



STATE OF MISSISSIPPI
Phil Bryant, Governor
MISSISSIPPI DEPARTMENT OF CHILD PROTECTION SERVICES

Dr. David A. Chandler, Commissioner

Memorandum

To: To all Vendors responding to RFP 17-001 for the acquisition of services to staff nine professional services positions to assist with implementing the Comprehensive Child Welfare Information System (CCWIS) for the Mississippi Department of Child Protection Services (MDCPS)

Date: March 28, 2017

Re: Response to Vendor Questions and Clarifications to Specifications

RFP 17-001 is being amended as follows:

1. Item 1.1: In the second bullet, "Project Manager for Document Content Management and Automated Interfaces" is being changed to "Project Manager for Document Management and Automated Interfaces".
2. Item 6.2.9: In the first sentence, "(eight positions)" is being changed to "(nine positions)".
3. Item 6.3.3: The first sentence is being revised to read: "The experience listed must be verifiable by reference check, directly or indirectly."
4. Item 6.4.4: In the title and first sentence, all occurrences of "content" are being removed, and all occurrences of "/" are being replaced with "and". With this modifications, the title and first sentence of Item 6.4.4 will read as follows: "Project Manager for Document Management and Automated Interfaces Duties. Vendor must propose a Project Manager to manage documents and automated interfaces."
5. Item 6.4.5: "Document Content Management" is being changed to "Document Management", and "/" is being replaced with "and".
6. Item 6.4.6: Both occurrences of "Document Content Management" are being changed to "Document Management", and "/" is being replaced with "and".
7. Item 6.4.6 Table heading: "Deputy" is being removed, "Document Content Management" is being changed to "Document Management", and "/" is being replaced with "and". With these modifications, the column heading will read as follows: "Position: Project Manager-Document Management and Automated Interfaces."
8. Item 6.4.6.1: In the first sentence, "content" is being removed. The revised first sentence will read as follows: "Must have document management experience on a project within the last five years."
9. Table following Item 6.4.6.14: In the second column heading, "content" is being replaced with "Management" and "/" is being replaced with "and". The modified column will read as follows: "Project Description (Document Management and Automated Interfaces Project Manager)".

10. Item 8.4: "2080 hours" is being changed to "2100 hours".
11. Section 10: In the second sentence, "Appendix A" is being changed to "Appendix B".
12. Appendices: "Appendix F: Sample Contract" is being added to the Appendix. A copy of the sample contract is attached to this amendment.

The following questions were submitted by Vendors in accordance with the instructions included in Sections 3.2.1 and 6.2.1 of RFP 17-001. Questions are stated as they were submitted:

Question Number	RFP Reference	Question	MDCPS' Response
1	Page 9, Section 3.5 Item-by-Item Response	Can you please clarify which section should the vendor start their item-by-item response as mentioned in this section?	The item-by-item response should begin with Section 6, Technical Specifications.
2	Page 13, Section 11 Contractual Terms	When would MDCPS provide the contract to the vendor for their review for exceptions being that it is not included with the RFP, as we only see contract exhibits?	See Amendment #12 above. A sample contract is being provided. However, most of the items that are a matter of State law have been included in Section 4.11. There may be items that will be included in the contract that are not a matter of State law, and have not been provided in the RFP. These items are negotiable.
3	Page 17, Section 6.2.5	What is MDCPS considering part-time and will there be big gaps in between the need for the Product Development Strategist because if there are big gaps it could be hard for the vendor to keep this person available for when MDCPS needs them back?	MDCPS envisions that this position will be full-time in the beginning, but the duties could possibly diminish over time.
4	Page 18, Section 6.2.9	This section talks mentions eight positions and on page 5 there are nine positions, could MDCPS please clarify the appropriate number of positions and titles?	See Amendment # 2 above. There are nine positions as detailed in Item 6.4.
5	Page 18, Section 6.3.3	This section talks about experience verifiable by reference checks, Can MDCPS please explain how they will handle the reference checks and will they only call the 2 Professional References that will be included with the resumes or is MDCPS looking for more than that? And if project references to meet years of	Response to first question: Reference checks will based on the information provided in response to Item 6.6, Professional References. For these references MDCPS will need contact information as stated to directly contact the stated reference.

		experience go back 10 or more years there could be a possibility that the person the candidate worked for is no longer with the company and there would be no true reference to call so how will MDCPS handle that as well?	Response to second question: It is the Vendor's responsibility to include projects for which a reference can be verified, directly or indirectly. As stated in Item 6.3.3, "Experience listed that cannot be verified will not count toward the minimum requirement". See Amendment #3 above.
6	Page 18, Section 6.3.4	Can MDCPS please clarify our understanding of what should go into the tables. Is MDCPS saying that all the listed projects it takes to meet the number of months of experience per qualification on the Experience Questionnaire are the only ones that need to be in the Project Description table as well?	Yes, only the projects needed to meet the number of months of experience for the role should be included in the table for that role.
7	Page 24, Section 6.4.6, page 28 section 6.4.9 and page 32 section 6.4.12	In this table under the requirements it talks about providing details of the experience as in 6.4.6.1, 6.4.6.3, 6.4.9.1, 6.4.9.3, 6.4.12.1 and 6.4.12.4, however the third column says to only have Project Name or Number so should this detail be include here or in the Project Description table on the following pages? Also how much detail is MDCPS looking for in the table as the resume will be included however it states resume should not be used so there could just be a duplicate of what is in the resume detail?	Project detail should not be included in the first table of Items 6.4.3, 6.4.6, 6.4.9, 6.4.12, 6.4.15, 6.4.18, 6.4.21, 6.4.24, and 6.4.27. These tables should include just the reference to the appropriate project that must be detailed in the second (the table following each of these tables). The project description can be brief (as short as one sentence), but should contain enough information to convey an understanding of the type of project.
8	Page 59, Section 8.4 Hours Worked	Can MDCPS please clarify the number of hours worked as it mentions 2080 hours in this section and it section 6.2.3 there was a not to exceed of 2100 hours?	The number of hours has been revised in this item. See Amendment #10 above.
9	Page 61, Section 10 References	Last sentence refers to Appendix A for the reference forms and it looks like Appendix B is actually the forms, Can MDCPS please clarify if this is correct?	Reference forms are located in Appendix B. See Amendment #11 above.
10		Regarding submittal of candidates for each of the defined positions, Can the vendor submit multiple candidates per position or is MDCPS	No, multiple candidates will not be accepted for the same role from a Vendor. MDCPS will accept the

		only looking for one submittal per position per vendor?	submission of one candidate per position per Vendor.
11	Section 4	The Contractual Terms and Conditions included in the RFP do not contain a limitation of liability, which places an unreasonable burden on Vendor. Unlimited liability for damages related to Vendor's breach of contract or negligent acts or omissions is a consideration that would need to be evaluated and, assuming Vendor decided to assume that liability, it would need to be priced into Vendor's proposal. Would MDCPS consider limiting Vendor's liability in this regard to an amount equal to the sum of fees paid by the MDCPS to Vendor over the previous 12 months, or an amount equal to, or some multiple of, the contract price?	Pursuant to state law, MDCPS cannot limit liability. Based on an Attorney General's opinion, only the Executive Director of the Mississippi Department of Information Technology Services (ITS) can establish limits on liability. Since ITS did not issue this RFP, ITS will not be a party to this contract. The contract will be between MDCPS and the selected Vendor(s).
12	Section 4	The Contractual Terms and Conditions included in the RFP do not contain a waiver of indirect damages or consequential damage. As MDCPS may be aware, indirect damages and/or consequential damages can quickly exceed several multiples of the contract price, placing an unreasonable burden on Vendor. If the Vendor will be liable for indirect damages and consequential damages, it needs to be priced into Vendor's bid. Would the State be willing to include a waiver of indirect and consequential damages in the Contractual Terms and Conditions included in the RFP?	This RFP contains the terms and conditions that are considered a matter of State law. The RFP should not be interpreted to contain all the terms and conditions that a resulting contract would contain. However, the RFP is being modified to include a Sample Contract. See Amendment #12 above. The inclusion of this contract does not preclude MDCPS from, at its sole discretion, negotiating additional terms and conditions with the selected Vendor(s) specific to the projects covered by this RFP, such as Personnel Assignment Guarantee, Force Majeure, and Liability Issues (liability article may contain items that cannot be limited as well as those for which the selected Vendor is not liable, like customer's neglect), or other articles.
13	Section 4	The Contractual Terms and Conditions included in the RFP do not contain clauses related to termination for default, or	These provisions will be included in the contract to be awarded. A Sample Contract is attached. See Amendment #12 above.

		termination for the convenience of MDCPS. Does MDCPS intend to include those provisions in the contract to be awarded, or amend the RFP to include those provisions?	
14	Item 3.4.5	Does the full body of RFP 17-001 CCWIS Professional Services need to be resubmitted to the State with pertinent information completed as implied by Section 3.4.5 or just the specific sections called out in Section 3.4.6 for the Vendor proposal?	The proposal response must contain at least the items specified in Item 3.4.6. A response to any additional Items other than those specified is optional.
15		Will MDCPS be the sole agency conducting interviews or will ITS also be a part of the interviews with our proposed candidates?	Yes, MDCPS is the sole agency conducting the interviews. ITS will not be involved.
16	Item 6.4.6.2	Can you provide more details on the automated interfaces skill requirement described in section 6.4.6.2.? Is this referring to automated interfaces with the Document Content application or automated interfaces with the new CCWIS application?	This is primarily referring to automated interfaces with the new CCWIS application. These interfaces will be with systems that are both internal and external to MDCPS.

Sample Contract

The inclusion of this contract does not preclude MDCPS from, at its sole discretion, negotiating additional terms and conditions with the selected Vendor(s) specific to the project covered by this RFP.

PROJECT NUMBER 17-001
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
INSERT VENDOR NAME
AND
MISSISSIPPI DEPARTMENT OF CHILD PROTECTION SERVICES

This Professional Services Agreement (hereinafter referred to as “Agreement”) is entered into by and between **INSERT VENDOR NAME**, a **INSERT STATE OF INCORPORATION** corporation having its principal place of business at **INSERT VENDOR STREET ADDRESS** (hereinafter referred to as “Contractor”), and Mississippi Department of Child Protection Services having its principal place of business at 660 North Street, Jackson, Mississippi 39202 (hereinafter referred to as “Customer” and/or “MDCPS”).

WHEREAS, Customer, pursuant to Request For Proposal Number 17-001 (hereinafter referred to as “RFP”) requested proposals for the acquisition of services for nine professional services positions to assist with implementing a Comprehensive Child Welfare Information System (CCWIS), and

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

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

ARTICLE 1 PERIOD OF PERFORMANCE

1.1 Unless this Agreement is extended by mutual agreement or terminated as prescribed elsewhere herein, this Agreement shall begin on the date it is signed by all parties and shall continue until the close of business on **INSERT DATE**. At the end of the initial term, this Agreement may, upon the written agreement of the parties, be renewed for an additional terms, the length of which will be agreed upon by the parties. Sixty (60) days prior to the expiration of the initial term or any renewal term of this Agreement, Contractor shall notify Customer of the impending expiration and Customer shall have thirty (30) days in which to notify Contractor of its intention to either renew or cancel the Agreement.

1.2 This Agreement will become a binding obligation on the State only upon the issuance of a valid purchase order by the Customer following contract execution.

ARTICLE 2 SCOPE OF SERVICES

Contractor shall perform all work specified in the Statement of Work attached hereto as “Exhibit A” and incorporated herein by reference. Contractor shall assign **INSERT NAME** to assist Customer with implementing a Comprehensive Child Welfare Information System as specified in the RFP and Contractor’s

proposal, as accepted by Customer, in response thereto, which are both incorporated herein by reference. It is understood by the Contractor that the individual assigned to perform such services shall work under the direction of Customer's Deputy Commissioner of IT, Cindy Greer, or her designee, whose responsibilities include assigning, directing and monitoring the daily work and assessing the quality of the work in accordance with the Warranty Article herein. While Contractor's work is to be performed primarily on-site in the Customer's offices in Jackson, Mississippi, it is understood that with the Customer's written approval, certain work can be performed off-site if it can be demonstrated to the Customer's satisfaction that the off-site work provides a savings to the Customer and that the work done off-site does not interfere with or slow the progress of the project or reduce the quality of the work. Contractor accepts full responsibility for all problems arising out of a decision to perform off-site work. The parties understand and agree that while the usual work hours will be 8:00 A.M. to 5:00 P.M. (Central Time) Monday through Friday, occasionally they may be required to work outside of these hours.

ARTICLE 3 CONSIDERATION AND METHOD OF PAYMENT

3.1 As consideration for the performance of this Agreement, Customer shall pay Contractor rates as specified in Exhibit A. It is understood by the parties that travel, subsistence and any related project expenses are included in this hourly rate. No additional costs will be added to the monthly invoices for such expenses. It is expressly understood and agreed that in no event will the total compensation to be paid hereunder exceed the specified sum of \$**INSERT AMOUNT**. Contractor shall keep daily records of the actual number of hours worked and of the tasks performed and shall immediately supply such records to Customer upon request.

3.2 Contractor shall submit an invoice monthly with the appropriate documentation to Customer for any month in which services are rendered. Upon the expiration of this Agreement, Contractor shall submit the final invoice with appropriate documentation to Customer for payment for the services performed during the final month of this Agreement. Contractor shall submit invoices and supporting documentation to Customer electronically during the term of this Agreement using the processes and procedures identified by the State. Customer agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Section 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by Customer within forty-five (45) days of receipt of the invoice. Contractor understands and agrees that Customer is exempt from the payment of taxes. All payments shall be in United States currency. Payments by state agencies using Mississippi's Accountability System for Government Information and Collaboration (MAGIC) shall be made and remittance information provided electronically as directed by the State. The payments by these agencies shall be deposited into the bank account of the Contractor's choice. No payment, including final payment, shall be construed as acceptance of defective products or incomplete work, and the Contractor shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the article herein titled "Entire Agreement."

3.3 Acceptance by the Contractor of the last payment from the Customer shall operate as a release of all claims against the State by the Contractor and any subcontractors or other persons supplying labor or materials used in the performance of the work under this Agreement.

ARTICLE 4 WARRANTIES

4.1 The Contractor represents and warrants that its services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of this Agreement. For any breach of this warranty, the Customer may, at its option, either terminate this Agreement immediately pursuant to the termination article herein, or require Contractor to provide

replacement personnel satisfactory to Customer within thirty (30) calendar days of Contractor's receipt of notification from Customer. Whether or not the departing personnel are to continue working while Contractor attempts to find replacement personnel is at the sole discretion of the Customer. If Contractor is notified within the first eight (8) hours of assignment that the person is unsatisfactory, Contractor will not charge Customer for those hours; otherwise, Customer shall pay for all actual hours worked prior to Customer's notification of replacement request to Contractor.

4.2 If applicable under the given circumstances, Contractor 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. Contractor 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. Contractor 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. Contractor understands and agrees that any breach of these warranties may subject Contractor to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Contractor 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, Contractor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

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

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

pursue the same remedies against the Contractor as it would pursue in the event of a breach of contract by the Contractor, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

ARTICLE 5 EMPLOYMENT STATUS

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

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

5.3 Any person assigned by Contractor to perform the services hereunder shall be the employee of Contractor, who shall have the sole right to hire and discharge its employee. Customer may, however, direct Contractor to replace any of its employees under this Agreement.

5.4 Contractor 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 Contractor nor employees of Contractor are entitled to state retirement or leave benefits.

5.5 It is further understood that the consideration expressed herein constitutes full and complete compensation for all services and performances hereunder, and that any sum due and payable to Contractor shall be paid as a gross sum with no withholdings or deductions being made by Customer for any purpose from said contract sum, except as permitted herein in the article titled "Termination".

ARTICLE 6 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS

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

ARTICLE 7 MODIFICATION OR RENEGOTIATION

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

ARTICLE 8 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS

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

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

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

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

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

ARTICLE 9 AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of Customer to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds for the performances required under this Agreement. If the funds anticipated for the fulfillment of this Agreement are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to Customer for the payments or performance due under this Agreement, Customer shall have the right to immediately terminate this Agreement, 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 this Agreement.

ARTICLE 10 TERMINATION

10.1 Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be terminated, in whole or in part, as follows: (a) upon the mutual, written agreement of the parties; (b) If either party fails to comply with the terms of this Agreement, the non-defaulting party may terminate the Agreement upon the giving of thirty (30) days written notice unless the breach is cured within said thirty (30) day period; (c) Customer may terminate the Agreement in whole or in part without the assessment of any penalties upon thirty (30) days written notice to Contractor if Contractor becomes the subject of bankruptcy, reorganization, liquidation or receivership proceedings, whether voluntary or involuntary, or (d) Customer may terminate the Agreement for any reason without the assessment of any penalties after

giving thirty (30) days written notice specifying the effective date thereof to Contractor. The provisions of this Article do not limit either party's right to pursue any other remedy available at law or in equity.

10.2 In the event Customer terminates this Agreement, Contractor shall be paid for satisfactory work completed by Contractor and accepted by Customer prior to the termination. Such compensation shall be based upon the amounts set forth in the Article herein on "Consideration and Method of Payment", but in no case shall said compensation exceed the total fixed price of this Agreement.

10.3 Notwithstanding the above, Contractor shall not be relieved of liability to Customer for damages sustained by Customer by virtue of any breach of this Agreement by Contractor, and Customer may withhold any payments to Contractor for the purpose of set off until such time as the exact amount of damages due Customer from Contractor are determined.

ARTICLE 11 GOVERNING LAW

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

ARTICLE 12 WAIVER

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

ARTICLE 13 SEVERABILITY

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

ARTICLE 14 CAPTIONS

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

ARTICLE 15 HOLD HARMLESS

To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect and exonerate Customer, 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 Contractor and/or its partners, principals, agents, employees or subcontractors in the performance of or failure to perform this Agreement.

ARTICLE 16 THIRD PARTY ACTION NOTIFICATION

Contractor shall notify Customer in writing within five (5) business days of Contractor 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 Contractor or Customer by any entity that may result in litigation related in any way to this Agreement and/or which may affect the Contractor's performance under this Agreement. Failure of the Contractor to provide such written notice to Customer shall be considered a material breach of this 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 17 AUTHORITY TO CONTRACT

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

ARTICLE 18 NOTICE

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their business address listed herein. Customer's address for notice is: Dr. David Chandler, Commissioner, Mississippi Department of Child Protection Services, 660 North Street, Jackson, Mississippi. The Contractor's address for notice is: **INSERT NAME, TITLE & ADDRESS OF VENDOR 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.

ARTICLE 19 RECORD RETENTION AND ACCESS TO RECORDS

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

ARTICLE 20 INSURANCE

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

ARTICLE 21 COMPLIANCE WITH LAWS

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

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

ARTICLE 22 CONFLICT OF INTEREST

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

ARTICLE 23 SOVEREIGN IMMUNITY

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

ARTICLE 24 CONFIDENTIAL INFORMATION

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

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

ARTICLE 25 EFFECT OF SIGNATURE

Each person signing this Agreement represents that he or she has read the Agreement in its entirety, understands its terms, is duly authorized to execute this Agreement on behalf of the parties and agrees

to be bound by the terms contained herein. Accordingly, this Agreement shall not be construed or interpreted in favor of or against the State or the Contractor on the basis of draftsmanship or preparation hereof.

ARTICLE 26 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS

All data, electronic or otherwise, collected by Contractor and all documents, notes, programs, data bases (and all applications thereof), files, reports, studies, and/or other material collected and prepared by Contractor in connection with this Agreement, whether completed or in progress, shall be the property of Customer upon completion of this Agreement or upon termination of this Agreement. Customer hereby reserves all rights to the databases and all applications thereof and to any and all information and/or materials prepared in connection with this Agreement. Contractor is prohibited from use of the above described information and/or materials without the express written approval of Customer.

ARTICLE 27 NON-SOLICITATION OF EMPLOYEES

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

ARTICLE 28 ENTIRE AGREEMENT

28.1 This Contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating thereto. The RFP and Contractor's Proposal in response thereto are hereby incorporated into and made a part of this Contract.

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

- A. This Agreement signed by the parties hereto;
- B. Any exhibits attached to this Agreement;
- C. RFP 17-001 and written addenda, and
- D. Contractor's Proposal, as accepted by Customer, in response thereto.

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

ARTICLE 29 STATE PROPERTY

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

ARTICLE 30 SURVIVAL

Articles 4, 11, 15, 19, 24, 26, 27 and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this Agreement.

ARTICLE 31 DEBARMENT AND SUSPENSION CERTIFICATION

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

ARTICLE 32 SPECIAL TERMS AND CONDITIONS

It is understood and agreed by the parties to this Agreement that there are no special terms and conditions.

ARTICLE 33 COMPLIANCE WITH ENTERPRISE SECURITY POLICY

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

ARTICLE 34 TRANSPARENCY

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

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

**Mississippi Department of Child Protection
Services**

INSERT VENDOR NAME

By: _____

By: _____

Authorized Signature

Authorized Signature

Printed Name: Dr. David A. Chandler

Printed Name: _____

Title: Commissioner

Title: _____

Date: _____

Date: _____

EXHIBIT A