



RFP No: 4582

INVITATION: Proposals, subject to the attached conditions, will be received at this office until Friday, August 30, 2024, @ 3:00 p.m. Central Time for the acquisition of the products/services described below for the **Mississippi Department of Education**.

English Language Proficiency Testing

NOTE: THIS RFP CONTAINS MANDATORY REQUIREMENTS TO WHICH NO EXCEPTION MAY BE TAKEN. SEE SECTION VII, ITEM 2, FOR DETAILS

The Vendor must submit proposals and direct inquiries to:

Solicitations Team

Information Technology Services
3771 Eastwood Drive
Jackson, MS 39211
601-432-8000
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. 4582
Friday, August 30, 2024 @ 3:00 p.m. Central Time
ATTENTION: Solicitations Team

DocuSigned by:

A handwritten signature in black ink, appearing to read "Craig P. Orgeron", is enclosed in a blue DocuSign signature box.

F577530FD3CA425...

Craig P. Orgeron, CPM, Ph.D.
Executive Director

ITS RFP Response Checklist

RFP Response Checklist: These items should be included in your response to RFP No. 4582.

- 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* (Attachment A)
- 7) Vendor response to *Cost Information Submission* (Section VIII)
- 8) *References* (Section IX)

Table of Contents

SECTION I.....	4
SUBMISSION COVER SHEET & CONFIGURATION SUMMARY.....	4
SECTION II.....	6
PROPOSAL SUBMISSION REQUIREMENTS.....	6
SECTION III.....	9
PROPOSER INFORMATION.....	9
SECTION IV.....	13
LEGAL AND CONTRACTUAL INFORMATION.....	13
SECTION V.....	24
PROPOSAL EXCEPTIONS.....	24
SECTION VI.....	27
RFP QUESTIONNAIRE.....	27
SECTION VII.....	31
TECHNICAL SPECIFICATIONS.....	31
SECTION VIII.....	35
COST INFORMATION SUBMISSION.....	35
SECTION IX.....	39
REFERENCES.....	39
REFERENCE FORM.....	41
SUBCONTRACTOR REFERENCE FORM.....	39
EXHIBIT A.....	43
STANDARD CONTRACT.....	43

**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 that the Mississippi Department of Information Technology Services, (ITS), will contact for purposes of this RFP.

Name _____ Phone # _____
Address _____ Fax # _____
_____ Email _____

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 acknowledgment 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 with 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 _____

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 any expenses for the development or delivery of proposals. Any proposal received after the proposal response deadline 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*.
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 to 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 describing the manner and degree in 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 clearly and accurately. **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 at any time during the evaluation process. 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 evaluating 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 proposal deadline 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 the 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 the 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 will be posted on the ITS website. Vendors failing to comply with this requirement will be subject to disqualification.
- 14.1 The State's contact for the selection process is:

Solicitations Team
3771 Eastwood Drive
Jackson, MS 39211
601-432-8000
rfp@its.ms.gov
 - 14.2 Vendors may consult with State representatives as designated by the State's contact person identified in 14.1 above in response to State-initiated inquiries. Vendors may consult with State representatives during scheduled oral presentations and demonstrations, excluding site visits.

SECTION III PROPOSER 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:

<https://www.its.ms.gov/procurement/rfps-and-sole-sources>

Any and all amendments will be posted no later than noon, seven 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 page one 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 Section VII.

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 any 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 specified timeframe. 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 part of the project throughout the duration of the contract as long as the personnel is 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 where proposal costs eclipse available funding or the State believes none of the competing proposals presents the 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. However, the State reserves the right to issue BAFOs to any and all responding Vendors at any time during the RFP evaluation process. All such Vendors will be provided an equal opportunity to respond with a Best and Final Offer under a procedure 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 to improve the opportunity for attaining the Best Value scenarios from 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, 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 before the execution of the contract is done at the Vendor's sole risk. The State is under no obligation to pay for work done before 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 successfully complete a contract or agreement with ITS.

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 they take no exceptions. Vendors who respond to this RFP by signing the *Submission Cover Sheet* may not later take exception to any item in this RFP during contract negotiations. This acknowledgment 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 the 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 the 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 purchasing 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 Pursuant to Mississippi Code Annotated Section 25-53-21(e), the Executive Director of ITS may negotiate a limitation on the liability to the State of prospective contractors provided such limitations afford the State reasonable protection and the limitation is approved by the State entity for whom the acquisition is being made. A Vendor who wishes to negotiate a limitation to their liability to the State under this RFP must provide a proposed limitation of liability in their response at the time of submission for the State's consideration. However, 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 even the funding authority does not appropriate funds. Notice requirement to the Vendor cannot exceed sixty (60) days.

- 7.7 The State of Mississippi does not waive its sovereign immunities or defenses as the law provides 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 the invoice and receipt, inspection, and approval of the 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 Vendor once the Vendor's offering has been approved as the lowest and best proposal through:
- 8.1.1 Written notification made to Vendors 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 The 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, including any Amendments or Change Orders, 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 the 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, before receiving any payments from state agencies. A Vendor is not charged to enroll or receive payments via PayMode. For additional information on PayMode, including registration instructions, Vendors should visit the following website: <http://portal.paymode.com/ms/>. Vendors may also request assistance from the Mississippi Management and Reporting System (MMRS) Call Center regarding PayMode registration by contacting 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 payment methods 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 rejecting 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 before 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 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 must only negotiate with the Vendor.

16.2 Furthermore, the Vendor acknowledges and agrees to pass on all rights and/or services related to 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 payment assignment 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 to 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 the 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 is 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. Destination is the point of use.

26. **Amortization Schedule**

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

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 and has exclusive rights to use, alter, or distribute it 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 is 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 the 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 awarding 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. A copy of the Enterprise Security Policy can be found on the ITS website.

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, policies, 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 policies 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. A copy of the Enterprise Cloud and Offsite Hosting Security Policy can be found on the ITS website.

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 website at:

<https://www.its.ms.gov/sites/default/files/ProcurementPDFs/ISS%20Procurement%20Manual.pdf#page=173> 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, which has the right to reproduce or distribute them 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 a performance bond or irrevocable bank letter of credit to secure the Vendor's performance for the services provided. The performance bond or letter of credit must be procured at the Vendor's expense before the execution of the contract resulting from the RFP. **The final decision regarding 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.**

The Vendor must procure and submit to ITS, on behalf of Mississippi Department of Education, 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 Department of Education 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 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 the Vendor's performance and the performance of the products/services delivered and determine that the letter of credit/performance bond may be reduced or released prior to the expiration of the full warranty period.

39. **Responsibility for the 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 website - ITS Protest Procedure and Policy, Section 019-020, ITS Procurement Handbook at:

<https://www.its.ms.gov/sites/default/files/ProcurementPDFs/ISS%20Procurement%20Manual.pdf#page=180> 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 the RFP Number 4582.

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 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 hired to perform work within the State of Mississippi. As used herein, the “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.

The 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 indicates 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 a 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 the 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 that 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, before 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 10-digit 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 to determine 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.

If the Vendor claims 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 RFP, from the Office of the Secretary of State of the State of Mississippi demonstrating that the Vendor is in good standing to do business in Mississippi. Failure to comply with this requirement may result in the Vendor's proposal 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 the National Defense Authorization Act**
The Vendor must provide equipment that is in compliance with the National Defense Authorization Act, Section 889. (Vendor must state if they can meet this requirement.)
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 the Vendor from being considered. (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 the 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 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:

<https://www.its.ms.gov/procurement/rfps-and-sole-sources>

ITS may post clarifications until noon seven 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**

The 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

Task	Date
First Advertisement Date for RFP	07/30/2024
Second Advertisement Date for RFP	08/06/2024
Deadline for Vendor's Written Questions	3:00 p.m. Central Time on 08/13/2024
Deadline for Questions Answered and Posted to ITS Web Site	08/20/2024
Open Proposals	08/30/2024
Evaluation of Proposals	09/04/2024
ITS Board Presentation	09/19/2024
Contract Negotiation	September 2024
Proposed Project Implementation Start-up	10/01/2024
Project Go-Live Deadline	10/10/2024

2. Mandatory Provisions or Non-Mandatory Provisions in Technical Requirements for this RFP

- 2.1 Certain items in this RFP's technical specifications are **MANDATORY**. Vendors are specifically disallowed from taking exception to these mandatory requirements, and proposals that do not meet a mandatory requirement is subject to immediate disqualification.
- 2.2 Mandatory requirements are those features classified as **MANDATORY** in the RFP and Attachment A documents. Meeting a mandatory requirement means the Vendor has provided a detailed response demonstrating that the Vendor meets the qualifications and experience required and/or the requested functionality exists in the base solution at the time of proposal submission.

3. Statement of Understanding

- 3.1 Vendors may request additional information or clarifications to this RFP using the following procedure:
 - 3.1.1 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.

Question	RFP Item	RFP Page	Vendor Question
1)			
2)			
3)			
4)			
5)			

3.1.2 Vendor must deliver a written document to the Solicitations Team at RFP@its.ms.gov by Tuesday, August 13, 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.** The Vendor is solely responsible for the clarification document reaching ITS on time. Vendors may contact ITS at rfp@its.ms.gov to verify the receipt of their document. Documents received after the deadline will be rejected.

3.2 All questions will be compiled and answered, and a written document containing all questions submitted and corresponding answers will be posted on the ITS website by the close of business on Tuesday, August 20, 2024.

3.3 When the RFP uses the term State, it refers to staff from ITS, MDE, and any other authorized State employee or agent.

4. **Functional and Technical Requirements**

4.1 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. 4582, and the link to it is located directly beneath the link to this RFP No. 4582.

5. **Scoring Methodology**

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

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

5.1.2 The sum of all categories equals 100 possible points.

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

Category	Possible Points
Non-Cost Categories:	
Functional Requirements	35
Support and Training	20
Management Factors	5
Total Non-Cost Points	65
Cost Categories:	
Lifecycle Cost	35
Total Cost Points	35
Maximum Possible Points	100

5.2 The evaluation will be conducted as follows:

5.2.1 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 including, but not limited to, content, organization/format, Vendor experience, mandatory requirements (if applicable), bond requirement (if applicable), timely delivery, and must be considered in competitive range (as detailed in the ITS Procurement Handbook). No evaluation points will be awarded at this stage. Failure to submit a complete proposal may result in rejection of the proposal.

5.2.2 Non-cost Evaluation (all requirements excluding cost)

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

Non-Cost Categories	Possible Points
Functional Requirements	35
Support and Training	20
Management Factors	5
Maximum Possible Points	65

5.2.2.2 Proposals receiving fewer than 80% of the total points allocated for the non-cost categories will be eliminated from further consideration.

5.2.3 Cost Evaluation

5.2.3.1 Points will be assigned using the following formula:

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

Where:

A = Total lifecycle cost of the lowest valid proposal

B = Total lifecycle cost of the proposal being scored

n = Maximum number of points allocated to cost for acquisition

5.2.3.2 Cost categories and maximum point values are as follows:

Cost Category	Possible Points
Lifecycle Cost	35
Maximum Possible Points	35

5.2.4 Demonstrations and Interviews

5.2.4.1 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.

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

5.2.4.3 Proposed key team members must be present at any demonstration. The evaluation team reserves the right to interview the proposed key team members during any presentations or demonstrations.

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

5.2.5 Site Visits

5.2.5.1 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. The Vendor must list potential reference sites in the proposal.

5.3 5.3 Final Quantitative Evaluation - Following any requested clarifications, BAFOs, presentations, demonstrations, and/or site visits, the Evaluation Team will re-evaluate 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 summarize all applicable project costs in the following matrix. The matrix must 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 in this section, even if 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.

Worksheet Instructions:

Enter the total price, by period, for the specific line items detailed in the worksheet. Note that the blue lines are total lines. Enter data in each period indicated in the headings. For the initial development period, be sure to split the prices between initial development and transition-related activities.

If there are prices for activities not detailed in the worksheet but requested in the RFP Technical Specifications, enter these prices within the appropriate category in the item “Other-Explain.” In these instances, enter the name of the activity and a brief explanation for that line item in the explanatory notes section at the end of the row.

Additionally, if there are transition-specific costs/prices, enter them in the appropriate category in the item “Transition-Related Activities.” Also enter a brief explanation of these items in the explanatory notes section at the end of the row. Vendors can submitted separate narratives to offer more descriptive explanations, if necessary.

	Year 1	Years 2 through 5						
	2024-2025 Operational Activities	Year 2 - 2025/2026	Year 3 - 2026/2027	Year 4 - 2027/2028	Year 5 - 2028/2029	Transition Activities	Total Costs	Explanatory Notes
Development	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Per Student Fees for assessments	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Regular Assessments (if not per student)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
SCD Assessments	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Other – Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Other – Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Other – Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	

Ancillary Development	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Assessment Support Materials (TCM, TAM)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Modified Ancillaries for Special Populations	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Large Print/Braille - Composition & Printing	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Large Print/Braille - Additional Scoring	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Online Braille Options	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Screener Placement Tests	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Online Testing Training/Modules/Videos	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Program Management	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Program Director	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Program/Project Manager	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Program Admin/Coordinator	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Customer Service Support Line	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Web/Email Support Line	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transition Related Activities	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Information Technology	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Online Order and Inventory System	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
SSID File Linkage (Pre-ID)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Rostering	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transition Related Activities	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Psychometrics	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Linking Studies	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
3rd Party Alignment Study	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Technical Reports	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Standard Setting Activities (if needed)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Quality Assurance	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
QA eTesting	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
General QA Testing	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Test Delivery System	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Set-up Costs of platform	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Annual Fixed Costs	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Online Test Security	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Production_Mfg_Dist	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Paper Based Forms Inventory	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Warehouse/Distribution	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Receiving/Scanning/Editing	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Receiving/Staging	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Scanning	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Reporting	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Student Label Printing & Delivery	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
On-line Reporting	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Interpretive Guides	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Translated Reports	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
MDE Summary Reports	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Travel and Meetings	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Program Management Travel	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Annual Planning Meeting (may be virtual)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Trainings - Online Systems	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Professional Development Training	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Technical Advisory Meeting (if needed)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Technology Training	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Grand Total -	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Options	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other - Explain	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Grand Total with Options	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

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 evaluating 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 before 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 company name, telephone number, contact person, type of work the 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 in the References section may be met through a combination of Vendor and subcontractor references and experience. The Vendor's proposal should clearly indicate any mandatory experience requirements met by subcontractors. NOTE: The State reserves the right to eliminate proposals from further consideration 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.)

REFERENCE FORM

COMPLETE THREE (3) REFERENCE FORMS.

Contact Name:
Company Name:
Address:
Phone #:
E-Mail:
Project Start Date:
Project End Date:

Description of product/services/project, including start and end dates:

--

SUBCONTRACTOR REFERENCE FORM

COMPLETE THREE (3) REFERENCE FORMS FOR EACH SUBCONTRACTOR.

Contact Name:

Company Name:

Address:

Phone #:

E-Mail:

Project Start Date:

Project End Date:

Description of product/services/project, including start and end dates:

**EXHIBIT A
STANDARD CONTRACT**

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

**PROJECT NUMBER 47967
SOFTWARE LICENSE AND APPLICATION SERVICE PROVIDER AGREEMENT
BETWEEN
VENDOR
AND
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES
AS CONTRACTING AGENT FOR THE
MISSISSIPPOPI DEPARTMENT OF EDUCATION**

This Software License and Application Service Provider Agreement (hereinafter referred to as "Agreement") is entered into by and between **VENDOR**, a **STATE OF INCORPORATION** corporation having its principal place of business at **VENDOR ADDRESS** (hereinafter referred to as "Licensor"), and Mississippi Department of Information Technology Services having its principal place of business at 3771 Eastwood Drive, Jackson, Mississippi 39211 (hereinafter referred to as "ITS"), as contracting agent for the Mississippi Department of Education, located at 359 North West Street, Jackson, Mississippi 39201 (hereinafter referred to as "Licensee" and/or "MDE"). ITS and MDE are sometimes collectively referred to herein as "State". ITS, Licensor, and Licensee are sometimes collectively referred to herein as "Parties".

WHEREAS, ITS, on behalf of MDE and pursuant to Request for Proposals (hereinafter referred to as "RFP") Number 4582 requested proposals for the services of a contractor to host and maintain an Application Service Provider ("ASP") solution for a English Language Proficiency Testing (ELPT) System; and

WHEREAS, Licensor was the successful proposer in an open, fair, and competitive procurement process to provide the software and services described herein;

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

ARTICLE 1 DEFINITIONS

1.1 "Active User" means MDE employees, and users actively participating on the system in any given month of operation, who shall be bound to the terms and conditions of this Agreement. Licensor does not impose a limit on the number of Active Users accessing or registering to use the system.

1.2 "Available Date" means the date upon which Licensor notifies MDE that the Software may be accessed on the Licensor's ASP server and MDE may begin acceptance testing.

1.3 “Content” means any content provided by or through Active Users for use with the Software.

1.4 “Documentation” means the published user and technical manuals and documentation that Licensor makes generally available for the Software; the help files included within the Software, and any files containing presentation materials or manuals or other related materials to train and educate Licensee and the Active Users on the use of the Software.

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

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

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

1.8 “Products” means the Software, Documentation, Corrections, Enhancements and any copy of the Software, Documentation, Corrections, or Enhancements provided by the Licensor.

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

1.10 “Software” means the machine-readable object code version of the computer programs whether embedded on disc, tape or other media used for the management of the web-based English Language Proficiency Testing (ELPT) System and Supported Interfaces (and any Documentation and help files within the Software), including any Enhancements provided pursuant to the maintenance and support terms identified herein.

1.11 “Software Error” means a reproducible defect or combination thereof in the Software that results in a failure of the Software when used in accordance with the Documentation. Software Errors do not include those errors caused by (a) Licensee’s negligence, (b) any unauthorized modification or alteration Licensee makes to the Software, (c) data that does not conform to Licensor’s specified data format, (d) operator error, or (e) use not conforming to the Licensor’s supported technical environment specified in the Documentation.

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

ARTICLE 2 PERIOD OF PERFORMANCE

2.1 Unless this Agreement is extended by mutual agreement or terminated as prescribed elsewhere herein, this Agreement shall begin on the date it is signed by all parties and shall continue in effect until the Licensor completes all tasks required herein pursuant to the project work plan, including services during the five (5) year hosting term. The web-based English Language Proficiency Testing (ELPT) system, as customized for the State of Mississippi, must be implemented; fully functional; accepted by MDE, and all tasks (excluding hosting) required herein, including but not limited to development of required interfaces and training, completed no later than four (4) weeks before testing, unless a change in this date is mutually agreed to in writing by the State and the Licensor. At the end of the five (5) year initial ASP services term, the

ASP services may, upon the written agreement of the parties, be renewed under the same terms and conditions for additional terms. One hundred and eighty (180) days prior to the expiration of the initial hosting term or any renewal hosting term of this Agreement, Licensor shall notify MDE and ITS of the impending expiration and MDE shall have sixty (60) days in which to notify Licensor of its intention to either renew or cancel the ASP services.

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

ARTICLE 3 SCOPE OF SERVICES

3.1 The Licensor agrees to provide to MDE an ASP based English Language Proficiency Testing (ELPT) system and Services and associated deliverables required to provide, host, and maintain a web-based application for MDE as described in this Agreement. While the scope of work for this project is defined by the contract documents set forth herein in the article titled "Entire Agreement", a summary of such work is outlined in Article 3.5 below.

3.2 The Licensor acknowledges that MDE intends to be actively involved in the day-to-day progress of the project. The Licensor agrees to (a) obtain MDE's approval of all tasks and the time schedule for completion of said tasks prior to commencing performance, if not already contained in the approved project work plan; (b) make available to the State project team members all project work papers and work-in-progress for review; (c) ensure that the Licensor Project Manager works closely together with the State Project Manager, (d) provide MDE access to the host website; (e) meet with MDE on a regular basis at a mutually agreeable time, and as otherwise requested by MDE, to discuss the status of the project, and (f) if required by MDE, submit written project status reports.

3.3 The parties understand and agree that the project shall be structured with interim deliverables as set forth in the agreed upon project work plan so as to allow MDE an opportunity to accept or reject the deliverables, including but not limited to, specifications, requirement definitions, process designs, data analyses, web layouts, screen layouts, and report layouts. The actual customizations shall not begin until after MDE has communicated its conceptual approval of the results the Licensor plans to provide. MDE shall have ten (10) business days to review interim materials, which review period can only be reduced by mutual agreement of the Licensor and MDE.

3.4 It is understood by the parties that the project work plan must be in place within fifteen (15) business days of execution of this Agreement and prior to any other work being performed. Once this mutually agreed upon project work plan, which will identify specific time frames and deliverable target dates for this project, has been developed, it will be incorporated into and made a part of this Agreement. The dates in the project work plan will define the agreed upon period of performance. The parties acknowledge that the project work plan will evolve and change from time to time upon the mutual written agreement of both parties. The parties agree that the deliverables and schedule set forth in the latest version of the project work plan will take precedence over any prior plans.

3.5 Licensor shall be responsible for the following:

- A.** Ensuring that all deliverables are complete and accepted by MDE pursuant to the mutually agreed upon project work plan;

- B.** Ensuring that the host site complies with PriorityOne of the World Wide Web Consortium's (W3C's) Web Accessibility Initiative and guidelines in Section 508 of the Rehabilitation Act that are not covered in W3C Priority;
- C.** Ensuring that the site is accessible through MDE's published universal resource locator ("URL") rather than through Licensor's site address;
- D.** Reviewing with MDE the Content a minimum of once a quarter to ensure that the Content remains timely and accurate and reaching an agreement with MDE as to reasonable timelines for implementing Content updates delivered to the Licensor that will be posted on the site;
- E.** Tracking date sensitive items to ensure timely updates;
- F.** All Content provided by the Licensee and collected by the Software shall remain the sole and exclusive property of the Licensee. Upon the termination or expiration of this Agreement, Licensor shall provide such Content in its possession to the Licensee pursuant to a mutually agreed upon release schedule;
- G.** Working with MDE to achieve access rates that meet MDE's needs;
- H.** Providing security for the host site that is agreeable to MDE with Licensor responsible for all necessary equipment and software related to security;
- I.** Maintaining the accessibility of the site twenty-four (24) hours a day, seven (7) days a week at an uptime rate of 99% or greater, subject to the limitations set forth in this Agreement, including but not limited to, those in Article 4.4;
- J.** Completing daily backups of the site;
- K.** Notifying MDE at least three (3) business days prior to any anticipated service interruption, with said notice containing a general description of the reason for the service interruption;
- L.** Proposing and adhering to a disaster recovery plan and providing access to such plan to the State, all at Licensor's expense;
- M.** Participating with MDE in disaster recovery planning and testing based on a mutually agreed upon schedule;
- N.** Maintaining the confidentiality of the data entered;
- O.** Providing MDE access to all of the technical information concerning operation of the site, including but not limited to, server specifications, Internet connection information, personnel requirements, and software implementations;
- P.** Identifying any commercially available software, by vendor and version number, integrated into the Products and describing the particular functionality of any software that is proprietary to the Licensor;
- Q.** Maintaining the host site, with the cost for such support, maintenance, and hosting for years following the initial five (5) year period not increasing annually beyond five percent (5%) or the percent increase in the consumer price index for all Urban Consumers, US City Average (C.P.I.-U) for the preceding year, whichever is less;
- R.** Providing 24x7x365 support of the web site, including sub-domain support;
- S.** Providing redundant internet connections;
- T.** Providing Dual T1 or greater connectivity;
- U.** Providing FTP and remote configuration access;
- V.** Providing SSL secure server support;
- W.** Providing monthly reports containing line utilization, site availability statistics, network usage, security user access reports and system performance data to MDE;
- X.** Maintaining sufficient bandwidth and server capacity to meet MDE and Active Users' demand as it may fluctuate and increase during the term of this Agreement, and
- Y.** Ensuring that upon termination or expiration of this Agreement that transition of the site from the Licensor to MDE or to a successor host will be accomplished at no expense to

MDE, and with minimal interruption of the site's accessibility and insignificant changes in the site's appearance and functionality.

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

ARTICLE 4 SCOPE OF LICENSE AND HOSTING SERVICES

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

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

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

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

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

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

4.7 Licensor acknowledges that the Content is and shall remain the sole and exclusive property of Licensee. Further, Licensor acknowledges that the Content may contain valuable trade secrets of Licensee and Licensor agrees to maintain the confidentiality of the Content and shall not make the Content publicly available except as may be necessary in performing the ASP Services.

4.8 Licensee acknowledges that the Software Products shall remain the exclusive property of Licensor. Licensee agrees that except as noted herein, it will not otherwise copy, translate, modify, adapt, decompile, disassemble, or reverse engineer any of the Software without the prior written consent of Licensor.

ARTICLE 5 DELIVERY; RISK OF LOSS, AND ACCEPTANCE

5.1 Licensor shall deliver, install, and make available the Software and Documentation to the Licensor's hosting environment, except as otherwise specified, and pursuant to the delivery schedule mutually agreed to by the parties.

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

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

ARTICLE 6 CONSIDERATION AND METHOD OF PAYMENT

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

6.2 Licensor shall submit invoices with the appropriate documentation to MDE monthly for any month in which ASP services and/or other Services are rendered. Licensor shall submit invoices and supporting documentation to MDE electronically during the term of this Agreement using the processes and procedures identified by the State. MDE 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 MDE within forty-five (45) days of receipt of the invoice. Licensor understands and agrees that MDE is exempt from the payment of taxes. All payments shall be in United States currency. Payments by state agencies using Mississippi's Accountability System for Government Information and Collaboration (MAGIC) shall be made and remittance information provided electronically as directed by the State. The payments by these agencies shall be deposited into the bank account of the Licensor's choice. No payment, including final payment, shall be construed as acceptance of defective products or incomplete work, and the Licensor shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the article herein titled "Entire Agreement."

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

ARTICLE 7 WARRANTY

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

7.2 Licensor represents and warrants that the Products provided by Licensor shall meet or exceed the minimum specifications set forth in RFP No. 4582 and Licensor's Proposal, as accepted by the State, in response thereto.

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

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

7.5 Licensor represents and warrants that neither the Software, nor Enhancements shall contain a disabling code, lockup program or device. Licensor further agrees that it will not, under any circumstances including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Licensee's licensed use of the Software, or Enhancements and/or which would restrict Licensee from accessing its data files or in any way interfere with the transaction of Licensee's business. For any breach of this warranty, Licensor at its expense shall, within ten (10) business days after receipt of notification of the breach, deliver Products to Licensee that are free of such disabling code, lockup program or device.

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

7.7 The Licensor represents and warrants that, upon completion of the project, the Licensor, and all subcontractors, if any, shall convey to MDE copies of all interim reports, cost records, data collection forms, and any working papers that support the final acceptance.

7.8 Licensor represents and warrants that it has obtained all necessary rights to permit use of the graphics on the site and that the Licensor shall provide MDE with evidentiary proof of graphic licenses and releases. Further, the Licensor represents and warrants that all Licensor-supplied graphics and content contains no scandalous or libelous material.

7.9 The Licensor represents and warrants that the deliverables provided to MDE under this Agreement, and their use by Active Users, will not infringe or constitute an infringement of any copyright, patent, trademark, servicemark, trade secret or other proprietary right of any person or entity. Licensee agrees that it will promptly notify Licensor in writing of any such claim or action of which it has knowledge, and that it will cooperate fully in the defense and investigation of the claim by supplying Licensor all relevant information currently available and in its possession, all at Licensor's expense. Licensor shall, to the extent authorized by Mississippi law, have sole control over the defense or settlement of any such claim or action. Licensor, at its own expense, shall defend or settle any and all infringement actions filed against Licensor or the State which involve the deliverables or other items provided under this Agreement and shall pay all settlements, as well as all costs, attorney fees, damages and judgment finally awarded against the State. If, in any such suit arising from such claim, the continued use of the items for the purpose intended is enjoined or threatened to be enjoined by any court of competent jurisdiction, Licensor shall, at its expense: (a) procure for the State the right to continue using such items, or (b) modify or replace them with non-infringing items with equivalent functionality, or, to the extent (a) or (b) cannot be done despite Licensor's commercially reasonable efforts, (c) refund to the State the fees previously paid by the State for the infringing Products. Said refund shall be paid within ten (10) business days of notice to the State to discontinue said use. In addition to the foregoing, the Licensor shall indemnify the State in accordance with the provisions of Article 18 herein.

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

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

7.12 Licensor 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 Licensor to the consequences set forth under Miss. Code Ann § 71-11-3.

7.13 Licensor represents and warrants that the system provided pursuant to this Agreement will pass both internal security audits and independent security audits. For any breach of the preceding warranty at any time during which the system is covered by warranty and/or software

support, Licensor shall, at its own expense and at no cost to Licensee, remediate any defect, anomaly, or security vulnerability in the system by repairing and/or replacing any and all components of the system necessary in order for the system to be secure.

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

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

ARTICLE 8 EMPLOYMENT STATUS

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

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

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

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

ARTICLE 9 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS

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

ARTICLE 10 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 11 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS

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

11.2 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.

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

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

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

ARTICLE 12 AVAILABILITY OF FUNDS

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

ARTICLE 13 TERMINATION

13.1 Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be terminated, in whole or in part, as follows: (a) upon the mutual, written agreement of the parties; (b) If either party fails to comply with the terms of this Agreement, the non-defaulting party may terminate the Agreement upon the giving of thirty (30) calendar days written notice unless the breach is cured within said thirty (30) day period; (c) MDE may terminate the Agreement in whole or in part without the assessment of any penalties upon ten (10) calendar days written notice to Licensor if Licensor becomes the subject of bankruptcy, reorganization, liquidation or receivership proceedings, whether voluntary or involuntary, or (d) MDE may terminate this Agreement in whole or in part for any reason without the assessment of any penalties after giving thirty (30) calendar days written notice specifying the effective date thereof to Licensor. The provisions of this Article 13 do not limit either party's right to pursue any other remedy available at law or in equity.

13.2 In the event MDE terminates this Agreement, Licensor shall receive just and equitable compensation for Services rendered by Licensor and accepted by MDE prior to the termination. Further, upon termination of this Agreement, Licensor shall refund any and all applicable unexpended prorated annual ASP fees previously paid by Licensee.

13.3 In the event that this Agreement's Scope of Services requires customization and/or implementation of software for which Licensee is required to pay a license fee upon execution of this Agreement, and if Licensor fails to complete said customization and/or implementation as required thereby precluding Licensee's use of the subject software, Licensor shall refund in full the price paid by Licensee to Licensor upon termination of this Agreement.

ARTICLE 14 GOVERNING LAW

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

ARTICLE 15 WAIVER

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Agreement. A waiver by either party, to be effective, must be in

writing, must set out the specifics of what is being waived, and must be signed by an authorized representative of that party.

ARTICLE 16 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 17 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 18 HOLD HARMLESS

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

ARTICLE 19 THIRD PARTY ACTION NOTIFICATION

Licensor shall notify MDE in writing within five (5) business days of Licensor filing bankruptcy, reorganization, liquidation, or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Licensor or MDE by any entity that may result in litigation related in any way to this Agreement and/or which may affect the Licensor's performance under this Agreement. Failure of the Licensor to provide such written notice to MDE shall be considered a material breach of this Agreement and MDE 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 20 AUTHORITY TO CONTRACT

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

ARTICLE 21 NOTICE

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their business address listed herein. ITS' address for notice is: Craig P. Orgeron, CPM, Ph.D., Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. Mississippi Department of Education's address for notice is: Sharon Prestridge, ELPT Coordinator, Mississippi Department of Education, 359 North West Street, Jackson, Mississippi 39201. The Licensor's address for notice is: **VENDOR NOTICE**

INFORMATION. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

ARTICLE 22 RECORD RETENTION AND ACCESS TO RECORDS

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

ARTICLE 23 INSURANCE

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

ARTICLE 24 DISPUTES

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

ARTICLE 25 COMPLIANCE WITH LAWS

25.1 Licensor shall comply with, and all activities under this Agreement shall be subject to, all Licensee policies and procedures which Licensor has received copies of, and all applicable federal, state, and local laws, regulations, policies, and procedures as now existing and as may be amended or modified. Specifically, but not limited to, Licensor shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of this Agreement because of race, creed, color, sex, age, national origin, or disability. Further, if applicable, Licensor shall comply with the provisions of the Davis-Bacon Act including, but not limited to, the wages, recordkeeping, reporting, and notice requirements set forth therein.

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

ARTICLE 26 CONFLICT OF INTEREST

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

ARTICLE 27 SOVEREIGN IMMUNITY

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

ARTICLE 28 CONFIDENTIAL INFORMATION

28.1 Licensor shall treat all Licensee data and information to which it has access by its performance under this Agreement as confidential and shall not disclose such data or information to a third party without specific written consent of Licensee. In the event that Licensor receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a validly issued judicial order requiring divulgence of such information, Licensor shall promptly inform Licensee and thereafter respond in conformity with such court order to the extent mandated by state and/or federal laws, rules, and regulations. This Article shall survive the termination or completion of this Agreement and shall continue in full force and effect and shall be binding upon the Licensor and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in this Agreement on behalf of, or under the rights of the Licensor following any termination or completion of this Agreement.

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

28.3 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 29 EFFECT OF SIGNATURE

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

ARTICLE 30 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS

All Content collected by the Software shall be the property of Licensee. Licensor may use the Content only in the performance of this Agreement, unless otherwise agreed upon between the parties. Licensee acknowledges that the Products shall remain the exclusive property of Licensor and are excluded from this Article.

ARTICLE 31 NON-SOLICITATION OF EMPLOYEES

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

agreement between these two entities is not a violation of the laws of the State of Mississippi or the federal government.

ARTICLE 32 ENTIRE AGREEMENT

32.1 This contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings, and agreements, written or oral, between the parties relating thereto, including all terms of any “shrink-wrap”, “click-wrap” or “browse-wrap” license of the Software. The RFP No. 4582, and Licensor’s Proposal, as accepted by the State, in response thereto are hereby incorporated into and made a part of this Agreement.

32.2 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. 4582 and written addenda, and
- D. Licensor’s Proposal, as accepted by the State, in response to RFP No 4582.

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

ARTICLE 33 STATE PROPERTY

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

ARTICLE 34 SURVIVAL

Articles 7, 14, 18, 22, 27, 28, 30, 31, 32, 38, 39, 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 35 DEBARMENT AND SUSPENSION CERTIFICATION

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

trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

ARTICLE 36 SPECIAL TERMS AND CONDITIONS

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

ARTICLE 37 STATUTORY AUTHORITY

By virtue of Section 25-53-21 of the Mississippi Code Annotated, as amended, the executive director of ITS is the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of information technology equipment, software, and services. The parties understand and agree that ITS as contracting agent is not responsible or liable for the performance or non-performance of any of the Licensee's or Licensor's contractual obligations, financial or otherwise, contained within this Agreement. The parties further acknowledge that ITS is not responsible for ensuring compliance with any guidelines, conditions, or requirements mandated by Licensee's funding source.

ARTICLE 38 COMPLIANCE WITH ENTERPRISE SECURITY POLICY

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

ARTICLE 39 COMPLIANCE WITH ENTERPRISE CLOUD AND OFFSITE HOSTING SECURITY

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

ARTICLE 40 SOFTWARE SUPPORT AND MAINTENANCE

40.1 As part of the Software support and maintenance services, Licensor will maintain the Products in an operable condition according to the specifications contained in the technical manuals and as outlined in the Licensor's Proposal in response thereto. Licensor shall provide Licensee with Enhancements to the Software as they are made generally available from time to time. Notwithstanding any other provisions of this Agreement, Licensor shall provide support only with respect to the then-current generally available version of the Software.

40.2 Licensor shall provide unlimited email and toll-free telephone technical support in the operation of the Software Products twenty-four (24) hours a day, seven (7) days a week. Licensor shall respond by telephone within one (1) hour to requests for support services. Licensor shall

also provide a Help Desk and Technical Support Desk that will respond to e-mail or telephone queries from teachers and administrators, depending on the area of inquiry. The hours of operation must be 7:00 a.m. – 5:00 p.m. Central Time (CT) on Monday-Friday during the operational test dates. Vendors must respond to queries within one (1) business day or less. Licensee shall be given priority placement in the support queue for all system locking situations or problems claimed by Licensee to be a mission critical process. Upon receipt of Licensee's call, Licensor will (a) create an error report, (b) assign a severity level and (c) attempt to resolve the Software problem in accordance with the procedures and processes for problem resolution detailed below. It is understood by the parties that the Licensee and Licensor must mutually agree on whether an error is classified as a Severity Level 1, 2, or 3 error.

40.3 Severity Level 1 implies that the Software is not functioning. Some examples of Severity Level 1 Software problems are as follows: (a) Software is down and will not restart; (b) Software is not able to communicate with external systems; and (c) Software is generating a data corruption condition. Licensor shall resolve Severity Level 1 Software Errors within one (1) business day, or within a mutually agreed upon time frame. When a Severity Level 1 Software Error is reported, Licensor will assign resources necessary to correct the Software Error. If access to the Software is required, Licensee will provide a contact available to Licensor and access to Licensee's system and other software for the duration of the error correction procedures.

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

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

ARTICLE 41 FORCE MAJEURE

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

ARTICLE 42 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.ms.gov/>

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 Licensor except by the express written approval of the State. The Licensor shall be obligated to perform all changes requested by the Licensee, which have no price or schedule effect.

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

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

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 Licensor to complete the work required by that change order. The project work plan will be revised as necessary.

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

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

ARTICLE 44 LIQUIDATED DAMAGES

44.1 The Parties recognize the importance of a timely and accurate assessment system for the MDE, districts, schools, students, and parents of students. The Parties further agree that if

nonperformance were to occur, it would be difficult to determine damages. Based on what the Parties presently know, the Parties agree that the amount of liquidated damages as set forth below are fair and reasonable and would not act as a penalty to the breaching party. MDE shall notify Licensor in writing of any claim for liquidated damages.

44.2 Parties agree to the following liquidated damages for Licensor’s nonperformance:

- a. Interrupted or slowed test administration such as issues pertaining to outages and/or slowed responsiveness shall be assessed liquidated damages in an amount up to or equal to \$10,000 per day not to exceed 7% total value of the contract for the fiscal year in which the nonperformance occurs.
- b. Test content during administration such as issues with item rendering, item versioning, item selection/ordering shall be assessed liquidated damages in an amount up to or equal to \$5,000 per day not to exceed 5% total value of the contract for the fiscal year in which the nonperformance occurs.
- c. Test security such as unauthorized access and/or unauthorized exposure to assessment content shall be assessed liquidated damages in an amount up to or equal to 5% total value of the contract for the fiscal year in which the nonperformance occurs.
- d. Data privacy and/or security such as unauthorized access and/or unauthorized exposure of personal identifiable information of student, teacher, the MDE staff, or other individuals shall be assessed liquidated damages in an amount up to or equal to 5% total value of the contract for the fiscal year in which the nonperformance occurs.
- e. Unrecoverable data loss and/or corruption such as orphaned data, missing data and/or mis-linked data shall be assessed liquidated damages in an amount up to or equal to 7% total value of the contract for the fiscal year in which the nonperformance occurs.
- f. Score validity (after reports are released) such as inaccurate item scores, inaccurate scale scores, and/or inaccurate performance levels shall be assessed liquidated damages in an amount up to or equal to 7% total value of the contract for the fiscal year in which the nonperformance occurs.

44.3 The “Deliverables” pursuant to the table below shall be subject to liquidated damages of \$10,000 per day per Deliverable if the Licensor fails to provide the deliverable by the deliverable date. If the MDE requests changes to the following deliverables that cause delays, the Licensor shall be held harmless from the liquidated damages.

Deliverable	Deliverable Date
First planning meeting	On or before July 15th each year
Online system permission hierarchy for Mississippi districts	On or before July 15 th each year
ELPT/AELPT Administration Training PPT planning	On or before November 20th each year

Provide student pre-id data upload file layout <u>and</u> final master results file layout to the MDE	On or before November 20th each year
Vendor will host Technology Setup Webinar for all Mississippi districts	On or before January 15 th each year
MDE to review and finalize manuals for online and paper testing	December /January each year
Training Sessions for the ELPT/AELPT Annual Administration	On or before January 30 th each year
District deadline to order large print/braille ELPT/AELPT	On or before February 1, each year
ELPT/AELPT test window	March 3, 2025 – April 16, 2025
MDE review of master data file	Mid-May each year
Webinar: Accessing and Reading Student Reports	Mid-June each year
Student results available to DTCs and STCs	Mid-June each year
Final invoice sent to MDE by 12:00 p.m. CT/CST	No later than June 30th each year

44.4 To the extent that Licensor’s nonperformance is excused, liquidated damages shall not be assessed.

44.5 To the extent that failure to timely and correctly complete a key deliverable is caused by or would not have occurred but for acts or failures to act by the State, the MDE, Local Education Agency, or by actions of a third party outside the control of the parties, liquidated damages shall not be assessed.

44.6 In the event of complete failure of performance, the liquidated damages provisions shall not apply and MDE may pursue any other legal or equitable remedies available to it.

ARTICLE 45 PERFORMANCE BOND

As a condition precedent to the formation of this Agreement, the Licensor must provide a performance bond as herein described. To secure the Licensor’s performance, the Licensor 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 Licensor 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 Licensor’s

performance and performance of the products/services delivered and determine that the Licensor's performance bond may be reduced or released prior to expiration of the full warranty period. The performance bond shall be procured at Licensor's expense and be paid by Licensor. Prior to approval of the performance bond, the State reserves the right to review the bond and require Licensor to substitute an acceptable bond in such form as the State may reasonably require. The premiums on such bond shall be paid by Licensor. 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 Licensor's failure to comply with the terms thereof, Licensee may claim against the performance bond.

ARTICLE 46 PERSONNEL ASSIGNMENT GUARANTEE

Licensor 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 Licensor and are not replaced by Licensor pursuant to the third paragraph of the Article herein titled "Employment Status". Licensor 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 Licensor to so provide these persons shall entitle the State to terminate this Agreement for cause. Licensor agrees to pay the Licensee 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 Licensor's employment or replacement by Licensor pursuant to the third paragraph of the Article herein titled "Employment Status". Subject to the State's written approval, the Licensor may substitute qualified persons in the event of the separation of the incumbents therein from employment with Licensor 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 Licensee within thirty calendar days or within such other mutually agreed upon period of time, or the Licensee 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 Licensee. The Licensor shall not permanently divert any staff member from meeting work schedules developed and approved under this Agreement unless approved in writing by the Licensee. In the event of Licensor personnel loss or redirection, the services performed by the Licensor shall be uninterrupted and the Licensor shall report in required status reports its efforts and progress in finding replacements and the effect of the absence of those personnel.

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

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

Vendor

By: _____

By: _____

Authorized Signature

Authorized Signature

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

Printed Name: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____

EXHIBIT A

EXHIBIT B

Annual Deliverables

Annual Deliverable	Annual Deliverable Date
Non-secure materials in the District (e.g., TAM & Teacher Guides	No later than four (4) weeks before testing
Secure materials in the District	No later than four (4) weeks before testing
Online tutorials available for District use	No later than eight (8) weeks before testing
Online test delivery system demonstration	No later than four (4) weeks before testing
Online test delivery system available for District installation/download	No later than four (4) weeks before testing
Test forms loaded in online test delivery system and online test delivery system ready for testing	No later than four (4) weeks before testing
Reporting: Individual Student-Level Files posted	Annually, no later than the last Wednesday in June (4:00 p.m. CT)
Reporting: Individual Student-Level File Electronic Reports posted	Annually, no later than the last Wednesday in June (4:00 p.m. CT)
Reporting: State-level Master File(s) posted	Annually, no later than the last Wednesday in June (4:00 p.m. CT)
Reporting: District-level File(s) posted	Annually, no later than the last Wednesday in June (4:00 p.m. CT)
Reporting: District-level Electronic Reports posted	Annually, no later than the last Wednesday in June (4:00 p.m. CT)
Reporting: School-level File(s) posted	Annually, no later than the last Wednesday in June (4:00 p.m. CT)
Reporting: School Electronic Reports posted	Annually, no later than the last Wednesday in June (4:00 p.m. CT)
Student Cumulative Record Label	Annually, no later than the last Wednesday in June (4:00 p.m. CT)
Technical Report (Mississippi specific) – final version to MDE	No later than October 30 annually.