State seeks responses from vendors experienced in providing system maintenance and operations (M&O) for Management Information Systems (MIS) to support the provision of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Through this RFP, the State of Mississippi is accepting proposals for operations, maintenance, and support as required and approved by the State for the State-hosted WIC MIS known as SPIRIT. The vendor will need to be able to provide the State with a method to run standard reports outside of the MIS for MIS data.

Copy this form to be used for each of the references.

<b>Reference Information</b>	
Contact Name:	
Contact Title:	
Company Name:	
Address:	
Phone #:	
E-Mail:	
<b>Project Information</b>	
Vendor's Name:	
Project Description:	
Project Start Date:	
Project End Date:	

**EXHIBIT A  
STANDARD CONTRACT**

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

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

**PROJECT NUMBER 44596  
MAINTENANCE AGREEMENT  
BETWEEN  
VENDOR NAME  
AND  
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES  
AS CONTRACTING AGENT FOR THE  
MISSISSIPPI STATE DEPARTMENT OF HEALTH**

This Maintenance Agreement (hereinafter referred to as "Agreement") is entered into by and between VENDOR NAME, a STATE OF INCORPORATION corporation having its principal place of business at VENDOR ADDRESS, CITY, STATE ZIP (hereinafter referred to as "Contractor"), 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 State Department of Health located at 570 East Woodrow Wilson, Jackson, Mississippi 39215 (hereinafter referred to as "Customer"). ITS and Customer are sometimes collectively referred to herein as "State".

**WHEREAS**, ITS, on behalf of Customer and pursuant to Request for Proposals ("RFP") No. 4534 requested proposals for the acquisition of maintenance, operation, and reporting services (hereinafter referred to as "Services") necessary for the MSDH SPIRIT MIS; and

**WHEREAS**, Contractor was the successful proposer in an open, fair and competitive procurement process to provide such Services;

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

**ARTICLE 1 PERIOD OF PERFORMANCE**

**1.1** Unless this Agreement is extended by mutual agreement or terminated as prescribed elsewhere herein, the period of performance of services under this Agreement shall begin on the date it is signed by all parties, and shall continue in effect for a six (6) year period (hereinafter referred to as "Initial Term"). At the end of the Initial Term, this Agreement may, upon the written agreement of the parties, be renewed for an additional term under the same terms and conditions, the length of which will be agreed upon by the parties. Sixty (60) days prior to the expiration of the initial term or any renewal term of this Agreement, Contractor shall notify Customer and ITS of the impending expiration and any inflation increase allowed for in this Agreement, and

Customer shall have thirty (30) days in which to notify Contractor of its intention to either renew or cancel the Agreement.

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

## **ARTICLE 2 SCOPE OF SERVICES**

Contractor agrees to provide all travel, labor, and material required to maintain the equipment listed in Exhibit A, which is attached hereto and incorporated herein, in accordance with the requirements set forth in RFP No. 4534. Further, Contractor warrants that it will provide services to the Customer as follows:

**2.1** Contractor shall provide all preventive and remedial maintenance necessary to maintain the SPIRIT MIS listed in Exhibit A in good condition.

**2.2** Contractor shall respond by telephone timely to requests for unscheduled remedial maintenance service and necessary repairs, Monday through Friday, 8:00 A.M. to 5:00 P.M. (Central Time), and provide effective troubleshooting and resolution within four (4) hours from the point the call is made to service components and make repairs. In the event that response times for support during any given instance do not meet the required four (4) hour response time or the Service Level Requirements listed in Exhibit C, which is attached hereto and incorporated herein, Contractor shall reimburse Customer according to the service credits as detailed in Exhibit B, which is attached hereto and incorporated herein.

**2.3** Contractor agrees to provide preventive maintenance based on the specific needs of the equipment during normal business hours and at intervals specified in RFP No. 4534, and Contractor's Proposal as accepted by the State in response thereto. Preventive maintenance may be performed concurrently with remedial maintenance activity. Contractor must record all activities related to preventive maintenance on a log to be retained on-site.

**2.45** Contractor shall have emergency response services and support available 365 days a year, 24 hours a day, for any major system failures for after hours, holidays, and weekends. Any emergency after-hours service calls will be incurred on a time and materials basis at the hourly rates specified in Exhibit A.

**2.5** The parties understand and agree that Customer reserves the right to add other equipment to be maintained or to cancel maintenance on all or part of the equipment, as Customer deems necessary.

**2.6** The parties understand and agree that this Agreement does not cover the following: print heads (normal wear), batteries, ribbons, and all disposable parts; damage to equipment caused by Customer's abuse or neglect; damage caused by an act of God (flood, earthquake, lightning, etc.); loss due to fire or theft; cost of repair or maintenance of any kind which results from a breach of the terms of this Agreement by the Customer; neglect, misuse, alterations, or deviation from intended machine use; maintenance or repair of the machine performed by persons other than Contractor; or maintenance or removal of alterations or attachments

## **ARTICLE 3 CONSIDERATION AND METHOD OF PAYMENT**

**3.1** During the initial term of this Agreement, Customer shall pay Contractor annually for maintenance services. Contractor shall submit an invoice annually with the appropriate documentation to Customer, including specific documentation of any inflation increase for any renewal term. Contractor shall submit invoices and supporting documentation to Customer electronically during the term of this Agreement using the processes and procedures identified by the State. In no event will the total compensation to be paid hereunder for the initial term exceed the specified sum of \$TOTAL COMPENSATION, unless prior written authorization from ITS has been obtained. Customer agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," Section 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by Customer within forty-five (45) days of receipt of the invoice. Contractor understands and agrees that Customer is exempt from the payment of taxes.

**3.2** In no event shall the cost for maintenance services for any renewal term increase by more than five percent (5%) per year or an increase consistent with the percent increase in the consumer price index, all Urban Consumer US City Average (C.P.I.-u) for the preceding year ("inflation increase"), whichever is less. Customer shall submit payments to VENDOR NAME, VENDOR ADDRESS, CITY, STATE ZIP. All payments should be made in United States currency. Payments by state agencies using Mississippi's Accountability System for Government Information and Collaboration (MAGIC) shall be made and remittance information provided electronically as directed by the State. The payments by these agencies shall be deposited into the bank account of the Contractor's choice. No payment, including final payment, shall be construed as acceptance of defective products or incomplete work, and the Contractor shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the article herein titled "Entire Agreement."

#### **ARTICLE 4 EMPLOYMENT STATUS**

**4.1** Contractor 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.

**4.2** Contractor represents that it is qualified to perform the duties to be performed under this Agreement and that it has or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the duties required under this Agreement. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of Customer. Contractor 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 Contractor nor employees of Contractor are entitled to state retirement or leave benefits.

**4.3** 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 Contractor shall be paid as a gross sum with no withholdings or deductions being made by Customer for any purpose from said contract sum.

#### **ARTICLE 5 RECORD RETENTION AND ACCESS TO RECORDS**

Contractor shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Agreement. The Customer, ITS, any state or federal agency authorized to audit Customer,

and/or any of their duly authorized representatives, shall have unimpeded, prompt access to this Agreement and to any of the Contractor'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 Contractor's office as applicable where such records are kept during normal business hours. All records relating to this Agreement shall be retained by the Contractor 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 6 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 7 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS**

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

**7.2** 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.

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

**7.4** Contractor represents and warrants that any subcontract agreement Contractor enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Customer, that the subcontractor acknowledges that no privity of contract exists between the Customer and the subcontractor, and that the Contractor is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with the Contractor. The Contractor 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 Contractor's failure to pay any and all amounts due by Contractor to any subcontractor, materialman, laborer, or the like.

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

#### **ARTICLE 8 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 9 AVAILABILITY OF FUNDS**

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

#### **ARTICLE 10 HOLD HARMLESS**

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

#### **ARTICLE 11 INSURANCE**

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

#### **ARTICLE 12 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. Contractor expressly agrees that under no circumstances shall Customer be obligated to pay an attorney's fee, prejudgment interest, or the cost of legal action to Contractor. Further, nothing in this Agreement shall affect any statutory rights Customer may have that cannot be waived or limited by contract.



### **ARTICLE 13 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 14 DISPUTES**

Any dispute concerning a question of fact under this Agreement, which is not disposed of by agreement of the Contractor and Customer, 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 15 NON-SOLICITATION OF EMPLOYEES**

Contractor agrees not to employ or to solicit for employment, directly or indirectly, any of the Customer'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 Customer and the Contractor, 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 16 COMPLIANCE WITH LAWS**

**16.1** Contractor shall comply with, and all activities under this Agreement shall be subject to, all Customer 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, Contractor 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, Contractor 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.

**16.2** Contractor 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, Contractor 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 17 CONFLICT OF INTEREST**

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

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

Contractor shall notify Customer in writing within five (5) business days of Contractor 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 Contractor or Customer by any entity that may result in litigation related in any way to this Agreement and/or which may affect the Contractor's performance under this Agreement. Failure of the Contractor to provide such written notice to Customer shall be considered a material breach of this Agreement and the Customer 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**

Contractor 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 CONFIDENTIAL INFORMATION**

**20.1** Contractor shall treat all Customer data and information to which it has access by its performance under this Agreement as confidential and shall not disclose such data or information to a third party without specific written consent of Customer. In the event that Contractor 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, Contractor shall promptly inform Customer 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 Contractor 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 Contractor, following any termination or completion of this Agreement.

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

**20.3** 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 21 CAPTIONS**

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

#### **ARTICLE 22 SPECIAL TERMS AND CONDITIONS**

Services hereunder shall be performed by the Contractor in conformity with generally accepted standards for such services in the data-processing and information technology fields as a whole. Should the Contractor fail to perform any services hereunder in compliance with such standards,

Contractor shall, at its sole expense, re-perform such services, provided Customer furnishes any media and data necessary for Contractor to re-perform such services.

### **ARTICLE 23 NOTICE**

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by electronic means, provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their business address listed herein. ITS' address for notice is: David C. Johnson, Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. Customer's address for notice is: Julio Cespedes, Jr., Office Director, Mississippi State Department of Health, 570 East Woodrow Wilson, Jackson, MS 39216. The Contractor's address for notice is: **VENDOR NOTICE NAME, TITLE, VENDOR NAME, ADDRESS, CITY, STATE ZIP**. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

### **ARTICLE 24 WARRANTIES**

Contractor makes the following warranties:

**24.1** Contractor represents and warrants that it shall perform all work hereunder in a good and workmanlike manner.

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

**24.3** Contractor represents and warrants that, to the extent applicable, it will ensure its compliance with the Mississippi Employment Protection Act, Miss. Code Ann. § 71-11-1, et seq. and any breach of Mississippi Employment Protection Act may subject Seller to the consequences set forth under Miss. Code Ann § 71-11-3.

**24.4** Contractor represents and warrants that no official or employee of Customer or of ITS, and no other public official of the State of Mississippi who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of said project, voluntarily acquire any personal interest, direct or indirect, in this Agreement. The Contractor 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 Contractor also warrants that in the performance of this Agreement no person having any such known interests shall be employed.

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

#### **ARTICLE 25 SYSTEM CONFIGURATION**

Contractor acknowledges that Customer will pursue continuous growth and enhancement of the existing systems operations. As such, Contractor agrees to fully support the integration of additional hardware and software provided by sources selected as lowest and best on future projects, in accordance with state law. Such upgrades would be subject to full compatibility with the baseline hardware and software technology comprising this system.

#### **ARTICLE 26 TERMINATION**

**26.1** Customer has the option of canceling this Maintenance Agreement without the assessment of any penalties on all or part of the equipment upon a thirty (30) day notice to Contractor. Upon termination, Contractor shall refund any and all applicable unexpended prorated annual service fees previously paid by Customer.

**26.2** Notwithstanding the above, Contractor shall not be relieved of liability to Customer for damages sustained by Customer by virtue of breach of this Agreement by Contractor, and Customer may withhold any payments to Contractor for the purpose of set off until such time as the exact amount of damages due to Customer from Contractor is determined. Customer shall also have the right to pursue all remedies in law or in equity that may be available to it for damages incurred.

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

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

#### **ARTICLE 28 SOVEREIGN IMMUNITY**

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

#### **ARTICLE 29 ENTIRE AGREEMENT**

**29.1** This Contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings, and agreements, written or oral, between the parties relating thereto. The RFP

No. 4534 and Contractor's Proposal in response to RFP No. 4534 are hereby incorporated into and made a part of this Contract.

**29.2** The Contract made by and between the parties hereto shall consist of and precedence is hereby established by the order of the following:

- A. This Agreement signed by the parties hereto;
- B. Any exhibits attached to this Agreement;
- C. RFP No. 4534 and written addenda; and
- D. Contractor's Proposal, as accepted by Customer, in response to RFP No. 4534.

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

#### **ARTICLE 30 SURVIVAL**

Articles {list the article numbers which pertain to record retention; hold harmless; governing laws; non-solicitation of employees; confidential information, and sovereign immunity}, and all other articles, which by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this Agreement.

#### **ARTICLE 31 DEBARMENT AND SUSPENSION CERTIFICATION**

Contractor 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 transactions (federal, state, or local) terminated for cause or default.

#### **ARTICLE 32 COMPLIANCE WITH ENTERPRISE SECURITY POLICY**

Contractor and Customer understand and agree that all products and services provided by Contractor under this Agreement must be and remain in compliance with the State of Mississippi's Enterprise Security Policy. The parties understand and agree that the State's Enterprise Security

Policy is based on industry-standard best practices, policy, and guidelines at the time of contract execution. The State reserves the right to introduce a new policy during the term of this Agreement and require the Contractor to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

### **ARTICLE 33 COMPLIANCE WITH ENTERPRISE CLOUD AND OFFSITE HOSTING SECURITY**

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

### **ARTICLE 34 STATUTORY AUTHORITY**

By virtue of §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 Customer's or Contractor's contractual obligations, financial or otherwise, contained within this Agreement.

### **ARTICLE 35 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS**

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

### **ARTICLE 36 TRANSPARENCY**

In accordance with the Mississippi Accountability and Transparency Act of 2008, §27-104-151, et seq., of the Mississippi Code of 1972, as Amended, the American Accountability and Transparency Act of 2009 (P.L. 111-5), where applicable, and §31-7-13 of the Mississippi Code of 1972, as amended, where applicable, a fully executed copy of this Agreement and any subsequent amendments and change orders shall be posted to the State of Mississippi's accountability website at: <https://www.transparency.mississippi.gov>.

### **ARTICLE 37 FORCE MAJEURE**

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war or terrorism, epidemics, governmental regulations superimposed after the fact, fire, earthquakes,

floods, or other natural disasters (the "Force Majeure Events"). When such a cause arises, the Contractor shall notify the Customer immediately in writing of the cause of its inability to perform; how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate this Agreement.

#### **ARTICLE 38 PERFORMANCE BOND**

As a condition precedent to the formation of this Agreement, the Contractor must provide a performance bond as herein described. To secure the Contractor's performance, the Contractor shall procure, submit to the State with this executed Agreement, and maintain in effect at all times during the course of this Agreement a performance bond in the total amount of this Agreement. 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 performance bond and shall identify a contact person to be notified in the event the State is required to take action against the bond. The term of the performance bond shall be concurrent with the term of this Agreement, with the exception of post-warranty maintenance and support, and shall not be released to Contractor until final acceptance of all products and deliverables required herein or until the warranty period, if any, has expired, whichever occurs last. If applicable, and at the State's sole discretion, the State may, at any time during the warranty period, review Contractor's performance and performance of the products/services delivered and determine that the Contractor's performance bond may be reduced or released prior to expiration of the full warranty period. The performance bond shall be procured at Contractor's expense and be payable to Customer. The cost of the bond may be invoiced to the Customer after project initiation only if itemized in the Contractor's cost proposal and in the attached Exhibit A. Prior to approval of the performance bond, the State reserves the right to review the bond and require Contractor to substitute an acceptable bond in such form as the State may reasonably require. The premiums on such bond shall be paid by Contractor. The bond must specifically refer to this Agreement and shall bind the surety to all of the terms and conditions of this Agreement. If the Agreement is terminated due to Contractor's failure to comply with the terms thereof, Customer may claim against the performance bond.

#### **ARTICLE 39 LIQUIDATED DAMAGES**

It is agreed by the parties hereto that time is of the essence, and that in the event of a delay in the satisfactory completion and acceptance of the services provided for herein, damage shall be sustained by Customer. In the event of a delay as described herein, Contractor shall pay Customer, within five (5) calendar days from the date of receipt of notice, fixed and liquidated damages of \$500.00 per day for each calendar day of delay caused by Contractor. Customer may offset amounts due it as liquidated damages against any monies due Contractor under this Agreement. Customer will notify Contractor in writing of any claim for liquidated damages pursuant hereto on or before the date Customer deducts such sums from money payable to Contractor. Any liquidated damages assessed are in addition to and not in limitation of any other rights or remedies of Customer.

#### **ARTICLE 40 RETAINAGE**

To secure the Contractor's performance under this Agreement, the Contractor agrees the Customer shall hold back as retainage fifteen percent (15%) of each amount payable under this

Agreement. The retainage amount will continue to be held until final acceptance of the deliverables by the Customer.

#### **ARTICLE 41 PERSONNEL ASSIGNMENT GUARANTEE**

Contractor guarantees that the personnel assigned to this project will remain a part of the project throughout the duration of the Agreement as long as the personnel are employed by the Contractor and are not replaced by Contractor pursuant to the third paragraph of the Article herein titled "Employment Status". Contractor further agrees that the assigned personnel will function in the capacity for which their services were acquired throughout the life of the Agreement, and any failure by Contractor to so provide these persons shall entitle the State to terminate this Agreement for cause. Contractor agrees to pay the Customer fifty percent (50%) of the total contract amount if any of the assigned personnel is removed from the project prior to the ending date of the contract for reasons other than departure from Contractor's employment or replacement by Contractor pursuant to the third paragraph of the Article herein titled "Employment Status". Subject to the State's written approval, the Contractor may substitute qualified persons in the event of the separation of the incumbents therein from employment with Contractor or for other compelling reasons that are acceptable to the State, and in such event, will be expected to assign additional staff to provide technical support to Customer within thirty calendar days or within such other mutually agreed upon period of time, or the Customer may, in its sole discretion, terminate this Agreement immediately without the necessity of providing thirty (30) days notice. The replacement personnel shall have equal or greater ability, experience and qualifications than the departing personnel, and shall be subject to the prior written approval of the Customer. The Contractor shall not permanently divert any staff member from meeting work schedules developed and approved under this Agreement unless approved in writing by the Customer. In the event of Contractor personnel loss or redirection, the services performed by the Contractor shall be uninterrupted and the Contractor shall report in required status reports its efforts and progress in finding replacements and the effect of the absence of those personnel.

#### **ARTICLE 43 CHANGE ORDER RATE AND PROCEDURE**

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

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

**43.3** With respect to any change orders issued in accordance with this Article, the Contractor shall be compensated for work performed under a change order according to the hourly change order rate specified in the attached Exhibit A. If there is a service that is not defined in the change order rate, the Contractor and the State will negotiate the rate. The Contractor agrees that this change order rate shall be a "fully loaded" rate, that is, it includes the cost of all materials, travel expenses, per diem, and all other expenses and incidentals incurred by the Contractor in the performance of the change order. The Contractor shall invoice the Customer upon acceptance



by the Customer of all work documented in the change order, and the Customer shall pay invoice amounts on the terms set forth in this Agreement.

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

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

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

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

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

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

**VENDOR NAME**

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

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

**Printed Name: David C. Johnson**

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

**Title: Executive Director**

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

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

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

## EXHIBIT A

**EXHIBIT B**  
**SERVICE CREDIT ASSESSMENT**

<b>Length of Continuous Deficiency</b>	<b>Service Credits</b>
1 to 4 hours	One day of Service Credits equal to 1/30th of Monthly Fees.
4 to 48 hours	Two days of Service Credits equal to 1/15th of Monthly Fees
48 to 96 hours	Five days of Service Credits equal to 1/6th of Monthly Fees
Each additional block of 96 hours thereafter	Additional Five days of Service Credits equal to 1/6th of Monthly Fees

**EXHIBIT C  
 SERVICE LEVEL REQUIREMENT**

<b>Severity Level</b>	<b>Description</b>	<b>Example</b>	<b>Resolution Time</b>
Level 1	Urgent System Failure/Outages - No further processing is possible	Provide M&O support deemed to be critical to problem resolution either on-site or through off-site diagnostic capabilities.	Acknowledge within one business hour of trouble ID. Resolution must not exceed two business days unless approved by the State.
Level 2	Critical - Unable to proceed with a selected function	Critical component unavailable or functionally incorrect (workaround is not available, possibly endangering the environment).	Acknowledge within one business hour of trouble ID. Resolution must not exceed three business days unless approved by the State.
Level 3	Restricted function capability but processing can continue	Non-critical component unavailable or functionally incorrect; incorrect calculation results in functionally critical key fields/dates (workaround usually is available).	Acknowledge within two business hours of Trouble ID. Resolution must not exceed five business days unless approved by State.
Level 4	Minor cosmetic change needed	Usability errors: screen or report errors that do not materially affect the quality and correctness of function, intended use, or results.	Acknowledge within four business hours of Trouble ID. Resolution must not exceed ten business days unless approved by State.
Service Requests/ Other	Provide effective troubleshooting and resolution of software-related issues from end-users.		Within four hours of receipt of the issue escalation.
	Perform ad-hoc SQL reporting upon request.		Acknowledge within 24 hours and fulfill within agreed upon time frames.
	Emergency Maintenance Documentation		Within 48 hours after resolution of emergency.