



RFP No: 3683

INVITATION: Sealed proposals, subject to the attached conditions, will be received at this office until May 27, 2014 @ 3:00 p.m. Central Time for the acquisition of the products/services described below for the Mississippi Department of Information Technology Services.

Acquisition of software escrow services from a qualified vendor

The Vendor must submit proposals and direct inquiries to:

Kay-Lynn Meador
Technology Consultant
Information Technology Services
3771 Eastwood Drive
Jackson, MS 39211
(601) 432-8001
KayLynn.Meador@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. 3683
due May 27, 2014 @ 3:00 p.m.,
ATTENTION: Kay-Lynn Meador

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. 3683.

- _____ 1) One clearly marked original response and five (5) 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	14
LEGAL AND CONTRACTUAL INFORMATION	14
SECTION V.....	25
PROPOSAL EXCEPTIONS	25
PROPOSAL EXCEPTION SUMMARY FORM.....	27
SECTION VI.....	28
RFP QUESTIONNAIRE	28
SECTION VII.....	31
TECHNICAL SPECIFICATIONS.....	31
SECTION VIII.....	50
COST INFORMATION SUBMISSION	50
SECTION IX.....	55
REFERENCES	55
REFERENCE FORM	57
SUBCONTRACTOR REFERENCE FORM.....	58
APPENDIX A.....	59
STANDARD CONTRACT	59
APPENDIX B.....	71
STANDARD CONTRACT	71

**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 Appendix A and B 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.
9. The Vendor must conform to the following standards in the preparation of the Vendor's proposal:
 - 9.1 The Vendor is required to submit one clearly marked original response and five (5) identical copy/copies of the complete proposal, including all sections and exhibits, in three-ring binders.
 - 9.2 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.
- 9.3 Number each page of the proposal.
 - 9.4 Respond to the sections and exhibits in the same order as this RFP.
 - 9.5 Label and tab the responses to each section and exhibit, using the corresponding headings from the RFP.
 - 9.6 If the Vendor does not agree with any item in any section, then the Vendor must list the item on the *Proposal Exception Summary Form*. (See Section V for additional instructions regarding Vendor exceptions.)
 - 9.7 Occasionally, an outline point in an attachment requests information which is not applicable to the products/services proposed. If the Vendor is certain the point does not apply to the given RFP, the Vendor should respond with "NOT APPLICABLE."
 - 9.8 Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
 - 9.9 When an outline point/attachment is a statement provided for the Vendor's information only, the Vendor need only read that point. The Vendor acknowledges having read and accepting, or taking exception to, all sections by signing the *Submission Cover Sheet* and providing a *Proposal Exception Summary Form*.
 - 9.10 Where a minimum requirement has been identified, respond by stating the item (e.g., device name/model number, guaranteed response time) proposed and how it will meet the specifications.
 - 9.11 The Vendor must fully respond to each requirement within the *Technical Specifications* by fully describing the manner and degree by which the proposal meets or exceeds said requirements.
10. It is the responsibility of the Vendor to clearly identify all costs associated with any item or series of items in this RFP. The Vendor must include and complete all parts of the cost proposal in a clear and accurate manner. **Omissions, errors, misrepresentations, or inadequate details in the Vendor's cost proposal may be grounds for rejection of the Vendor's proposal. Costs that are not clearly identified will be borne by the Vendor.** The Vendor must complete the *Cost Information Submission* in this RFP, which outlines the minimum requirements for providing cost information. The Vendor should supply supporting details as described in the *Cost Information Submission*.
 11. **ITS** reserves the right to request additional information or clarification of a Vendor's proposal. The Vendor's cooperation during the evaluation process in providing **ITS** staff with adequate responses to requests for clarification will be considered a factor in the evaluation of the Vendor's overall responsiveness. Lack of such cooperation or failure to

provide the information in the manner required may, at the State's discretion, result in the disqualification of the Vendor's proposal.

12. Unsolicited clarifications and updates submitted after the deadline for proposals will be accepted or rejected at the sole discretion of **ITS**.
13. Unsolicited clarifications in the evaluation and selection of lowest and best proposal will be considered only if all the following conditions are met:
 - 13.1 A clarification to a proposal that includes a newly announced product line or service with equal or additional capability to be provided at or less than the proposed price will be considered.
 - 13.2 Information provided must be in effect nationally and have been formally and publicly announced through a news medium that the Vendor normally uses to convey customer information.
 - 13.3 Clarifications must be received early enough in the evaluation process to allow adequate time for re-evaluation.
 - 13.4 The Vendor must follow procedures outlined herein for submitting updates and clarifications.
 - 13.5 The Vendor must submit a statement outlining the circumstances for the clarification.
 - 13.6 The Vendor must submit one clearly marked original and five (5) copy/copies of the clarification.
 - 13.7 The Vendor must be specific about which part of the original proposal is being changed by the clarification (i.e., must include exact RFP reference to section and outline point).
14. **Communications with State**

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

 - 14.1 The State's contact person for the selection process is: Kay-Lynn Meador, Technology Consultant, 3771 Eastwood Drive, Jackson, MS 39211, 601-432-8001, KayLynn.Meador@its.ms.gov.

- 14.2 Vendor may consult with State representatives as designated by the State's contact person identified in 14.1 above in response to State-initiated inquiries. Vendor may consult with State representatives during scheduled oral presentations and demonstrations excluding site visits.

SECTION III VENDOR INFORMATION

The objective of the Vendor Information section of this RFP is to provide Vendors with information required to 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 awarded 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 Appendix A and B 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 Appendix A and B, 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 awarded 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 awarded 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 fifteen (15) working days from the Vendor’s initial receipt of the project contract from **ITS**, unless **ITS** consents to extend the period. Failure to complete negotiations within the stated time period constitutes grounds for rejection of the Vendor’s response to this RFP. **ITS** may withdraw the proposal award and begin negotiations with the next ranked Vendor immediately or pursue any other option.

14.2 Negotiations shall be limited to items to which the Vendor has noted as exceptions on their Proposal Exception Summary Form, as well as any new items that the State may require. All contract changes requested by the

Vendor related to such exceptions noted in Vendor's proposal shall be submitted three (3) working days prior to scheduled negotiations, unless **ITS** consents to a different period.

15. **Prime Contractor**

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

16. **Sole Point of Contact**

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

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

16.2 Furthermore, the Vendor acknowledges and agrees to pass all rights and/or services related to all general consulting, services leasing, software licensing, warranties, hardware maintenance and/or software support to the State from any contractor, third party or subcontractor without the State having to negotiate separately or individually with any such parties for these terms or conditions.

16.3 Should a proposing Vendor wish to assign payment of any or all charges resulting from this contract to a third party, Vendor must disclose that fact in his/her proposal, along with the third party's name, address, nature of business, and relationship to the proposing Vendor, the reason for and purpose of the assignment, and all conditions of the assignment, including but not limited to a copy of an assignment document to be executed by the State, the Vendor, and the third party. Such assignments will be accepted or rejected at the sole discretion of the State. Vendor must clearly and definitively state in his/her proposal whether the proposal is contingent upon the requested assignment of payments. Whenever any assignment of payment is requested, the proposal, contract, and assignment document must include language specifically guaranteeing that the proposing Vendor is solely and fully liable and responsible for the performance of its obligations under the subject contract. No assignment of payment will be considered at the time of purchase unless such assignment was fully disclosed in the Vendor's proposal and subsequently accepted by the State.

17. **ITS Approval of Subcontractor Required**

Unless provided in the contract, the Vendor shall not contract with any other party for furnishing any of the contracted work or services without the consent, guidance, and written approval of the State. **ITS** reserves the right of refusal and the right to request replacement of a subcontractor due to unacceptable work or conduct. This provision

should not be interpreted as requiring the approval of individual contracts of employment between the Vendor and personnel assigned for services under the contract.

18. **Inclusion of Subcontract Agreements**
Copies of any agreements to be executed between the Vendor and any subcontractors must be included in the Vendor's proposal.
19. **Negotiations with Subcontractor**
In order to protect the State's interest, **ITS** reserves the right to attempt to resolve the contractual disagreements that may arise between the Vendor and its subcontractor after award of the contract.
20. **References to Vendor to Include Subcontractor**
All references in the RFP to "Vendor" shall be construed to encompass both the Vendor and its subcontractors.
21. **Outstanding Vendor Obligations**
 - 21.1 Any Vendor who presently owes the State of Mississippi money pursuant to any contract for which **ITS** is the contracting agent and who has received written notification from **ITS** regarding the monies owed, must submit, with the proposal, a certified check in the amount due and owing in order for the proposal in response to this RFP to be considered. For a Vendor currently in bankruptcy as of the RFP submission date, this requirement is met, if and only if, **ITS** has an active petition before the appropriate bankruptcy court for recovery of the full dollar amount presently owed to the State of Mississippi by that Vendor. If the Vendor has emerged from bankruptcy by the RFP submission date, the Vendor must pay in full any amount due and owing to the State, as directed in the court-approved reorganization plan, prior to any proposal being considered.
 - 21.2 Any Vendor who is presently in default on existing contracts for which **ITS** is the contracting agent, or who otherwise is delinquent in the performance of any such contracted obligations, is in the sole judgment of the State required to make arrangement for fulfilling outstanding obligations to the satisfaction of the State in order for the proposal to be considered.
 - 21.3 The State, at its sole discretion, may reject the proposal of a Vendor with any significant outstanding financial or other obligations to the State or who is in bankruptcy at the time of proposal submission.
22. **Equipment Condition**
For all RFPs requiring equipment, the Vendor must furnish only new equipment in response to **ITS** specifications, unless an explicit requirement for used equipment is otherwise specified.
23. **Delivery Intervals**
The Vendor's proposal must specify, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, delivery and installation intervals after receipt of order.

24. **Pricing Guarantee**
The Vendor must explicitly state, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, how long the proposal will remain valid. Unless stated to the contrary in the *Technical Specifications*, pricing must be guaranteed for a minimum of ninety (90) days.
25. **Shipping Charges**
For all RFPs requiring shipment of any product or component, all products must be delivered FOB destination to any location within the geographic boundaries of the State with all transportation charges prepaid and included in the RFP proposal or LOC quotation. Destination is the point of use.
26. **Amortization Schedule**
For all RFPs requiring equipment, contracts involving the payment of interest must include an amortization schedule clearly documenting the amount of interest payable over the term of the contract.
27. **Americans with Disabilities Act Compliance for Web Development and Portal Related Services**
All Web and Portal development work must be designed and implemented in compliance with the Electronic and Information Technology Accessibility Standards associated with Section 508 of the Rehabilitation Act and with the Web Accessibility Initiative (WAI) of the W3C.
28. **Ownership of Developed Software**
- 28.1 When specifications require the Vendor to develop software for the State, the Vendor must acknowledge and agree that the State is the sole owner of such developed software with exclusive rights to use, alter, or distribute the software without restriction. This requirement applies to source code, object code, and documentation.
- 28.2 The State may be willing to grant the Vendor a nonexclusive license to use the State's software subject to devising acceptable terms and license fees. This requirement is a matter of State Law, and not negotiable.
29. **Ownership of Custom Tailored Software**
In installations where the Vendor's intellectual property is modified and custom-tailored to meet the needs of the State, the Vendor must offer the State an application license entitling the State to use, and/or alter the software without restriction. These requirements apply to source code, object code and documentation.
30. **Terms of Software License**
The Vendor acknowledges and agrees that the term of all software licenses provided to the State shall be perpetual unless stated otherwise in the Vendor's proposal.
31. **The State is Licensee of Record**
The Vendor must not bypass the software contracting phase of a project by licensing project software intended for State use in its company name. Upon award of a project,

the Vendor must ensure that the State is properly licensed for all software that is proposed for use in a project.

32. Compliance with Enterprise Security Policy

Any solution 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, email, 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, email address, phone number) to the State's contact person identified in Section II, Item 14.1 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 with 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 3683.

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

Appendix A and B, 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, Appendices 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 email 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

NOTE: The terms “vendor” and “escrow agent” may be used interchangeably in this RFP. The term “**ITS** customer” refers to Mississippi State Agencies and Institutions of Higher Learning.

The Mississippi Department of Information Technology Services (**ITS**) role in procurement is to assist Mississippi State Agencies and Institutions of Higher Learning with technology related purchases. Due to the large volume of software procurement projects **ITS** manages, **ITS** plans to establish a partnership with an escrow agent to provide escrow services for **ITS** customers acquiring software solutions. **ITS** will sign a master contract with the awarded escrow agent that will allow for individual statements of work to be signed by the **ITS** customer, the escrow agent and software provider when

escrow agreements are needed. This will centralize the software escrow process by utilizing escrow services from a single awarded escrow agent to agencies and institutions for contracts.

There is no guarantee of volume for these services. The following historical information is provided to demonstrate historical use of escrow services by **ITS** customers over the last five years.

YEAR	NUMBER OF ESCROW AGREEMENTS
2013	18
2012	10
2011	5
2010	9
2009	80
TOTAL	122

Once RFP No. 3683 is awarded, **ITS** will sign the **Master Escrow Services Agreement** located in Appendix A: Standard Contract of this RFP (as the contracting agent for the Agencies and Institutions of Mississippi) with the awarded escrow agent.

The **Master Escrow Services Agreement** will establish the contract terms for escrow services provided to **ITS** customers (state agencies and institutions) based on the RFP award and will be signed by the awarded escrow agent and **ITS**.

Exhibit A – Pricing for Escrow Services is included in the **Master Escrow Services Agreement** and will include the standard price list for escrow services provided to **ITS** customers by the awarded escrow agent.

Each time **ITS** customers utilize escrow services provided by the awarded escrow agent, a new **Three Party Escrow Agreement** will be executed to detail the specific requirements of each escrow agreement. This agreement will be used as a supplement contract to the **Master Escrow Services Agreement**.

The **Three Party Escrow Agreement** located in Appendix B: Standard Contract of this RFP will establish the contract terms for escrow services provided to a specific **ITS** customer agency or institution and will be signed by the awarded escrow agent, the **ITS** customer (state agency or institution) and the software provider.

Exhibit B – Deposit Materials Description Form is included in the **Three Party Escrow Agreement** and will include information relative to the software escrow deposit for the **ITS** customer.

Generally, **ITS** anticipates the **Three Party Escrow Agreement(s)** will consist of a single source code (software product), a single depositor (software provider) and a single beneficiary (**ITS** customer). **ITS** plans to provide a menu of software escrow

services and associated pricing within this framework, so that a tailored escrow can be created to meet each **ITS** customer’s individual needs. Although flexibility in billing is desired, **ITS** primarily intends for **ITS** customers to be billed directly for software escrow services provided by the awarded escrow agent.

ITS requires documentation confirming receipt of the deposit materials (source code), as well as standard deposit inspection reports and services reports (as outlined in this RFP in Section VII, *Reporting Requirements*, Items 8.3 – 8.6), to be provided for the **ITS** customer. In addition, due to **ITS**’s role as contracting agent for the agencies and institutions of the State of Mississippi, a semi-annual report of all escrow accounts set up for **ITS** customers must be provided to BOTH **ITS** and the **ITS customer** for software escrow tracking and monitoring purposes. (See *Reporting Requirements*, Item 8.1)

Vendors are encouraged to ask questions to further clarify the requested escrow services outlined in the RFP, and offer suggestions on the structure of a successful escrow account relationship for **ITS** customers, software vendors and the escrow agent.

3. Procurement Project Schedule

Task	Date
First Advertisement Date for RFP	04/15/14
Second Advertisement Date for RFP	04/22/14
Deadline for Vendor’s Written Questions	3:00 p.m. Central Time on 04/29/14
Deadline for Questions Answered and Posted to ITS Web Site	05/13/14
Open Proposals	05/27/14
Evaluation of Proposals	05/27/14 - 06/20/14
Contract Negotiation	06/20/14 – 07/11/14
Proposed Project Implementation Start-up	07/21/14

4. Statement of Understanding

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

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

4.1.2 Vendor must deliver a written document to Kay-Lynn Meador by April 29, 2014 at 3:00 p.m. Central Time. This document may be delivered by hand, mail, email, or fax. Address information is given on page one of this RFP. The fax number is (601) 713-6380. **ITS WILL NOT BE RESPONSIBLE FOR DELAYS IN THE DELIVERY OF QUESTION DOCUMENTS.** It is solely the responsibility of the vendor that the clarification document reaches **ITS** on time. Vendors may contact Kay-Lynn Meador to verify the

receipt of their document. Documents received after the deadline will be rejected.

- 4.2 All questions will be compiled and answered, and a written document containing all questions submitted and corresponding answers will be posted on the **ITS** web site by close of business on May 13, 2014.

5. Vendor Qualifications

- 5.1 The Vendor must describe in narrative form, the history of the company, service(s) being proposed and the number of years they have provided software escrow services. Vendor must have at least five (5) years of experience providing software escrow services.
- 5.2 The Vendor must provide the physical address of the facility used for deposit materials (software escrow) storage. Vendor should describe the facility and include information about storage capacity and security. Vendor must describe plans for fire safety, and natural or other types of disasters. Vendor should include details about any ongoing enhancements and upgrades currently in progress. Favorable consideration will be given to vendors who, in the State's opinion, provide enhanced security and safety features. If enhanced security and safety features are provided, Vendor must describe the functionality of these features.
- 5.3 Vendor must detail if the deposit materials (software escrow) storage is housed on-site in the Vendor's facilities, or in a third-party vendor facility. If using a third-party vendor storage facility, Vendor must provide the name(s) of the vendor(s), and the number of years they have utilized the storage facility.
- 5.4 Vendor must state the number of customers for which they currently provide software escrow services.
- 5.5 Vendor must provide at least three (3) large government account references where software escrow services are currently being provided. Refer to Section IX, References for further instructions.
- 5.6 The Vendor must detail the methods (mail delivery and/or electronic delivery) and processes for receiving escrow updates.
- 5.7 The Vendor must detail the process by which Deposit Inspection Services (physical audit), Technical Verification Services (build and compile) and Full Usability Verification Services (test plan) are performed for different environments, and the different types of source codes that are supported for these services. Vendor should include a list of licenses or environments they currently support. Favorable consideration will be given to vendors supporting a wide range of environments and source codes. Vendor must describe licenses, environments and source codes supported in detail. (See *Functional Requirements*, Items 7.1.4, 7.1.5 and 7.1.7 for a description of these services.)

- 5.8 Vendor must detail the process for creating an environment to provide Deposit Inspection Services (physical audit), Technical Verification Services (build and compile) and Full Usability Verification Services (test plan) when the source code or software application is based on unique or emerging technology. (See *Functional Requirements*, Items 7.1.4, 7.1.5 and 7.1.7 for a description of these services.)
- 5.9 Vendor must detail the course of action taken for customer requests for Deposit Inspection Services (physical audit), Technical Verification Services (build and compile) and Full Usability Verification Services (test plan) for software licenses or environments the Vendor does not support and/or if this issue ever occurs due to unique or emerging technology. (See *Functional Requirements*, Items 7.1.4, 7.1.5 and 7.1.7 for a description of these services.)
- 5.10 The Vendor must detail any subcontracting relationships that are utilized to perform Deposit Inspection Services, Technical Verification Services, and Full Usability Verification Services. Vendor must provide the names of subcontractors used, the number of years they have utilized the subcontractors' services, a description of the services provided and the environments and source codes the subcontractor supports. (See *Functional Requirements*, Items 7.1.4, 7.1.5 and 7.1.7 for a description of these services.)
- 5.11 The Vendor must detail information regarding any specialized training provided to their employees for Deposit Inspection Services, Technical Verification Services, and Full Usability Verification Services. Vendor should provide details on any employee certification in these areas. (See *Functional Requirements*, Items 7.1.4, 7.1.5 and 7.1.7 for a description of these services.)
- 5.12 Vendor must be willing to work with **ITS** customers to do a customized analysis on the scope of work needed for Technical Verification Services and Full Usability Verification Services and to determine a level of effort and associated cost based on tiered pricing for these services. (See *Functional Requirements*, Items 7.1.5 and 7.1.7 for a description of these services.)
- 5.13 Vendor must provide details about their software escrow inspection services and/or verification services that differentiate it from competing services in the marketplace.
- 5.14 Vendor must provide information regarding their administrative process for handling software escrow releases and should include details regarding the total number of requested releases vs. successful releases administered each year. Favorable consideration will be given to vendors who, in the State's opinion, demonstrate expertise in administering successful software escrow releases.

6. Administrative and Management Requirements

- 6.1 Vendor must provide flexibility in contracting. This should include customizing statements of work based on the needs of any of the parties involved in the escrow.
- 6.2 Vendor must provide flexibility in billing. This should include the option to bill any of the following with all fees itemized:
- 6.2.1 **ITS** (as contracting agent for **ITS** customer or beneficiary)
 - 6.2.2 **ITS** customers (beneficiary of source code)
 - 6.2.3 Software provider (depositor of source code)
- NOTE:** Although flexibility in billing is desired, **ITS** primarily intends for **ITS** customers to be billed directly for software escrow services provided by the awarded escrow agent.
- 6.3 Vendor must provide an assigned account representative to provide support and documentation as needed to **ITS**, **ITS** customers (beneficiary), and software providers (depositor) that **ITS** customers do business with.
- 6.3.1 Support and documentation may include, but is not limited to, the following:
- 6.3.1.1 Timely contact with **ITS**, **ITS** customers (beneficiaries) and software providers (depositors) to ensure all update obligations and terms are performed as outlined in the escrow agreement;
 - 6.3.1.2 Answer questions or resolve issues regarding escrow services, agreement, customer account information, and billing or payments.
 - 6.3.1.3 Periodically provide all involved parties with report information regarding Deposit Updates and Receipts, Deposit Inspection Services, Technical Verification Services, Full Usability Verification Services (if necessary), and billing/payment statements (as needed).
- 6.4 Vendor must list the personnel planned to be assigned to manage the **ITS** account, handle software escrow sales requests, and customer inquiries as indicated in Item 6.3.
- 6.5 Vendor must describe Vendor's process for handling sales and establishing new software escrow accounts.

6.6 **ITS** is not able to project the total number of software escrow accounts that may be needed on a yearly basis as this number may vary greatly. There is no guaranteed minimum quantity of escrow accounts that will be awarded to the awarded escrow agent.

7. Functional Requirements

7.1 Vendor will provide a menu of prices and options for **ITS** customers (beneficiaries). Options should be able to be combined to meet the financial and technical needs of the parties in the escrow agreement. Options should include, but are not limited to, the following:

7.1.1 Standard Yearly Escrow Agreement for Initial Deposit Only

A Three Party Agreement between the escrow agent, software provider (one depositor) and **ITS** customer (one beneficiary) for a single software product (one source code). Includes a one-time or initial deposit of materials only; additional updates not included. This agreement includes Deposit Inspection Services (See 7.1.4) for the one-time, annual deposit along with a Confirmation Receipt of Deposit Report and Standard Deposit Inspection Report. (See *Reporting Requirements*, Items 8.3 and 8.4)

7.1.2 Individual Deposit Updates

An individual fee charged for each update to the source code in the escrow account over the life of the contract and for use with the Standard Yearly Escrow Agreement for Initial Deposit only. Each Individual Deposit Update change will include Deposit Inspection Services (See 7.1.4) along with a Confirmation Receipt of Deposit Report and Standard Deposit Inspection Report. (See *Reporting Requirements*, Items 8.3 and 8.4) The State reserves the right to make deposits as needed to the escrow account.

7.1.3 Standard Yearly Escrow Agreement with Unlimited Deposit Update

A Three Party Agreement between the escrow agent, software provider (single depositor) and **ITS** customer (single beneficiary) for a single software product (source code). This agreement includes unlimited annual deposit updates for the source code and Deposit Inspection Services (See 7.1.4), Confirmation Receipt of Deposit Report and Standard Deposit Inspection Report for each deposit. (See *Reporting Requirements*, Items 8.3 and 8.4)

7.1.4 Deposit Inspection Services

Vendor will provide a physical audit or inventory of the deposit materials (source code) for each deposit made into the escrow account. These services include a Confirmation Receipt of

Deposit Report, and a Standard Deposit Inspection Report. (See *Reporting Requirements*, Items 8.3 and 8.4)

- 7.1.4.1 Vendor will visually inspect received deposit materials (source code) against the item description and quantity listed on the applicable "Deposit Materials Description" form provided by the depositor (software provider). See Exhibit B of the Master Escrow Services Agreement for an example of the form. Deposit materials should include all software, hardware, third party items and build documentation needed to re-create the software in the event of a release. Missing items, physical defects or damaged materials must be reported.
- 7.1.4.2 Vendor will check deposit materials (source code) to determine if encryption, password protection or other security issues are encountered. If needed, de-encryption keys, passwords and instructions must be included with deposit materials. Vendor must report any issues with encryption, passwords or other security issues.
- 7.1.4.3 Vendor will check source code storage media for blank media, unreadable media and/or missing source code. Vendor will also check source code storage media for viruses using anti-virus software. Vendor must report any blank media, unreadable media, missing source code, or viruses found.
- 7.1.4.4 Vendor will provide a Confirmation Receipt of Deposit Report to confirm receipt of the deposit materials (source code) in the escrow account to the software provider (depositor) and **ITS** customer (beneficiary) within 10 business days of the deposit. (See *Reporting Requirements*, Item 8.3)
- 7.1.4.5 Vendor will provide a Standard Deposit Inspection Report to provide information on the physical audit results of the deposit materials (source code) to the software provider (depositor) and **ITS** customer (beneficiary) within 10 business days of the deposit. (See *Reporting Requirements*, Item 8.4)

7.1.5 Technical Verification Services (Build and Compile)

Vendor will provide technical verification and assurance that all the necessary deposit materials (source code) information in the escrow account meet the technical requirements of the license agreement between the software provider (depositor) and **ITS** customer (beneficiary) and/or are sufficient to re-create the

working application. Assurances should include a Confirmation Receipt of Deposit Report, Standard Deposit Inspection Report and Technical Verification Services Report. (See *Reporting Requirements*, Items 8.3 - 8.5)

- 7.1.5.1 Vendor will compile the source code in the deposit materials and build an executable program following build instructions and configuration information provided by the software provider (depositor) in the deposit materials.
- 7.1.5.2 The software provider (depositor) must provide the documentation materials, build and compile instructions, and any other materials, resources, equipment or tools needed by the Vendor to facilitate the technical verification.
- 7.1.5.3 The software provider (depositor) and **ITS** customer (beneficiary) must provide an agreed-upon custom Technical Verification Addendum to the Vendor prior to the start of any services provided. The addendum will define the scope and type of technical services to be provided to ensure the deposit materials (source code) can be re-created into a working application. (See Item 7.1.6)
- 7.1.5.4 Vendor will utilize the Technical Verification Addendum to determine the scope of work, level of effort, and number of working hours required for technical services. Based on Vendor's assessment, Vendor will apply tier pricing as appropriate for Level 1 (Small Effort), Level 2 (Medium Effort) and Level 3 (Large Effort). Vendor should indicate a range of working hours for each tier level within the *Cost Information Submission Table* in Section VIII.
- 7.1.5.5 Vendor will provide a Confirmation of Receipt Deposit Report to confirm receipt of deposit materials (source code) in the escrow account to the software provider (depositor) and **ITS** customer (beneficiary) within 10 business days of the deposit. (See *Reporting Requirements*, Item 8.3)
- 7.1.5.6 Vendor will provide a Standard Deposit Inspection Report to provide information on the physical audit results of the deposit materials (source code) to the software provider (depositor) and **ITS** customer (beneficiary) within 10 business days of the deposit. (See *Reporting Requirements*, Item 8.4)

7.1.5.7 Vendor will also provide a Technical Verification Services Report to provide information on the results of the build and compile of the deposit materials (source code) to the software provider (depositor) and **ITS** customer (beneficiary) within 30 business days of the deposit. (See *Reporting Requirements*, Item 8.5)

7.1.6 Technical Verification Addendum:

The software provider (depositor) and **ITS** customer (beneficiary) will provide the Vendor a statement of work detailing Technical Verification Services AND/OR Full Usability Verification Services to be provided. The addendum will define the scope and type of all services to be provided.

7.1.6.1 Vendor must provide **ITS** a sample Technical Verification Addendum form that includes the outlined information below, as well as, other information the Vendor deems pertinent to a statement of work needed to perform Technical Verification Services and/or Full Usability Verification Services.

7.1.6.2 The Technical Verification Addendum must include, but is not limited to, the following information:

Escrow Agreement Number, **ITS** Customer Name, **ITS** Project Number, Agreed-Upon Inventory of Deposit Materials or Source Code (including instructions, materials, equipment, tools, etc.), Depositor Name, Address and Contact Information, Beneficiary Name, Address and Contact Information, Escrow Agent Name, Address and Contact Information, Hardware, Software, Code Language, Media Type, List of Technical Verification Services (build and compile) AND/OR Full Usability Verification Services (testing plan) to be performed.

7.1.7 Full Usability Verification Services (Test Plan)

Vendor will provide technical verification and assurance as to the deposit materials (source code) full functionality in the event of a release occurrence. A series of tests will be run to ensure the replicated software is fully functional, runs properly and meets the technical requirements of the license agreement between the software provider (depositor) and **ITS** customer (beneficiary). These services include a Confirmation Receipt of Deposit Report, Standard Deposit Inspection Report, and Full Usability Verification Services Report. (See *Reporting Requirements*, Items 8.3, 8.4 and 8.6)

- 7.1.7.1 Vendor will compile the source code in the deposit materials and build an executable program following build instructions and configuration information provided by the software provider (depositor) in the escrow account.
- 7.1.7.2 The software provider (depositor) must provide the documentation materials, build and compile instructions, and any other materials, resources, equipment or tools needed by the Vendor to facilitate the technical verification.
- 7.1.7.3 The software provider (depositor) and **ITS** customer (beneficiary) must provide an agreed-upon custom Technical Verification Addendum to the Vendor prior to the start of any services provided. The addendum will define the scope and type of technical services to be provided, in addition to a list of functionality tests to be run to determine the usability of the deposit materials (source code) in the event of a release. (See Item 7.1.6)
- 7.1.7.4 Vendor will utilize the Technical Verification Addendum to determine the scope of work, level of effort, and number of working hours required for technical and functionality testing services. Based on Vendor's assessment, Vendor will apply tier pricing as appropriate for Level 1 (Small Effort), Level 2 (Medium Effort) and Level 3 (Large Effort). Vendor should indicate a range of working hours for each tier level within the *Cost Information Submission Table* in Section VIII.
- 7.1.7.5 Vendor will provide a Confirmation of Receipt Deposit Report to confirm receipt of deposit materials (source code) in the escrow account to the software provider (depositor) and **ITS** customer (beneficiary) within 10 business days of the deposit. (See *Reporting Requirements*, Item 8.3)
- 7.1.7.6 Vendor will provide a Standard Deposit Inspection Report to provide information on the physical audit results of the deposit materials (source code) to the software provider (depositor) and **ITS** customer (beneficiary) within 10 business days of the deposit. (See *Reporting Requirements*, Item 8.4)
- 7.1.7.7 Vendor will also provide a Full Usability Verification Services Report to provide both information on the results of the build and compile of the deposit materials

(source code) AND the tests completed to confirm the operating functionality of the deposit materials (source code) to the software provider (depositor) and **ITS** customer (beneficiary) within a specified time frame as agreed upon by all parties. (See *Reporting Requirements*, Item 8.6)

8. Reporting Requirements

8.1 **ITS** Semi-Annual Escrow Report

Vendor will provide a Semi-Annual Escrow Report to **ITS** of all accounts held by **ITS** customers (beneficiary) for the following time periods January 1 – June 30 and July 1 – December 31 within fifteen (15) calendar days following the completion of each reporting period. This information will be used to monitor activity, contract terms, and expiration dates.

8.1.1 The **ITS** Semi-Annual Escrow Report should include, but is not limited to, the following information:

Escrow Agreement Number, **ITS** Customer Name (Beneficiary), **ITS** Customer Contact Information, **ITS** Project Number, Software Provider Name (Depositor), Software Provider Contact Information, Software Name, Status of the Escrow Agreement (Number of months remaining for contract term), Activity Summary (Last Date of Deposit, Type of services i.e. Technical Verification Services, etc.), and other relevant information.

8.2 **ITS** Customer Semi-Annual Escrow Report

Vendor will provide a Semi-Annual Escrow Report to each **ITS** customer (beneficiary) with an escrow account having at least 3 months of activity for the following time periods January 1 – June 30 and July 1 – December 31 within fifteen (15) calendar days following the completion of each reporting period. This report should describe any activity related to the **ITS** customer's account and an inventory of the Deposit Materials (source code) held by the Vendor.

8.2.1 The **ITS** Customer Semi-Annual Escrow Report should include, but is not limited to, the following:

8.2.2 Escrow Agreement Number, **ITS** Customer Name (Beneficiary), **ITS** Customer Contact Information, **ITS** Project Number, Software Provider Name (Depositor), Software Provider Contact Information, Software Name, Status of the Escrow Agreement (Number of months remaining for contract term), Activity (Dates of Deposits, and other relevant information).

8.3 Confirmation Receipt of Deposit Report

Vendor will provide written documentation confirming receipt of the deposit materials (source code) in the escrow account to the software provider (depositor) and **ITS** customer (beneficiary) within 10 business days of the deposit. The Confirmation Receipt of Deposit Report should include, but is not limited to, the following:

- 8.3.1 Escrow Agreement Number, **ITS** Customer Name (Beneficiary), **ITS** Customer Contact Information, **ITS** Project Number, Date and Time of Deposit, Software Provider Name (Depositor), Software Provider Contact Information, Software Name, Escrow Agent Name, Escrow Agent Contact Information, Description or Identification of Deposit Materials.

8.4 Standard Deposit Inspection Report

Vendor will provide written documentation of the physical audit or inspection of the deposit materials or source code (Deposit Inspection Services) to the software provider (depositor) and **ITS** customer (beneficiary) within 10 business days of the deposit. The Standard Deposit Inspection Report should include, but is not limited to, the following:

- 8.4.1 Escrow Agreement Number, **ITS** Customer Name (Beneficiary), **ITS** Customer Contract Information, **ITS** Project Number, Deposit Date, Inspection Date, Inventory of Deposit Materials Received, Software Provider Name (Depositor), Software Provider Contact Information, Escrow Agent Name, Escrow Agent Contact Information, Software Name, Hardware Name (if needed), Code Language, Media Type, Evaluation Results and an itemized list of any discrepancies found.

8.5 Technical Verification Services Report

Vendor will provide written documentation of the results of the build and compile of the deposit materials or source code (Technical Verification Services) to the software provider (depositor) and **ITS** customer (beneficiary) within 30 days of the deposit. The Technical Verification Services Report should include, but is not limited to, the following:

- 8.5.1 Escrow Agreement Number, **ITS** Customer Name (Beneficiary), **ITS** Customer Contact Information, **ITS** Project Number, Deposit Date, Verification Date(s), Inventory of Deposit Materials Received, Software Provider Name (Depositor), Software Provider Contact Information, Depositor Technician Name and Contact Information (person(s) providing Deposit Materials or Source Code and information related to the build/compile for the Depositor), Escrow Agent Name, Escrow Agent Contact Information, Escrow Agent Technician Name and Contact

Information (person(s) performing build/compile work of the source code for the escrow agent), Software Name, Hardware Name (if needed), Code Language, Third Party items, Build Documentation, etc.

- 8.5.2 An itemized list of issues encountered with the build/compile of deposit materials (source code) per the requirements specified in the Technical Addendum.
- 8.5.3 An evaluation of the overall results for the build/compile of the deposit materials (source code) based on the Technical Addendum requirements to confirm the deposit materials can be used to re-create the working application.

8.6 Full Usability Verification Services Report

Vendor will provide written documentation of both the results of the build and compile of the deposit materials or source code (Technical Verification Services) AND the tests completed to confirm the operating functionality of the deposit materials or source code (Full Usability Verification Services) to the software provider (depositor) and **ITS** customer (beneficiary). The Full Usability Verification Services Report should include, but is not limited to, the following:

- 8.6.1 Escrow Agreement Number, **ITS** Customer Name (Beneficiary), **ITS** Customer Contact Information, **ITS** Project Number, Deposit Date, Verification Date(s), Inventory of Deposit Materials Received, Software Provider Name (Depositor), Software Provider Contact Information, Depositor Technician Name and Contact Information (person(s) providing deposit materials or source code and information related to the build/compile or test plan for the Depositor), Escrow Agent Name, Escrow Agent Contact Information, Escrow Agent Technician Name and Contact Information (person(s) performing build/compile work or testing the usability of the source code for the escrow agent), Software Name, Hardware Name (if needed), Code Language, Third Party Items, Build Documentation, etc.
- 8.6.2 An itemized list of issues encountered with the build/compile of deposit materials (source code) AND/OR errors encountered with functionality tests per the requirements specified in the Technical Addendum.
- 8.6.3 An evaluation of the overall results for both the build/compile of the deposit materials (source code) and the functionality tests completed (based on the Technical Addendum requirements) to confirm the operating functionality of the source code.

8.7 Vendor must provide a sample report within their proposal for each of the reports indicated below. The Vendor should include information requested by **ITS**, as well as other information the Vendor deems pertinent. Favorable consideration will be given to vendors who, in the State's opinion, provide informative, easy-to-read reports and/or reporting functionality.

8.7.1 **ITS** Semi-Annual Escrow Report

8.7.2 **ITS** Customer Semi-Annual Escrow Report

8.7.3 Standard Deposit Inspection Report

8.7.4 Technical Verification Services Report

8.7.5 Full Usability Verification Services Report

9. **Cost Information**

9.1 Vendor must provide pricing for a single software product (source code), single beneficiary (**ITS** customer) and single depositor (software) in response to this RFP. This information should be detailed in Section VIII – Cost Information Submission.

9.2 Vendor must detail any additional costs associated with software escrow services. Vendor pricing must be detailed in Section VIII – Cost Information Submission.

9.3 Vendor must indicate what discounts, such as volume discounts, are available to **ITS**. Vendor must clearly identify how these discounts are applied. Vendor pricing must be detailed in Section VIII – Cost Information Submission.

9.4 Vendor may additionally include information regarding the number of recommended deposit updates per year for escrow accounts. Vendor should state if deposit updates typically occur on a scheduled or as-needed basis. If scheduled, Vendor should provide information on the scheduled dates for deposit updates. Vendor must detail this information, if provided, in Section VII – Cost Information Submission.

9.5 Vendor may also provide other cost options, such as SaaS escrow services, as long as the required cost specifications have been included. Vendor pricing must be detailed in Section VIII – Cost Information Submission.

10. **Additional Requirements**

10.1 **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 provide a full service software escrow for **ITS** customers.

11. Scoring Methodology

- 11.1 An Evaluation Team composed of **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.
 - 11.1.1 Each category included in the scoring mechanism is assigned a weight between one and 100.
 - 11.1.2 The sum of all categories, other than Value-Add, equals 100 possible points.
 - 11.1.3 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.
 - 11.1.4 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	25
Admin. and Management Requirements	10
Functional Requirements	15
Reporting Requirements	10
Total Non-Cost Points	60
Cost	40
Total Base Points	100
Value Add	5
Maximum Possible Points	105

- 11.2 The evaluation will be conducted in four stages as follows:
 - 11.2.1 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.

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

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

Non-Cost Categories	Possible Points
Vendor Qualifications	25
Admin. and Management Requirements	10
Functional Requirements	15
Reporting Requirements	10
Maximum Possible Points	60

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

11.2.2.3 **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 ‘Technical Requirements’ category was allocated 50 points; a proposal that fully met all requirements in that section would have scored 45 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.

11.3 Stage 3 – Cost Evaluation

11.3.1 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

11.3.2 Cost categories and maximum point values are as follows:

Cost Category	Possible Points
Lifecycle Cost	40
Maximum Possible Points	40

11.4 Stage 4 – Selection of the successful Vendor

11.4.1 On-site Demonstrations and Interviews

11.4.1.1 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.

11.4.1.2 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.

11.4.1.3 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.

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

11.4.2 Site Visits

11.4.2.1 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.

- 11.5 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.

See Section VII, *Functional Requirements*, Items 7.1.1 - 7.1.3

Item Description	1-Year	2-Year	3-Year	5-Year
Standard Yearly Escrow Agreement for Initial Deposit Only <i>(Three Party Agreement for a single product, and a single beneficiary.)</i>				
Individual Deposit Updates* (Indicate cost per deposit) <i>*The State reserves the right to request deposit updates as needed.</i>				
Standard Yearly Escrow Agreement with Unlimited Deposit Updates <i>(Three Party Agreement for a single product, and a single beneficiary.)</i>				

NOTE: Costs for each service should include: Deposit Inspection Services, Confirmation Receipt of Deposit Report and Standard Deposit Inspection Report.

Vendor may additionally include information regarding the number of recommended deposit updates per year for escrow accounts. Vendor should state if deposit updates typically occur on a scheduled or as-needed basis. If scheduled, Vendor should provide information on the scheduled dates for deposit updates.

Vendor may also provide other cost options, such as SaaS escrow services, as long as the required cost specifications have been included. Pricing must be detailed in Section VIII – Cost Information Submission on page 54.

See Section VII, *Functional Requirements*, Item 7.1.5.

Item Description	1-Year	2-Year	3-Year	5-Year
Technical Verification Services / Build and Compile (Cost = per instance) LEVEL 1 (Small (# - # Hours))				
Technical Verification Services / Build and Compile (Cost = per instance) LEVEL 2 (Medium) (# - # Hours)				
Technical Verification Services / Build and Compile (Cost = per instance) LEVEL 3 (Large) (# - # Hours)				

NOTE: Costs for each service should include: Deposit Inspection Services, Confirmation Receipt of Deposit Report, and Technical Verification Services Report.

See Section VII, *Functional Requirements*, Item 7.1.7

Item Description	1-Year	2-Year	3-Year	5-Year
Full Usability Verification Services / Test Plan (Cost = per instance) LEVEL 1 (Small) (# - # Hours)				
Full Usability Verification Services / Test Plan (Cost = per instance) LEVEL 2 (Medium) (# - # Hours)				
Full Usability Verification Services / Test Plan (Cost = per instance) LEVEL 3 (Large) (# - # Hours)				

NOTE: Costs for each service should include: Deposit Inspection Services, Confirmation Receipt of Deposit Report, and Full Usability Verification Services Report.

See Section VII, Cost Information, Item 9

Item Description	1-Year	2-Year	3-Year	5-Year
Additional Costs Associated with Software Escrow Services				
Other Service Options (For Example: SaaS Escrow Services, etc.)				

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

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

2. **Subcontractors**

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

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

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 three (3) Reference Forms for each Subcontractor.

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

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

APPENDIX 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 awarded 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 39587
MASTER ESCROW SERVICES AGREEMENT
BETWEEN
INSERT VENDOR NAME
AND
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES
AS CONTRACTING AGENT FOR THE
AGENCIES AND INSTITUTIONS OF THE STATE OF MISSISSIPPI

This Master Escrow Services Agreement (hereinafter referred to as “Master Agreement”) is entered into by and between **INSERT VENDOR NAME**, a **INSERT STATE OF INCORPORATION** corporation having its principal offices at **INSERT VENDOR STREET ADDRESS** (hereinafter referred to as “Escrow Agent”) and the Mississippi Department of Information Technology Services, having its principal place of business at 3771 Eastwood Drive, Jackson, Mississippi 39211 (hereinafter referred to as “ITS”), as contracting agent for the governmental agencies and educational institutions of the State of Mississippi (hereinafter referred to as “Customer”). ITS and Customer are sometimes collectively referred to herein as “State.”

WHEREAS, ITS, pursuant to Request for Proposals (“RFP”) Number 3683 requested the services of an escrow agency to fulfill state agencies and educational institutions’ escrow requirements on an “as needed” and “if needed” basis;

WHEREAS, the Escrow Agent was the successful respondent in an open, fair and competitive procurement process to provide the above mentioned escrow services;

WHEREAS, ITS and Escrow Agent desire to enter into this Master Agreement containing the terms and conditions which will govern any orders placed by Customer during the term of this Master Agreement for escrow services by Escrow Agent; and

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

ARTICLE 1 TERM OF AGREEMENT

Unless terminated as prescribed elsewhere herein, this Master Agreement will become effective on the date it is signed by all parties (the “Effective Date”) and will continue in effect for five (5) years thereafter, or until any unexpired Three Party Escrow Agreements have expired, whichever occurs last (hereinafter referred to as “Initial Term”). At the end of the Initial Term, the Master Agreement may, upon the written agreement of ITS and Escrow Agent, be renewed for an additional term, the length of which will be agreed upon by the parties. Escrow Agent will notify ITS sixty (60) days in advance prior to the expiration of the Initial Term or any renewal term and ITS shall have thirty (30) days in which to notify Escrow Agent of its intention to either renew or cancel this Master Agreement.

ARTICLE 2 DEFINITIONS

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

2.1 “Customer” means, in each instance, the governmental agency, educational institution or other governing authority of the state of Mississippi who engages Escrow Agent to perform the Services pursuant to this Master Agreement, and who shall be bound by the terms and

conditions of this Master Agreement.

2.2 “Depositor” means in each instance, the owner of the software and other materials licensed to Customer pursuant to a license agreement and deposited with the Escrow Agent.

2.3 “Escrow Agent” means **INSERT VENDOR NAME** and its successors and assigns.

2.4 “Services” means the basic escrow services, as well as any additional verification, compilation, and testing services that Customer procures in any given instant in the pertinent Three Party Escrow Agreement.

2.5 “Three Party Escrow Agreement” means the document pursuant to which, among other things, Customer orders the Services from Escrow Agent. The agreed upon format of the Three Party Escrow Agreement is attached hereto as Exhibit B.

ARTICLE 3 MODIFICATION OR RENEGOTIATION

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

ARTICLE 4 INCLUDED PARTIES AND PRICING

Escrow Agent will accept orders from and furnish the Services under this Master Agreement to Customers based on Escrow Agent’s pricing submitted in its proposal in response to RFP No. 3683 and attached hereto as Exhibit A and distributed to the various Customers. At the end of the Initial Term of this Master Agreement, ITS and Escrow Agent may mutually agree in writing to modify, amend or replace the pricing specified in Exhibit A.

ARTICLE 5 ORDERS

5.1 The State does not guarantee that it will procure any certain amount of Services under this Master Agreement.

5.2 When a Customer decides to procure any Services from Escrow Agent, the Customer and ITS may issue a Three Party Escrow Agreement to Escrow Agent. The Three Party Escrow Agreement shall reference this Master Agreement and the underlying license agreement and shall identify the software and other materials to be deposited and the name and address of the Customer and Depositor, as well as the Services to be procured; the prices for same; the term of the desired Services; the Customer’s designated contact, and any additional terms and conditions that apply to the specific Three Party Escrow Agreement as agreed to in writing by the parties. Any additional terms and conditions contained in any Three Party Escrow Agreement shall apply solely to the Services being procured therein. All Three Party Escrow Agreements shall be governed by, and incorporate by reference, the terms and conditions of this Master Agreement. Excluding better pricing and/or discounts which may be specified in a Three Party Escrow Agreement, in the event of a conflict between the other terms and conditions in a Three Party Escrow Agreement and this Master Agreement, the terms and conditions of this Master Agreement shall prevail. The terms and conditions of this Master Agreement shall supersede any conflicting terms and conditions set forth in any document

provided by Escrow Agent. The parties agree that the Customer has the right to adjust the quantity of Services to be rendered or the length of the term based upon the availability of funding or as determined necessary by the Customer.

ARTICLE 6 METHOD AND TIME OF PAYMENT

6.1 As consideration for the performance of any Three Party Escrow Agreement, Escrow Agent will be paid at prices not to exceed the pricing specified in the attached Exhibit A for the actual Services rendered as specified in the applicable Three Party Escrow Agreement. If the Three Party Escrow Agreement designates Customer as being the party responsible for paying Escrow Agent, then Escrow Agent shall submit invoices and supporting documentation electronically to Customer for any year in which Services are rendered, using the processes and procedures identified by the State. Escrow Agent shall certify that the billing is true and correct. Customer agrees to pay Escrow Agent in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," Sections 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the State within forty-five (45) days of receipt of the invoice. All payments shall be in United States currency. Escrow Agent understands and agrees that Customer is exempt from the payment of taxes. 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 Escrow Agent's choice. No payment, including final payment, shall be construed as acceptance of incomplete work, and Escrow Agent shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the Article herein titled "Entire Agreement."

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

6.3 Acceptance by Escrow Agent of the last payment from the Customer under a Three Party Escrow Agreement shall operate as a release of all claims for money against the State by Escrow Agent and any subcontractors or other persons supplying labor or materials used in the performance of any work under a Three Party Escrow Agreement.

ARTICLE 7 SCOPE OF SERVICES

Escrow Agent will fulfill Customers' escrow requirements on an "as needed" and "if needed" basis in compliance with RFP No. 3683 and Escrow Agent's proposal, as accepted by ITS, in response thereto.

ARTICLE 8 WARRANTIES

8.1 Escrow Agent represents and warrants that the Services provided by Escrow Agent to Customer shall meet or exceed the minimum specifications set forth in RFP No. 3683 and Escrow Agent's Proposal in response thereto.

8.2 Escrow Agent represents and warrants that its Services 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 Master Agreement and the applicable Three Party Escrow Agreement. For any breach of this warranty, the Escrow Agent shall, for a period of ninety (90) days from performance of the Services, perform the Services again, at no cost to Customer, or if Escrow Agent is unable to perform the Services as warranted, Escrow Agent shall reimburse Customer the fees paid to Escrow Agent for the unsatisfactory Services.

8.3 Escrow Agent 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. Escrow Agent 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. Escrow Agent 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. Escrow Agent understands and agrees that any breach of these warranties may subject Escrow Agent to the following: (a) termination of the Three Party Escrow Agreement and this Master 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 Escrow Agent 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, Escrow Agent would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

ARTICLE 9 EMPLOYMENT STATUS

9.1 Escrow Agent shall, during the entire term of this Master Agreement, be construed to be an independent contractor. Nothing in this Master Agreement is intended to nor shall it be construed to create an employer-employee relationship, partnership, agency, or joint venture relationship.

9.2 Escrow Agent represents that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the required duties identified in a Three Party Escrow Agreement. Such personnel shall not be deemed in any way directly or indirectly, expressly or by implication, to be employees of Customer. Escrow Agent shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Escrow Agent nor employees of Escrow Agent are entitled to state retirement or leave benefits.

ARTICLE 10 ASSIGNMENT

Neither Customer nor Escrow Agent may assign or otherwise transfer the Three Party Escrow Agreement and this Master Agreement or its obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted

assignment or transfer of its obligations without such consent shall be null and void. The Three Party Escrow Agreement and this Master Agreement shall be binding upon the parties' respective successors and assigns.

ARTICLE 11 AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of Customer to proceed under this Master Agreement and the Three Party Escrow Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds for the performances required under this Master Agreement. If the funds anticipated for the fulfillment of this Master Agreement and the Three Party Escrow Agreement are, at any time, not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to Customer for the payments or performance due under this Master Agreement, Customer shall have the right to immediately terminate the Three Party Escrow Agreement and this Master Agreement as to itself only, without damage, penalty, cost or expense to Customer of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Customer shall have the sole right to determine whether funds are available for the payments or performances due under the Three Party Escrow Agreement and this Master Agreement. In the event of termination due to unavailability of funds, Escrow Agent shall be paid for work completed by Escrow Agent in connection with the Three Party Escrow Agreement and accepted by Customer prior to the date of receipt of notification of termination.

ARTICLE 12 TERMINATION

12.1 Termination Upon Mutual Agreement: A Three Party Escrow Agreement may be terminated in whole or in part upon the mutual written agreement of Escrow Agent, Customer, and the Depositor.

12.2 Termination Due To Bankruptcy: Should Escrow Agent become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or execute an assignment for the benefit of its creditors, the Customer may, upon the giving of thirty (30) days prior written notice,

12.3 Termination Other Than For Cause: A Customer may terminate a Three Party Escrow Agreement and this Master Agreement as to itself only, in whole or in part and without the assessment of penalties, for any reason by giving thirty (30) calendar days written notice specifying the effective date thereof to Escrow Agent and Depositor.

12.4 Termination For Cause: If Escrow Agent or Depositor fail to comply with the terms and conditions of the Three Party Escrow Agreement or this Master Agreement and that breach continues for thirty (30) days after the defaulting party receives written notice from the State, then the State has the right to terminate the Three Party Escrow Agreement and this Master Agreement solely as between those two parties. The Customer may also pursue any remedy available to it in law or in equity.

12.5 Termination of Master Agreement: ITS may terminate this Master Agreement without the assessment of penalties for any reason after giving thirty (30) calendar days written notice specifying the effective date thereof to Escrow Agent but any Three Party Escrow Agreement entered into prior to the termination date of this Master Agreement shall survive the termination

of the Master Agreement. The terms of this Master Agreement shall survive its termination/expiration with respect to any un-expired Three Party Escrow Agreements.

ARTICLE 13 GOVERNING LAW

This Master Agreement and each Three Party Escrow 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. Escrow Agent expressly agrees that under no circumstances shall Customer or ITS be obligated to pay an attorneys fee, prejudgment interest or the cost of legal action to Escrow Agent. Further, nothing in this Master Agreement shall affect any statutory rights Escrow Agent and Customer may have that cannot be waived or limited by contract.

ARTICLE 14 WAIVER

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

ARTICLE 15 SEVERABILITY

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

ARTICLE 16 CAPTIONS

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

ARTICLE 17 HOLD HARMLESS

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

ARTICLE 18 THIRD PARTY ACTION NOTIFICATION

Escrow Agent shall notify Customer in writing within five (5) business days of Escrow Agent 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 Escrow Agent or Customer by any entity that may result in litigation related in any way to the Three Party Escrow Agreement or this Master Agreement and/or which may affect the Escrow Agent's performance under the Three Party Escrow Agreement or this Master

Agreement. Failure of the Escrow Agent to provide such written notice to Customer shall be considered a material breach of this Master Agreement and the Customer may, at its sole discretion, pursue its rights as set forth in the Termination Article herein and any other rights and remedies it may have at law or in equity.

ARTICLE 19 AUTHORITY TO CONTRACT

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

ARTICLE 20 NOTICE

Any notice required or permitted to be given under this Master Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their usual business address. ITS' address for notice is: Craig P. Orgeron, Ph.D., Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. Escrow Agent's address for notice is: **INSERT NAME, TITLE & ADDRESS OF VENDOR PERSON FOR NOTICE**. Customer's and Depositor's address for notice will be set forth in the applicable Three Party Escrow Agreement. 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 or points of contact.

ARTICLE 21 RECORD RETENTION AND ACCESS TO RECORDS

Escrow Agent shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Master Agreement and the Three Party Escrow Agreement. The Customer, ITS, any state or federal agency authorized to audit Customer, and/or any of their duly authorized representatives, accountants or attorneys, shall have unimpeded, prompt access to the Three Party Escrow Agreement, this Master Agreement, and to any of Escrow Agent's proposals, books, documents, papers and/or records that are pertinent to the Three Party Escrow Agreement and this Master Agreement to make audits, copies, examinations, excerpts and transcriptions at the State's or Escrow Agent's office as applicable where such records are kept during normal business hours. All records relating to this Master Agreement and the Three Party Escrow Agreement shall be retained by Escrow Agent for three (3) years from the date of receipt of final payment under this Master Agreement and the Three Party Escrow 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 22 INSURANCE

Escrow Agent represents that it will maintain workers' compensation insurance as prescribed by law which shall inure to the benefit of Escrow Agent's personnel, as well as comprehensive general liability insurance. Escrow Agent will, upon request, furnish Customer with a certificate

of conformity providing the aforesaid coverage.

ARTICLE 23 COMPLIANCE WITH LAWS

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

ARTICLE 24 CONFLICT OF INTEREST

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

ARTICLE 25 SOVEREIGN IMMUNITY

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

ARTICLE 26 CONFIDENTIAL INFORMATION

26.1 The deposited materials shall only be accessible to authorized employees of Escrow Agent. Escrow Agent shall reasonably protect the confidentiality of the deposited materials. Except as provided in the Three Party Escrow Agreement, Escrow Agent shall not disclose, transfer, make available or use the deposited materials. If Escrow Agent has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, Escrow Agent shall promptly inform Customer and Depositor and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules and regulations.

26.2 With the exception of any attached exhibits which are labeled as "confidential", the parties understand and agree that the Three Party Escrow Agreement and this Master Agreement do not constitute confidential information, and may be reproduced and distributed by the State without notification to Escrow Agent. ITS will provide third party notice to Escrow Agent of any requests received by ITS for any such confidential exhibits so as to allow Escrow Agent the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

ARTICLE 27 EFFECT OF SIGNATURE

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

ARTICLE 28 SURVIVAL

Articles 8, 13, 17, 21, 25, 26, and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of the Three Party Escrow Agreement or this Master Agreement.

ARTICLE 29 ENTIRE AGREEMENT

29.1 This Master Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating hereto. The Three Party Escrow Agreement, RFP No. 3683, and Escrow Agent's Proposal submitted in response to RFP No. 3683 are hereby incorporated into and made a part of this Master Agreement as far as the individual Customer is concerned.

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

- A.** This Master Agreement signed by Escrow Agent and ITS;
- B.** Any Exhibits attached to this Master Agreement;
- C.** The Three Party Escrow Agreement signed by Customer, Escrow Agent, and Depositor, as applicable;
- D.** RFP No. 3683 and all written clarifications/addenda; and
- E.** Escrow Agent's Proposal, as accepted by ITS, in response to RFP No. 3683.

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

ARTICLE 30 DEBARMENT AND SUSPENSION CERTIFICATION

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

this Master Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

ARTICLE 31 COMPLIANCE WITH ENTERPRISE SECURITY POLICY

Escrow Agent and Customer understand and agree that all Services provided by Escrow Agent under this Master 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 Master Agreement and require the Escrow Agent 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.

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

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

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
Pricing For Escrow Services

Escrow Service Description	Cost

APPENDIX B STANDARD CONTRACT

A properly executed contract is a requirement of this RFP. After an award has been made, it will be necessary for the awarded Vendor to execute an individual contract with each **ITS** customer (Mississippi State Agencies or Institutions of Higher Learning) for each software escrow agreement. The inclusion of this contract does not preclude the **ITS** customer from, at its sole discretion, negotiating additional terms and conditions with the selected Vendor(s) specific to their requirements for the software escrow agreement.

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.

**THREE PARTY ESCROW AGREEMENT
BETWEEN
INSERT NAME OF ESCROW AGENT
AND
INSERT NAME OF DEPOSITOR
AND
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES
AS CONTRACTING AGENT FOR
INSERT NAME OF BENEFICIARY**

This Three Party Escrow Agreement (hereinafter referred to as “Escrow Agreement”) is entered into as of the date it is signed by all parties (the “Effective Date”) by and between **INSERT NAME OF ESCROW AGENT**, a **INSERT STATE OF INCORPORATION** corporation having its principal place of business at **INSERT STREET ADDRESS FOR ESCROW AGENT** (hereinafter referred to as “Escrow Agent”), **INSERT NAME OF SOFTWARE VENDOR**, a **INSERT STATE OF INCORPORATION** corporation having its principal place of business at **INSERT STREET ADDRESS FOR SOFTWARE VENDOR** (hereinafter referred to as “Depositor”), and the Mississippi Department of Information Technology Services having its principal place of business at 3771 Eastwood Drive, Jackson, Mississippi 39211 (hereinafter referred to as “ITS”), as contracting agent for **INSERT NAME OF CUSTOMER AGENCY** located at **INSERT STREET ADDRESS FOR CUSTOMER AGENCY** (hereinafter referred to as “Beneficiary”). Escrow Agent, Depositor, ITS and Beneficiary are each referred to herein individually as “party” and collectively as “the parties”.

WHEREAS, Depositor and Beneficiary have entered into a **INSERT TYPE OF CONTRACT** (hereinafter referred to as the “License Agreement”) pursuant to which Developer has licensed the use of certain proprietary software in the form of object code to Beneficiary; and

WHEREAS, Depositor and Beneficiary desire to establish an escrow with Escrow Agent to ensure the availability to Beneficiary of the source code and all relevant documentation and instructions necessary to maintain, duplicate, and compile the software (collectively the “Deposit Materials”) and all necessary proprietary information related to such Deposit Materials in the event certain Release Conditions (as hereinafter defined) should occur;

WHEREAS, the parties desire this Escrow Agreement to be supplementary to the License Agreement pursuant to the United States Bankruptcy Code, Section 365(n), as amended;

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1: Term

The initial term of this Escrow Agreement is for a period of one (1) year from the Effective Date. Thereafter this Escrow Agreement shall automatically renew from year to year unless (a) this Escrow Agreement is terminated as provided elsewhere herein; or (b) all Deposit Materials have been released in accordance with the terms hereof.

Section 2: Initial Delivery of Deposit Materials

Depositor shall submit the initial Deposit Materials to Escrow Agent upon execution of this

Escrow Agreement or within ten (10) business days of development of the Deposit Materials. Depositor shall complete, sign and deliver with all Deposit Materials (initial and updates thereto) a form as shown herein as Exhibit B titled "Deposit Materials Description", which shall provide: (a) name and address of the Depositor and Beneficiary; (b) product name and version of the Deposit Materials; and (c) quantity and a media description. Each Exhibit B that is executed by Depositor shall be deemed a part of this Escrow Agreement and incorporated herein by reference. Within ten (10) business days of receipt of the initial Deposit Materials, Escrow Agent shall issue a receipt to Depositor and notify Beneficiary.

Section 3: Inspection of Deposit Materials

When Escrow Agent receives the initial Deposit Materials and any updates thereto, Escrow Agent shall, within five (5) business days of receipt, conduct a deposit inspection by opening the package and visually matching the labeling of the tangible media containing the Deposit Materials to the item descriptions and quantity listed on the applicable Deposit Materials Description Exhibit. This inspection process also includes checking the CD-ROM (or other media) to make sure they are not damaged and that they are readable; scanning the CD-ROMs for viruses; and checking to make sure that the Deposit Materials are not encrypted. In addition to such inspection, upon Beneficiary's request and upon Escrow Agent's receipt of payment therefore, Escrow Agent shall promptly conduct a Verification of the Deposit Materials in accordance with the Beneficiary's requirements and Section 8 below. In the event the inspection reveals that the labeling of the tangible media comprising the Deposit Materials does not match the information listed on the applicable Deposit Materials Description Exhibit, Escrow Agent shall immediately notify Depositor and Beneficiary in writing of the discrepancies and Depositor shall, within five (5) business days of receipt of such notification, remedy such discrepancies and re-deliver the applicable Deposit Materials and Deposit Materials Description Exhibit to the Escrow Agent.

Section 4: Deposit Materials Updates

Depositor shall update the escrow and keep it current with the software licensed to Beneficiary. Depositor shall submit updates to the initial Deposit Materials to Escrow Agent within ten (10) business days of any modification, upgrade or new release of the software. Depositor shall complete and deliver with all updates to the Deposit Materials an amended Deposit Materials Description Exhibit form, which shall become part of this Escrow Agreement. Within ten (10) business days of receipt of the update to the Deposit Materials, Escrow Agent shall issue a receipt to Depositor and notify Beneficiary.

Section 5: Depositor Representations and Warranties

5.1 Depositor represents and warrants that it lawfully possesses all of the Deposit Materials deposited with Escrow Agent.

5.2 Depositor represents and warrants with respect to all of the Deposit Materials, Depositor has the right and authority to grant to Escrow Agent and Beneficiary the rights and licenses as provided in this Escrow Agreement and the License Agreement.

5.3 Depositor represents and warrants that the Deposit Materials are not subject to any lien or other encumbrance.

5.4 Depositor represents and warrants that the Deposit Materials consist of the proprietary information and other materials identified in the License Agreement and comply in all respects to, and are covered by Depositor's representations, warranties, covenants and indemnities contained in the License Agreement.

5.5 Depositor represents and warrants that there are no known intended or unintended copy

inhibitors or limiters, locking mechanisms, lockout encryption or security devices or malicious code contained in or related to the Deposit Materials that may prevent Beneficiary or a third party from using, copying and modifying the Deposit Materials.

5.6 Depositor represents and warrants that the Deposit Materials delivered to Escrow Agent shall at all times (a) conform to the version(s) of the software then in use by Beneficiary; (b) be a complete and correct set of the source code version of the software; and (c) be sufficient to enable a reasonably skilled computer programmer of Beneficiary to maintain and support the software without further assistance from Depositor or reference to any other software or materials.

Section 6: Escrow Agent Representations and Warranties

6.1 Escrow Agent represents and warrants that it has the right and capacity to enter into this Escrow Agreement and fully perform all of its obligations and provide the services hereunder.

6.2 Escrow Agent represents and warrants that it shall store the Deposit Materials in a fire-proof, weatherproof, demagnetization-proof and environmentally controlled locked receptacle, under climatic conditions sufficient to safeguard the quality and integrity of the Deposit Materials.

Section 7: Indemnification

Escrow Agent shall indemnify, defend, save and hold harmless, protect and exonerate Depositor, ITS and the Beneficiary, 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 Escrow Agent and/or its partners, principals, agents, employees or subcontractors in the performance of or failure to perform this Escrow Agreement. It is understood and agreed, however, that Escrow Agent is not responsible for the Beneficiary or Depositor's willful misconduct.

Section 8: Verification

Beneficiary, or a third party on behalf of Beneficiary, reserves the right from time to time to request Verification of the Deposit Materials and to examine the Deposit Materials to verify conformance to the requirements of the License Agreement and this Escrow Agreement. Verification, as used herein, means a procedure or process to determine the accuracy, completeness, sufficiency and quality of the Deposit Materials at a level of detail reasonably requested by Beneficiary, and may include, but not be limited to, file listing, inventory and analysis, compilation, size comparison, usability/functionality testing, and on-line comparison services. Such Verifications services are optional services offered by Escrow Agent and the fees associated with same are set forth on the Fee Schedule attached hereto as Exhibit A. Except as otherwise required by Beneficiary (or by a third party on behalf of Beneficiary and reasonably approved by Depositor), all Verification tasks shall be performed solely by employees of Escrow Agent and, at Beneficiary's option, employees of Beneficiary or a third party engaged by Beneficiary (subject to Depositor's reasonable approval, which approval shall not be unreasonably denied) without interference from Depositor; provided however, that if and to the extent requested by Beneficiary, Depositor shall at Depositor's expense, provide Escrow Agent and/or Beneficiary all reasonably necessary assistance and cooperation in connection with the performance of any Verification, including without limitation, assisting in the performance of tests and inspections ancillary to such Verification and compiling the source code into the executable code version. Any Verification performed by Escrow Agent or a third

party engaged by Escrow Agent (and acceptable to Beneficiary) shall be performed in a good, workmanlike, timely and professional manner by qualified persons fully familiar with the requirements, materials and technology involved in performing such Verifications. A copy of the Verification results shall be immediately provided by the Escrow Agent to the Beneficiary.

Section 9: Fees

Upon receipt of the signed Escrow Agreement, the Escrow Agent shall submit an invoice to Depositor for the services to be performed hereunder, and Depositor shall pay Escrow Agent an annual fee of \$**INSERT AMOUNT**. The Fee Schedule is set forth in the attached Exhibit A. All payments shall be in U.S. currency and are due within sixty (60) calendar days of receipt of Escrow Agent's invoice.

Section 10: Release of Deposit Materials

10.1 Release Conditions: The occurrence of any of the following events ("Release Conditions") shall provide the Beneficiary the right to request the Escrow Agent to release and deliver the Deposit Materials held in escrow to the Beneficiary:

- (a) Depositor's cessation, for any reason, to do business;
- (b) Bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or other similar proceedings are instituted by or against Depositor;
- (c) A general assignment for the benefit of creditors by Depositor;
- (d) Depositor discontinues providing maintenance of the software in accordance with its obligations pursuant to the License Agreement;
- (e) Depositor has breached (and if subject to a cure period, has not cured such breach within such period) a material term or conditions of the License Agreement or this Escrow Agreement;
- (f) Depositor refused or fails to renew its maintenance and support obligations under the License Agreement after Beneficiary has requested such renewal; or
- (g) Any or all materials parts of the source code or object code is generally made available, with or without additional cost, to other users of comparable software.

When Beneficiary makes such a request to Escrow Agent setting forth any of the above mentioned Release Conditions, it is understood that Beneficiary shall provide a copy of any such request to the Depositor.

10.2 Depositor Request for Release: Another Release Condition is the Depositor's actual request for release. If Depositor notifies Escrow Agent in writing to release the Deposit Materials, the Escrow Agent shall release the Deposit Materials to Beneficiary within ten (10) business days of its receipt of the Depositor's request.

10.3 Beneficiary Request for Release: Upon receipt of Beneficiary's request for release of the Deposit Materials due to the occurrence of any of the Release Conditions specified in Section 10.1 herein, Escrow Agent shall promptly release and deliver a copy of the Deposit Materials to Beneficiary within ten (10) business days of its receipt of the request unless Escrow Agent and Beneficiary receive written notification that Depositor has requested mediation per Section 11 below or a court hearing prior to the expiration of such ten (10) day period. In the event Escrow Agent and Beneficiary do receive a timely objection from Depositor as set forth herein, Escrow Agent will continue to hold the Deposit Materials pending receipt of (a) joint instructions from Depositor and Beneficiary; (b) dispute resolution according to Section 11 (Mediation); or (c) order from a court of competent jurisdiction. Immediately upon release of the Deposit Materials to Beneficiary, Escrow Agent shall notify Depositor of same in writing.

10.4 Grant of License to Deposit Materials: In the event the Deposit Materials are delivered out of escrow to Beneficiary pursuant to the terms of this Escrow Agreement, Depositor hereby grants to Beneficiary: (a) a world-wide, non-exclusive, irrevocable, unlimited, paid in full license to use, copy, modify, maintain and update the Deposit Materials; (b) the right to create derivative works from the Deposit Materials; (c) the right to combine the Deposit Materials with other programs and modules and the right to create interfaces to other programs; (d) the right to reproduce any and all physical documentation supplied under the terms of this Escrow Agreement. The foregoing license includes the right of Beneficiary to allow third parties the right to use the Deposit Materials on Beneficiary's behalf, in each case in accordance with the applicable terms of this Escrow Agreement.

Section 11: Mediation

In the event of any dispute respecting release of the Deposit Materials under Section 10 above, representatives of Depositor and Beneficiary shall meet no later than five (5) business days after delivery of Depositor's notice objecting to such release and shall make a good faith effort to amicably resolve any disagreements among them concerning the disputed claim. If such persons are unable to resolve the dispute in a satisfactory manner within the next five (5) business days, either party may give the other party written notice of its disagreement, which notice shall include the factual details of the party's position, the contractual provisions relied upon, and its arguments, if any, which support its position, and may simultaneously therewith request non-binding mediation of the dispute under either the Center for Public Resources Mediation Procedure in effect as of the date of this Agreement, or the American Arbitration Association Rules for Commercial Mediation in effect at the time mediation is requested. The other party, herein called "Respondent", may agree to mediation at its discretion. If the Respondent agrees to mediation, it may, in its discretion, elect to proceed under any available rules for expedited processing of the mediation. The parties agree that any mediator provided must be knowledgeable and experienced in the type of disputes submitted to mediation. Depositor and Beneficiary shall share equally the mediator's fee and any costs incurred in arranging for facilities at which to conduct the mediation. All mediation proceedings pursuant to this Section shall be confidential and shall be treated as compromise settlement negotiations for purposes of applicable rules of evidence. If the dispute is not resolved through mediation, either party may initiate litigation in a court of competent jurisdiction in Hinds County, Mississippi; provided, however, either Depositor or Beneficiary may initiate litigation prior to the completion of mediation under this Section to toll any applicable statute of limitations, to preserve its legal rights or to seek a preliminary injunction or other provisional judicial relief, if in its sole judgment such action is necessary. Nothing in this Section shall impair the right of either party to seek such other rights or remedies it may have at law or in equity.

Section 12: Confidentiality and Record Keeping

12.1 Confidentiality: The Deposit Materials shall only be accessible to authorized employees of Escrow Agent. Escrow Agent shall reasonably protect the confidentiality of the Deposit Materials. Except as provided in this Escrow Agreement, Escrow Agent shall not disclose, transfer, make available or use the Deposit Materials. If Escrow Agent receives a subpoena or other order of a court or judicial tribunal pertaining to the disclosure or release of the Deposit Materials, Escrow Agent will immediately notify Depositor and Beneficiary. It shall be the responsibility of either Depositor or Beneficiary to challenge any such order; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will not be required to disobey any court or other judicial tribunal order.

12.2 Status Reports: At least semi-annually, or as reasonably requested by Depositor or Beneficiary, Escrow Agent shall issue to Depositor and Beneficiary a report that describes any activity related to Beneficiary's account and inventories the Deposit Materials held by Escrow Agent.

12.3 Audit Rights: Escrow Agent shall retain and make available for audit purposes, upon request by Depositor or Beneficiary (or by a third party on behalf of Beneficiary), all Depositor and Beneficiary related records and documentation. During the term of this Escrow Agreement and for a two (2) year period thereafter, Depositor and Beneficiary (or by a third party on behalf of Beneficiary) shall each have the right, upon prior reasonable notice to Escrow Agent, to inspect the written records of Escrow Agent pertaining to this Escrow Agreement. Any such inspection shall be held during Escrow Agent's normal business hours. The party requesting such audit shall bear the cost of conducting same; provided, however, that in the event such audit uncovers inaccuracies in such records, Escrow Agent shall reimburse such party for the cost of the audit.

Section 13: Governing Law

This Escrow 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. Escrow Agent and Depositor expressly agree that under no circumstances shall Beneficiary or ITS be obligated to pay an attorney's fee, prejudgment interest, or the cost of legal action to Escrow Agent or Depositor. Further, nothing in this Escrow Agreement shall affect any statutory rights Beneficiary may have that cannot be waived or limited by contract.

Section 14: Notice

Any notice required or permitted to be given under this Escrow 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. Beneficiary's address for notice is: **INSERT NAME, TITLE, & ADDRESS OF BENEFICIARY PERSON FOR NOTICE**. Depositor's address for notice is: **INSERT NAME, TITLE, & ADDRESS OF DEPOSITOR PERSON FOR NOTICE**. Escrow Agent's address for notice is: **INSERT NAME, TITLE, & ADDRESS OF ESCROW AGENT PERSON FOR NOTICE**. 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.

Section 15: Force Majeure

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

Section 16: Severability

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

Section 17: Waiver

Failure of any 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 Escrow Agreement. A waiver by the Beneficiary, 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 Beneficiary.

Section 18: Modification

This Escrow 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.

Section 19: Assignment

No party may assign or otherwise transfer this Escrow Agreement or its obligations hereunder without the prior written consent of the other parties, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of its obligations without such consent shall be null and void. This Escrow Agreement shall be binding upon the parties' respective successors and assigns.

Section 20: Time is of the Essence

Depositor and Escrow Agent expressly acknowledge and agree that time is of the essence in the performance of their respective obligations hereunder. Beneficiary is relying on timely performance by Depositor and Escrow Agent and shall schedule operations and incur obligations to third parties in reliance upon such timely performances by Depositor and Escrow Agent, and shall sustain substantial losses by reason of any failure to timely perform.

Section 21: Termination

21.1 Termination Events: This Escrow Agreement may be terminated as follows: (a) upon the mutual, written agreement of Depositor and Beneficiary after notice of the effective date thereof to Escrow Agent; (b) by Beneficiary, upon written notice to Depositor and Escrow Agent if Escrow Agent becomes the subject of bankruptcy, reorganization, liquidation, or receivership proceedings, whether voluntary or involuntary; (c) by Beneficiary, upon written notice to Depositor and Escrow Agent if Escrow Agent is in breach of this Escrow Agreement; (d) by Beneficiary at any time, with or without cause, upon written notice to Depositor and Escrow Agent; and (e) by Escrow Agent in the event of nonpayment of fees hereunder. In the event of any termination hereunder, Escrow Agent shall immediately reimburse Beneficiary and Depositor, as applicable, on a pro-rata basis for any advance payment made to Escrow Agent for services not performed as of the effective termination date.

21.2 Termination for Non-Payment: In the event of the nonpayment of fees properly due to Escrow Agent hereunder, Escrow Agent shall provide written notice of delinquency to Depositor and Beneficiary. Any party to this Escrow Agreement shall have the right to make the payment

to Escrow Agent to cure such nonpayment. If the past-due payment is not received in full by Escrow Agent within sixty (60) days of the delinquent notification, Escrow Agent shall have the right to terminate this Escrow Agreement any time thereafter by sending written notice of termination to Depositor and Beneficiary.

21.3 Return of Deposit Materials: Upon termination of this Escrow Agreement for any reason other than in the event all Deposit Materials have been released in accordance with the terms of Section 10 herein, Escrow Agent shall return the Deposit Materials to Depositor via commercial courier to the address of Depositor shown in this Escrow Agreement, provided that all fees due Escrow Agent are paid in full. If two (2) attempts to return Deposit Materials via commercial courier to Depositor fail or Depositor does not accept the Deposit Materials, Escrow Agent shall destroy the Deposit Materials.

21.4 Subsequent Escrow Agreement: Upon Beneficiary's election to terminate this Escrow Agreement, Beneficiary and Depositor shall enter into a new escrow agreement with a mutually agreed upon third party escrow agent. Any and all terms and conditions stated herein shall, without modification, be incorporated into the new escrow agreement; provided, however, that Depositor agrees to negotiate in good faith with such escrow agent in the event such subsequent escrow agent or Beneficiary requests modification of any terms and conditions contained herein.

Section 22: Entire Agreement

The parties hereto acknowledge that each has read this Escrow Agreement, understands it, and agrees to be bound by its terms. This Escrow 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.

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

State of Mississippi, Department of
Information Technology Services, on
behalf of **INSERT BENEFICIARY**

INSERT NAME OF DEPOSITOR

By: _____
Authorized Signature

By: _____
Authorized Signature

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

Printed Name: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____

INSERT BENEFICIARY NAME

INSERT ESCROW AGENT NAME

By: _____
Authorized Signature

By: _____
Authorized Signature

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

(The parties need to attach Exhibit A: Fee Schedule and Exhibit B: Deposit Materials Description.)

EXHIBIT B
Deposit Materials Description
INSERT ESCROW AGENT NAME

INSERT BENEFICIARY NAME

INSERT DEPOSITOR NAME

Contact Name: _____
 Address: _____

 Email: _____
 Phone: _____
 Date: _____

Contact Name: _____
 Address: _____

 Email: _____
 Phone: _____
 Date: _____

INSERT PRODUCT NAME

RFP # _____
 ITS Project # _____

Provide product version, description and other relevant deposit materials information.

Deposit Materials Description	Quantity

***Deposit materials should include: All software (including source, object and executable code needed), hardware, third-party items, and relevant documentation needed to successfully re-create the software in the event of a release.**