



## RFP No: 4666

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INVITATION: Proposals, subject to the attached conditions, will be received at this office until Wednesday, April 15, 2026 @ 3:00 p.m. Central Time for the acquisition of the products/services described below for the Mississippi Department of Information Technology Services.

**AVAYA Products, Services, and CCaaS**

**MANDATORY ONSITE/VIRTUAL VENDOR CONFERENCE:** SEE SECTION VII, ITEM 3.3, FOR DETAILS

NOTE: THIS RFP CONTAINS MANDATORY REQUIREMENTS TO WHICH NO EXCEPTION MAY BE TAKEN. SEE RFP, SECTION VII, ITEM 3, FOR DETAILS.

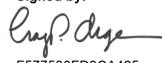
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**The Vendor must submit proposals and direct inquiries to:**

Roshunda Ware  
Technology Consultant  
Information Technology Services  
3771 Eastwood Drive  
Jackson, MS 39211  
(601) 432-8223  
Roshunda.Ware@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. 4666  
Wednesday, April 15, 2026 @ 3:00 p.m. Central Time  
ATTENTION: Roshunda Ware

Signed by:  
  
F577530FD3CA425...

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

## ITS RFP Response Checklist

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RFP Response Checklist: These items should be included in your response to RFP No. 4666.

- 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* (Section VII and the applicable Attachment A Excel Spreadsheet(s))
- 7) Vendor response to *Cost Information Submission* (the applicable Attachment A Excel Spreadsheet(s) and Attachment D)
- 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 acknowledgement also contractually obligates any and all subcontractors that may be proposed. Vendors who sign below may not later take exception to any point during contract negotiations. The Vendor further certifies that the company represented here is an authorized dealer in good standing of the products/services included in this proposal.

\_\_\_\_\_  
Original Signature of Officer in Bind of Company      Date \_\_\_\_\_

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

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**CONFIGURATION SUMMARY**

The Vendor must provide a summary of the main components of products/services offered in this proposal using 100 words or less. Summary must include the category(ies) that are being proposed.

## **PROPOSAL BONDS**

A Proposal Bond is not required for this procurement.

## **SECTION II PROPOSAL SUBMISSION REQUIREMENTS**

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

1. Failure to follow any instruction within this RFP may, at the State's sole discretion, result in the disqualification of the Vendor's proposal.
2. The State has no obligation to locate or acknowledge any information in the Vendor's proposal that is not presented under the appropriate outline according to these instructions and in the proper location.
3. The Vendor's proposal must be received, in writing, by the office of ITS by the date and time specified. ITS is not responsible for any delays in delivery or any expenses for the development or delivery of proposals. Any proposal received after the proposal response deadline will be returned unopened. Any proposal received with insufficient postage will be returned unopened.
4. Proposals or alterations by fax, e-mail, or phone will not be accepted.
5. Original signatures in blue ink are required on the *Submission Cover Sheet and Configuration Summary*.
6. ITS reserves the right to reject any proposals, including those with exceptions, prior to and at any time during negotiations.
7. ITS reserves the right to waive any defect or irregularity in any proposal procedure.
8. The Vendor may intersperse their response following each RFP specification but must not otherwise alter or rekey any of the original text of this RFP. If the State determines that the Vendor has altered any language in the original RFP, the State may, in its sole discretion, disqualify the Vendor from further consideration. The RFP issued by ITS is the official version and will supersede any conflicting RFP language submitted by the Vendor.
9. The Vendor must conform to the following standards in the preparation of the Vendor's proposal:
  - 9.1 The Vendor is required to submit one response of the complete proposal, including all sections, attachments, 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, attachments, and exhibits in the same order as this RFP.
- 9.5 Label the file names of each section, attachment, and exhibit, using the corresponding headings from the RFP and applicable filenames.
- 9.6 If the Vendor does not agree with any item in any section or any items in the Attachment As, 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 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 outline points and/or requirements by signing the *Submission Cover Sheet* and providing a *Proposal Exception Summary Form*.
- 9.10 Where a minimum requirement has been identified, respond by stating the item (e.g., device name/model number, guaranteed response time) proposed and how it will meet the specifications.
- 9.11 The Vendor must fully respond to each requirement within the *Technical Specifications* by fully describing the manner and degree by which the proposal meets or exceeds said requirements.
10. It is the responsibility of the Vendor to clearly identify all costs associated with any item or series of items in this RFP. The Vendor must include and complete all parts of the cost proposal in a clear and accurate manner. **Omissions, errors, misrepresentations, or inadequate details in the Vendor's cost proposal may be grounds for rejection of the Vendor's proposal. Costs that are not clearly identified will be borne by the Vendor.** The Vendor must complete the *Cost Information Submission* in this RFP, which outlines the minimum requirements for providing cost information. The Vendor should supply supporting details as described in the *Cost Information Submission*.
11. ITS reserves the right to request additional information or clarification of a Vendor's proposal 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 the sole discretion of ITS.

13. Unsolicited clarifications in the evaluation and selection of lowest and best proposal will be considered only if all the following conditions are met:
- 13.1 A clarification to a proposal that includes a newly announced product line or service with equal or additional capability to be provided at or less than the proposed price will be considered.
  - 13.2 Information provided must be in effect nationally and have been formally and publicly announced through a news medium that the Vendor normally uses to convey customer information.
  - 13.3 Clarifications must be received early enough in the evaluation process to allow adequate time for re-evaluation.
  - 13.4 The Vendor must follow procedures outlined herein for submitting updates and clarifications.
  - 13.5 The Vendor must submit a statement outlining the circumstances for the clarification.
  - 13.6 The Vendor must submit unsolicited clarifications via USB in the same manner as detailed in Item 9 above.
  - 13.7 The Vendor must be specific about which part of the original proposal is being changed by the clarification (i.e., must include exact RFP reference to section and outline point).
14. **Communications with State**  
From the issue date of this RFP until a Vendor is selected and the selection is announced, responding Vendors or their representatives may not communicate, either orally or in writing regarding this RFP with any statewide elected official, state officer or employee, member of the legislature or legislative employee except as noted herein. To ensure equal treatment for each responding Vendor, all questions regarding this RFP must be submitted in writing to the State's contact person for the selection process, and not later than the last date for accepting responding Vendor questions provided in this RFP. All such questions will be answered officially by the State in writing. All such questions and answers will become addenda to this RFP, and they will be posted to the ITS 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: Roshunda Ware, Technology Consultant, 3771 Eastwood Drive, Jackson, MS 39211, 601-432-8223, Roshunda.Ware@its.ms.gov.
  - 14.2 Vendor may consult with State representatives as designated by the State's contact person identified in 14.1 above in response to State-initiated inquiries. 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/or (3) research on changes in the Vendor, market, and technical environments since the initial award.
11. **Right to Use Proposals in Future Projects by Entities Outside Mississippi**

The State reserves the right to offer the awarded proposal from this RFP, including all products and services proposed therein, along with the resulting contractual terms, for possible use in future projects by governmental entities outside Mississippi (i.e., "piggyback option"), if (a) it is deemed to be in the best interest of the governmental entity desiring to do so; and (b) the Vendor is willing to extend a cost less than or equal to that specified in the awarded proposal and resulting contract. A decision concerning the utilization of a Vendor's proposal for future projects outside Mississippi is solely at the discretion of the State, and requires the desire of the governmental entity outside Mississippi and the agreement of the proposing Vendor. The State's decision to consent to the reuse of an awarded proposal outside Mississippi will be based upon such criteria as: (1) the governmental entity's business requirements; (2) elapsed time since the award of the original project; and/or (3) research on changes in the Vendor, market, and technical environments since the initial award.
12. **Price Changes During Award or Renewal Period**

A price increase will not be accepted during the award period or any renewal period, unless stipulated in the contract. However, the State will always take advantage of price decreases.
13. **Right to Request Information**

The State reserves the right to request information relative to a Vendor's references and financial status and to visit a Vendor's facilities during normal working hours. The State also reserves the right to request a current financial statement, prepared and certified by an independent auditing firm, and reserves the right to require that Vendors document

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

**14. Vendor Personnel**

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

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

**15. Vendor Imposed Constraints**

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

**16. Best and Final Offer**

The State reserves the right to solicit Best and Final Offers (BAFOs) from Vendors, principally in situations in which proposal costs eclipse available funding or the State believes none of the competing proposals presents a Best Value (lowest and best

proposal) opportunity. Because of the time and expense incurred by both the Vendor community and the State, BAFOs are not routinely conducted. Vendors should offer their best pricing with the initial solicitation. Situations warranting solicitation of a BAFO will be considered an exceptional practice for any procurement. 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 to be defined by the State that encompasses the specific, refined needs of a project, as part of the BAFO solicitation. The State may re-evaluate and amend the original project specifications should it be deemed necessary in order to improve the opportunity for attaining Best Value scenarios from among the remaining competing Vendors. All BAFO proceedings will be uniformly conducted, in writing and subject to solicitation by the State and receipt from the Vendors under a precise schedule.

17. **Restriction on Advertising**

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

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

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

19. **Additional Information to be Included**

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

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

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

## SECTION IV LEGAL AND CONTRACTUAL INFORMATION

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

1. **Acknowledgment Precludes Later Exception**  
By signing the *Submission Cover Sheet*, the Vendor is contractually obligated to comply with all items in this RFP, including the *Standard Contract* in Exhibit A if included herein, except those specifically listed as exceptions on the *Proposal Exception Summary Form*. If no *Proposal Exception Summary Form* is included, the Vendor is indicating that they take no exceptions. Vendors who respond to this RFP by signing the *Submission Cover Sheet* may not later take exception to any item in the RFP during contract negotiations. This acknowledgement also contractually obligates any and all subcontractors that may be proposed. No exceptions by subcontractors or separate terms and conditions will be entertained after the fact.
2. **Failure to Respond as Prescribed**  
Failure to respond as described in Section II: *Proposal Submission Requirements* to any item in the sections, attachments, and exhibits of this RFP, including the *Standard Contract* attached as Exhibit A shall contractually obligate the Vendor to comply with that item.
3. **Contract Documents**  
ITS will be responsible for all document creation and editorial control over all contractual documentation related to each procurement project. The following documents will normally be included in all contracts between ITS and the Vendor:
  - 3.1 The Proposal Exception Summary Form as accepted by ITS;
  - 3.2 Contracts which have been signed by the Vendor and ITS;
  - 3.3 ITS' Request for Proposal, including all addenda;
  - 3.4 Official written correspondence from ITS to the Vendor;
  - 3.5 Official written correspondence from the Vendor to ITS when clarifying the Vendor's proposal; and
  - 3.6 The Vendor's proposal response to the ITS RFP.
4. **Order of Precedence**  
When a conflict arises regarding contract intent due to conflicting statements in documents included in the contract, the order of precedence of each document is as listed above unless modification of order is negotiated and agreed upon by both ITS and the winning Vendor.
5. **Additional Contract Provisions**  
The contract will also include such additional provisions, which are not inconsistent or incompatible with the material terms of this RFP, as may be agreed upon by the parties. All of the foregoing shall be in such form and substance as prescribed by the State.

**6. Contracting Agent by Law**

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

**7. Legal Provisions**

- 7.1 The State of Mississippi is self-insured; all requirements for the purchase of casualty or liability insurance are deleted.
- 7.2 Any provisions disclaiming implied warranties shall be null and void. See Mississippi Code Annotated Sections 11-7-18 and 75-2-719(4). The Vendor shall not disclaim the implied warranties of merchantability and fitness for a particular purpose.
- 7.3 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 items listed in Mississippi Code Annotated Section 25-53-21(e).
- 7.4 All requirements that the State pay interest (other than in connection with lease-purchase contracts not exceeding five years) are deleted.
- 7.5 Any contract negotiated under this RFP will be governed by and construed according to the laws of the State of Mississippi. Venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi.
- 7.6 Any contract negotiated under this RFP is cancelable in the event the funding authority does not appropriate funds. Notice requirements to Vendor cannot exceed sixty (60) days.
- 7.7 The State of Mississippi does not waive its sovereign immunities or defenses as provided by law by entering into this contract with the Vendor, Vendor agents, subcontractors, or assignees.
- 7.8 The State will deliver payments to the Vendor within forty-five (45) days after receipt of invoice and receipt, inspection, and approval of Vendor's products/services. No late charges will exceed 1.5% per month on any unpaid balance from the expiration of said period until payment is delivered. See Section 31-7-305 of the Mississippi Code Annotated. Seller understands and agrees that Purchaser is exempt from the payment of taxes.

- 7.9 The State shall not pay any attorney's fees, prejudgment interest or the cost of legal action to or for the Vendor.
- 7.10 The State shall not propose any prohibited technology as defined in the law (a) "Prohibited technology" means any information technology deemed to pose an unacceptable risk to the security of the United States and/or the State of Mississippi by Mississippi and/or federal law, regulation, or guidance

## 8. **Approved Contract**

- 8.1 Award of Contract - A contract is considered to be awarded to a Vendor once the awarded Vendor's offering has been approved as lowest and best proposal through:
- 8.1.1 Written notification made to Responding Vendors on ITS letterhead, or
  - 8.1.2 Notification posted to the ITS website for the project, or
  - 8.1.3 CP-1 authorization executed for the project, or
  - 8.1.4 The ITS Board's approval of same during an open session of the Board.
- 8.2 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 availability of funds of the acquiring State entity and are contingent upon receipt by the winning Vendor of a purchase order from the acquiring State entity.

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

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

### 13. Requirement for Electronic Payment and Invoicing

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

### 14. Time For Negotiations

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

### 15. Prime Contractor

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

### 16. Sole Point of Contact

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

- 16.1 The Vendor must acknowledge and agree that in matters of proposals, clarifications, negotiations, contracts, and resolution of issues and/or disputes, the Vendor represents all contractors, third parties and/or subcontractors the Vendor

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

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

notification from ITS regarding the monies owed must submit, with the proposal, a certified check in the amount due and owing in order for the proposal in response to this RFP to be considered. For a Vendor currently in bankruptcy as of the RFP submission date, this requirement is met if, and only if, ITS has an active petition before the appropriate bankruptcy court for recovery of the full dollar amount presently owed to the State of Mississippi by that Vendor. If the Vendor has emerged from bankruptcy by the RFP submission date, the Vendor must pay in full any amount due and owing to the State, as directed in the court-approved reorganization plan, prior to any proposal being considered.

- 21.2 Any Vendor who is presently in default on existing contracts for which ITS is the contracting agent, or who otherwise is delinquent in the performance of any such contracted obligations, is in the sole judgment of the State required to make arrangement for fulfilling outstanding obligations to the satisfaction of the State in order for the proposal to be considered.
- 21.3 The State, at its sole discretion, may reject the proposal of a Vendor with any significant outstanding financial or other obligations to the State or who is in bankruptcy at the time of proposal submission.
22. **Equipment Condition**  
For all RFPs requiring equipment, the Vendor must furnish only new equipment in response to ITS specifications, unless an explicit requirement for used equipment is otherwise specified.
23. **Delivery Intervals**  
The Vendor's proposal must specify, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, delivery and installation intervals after receipt of order.
24. **Pricing Guarantee**  
The Vendor must explicitly state, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, how long the proposal will remain valid. Unless stated to the contrary in the *Technical Specifications*, pricing must be guaranteed for a minimum of ninety (90) days.
25. **Shipping Charges**  
For all RFPs requiring shipment of any product or component, all products must be delivered FOB destination to any location within the geographic boundaries of the State with all transportation charges prepaid and included in the RFP proposal or LOC quotation. Destination is the point of use.
26. **Amortization Schedule**  
For all RFPs requiring equipment, contracts involving the payment of interest must include an amortization schedule clearly documenting the amount of interest payable over the term of the contract.
27. **Americans with Disabilities Act Compliance for Web Development and Portal Related Services**  
All Web and Portal development work must be designed and implemented in compliance with the Electronic and Information Technology Accessibility Standards associated with

Section 508 of the Rehabilitation Act and with the Web Accessibility Initiative (WAI) of the W3C.

**28. Ownership of Developed Software**

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

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

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

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

**30. Terms of Software License**

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

**31. The State is Licensee of Record**

The Vendor must not bypass the software contracting phase of a project by licensing project software intended for State use in its company name. Upon award of a project, the Vendor must ensure that the State is properly licensed for all software that is proposed for use in a project.

**32. Compliance with Enterprise Security Policy**

Any solution or service proposed in response to this RFP must be in compliance with the State of Mississippi's Enterprise Security Policy. The Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines and is established to safeguard the State's information technology (IT) assets from unauthorized use, access, disclosure, modification, or destruction. Given that information security is an evolving technology practice, the State reserves the right to introduce new policy during the term of the contract resulting from this RFP and require the Vendor to ensure the solution or service complies with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi. 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, policy, and guidelines and augments the Enterprise Security Policy. Given that information security is an evolving technology practice, the State reserves the right to introduce new policy during the term of the contract resulting from this RFP and require the Vendor to ensure the cloud or vendor-hosted solution complies

with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi. A copy of the Enterprise Cloud and Offsite Hosting Security Policy can be found on the ITS website.

**34. Negotiating with Next Ranked Vendor**

Should the State cease doing business with any Vendor selected via this RFP process, for any reason, the State reserves the right to initiate negotiations with the next ranked Vendor.

**35. Disclosure of Proposal Information**

Vendors should be aware that any information in a proposal may be subject to disclosure or reproduction under the Mississippi Public Records Act of 1983, defined in Section 25-61-1 et seq. of the Mississippi Code Annotated. All disclosures of proposal information will be made in compliance with the ITS Public Records Procedures established in accordance with the Mississippi Public Records Act. The ITS Public Records Procedures are available in Section 019-010 of the ITS Procurement Handbook on the ITS website at:

<https://www.its.ms.gov/sites/default/files/ProcurementPDFs/ISS%20Procurement%20Manual.pdf#page=173> or from ITS upon request.

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

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

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

**36. Risk Factors to be Assessed**

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

**37. Proposal Bond**

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

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

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

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

Vendor's proposing Category I and/or Category II must include a Performance Bond or Irrevocable Bank Letter of Credit in the following amounts:

Category I: \$2,000,000.00  
Category II: \$3,000,000.00

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

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

State agency or institution will be asked to leave the premises and can be suspended from further work on the premises.

40. **Protests**

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

<https://www.its.ms.gov/sites/default/files/ProcurementPDFs/ISS%20Procurement%20Manual.pdf#page=180> or from ITS upon request.

41. **Protest Bond**

Potential Vendors may protest any of the specifications of this RFP on the belief that the specification is unlawful, unduly restrictive, or unjustifiably restraining to competition. Any such protest must be in writing and submitted to the ITS Executive Director along with the appropriate protest bond within five (5) working days of the Official Release of the RFP, as defined in the ITS Protest Procedure and Policy. The outside of the envelope must be marked "Protest" and must specify RFP Number 4666.

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 \$500,000.00, 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 or Attachment of this RFP listed and clearly explained or state "No Exceptions Taken." If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions to any item in this RFP document.

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

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

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

**PROPOSAL EXCEPTION SUMMARY FORM**

**List and clearly explain any exceptions, for all RFP Sections, Attachments, 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 in determining which Vendor will be chosen for the project. Any Vendor who can claim status as a Minority Business Enterprise or a Woman Business Enterprise in accordance with the definitions on this form and who has not previously submitted a form to the State of Mississippi should submit the completed form with the proposal. A copy of the Minority Vendor Self-Certification Form can be obtained at:

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

Please direct any questions about minority certification in Mississippi to the Minority Business Enterprise Division of the Mississippi Development Authority by telephone at (601) 359-3448 or via email at [minority@mississippi.org](mailto:minority@mississippi.org).

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

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

- 2.1 Vendors must provide proof, in its response to this 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 National Defense Authorization Act**  
The Vendor must provide equipment that is in compliance with the National Defense Authorization Act, Section 889. (Vendor must state if they can meet this requirement.)
4. **Compliance with National Security on State Devices and Networks Act**  
Vendors shall not provide or propose to provide any prohibited technology as defined under the National Security on State Devices and Networks Act, Mississippi Code Ann. Section 25-53-193. Failure to meet this requirement may disqualify Vendor from consideration. (Vendor must state if they can meet this requirement.)
5. **Countries of Particular Concern**  
The State strictly prohibits vendors, subcontractors, and any associated personnel from performing work, providing services, or accessing State accounts, networks, or systems from any country identified by the United States government as a country of concern. Vendors shall ensure compliance with this restriction and certify that all work will be conducted only from authorized jurisdictions. In the event that the United States government updates or modifies its list of countries of concern during the term of the contract, Vendors must immediately comply with such changes and certify ongoing adherence to this requirement. Vendor must indicate if their company, subcontractors, or any personnel involved in the services provided under this RFP are considered a Country of Particular Concern as listed on the U.S. Department of State website: <https://www.state.gov/countries-of-particular-concern-special-watch-list-countries-entities-of-particular-concern>.
6. **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:
- 6.1 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.)
- 6.2 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.
7. **Pending Legal Actions**
- 7.1 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.)
- 7.2 Are there any criminal or civil proceedings (federal or state) pending against the Vendor or its principals or employees that pertain to any public procurement within the State of Mississippi or elsewhere? (A yes or no answer is required.)

7.3 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.

7.4 The State, at its sole discretion, may reject the proposal of a Vendor who (a) has criminal or civil proceedings pending that pertain to a public procurement within Mississippi or elsewhere, or (b) has lawsuits or other legal proceedings pending that pertain to any of the products or services which are part of the Vendor’s proposal.

8. **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.)

9. **Web Amendments**

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

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

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

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

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

10. **Order and Remit Address**

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

Order Address:

Remit Address (if different):

11. **Taxpayer Identification Number**  
Vendor must specify their taxpayer identification number.
12. **Certification of Liability Insurance**  
Vendor must provide a copy of their Certificate of Liability Insurance with their RFP response.
13. **E-Verify Registration Documentation**  
Vendor must ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008). Vendor must provide documentation of their E-Verify compliance with their RFP response. See Section IV, Item 42 for additional information.

## **SECTION VII TECHNICAL SPECIFICATIONS**

### **1. How to Respond to this Section**

- 1.1 Beginning with Item 7 and through Item 12.9 of this section, Vendor should label and respond to each outline point in this section as it is labeled in the RFP.
- 1.2 The State is under the impression that Vendors have read and agree to all items in this RFP. Vendors should take exception to items in which they disagree.
- 1.3 The Vendor must respond with "WILL COMPLY" to each point in this section. In addition, Vendor must provide detailed and specific justification to substantiate Vendor's response to ensure compliance. Failure to provide the information requested will result in the Vendor receiving a lower score for that item, or, at the State's sole discretion, being subject to disqualification.
- 1.4 "WILL COMPLY" indicates that the vendor can and will adhere to the requirement. This response specifies that a vendor or vendor's proposed solution must comply with a specific item or must perform a certain task.
- 1.5 If the Vendor cannot respond with "WILL COMPLY", then the Vendor must respond with "EXCEPTION". (See Section V of this RFP, for additional instructions regarding Vendor exceptions.)
- 1.6 Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
- 1.7 In addition to the above, Vendor must provide explicit details as to the manner and degree to which the proposal meets or exceeds each specification.

### **2. How to Respond to the Attachment A Excel Spreadsheets**

- 2.1 Unless a row is grayed out, all items in the Technical Specifications tab require a response of "A", "E", or "X" (meaning of the responses are detailed in the spreadsheets).
- 2.2 The State is under the impression that Vendors have read and agree to all items in Attachment A. Vendors should take exception to any item in which they disagree.
- 2.3 With a response of "A", Vendors should provide enough justification in the "Vendor Comments" column to prove their abilities to the State. If the evaluation team determines that a requirement asking for details is lacking, Vendor is at risk of receiving a lower score for that item.
- 2.4 With a response of "E" or "X", Vendor must list any alternatives or their inability to meet a requirement in Section V Proposal Exception Summary Form.
- 2.5 Due to certain cell limitations, Vendors may provide any additional narrative or graphics for the "Vendor Comments" column in a separate document; however,

Vendor must reference in the “Vendor Comments” cell where the additional information or documentation is included in their proposal response.

- 2.6 Should Vendors include their narrative as a separate point-by-point response document, Vendors must still include in the Attachment A spreadsheets a proper response of “A”, “E”, or “X”. Failure to respond to the Attachment A spreadsheet(s) as described could deem a Vendor unresponsive.
- 2.7 The tab labeled “Scoring Methodology” is for informational purposes only.
- 2.8 Vendors must include all applicable costs of their offering in the “Cost Information Submission” tab as indicated in Section VIII of this RFP.

**3. Mandatory Provisions or No Mandatory Provisions in Technical Requirements for this RFP**

- 3.1 Certain items in the technical specifications of this RFP are **MANDATORY**. Vendors are specifically disallowed from taking exception to these mandatory requirements, and a proposal that does not meet a mandatory requirement is subject to immediate disqualification.
- 3.2 Mandatory requirements are those classified as **MANDATORY** in this Section of the RFP and “M” in a column of the Attachment A documents. Meeting a mandatory requirement means the Vendor has provided a detailed response that demonstrates that Vendor meets the qualifications and experience required and/or the requested functionality exists in the base solution at time of proposal submission.
- 3.3 Attendance at the onsite or virtual Vendor Conference is **MANDATORY** for any Vendor who intends to submit an RFP response. No exceptions will be granted to this requirement. Any proposal received from a Vendor who did not have an authorized representative at the Vendor Conference will be rejected.

Description	Date	Location
Category I Avaya Products and Category II Managed Services	03/16/2026 at 10:00 a.m.	Mississippi Department of Information Technology Services (ITS) or Virtual
Category III Call Center as a Service (CCaaS)	03/16/2026 at 1:00 p.m.	Mississippi Department of Information Technology Services (ITS) or Virtual

- 3.3.1 To attend the mandatory onsite or virtual Vendor Conference, Vendors must contact Roshunda Ware via email no later than Friday March 13, 2026, at 12:00 p.m. Central Standard Time (CST) to receive instructions.

#### 4. General Overview and Background

In 1996, ITS evaluated the voice communications platform serving the Capitol Complex, which includes the metro-Jackson area. ITS issued a Request for Proposals (RFP) to include the options of upgrading the existing AT&T (now AVAYA Communications) Definity Generic 2 platform or replacing the system in total. In August 1996, the ITS Board, based upon the recommendation from staff, awarded to AT&T (AVAYA) the upgrade of the system to the Definity Generic 3 Enhanced Communications System, equipment connected in the Capitol Complex. That upgrade was completed in April 1997.

##### 4.1 Current Environment

4.1.1 The State's comprehensive communication platform is detailed in the Technical Requirements for each functional Category.

4.1.2 The current Avaya system runs on a combination of Dell ASP130's and virtual servers hosted in the ITS virtual environments in Jackson and Starkville, MS. The system is currently Avaya Aura 10.1. ITS has G430 and G450 gateways in various locations around the state. Local sites use a combination of Analog or PRI circuits, while the Capital Complex area uses SIP trunks and Avaya SBCs. ITS uses a combination of endpoints including analog, digital, H323, and SIP desk phones as well as Avaya Workplace. ITS leverages several Avaya products such as WFO, Experience Portal, IX messaging and CMS as add-on applications to the PBX. In addition to the State's Enterprise AVAYA PBX, the Mental Health hospitals, Department of Rehab Services, and Department of Corrections also maintain AVAYA systems of various versions that operate as standalone systems. *The current environment/configuration is subject to change during the term of this contract.*

##### 4.2 Telecommunication Acquisitions

Statute governing the acquisition, operation, and maintenance of telecommunications systems is contained in Sections 25-53-101 through 25-53-125 of the Mississippi Code of 1972. This statute requires that the Mississippi Department of Information Technology Services (ITS) act as the "sole centralized customer for the acquisition, billing, and record keeping of all telecommunications systems or services provided to State agencies whether obtained through lease or purchase." "Agency" is defined as "all the various State agencies, officers, departments, boards, commissions, offices and institutions of the State" and includes the State's institutions of higher learning (IHLs).

ITS' legislative charge is to leverage the total aggregate buying power of State government to obtain both best pricing and highest quality of service from telecommunication Vendors on behalf of State government. Aggregation and single point of contact also allow the State to have a more accurate inventory of telecommunications equipment and services and to plan and execute smoother migrations to new technologies. The management and consolidation of telecommunication contracts through ITS is also intended to ensure that the products and services obtained by State agencies and institutions are appropriate to and fit within the overall infrastructure of the State.

Section 25-53-117 of the Mississippi Code states that “no agency shall be permitted to obligate the state to any vendor source for a telecommunications system of any kind. All transactions dealing with a telecommunications system shall be conducted through [ITS] and any vendor found in violation of this policy may be prohibited from bidding on such systems for a period of time commensurate with the severity of the violation.” In compliance with this statute, ITS does not allow Vendors to contract directly with State agencies and IHLs for telecommunication products, systems, and services. If there is no contract for the required telecommunications services, ITS must still be a party to any provision of telecommunications products or services to a State agency or institution.

Contracts are awarded to Vendors who have participated in a competitive bid and whose proposals have been determined to be “lowest and best” in an objective evaluation process as required by ITS law. State law prohibits Vendors who have not been awarded a contract through a competitive process from offering telecommunications services or products to State agencies and IHLs. The competitive process and resulting contract provide strong protective measures for all State government customers and guarantee a consistent level of service to all areas of the State. There is no delegation threshold for the purchase of telecommunications systems and services by State agencies and institutions. All such purchases must be made via a procurement or service request from the agency or institution to ITS.

The contracts awarded under this RFP will be available for use by different categories of public entities in the State of Mississippi by use of an ITS-published Instructions for Use that will be publicly published on the ITS website.

#### 4.3 Scope

The current AVAYA infrastructure contract has served the State well, but the State must now look at future needs and technologies to ensure that Mississippi government and public education remain competitive. It is the desire of ITS to expand and build upon past successes under a new contract while not accepting less in the technology and the service support model that the State has worked hard to achieve. The State of Mississippi recognizes and acknowledges that new competition now exists for many telecommunications service offerings. The State of Mississippi is committed to taking advantage of this competition for its benefit. This RFP will be used to procure certain services for the State of Mississippi to be administered by the Mississippi Department of Information Technology Services (ITS). This RFP is being broken down into three (3) distinct functional Categories for response and evaluation. The three (3) categories are: (I) Avaya Products, (II) Managed Services, and (III) Call Center as a Service (CCaaS).

4.3.1 ITS acknowledges that the telecommunications industry is a dynamic marketplace with increased competition for both services and hardware/software. ITS also understands that cloud communications is an option and alternative to the current telecommunications structure in place today. The State of Mississippi is committed to taking advantage of this competition and increased product offerings to choose and implement the best communications solutions to fully meet the needs of ITS and state agencies. The chosen solution will be based on the current platform, which is subject to change, and this RFP will not be based on a

volume or revenue commitment. Furthermore, the State requires a 30-day notice of termination in the event of funding issues, technology changes/advancements, or simply a change in the needs of the State.

- 4.3.2 The primary objectives of this RFP are to obtain high quality, reliable telecommunication services for all State entities at the lowest possible cost and to expend State funds in such a manner as to promote enhancements to the State’s telecommunication infrastructure that will result in better services for the State’s private customers, business/industry, and citizenry.

**5. Procurement Project Schedule**

<b>Task</b>	<b>Date</b>
First Advertisement Date for RFP	03/03/2026
Second Advertisement Date for RFP	03/10/2026
Deadline for Vender Conference Registration	12:00 p.m. Central Time on 03/13/2026
Mandatory Onsite/Virtual Vendor Conference – See location, dates, and times in item 3.3 above	03/16/2026
Deadline for Vendor’s Written Questions	3:00 p.m. Central Time on 03/19/2026
Deadline for Questions Answered and Posted to ITS Website	03/31/2026
Proposal Response Deadline/Opening of Proposals	3:00 p.m. Central Time on 04/15/2026
Begin Evaluation of Proposals	04/16/2026
ITS Board Presentation (estimated)	05/21/2026
Begin Contract Negotiation	May 2026
Proposed Project Implementation Start-up	07/01/2026
Estimated Project Go-Live	08/03/2026

**6. Statement of Understanding**

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

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

<b>Question</b>	<b>RFP Item</b>	<b>RFP Page</b>	<b>Vendor Question</b>
1)			
2)			
3)			
4)			
5)			

- 6.1.2 Vendor must deliver a written document to Solicitations Team at ITS by Thursday, March 19, 2026 at 3:00 p.m. Central Time. This document may

be delivered by hand, mail, email, or fax. Address information is given on page one of this RFP. The fax number is (601) 713-6380. **ITS WILL NOT BE RESPONSIBLE FOR DELAYS IN THE DELIVERY OF QUESTION DOCUMENTS.** It is solely the responsibility of the vendor that the clarification document reaches ITS on time. Vendors may contact Roshunda Ware to verify the receipt of their document. Documents received after the deadline will be rejected.

- 6.2 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 close of business on Tuesday, March 31, 2026.
- 6.3 Any award(s) from RFP No. 4666 will be available to all of the various logical entities of the State. These logical entities include state agencies, libraries, institutions of higher learning, community colleges, K-12 schools, and local government entities. Governing authorities, universities, community and junior colleges, libraries and K-12 schools will work directly with the awarded Vendor(s) for all billing and service related issues.
- 6.4 References to "Customer" within this RFP shall mean ITS or the logical entity placing an order.
- 6.5 The State reserves the right to continue using other options for procuring installation services, hardware, software managed services and cloud solutions. These options include, but are not limited to, General RFPs, both current and future, ITS Express Procurement Options (EPO), and the use of IT procurement law that includes the use of quotes within certain dollar ranges and national consortium contracts.
- 6.6 ITS will serve as its own agent of record to all common carriers.
- 6.7 Within each functional Category to which the Vendor responds, Vendor is requested to provide details on what features, functions, or other considerations exclusive of the specified requirements either their company or the proposed hardware/software/services afford the customer that may provide a distinct added value to the State, specific to the services or products in that RFP Category.
- 6.8 By responding to this RFP, Vendor acknowledges that it will partner with the State to bring its best resources to bear on behalf of the State in a manner that is consistent with ITS' master plans, policies and procedures. In the event a conflict arises between the Vendor's business practices and ITS' master plans, policies, and procedures, both parties agree to meet and negotiate an understanding and realignment of this partnership. Any failure to cure such a conflict shall be grounds for termination of any Agreement between the Vendor and the State.
- 6.9 Vendors should understand that their history or the lack of history of performance on previous contracts and compliance with State Law and ITS policy and procedures will be taken into consideration in the evaluation and award of the RFP.

- 6.10 It is the State's expectation that all customers that purchase services from this RFP will receive the same level of service regardless of the volume or size of the customer's account.
- 6.11 In order to accurately and completely document functional requirements, ITS has identified three (3) functional Categories where Vendors must respond. The functional requirements of these Categories are described in the Attachment A Excel spreadsheets. Responding Vendors must complete and return the Excel spreadsheets for the functional Categories in which they wish to respond. The State desires to award a single vendor in each of the three (3) functional Categories shown below:
- 6.11.1 Category I – Avaya Products;
- 6.11.2 Category II – Managed Services; and
- 6.11.3 Category III – Call Center as a Service (CCaaS).
- 6.12 It should be understood that Vendors are ***not required*** to respond to each functional Category. Vendors must indicate in their Configuration Summary (included as Section I of this RFP) which functional Category(ies) that they are responding to.
- 6.12.1 Vendors are required to respond to the “Technical Specifications” and “Cost Information Submission” tabs of the functional Category(ies) that are being proposed. Failure to respond appropriately will deem a Vendor's proposal as non-responsive.
- 6.12.2 Award decisions for each functional Category will be made independently, and proposals should not be contingent upon the award of any other Category. However, the State reserves the right to award any combination of functional Categories, including all three, to the vendor(s) whose overall proposal(s) are deemed most advantageous to the State.
- 6.12.3 It is the State's preference that one Vendor be selected for the Avaya Products and Managed Services Categories, but the State understands that it may be financially advantageous to award each functional Category to different vendors. If the State is able to receive additional discounts for being selected for both the Avaya Products and Managed Services Categories, please outline that in your response and include any discounts in your cost proposal. Upon final evaluation of the independent awards, the State will take any proposed discounts into consideration.
- 6.13 Vendors awarded contract(s) under this RFP are not guaranteed any amount of work pursuant to the RFP, and Vendor proposals may not be based on any volume or revenue commitments.

## 7. **Vendor Organization, Staff, and Product**

The Vendor must provide a description of their organization. This description shall contain all pertinent data relating to the Vendor's organization, personnel, and experience that

would substantiate the qualifications and capabilities of the Vendor's company to perform the services described herein. At minimum, this description should include:

7.1 Brief History of the Company.

7.2 Experience in the Industry:

Provide information as to the Vendor's background and experience in providing network/telecommunication services for each of the specified areas being responded to.

7.3 Organization Size and Structure:

7.3.1 Describe the Vendor's size (i.e., number of offices, employees, customer base, etc.) and organizational structure, and state whether the Vendor is based locally, regionally, nationally, or internationally, as well as its relationships to any parent firms, sister firms, or subsidiaries.

7.3.2 Give the location of the Vendor's principal corporate headquarters and the number of executive and professional personnel employed at that office and the location of the Vendor's principal corporate office in Mississippi and the number of executive and professional personnel employed at that office.

7.3.3 If incorporated, the name of the State of incorporation shall be included.

7.3.4 The Vendor must provide a copy of their most recent annual report, credit rating number from an industry-accepted credit rating firm, or report of an auditor's unqualified opinion of the financial stability of the firm. Vendor must indicate the file name of this report on their USB drive.

7.3.5 If a Vendor's credit rating number or financial report is unsound or if a Vendor is currently in bankruptcy, Vendor must explain its company's financial plans to overcome its financial difficulties. Should a Vendor be financially insolvent or has filed bankruptcy within the last three (3) years, Vendor may be eliminated at the state's sole discretion.

7.4 Vendors must understand that the State's expectation is that all account and support personnel will be proficient in spoken and written English. The state reserves the right to request a change in supporting staff should there be an issue relative to effective communications with the Vendor's staff.

8. **Service Related Data**

8.1 The State of Mississippi shall own all right, title and interest to the data used by, resulting from, and collected by the Vendor in the providing of the services. Vendor must agree to the following general security requirements for its proposed solution in regards to this data:

8.1.1 **MANDATORY** - The Vendor shall not access State of Mississippi User accounts, or State of Mississippi 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 of Mississippi's written request.

- 8.1.2 Protection of personal privacy and sensitive data shall be an integral part of the business activities of the Vendor to ensure that there is no inappropriate or unauthorized use of State of Mississippi information at any time. To this end, the Vendor shall safeguard the confidentiality, integrity, and availability of State information and comply with the following conditions:
- 8.1.2.1 All information obtained by the Vendor under this service shall become and remain property of the State of Mississippi.
- 8.1.2.2 At no time shall any data or processes which either belongs to or are intended for the use of State of Mississippi or its officers, agents, or employees, be copied, disclosed, or retained by the Vendor or any party related to the Vendor for subsequent use in any transaction that does not include the State of Mississippi.
- 8.1.3 **MANDATORY** - The Vendor shall not store or transfer State of Mississippi data outside of the United States. This includes backup data and Disaster Recovery locations. The Vendor will permit its personnel and contractors to access State of Mississippi data remotely only as required to provide technical support.
- 8.1.4 The Vendor shall encrypt all non-public data in transit regardless of the transit mechanism.
- 8.1.5 For engagements where the 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, the Licensor must describe existing security measures that provide a similar level of protection. Additionally, when the 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:
- 8.1.5.1 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).
- 8.1.5.2 The Vendor and the State shall reach agreement on the level of liability insurance coverage required.
- 8.1.5.3 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.

- 8.1.5.4 At a minimum, the policy shall include third party coverage for credit monitoring, notification costs to data breach victims; and regulatory penalties and fines.
- 8.1.5.5 The policy shall apply separately to each insured against whom claim is made or suit is brought subject to the Vendor's limit of liability.
- 8.1.5.6 The policy shall include a provision requiring that the policy cannot be cancelled without thirty (30) days written notice.
- 8.1.5.7 The Vendor shall be responsible for any deductible or self-insured retention contained in the insurance policy.
- 8.1.5.8 The coverage under the policy shall be primary and not in excess to any other insurance carried by the Vendor.
- 8.1.5.9 In the event the Vendor 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.
- 8.1.6 **MANDATORY** - Unauthorized access or disclosure of data is considered to be a breach. The Vendor will provide immediate notification, and all communication shall be coordinated with the State of Mississippi. When the Vendor or their sub-contractors are liable for the loss, the Vendor shall bear all costs associated with the investigation, response, and recovery from the breach, mailing costs, website, and continental US-based call center services. The State of Mississippi shall not agree to any limitation on liability that relieves a Contractor from its own negligence or to the extent that it creates an obligation on the part of the State to hold a Contractor harmless.
- 8.1.7 The Vendor shall contact the State of Mississippi upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to the data of the State. The Vendor shall not respond to subpoenas, service of process, and other legal requests related to the State of Mississippi data in possession of the Vendor due to this service without first notifying the State unless prohibited by law from providing such notice.
- 8.1.8 **MANDATORY** - In the event of termination of the service, the Vendor shall implement an orderly return of State of Mississippi data in CSV or XML or another mutually agreeable format. The Vendor shall guarantee the subsequent secure disposal of State of Mississippi data.
  - 8.1.8.1 During any period of suspension or contract negotiation or disputes, the Vendor shall not take any action to intentionally erase any State of Mississippi data.

- 8.1.8.2 In the event of termination of any services or agreement in entirety, the Vendor shall maintain the existing level of security as stipulated in the Agreement and shall not take any action to intentionally erase any State of Mississippi data for a period of ninety (90) days after the effective date of the termination. After such ninety (90) day period, the Vendor shall have no obligation to maintain or provide any State of Mississippi data and shall thereafter, unless legally prohibited, dispose of all State of Mississippi data in its systems or otherwise in its possession or under its control as specified in the requirement below. Within this ninety (90) day timeframe, Vendor will continue to secure and back up State of Mississippi data covered under the contract.
- 8.1.8.3 The State of Mississippi 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 an SLA.
- 8.1.8.4 When requested by the State of Mississippi, the Vendor shall destroy all requested data in all of its forms and locations. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST) approved methods and certificates of destruction shall be provided to the State of Mississippi.
- 8.1.9 The State currently uses recording services from Verint, with recordings kept in the Verint cloud. Vendor must explain how the State can migrate existing recordings and metadata to Vendor's proposed solution, explain how the State can migrate recordings and metadata from the Vendor's proposed solution to a different Vendor's solution (post termination or expiration), and explain how the State will continue to access the data for a three (3) year retention period.
- 8.1.10 The Vendor shall conduct criminal background checks and not utilize any staff, including sub-contractors, to fulfill the obligations of the contract who has been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or any misdemeanor offense for which incarceration for a minimum of one (1) year is an authorized penalty. The Vendor shall promote and maintain an awareness of the importance of securing the State's information among the Vendor's employees and agents.
- 8.1.11 The Vendor shall allow the State of Mississippi access to system security logs that affect this engagement, its data, and/or processes. This includes the ability for ITS 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.

8.1.11.1 These mechanisms should be defined up front and be available for the entire length of the agreement with the Vendor.

8.1.12 The Vendor shall allow the State of Mississippi to audit conformance, including contract terms, system security, and data centers as appropriate. The State of Mississippi may perform this audit or contract with a third party at its discretion at the State's expense.

8.1.13 The Vendor shall identify all of its strategic business partners related to services provided under this contract, including but not limited to, all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Vendor, who will be involved in any application development and/or operations.

8.1.14 Vendor must ensure that any agent, including a Vendor or subcontractor, to whom the Vendor grants access to the solution, agrees to the same restrictions and conditions that apply through this Agreement.

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

## 9. **Billing**

9.1 ITS will act as the agent of record to any awarded provider of the services provided under this contract for the State of Mississippi. However, ITS reserves the right to designate an agent of record as it deems necessary, which may include allowing agencies and institutions to serve as their own agents of record.

9.2 The State is interested in potentially using the following billing models. Vendors are asked to detail how they can accommodate these models.

9.2.1 Billing directly to ITS.

9.2.2 Billing directly to the logical entity, as deemed appropriate by ITS.

9.3 Vendors must provide information regarding their ability to split a bill for a given service among multiple entities. For example, if two (2) entities share a service, that cost should be split among those entities either evenly or as designated percentage and billed accordingly.

9.4 **Billing Cycle:**

9.4.1 The billing cycle for each class of service will begin on the first day of each month and end on the last day of each month.

9.4.2 The bill must be received by the tenth day of each month.

- 9.4.2.1 Failure to have the bill delivered to ITS by the 10<sup>th</sup> day of each month shall result in liquidated damages of \$400 per each day of delay.
- 9.4.3 Invoices submitted to the State of Mississippi for payment will be paid forty-five days (45) after receipt of undisputed invoice.
- 9.5 Billing Requirements:
  - 9.5.1 Bill information should be consistent for all services.
    - 9.5.1.1 All elements for a given service should appear on a single bill.
    - 9.5.1.2 Any administrative, federal regulatory, etc. fees must be fully disclosed by the Vendor and have a maximum rate associated with each fee. Any fees not disclosed by the Vendor must be removed from any invoices.
    - 9.5.1.3 On a per logical entity basis, the logical entity may choose to have their bill under a single account. As a new service is turned up for the logical entity, service must be consolidated under their designated account. Any errant bills will not be paid. The incorrect charges must be removed from the errant account and be rebilled under the designated account.
  - 9.5.2 Vendor must clearly define rates on a per billing element basis and not reflect rates as a percentage off of the tariff rate.
  - 9.5.3 Some logical entities have the business requirement to rebill services within departments, etc. In order to meet this requirement, the Vendor must work with the logical entity that ordered the services to properly identify all billed services for rebilling purposes. This includes, but is not limited to, department identifiers, site identifiers, telephone numbers, circuit identifiers, etc.
    - 9.5.3.1 Any charges not properly identified on a bill will not be paid. Vendor will be allowed one billing cycle to correct an incorrect identifier and rebill previous charges as current charges. Failure to have the bill corrected and delivered to ITS within one billing cycle shall result in liquidated damages of \$400 per each day of delay.
    - 9.5.3.2 Any usage-based billing associated with a service must be detailed to a level agreed upon by the State.
  - 9.5.4 Vendor must perform an annual audit of all services sold through this contract to verify that the bills are correct and accurate.
    - 9.5.4.1 Any discrepancies for overbilling found must be credited back to the date of installation. Any under-billing may be corrected

going forward as of the date found, and Vendor must notify the logical entity of this change.

9.5.4.2 Vendor must provide ITS with audit results on a monthly basis, to be received by ITS with the monthly bill. Failure to provide audit results to ITS on 10<sup>th</sup> day of the month shall result in liquidated damages of \$400 per each day of delay.

9.5.5 For any services proposed, Vendor agrees not to bill for services until installation and/or acceptance is complete and signed off by the logical entity ordering the service. Vendor cannot bill for partial or incomplete services.

9.5.6 When an order is placed to cancel or disconnect a service, Vendor must stop billing for the service on the customer requested date. The requested date may be the same date that the order is placed to cancel or disconnect the service.

## 9.6 Reporting Requirements

9.6.1 Vendor must provide an online reporting portal that encompasses all services offered by the Vendor. *(This requirement only applies to Vendors proposing CCaaS. Vendors not proposing CCaaS can skip this requirement 9.6.1 and all sub-requirements.)*

9.6.1.1 Online reporting data must be segmented at a logical entity level. ITS, as the contract holder for the State, reserves the right to have access and audit the services purchased through this contract by other logical entities.

9.6.1.2 Portal must allow for the creation of ad hoc reports. Reports should be customizable by the user.

9.6.1.2.1 Reports must be downloadable as CSVs or PDFs.

9.6.1.2.2 Preference will be given to Vendors whose reporting systems allow for the creation and storage of queries that can be run on an ad hoc or scheduled basis.

9.6.2 Billing Reporting. *(This requirement only applies to Vendors proposing CCaaS. Vendors not proposing CCaaS can skip this requirement 9.6.2 and all sub-requirements.)*

For entities that rebill services, Vendor must provide billing reporting information.

9.6.2.1 Vendor must provide a secure transfer method to transmit bill information to the logical entity.

- 9.6.2.2 File must be available by the tenth calendar day of the month. Holidays are no exception.
- 9.6.2.3 File must be in a CSV ASCII. Data requirements include, but are not limited to, the following:
  - 9.6.2.3.1 Billing month
  - 9.6.2.3.2 Agency name
  - 9.6.2.3.3 Cost for individual billing components
  - 9.6.2.3.4 Itemized cost for any one-time or non-recurring charges
  - 9.6.2.3.5 Total cost
  - 9.6.2.3.6 File format must be agreed upon between the State and the Vendor after the award of the RFP.
  - 9.6.2.3.7 Costs reflected in the data file must be the actual amount billed.
- 9.6.2.4 Any changes to the file format by the Vendor must be pre-approved by the State. A minimum of thirty (30) days' notice must be given prior to any file format changes. File format changes cannot go into production unless authorized by the State.

9.6.3 Billing Disputes

- 9.6.3.1 Logical entities perform detailed billing analysis on their bills every month prior to payment submission. Any discrepancies, errors, unexpected charges, etc. that are found, Vendor must allow the State to short-pay the invoice until these issues have been resolved to the State's satisfaction.
  - 9.6.3.1.1 Once an invoice is "short paid", the State does not have the ability to make further payments against that invoice. If the State needs to pay a disputed charge, then it must be re-invoiced as a current charge.
  - 9.6.3.1.2 Vendor has five (5) business days to respond to any disputed charges. If the Vendor cannot respond in this time frame, the charge will not be paid.
  - 9.6.3.1.3 For all recurring incorrect charges, the State will receive a credit equal to ten percent (10%) of the incorrect charge. Recurring incorrect charges are

defined as charges that were disputed on a given billing cycle and were not corrected by the next month.

#### 9.6.4 Billing Personnel

9.6.4.1 Billing Manager - Responds to billing inquiries and resolves billing disputes. Proactively monitors service provider-billing accuracy. Works with order processing group to minimize billing errors on the front end. This individual must be designated to the State of Mississippi account and must be located in the continental United States.

9.6.4.2 Billing Customer Service Representative – Works at the direction of the billing manager to issue credit and resolve disputes. This individual must be designated to the State of Mississippi account and must be located anywhere in the continental United States.

### 10. **Business Continuity/Disaster Recovery.** *(This section only applies to Vendors proposing Managed Services and/or CCaaS. Vendors not proposing Managed Services and/or CCaaS can skip this Section 10.)*

10.1 In the event Vendor's host site experiences unsafe or inoperable conditions, Vendor must be prepared to resume normal Customer operations within twelve (12) hours of becoming compromised. So that Customer can assess Vendor's ability to meet this requirement, Vendor must submit with its proposal, a preliminary Continuity of Operations Plan (COOP). COOP services include but are not limited to the provision of cloud computing, system data, and documentation to ensure essential services in the event of a disaster declaration. Essential services are defined as those functions that enable Vendor to provide normal Customer operations under any and all circumstances.

10.2 At a minimum, the Preliminary COOP must:

- a. Outline a decision process for determining appropriate actions in implementing COOP plans and procedures in order to resume essential operations within twelve (12) hours of failure;
- b. Describe procedures to restore system functionality and to protect the integrity of system data and other assets;
- c. Describe plans to mitigate disruptions to operations; and
- d. Outline plans for a timely and orderly recovery from an emergency and to resume full service to users.

10.3 Upon implementation Customer and the awarded Vendor will update the COOP to:

- a. Revise plans and procedures as appropriate;
- b. Identify essential functions;
- c. Identify and describe alternate facilities;
- d. Identify vital records and databases;

- e. Document testing, training, and monthly exercises and drills;
  - f. Establish a roster of fully equipped and trained personnel with the authority to perform essential functions and activities; and
  - g. Establish reliable processes and procedures to acquire resources necessary to resume essential operations and functions within two days of the declaration of disaster.
- 10.4 In the event of a declared disaster, Customer expects the Vendor to be completely responsible for the restoration of essential operations.
- 10.5 Vendor will be expected to invoke the appropriate disaster recovery plan within two (2) hours from the disaster declaration and the disruption of normal operations.
- 10.6 Customer must be able to log on to the failover system at the disaster recovery site at 100% operational capacity within twelve (12) hours of the declaration of disaster.
- 10.7 In the event of a disaster declaration, Vendor must remain in regular and consistent communications with Customer, keeping all relevant managers and responders informed and updated on efforts to restore normal operations.
- 10.8 Vendor must agree that the proposed solution will maintain synchrony between the primary Customer site and the failover site to ensure that each and every transaction successfully enrolled in the operational site is still available in case of a switchover to the alternate site.

## 11. **Implementation Requirements – Statement of Work/Method of Procedure**

- 11.1 Project Management Plan (PMP): ITS desires to implement the proposed solution as rapidly as possible after contract execution. So that ITS can assess Vendor's ability to successfully implement the proposed solution, Vendor must submit a preliminary PMP. At a minimum, the PMP must address design and development, all implementation tasks, data conversion and migration, estimated hours per task, major project milestones, quality assurance checkpoints, testing, and end-user training. The preliminary PMP must be submitted with the Vendor's proposal.
- 11.2 Vendor's PMP must include a preliminary Integrated Master Schedule (IMS). The IMS must estimate the time necessary to complete all phases of implementation from the point of contract execution through completion of go-live, final system acceptance, and user training.
- 11.3 The PMP, which will require Customer approval, must reveal plans for multiple environments, including design and development, user testing, production, end user training, and help desk support. In the user testing environment, all customizations, integrations, and interfaces must be tested and validated.
- 11.4 Vendor's PMP must reflect industry best practice standards and must detail Vendor's plans for planning, monitoring, supervising, tracking, and controlling all project activities.

- 11.5 Vendor's PMP must describe the organizational structure of the implementation team, team member roles and responsibilities, resources, processes, and all other information necessary for Customer to assess your ability to manage the proposed solution.
  - 11.6 Upon award, the Vendor and Customer will jointly modify the proposed PMP and IMS as appropriate to meet implementation objectives. Customer expects the Vendor to work with the Customer Project Manager to ensure effective project management during all implementation phases through and until final acceptance.
  - 11.7 As it relates to this procurement, Vendor must state all Vendor assumptions or constraints regarding the proposed solution and overall project plan, timeline, and project management.
  - 11.8 Identify any potential risks, roadblocks, and challenges you have encountered in similar implementations that could negatively affect a timely and successful completion of the project. Recommend a high-level strategy to mitigate these risks.
  - 11.9 Vendor's PMP must address interface, integration, conversion, migration, or other issues that may arise during implementation.
  - 11.10 Customer will have limited resources available to the awarded Vendor for implementation.
12. **User Acceptance Testing Plan**
- 12.1 Vendor agrees to conduct User Acceptance Testing Plan to prove that the proposed solution fully meets their awarded requirements of RFP No. 4666.
    - 12.1.1 Vendor agrees that UAT procedures will include proving all end-to-end workflows and all necessary Customer interfaces.
    - 12.1.2 Vendor agrees that UAT will provide a full suite of reports generated during the UAT period to validate the reporting functions.
    - 12.1.3 Vendor agrees that in the user testing environment, all customizations, integrations, and interfaces must be tested and validated.
  - 12.2 Vendor must agree to regular status meetings with Customer project management team to review progress on UAT.
    - 12.2.1 Vendor agrees to submit meeting agendas, presentation materials, and subsequent meeting minutes.
  - 12.3 Vendor must submit with his proposal, a preliminary, comprehensive UAT plan (UATP) to demonstrate Vendor's ability to conduct user acceptance testing for the proposed solution.
  - 12.4 Vendor's UAT plan must incorporate the following minimum components:
    - 12.4.1 UAT Test Procedures and Methodologies;

- 12.4.2 UAT Test Report; and
- 12.4.3 Training Materials.
- 12.5 Upon award, Vendor agrees to finalize the preliminary UAT plan with input from the Customer project team.
  - 12.5.1 Vendor agrees that the final UAT plan requires approval from Customer.
  - 12.5.2 Vendor agrees that Customer expects to witness the execution of the UAT.
  - 12.5.3 Vendor agrees that Customer retains the right to determine the success or failure of individual UAT tests.
- 12.6 Vendor must provide the facilities, equipment, and personnel to support the services identified in UAT.
- 12.7 Vendor must agree to provide the equipment and personnel to identify and resolve discrepancies between the results of the legacy system(s) and results of Vendor delivered system(s).
- 12.8 Vendor must agree to take corrective measures at no additional cost to Customer when such discrepancies result as a failure of the Vendor-delivered system(s).
- 12.9 Vendor agrees that upon the successful completion of all implementation phases, including end user training, Customer will conduct a Final Acceptance Review (FAR) to determine whether or not Vendor has satisfied the terms and conditions of the awarded contract, which includes their awarded requirements of this RFP No. 4666.

### 13. **Scoring Methodology**

- 13.1 An Evaluation Team composed of ITS staff will review and evaluate all proposals for each functional Category. All information provided by the Vendors, as well as any other information available to evaluation team, will be used to evaluate the proposals.
  - 13.1.1 Each requirement included in the scoring mechanism is assigned a weight between one and 100.
  - 13.1.2 The sum of all evaluation categories equals 100 possible points.
  - 13.1.3 Each functional Category of this RFP No. 4666 will be scored individually and points are defined within the respective functional Category under the Excel tab labeled "Scoring Methodology".
- 13.2 The evaluation will be conducted as follows:
  - 13.2.1 Validation – Selection of Responsive/Valid Proposals – Each proposal will be reviewed to determine if it is sufficiently responsive to the RFP

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

### 13.2.2 Non-cost Evaluation (all requirements excluding cost)

13.2.2.1 Each functional Category will have its own non-cost evaluation. These non-cost points are defined in each separate Excel tab labeled "Scoring Methodology".

13.2.2.2 ITS scores requirements in the non-cost categories on a 10-point scale. Proposals receiving fewer than 80% of the total points allocated for the non-cost categories will be eliminated from further consideration.

### 13.2.3 Cost Evaluation

13.2.3.1 Points will be assigned using the following formula:

$$[1 - \{(B - A)/A\}] * n$$

Where:

A = Total lifecycle cost of lowest valid proposal

B = Total lifecycle cost of proposal being scored

n = Maximum number of points allocated to cost for acquisition

13.2.3.2 Cost categories and maximum point values are defined in each Excel spreadsheet.

### 13.2.4 Selection of the successful Vendor

#### 13.2.4.1 Demonstrations and Interviews

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

13.2.4.1.2 If requested, Vendors must be prepared to make demonstrations (on-site or virtual, at the sole discretion of the State) 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 implementation of this project.

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

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

### 13.2.5 Site Visits

13.2.5.1 At the State's option, Vendors that remain within a competitive range must be prepared to provide a reference site within seven calendar days of notification. If possible, the reference site should be in the Southeastern region of the United States. Vendor must list potential reference sites in the proposal.

13.3 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**

Each functional Category within the RFP has its own Cost Information Submission tab where responding Vendors should propose their costs. Vendors must propose a summary of all applicable project costs in the associated Excel spreadsheet for the respective functional Category.

## 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 for each functional Category in which they are responding that consists 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 At least one reference installation must be for a project similar in scope and size to the project for which this RFP is issued;
  - 1.3.2 The reference installation must have been operational for at least six (6) months.
- 1.4 The State reserves the right to request information about the Vendor from any previous customer of the Vendor of whom the State is aware, including the procuring agency and/or other agencies or institutions of the State, even if that customer is not included in the Vendor's list of references, and to utilize such information in the evaluation of the Vendor's proposal.
- 1.5 Unless otherwise indicated in the Scoring Methodology in Section VII, reference information available to the State, at the State's sole discretion will be used as follows:

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

## 2. **Subcontractors**

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

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

### REFERENCE FORM

**COMPLETE THREE (3) 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. If responding to Category I and/or II, Vendor should include details of all ancillary products/services provided that are similar to the State's current environment.

### SUBCONTRACTOR REFERENCE FORM

**COMPLETE THREE (3) 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. Should awarded Vendor have any ordering documents where signature by the State is required, Vendor must include this documentation with their RFP response for the State's consideration.

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

**PROJECT NUMBER 48690  
 RFP NUMBER 4666-X  
 MASTER PURCHASE AND SERVICES AGREEMENT  
 BETWEEN  
 VENDOR  
 AND  
 MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES  
 AS CONTRACTING AGENT FOR THE  
 AGENCIES, INSTITUTIONS AND GOVERNING AUTHORITIES OF THE  
 STATE OF MISSISSIPPI**

This Master Purchase and Services Agreement (hereinafter referred to as "Master Agreement") is entered into by and between [VENDOR], a [STATE OF INCORPORATION] corporation having its principal offices at [VENDOR ADDRESS] (hereinafter referred to as "Seller") and the 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 governmental agencies, governing authorities, and educational institutions of the State of Mississippi (hereinafter referred to as "Purchaser"). ITS and Purchaser are sometimes collectively referred to herein as "State".

**WHEREAS**, ITS, pursuant to Request for Proposals ("RFP") Number 4666 requested proposals for the acquisition of a master contract containing the terms and conditions which will govern any orders placed by a Purchaser during the term of this Master Agreement for the acquisition AVAYA Products, Services, and CCaaS (hereinafter referred to as "Products");

**WHEREAS**, the Seller was the successful respondent in an open, fair and competitive procurement process to provide [AWARDED CATEGORIES];

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

### ARTICLE 1 TERM OF AGREEMENT

Unless terminated as prescribed elsewhere herein, this Master Agreement will become effective on the date it is signed by all parties (the "Effective Date") and will continue in effect for five (5) years thereafter ("Initial Term"). At the end of the Initial Term, the Master Agreement may, upon the written agreement of the parties, be renewed for additional terms, the length of which will be agreed to by the Parties. Sixty (60) days prior to the expiration of the Initial Term or any renewal

term of this Master Agreement, Seller shall notify ITS in writing of the impending expiration and thereafter ITS shall notify Seller of its intent to either renew or cancel the Master Agreement.

## ARTICLE 2 DEFINITIONS

The following terms as used herein shall have the following meanings:

**2.1 "Documentation"** means information published in varying mediums which may include product information, operating instructions and performance specifications that are generally made available to users of products. Documentation does not include marketing materials

**2.2 "Purchaser"** means, in each instance, the governmental agency, educational institution or other governing authority of the State of Mississippi who procures Vendor Products and/or services from Seller pursuant to this Master Agreement, and who shall be bound by the terms and conditions of this Master Agreement.

**2.3 "Seller"** means **VENDOR** and its successors and assigns.

**2.4 "Software"** means computer programs in object code, provided by Vendor or a Vendor Channel Partner, whether as stand-alone products or pre-installed on hardware products, and any upgrades, updates, patches, bug fixes, or modified versions thereto.

**2.5 "Order Form"** means the **[VENDOR ORDERING DOCUMENT]** pursuant to which, among other things, Purchaser orders the Products and services from Seller.

## ARTICLE 3 MODIFICATION OR RENEGOTIATION

This Master 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 Master Agreement if federal and/or state revisions of any applicable laws or regulations make changes in this Master Agreement necessary.

## ARTICLE 4 SCOPE AND DISCOUNTS

**4.1** Seller agrees to provide **[AWARDED CATEGORIES]** as specified in RFP No. 4666 and in Seller's Proposal, as accepted by the State, in response thereto, which is incorporated herein by reference.

**4.2** It is understood by the parties that Seller shall make available all RFP No. 4666 contract rates to K-12 schools, libraries, community colleges, and governing authorities, at ITS' discretion, with the understanding that these particular entities, which are not under ITS statutory authority, may choose to select some, but not all, of the state contract services. Seller agrees to seek prior approval from ITS for any entities or institutions which are not under ITS statutory authority that request use of this Master Agreement and related pricing elements.

**4.3** Seller will accept orders from and furnish the Products and services under this Master Agreement to Purchaser based on Seller's pricing and/or discounts submitted in its proposal in response to RFP No. 4666, as found in Exhibit A, and distributed to the various Purchasers. Seller guarantees the discounts throughout the life of this Master Agreement. The percentage discounts may increase, but may never decrease, and will be applied to the then-current Vendor national price list.

**4.4** **[APPLICABLE TO CATEGORY II AND CATEGORY III ONLY]** For any contract extension,

in any form permitted under the Master Agreement, Seller may request a price adjustment, calculated based on the 12-month percentage change in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, Not Seasonally Adjusted, as officially published by the U.S. Bureau of Labor Statistics (BLS). Price escalation must be approved by the State. If approved by the State, the Parties agree that the price escalation rate shall be based on the most recent index published for the month that is three (3) calendar months prior to the contract's expiration date or 5%, whichever is less. This price escalation rate will be applied to each year's applicable costs for the term of the extension period.

**4.5** [APPLICABLE TO CATEGORY II AND CATEGORY III ONLY] In the event the BLS discontinues the publication of this specific CPI-U index, the parties shall mutually agree on a reasonable substitute index from the BLS or a comparable government source. If a substitute cannot be agreed upon within sixty (60) days of the index's discontinuation, the annual adjustment shall be held at the most recent capped percentage until a resolution is reached.

**4.6** [APPLICABLE TO CATEGORY II AND CATEGORY III ONLY] Seller's failure to request a price adjustment during any eligible escalation period shall constitute a waiver of that year's adjustment. In such cases, no retroactive escalation shall be applied, and any future adjustment shall be calculated based solely on the most recent contract pricing in effect at the time of the request.

## **ARTICLE 5 ADDITIONAL TERMS AND CONDITIONS**

All provisions in this Master Agreement are in addition to the requirements of RFP No. 4666 and Seller's Proposal, as accepted by ITS, in response thereto, which are both incorporated into and made a part of this Master Agreement.

## **ARTICLE 6 ORDERS**

**6.1** The State does not guarantee that it will purchase any minimum amount under an Order Form and/or this Master Agreement.

**6.2** When a Purchaser decides to procure any Products and/or services from Seller, the Purchaser, after following applicable state procurement rules and regulations, may execute an Order Form to be signed by Seller and an authorized representative of the Purchaser. The Order Form shall reference this Master Agreement and shall set forth the Products/services to be procured; the prices for same; the warranty period (if different from that provided herein); the Purchaser's designated contact; the specific details of the transaction, as well as any additional terms and conditions agreed to by the parties. Any additional terms and conditions contained in an Order Form shall apply solely to the Products/services being procured therein. All Order Forms shall be governed by, and incorporate by reference, the terms and conditions of this Master Agreement. Excluding better pricing and/or discounts which may be specified in an Order Form, in the event of a conflict between the terms and conditions in an Order Form and this Master Agreement, the terms and conditions of this Master Agreement shall prevail. The terms of this Master Agreement shall also supersede any conflicting terms and conditions set forth in any document provided by Seller or its subcontractors. The parties agree that the Purchaser has the right to adjust the quantities of purchases based upon the availability of funding or as determined necessary by the Purchaser.

## **ARTICLE 7 CONSIDERATION AND METHOD OF PAYMENT**

**7.1** Once the Products have been accepted by Purchaser as prescribed in Article 8 herein or there has been lack of notice to the contrary, Seller shall submit an invoice for the cost and shall

certify that the billing is true and correct. Services will be invoiced as they are rendered. Seller shall submit invoices and supporting documentation to Purchaser electronically during the term of this Master Agreement using the processes and procedures identified by the State. Purchaser agrees to pay Seller in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Sections 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the State within forty-five (45) days of receipt of the invoice. Seller understands and agrees that Purchaser is exempt from the payment of taxes. All payments shall be in United States currency. Payments by state agencies using Mississippi's Accountability System for Government Information and Collaboration (MAGIC) shall be made and remittance information provided electronically as directed by the State. The payments by these agencies shall be deposited into the bank account of the Seller's choice. No payment, including final payment, shall be construed as acceptance of defective Products or incomplete work, and Seller shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the Article herein titled "Entire Agreement".

**7.2** If payment of undisputed amounts is not made to Seller within forty-five (45) days of Purchaser's receipt of the invoice, Purchaser shall be liable to Seller for interest at a rate of one and one-half percent (1 ½%) per month (or such lesser rate as may be the maximum permissible rate under the law) on the unpaid balance from the expiration of such forty-five (45) day period until such time as payment is made. This provision for late payments shall apply only to undisputed amounts for which payment has been authorized.

**7.3** If applicable, Seller agrees 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 Purchaser purposes under this Master Agreement unless express written approval is given by DFA to the Purchaser 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.

**7.4** Acceptance by Seller of the last payment from the Purchaser under an Order Form shall operate as a release of all claims for money against the State by Seller and any subcontractors or other persons supplying labor or materials used in the performance of any work under an Order Form.

## **ARTICLE 8 DELIVERY, RISK OF LOSS, INSTALLATION, AND ACCEPTANCE**

**8.1** Seller shall deliver the Products to the location specified by Purchaser and pursuant to the delivery schedule mutually agreed to by Seller and Purchaser.

**8.2** Seller shall assume and shall bear the entire risk of loss and damage to the Products from any cause whatsoever while in transit and at all times throughout its possession thereof.

**8.3** If installation by Seller is required, Seller shall complete installation of the Products pursuant to the requirements of the Purchaser based on the guidelines specified in RFP No. 4666.

**8.4** If installation by Seller is required, Seller shall be responsible for installing all Products in accordance with all state, federal and industry standards for such items. Further, Seller acknowledges that installation of the Products shall be accomplished with minimal interruption of Purchaser's normal day to day operations.

**8.5** Seller warrants that all Products shall be properly delivered, installed and integrated, if

necessary, for acceptance testing within the scheduling deadlines agreed to by Seller and Purchaser as the site is deemed ready for installation. If installation by Seller is required, Seller shall provide Purchaser with an installation schedule identifying the date, time and location within the scheduling deadlines agreed to by Seller and Purchaser.

**8.6** Seller shall be responsible for replacing, restoring or bringing to at least original condition any damage to floors, ceilings, walls, furniture, grounds, pavements, sidewalks, and the like caused by its personnel and operations during the installation, subject to final approval of Purchaser. The repairs will be done only by technicians skilled in the various trades involved, using materials and workmanship to match those of the original construction in type and quality.

**8.7** Unless a different acceptance period is agreed upon by Seller and the Purchaser and specified in the Order Form, Purchaser shall accept or reject the Products provided by Seller after a thirty (30) calendar day testing period utilizing testing criteria developed jointly by the parties. During the acceptance period, Purchaser shall have the opportunity to evaluate and test the Products to confirm that they perform without any defects and perform pursuant to its technical documentation. Purchaser may be deemed to have accepted the Product at the end of the thirty (30) day period, unless Purchaser notifies Seller that the Product fails to perform as stated herein.

**8.8** In the event the Product fails to perform as stated in Article 8.7 herein, Purchaser shall notify Seller. Unless a different period of time is agreed upon by the Seller and Purchaser and specified in the Order Form, Seller shall, within five (5) business days, correct the defects identified by Purchaser or replace the defective Product. If Seller is unable to correct the defects or replace the defective Product, Purchaser reserves the right to return the Product to Seller at Seller's expense, and cancel the Order Form.

**8.9** Upon receipt of a corrected or replaced Product, Purchaser shall have another acceptance period, as set forth in Article 8.7 herein, in which to reevaluate/retest such Product.

**8.10** If, after Seller has tendered to Purchaser Seller's attempt to correct the Product, Purchaser again determines the Product to have a defect, Purchaser may take such actions as it deems appropriate, including but not limited to, either (i) notifying Seller that it has elected to keep the Product despite such defects; (ii) returning the Product to Seller and providing Seller with an opportunity to deliver a substitute Product acceptable to Purchaser within the time period specified by Purchaser, or (iii) returning the Product to Seller at Seller's expense and canceling the Order Form.

## **ARTICLE 9 TITLE TO EQUIPMENT AND SOFTWARE**

Title to the hardware and software Products provided under this Master Agreement shall pass to Purchaser upon its acceptance of the hardware and software Products.

## **ARTICLE 10 WARRANTIES**

**10.1** Seller represents and warrants that it has the right to sell the Products provided under this Master Agreement.

**10.2** Seller represents and warrants that Purchaser shall acquire good and clear title to the hardware Products purchased hereunder, free and clear of all liens and encumbrances.

**10.3** Seller represents and warrants that each Product delivered shall be delivered new and not as a "used, substituted, rebuilt, refurbished or reinstalled" Product.

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

**10.5** Unless a longer warranty period is specified in the Order Form, Seller represents and warrants that all Products provided pursuant to this Master Agreement shall be free from defects in material, manufacture, design and workmanship for a period of one (1) year after acceptance. Seller's obligations pursuant to this warranty shall include, but are not limited to, the repair of all defects or the replacement of the Product, or the redoing of the faulty installation, at no cost to Purchaser. Response times and maintenance requirements during the warranty period shall be as specified in RFP No. 4666. In the event Seller cannot repair or replace the Product during the warranty period within ten (10) business days of receipt of notice of the defect, Seller shall refund the purchase price of the Product and refund any fees paid for services that directly relate to the defective Product, and Purchaser shall have the right to terminate the Order Form and this Master Agreement in whole or in part, solely as between those two entities. Purchaser's rights hereunder are in addition to any other rights Purchaser may have.

**10.6** Seller represents and warrants that all Products provided by Seller shall meet or exceed the minimum specifications set forth in RFP No. 4666 and Seller's Proposal, as accepted by ITS, in response thereto.

**10.7** Unless a longer warranty period is specified in the Order Form, Seller represents and warrants, for a period of ninety (90) days from performance of the service, that all work hereunder, including, but not limited to, consulting, training and technical support, has been performed in a good and workmanlike manner and consistent with generally accepted industry standards. For any breach of this warranty, Seller shall perform the services again, at no cost to Purchaser, or if Seller is unable to perform the services as warranted, Seller shall reimburse Purchaser the fees paid to Seller for the unsatisfactory services.

**10.8** Seller represents and warrants that there is no disabling code or lockup program or device embedded in the Products provided to Purchaser. Seller further agrees that it will not, under any circumstances, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Purchaser's use of the Products and/or which would restrict Purchaser from accessing its data files or in any way interfere with the transaction of Purchaser's business. For any breach of this warranty, Seller at its expense shall, within five (5) business days after receipt of notification of the breach, deliver Products to Purchaser that are free of such disabling code, lockup program or device.

**10.9** Seller represents and warrants that the software Products, as delivered to Purchaser, do not contain a computer virus. For any breach of this warranty, Seller at its expense shall, within five (5) business days after receipt of notification of the breach, deliver Products to Purchaser that are free of any virus, and shall be responsible for repairing, at Seller's expense, any and all damage done by the virus to Purchaser's site.

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

**10.11** The Seller represents and warrants that no elected or appointed officer or other employee

of the State of Mississippi, nor any member of or delegate to Congress has or shall benefit financially or materially from this Master Agreement. No individual employed by the State of Mississippi shall be admitted to any share or part of the Master Agreement or to any benefit that may arise therefrom. The State of Mississippi may, by written notice to the Seller, terminate the right of the Seller to proceed under this Master Agreement if it is found, after notice and hearing by the ITS Executive Director or his/her designee, that gratuities in the form of entertainment, gifts, jobs, or otherwise were offered or given by the Seller to any officer or employee of the State of Mississippi with a view toward securing this Master 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 Master Agreement is terminated under this article, the State of Mississippi shall be entitled to pursue the same remedies against the Seller as it would pursue in the event of a breach of contract by the Seller, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

## **ARTICLE 11 INFRINGEMENT INDEMNIFICATION**

**11.1** Seller represents and warrants that neither the Products, their elements nor the use thereof violates or infringes on any copyright, patent, trade secret or other proprietary right of any person or entity. Seller, at its own expense, shall defend or settle any and all infringement actions filed against Seller or Purchaser which involve the Products provided under this Master Agreement and shall pay all costs, attorney fees, settlements, damages and judgment finally awarded against Purchaser, provided that: (i) Purchaser promptly notifies Seller in writing of any such claim of which it has knowledge; (ii) Seller has, to the extent authorized by Mississippi law, sole control of the defense of any actions and negotiations related to the defense or settlement of any claim, and (iii) Purchaser cooperates in the defense of the claim by supplying Seller all relevant information currently available and in its possession, all at Seller's expense.

**11.2** If Seller believes that the Product is or will become the subject of an infringement claim, or in the event that use of the Product is enjoined, Seller, at its own expense, shall: (a) first procure for Purchaser the right to continue using the Product, or upon failing to procure such right; (b) modify or replace the Product to make it non-infringing while maintaining substantially similar functionality, or upon failing to secure either such right, (c) request Purchaser to return the infringing items to Seller and Seller shall refund the purchase price previously paid by Purchaser for the Products the Purchaser may no longer use. Said refund shall be paid within ten (10) business days of notice to Purchaser to discontinue said use.

**11.3** Seller shall have no obligations to Purchaser under this Article for any infringement claims caused directly by: (i) the combination or use of the Product with other items not provided by Seller; (ii) unauthorized modification of the Product by someone other than Seller, its agents or subcontractors or Purchaser's employees who were working at Seller's direction, where such modification creates the infringement; or (iii) use of an allegedly infringing version of the Product if the alleged infringement would have been avoided by the use of a different version Seller made available to Purchaser at no cost to Purchaser, as long as the new or corrected version did not adversely affect the Purchaser's system's functionality.

## **ARTICLE 12 SOFTWARE**

**12.1** Seller shall furnish the software to Purchaser as set forth in Order Forms and shall acquire the right to license the software to Purchaser. For purposes of this Article, the term "Purchaser" means the governmental agency, educational institution or other governing authority within the

State of Mississippi submitting the Order Form, its employees and any third party consultants or outsourcers engaged by Purchaser who have a need to know, and who shall be bound by the terms and conditions of this license and Master Agreement.

**12.2** Seller understands and agrees that Purchaser shall have: (a) a non-exclusive, non-transferable, subscription license (unless specified as a term license in the Order Form) for the software provided pursuant to an Order Form; (b) the right to use and customize the software products and the related documentation for Purchaser's business operations and in accordance with the terms and conditions of this Master Agreement; (c) unlimited use by licensed users of the software products acquired for Purchaser's operations; (d) use of such software products with a backup platform system should it be deemed necessary by Purchaser; (e) the right to copy such software for safekeeping, backup and disaster recovery purposes; (f) the right to combine the software with other programs and modules, and the right to create interfaces to other programs, and (g) the right to reproduce any and all physical documentation supplied under the terms of this Master Agreement.

**12.3** Purchaser agrees that except as noted herein, it will not otherwise copy, translate, modify, adapt, decompile, disassemble or reverse engineer any of the software without the prior written consent of Seller. All title and proprietary rights, whether tangible or intangible, including but not limited to, copyright, trademark and trade secret rights, in and to the software are retained by the Seller or the third party software manufacturer as applicable. Purchaser agrees to reproduce and include the copyright, trademark and other proprietary rights notices on any copies made of the software and documentation.

### **ARTICLE 13 EMPLOYMENT STATUS**

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

**13.2** Seller represents that it is qualified to perform the duties to be performed under an Order Form and this Master Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the required duties. Such personnel shall not be deemed in any way directly or indirectly, expressly or by implication, to be employees of Purchaser. Seller shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Seller nor employees of Seller are entitled to state retirement or leave benefits.

**13.3** Any person assigned by Seller to perform the services hereunder shall be the employee or an authorized subcontractor of Seller, who shall have the sole right to hire and discharge its employee or subcontractor. Purchaser may, however, request Seller to replace any of its employees or subcontractor personnel providing services to Purchaser under an Order Form.

### **ARTICLE 14 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS**

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

liability insurance policy.

## **ARTICLE 15 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS**

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

**15.2** Neither party to an Order Form and this Master Agreement may assign or otherwise transfer the Order Form and this Master 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. The Order Form and this Master Agreement shall be binding upon the parties' respective successors and assigns.

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

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

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

## **ARTICLE 16 AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of Purchaser to proceed under this Master Agreement and the Order Form 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 Master Agreement. If the funds anticipated for the fulfillment of this Master Agreement and the Order Form are, at any time, not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to Purchaser for the payments or performance due under this Master Agreement, Purchaser shall have the right to immediately terminate the Order Form and this Master Agreement as to itself only, without damage, penalty, cost or expense to Purchaser of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Purchaser shall have the sole right to determine whether funds are available for the payments or performances due under the Order Form and this Master Agreement. Any payment due Seller for

services rendered by Seller prior to termination and received by Purchaser shall be paid.

## **ARTICLE 17 TERMINATION**

**17.1 Termination Upon Mutual Agreement:** An Order Form may be terminated in whole or in part upon the mutual written agreement of Seller and the Purchaser.

**17.2 Termination Due To Bankruptcy:** Should Seller become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or execute an assignment for the benefit of its creditors, the Purchaser may, upon the giving of thirty (30) calendar days prior written notice, terminate an Order Form and this Master Agreement solely as between those two entities and without the assessment of any penalties.

**17.3 Termination Other Than For Cause:** A Purchaser may terminate an Order Form as to itself only and ITS may terminate this Master Agreement in whole or in part and without the assessment of penalties, for any reason by giving thirty (30) calendar days written notice specifying the effective date thereof to Seller.

**17.4 Termination For Cause:** Either Purchaser or Seller may terminate an Order Form and ITS or Seller may terminate this Master Agreement upon a material breach by the other party upon thirty (30) calendar days prior written notice unless the defaulting party cures such breach within such thirty (30) calendar-day period. Provided that, if the Purchaser terminates an Order Form and this Master Agreement solely as between those two parties because of Seller's inability to cure material defects after notice and opportunity to cure, the Purchaser may terminate the Order Form and this Master Agreement solely as between those two entities without also providing the notice and opportunity to cure required in this Article. The non-defaulting party may also pursue any remedy available to it in law or in equity.

**17.5 Termination of Master Agreement:** ITS may terminate this Master Agreement without the assessment of any penalties for any reason after giving thirty (30) calendar days written notice specifying the effective date thereof to Seller, but any Order Form entered into prior to the termination date of this Master Agreement shall survive the termination of the Master Agreement and shall not expire unless terminated by Purchaser. The terms of this Master Agreement shall survive its termination/expiration with respect to any un-expired Order Forms.

**17.6 Refund Of Unexpended Fees:** Upon termination of an Order Form, Seller shall refund any and all applicable unexpended pro-rated maintenance/service or other fees previously paid by the Purchaser. Further, in the event a Order Form is terminated, Seller shall be paid for satisfactory work completed by Seller and accepted by Purchaser prior to the termination. Such compensation shall be based upon and shall not exceed the amounts set forth in the particular Order Form.

## **ARTICLE 18 GOVERNING LAW**

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

#### **ARTICLE 19 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 Master Agreement. A waiver by the State, to be effective, must be in writing, must set out the specifics of what is being waived, and must be signed by an authorized representative of the State.

#### **ARTICLE 20 SEVERABILITY**

If any term or provision of an Order Form or this Master 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 the Order Form or this Master Agreement shall be valid and enforceable to the fullest extent permitted by law provided that the Purchaser's purpose for entering into the Order Form can be fully achieved by the remaining portions of the Order Form that have not been severed.

#### **ARTICLE 21 CAPTIONS**

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

#### **ARTICLE 22 HOLD HARMLESS**

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

#### **ARTICLE 23 THIRD PARTY ACTION NOTIFICATION**

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

#### **ARTICLE 24 AUTHORITY TO CONTRACT**

Seller warrants that it is a validly organized business with valid authority to enter into this Master Agreement; that entry into and performance under this Master 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 Master 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 an Order Form and this Master Agreement.

## **ARTICLE 25 NOTICE**

Any notice required or permitted to be given under this Master 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 usual business address. ITS' address for notice is: Craig P. Orgeron, Ph.D., Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. Seller's address for notice is: **VENDOR NOTICE INFORMATION**. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

## **ARTICLE 26 RECORD RETENTION AND ACCESS TO RECORDS**

Seller shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Master Agreement and the Order Form. The Purchaser, ITS, any state or federal agency authorized to audit Purchaser, and/or any of their duly authorized representatives, shall, at their expense and upon prior reasonable notice to Seller, have access to any of Seller's proposals, books, documents, papers and/or records that are pertinent to the Order Form and this Master Agreement to make audits, copies, examinations, excerpts and transcriptions at the State's or Seller's office as applicable where such records are kept during normal business hours. All records relating to this Master Agreement and the Order Form shall be retained by Seller for three (3) years from the date of receipt of final payment under this Master Agreement and the Order Form. 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 27 INSURANCE**

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

## **ARTICLE 28 DISPUTES**

Any issues or provisions of this Master Agreement in dispute between the Purchaser and Seller which, in the judgment of either party may materially affect the performance of such party shall be reduced to writing and delivered to the other party. The Purchaser and Seller shall promptly thereafter negotiate in good faith and use every reasonable effort to resolve such dispute in a mutually satisfactory manner. Any such dispute as to a question of fact which is not disposed of in a mutually satisfactory manner shall be submitted to and decided by the Executive Director of ITS or such person as the Executive Director may select. The decision of the Executive Director shall be reduced to writing and a copy thereof mailed to the parties. Disagreement with such a decision by either party shall not constitute a breach under the terms of this Master Agreement. Such decision shall not be a final disposition of the matter if either party still disagrees, and such disagreeing party shall be entitled to seek such other rights and remedies it may have in law or in equity.

## **ARTICLE 29 COMPLIANCE WITH LAWS**

**29.1** Seller shall comply with, and all activities under a Order Form and this Master Agreement shall be subject to all Purchaser policies and procedures of which Seller has knowledge, and all

applicable federal, state and local laws, regulations, policies and procedures as now existing and as may be amended or modified. Specifically, but not limited to, Seller shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of the Order Form and this Master Agreement because of race, creed, color, sex, age, national origin or disability.

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

### **ARTICLE 30 CONFLICT OF INTEREST**

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

### **ARTICLE 31 SOVEREIGN IMMUNITY**

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

### **ARTICLE 32 CONFIDENTIAL INFORMATION**

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

**32.2** The foregoing obligations do not apply to information which: (a) is or becomes known by the Seller without an obligation to maintain its confidentiality; (b) is or becomes generally known to the public through no act or omission of Seller, or (c) is independently developed by Seller without use of confidential or proprietary information.

**32.3** The parties understand and agree that this Master Agreement, including any amendments and/or change orders thereto, does not constitute confidential information, and may be reproduced and distributed by the State without notification to Seller. It is understood by Seller that copies of this executed Master Agreement may be distributed to the governmental agencies, governing authorities, and educational institutions of the State of Mississippi.

**32.4** 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 Master Agreement shall not be deemed confidential information.

### **ARTICLE 33 EFFECT OF SIGNATURE**

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

### **ARTICLE 34 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS**

The Purchaser shall own all files, work papers, documentation, and/or other material, electronic or otherwise, collected and created in connection with work performed under a Order Form, whether completed or in progress, except for: (a) Seller's internal administrative and quality assurance files and internal project correspondence; (b) documents, objects or things owned by Seller and pre-existing the work performed under the Order Form, and (c) documents, objects or things in which Seller has no right to transfer ownership. As to such documents, objects and things, Seller shall convey such right or interest to the extent allowed by law. Seller shall deliver such documents and work papers to Purchaser upon termination or completion of the Order Form. Seller is prohibited from use of the above described information and/or materials without the express written approval of Purchaser.

### **ARTICLE 35 STATE PROPERTY**

Seller shall be responsible for the proper custody of any Purchaser-owned property furnished for Seller's use in connection with work performed pursuant to any Order Form. Seller shall reimburse the Purchaser for any loss or damage to the aforementioned Purchaser-owned property, normal wear and tear excepted.

### **ARTICLE 36 NEWS RELEASES**

News releases pertaining to an Order Form or this Master Agreement or the products, study, data, or project to which it relates will not be made without prior written Purchaser approval, and then only in accordance with the explicit written instructions from Purchaser.

### **ARTICLE 37 SURVIVAL**

Articles 10, 11, 18, 22, 26, 31, 32, 34, 38, 41, 42, and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of the Order Form or this Master Agreement. The Parties understand and agree that the terms and conditions of this Master Agreement and resulting Order Form may survive the expiration and/or termination of the Master Agreement, and Seller shall be willing to offer Products and services at the current rates for any new or existing Order Forms.

### **ARTICLE 38 ENTIRE AGREEMENT**

**38.1** This Master Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating hereto, including all terms of any unsigned "shrink-wrap", "clickwrap", or "browse-wrap" license included in any

package, media or electronic or online version of Seller-furnished software. The Order Form, RFP No. 4666, and Seller's Proposal submitted in response to RFP No. 4666 are hereby incorporated into and made a part of this Master Agreement as far as the individual Purchaser is concerned.

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

- A. This Master Agreement signed by Seller and ITS;
- B. Any exhibits attached to this Master Agreement;
- C. RFP No. 4666, including all addenda;
- D. The Order Form signed by Seller and Purchaser, and
- E. Seller's Proposal, as accepted by ITS, in response to RFP No. 4666.

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

#### **ARTICLE 39 DEBARMENT AND SUSPENSION CERTIFICATION**

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

#### **ARTICLE 40 SERVICES**

When ordered by Purchaser, Seller agrees to provide installation, consulting, maintenance, training and technical support services pursuant to the requirements set forth in the Order Form and RFP No. 4666.

#### **ARTICLE 41 COMPLIANCE WITH ENTERPRISE SECURITY POLICY**

As applicable, Seller and State understand and agree that all products and/or services provided under this Master Agreement must allow the State to be and remain in compliance with the State of Mississippi's Enterprise Policies and Standards, copies of which can be found on the ITS website. Any required contract terms and conditions of these policies are herein expressly

incorporated by reference. The State reserves the right to update existing policy and/or introduce a new policy during the term of the Master Agreement. The Parties agree to work in good faith to resolve any compliance gaps identified with any new or revised policies applicable after the execution of this Master Agreement. If, at any time during the term of the Master Agreement, the products and/or services provided under this Master Agreement do not allow State to be and remain in compliance with the State of Mississippi's Enterprise Policies and Standards (new, revised, and/or existing), the State shall have the right to terminate the Master Agreement without assessment of any penalties or fees, and Seller shall be paid for all products and/or services rendered prior to the date of termination, and Seller shall refund any and all applicable unexpended prorated fees previously paid by State under a particular Order Form.

#### **ARTICLE 42 TRANSPARENCY**

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

#### **ARTICLE 43 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, hurricanes, tornadoes, or other natural disasters (the "Force Majeure Events"). When such a cause arises, the Seller shall notify the Purchaser immediately in writing of the cause of its inability to perform; how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the Purchaser determines it to be in its best interest to terminate the Order Form.

#### **ARTICLE 44 PERFORMANCE BOND [THIS ARTICLE IS ONLY APPLICABLE TO CATEGORY I AND II]**

As a condition precedent to the formation of this Master Agreement, the Seller must provide a performance bond as herein described. To secure the Seller's performance, the Seller shall procure, submit to the State with this executed Master Agreement, and maintain in effect at all times during the course of this Master Agreement, a performance bond in the amount of \$[BOND PRICE SPECIFIED IN RFP, SECTION IV]. The bond shall be accompanied by a duly authenticated or certified document evidencing that the person executing the bond is a licensed Mississippi agent for the bonding company. This certified document shall identify the name and address of the person or entity holding the performance bond and shall identify a contact person to be notified in the event the State is required to take action against the bond. The term of the performance bond shall be concurrent with the term of this Master Agreement, with the exception of post-warranty maintenance and support, and shall not be released to Seller until final acceptance of all products and deliverables required herein or until the warranty period, if any, has expired, whichever occurs last. If applicable, and at the State's sole discretion, the State may, at any time during the warranty period, review Seller's performance and performance of the products/services delivered and determine that the Seller's performance bond may be reduced or released prior to expiration of the full warranty period. The performance bond shall be procured

at Seller's expense and be payable to the Purchaser. The cost of the bond may be invoiced to the Purchaser after project initiation only if itemized in the Seller's cost proposal and in the attached Exhibit A. Prior to approval of the performance bond, the State reserves the right to review the bond and require Seller to substitute an acceptable bond in such form as the State may reasonably require. The premiums on such bond shall be paid by Seller. The bond must specifically refer to this Master Agreement and shall bind the surety to all of the terms and conditions of this Master Agreement. If the Master Agreement is terminated due to Seller's failure to comply with the terms thereof, Purchaser may claim against the performance bond.

#### **ARTICLE 45 LIQUIDATED DAMAGES**

**45.1** It is agreed by the parties hereto that time is of the essence, and that in the event of a delay in the delivery and installation deadlines or delay in the satisfactory completion and acceptance of the services provided for herein, damage shall be sustained by the State. In the event of a delay caused by the Seller, the Seller shall issue a credit to ITS within two (2) billing cycles from the date of receipt of notice of such delay, fixed, and liquidated damages as specified herein:

- a) All Services: Failure to have the billing detail and audit of services results, as mutually agreed upon by ITS and Seller, available to ITS for download by the 10th day of the month shall result in liquidated damages of \$400 per day for each day of delay;
- b) All Services: Failure to have improperly identified charges on a bill corrected and delivered to ITS within one billing cycle shall result in liquidated damages of \$400 per each day of delay;
- c) All Services: Failure for Seller to respond to State inquiries within thirty (30) calendar days shall result in liquidated damages of 10% of that month's contract value per each additional day beyond thirty (30) days of no response;
- d) [APPLIES TO CATEGORY II AND III] Tenant: Unless otherwise agreed upon, if new deployment is not completed within thirty (30) calendar days, Seller will credit entity thirty (30) days plus each day after the initial thirty (30) days for delay in deployment;
- e) [APPLIES TO CATEGORY II AND III] Restoration of Services: In the event of a cloud service outage, service restoration must occur within four (4) hours. If service is not restored within this timeframe, Seller shall provide a service credit equal to ten percent (10%) of the applicable monthly service fees. For any on-premises systems, Seller must provide a documented remediation and resolution plan within four (4) hours of outage notification.

**45.2** Notwithstanding the foregoing, in the event of a failure as noted in subsections (c) and (d) above, Seller shall have thirty (30) calendar days following delivery of notice by Purchaser to cure the failure prior to the State imposing the applicable liquidated damages.

**45.3** The State may offset undisputed amounts due it as liquidated damages against any monies due Seller under this Agreement. The State will notify the Seller in writing of any claim for liquidated damages pursuant hereto on or before the date the State deducts such sums from money payable to Seller. Any liquidated damages assessed are in addition to and not in limitation of any other rights or remedies of the State.

**45.3** The liquidated damages set forth in this Article shall not apply to delays of performance by the Seller if such delays were a result of causes beyond the reasonable control and without the fault or negligence of the Seller and/or its subcontractors. Further, this Article shall not apply to delays caused by the negligence or non-performance of the State.

## **ARTICLE 46 FEDERAL TAX INFORMATION COMPLIANCE**

### **46.1 PERFORMANCE**

In performance of this contract, the Seller agrees to comply with and assume responsibility for compliance by officers or employees with the following requirements:

- (1) All work will be performed under the supervision of the Seller.
- (2) The Seller and Seller's officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The Seller will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the State and, upon request, to the IRS.
- (3) FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this Master Agreement. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Master Agreement. Inspection or disclosure of FTI to anyone other than the Seller or the Seller's officers or employees authorized is prohibited.
- (4) FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.
- (5) The Seller will certify that FTI processed during the performance of this Master Agreement will be completely purged from all physical and electronic data storage with no output to be retained by the Seller at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the Seller will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the State. When this is not possible, the Seller will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the State with a statement containing the date of destruction, description of material destroyed, and the destruction method.
- (7) All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- (8) No work involving FTI furnished under this Master Agreement will be subcontracted without the prior written approval of the IRS.
- (9) Seller will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.
- (10) To the extent the terms, provisions, duties, requirements, and obligations of this Master Agreement apply to performing services with FTI, the Seller shall assume toward the subcontractor all obligations, duties and responsibilities that the State under this contract assumes toward the Seller, and the subcontractor shall assume toward the Seller all the same obligations, duties and responsibilities which the Seller assumes toward the State under this contract.
- (11) In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this Master Agreement apply to the subcontractor, and the subcontractor is bound and obligated to the Seller hereunder by the same terms and conditions

by which the Seller is bound and obligated to the State under this Master Agreement.

(12) For purposes of this Master Agreement, the term "Seller" includes any officer or employee of the Seller with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of the subcontractor with access to or who uses FTI.

(13) The State will have the right to void the Master Agreement if the Seller fails to meet the terms of FTI safeguards described herein.

#### **46.2 CRIMINAL/CIVIL SANCTIONS**

(14) Each officer or employee of a Seller to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.

(15) Each officer or employee of a Seller to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.

(16) Each officer or employee of a Seller to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

- Additionally, it is incumbent upon the Seller to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- Granting a contractor access to FTI must be preceded by certifying that each officer or employee understands the State's security policy and procedures for safeguarding FTI. A contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the agency's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, a contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431 (see Exhibit 4, *Sanctions for*

*Unauthorized Disclosure*, and Exhibit 5, *Civil Damages for Unauthorized Disclosure*). The training on the State’s security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. For the initial certification and the annual recertifications, the Seller and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

**46.3 INSPECTION**

The IRS and the State, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the Seller to inspect facilities and operations performing any work with FTI under this Master Agreement for compliance with requirements defined in IRS Publication 1075. The IRS’ right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the Seller is found to be noncompliant with FTI safeguard requirements.

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

**State of Mississippi, Department of Information Technology Services, on behalf of the agencies and institutions of the State of Mississippi**

**VENDOR**

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

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

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

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

**Title: Executive Director**

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

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

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