



RFP No: 4585

INVITATION: Proposals, subject to the attached conditions, will be received at this office until Thursday, November 07, 2024 @ 3:00 p.m. Central Time for the acquisition of the products/services described below for the **Mississippi Secretary of State's Office**.

Business Operations and Filing System

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. 4585
Thursday, November 07, 2024 @ 3:00 p.m. Central Time
ATTENTION: Solicitations Team

A handwritten signature in black ink, appearing to read "C. Orgeron", is written over a horizontal line.

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. 4585.

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

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

Provide the following information regarding the person responsible for the completion of your proposal. This person will 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 of the products/services included in this proposal.

Original Signature of Officer in Bind of Company Date _____

Name (typed or printed) _____
Title _____
Company name _____
Physical address _____

State of Incorporation _____

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 delivery of proposals. Any proposal received after the proposal response deadline will be returned unopened. Any proposal received with insufficient postage will be returned unopened.
4. Proposals or alterations by fax, e-mail, or phone will not be accepted.
5. Original signatures in blue ink are required on the *Submission Cover Sheet and Configuration Summary*. The Vendor must include the Proposal Bond within the proposal package (if explicitly required in Section IV).
6. ITS reserves the right to reject any proposals, including those with exceptions, prior to and at any 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 re-key any of the original text of this RFP. If the State determines that the Vendor has altered any language in the original RFP, the State may, in its sole discretion, disqualify the Vendor from further consideration. The RFP issued by ITS is the official version and will supersede any conflicting RFP language submitted by the Vendor.
9. The Vendor must conform to the following standards in the preparation of the Vendor's proposal:
 - 9.1 The Vendor is required to submit one response of the complete proposal, including all sections and exhibits, on a USB flash drive. Vendor's documents must be submitted in Microsoft Office 2010 or higher format and/or PDF format, as appropriate. If PDF format is submitted, the file must be searchable.
 - 9.2 To prevent opening by unauthorized individuals, the proposal must be sealed in a package/envelope. A label containing the information on the RFP cover page must be clearly typed and affixed to the package in a clearly visible location.
 - 9.3 Number each page of the proposal.

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

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

SECTION III VENDOR INFORMATION

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

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 (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 (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 on-site interviews are required, the individual can be at the specified location in Mississippi within the specified timeframe. The Vendor will be responsible for all costs associated with onsite interviews.
- 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 are employed 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 in order to improve the opportunity for attaining the Best Value scenarios from among the remaining competing Vendors. All BAFO proceedings will be uniformly conducted, in writing, and subject to solicitation by the State and receipt from the Vendors under a precise schedule.

17. **Restriction on Advertising**

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

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

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

19. **Additional Information to be Included**

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

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

The successful Vendor should not commence any billable work until a valid contract has been executed. Any work done by the successful Vendor 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 the 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 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 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 that are not inconsistent or incompatible with the material terms of this RFP, as may be agreed upon by the parties. All of the foregoing shall be in such form and substance as prescribed by the State.

6. Contracting Agent by Law

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

7. Legal Provisions

- 7.1 The State of Mississippi is self-insured; all requirements for the purchase of casualty or liability insurance are deleted.
- 7.2 Any provisions disclaiming implied warranties shall be null and void. See Mississippi Code Annotated Sections 11-7-18 and 75-2-719(4). The Vendor shall not disclaim the implied warranties of merchantability and fitness for a particular purpose.
- 7.3 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 real property; and
 - 7.3.5 The intentional and willful misconduct or negligent acts of the Vendor and/or Vendor's employees or subcontractors.
- 7.4 All requirements that the State pay interest (other than in connection with lease-purchase contracts not exceeding five years) are deleted.
- 7.5 Any contract negotiated under this RFP will be governed by and construed according to the laws of the State of Mississippi. Venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi.
- 7.6 Any contract negotiated under this RFP is cancelable in the event the funding authority does not allocate appropriate funds. Notice requirement to Vendor cannot exceed sixty (60) days.

- 7.7 The State of Mississippi does not waive its sovereign immunities or defenses as provided by law by entering into this contract with the Vendor, Vendor agents, subcontractors, or assignees.
- 7.8 The State will deliver payments to the Vendor within forty-five (45) days after receipt of 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 awarded Vendor has been approved as the lowest and best proposal through:
 - 8.1.1 Written notification made to responding Vendors on ITS letterhead;
 - 8.1.2 Notification posted to the ITS website for the project;
 - 8.1.3 CP-1 authorization executed for the project; or
 - 8.1.4 The ITS Board's approval of same during an open session of the Board.
- 8.2 ITS statute specifies whether ITS Director approval or ITS Board approval is applicable for a given project, depending on the total lifecycle cost of the contract.
- 8.3 A contract is not deemed final until five (5) working days after either the award of contract or post-procurement review, as stipulated in the ITS Protest Procedure and Policy. In the event of a valid protest, the State may, at its sole discretion, continue the procurement or stay the procurement in accordance with the ITS Protest Procedure and Policy. If the procurement is stayed, the contract is not deemed final until the protest is resolved.

9. Contract Validity

All contracts, 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. There is no charge for a Vendor to enroll or receive payments via PayMode. For additional information on PayMode, including registration instructions, Vendors should visit the following website: <http://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 the 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 any and all charges resulting from the contract.

16.1 The Vendor must acknowledge and agree that in matters of proposals, clarifications, negotiations, contracts, and resolution of issues and/or disputes, the Vendor represents all contractors, third parties, and/or subcontractors the Vendor has assembled for this project. The Vendor's commitments are binding on all such parties and, consequently, the State is only required to negotiate with the Vendor.

16.2 Furthermore, the Vendor acknowledges and agrees to pass all rights and/or services related to 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 State's sole discretion. The vendor must clearly and definitively state in his/her proposal whether the proposal is contingent upon the requested assignment of payments. Whenever any assignment of payment is requested, the proposal, contract, and assignment document must include language specifically guaranteeing that the proposing Vendor is solely and fully liable and responsible for the performance of its obligations under the subject contract. No assignment of payment will be considered at the time of purchase unless such assignment was fully disclosed in the Vendor's proposal and subsequently accepted by the State.

17. ITS Approval of Subcontractor Required

Unless provided in the contract, the Vendor shall not contract with any other party for furnishing any of the contracted work or services without the consent, guidance, and written approval of the State. ITS reserves the right of refusal and the right to request replacement of a subcontractor due to unacceptable work or conduct. This provision should not be interpreted as requiring the approval of individual contracts of employment between the Vendor and personnel assigned for services under the contract.

18. Inclusion of Subcontract Agreements

Copies of any agreements to be executed between the Vendor and any subcontractors must be included in the Vendor's proposal.

19. Negotiations with Subcontractor

In order to protect the State's interest, ITS reserves the right to attempt to resolve the contractual disagreements that may arise between the Vendor and its subcontractor after 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 being considered.

21.2 Any Vendor who is presently in default on existing contracts for which ITS is the contracting agent, or who otherwise is delinquent in the performance of any such contracted obligations, is in the sole judgment of the State required to make arrangement for fulfilling outstanding obligations to the satisfaction of the State in order for the proposal to be considered.

21.3 The State, at its sole discretion, may reject the proposal of a Vendor with any significant outstanding financial or other obligations to the State or who is in bankruptcy at the time of proposal submission.

22. Equipment Condition

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

23. Delivery Intervals

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

24. Pricing Guarantee

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

25. Shipping Charges

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

26. **Amortization Schedule**

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

27. **Americans with Disabilities Act Compliance for Web Development and Portal-Related Services**

All Web and Portal development work must be designed and implemented in compliance with the Electronic and Information Technology Accessibility Standards associated with Section 508 of the Rehabilitation Act and with the Web Accessibility Initiative (WAI) of the W3C.

28. **Ownership of Developed Software**

28.1 When specifications require the Vendor to develop software for the State, the Vendor must acknowledge and agree that the State is the sole owner of such developed software with exclusive rights to use, alter, or distribute the software without restriction. This requirement applies to source code, object code, and documentation.

28.2 The State may be willing to grant the Vendor a nonexclusive license to use the State's software subject to devising acceptable terms and license fees. This requirement is a matter of State Law and not negotiable.

29. **Ownership of Custom-Tailored Software**

In installations where the Vendor's intellectual property is modified and custom-tailored to meet the needs of the State, the Vendor must offer the State an application license entitling the State to use and/or alter the software without restriction. These requirements apply to source code, object code, and documentation.

30. **Terms of Software License**

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

31. **The State is 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 the 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 due to this RFP.

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

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

36. **Risk Factors to be Assessed**

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

37. **Proposal Bond**

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

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

The Vendor is not required to include the price of a performance bond or irrevocable bank letter of credit with its RFP proposal.

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 competition. Any such protest must be in writing and submitted to the ITS Executive Director along with the appropriate protest bond within five (5) working days of the Official Release of the RFP, as defined in the ITS Protest Procedure and Policy. The outside of the envelope must be marked "Protest" and must specify RFP Number 4585.

As a condition precedent to filing any protest related to this procurement, the Vendor must procure, submit to the ITS Executive Director with its written protest, and maintain in effect at all times during the course of the protest or appeal thereof, a protest bond in the full amount of the total estimated project lifecycle cost or \$250,000.00, whichever is less. The total estimated project lifecycle cost will be the amount used by ITS in the computation of cost points, as the low cost in the denominator of the cost evaluation formula. The bond shall be accompanied by a duly authenticated or certified document evidencing that the person executing the bond is a licensed Mississippi agent for the bonding company. This certified document shall identify the name and address of the person or entity holding the protest bond and shall identify a contact person to be notified in the event that the State

is required to take action against the bond. The protest bond shall not be released to the protesting Vendor until the protest is finally resolved and the time for appealing said protest has expired. The protest bond shall be procured at the protesting Vendor's expense and be payable to the Mississippi Department of Information Technology Services. Prior to approval of the protest bond, ITS reserves the right to review the protest bond and require the protesting Vendor to substitute an acceptable bond in such form as the State may reasonably require. The premiums on such bond shall be paid by the protesting Vendor. The State may claim against the protest bond as specified in Section 25-53-5 (n) of the Mississippi Code of 1972, as amended during the 1998 Mississippi legislative session, in addition to all other rights and remedies the State may have at law or in equity.

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

42. **Mississippi Employment Protection Act**

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

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

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

SECTION V PROPOSAL EXCEPTIONS

Please return the *Proposal Exception Summary Form* at the end of this section with all exceptions to items in any Section of this RFP listed and clearly explained or state "No Exceptions Taken." If no *Proposal Exception Summary Form* is included, the Vendor indicates that they take 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 the 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 which is being accepted or submit a formal written response to the *Proposal Exception Summary* responding to each of the Vendor's exceptions. The *Proposal Exception Summary*, with those exceptions approved by ITS, will become a part of any contract on acquisitions made under this RFP.
4. An exception will be accepted or rejected at the State's sole discretion.
5. The State desires to award this RFP to a Vendor or Vendors with whom there is a high probability of establishing a mutually agreeable contract, substantially within the standard terms and conditions of the State's RFP, including the *Standard Contract* in Exhibit A, if included herein. As such, Vendors whose proposals, in the sole opinion of the State,

reflect a substantial number of material exceptions to this RFP may place themselves at a comparative disadvantage in the evaluation process or risk disqualification of their proposals.

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

PROPOSAL EXCEPTION SUMMARY FORM

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

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

SECTION VI RFP QUESTIONNAIRE

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

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

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

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

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

All Vendors must furnish ITS with their 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 subject the Vendor's response being deemed non-responsive and subject to disqualification.

- 2.2 The Vendor must certify that they are 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 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 consideration. (Vendor must state if they can meet this requirement.)
5. **Certification of No Conflict of Interest**
Mississippi law clearly forbids a direct or indirect conflict of interest of a company or its employees in selling to the State. The Vendor must answer and/or provide the following:
- 5.1 Does there exist any possible conflict of interest in the sale of items to any institution within ITS jurisdiction or to any governing authority? (A yes or no answer is required.)
- 5.2 If the possibility of a conflict does exist, provide a list of those institutions and the nature of the conflict on a separate page and include it in your proposal. The Vendor may be precluded from selling to those institutions where a conflict of interest may exist.
6. **Pending Legal Actions**
- 6.1 Are there any lawsuits or other legal proceedings against the Vendor that pertain to any of the software, hardware, or other materials and/or services which are a part of the Vendor's proposal? (A yes or no answer is required.)
- 6.2 Are there any criminal or civil proceedings (federal or state) pending against the Vendor, its principals, or employees that pertain to any public procurement within the State of Mississippi or elsewhere? (A yes or no answer is required.)
- 6.3 If your answer to either of the above is "yes", provide a copy of same and state with specificity the current status of the proceedings.
- 6.4 The State, at its sole discretion, may reject the proposal of a Vendor who (a) has criminal or civil proceedings pending that pertain to 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 stated above? (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). Vendors must provide documentation of their E-Verify compliance with their RFP response. See Section IV, Item 42 for additional information.

SECTION VII TECHNICAL SPECIFICATIONS

1. Mandatory Provision in Technical Requirements for this RFP

- 1.1 Certain items in the technical specifications of this RFP 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.
- 1.2 Mandatory requirements are those classified as **MANDATORY** in this Section of the RFP and/or the Attachment A document(s). Meeting a mandatory requirement means the Vendor has provided a detailed response that demonstrates that the Vendor meets the qualifications and experience required and/or the requested functionality exists in the base solution at time of proposal submission.

2. Procurement Project Schedule

| Task | Date |
|---|---|
| First Advertisement Date for RFP | 09/24/2024 |
| Second Advertisement Date for RFP | 10/01/2024 |
| Deadline for Vendor's Written Questions | 10/08/2024 at 3:00 p.m. Central Time |
| Deadline for Questions Answered and Posted to ITS Website | 10/23/2024 |
| Open Proposals | 11/07/2024 |
| Evaluation of Proposals | November 08, 2024 – January 09, 2025 |
| ITS Board Presentation | 02/20/2025 |
| Contract Negotiation | February 20, 2025 – April 21, 2025 |
| Proposed Project Implementation Start-up | 07/01/2025 |
| Project Go-Live Deadline | 06/30/2028 |

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 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, October 8, 2024, at 3:00 p.m. Central Time. This document may be delivered by hand, mail, e-mail, or fax. Address information is given on page one of this RFP. The fax number is (601) 713-6380. **ITS WILL NOT BE RESPONSIBLE FOR DELAYS IN THE DELIVERY OF QUESTION DOCUMENTS.** It is solely the responsibility of the Vendor that the clarification document reaches ITS on time. Vendors may contact 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 Wednesday, October 23, 2024.

3.3 ITS, on behalf of MSOS, is also issuing RFP No. 4586 for a Campaign Finance and Lobbyist Registration System. Should the award Vendor of that RFP and this RFP No. 4585 be the same Vendor, the State reserves the right to negotiate one contract for both systems.

4. **Functional and Technical Requirements**

4.1 For the functional and technical requirements relevant to this procurement, refer to Attachment A, incorporated herein by reference and considered integral to this RFP. Attachment A is posted on the same website location as RFP No. 4585, and the link to it is located directly beneath the link to RFP No. 4585.

5. **Additional Requirements**

5.1 ITS acknowledges that the specifications within this RFP are not exhaustive. Rather, they reflect the known requirements that must be met by the proposed system. Vendors must specify here what additional components may be needed and are proposed in order to complete each configuration.

6. **Scoring Methodology**

6.1 An Evaluation Team composed of Mississippi Secretary of State (MSOS) and ITS staff will review and evaluate all proposals. All information provided by the Vendors and any other information available to the evaluation team will be used to evaluate the proposals.

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

6.1.2 The sum of all categories, other than Value-Add, equals 100 possible points.

6.1.3 Value-Add is defined as product(s) or service(s), exclusive of the stated functional and technical requirements and provided to the State at no additional charge, which, in the sole judgement of the State, provide both benefit and value to the State significant enough to distinguish the proposal and merit the award of additional points. A Value-Add rating between 0 and

5 may be assigned based on the assessment of the evaluation team. These points will be added to the total score.

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

| Category | Possible Points |
|---|-----------------|
| Non-Cost Categories: | |
| Functional Technical Requirements/Functional Requirements by Module | 35 |
| System Design/Implementation Requirements | 20 |
| Support and Maintenance/Software Administration and Security/Final Acceptance Review/Deliverables/General | 15 |
| Total Non-Cost Points | 70 |
| Cost Categories: | |
| Lifecycle Cost | 30 |
| Total Cost Points | 30 |
| Total Base Points | 100 |
| Value-Add | Up to 5 |
| Maximum Possible Points | 105 |

6.2 The evaluation will be conducted as follows:

6.2.1 Validation – 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.

6.2.2 Non-cost Evaluation (all requirements excluding cost)

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

| Non-Cost Categories | Possible Points |
|---|-----------------|
| Functional Technical Requirements/Functional Requirements by Module | 35 |
| System Design/Implementation Requirements | 20 |
| Support and Maintenance/Software Administration and Security/Final Acceptance Review/Deliverables/General | 15 |
| Maximum Possible Points | 70 |

6.2.2.2 Proposals receiving fewer than 90% of the total points allocated for the non-cost categories may be eliminated from further consideration.

6.2.3 Cost Evaluation

6.2.3.1 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

6.2.3.2 Cost categories and maximum point values are as follows:

| Cost Category | Possible Points |
|--------------------------------|-----------------|
| Lifecycle Cost | 30 |
| Maximum Possible Points | 30 |

6.2.4 Demonstration and Interviews

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

6.2.4.2 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.

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

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

6.2.5 Site Visits

6.2.5.1 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.

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

**SECTION VIII
 COST INFORMATION SUBMISSION**

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

| Description | Quantity | Unit Cost |
|---|----------|-----------|
| Implementation Services (fully loaded with travel, subsistence, and associated per diem costs) | | |
| Base Offering: Product Customization, Implementation, Data Conversion/Migration, Interfaces, Integrations, Testing, Training, Maintenance, etc. as described in RFP 4585 | 1 | \$ |
| Itemize the cost for any deliverable not included in the base offering as a separate line item below. | | |
| Other Costs (specify) | | |
| Base Offering Cost Total: | | \$ |

| Deliverables Payment Amount |
|---|
| 1. Project Work Plan and Schedule (Section I, G) |
| \$ |
| 2. Project Plans to include the following (sub-items a-i only paid upon completion and final acceptance of all items a-i.): |
| \$ |
| a. Continuity of Operations Plan (Section IV, F) |
| b. Project Management Plan (PMP) (Section V, D) |
| c. System Migration Plan (Section V, G) (Preliminary, then updated by module after award) |
| d. Data Quality and Management Plan (Section V, H) |
| e. Data Conversion and Migration Plan (Section V, I) |
| f. User Acceptance Test Plan (Section V, K) |

| Deliverables Payment Amount | |
|---|-----------|
| g. User Training Documentation (Section V, L) | |
| h. Change Management and Control Plan (CMP) (Section V, N) | |
| i. The Vendor must develop a RACI Model (Responsible, Accountable, Consulted, and Informed) | |
| 3. System Documentation – complete and all-inclusive (Section V, B) | \$ |
| Deliverables by Module – Corp | \$ |
| 1. Business Entity Portal Setup with Searches | |
| 2. Data Conversion | |
| 3. Business Registrations and Filings – External Portal | |
| 4. Business Registrations and Filings – Internal | |
| 5. Standard Reports and Queries | |
| 6. Corp-specific Interfaces to include B2B Annual Reports, MS Department of Revenue | |
| Deliverables by Module – Uniform Commercial Code (UCC) | \$ |
| 1. UCC Customer Filing Portal Setup with Searches | |
| 2. Data Conversion | |
| 3. Import of UCC Images | |
| 4. UCC Filings – External Portal | |
| 5. UCC Filings – Internal | |
| 6. Standard Reports | |
| 7. UCC-specific Interfaces to include B2B Filings (high-volume bulk filings) | |
| 8. UCC Customer Subscription Service | |
| Deliverables by Module – Charities | \$ |
| 1. Charities Filing Portal Setup with Searches | |

| Deliverables Payment Amount | |
|--|-----------|
| 2. Initial Data Conversion | |
| 3. Charities Registrations and Filings – External Portal | |
| 4. Charities Registrations and Filings – Internal | |
| 5. Standard Reports and Queries | |
| 6. Examinations and Investigations NOTE: The current module shares Examinations and Investigations functionality across other modules, such as Charities, Securities, and Regulation & Enforcement areas. Under the new solution, would prefer each module to have dedicated Examinations and Investigations. | |
| Deliverables by Module – PreNeed and Perpetual Care Cemeteries | \$ |
| 1. PreNeed and Perpetual Care Filing Portal Setup with Searches | |
| 2. Data Conversion | |
| 3. PreNeed and Perpetual Care Registrations and Filings – External Portal | |
| 4. PreNeed and Perpetual Care Registrations and Filings – Internal | |
| 5. Standard Reports and Queries | |
| 6. Examinations and Investigations NOTE: The current module shares Examinations and Investigations functionality across other modules, such as Charities, Securities, and Regulation & Enforcement areas. Under the new solution, would prefer each module to have dedicated Examinations and Investigations. | |
| Deliverables by Module – Securities | \$ |
| 1. Securities Web Page with Search | |
| 2. Electronic Import of Securities Filings and Related Payments | |
| 3. Data Conversion | |
| 4. Securities Registrations and Filings – Internal | |
| 5. Standard Reports and Queries | |

| Deliverables Payment Amount | |
|--|----|
| 6. Examinations and Investigations NOTE: The current module shares Examinations and Investigations functionality across other modules, such as Charities, Securities, and Regulation & Enforcement areas. Under the new solution, would prefer each module to have dedicated Examinations and Investigations. | |
| Deliverables by Module – Public Records Requests | \$ |
| 1. Public Records Filing Request Portal Setup | |
| 2. Data Conversion | |
| 3. Public Records Request – External Portal | |
| 4. Public Records Request - Internal | |
| Deliverables by Module – Revenue Receiving System | \$ |
| 1. Internal Revenue Receiving for all Modules | |
| 2. Data Conversion | |
| 3. Interface with Regions Bank | |
| 4. Interfaces with Internal Modules Databases | |

| Development and Configuration Block Service Hours | Per Hour | Total |
|--|----------|-------|
| Not to Exceed 2,500 Block Service Hours (per year) | \$ | \$ |

| Annual Costs | | |
|---|----------------------------|---------------------------------------|
| Annual Subscription and Hosting Fees – Including maintenance/support costs for 5 years) | Unit Price (If Applicable) | Combined Subscription and Hosting Fee |
| Year 1 | | \$ |
| Year 2 | | \$ |
| Year 3 | | \$ |

| | | |
|---|--|----|
| Year 4 | | \$ |
| Year 5 | | \$ |
| Miscellaneous Costs (must specify) | | \$ |
| Total Subscription and Hosting Cost: | | \$ |
| GRAND TOTAL (Base Offering Total Cost, Development and Configuration Block Service Hours, and Total Subscription and Hosting Cost: | | \$ |
| | | |
| If the Change Order Rate varies depending on the level of support, the Vendor must specify the Change Order Rate according to position or support role. | | |
| Fully-Loaded Hourly Change Order Rate | | \$ |
| Pricing for Optional Items (Itemize cost) | | \$ |
| <p>License Per User Cost Over 200 – If the number of users exceeds the original 200 estimated users in the proposed solution, the Vendor must provide a tier pricing structure or per-user unit cost for the number of licenses over the proposed amount. If the vendor does not add a License Per User Cost Over 200, the State will be under the impression that the user count is unlimited, and the Vendor will not be able to increase their annual subscription and hosting costs if MSOS requires more users.</p> | | \$ |

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 name of the company, telephone number, contact person, type of work subcontractor will perform, number of certified employees to perform said work, and three (3) references for whom the subcontractor has performed work that the State may contact. Forms for providing subcontractor information and references are included at the end of this section.

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

REFERENCE FORM

COMPLETE REFERENCE FORMS.

Contact Name: _____
Company Name: _____
Address: _____
Phone Number: _____
Email: _____
Project Start Date: _____
Project End Date: _____

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

SUBCONTRACTOR REFERENCE FORM

COMPLETE REFERENCE FORMS FOR EACH SUBCONTRACTOR.

Contact Name: _____
Company Name: _____
Address: _____
Phone Number: _____
Email: _____
Project Start Date: _____
Project End Date: _____

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

EXHIBIT A STANDARD CONTRACT

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

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

**PROJECT NUMBER 47843
SOFTWARE AS A SERVICE AGREEMENT
BETWEEN
VENDOR
AND
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES
AS THE CONTRACTING AGENT FOR
MISSISSIPPI SECRETARY OF STATE'S OFFICE**

This Software as a Service 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 Secretary of State's Office located at 125 South Congress Street, Jackson, Mississippi 39201 (hereinafter referred to as "Licensee" and/or "MSOS"). ITS and MSOS are sometimes collectively referred to herein as "State". ITS, Purchaser, and Seller are sometimes collectively referred to herein as "Parties".

WHEREAS, ITS, on behalf of MSOS and pursuant to Request for Proposals ("RFP") No. 4585 requested proposals for the services of a contractor to provide a Software as a Service ("SaaS") solution for a Business, UCC, Charities, Regulation & Enforcement, Securities, and Public Records Filing System; and

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

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

ARTICLE 1 DEFINITIONS

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

1.2 "Application(s)" or "SaaS Application(s)" means those Licensor software application programs which are made accessible for MSOS to use under the terms of this Agreement.

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

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

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

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

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

1.8 “Licensee” means the Mississippi Secretary of State’s Office, its employees, and any third-party consultants or outsourcers engaged by MSOS who have a need to know and who shall be bound by the terms and conditions of this Agreement.

1.9 “Licensor” means Vendor, and its successors and assigns.

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

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

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

ARTICLE 2 PERIOD OF PERFORMANCE

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

2.2 This Agreement will become a binding obligation on the State only upon the issuance of a valid purchase order by MSOS 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 MSOS a SaaS based Business, UCC, Charities, Regulation & Enforcement, Securities, and Public Records Filing System and associated deliverables as described in this Agreement. While the scope of work for this project is defined by the contract documents set forth herein in the article titled "Entire Agreement", a summary of such work is outlined in Article 3.2 below.

3.2 Licensor shall be responsible for the following:

- A.** Ensuring that all deliverables are complete and accepted by MSOS pursuant to a mutually agreed upon project work plan;
- B.** Tracking date sensitive items to ensure timely updates;
- C.** Acknowledging that the Content is and shall remain the sole and exclusive property of MSOS. Further, Licensor acknowledges that the Content may contain PII and Licensor agrees to maintain the confidentiality of the Content and shall not make the Content publicly available except as may be necessary in performing the SaaS Services or to comply with applicable laws. Upon the termination or expiration of this Agreement, Licensor shall provide such Content in its possession to MSOS pursuant to a mutually agreed upon release schedule and in a format acceptable to MSOS;
- D.** Working with MSOS to achieve access rates that meet MSOS's needs;
- E.** Providing security for the site that is agreeable to MSOS with Licensor responsible for all necessary equipment and software related to security;
- F.** Maintaining the accessibility of the site twenty-four (24) hours a day, seven (7) days a week at an uptime rate of 99.99% or greater, subject to the limitations set forth in this Agreement, including but not limited to, those in Article 4.4;
- G.** Completing daily backups of the site;
- H.** Notifying MSOS at least three (3) business days prior to any anticipated service interruption, with said notice containing a general description of the reason for the service interruption;
- I.** Proposing and adhering to a disaster recovery plan and providing access to such plan to the State, all at Licensor's expense;
- J.** Participating with MSOS in disaster recovery planning and testing based on a mutually agreed upon schedule;
- K.** Maintaining the confidentiality of the information entered;
- L.** Providing MSOS access to all of the technical information concerning operation of the Business, UCC, Charities, Regulation & Enforcement, Securities, and Public Records Filing System, including but not limited to, server specifications, Internet connection information, personnel requirements, and software implementations;
- M.** Identifying any commercially available software, by vendor and version number, integrated into the Applications and describing the particular functionality of any software that is proprietary to the Licensor;
- N.** Maintaining the host site, with the cost for such support, maintenance, and hosting for years following the initial five (5) year period not increasing annually beyond three percent (3%) or the percent increase in the consumer price index for all Urban Consumers, US City Average (C.P.I.-U) for the preceding year, whichever is less;
- O.** Providing 24x7x365 support of the site;
- P.** Providing redundant internet connections;
- Q.** Providing Transport Layer Security ("TLS") secure server support;
- R.** Maintaining sufficient bandwidth and server capacity to meet MSOS's and Active Users' demand as it may fluctuate and increase during the term of this Agreement, and;

- S. Ensuring that all Licensee data remains within the continental United States;
- T. Partitioning Licensee's data from other customer data so Licensee's access is not impaired due to e-discovery, seizure, or the like, and
- U. Ensuring that upon termination or expiration of this Agreement that transition from the Licensor to MSOS or to a successor host will be accomplished at no expense to MSOS.

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

ARTICLE 4 SCOPE OF LICENSE AND RIGHT TO USE

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

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

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

4.4 The Applications and Services will be accessible at least 99.99% of the time, twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of the SaaS Services due to causes beyond the control of Licensor. In the event that MSOS or an Active User is unable to achieve the 99.99% application availability during any given month, excluding scheduled maintenance, required repairs, and unavailability due to causes beyond the control of Licensor, the Licensor and Licensee must refer to Exhibit C, Service Credit Assessment, which is attached to Agreement and incorporated herein by reference, for any associated monthly service credits. Licensor shall maintain the server at a secured location with restricted access.

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

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

4.7 MSOS acknowledges that Licensor retains ownership of all right, title and interest to the

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

ARTICLE 5 ACCEPTANCE

5.1 Licensor shall make the Applications, Documentation, and Deliverables (Attachment A, Table 3 of the RFP) available through its Services pursuant to the delivery schedule mutually agreed to by the parties.

5.2 MSOS shall have thirty (30) calendar days after the Available Date to evaluate and conduct the final acceptance testing of the Applications and Services to confirm that they perform without any defects and perform in accordance with the requirements of this Agreement. MSOS shall immediately thereafter notify Licensor of any defects in the Applications or Services which must be corrected. Thereafter, unless both parties agree to extend this period, Licensor shall have ten (10) business days in which to repair the Service or repair or replace the defective Applications, all at Licensor's expense, and MSOS shall have an additional thirty (30) calendar days to evaluate the Applications and Services. In the event Licensor is unable to repair the defect within this ten (10) day period, MSOS 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 MSOS for all Applications, development, maintenance and SaaS Services, customizations, products, travel, performances, and expenses under this Agreement shall not exceed the specified sum of \$TOTAL COMPENSATION, and shall be payable as set forth in the Payment Schedule attached hereto as Exhibit A.

6.2 Licensor shall submit invoices with the appropriate documentation to MSOS monthly for any month in which SaaS Services and/or other services are rendered. Licensor shall submit invoices and supporting documentation to MSOS electronically during the term of this Agreement using the processes and procedures identified by the State. MSOS 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 MSOS within forty-five (45) days of receipt of the invoice. Licensor understands and agrees that MSOS 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 MSOS 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.

6.4 Licensors agree to use the third-party electronic payment processor designated by Mississippi Department of Finance and Administration ("DFA") to accept electronic payments for various services and fees collectible for Licensee purposes under this Agreement unless express written approval is given by DFA to the Licensee for the use of an alternate payment processor in accordance with Miss. Code Ann. Section 27-104-33 *et seq.*, Miss. Code Ann. Section 25-53-151, and DFA's regulations.

ARTICLE 7 WARRANTY

7.1 Licensors represent and warrants that it has the right to license the Applications provided under this Agreement.

7.2 Licensors represent and warrants that the Applications provided by Licensors shall meet or exceed the minimum specifications set forth in RFP No. 4585 and Licensors' Proposal, as accepted by the State, in response thereto.

7.3 During the term of this Agreement, the Licensors represent 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 Licensors of its responsibilities to correct any Defect during the warranty period. The Licensors 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 MSOS consents in writing to a longer period of repair time. In the event Licensors are unable to repair or replace the Application within the mutually agreed upon time frame after receipt of notice of the Defect, MSOS 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 Licensors represent 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, Licensors shall perform the Services again, at no cost to the State, or if Licensors are unable to perform the Services as warranted, Licensors shall reimburse the State the fees paid to Licensors for the unsatisfactory Services.

7.5 Licensors represent and warrants that the Application shall not contain a disabling code, lockup program or device. Licensors further agree that it will not, under any circumstances including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Licensee's licensed use of the Applications and/or which would restrict Licensee from accessing its data files or in any way interfere with the transaction of Licensee's business. For any breach of this warranty, Licensors at its expense shall, within ten (10) business days after receipt of notification of the breach, remove any such disabling code, lockup program or device.

7.6 Licensors represent and warrants that it has tested and will test (not less than on a daily basis) the Applications using commercially reasonable methods to ensure that the Applications provided to MSOS do not and will not contain or incorporate any computer code, programs,

procedures, mechanisms or programming devices (including but not limited to, viruses, trojan horses, or worms) that are designed to, or would enable Licensor or any third-party to, disrupt, modify, delete, damage, deactivate, disable, harm or otherwise impede the operation of the Licensor's system, or any other associated software, firmware, hardware, computer system or network, including MSOS's applications and MSOS's Content. For any breach of this warranty, Licensor at its expense shall, within five (5) business days after receipt of notification of the breach, be responsible for repairing, at Licensor's expense, any and all damage done by the virus or such to MSOS's applications and MSOS's Content.

7.7 Licensor represents and warrants that the Business, UCC, Charities, Regulation & Enforcement, Securities, and Public Records Filing System provided by the Licensor shall be reasonably expandable and scalable so MSOS can add and support additional business functions and users over time. It is understood and agreed that any standard revisions, enhancements, improvements, and upgrades to the Applications and host site equipment during the term of this Agreement, including operating system, database management system, and other software, shall be provided by Licensor to MSOS at no additional cost to MSOS.

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

7.9 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.

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

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

7.12 The Licensor represents and warrants that no elected or appointed officer or other employee of the State of Mississippi, nor any member of or delegate to Congress has or shall benefit financially or materially from this Agreement. No individual employed by the State of Mississippi shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom. The State of Mississippi may, by written notice to the Licensor, terminate the right of the Licensor to proceed under this Agreement if it is found, after notice and hearing by the ITS

Executive Director or his/her designee, that gratuities in the form of entertainment, gifts, jobs, or otherwise were offered or given by the Licensor to any officer or employee of the State of Mississippi with a view toward securing this Agreement or securing favorable treatment with respect to the award, or amending or making of any determinations with respect to the performing of such contract, provided that the existence of the facts upon which the ITS Executive Director makes such findings shall be in issue and may be reviewed in any competent court. In the event this Agreement is terminated under this article, the State of Mississippi shall be entitled to pursue the same remedies against the Licensor as it would pursue in the event of a breach of contract by the Licensor, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

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

ARTICLE 8 INFRINGEMENT INDEMNIFICATION

8.1 Licensor represents and warrants, to the best of its knowledge, that neither the Applications and Services provided to MSOS under this Agreement nor their use by MSOS will violate or infringe on any copyright, patent, trade secret or other proprietary right of any person or entity. Licensor, at its own expense, shall defend or settle any and all infringement actions filed against Licensor or MSOS which involve the Applications, Services or other items provided under this Agreement and shall pay all costs, attorney fees, damages and judgment finally awarded against MSOS provided that: (a) MSOS notifies Licensor in writing of any such claim of which it has knowledge; (b) Licensor has, to the extent authorized by Mississippi law, sole control of the defense of any actions or negotiations related to the defense or settlement of any such claim, and (c) MSOS cooperates in the defense of the claim by supplying Licensor all relevant information currently available and in its possession, all at Licensor's expense. In no event shall the State compromise, settle or adversely impact the defense of any actions or negotiations without the prior, written consent of Licensor. Further, in no event shall Licensor compromise or settle any such actions or negotiations without the prior written consent of MSOS if such compromise or settlement would create an obligation or liability upon MSOS or the State. If, in any such suit arising from such claim, the continued use of the items for the purpose intended is enjoined or threatened to be enjoined by any court of competent jurisdiction, Licensor shall, at its expense: (a) first procure for MSOS the right to continue using such Applications or Services, or upon failing to procure such right; (b) modify or replace them with non-infringing items with equivalent functionality, or upon failing to secure either such right at Licensor's reasonable expense, (c) issue a pro-rata refund to MSOS for the fees previously paid by MSOS for the infringing Applications and Services MSOS may no longer use. Said refund shall be paid within ten (10) business days of notice to MSOS discontinue said use.

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

ARTICLE 9 DATA SECURITY

9.1 As part of the Services, Licensor shall provide administrative, physical, and technical

safeguards for protection of the security, confidentiality, and integrity of MSOS Content. Licensor agrees to comply with all applicable privacy or data protection statutes, rules, or regulations governing the respective activities of the parties under this Agreement.

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

9.3 Licensor shall maintain a hosting environment that undergoes examinations from an independent auditor in accordance with the American Institute of Certified Public Accounts SSAE 16 (i.e. SOC 1) and the AICPA Trust Services Principles Section 100a, Trust Services for Security, Availability, Processing Integrity, Confidentiality and Privacy (i.e. SOC 2). Licensor's private cloud shall be evaluated for the principles of Security, Availability and Confidentiality by the independent auditor. The data center in which Licensor's private cloud is located shall undergo pertinent security examinations. Management access to Licensor's private cloud shall be limited to Licensor's authorized support staff and MSOS's authorized staff. The Applications shall provide MSOS with the ability to configure application security and logical access per MSOS's business processes. In the event MSOS identifies a security issue, MSOS will notify Licensor.

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

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

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

respect to the return or disposal of PII.

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

9.8 It is understood and agreed that at least once per year, Licensor shall conduct site audits of the information technology and information security controls for all facilities used in complying with its obligations under this Agreement, including but not limited to, obtaining a network-level vulnerability assessment performed by a recognized third-party audit firm based on the recognized industry best practices. Licensor shall make the reports available to MSOS for review. Any exceptions noted on the Statement on Standards for Attestation Engagements (SSAE) report or other audit reports will be promptly addressed with the development and implementation of a corrective action plan by Licensor's management and resolved, at Licensor's sole expense, within thirty (30) calendar days of the audit.

ARTICLE 10 EMPLOYMENT STATUS

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

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

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

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

ARTICLE 11 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS

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

ARTICLE 12 MODIFICATION OR RENEGOTIATION

This Agreement may be modified only by written agreement signed by the parties hereto, and any

attempt at oral modification shall be void and of no effect. The parties agree to renegotiate the Agreement if federal and/or state revisions of any applicable laws or regulations make changes in this Agreement necessary.

ARTICLE 13 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS

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

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

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

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

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

ARTICLE 14 AVAILABILITY OF FUNDS

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

the sole right to determine whether funds are available for the payments or performances due under this Agreement.

ARTICLE 15 TERMINATION

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

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

ARTICLE 16 GOVERNING LAW

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

ARTICLE 17 WAIVER

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

ARTICLE 18 SEVERABILITY

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

ARTICLE 19 CAPTIONS

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

ARTICLE 20 HOLD HARMLESS

To the fullest extent allowed by law, Licensor shall indemnify, defend, save and hold harmless,

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

ARTICLE 21 THIRD PARTY ACTION NOTIFICATION

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

ARTICLE 22 AUTHORITY TO CONTRACT

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

ARTICLE 23 NOTICE

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their business address listed herein. ITS' address for notice is: Craig P. Orgeron, CPM, Ph.D., Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. Licensee's address for notice is: Loise Jefferson, Procurement and Property Officer, Mississippi Secretary of State, 125 South Congress 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 24 RECORD RETENTION AND ACCESS TO RECORDS

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

ARTICLE 25 INSURANCE

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

ARTICLE 26 DISPUTES

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

ARTICLE 27 COMPLIANCE WITH LAWS

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

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

ARTICLE 28 CONFLICT OF INTEREST

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

ARTICLE 29 SOVEREIGN IMMUNITY

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

ARTICLE 30 CONFIDENTIAL INFORMATION

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

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

30.2 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 so as to allow Licensor the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

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

ARTICLE 31 EFFECT OF SIGNATURE

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

ARTICLE 32 NON-SOLICITATION OF EMPLOYEES

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

ARTICLE 33 ENTIRE AGREEMENT

33.1 This contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings, and agreements, written or oral, between the parties relating thereto, including all terms of any "shrink-wrap", "click-wrap" or "browse-wrap" license of the Software. The RFP No. 4585 and Licensor's Proposal, as accepted by the State, in response thereto are hereby incorporated into and made a part of this Agreement.

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

- A.** This Agreement signed by the parties hereto;
- B.** Any exhibits attached to this Agreement;
- C.** RFP No. 4585 and written addenda, and
- D.** Licensor's Proposal, as accepted by the State, in response to the RFP.

33.3 The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by the Licensor. The documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall

supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof; provided, however, that in the event an issue is addressed in one of the above-mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority, that is, the highest document begins with the first listed document ("A. This Agreement") and the lowest document is listed last ("D. Licensor's Proposal").

ARTICLE 34 STATE PROPERTY

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

ARTICLE 35 SURVIVAL

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

ARTICLE 36 DEBARMENT AND SUSPENSION CERTIFICATION

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

ARTICLE 37 SPECIAL TERMS AND CONDITIONS

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

ARTICLE 38 STATUTORY AUTHORITY

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

ARTICLE 39 COMPLIANCE WITH ENTERPRISE SECURITY POLICY

Licensor and Licensee understand and agree that all products and services provided by Licensor under this Agreement must 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 40 COMPLIANCE WITH ENTERPRISE CLOUD AND OFFSITE HOSTING SECURITY

40.1 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.

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

40.3 Data Protection: Protection of personal privacy and sensitive data shall be an integral part of the business activities of Licensor to ensure that there is no inappropriate or unauthorized use of State information at any time. To this end, Licensor shall safeguard the confidentiality, integrity, and availability of State information and comply with the following conditions: a) All information obtained by Licensor under this contract shall become and remain property of the State. b) At no time shall any data or processes which either belong to or are intended for the use of State or its officers, agents, or employees be copied, disclosed, or retained by Licensor or any party related to Licensor for subsequent use in any transaction that does not include the State.

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

40.5 Encryption: a) Licensor shall encrypt all non-public data in transit regardless of the transit mechanism. b) For engagements where Licensor stores non-public data, the data shall be encrypted at rest. The key location and other key management details will be discussed and negotiated by both parties. Where encryption of data at rest is not possible, Licensor must describe existing security measures that provide a similar level of protection. Additionally, when Licensor cannot offer encryption at rest, it must maintain, for the duration of the contract, cyber security liability insurance coverage for any loss resulting from a data breach. The policy shall comply with the following requirements:

- The policy shall be issued by an insurance company acceptable to the State and valid for

the entire term of the contract, inclusive of any term extension(s).

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

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

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

40.8 Termination and Suspension of Service: In the event of termination of the contract, Licensor shall implement an orderly return of State data in CSV or XML or another mutually agreeable format. Licensor shall guarantee the subsequent secure disposal of State data.

- a) **Suspension of services:** During any period of suspension of this Agreement, for whatever reason, Licensor shall not take any action to intentionally erase any State data.
- b) **Termination of any services or agreement in entirety:** In the event of termination of any services or of the agreement in its entirety, Licensor shall not take any action to intentionally erase any State data for a period of 90 days after the effective date of the termination. After such 90-day period, Licensor shall have no obligation to maintain or provide any State data and shall thereafter, unless legally prohibited, dispose of all State data in its systems or otherwise in its possession or under its control as specified in 40.8(d) below. Within this 90-day timeframe, Licensor will continue to secure and

back up State data covered under the contract.

- c) **Post-Termination Assistance:** The State shall be entitled to any post-termination assistance generally made available with respect to the Services unless a unique data retrieval arrangement has been established as part of the Service Level Agreement.
- d) **Secure Data Disposal:** When requested by the State, Licensor shall destroy all requested data in all of its forms, for example: disk, CD/DVD, backup tape, and paper. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST) approved methods. Certificates of destruction shall be provided to the State.

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

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

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

40.12 Sub-contractor Disclosure: Licensor shall identify all of its strategic business partners related to services provided under this Agreement, including but not limited to, all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with Licensor, who will be involved in any application development and/or operations.

40.13 Sub-contractor Compliance: Licensor must ensure that any agent, including Licensor or subcontractor, to whom Licensor provides access agrees to the same restrictions and conditions that apply through this Agreement.

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

40.15 Operational Metrics: Licensor and the State shall reach agreement on operational metrics and document said metrics in the Service Level Agreement. At a minimum the SLA shall include:

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

In the event of a conflict with this Article 40 and any other term or provision of the Agreement, this Article 40 shall control, as applicable.

ARTICLE 41 SOFTWARE SUPPORT AND MAINTENANCE

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

41.2 Licensor shall also provide unlimited email and toll-free telephone technical support in the operation of the Applications and Service twenty-four (24) hours a day, seven (7) days a week. Licensor shall respond by telephone within one (1) hour to requests for support services. Licensee shall be given priority placement in the support queue for all system locking situations or problems claimed by Licensee to be a mission critical process. Upon receipt of Licensee's call, Licensor will (a) create an error report, (b) assign a severity level and (c) attempt to resolve the problem in accordance with the procedures and processes for problem resolution detailed below. It is understood by the parties that the Licensee and Licensor must refer to Exhibit B, Deficiency Priority Levels, which is attached to Agreement and incorporated herein, for determining appropriate priority levels and response times.

ARTICLE 42 FORCE MAJEURE

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

ARTICLE 43 TRANSPARENCY

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

ARTICLE 44 CHANGE ORDER RATE AND PROCEDURE

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

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

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

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

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

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

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

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

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

**State of Mississippi, Department of
Information Technology Services, on
behalf of Mississippi Secretary of State's
Office**

VENDOR

By: _____
Authorized Signature

By: _____
Authorized Signature

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

Printed Name: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____

EXHIBIT A

EXHIBIT B

DEFICIENCY PRIORITY LEVELS

| Priority Level | Description of Deficiency | Response Timeframe | Resolution Time |
|-------------------------------------|--|-------------------------------|--|
| <p>1 Critical</p> | <p>The system is down (unscheduled downtime) is practically down (e.g., extremely slow response time), or does not function at all, as determined by the State. There is no way to circumvent the problem; a significant number of State users are affected. A production business system is inoperable.</p> | <p>One hour from intake</p> | <p>Eight consecutive hours of intake</p> |
| <p>2 Severe</p> | <p>A component of the solution is not performing by the specifications (e.g., slow response time), creating significant State business impact, its core functionality is not available, or one of the system requirements is not met, as determined by the State.</p> | <p>Four hours from intake</p> | <p>24 hours from intake</p> |
| <p>3 Moderate</p> | <p>A component of the solution is not performing by the specifications; there are unexpected results, and there is moderate or minor operational impact, as determined by the State.</p> | <p>24 hours from intake</p> | <p>14 days from intake</p> |
| <p>4 Low</p> | <p>As determined by the State, this is a low-impact problem, that is not significant to operations or is related to education. Some examples include general how-to or informational solution software questions, understanding of reports, and general how-to create reports or documentation requests.</p> | <p>48 hours from intake</p> | <p>Resolve educational issues as soon as practicable by the Vendor. Low-impact software or operational issues are to be resolved by the next version release or six months unless otherwise agreed to by the State and Vendor.</p> |

EXHIBIT C

SERVICE CREDIT ASSESSMENTS

| Length of Continuous Unscheduled Downtime | Service Credits |
|--|---|
| 1 to 4 hours | One day of Service Credits equal to 1/30th of Monthly Fees. |
| 4 to 48 hours | Two days of Service Credits equal to 1/15th of Monthly fees. |
| 48 to 96 hours | Five days of Service Credits equal to 1/6th of Monthly Fees. |
| Each additional block of 96 hours thereafter | Additional Five days of Service Credits equal to 1/6th of Monthly Fees. |