



RFP No: 3732

INVITATION: Sealed proposals, subject to the attached conditions, will be received at this office until August 29, 2013 @ 3:00 p.m. Central Time for the acquisition of the products/services described below for Mississippi Department of Information Technology Services.

Online courseware solution and services

The Vendor must submit proposals and direct inquiries to:

Paula Conn
Technology Consultant
Information Technology Services
3771 Eastwood Drive
Jackson, MS 39211
(601) 432-8046
Paula.Conn@its.ms.gov

To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the 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. 3732
due August 29, 2013 @ 3:00 p.m.,
ATTENTION: Paula Conn


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

ITS RFP Response Checklist

RFP Response Checklist: These items should be included in your response to RFP No. 3732.

- _____ 1) One clearly marked original response and **three (3)** identical copy/copies of the complete proposal. Label the front and spine of the three-ring loose-leaf binder with the Vendor name and RFP number. Include the items listed below inside the binder. Please **DO NOT** include a copy of the RFP in the binder.
- _____ 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)
- _____ 7) Vendor response to *Cost Information Submission* (Section VIII)
- _____ 8) *References* (Section IX)

Table of Contents

SECTION I.....	4
SUBMISSION COVER SHEET & CONFIGURATION SUMMARY	4
PROPOSAL BONDS	5
SECTION II	6
PROPOSAL SUBMISSION REQUIREMENTS	6
SECTION III	10
VENDOR INFORMATION.....	10
SECTION IV.....	15
LEGAL AND CONTRACTUAL INFORMATION	15
SECTION V.....	27
PROPOSAL EXCEPTIONS.....	27
PROPOSAL EXCEPTION SUMMARY FORM	29
SECTION VI.....	30
RFP QUESTIONNAIRE.....	30
SECTION VII.....	33
TECHNICAL SPECIFICATIONS.....	33
SECTION VIII.....	49
COST INFORMATION SUBMISSION	49
SECTION IX.....	50
REFERENCES	50
REFERENCE FORM	52
SUBCONTRACTOR REFERENCE FORM.....	53
EXHIBIT A	54
STANDARD CONTRACT.....	54

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

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

Name _____ Phone # _____
Address _____ Fax # _____
_____ E-mail _____

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

_____/_____
Original signature of Officer in Bind of Company/Date

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

CONFIGURATION SUMMARY

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

PROPOSAL BONDS

A Proposal Bond is not required for this procurement.

SECTION II PROPOSAL SUBMISSION REQUIREMENTS

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

1. Failure to follow any instruction within this RFP may, at the State's sole discretion, result in the disqualification of the Vendor's proposal.
2. The State has no obligation to locate or acknowledge any information in the Vendor's proposal that is not presented under the appropriate outline according to these instructions and in the proper location.
3. The Vendor's proposal must be received, in writing, by the office of ITS by the date and time specified. ITS is not responsible for any delays in delivery or expenses for the development or delivery of proposals. Any proposal received after proposal opening time will be returned unopened. Any proposal received with insufficient postage will be returned unopened.
4. Proposals or alterations by fax, e-mail, or phone will not be accepted.
5. Original signatures are required on one copy of the Submission Cover Sheet and Configuration Summary, and the Vendor's original submission must be clearly identified as the original. The Vendor's original proposal must include the Proposal Bond, (if explicitly required in Section IV).
6. ITS reserves the right to reject any proposals, including those with exceptions, prior to and at any time during negotiations.
7. ITS reserves the right to waive any defect or irregularity in any proposal procedure.
8. The Vendor may intersperse their response following each RFP specification but must not otherwise alter or rekey any of the original text of this RFP. If the State determines that the Vendor has altered any language in the original RFP, the State may, in its sole discretion, disqualify the Vendor from further consideration. The RFP issued by ITS is the official version and will supersede any conflicting RFP language submitted by the Vendor.

The Vendor must conform to the following standards in the preparation of the Vendor's proposal:

- 8.1 The Vendor is required to submit one clearly marked original response and **three (3)** identical copy/copies of the complete proposal, including all sections and exhibits, in three-ring binders.
 - 8.2 To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the package. A label containing the information on the RFP cover page must be clearly typed and affixed to the package in a clearly visible location.
 - 8.3 Number each page of the proposal.
 - 8.4 Respond to the sections and exhibits in the same order as this RFP.
 - 8.5 Label and tab the responses to each section and exhibit, using the corresponding headings from the RFP.
 - 8.6 If the Vendor does not agree with any item in any section, then the Vendor must list the item on the *Proposal Exception Summary Form*. (See Section V for additional instructions regarding Vendor exceptions.)
 - 8.7 Occasionally, an outline point in an attachment requests information which is not applicable to the products/services proposed. If the Vendor is certain the point does not apply to the given RFP, the Vendor should respond with "NOT APPLICABLE."
 - 8.8 Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
 - 8.9 When an outline point/attachment is a statement provided for the Vendor's information only, the Vendor need only read that point. The Vendor acknowledges having read and accepting, or taking exception to, all sections by signing the *Submission Cover Sheet* and providing a *Proposal Exception Summary Form*.
 - 8.10 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.
 - 8.11 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.
9. 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*.

10. **ITS reserves the right to request additional information or clarification of a Vendor's proposal. The Vendor's cooperation during the evaluation process in providing ITS staff with adequate responses to requests for clarification will be considered a factor in the evaluation of the Vendor's overall responsiveness. Lack of such cooperation or failure to provide the information in the manner required may, at the State's discretion, result in the disqualification of the Vendor's proposal.**
11. **Unsolicited clarifications and updates submitted after the deadline for proposals will be accepted or rejected at the sole discretion of ITS.**
12. **Unsolicited clarifications in the evaluation and selection of lowest and best proposal will be considered only if all the following conditions are met:**
 - 12.1 **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.**
 - 12.2 **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.**
 - 12.3 **Clarifications must be received early enough in the evaluation process to allow adequate time for re-evaluation.**
 - 12.4 **The Vendor must follow procedures outlined herein for submitting updates and clarifications.**
 - 12.5 **The Vendor must submit a statement outlining the circumstances for the clarification.**
 - 12.6 **The Vendor must submit one clearly marked original and three (3) copies of the clarification.**
 - 12.7 **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).**
13. **Communications with State**

From the issue date of this RFP until a Vendor is selected and the selection is announced, responding Vendors or their representatives may not communicate, either orally or in writing regarding this RFP with any statewide elected official,

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

- 13.1 The State's contact person for the selection process is: Paula Conn, Technology Consultant, 3771 Eastwood Drive, Jackson, MS 39211, 601-432-8046, Paula.Conn@its.ms.gov.
- 13.2 Vendor may consult with State representatives as designated by the State's contact person identified in 13.1 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 respond to the RFP successfully.

1. Interchangeable Designations

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

2. Vendor's Responsibility to Examine RFP

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

3. Proposal as Property of State

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

4. Written Amendment to RFP

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

http://www.its.ms.gov/Procurement/Pages/RFPS_Awaiting.aspx

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 *Technical Specifications*.

8. Multiple Awards

ITS reserves the right to make multiple awards.

9. Right to Award In Whole or Part

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

10. Right to Use Proposals In Future Projects

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

11. Price Changes During Award or Renewal Period

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

12. 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.

13. 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:

- 13.1 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.
- 13.2 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.
- 13.3 That the individual is proficient in spoken and written English;
- 13.4 That the individual is a U.S. citizen or that the individual meets and will maintain employment eligibility requirements in compliance with all INS 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.
- 13.5 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 INS eligibility throughout the duration of the contract.

14. 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.

15. Best and Final Offer

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

16. 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.

17. Rights Reserved to Use Existing Product Contracts

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

18. 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.

19. Valid Contract Required to Begin Work

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

SECTION IV LEGAL AND CONTRACTUAL INFORMATION

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

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

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

3. **Contract Documents**
ITS will be responsible for all document creation and editorial control over all contractual documentation related to each procurement project. The following documents will normally be included in all contracts between ITS and the Vendor:
 - 3.1 The Proposal Exception Summary Form as accepted by ITS;
 - 3.2 Contracts which have been signed by the Vendor and ITS;
 - 3.3 ITS' Request for Proposal, including all addenda;
 - 3.4 Official written correspondence from ITS to the Vendor;
 - 3.5 Official written correspondence from the Vendor to ITS when clarifying the Vendor's proposal; and
 - 3.6 The Vendor's proposal response to the ITS RFP.

4. **Order of Precedence**
When a conflict arises regarding contract intent due to conflicting statements in documents included in the contract, the order of precedence of each document is

as listed above unless modification of order is negotiated and agreed upon by both ITS and the winning Vendor.

5. Additional Contract Provisions

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

6. Contracting Agent by Law

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

7. Mandatory Legal Provisions

- 7.1 The State of Mississippi is self-insured; all requirements for the purchase of casualty or liability insurance are deleted.
- 7.2 Any provisions disclaiming implied warranties shall be null and void. See Mississippi Code Annotated Sections 11-7-18 and 75-2-719(4). The Vendor shall not disclaim the implied warranties of merchantability and fitness for a particular purpose.
- 7.3 The Vendor shall have no limitation on liability for claims related to the following items:
 - 7.3.1 Infringement issues;
 - 7.3.2 Bodily injury;
 - 7.3.3 Death;
 - 7.3.4 Physical damage to tangible personal and/or real property; and/or
 - 7.3.5 The intentional and willful misconduct or negligent acts of the Vendor and/or Vendor's employees or subcontractors.
- 7.4 All requirements that the State pay interest (other than in connection with lease-purchase contracts not exceeding five years) are deleted.

- 7.5 Any contract negotiated under this RFP will be governed by and construed according to the laws of the State of Mississippi. Venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi.
- 7.6 Any contract negotiated under this RFP is cancelable in the event the funding authority does not appropriate funds. Notice requirements to Vendor cannot exceed sixty (60) days.
- 7.7 The State of Mississippi does not waive its sovereign immunities or defenses as provided by law by entering into this contract with the Vendor, Vendor agents, subcontractors, or assignees.
- 7.8 The State will deliver payments to the Vendor within forty-five (45) days after receipt of invoice and receipt, inspection, and approval of Vendor's products/services. No late charges will exceed 1.5% per month on any unpaid balance from the expiration of said period until payment is delivered. See Section 31-7-305 of the Mississippi Code Annotated. Seller understands and agrees that Purchaser is exempt from the payment of taxes.
- 7.9 The State shall not pay any attorney's fees, prejudgment interest or the cost of legal action to or for the Vendor.

8. Approved Contract

- 8.1 Award of Contract - A contract is considered to be awarded to a proposer once the proposer's offering has been approved as lowest and best proposal through:
 - 8.1.1 Written notification made to proposers on ITS letterhead, or
 - 8.1.2 Notification posted to the ITS website for the project, or
 - 8.1.3 CP-1 authorization executed for the project, or
 - 8.1.4 The ITS Board's approval of same during an open session of the Board.
- 8.2 ITS statute specifies whether ITS Director approval or ITS Board approval is applicable for a given project, depending on the total lifecycle cost of the contract.
- 8.3 A contract is not deemed final until five (5) working days after either the award of contract or post procurement review, as stipulated in the ITS Protest Procedure and Policy. In the event of a valid protest, the State may, at its sole discretion, continue the procurement or stay the procurement in accordance with the ITS Protest Procedure and Policy. If

the procurement is stayed, the contract is not deemed final until the protest is resolved.

9. Contract Validity

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

10. Order of Contract Execution

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

11. Availability of Funds

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

12. CP-1 Requirement

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

13. Requirement for Electronic Payment and Invoicing

13.1 Payments to the awarded Vendor for all goods and services acquired under this RFP by state agencies that make payments through the Statewide Automated Accounting System ("SAAS") 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.state.ms.us.

13.2 For state agencies that make payments through SAAS, 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. Should the requirement for electronic invoicing be implemented during the term of the project contract, the State will work with the Vendor to determine a reasonable timeframe for initiating electronic invoicing.

13.3 Items 13.1 and 13.2 only apply to state agencies that make payments through SAAS. 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 ten (10) 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 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 covers the following topics: web servers, e-mail, virus prevention, firewalls, data encryption, remote access, passwords, servers, physical access, traffic restrictions, wireless, laptop and mobile devices, disposal of hardware/media, and application assessment/certification. 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 comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

The Enterprise Security Policy is available to third parties on a need-to-know basis. The Vendor may request individual sections of the Enterprise Security Policy or request the entire document.

Vendor must provide contact information (name, e-mail address, phone number) to the State's contact person identified in Section II, Item 13.1 who will coordinate the secure delivery of the requested information.

33. 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.

34. Disclosure of Proposal Information

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

<http://dsitspe01.its.ms.gov/its/procman.nsf/f4ad43bd44ad9d8c86256daa0063e1f0/bb780b5a8360c3138625765d004e4aff?OpenDocument> 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, with the exception of information contained in contract exhibits identified and labeled as confidential during the contract negotiation process. ITS will provide third-party notice of requests for any such confidential exhibits to allow Vendor the opportunity to protect the information by court order as outlined in the ITS Public Records Procedures.

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 and contract 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.

35. 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.

36. Proposal Bond

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

37. Performance Bond/Irrevocable Bank Letter of Credit

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

38. 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.

39. Protests

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

<http://dsitspe01.its.ms.gov/its/procman.nsf/f4ad43bd44ad9d8c86256daa0063e1f0/f227957c9c49a38a8625767900790c4e?OpenDocument> or from ITS upon request.

40. 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 3732.

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

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

41. 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, to provide a copy of each such verification to the State.

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

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

SECTION V PROPOSAL EXCEPTIONS

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

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

4. An exception will be accepted or rejected at the sole discretion of the State.
5. The State desires to award this RFP to a Vendor or Vendors with whom there is a high probability of establishing a mutually agreeable contract, substantially within the standard terms and conditions of the State's RFP, including the *Standard Contract* in Exhibit A, if included herein. As such, Vendors whose proposals, in the sole opinion of the State, reflect a substantial number of material exceptions to this RFP, may place themselves at a comparative disadvantage in the evaluation process or risk disqualification of their proposals.
6. For Vendors who have successfully negotiated a contract with ITS in the past, ITS requests that, prior to taking any exceptions to this RFP, the individual(s) preparing this proposal first confer with other individuals who have previously submitted proposals to ITS or participated in contract negotiations with ITS on behalf of their company, to ensure the Vendor is consistent in the items to which it takes exception.

PROPOSAL EXCEPTION SUMMARY FORM

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

ITS RFP Reference	Vendor Proposal Reference	Brief Explanation of Exception	ITS Acceptance (sign here only if accepted)
(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)	
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. Statewide Automated Accounting System (SAAS) Information for State of Mississippi Vendor File

1.1 SAAS Vendor Code: Any Vendor who has not previously done business with the State and has not been assigned a SAAS Vendor code should furnish a signed copy of an IRS W-9 form with the proposal. A copy of the W-9 Form can be obtained at the following link on the ITS website:

<http://www.its.ms.gov/Procurement/Pages/Vendor.aspx>

Vendors who have previously done business with the State should furnish ITS with their SAAS Vendor code.

SAAS Vendor Code: _____ OR Signed W-9 Form Attached: _____

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: http://www.mississippi.org/assets/docs/minority/minority_vendor_selfcertform.pdf. 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 e-mail at minority@mississippi.org.

Minority Vendor Self-Certification Form Included: _____
Minority Vendor Self-Certification Form Previously Submitted: _____
Not claiming Minority/Women Business Enterprise Status: _____

2. Certification of Authority to Sell

The Vendor must certify Vendor is a seller in good standing, authorized to sell and able to deliver all items and related services proposed in the State of Mississippi in the time frame specified. Does the Vendor make these certifications? (A yes or no answer is required.)

3. 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:

- 3.1 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.)
- 3.2 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.

4. Pending Legal Actions

- 4.1 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.)
- 4.2 If so, provide a copy of same and state with specificity the current status of the proceedings.

5. Non-Disclosure of Social Security Numbers

Does the Vendor acknowledge 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 acknowledgement is required by Section 25-1-111 of the Mississippi Code Annotated.

6. Order and Remit Address

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

Order Address:

--

Remit Address (if different):

7. Web Amendments

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

http://www.its.ms.gov/Procurement/Pages/RFPS_Awaiting.aspx

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.)

SECTION VII TECHNICAL SPECIFICATIONS

1. How to Respond to this Section

- 1.1 Beginning with Item 2 of this section, label and respond to each outline point in this section as it is labeled in the RFP.
- 1.2 The Vendor must respond with "ACKNOWLEDGED," "WILL COMPLY" or "AGREED" to each point in this section. In addition, many items in this RFP require detailed and specific responses to provide the requested information. 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.
- 1.3 "ACKNOWLEDGED" should be used when no vendor response or vendor compliance is required. "ACKNOWLEDGED" simply means the vendor is confirming to the State that he read the statement. This is commonly used in the RFP sections where the agency's current operating environment is described or where general information is being given about the project.
- 1.4 "WILL COMPLY" or "AGREED" are used interchangeably to indicate that the vendor will adhere to the requirement. These terms are used to respond to statements that specify 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 "ACKNOWLEDGED," "WILL COMPLY," or "AGREED," then the Vendor must respond with "EXCEPTION." (See Section V, 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. General Overview and Background

The Mississippi Department of Information Technology Services (ITS) Education Services Division offers an ongoing educational program designed to enhance and improve the computer and communications skills of personnel within state government including, but not limited to, state agencies, universities, community colleges, and governing authorities. The training program is commonly called the ITS Institute.

Over 217 instructor-led classes are offered annually by the ITS Institute to approximately 2,000 students. The Institute curriculum has been expanded as the demand for information systems skills has increased. The ITS Institute provides the necessary education and training to help make state personnel more productive.

This RFP is for Internet-based, off-the-shelf, online training courseware to be offered by the ITS Institute for technology training. Specifically, this contract shall include all course software, an administrative application for the assignment and tracking of students and training, full installation and implementation services, and ongoing technical support for the term of the Agreement. The courseware provided by the awarded Vendor will be made available to state agencies, universities, community colleges, and governing authorities. It is highly preferable that one Vendor provide all online training courseware.

Online training courseware will allow the ITS Institute to deliver “just-in-time” training to their students where it is most effective (e.g. at desktop workstations, portable computers at work, at home, or on the road) and when it is most effective (e.g. during the workday, evenings, or weekends). Courseware must be suitable for management, technical staff and end-users.

3. Procurement Project Schedule

Task	Date
First Advertisement Date for RFP	07/30/13
Second Advertisement Date for RFP	08/06/13
Deadline for Vendor’s Written Questions	3:00 p.m. Central Time on 08/13/13
Deadline for Questions Answered and Posted to ITS Web Site	08/20/13
Open Proposals	08/29/13
Evaluation of Proposals	08/29-09/10/13
Contract Negotiation	09/11-24/13
Proposed Project Implementation Start-up	10/01/13

4. Statement of Understanding

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

4.1.1 Vendors must clearly identify the specified paragraph(s) in the RFP that is in question.

- 4.1.2 Vendor must deliver a written document to Paula Conn at ITS by Tuesday, August 13, 2013 at 3:00 p.m. Central Time. This document may be delivered by hand, mail, e-mail, or fax. Address information is given on page one of this RFP. The fax number is (601) 713-6380. **ITS WILL NOT BE RESPONSIBLE FOR DELAYS IN THE DELIVERY OF QUESTION DOCUMENTS.** It is solely the responsibility of the vendor that the clarification document reaches ITS on time. Vendors may contact Paula Conn to verify the receipt of their document. Documents received after the deadline will be rejected.
- 4.1.3 All questions will be compiled and answered, and a written document containing all questions submitted and corresponding answers will be posted on the ITS web site by close of business on Tuesday, August 20, 2013.
- 4.2 The Vendor is requested to provide details on what features, functions, or other considerations exclusive of the specific requirements either his company or the proposed solution afford the State that may provide a distinct value to ITS. In the event that the State agrees such features, functions, and other considerations do provide a distinct benefit, the State reserves the right to give the Vendor additional consideration. The State shall make the sole assessment of the relative merits of each added value proposal.
- 4.3 The State deems performance of the Vendor on existing contracts and support after the sale to be of critical importance. Therefore, in the evaluation process for contract award of this RFP, Vendors with good performance ratings on existing accounts will be at a decided advantage, while Vendors with poor performance ratings will be at a decided disadvantage or be subject to disqualification at the discretion of the State.
- 4.4 The State is seeking a solution that is intuitive in nature and that utilizes the best technical practices of the Information Technology industry.
- 4.5 Other Vendors may be listed in these requirements when referencing service(s) provided to the State. Any mention of other Vendors in these requirements is subject to change based upon the expiration of any current Agreements or the acquisition of future Agreements during this RFP process.
- 4.6 ITS requires a Commercial Off the Shelf (COTS) approach to this procurement, placing strong emphasis on acquiring a field-proven, mature product with a good client base from an experienced Vendor. Although the Vendor should be prepared to customize the proposed system to meet the requirements detailed in this RFP, ITS is not anticipating a major

customization effort. The solution will be selected based on overall closeness of fit with ITS operations, requiring the least amount of system customization.

- 4.7 While a mature, field-proven product is being sought, ITS also requires a system that is not at the end of its product life cycle and that also reflects the best practices of the industry. Additionally, the technology platform (database engine, operating platform, etc.) for the proposed product must not be at the end of its life cycle.
- 4.8 This project will be awarded to a single Vendor.
- 4.9 MindLeaders, now SkillSoft Corporation, is the incumbent provider of online courseware and services for the State of Mississippi. The names MindLeaders and SkillSoft may be used interchangeably throughout RFP 3732.

5. Vendor Qualifications

- 5.1 Vendor must provide a brief company history.
- 5.2 The Vendor must provide a description of his organization with sufficient information to substantiate proven experience in the products and services being proposed. Information to be specified includes but is not limited to:
 - 5.2.1 Disclosure of any company restructurings, mergers, and acquisitions over the past 3 years that have impacted any products the Vendor has included in this proposal;
 - 5.2.2 The location of its principal office and the number of executive and professional personnel employed at this office;
 - 5.2.3 The number of years the Vendor has been in business;
 - 5.2.4 The number of clients for whom the Vendor is currently providing certification/licensure software and software support services;
 - 5.2.5 The organization's size (e.g., employees, offices, locations) and structure (e.g., state, national, or international organization); and
 - 5.2.6 Whether the Vendor is based locally, regionally, nationally, or internationally as well as its relationship to any parent firms, sister firms, or subsidiaries.
- 5.3 Vendor must list companies with whom they have partnered to develop specific courses (e.g., Cisco, Novell, Lotus, Microsoft, Oracle). Vendor

must indicate if the partner uses the proposed courseware to train their own employees.

- 5.4 Vendor must indicate if there are any resellers for the proposed courseware.
- 5.5 Vendor must provide the "Notice" information for the contract, including Name, Title, Address, Telephone Number, and E-mail address. (See, also, Exhibit A: Standard Contract.)

6. Functional/Technical Specifications/Requirements

6.1 COURSE COVERAGE

- 6.1.1 Vendor must indicate the total number of libraries and technology courses available in the proposed course library.
- 6.1.2 Vendor must list the curricula covered (technical, end-user, professional/business development) in each of the proposed course libraries.
- 6.1.3 Vendor must include a listing of all technology courses offered in the proposed course library. For each technology course included in the proposed course library, Vendor must provide, at a minimum, the following:
 - 6.1.3.1 A description of the course;
 - 6.1.3.2 The actual duration of the course;
 - 6.1.3.3 The version(s) offered for the course (e.g., Microsoft Excel 2007 and 2010, Windows 7, or Crystal Reports 11); and
 - 6.1.3.4 The level(s) within each version(s) available for the course (e.g., Excel 2007 and 2010: Level 1, Excel 2007 and 2010: Level 2, or Excel 2007 and 2010: Level 3).
- 6.1.4 Vendor must list any nationally recognized certifications to which the proposed course library maps (e.g., CNE, CNA, A+, etc.).
 - 6.1.4.1 Vendor must indicate if any guarantees are offered for exam completion after successfully completing the proposed courseware.
- 6.1.5 Vendor must indicate if college credit (either academic or continuing education) is given for completing certain courses.

- 6.1.5.1 Vendor must detail the process required by the student to obtain college credits.**
- 6.1.5.2 Vendor must detail any additional charges required for a student to receive college credits.**
- 6.1.6 Vendor must indicate the methodology followed in determining how quickly a course would be added to the proposed course library, and made available to students, after the release of a new subject matter version (e.g., how soon after the release of a new version of Microsoft Office would the course(s) covering this new version be added to the course library?).**
- 6.1.7 Vendor must indicate if proposed courseware is Section 508 compliant.**
- 6.1.8 Vendor must indicate if the proposed courseware is AICC and/or SCORM compliant. Be specific as to the related delivery option for compliance.**
- 6.1.9 Vendor must describe the instructional design philosophy and the approach to course development.**
 - 6.1.9.1 Vendor must detail how often and how many new courses are added each year. Is there a charge for adding new course? If so, charges must be clearly defined in Section VIII: Cost Information Summary.**
 - 6.1.9.2 Vendor must provide the course titles added over the last eighteen (18) months and indicate the date on which they were added.**
 - 6.1.9.3 Vendor must indicate in this item if Project Management (PM) Courses are certified for earning PDU credits toward maintaining PMI certification. Favorable consideration will be given to Vendors whose PM courses are certified.**
- 6.1.10 Vendor must discuss any new features planned for introduction within the next six (6) months, twelve (12) months, and twenty-four (24) months.**
- 6.1.11 Vendor must discuss any new features added to the proposed courseware within the past three (3) years.**
- 6.1.12 Vendor must discuss ROI in relation to the use of the proposed courseware.**

6.2 INTERACTIVITY AND ASSESSMENTS

- 6.2.1 Vendor must discuss the interactivity of proposed courses.**
- 6.2.2 Vendor must indicate if application software must be installed in order to take a course on that particular application. If not, Vendor must indicate if simulation software is used during the course.**
- 6.2.3 Vendor must specify if the courses have a pretest and post-test assessment. If so, Vendor must indicate if testing is optional.**
 - 6.2.3.1 Vendor must indicate if students “test out” after taking a pre-assessment and receive credit for material they have already mastered.**
 - 6.2.3.2 Vendor must indicate if a student takes the same assessment more than once, if the student will receive a different set of questions each time.**
- 6.2.4 Vendor must specify if students can “bookmark” their course at the point in which they must exit so that they can return to the course at that particular point upon continuation.**
- 6.2.5 Vendor must indicate the various types of questions in the test bank (e.g., true-false, multiple choice, fill-in-the-blank, etc.).**
 - 6.2.5.1 Are the test questions generated randomly?**
 - 6.2.5.2 Is the student provided the correct answer if they choose incorrectly?**
- 6.2.6 Vendor must indicate if certificates will be available to students upon completion of a course.**
 - 6.2.6.1 Vendor must indicate if these certificates can be forwarded to a manager or third party electronically.**

6.3 ONLINE MENTORING

- 6.3.1 The proposed solution must provide online mentoring/help for students via functionality similar to “instant messaging.”**
- 6.3.2 Online mentoring functionality must include, but not be limited to:**
 - 6.3.2.1 Real-time access to subject-matter experts (SME)**

- 6.3.2.2 Two-way communication so students can ask questions and receive answers from the SMEs regarding coursework, exercises, and concepts pertaining to the class**
- 6.3.2.3 A method to allow the SME to, upon the request of the student, review the student's coursework/exercises to aid the student in better understanding a concept or process**
- 6.3.2.4 A method to disallow access can be allowed/disallowed at various levels within the online training application (e.g., by student, agency, course, or at the ITS Institute level)**
- 6.3.2.5 A method to allow for automatic access upon student log-in**

6.4 TRAINING PLANS

- 6.4.1 Vendor must indicate if the proposed courseware provides functionality to create an individual training plan (ITP) for each student.**
- 6.4.2 Vendor must indicate if the ITP created via the proposed solution provides:**
 - 6.4.2.1 Clear learning tasks**
 - 6.4.2.2 Access to learning resources**
 - 6.4.2.3 Analysis for identifying training to help students better perform their jobs**
- 6.4.3 Vendor must indicate how the ITP is created.**
- 6.4.4 Vendor must include in the proposal an example(s) of an ITP created utilizing the proposed courseware.**
- 6.4.5 Vendor must indicate what learning resources are associated with the ITP including, but not limited to:**
 - 6.4.5.1 e-learning courses**
 - 6.4.5.2 Web-based videos**
 - 6.4.5.3 Customized information**
- 6.4.6 Vendor must indicate if the ITP includes learning tasks.**

6.4.7 Vendor must indicate if the proposed solution offers a learning “advisor” to identify an individual's training needs and make training recommendations.

6.5 COURSE CUSTOMIZATION

6.5.1 Vendor must indicate if the proposed courseware provides the capability for an agency to create its own training course(s). For example, if an agency has a training class on “How to Maintain a Bridge”, the agency should be able to load the class into the courseware so that the class has the same appearance and operation as the proposed courseware.

6.6 STUDENT TRANSCRIPTS

6.6.1 Vendor must indicate if the proposed courseware maintains a cumulative transcript of all courses taken by each student.

6.6.2 As stated earlier, MindLeaders, now SkillSoft Corporation, is the current provider of online courseware and services for the State of Mississippi. Vendor must indicate if Vendor can convert transcripts currently stored in MindLeaders. Favorable consideration will be given to Vendors who can convert these transcripts.

6.6.2.1 Vendor must indicate if Vendor has performed conversions of this nature in the past.

6.6.2.2 Vendor must include specific information regarding how the past conversions were accomplished.

6.6.2.3 Vendor must indicate if Vendor has converted student transcripts stored in MindLeaders in the past.

6.6.3 Vendor must indicate if the proposed software can continue to maintain a cumulative transcript of all courses taken in MindLeaders as well as the awarded Vendor's proposed solution.

6.7 SYSTEM CONFIGURATION

6.7.1 Vendor must indicate the minimum technical requirements to run the proposed courseware.

6.7.2 Vendor must indicate which delivery methods are available for the proposed courseware.

6.8.3.1 Vendor must describe the typical interval between updates.

6.8.3.2 Vendor must describe the upgrade installation procedures.

6.8.4 Vendor must detail the technical support available for students. The cost for this service must be included on the Cost Information Summary Form in Section VIII.

6.8.5 Vendor must detail the technical support available for administrators. The cost for this service must be included on the Cost Information Summary Form.

6.8.6 Vendor must provide, at a minimum, one open house session per year at ITS' location and one open house session per year at a location of ITS' choosing, within the Jackson-Metro area. ITS reserves the right to request up to two additional open house sessions.

6.9 TRAINING

6.9.1 Vendor must perform training for the appropriate ITS staff. This training must include functional training as well as technical training. The cost for this service must be included on the Cost Information Summary Form.

6.9.2 Vendor must detail their proposed training.

6.9.3 Training must be provided to the Administrator on the Administration Site.

6.10 ADMINISTRATION

6.10.1 Vendor must provide the requested system and services on an application service provision (ASP) basis. ITS prefers to acquire the system capabilities described here as a service, and does not desire to purchase and operate or support hardware.

6.10.2 Vendor must describe the administrative capabilities for tracking students, courses, training plans, pre-test and post-test results, etc. for all delivery methods.

6.10.3 Vendor must describe reporting features available for all delivery methods.

6.10.4 Vendor must indicate if the administrative features are consistent across the various delivery methods.

6.10.5 Vendor must provide Administrative Sites under the ITS umbrella for a limited number of larger agencies.

6.11 LICENSING AND PRICING

6.11.1 At the time of award of this project, ITS will be maintaining current MindLeaders licenses with expiration dates throughout calendar year 2014. ITS plans to contract with MindLeaders to honor those procured licenses with expiration dates during 2014 through their fruition; however, upon award of this project, ITS will purchase new licenses from the awarded Vendor only.

6.11.2 Vendor must be aware that the award of this contract does not offer a guarantee of any minimum number of licenses to be purchased or that any licenses will be purchased.

6.11.3 Vendor must provide pricing that allows ITS to purchase individual licenses on an "as-needed" basis. This price must not require a specific and/or minimum number of individual licenses be purchased.

6.11.3.1 The number of current licenses will fluctuate on a monthly basis depending on the purchase and expiration dates of each individual license purchased throughout the course of this project.

6.11.3.2 ITS has no way of predicting the number of licenses that will be requested during any given month or year of this award.

6.11.3.3 ITS has no way of guaranteeing that the number of licenses purchased at any given time during the life of this project will be maintained/renewed past the initial purchase for the remainder of the project.

6.11.4 Vendor must provide one price for one user to have access to the vendor's full library of proposed technology courseware for one year. This price must not require a specific and/or minimum number of users and must provide for access of the courses via the Internet.

6.11.5 Vendor must provide one price per curricula for one user to have access to each curricula offered for one year (e.g., technical, end-user, professional/business development). This price must not require a specific and/or minimum number of users and must provide for access of the courses via the Internet.

- 6.11.6 The initial period of performance shall begin upon contract execution and will continue for a three year period. At the end of the initial term, this Agreement may, upon the written agreement of the parties, be renewed for additional terms.
- 6.11.7 Proposed pricing must remain fixed during the initial three (3) year contract period. Vendor must state an annual fixed cost or annual percentage increase. The maximum annual percentage increase is 5% per year.
- 6.11.8 Vendor must provide itemized pricing for any additional options/services available.
- 6.11.9 Vendor must include any discount options available (e.g., 1 to 100 user licenses cost per license, 101 to 200 user licenses cost per license, etc.).
 - 6.11.9.1 Discounts will apply to the cumulative number of license under the ITS umbrella, not for individual agencies with a larger number of end-users.
 - 6.11.9.2 Each year the Vendor and ITS will review the number of licenses to determine additional discounts available.
- 6.11.10 Vendor will invoice ITS on a monthly basis for any new licenses issued during the preceding month.
- 6.11.11 Additionally, Vendor must include a fully-loaded hourly change order rate for possible use in the future. This hourly rate would be utilized if a need arises for the proposed solution to interface with another software application(s) utilized by the State.

7. Additional Requirements

- 7.1 ITS acknowledges that the specifications within this RFP are not exhaustive. Rather, they reflect the known requirements that must be met by the proposed system. Vendors must specify, here, what additional components may be needed and are proposed in order to complete each configuration.
- 7.2 Vendor will provide a project manager/account manager to support the State account. While the project manager does not have to be dedicated to the State account only, the project manager should be available to assist the Administrator when questions or issues arise. The Administrator will not be required to contact a call center not familiar with the account or contract.

8. Scoring Methodology

- 8.1 An Evaluation Team composed ITS staff will review and evaluate all proposals. All information provided by the Vendors, as well as any other information available to evaluation team, will be used to evaluate the proposals.**
- 8.1.1 Each category included in the scoring mechanism is assigned a weight between one and 100.**
- 8.1.2 The sum of all categories, other than Value-Add, equals 100 possible points.**
- 8.1.3 Value-Add is defined as product(s) or service(s), exclusive of the stated functional and technical requirements and provided to the State at no additional charge, which, in the sole judgment of the State, provide both benefit and value to the State significant enough to distinguish the proposal and merit the award of additional points. A Value-Add rating between 0 and 5 may be assigned based on the assessment of the evaluation team. These points will be added to the total score.**
- 8.1.4 For the evaluation of this RFP, the Evaluation Team will use the following categories and possible points:**

Category	Possible Points
Non-Cost Categories:	
Vendor Qualifications and Experience	10
Functional and Technical Specifications/Requirements	40
Total Non-Cost Points	50
Cost	50
Total Base Points	100
Value Add	5
Maximum Possible Points	105

- 8.2 The evaluation will be conducted in four stages as follows:**
- 8.2.1 Stage 1 – Selection of Responsive/Valid Proposals – Each proposal will be reviewed to determine if it is sufficiently responsive to the RFP requirements to permit a complete evaluation. A responsive proposal must comply with the instructions stated in this RFP with regard to content, organization/format, Vendor**

experience, number of copies, bond requirement and timely delivery. No evaluation points will be awarded in this stage. Failure to submit a complete proposal may result in rejection of the proposal.

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

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

Non-Cost Categories	Possible Points
Vendor Qualifications and Experience	10
Functional & Technical Specifications/Requirements	40
Maximum Possible Points	50

8.2.2.2 Proposals meeting fewer than 80% of the requirements in the non-cost categories may be eliminated from further consideration.

8.2.2.3 ITS scores the non-cost categories on a 10-point scale, with 9 points for meeting the requirement. The 'Meets Specs' score for each category is 90% of the total points allocated for that category. For example, the 'Functional & Technical Specifications/Requirements' category was allocated 40 points; a proposal that fully met all requirements in that section would have scored 36 points. The additional 10% is used for a proposal that exceeds the requirement for an item in a way that provides additional benefits to the state.

8.3 Stage 3 – Cost Evaluation

8.3.1 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

8.3.2 Cost categories and maximum point values are as follows:

Cost Category	Possible Points
Lifecycle Cost	45
Maximum Possible Points	45

8.4 Stage 4 – Selection of the successful

8.4.1 On-site Demonstrations and Interviews

8.4.1.1 At the discretion of the State, evaluators may request interviews, on-site 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.

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

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

8.4.1.4 Although on-site demonstrations may be requested, the demonstration will not be allowed in lieu of a written proposal.

8.4.2 Site Visits

8.4.2.1 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.

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

**SECTION VIII
 COST INFORMATION SUBMISSION**

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

MANUFACTURER OF PROPOSED COURSEWARE: _____

MANUFACTURER PART #: _____

NAME OF PROPOSED COURSEWARE: _____

DESCRIPTION	UNIT COST
Per user license fee for complete technology courseware (Specification 6.11.4)	
Per user license fee per curricula (Specification 6.11.5)	
Itemized pricing for additional options/services (Specification 6.11.8)	
Total:	

Vendor must detail discount options available (Specification 6.11.9)

Fully-loaded change order hourly rate (Specification 6.11.11): _____

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 five (5) references consisting of Vendor accounts that the State may contact. Required information includes customer contact name, address, telephone number, e-mail address, and engagement starting and ending dates. Forms for providing reference information are included later in this RFP section. The Vendor must make arrangements in advance with the account references so that they may be contacted at the Project team's convenience without further clearance or Vendor intercession.
- 1.2** Any of the following may subject the Vendor's proposal to being rated unfavorably relative to these criteria or removed from further consideration, at the State's sole discretion:
 - 1.2.1** Failure to provide reference information in the manner described;
 - 1.2.2** Inability of the State to substantiate minimum experience or other requirements from the references provided;
 - 1.2.3** Non-responsiveness of references to the State's attempts to contact them; or
 - 1.2.4** Unfavorable references that raise serious concerns about material risks to the State in contracting with the Vendor for the proposed products or services.
- 1.3** References should be based on the following profiles and be able to substantiate the following information from both management and technical viewpoints:
 - 1.3.1** The reference installation must be for a project similar in scope and size to the project for which this RFP is issued;
 - 1.3.2** The reference installation must have been operational for at least six (6) months.
- 1.4** The State reserves the right to request information about the Vendor from any previous customer of the Vendor of whom the State is aware, including the procuring agency and/or other agencies or institutions of the State, even if that customer is not included in the Vendor's list of

references, and to utilize such information in the evaluation of the Vendor's proposal.

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

2. Subcontractors

The Vendor's proposal must identify any subcontractor that will be used and include the name of the company, telephone number, contact person, type of work subcontractor will perform, number of certified employees to perform said work, and five (5) references for whom the subcontractor has performed work that the State may contact. Forms for providing subcontractor information and references are included at the end of this section.

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

REFERENCE FORM

Complete five (5) Reference Forms.

Contact Name:

Company Name:

Address:

Phone #:

E-mail:

Project Start Date:

Project End Date:

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

SUBCONTRACTOR REFERENCE FORM

Complete a separate form for each subcontractor proposed.

Contact Name:
Company name:
Address:
Phone #:
E-mail:

Scope of services/products to be provided by subcontractor:

Complete five (5) Reference Forms for each Subcontractor.

Contact Name:
Company name:
Address:
Phone #:
E-mail:
Description of product/services/project, including start and end dates:

EXHIBIT A
STANDARD CONTRACT

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

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

**PROJECT NUMBER 40357
SOFTWARE LICENSE AND MAINTENANCE AGREEMENT
BETWEEN
INSERT VENDOR NAME
AND
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES**

This Software License and Maintenance Agreement (hereinafter referred to as “Agreement”) is entered into by and between **INSERT VENDOR NAME**, a **INSERT STATE OF INCORPORATION** corporation having its principal place of business at **INSERT VENDOR ADDRESS** (hereinafter referred to as “Licensor”), and Mississippi Department of Information Technology Services having its principal place of business at 3771 Eastwood Drive, Jackson, Mississippi 39211 (hereinafter referred to as “ITS” and/or “Licensee”).

WHEREAS, Licensee, pursuant to Request for Proposals (hereinafter referred to as “RFP”) Number 3635, requested proposals for the acquisition of software, services, and technical support necessary for the implementation of online training courseware and services, as described in the RFP; and

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

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

ARTICLE 1 DEFINITIONS

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

- 1.1 **“Documentation”** means the published user and technical manuals and documentation that Licensor makes generally available for the courseware Software.
- 1.2 **“Enhancements”** means the fixes, updates and upgrades of the courseware Software or Documentation that Licensor may provide to Licensee under this Agreement.
- 1.3 **“Licensee”** means the Mississippi Department of Information Technology Services, its employees, and any third party consultants or outsourcers engaged by Licensee who have a need to know and who shall be bound by the terms and conditions of this Agreement.
- 1.4 **“Licensor”** means **INSERT VENDOR NAME** and its successors and assigns.

1.5 “**Products**” means the courseware Software, Documentation, Enhancements, and any copy of the courseware Software, Documentation, or Enhancements.

1.6 “**Software**” means the machine-readable object code version of the computer programs described in and specifically identified in the attached Exhibit A, whether embedded on disc, tape, or other media.

ARTICLE 2 TERM OF AGREEMENT

The initial term of this Agreement during which time Licensee may place orders and add licensed users begins upon execution of this Agreement and continues for three (3) years thereafter (hereinafter referred to as “Initial Term”). Licensed users may be added by Licensee during the Initial Term and during any renewal term, as specified herein. At the end of the Initial Term, this Agreement may, upon the written agreement of the parties, be renewed for an additional term, the length of which will be agreed upon by the parties. Sixty (60) days prior to the expiration of the Initial Term or any renewal term of this Agreement, Licensor shall notify Licensee of the impending expiration and Licensee shall have thirty (30) days in which to notify Licensor of its intention to either renew or cancel the Agreement. The provisions of this Agreement shall survive its termination/expiration with respect to any un-expired access terms.

ARTICLE 3 ORDERS AND PRICING

3.1 The parties understand and agree that ITS will order Software on an “as-needed” basis and does not guarantee that it will procure any minimum amount of Software under this Agreement.

3.2 While the pricing in the attached Exhibit A may be decreased during the term of this Agreement, it is understood and agreed that Licensor’s pricing may not be increased during the Initial Term. Following the Initial Term, the cost of the Software and services shall not increase by more than five percent (5%) per year during any renewal period.

ARTICLE 4 SCOPE OF LICENSE

Licensor hereby grants to Licensee a non-exclusive, non-transferable, and term license to use the Products for Licensee’s business operations subject to the terms of this Agreement. The courseware will be made available to Licensee via Licensor’s ASP service offering on the Internet located at **INSERT VENDOR’S WEBSITE ADDRESS**. Licensee may license additional Products thereby increasing the number of licensed users and paying additional license fees.

ARTICLE 5 ACCEPTANCE

Licensee shall have thirty (30) calendar days after its initial access to the courseware Software to evaluate and test the Software to confirm that it performs without any defects and in accordance with RFP No. 3635, Licensor’s Proposal in response thereto, and Licensor’s user

Documentation. Licensee shall immediately thereafter notify Licensor in writing of any defects in the Software, which must be corrected prior to payment being made. Thereafter, Licensor shall have ten (10) working days in which to either repair or replace the defective Software, all at Licensor's expense. In the event Licensor is unable to repair or replace the Software, Licensee may terminate this Agreement pursuant to the Termination Article herein.

ARTICLE 6 CONSIDERATION AND METHOD OF PAYMENT

The cost of the courseware Software and services to be provided by Licensor is specified in the attached Exhibit A, which is incorporated herein by reference. Upon acceptance of the courseware Software by Licensee, Licensor shall invoice Licensee for the courseware Software on a monthly basis in arrears for any new users/licenses issued during the preceding month. Services will be invoiced as they are rendered. Licensor shall submit invoices and supporting documentation to Licensee electronically during the term of this Agreement using the processes and procedures identified by the State. Licensee shall make payment hereunder in accordance with Mississippi law on "Timely Payment for Purchases by Public Bodies," Section 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by Licensee within forty-five (45) days of receipt of the invoice. Licensor understands and agrees that Licensee is exempt from the payment of taxes. All payments should be made in United States currency. Payments by state agencies using the Statewide Automated Accounting System ("SAAS") shall be made and remittance information provided electronically as directed by the State. These payments by SAAS agencies shall be deposited into the bank account of the Licensor's choice. No payment, including final payment, shall be construed as acceptance of defective Products or incomplete work, and the Licensor shall remain responsible for full performance in strict compliance with the contract documents specified in the article herein titled "Entire Agreement."

ARTICLE 7 OWNERSHIP, USE, AND RESTRICTIONS ON USE

7.1 Licensee acknowledges that the Products shall remain the exclusive property of Licensor. Licensee acknowledges that it has no right to or interest in the Products other than as expressly granted herein. Licensee shall not remove any identification notices affixed to the Products or their packaging.

7.2 Licensee is granted the right to make sufficient copies of the Products to support its use and for archival and disaster recovery purposes. Licensee shall include Licensor's confidentiality and proprietary rights notices on any copies made of the Products.

7.3 Licensee acknowledges that the Products are trade secrets and confidential information of Licensor. Neither the Products nor any physical media containing the Software may be used, copied, disclosed, broadcast, sold, re-licensed, distributed, or otherwise published by Licensee

except as expressly permitted by this Agreement. Licensee shall use reasonable efforts to maintain the confidential nature of the Products.

7.4 Licensee is granted the right to customize the Software for its use. Licensee may not resell or sub-license the original Software or the customized version.

7.5 Licensee agrees that, except as noted herein, it will not otherwise copy, translate, modify, adapt, decompile, disassemble, or reverse engineer any of the Software without the prior written consent of Licensor.

ARTICLE 8 WARRANTIES

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

8.2 Licensor represents and warrants that the Products provided by Licensor shall meet or exceed the minimum specifications set forth in RFP No. 3635 and Licensor's Proposal in response thereto.

8.3 Licensor represents and warrants that all services performed hereunder, including but not limited to consulting, training, and Software maintenance, shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of this Agreement. For any breach of this warranty, the Licensor shall, for a period of ninety (90) days from the performance of service, perform the services again at no cost to the Licensee, or if the Licensor is unable to perform the services as warranted, the Licensor shall reimburse the Licensee the fees paid to the Licensor for the unsatisfactory services.

8.4 Licensor represents and warrants that neither the Software nor Enhancements shall contain disabling code or a lockup program or device. Licensor further agrees that it will not under any circumstances, including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Licensee's licensed use of the Software or Enhancements and/or which would restrict Licensee from accessing its data files or in any way interfere with the transactions of Licensee's business. For any breach of this warranty, Licensor, at its expense, shall, within five (5) working days after receipt of notification of the breach, deliver Products to Licensee that are free of such disabling code or a lockup program or device.

8.5 In addition, Licensor represents and warrants that neither the Software nor Enhancements delivered to Licensee contain a computer virus. For purposes of this provision, a computer virus shall be defined as code intentionally inserted in the Software or Enhancements that will damage

or destroy Licensee's applications or data. For any breach of this warranty, Licensor, at its expense, shall, within five (5) working days after receipt of notification of the breach, deliver Products to Licensee that are free of any virus and shall be responsible for repairing, at Licensor's expense, any and all damage done by the virus to Licensee's site.

8.6 Licensor represents and warrants that the Software will operate free from defects during the term of the license and will provide Licensee complete functionality as stated in RFP No. 3635 and the Licensor's Proposal in response thereto. Licensor's obligations pursuant to this warranty shall include, but are not limited to, the repair of all defects or the replacement of the Software at the expense of Licensor. In the event Licensor is unable to repair or replace the Software within ten (10) working days after receipt of notice of the defect, Licensor shall immediately refund a pro-rata portion of the license fees paid by Licensee and Licensee shall have the right to terminate this Agreement in whole or in part. Licensee's rights hereunder are in addition to any other rights Licensee may have.

8.7 Licensor represents and warrants that 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. Licensor agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security where required, to provide a copy of each such verification to the State. Licensor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Licensor understands and agrees that any breach of these warranties may subject Licensor to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Licensor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Licensor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

8.8 Licensor represents and warrants that no official or employee of Licensee, and no other public official of the State of Mississippi who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of said project, voluntarily acquire any personal interest, direct or indirect, in this Agreement.

The Licensor warrants that it has removed any material conflict of interest prior to the signing of this Agreement, and that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its responsibilities under this Agreement. The Licensor also warrants that in the performance of this Agreement no person having any such known interests shall be employed.

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

8.10 Licensor represents and warrants that the courseware licensed hereunder is capable, either by virtue of features included with the technology or because it is adaptable by use with other third party technology of (a) providing equivalent access for effective use by both visual and non-visual means; (b) presenting information, including prompts used for interactive communications, in formats intended for non-visual use, and (c) being integrated into networks for obtaining, retrieving and disseminating information used by individuals who are not blind or visually impaired. For purposes of this Article, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical display and customizable display appearance. For any breach of this warranty, Licensor shall, at its option, either correct the errors in the Courseware that cause the breach of this warranty or pay the excess costs to provide equivalent access, over the costs that would constitute a reasonable accommodation under the Americans with Disabilities Act.

ARTICLE 9 INFRINGEMENT INDEMNIFICATION

Licensor represents and warrants that neither the Products and their elements nor the use thereof violates or infringes on any copyright, patent, trademark, servicemark, trade secret, or other proprietary right of any person or entity. Licensee shall notify Licensor promptly of any infringement claim of which it has knowledge and shall cooperate with Licensor in the defense of such claim by supplying information, all at Licensor's expense. Licensor, at its own expense, shall defend or settle any and all infringement actions filed against Licensor or Licensee which involve the Products provided under this Agreement and shall pay all settlements, as well as all costs, attorney fees, settlements, damages, and judgment finally awarded against Licensee. If the continued use of the Products for the purpose intended is threatened to be enjoined or is enjoined by any court of competent jurisdiction, Licensor shall, at its expense: (a) first procure for Licensee the right to continue using the Products, or upon failing to procure such right; (b) modify or replace the Products, or components thereof, with non-infringing Products so it becomes non-infringing, or upon failing to secure either such right; (c) refund the license fees previously paid by Licensee for the Products Licensee may no longer use. Said refund shall be paid within ten (10) working days of notice to Licensee to discontinue said use.

ARTICLE 10 MODIFICATION

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

ARTICLE 11 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS

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

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

11.3 Licensor must obtain the written approval of Licensee before subcontracting any portion of this Agreement. No such approval by Licensee of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of Licensee in addition to the total fixed price

agreed upon in this Agreement. All subcontracts shall incorporate the terms of this Agreement and shall be subject to the terms and conditions of this Agreement and to any conditions of approval that Licensee may deem necessary.

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

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

ARTICLE 12 AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of the Licensee to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of this Agreement are, at any time, not forthcoming or insufficient through the failure of the federal government to provide funds, the State of Mississippi to appropriate funds, the discontinuance or material alteration of the program under which funds were provided, or if funds are not otherwise available to the Licensee, the Licensee shall have the right to immediately terminate this Agreement without damage, penalty, cost, or expense to the Licensee of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. In the event of termination, Licensor shall be entitled to receive just and equitable compensation for satisfactory work completed or services rendered by Licensor in connection with this Agreement as of the date of receipt of notification of termination.

ARTICLE 13 TERMINATION

Notwithstanding any other provision of this Agreement to the contrary, this Agreement and the access term of any licensed user associated therewith may be terminated in whole or in part as follows: (a) upon the mutual, written agreement of the parties; (b) by Licensee upon thirty (30) days written notice to Licensor without the assessment of any penalties if Licensor becomes the subject of bankruptcy, reorganization, liquidation, or receivership proceedings, whether voluntary or involuntary; (c) by Licensee upon thirty (30) days written notice to Licensor without

the assessment of any penalties in the event Licensee determines not to renew any licensed user's access and/or to terminate this Agreement; (d) by either party in the event of a breach of a material term or provision of this Agreement where such breach continues for thirty (30) days after the breaching party receives written notice from the other party; or (e) upon termination of all accesses for all licensed users, either party may terminate this Agreement at any time upon thirty (30) days written notice to the other party. Upon termination, Licensee will be entitled to a refund of applicable unexpended prorated annual fees/charges, if any. The provisions of this article do not limit either party's right to pursue any other remedy available at law or in equity.

ARTICLE 14 GOVERNING LAW

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

ARTICLE 15 WAIVER

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants, and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Agreement. A waiver by 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 16 SEVERABILITY

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

ARTICLE 17 CAPTIONS

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

ARTICLE 18 HOLD HARMLESS

To the fullest extent allowed by law, Licensor shall indemnify, defend, save and hold harmless, protect, and exonerate Licensee, its Board Members, officers, employees, agents, and representatives from and against any and all claims, demands, liabilities, suits, actions, damages,

losses, costs, and expenses of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, attorney fees, and claims for damages arising out of or caused by Licensor and/or its partners, principals, agents, employees, or subcontractors in the performance of or failure to perform this Agreement.

ARTICLE 19 THIRD PARTY ACTION NOTIFICATION

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

ARTICLE 20 AUTHORITY TO CONTRACT

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

ARTICLE 21 NOTICE

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

ARTICLE 22 RECORD RETENTION AND ACCESS TO RECORDS

Licensor shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Agreement. The Licensee, any state or federal agency authorized to audit Licensee, and/or any of their duly authorized representatives, shall have unimpeded, prompt access to this Agreement and to any of the Licensor's proposals, books, documents, papers and/or records that are

pertinent to this Agreement to make audits, copies, examinations, excerpts and transcriptions at the State's or Licensor's office as applicable where such records are kept during normal business hours. All records relating to this Agreement shall be retained by the Licensor for three (3) years from the date of receipt of final payment under this Agreement. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the three (3) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.

ARTICLE 23 INSURANCE

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

ARTICLE 24 DISPUTES

Any dispute concerning a question of fact under this Agreement, which is not disposed of by agreement of the Licensor and Licensee, shall be decided by the Executive Director of Mississippi Department of Information Technology Services or his/her designee. Licensor agrees to continue to provide such service, maintenance, and updates as Licensee may contract for and pay for pending the resolution of any dispute hereunder. The decision of the Executive Director shall be reduced to writing and a copy thereof mailed or furnished to the parties. Disagreement with such decision by either party shall not constitute a breach under the terms of this Agreement. Nothing in this Article shall abridge the right of either party to seek such other rights and remedies it may have at law or in equity.

ARTICLE 25 COMPLIANCE WITH LAWS

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

ARTICLE 26 CONFLICT OF INTEREST

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

ARTICLE 27 SOVEREIGN IMMUNITY

By entering into this Agreement with Licensor, the Licensee in no way waives its sovereign immunities or defenses as provided by law.

ARTICLE 28 CONFIDENTIAL INFORMATION

28.1 Both parties shall treat the other party's data and information to which it has access by Licensor's performance under this Agreement as confidential and shall not disclose such data or information to a third party without specific written consent. In the event that either party 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 said party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by state or federal law. This section shall survive the termination or completion of this Agreement.

28.2 Licensor and Licensee shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("the Disclosing Party") which: (a) is or becomes known to the public without fault or breach of the party receiving confidential information of the Disclosing Party ("the Recipient"); (b) is furnished by the Disclosing Party to third parties without restriction on subsequent disclosure; (c) the Recipient obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation; (d) is already in the Recipient's possession without an obligation of confidentiality; or (e) is independently developed by Recipient without reliance on the confidential information.

28.3 With the exception of any attached exhibits which are labeled as "confidential", the parties understand and agree that this Agreement, including any amendments and/or change orders thereto, does not constitute confidential information, and may be reproduced and distributed by the State without notification to Licensor. ITS will provide third party notice to Licensor of any requests received by ITS for any such confidential exhibits so as to allow Licensor the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

ARTICLE 29 EFFECT OF SIGNATURE

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

ARTICLE 30 ENTIRE AGREEMENT

30.1 This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings, and agreements, written or oral, between the parties relating hereto, including any “shrink-wrap” version of the Software Product or any “click-wrap” or “browse-wrap” license presented in connection with a license via the Internet. The RFP No. 3635 and Licensor’s Proposal in response thereto are hereby incorporated into and made a part of this Agreement.

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

- A. This Agreement signed by both parties;
- B. Any exhibits attached to this Agreement;
- C. RFP No. 3635; and
- D. Licensor’s Proposal, as accepted by Licensee, in response to RFP No. 3635.

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

ARTICLE 31 SURVIVAL

Articles 8, 9, 14, 18, 22, 27, 28, and all other articles, which by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this Agreement.

ARTICLE 32 DEBARMENT AND SUSPENSION CERTIFICATION

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

property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, including violation of federal or state anti-trust statutes, commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property; and (d) have, within a three (3) year period preceding this Agreement, had one or more public (federal, state, or local) transactions terminated for cause or default.

ARTICLE 33 COMPLIANCE WITH ENTERPRISE SECURITY POLICY

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

ARTICLE 34 TRAINING, MARKETING & EDUCATIONAL SERVICES

34.1 Licensor shall, for the fees specified in the attached Exhibit A, provide functional and technical training and support to the appropriate Licensor agrees to provide, upon delivery, all Documentation needed to fully acquaint the user with the operation of the Software, if available.

34.2 Licensor shall, upon a mutually agreed upon date and time, provide the following on-site educational services in accordance with RFP No. 3732 and Licensor's Proposal in response thereto: internal marketing, open house, and installation and support as mutually agreed to by the parties. Licensor and Licensee shall mutually agree on the time for the educational services and an outline of the educational services to be provided.

34.3 During any term of this Agreement, Licensor shall provide a minimum of one (1) open house per year at ITS' offices and one (1) open house per year at a location of ITS' choosing within the Jackson metro area. Further, it is understood and agreed that ITS reserves the right to request Licensor to provide up to two (2) additional open houses each year at no additional cost.

ARTICLE 35 SOFTWARE MAINTENANCE

As part of the Software maintenance services, Licensor will maintain the Products in an operable condition according to the specifications contained in the technical manuals and as outlined in RFP No. 3635 and the Licensor's Proposal in response thereto. Licensor shall make available to Licensee during each annual maintenance period at least one (1) update to the Products that will

incorporate any new features or enhancements to the licensed Products. Licensor shall also provide unlimited toll-free telephone support in the operation of the Products Monday through Friday, 8:00 A.M. to 5:00 P.M. (Central Time), with a guaranteed one (1) hour response time. Priority placement in the support queue shall be given to all system locking situations or problems claimed by Licensee to be mission critical processes. Finally, Licensor shall provide on-site support in the operation of the Software Products if reasonably convenient or necessary in the opinion of the Licensor.

ARTICLE 36 TRANSPARENCY

In accordance with the Mississippi Accountability and Transparency Act of 2008, §27-104-151, et seq., of the Mississippi Code of 1972, as Amended, the American Accountability and Transparency Act of 2009 (P.L. 111-5), where applicable, and §31-7-13 of the Mississippi Code of 1972, as amended, where applicable, a fully executed copy of this Agreement shall be posted to the State of Mississippi's accountability website at: <https://www.transparency.mississippi.gov>. Prior to Licensee posting the Agreement to the website, any attached exhibits which contain trade secrets or other proprietary information and are labeled as "confidential" will be redacted by Licensee.

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

**State of Mississippi, Department of
Information Technology Services**

INSERT VENDOR NAME

By: _____
Authorized Signature

By: _____
Authorized Signature

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

Printed Name: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____

EXHIBIT A