



IFB No: IT1001

**MISSISSIPPI DEPARTMENT OF HUMAN SERVICES
750 North State St.
Jackson, Mississippi 39202**

INVITATION: Sealed bids, subject to the conditions herein stated and attached hereto, will be received at this office **until 3:00 p.m. Central Time on Tuesday, April 10, 2018**, and then publicly opened for furnishing the products as described below for the Mississippi Department of Human Services (MDHS).

DESCRIPTION

For the acquisition of an upgrade from physical to virtual Micro Focus software licenses for the Mississippi Department of Human Services:

Bidder Information

Attachment A: Specifications

Attachment B: Bid Form

Attachment C: Standard Contract

Attachment D: Exception Summary Form

Bidder must submit bid and attachments to:

Attn: Valeria O'Neal
IT Procurement
MS Department of Human Services
750 North State St.
Jackson, MS 39202
(601) 359-4640

To prevent opening by unauthorized individuals, your bid should be placed in a sealed envelope and plainly identified as follows:

SUBMITTED IN RESPONSE TO INVITATION FOR BID NUMBER IT1001.

INVITATION FOR BID BIDDER INFORMATION

This document contains general information for bidders responding to an Invitation for Bid issued by the MDHS.

I. Miscellaneous Conditions and Information

1. Bidders are expected to examine all documents, forms, specifications, standard provisions and all instructions. Failure to do so will be at the bidder's risk.
2. Any bid not received in writing at this office by the date and time specified will be declared a late bid. The State will not be responsible for any delays in delivery. It is solely the responsibility of the bidder that bids reach the opening on time. Any bid received after closing time will be returned unopened.
3. Bids or alterations by fax, e-mail or phone will not be accepted.
4. All bid openings are open to the public. The MDHS staff will read the name of bidder responding.
5. All disclosures of bid information to interested parties will be made in accordance with the Mississippi Public Records Act of 1983 defined in Section 25-61-1 et seq. of the Mississippi Code.
6. No negotiations, decisions, or actions shall be executed by any bidder as a result of any discussions with any state employee. Only transactions which are in writing from MDHS may be considered official.
7. MDHS reserves the right to reject any and all bids and to waive any defect or informality in any bid or bid procedure, including those with exceptions, prior to and at any time during negotiations.
8. All bid material submitted in writing shall become the property of the State.
9. Expenses for the development and delivery of bids are entirely the responsibility of the bidder and shall not be chargeable to the State.

II. Format and Content of Bid

1. The Bidder is required to submit three (3) identical copies of his bid.
2. The Bidder should note that original signatures are required on each copy of the bid.
3. The Bidder must complete all forms included in this IFB in their entirety.
4. The State reserves the right to reject bids from bidders who submit incomplete bids.

III. Clarifications and Updates After the Bid Opening Date and Time

Bid clarifications and updates submitted after the bid opening date and time will be accepted or rejected at the sole discretion of MDHS. MDHS will accept no price increases for a 90-day period after the bid opening. However, the State will always take advantage of price decreases. MDHS will consider updates in the evaluation and selection of lowest and best bid only if: (a) The update provided is in effect nationally and has been publicly announced; and (b) the update is received early enough in the evaluation process to allow adequate time for re-evaluation. Bidders must follow the procedure outlined below in submitting updates to bids:

1. The Bidder must submit a statement outlining the circumstances under which he is submitting a clarification or update to the original bid.
2. The Bidder must submit updates in three (3) copies and in the format of the specifications of only those pages in the bid document that should replace the old pages or that should be added. The revised pages must be marked as a bid clarification or update, dated, and page numbered.

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ATTACHMENT A SPECIFICATIONS

I. Specifications

1. Mississippi Department of Human Services acquired physical licenses for the following products via RFP M3PS2017:

Micro Focus Enterprise Developer
Micro Focus Enterprise Server (Dev) Xeon
Micro Focus Enterprise Server (Test/QA) Xeon
Micro Focus Enterprise Server (Production) Xeon
Micro Focus Enterprise Server (Staging) Xeon
Micro Focus Enterprise Server (DR) Xeon

MDHS is currently seeking to acquire an upgrade to the current licenses from physical to Virtual software licenses associated with the above products.

2. Vendor must state how invoices will be issued – in arrears and/or monthly –or if MDHS will incur any reinstatement fees.
3. Vendors must propose pricing for the items listed below. The pricing must include delivery, installation (if any) and three (3) years of support. Any cost not listed in this section that is required may result in the Bidder providing those products or services at no charge to the State or face disqualification. The State reserves the right to purchase all, a portion of, or none of these items:

a. Virtual License Upgrade – Development and Test Environments

Software Products comparable to those listed below:

- i. Micro Focus Enterprise Developer – 10 users or a product
- ii. Micro Focus Enterprise Server (Dev) Xeon – 4 Cores
- iii. Micro Focus Enterprise Server (Test/QA) Xeon – 4 Cores

b. Virtual Licensing Upgrade – Production and DR COLD Environments

Software Products comparable to those listed below:

- i. Micro Focus Enterprise Server (Production) Xeon – 8 Cores
- ii. Micro Focus Enterprise Server (Staging) Xeon – 8 Cores
- iii. Micro Focus Enterprise Server (DR Cold) Xeon – 8 Cores

c. Virtual Licensing Upgrade – ADABAS Add-on

Software Products comparable to those listed below:

- i. ADABAS Add-on for Enterprise Developer – 10 users
- ii. ADABAS Add-on for Dev Environment – 4 Cores
- iii. ADABAS Add-on for Test/QA Environment – 4 Cores
- iv. ADABAS Add-on for Production Environment – 8 Cores
- v. ADABAS Add-on for Staging Environment– 8 Cores
- vi. ADABAS Add-on for DR COLD Environment – 8 Cores

4. Additional Requirements

- a.** MDHS acknowledges that the specifications within this IFB may not be exhaustive. Rather, they reflect the known requirements that will possibly meet the need. Vendors must specify, here, what additional components may be needed and are proposed in order to have a fully functional product in a virtual environment.

**ATTACHMENT B
BID FORM**

Please submit all unit and extended costs, as well as all required supporting details and other requested information, using the format below. 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.

MDHS Contact Name: _____ **IFB #:** IT1001

Company Name: _____ **Date:** _____

Contact Name: _____ **Phone #:** _____

Contact E-mail: _____

Part Number	Description	QTY	Year 1	Year 2	Year 3	Total 3 Year

ATTACHMENT C
STANDARD CONTRACT

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

If Vendor cannot comply with any term or condition of this Standard Contract, Vendor must list and explain each specific exception on the *Bid Exception Summary Form* included in Attachment D. If no Exception Summary Form is included, the Bidder is indicating that he takes no exceptions. Bidders who fail to take exception to any point in the IFB or the Standard Contract may not later do so during contract negotiations.

ATTACHMENT C
IFB IT1001
PURCHASE AGREEMENT
BETWEEN
INSERT VENDOR NAME
AND
MISSISSIPPI DEPARTMENT OF HUMAN SERVICES

This Purchase 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 "Seller"), and Mississippi Department of Human Services having its principal place of business at 750 North State St., Jackson, Mississippi 39202 (hereinafter referred to as "Purchaser").

WHEREAS, Purchaser, based on Invitation for Bid ("IFB") No. IT1001, requested bids for the acquisition of software, maintenance and services; and

WHEREAS, Seller was the successful proposer in an open, fair and competitive procurement process;

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

1.1 Unless this Agreement is extended by mutual agreement or terminated as prescribed elsewhere herein, the period of performance of software maintenance and support Services under this Agreement shall begin on date signed by all parties, and will continue in effect until the close of business on **INSERT DATE** (hereinafter referred to as "Initial Term"). At the end of the Initial Term, this Agreement may, upon the written agreement of the parties, be renewed for 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, Seller shall notify Purchaser of the impending expiration and any inflation increase allowed for in this Agreement, and Purchaser shall have thirty (30) days in which to notify Seller of its intention to either renew or cancel the Agreement. Failure of the Seller to so notify Purchaser will result in the Seller providing the maintenance and support Services to Purchaser without charging penalties until a new contract can be negotiated. The parties shall negotiate a new contract in good faith within sixty (60) days of receipt of notification of the expiration of the contract.

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

ARTICLE 2 FURNISHING OF SERVICES

2.1 Subject to the terms and conditions set forth herein, Seller agrees to provide and Purchaser agrees to buy as needed, the Products and Services listed in the Attachment **INSERT ATTACHMENT IDENTIFIER** and at the purchase price set forth therein, but in no event will the total compensation to be paid hereunder exceed the specified sum of **\$INSERT AMOUNT** unless prior written authorization has been obtained. Purchaser shall submit a purchase order signed by

a representative of Purchaser itemizing the Services to be purchased. The purchase order shall be subject to the terms and conditions of this Agreement. The parties agree that Purchaser reserves the right to adjust the quantities of purchases based upon the availability of funding or as determined necessary by Purchaser. Seller guarantees pricing for the Initial Term of this Agreement. In the event there is a national price decrease of the Services bid during this time, Seller agrees to extend the new, lower pricing to Purchaser.

2.2 The Services provided by Seller shall meet or exceed the minimum specifications set forth in the IFB No. IT1001 and the Seller's bid in response thereto.

ARTICLE 3 CONSIDERATION AND METHOD OF PAYMENT

3.1 During the Initial Term of this Agreement, Purchaser shall pay not-to-exceed amounts to Seller **\$INSERT AMOUNT** for year 1, **\$INSERT AMOUNT** for year 2, and **\$INSERT AMOUNT** for year 3 for the maintenance and support Services as detailed in Attachment **INSERT ATTACHMENT IDENTIFIER**. Seller shall submit an invoice annually with the appropriate documentation to Purchaser, including specific documentation of any inflation increase for any renewal term. Seller shall submit invoices and supporting documentation to Purchaser electronically during the term of this Agreement using the processes and procedures identified by the State. In no event will the total compensation to be paid hereunder for the Initial Term exceed the specified sum of **\$INSERT AMOUNT**, unless prior written authorization has been obtained. Purchaser 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 Purchaser within forty-five (45) days of receipt of the invoice. Seller understands and agrees that Purchaser is exempt from the payment of taxes.

3.2 In no event shall the cost for maintenance services for any renewal term increase by more than five percent (5%) per year or an increase consistent with the percent increase in the consumer price index, all Urban Consumer US City Average (C.P.I.-u) for the preceding year ("inflation increase"), whichever is less. Purchaser shall submit payments to: **INSERT ADDRESS**. All payments should be made in United States currency. Payments by state agencies using Mississippi's Accountability System for Government Information and Collaboration (MAGIC) shall be made and remittance information provided electronically as directed by the State. The payments by these agencies shall be deposited into the bank account of the Seller's choice.

ARTICLE 4 WARRANTIES

4.1 Seller represents and warrants that Seller has the right to sell the Services provided under this Agreement.

4.2 Seller represents and warrants that the Services provided by Seller shall meet or exceed the minimum specifications set forth in the IFB No. IT1001 and Seller's Bid in response thereto.

4.3 Seller 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 Seller shall, for a period of ninety (90) days from performance of the Service, perform the Services again, at no cost to

Purchaser, or if Seller is unable to perform the Services as warranted, Seller shall reimburse Purchaser the fees paid to Seller for the unsatisfactory Services.

4.4 Seller 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 (Supp 2008), 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. Seller 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. Seller 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. Seller understands and agrees that any breach of these warranties may subject Seller 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 Seller 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, Seller would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

4.5 Seller represents and warrants, to the best of its knowledge, that neither the replacement parts provided to Purchaser under this Agreement nor their use by Purchaser will violate, infringe, or constitute an infringement of any patent, copyright, trademark, servicemark, trade secret, or other proprietary right of any person or entity.

4.6 Seller represents and warrants that it has and will obtain and pass through to Purchaser any and all warranties obtained or available from any manufacturer of the replacement parts supplied to Seller for use by Purchaser.

4.7 Seller understands and agrees that pursuant to Section II-7-18, Section 75-2-315.1, and Section 75-2-719 of the Mississippi Code Annotated, there is no disclaimer of the implied warranties of merchantability and fitness for a particular purpose.

4.8 The parties understand and agree that pursuant to Section 100 of the Mississippi Constitution, the State can't agree to indemnify Seller or any third party.

ARTICLE 5 EMPLOYMENT STATUS

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

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

5.3 Any person assigned by Seller to perform the services hereunder shall be the employee of Seller, who shall have the sole right to hire and discharge its employee. Purchaser may, however, direct Seller to replace any of its employees under this Agreement. If Seller is notified within the first eight (8) hours of assignment that the person is unsatisfactory, Seller will not charge Purchaser for those hours.

5.4 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 Seller shall be paid as a gross sum with no withholdings or deductions being made by Purchaser for any purpose from said contract sum.

ARTICLE 6 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS

Seller will be responsible for the behavior of all its employees and subcontractors while on the premises of any Purchaser location. Any employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive, or offensive to any of the staff will be asked to leave the premises and may be suspended from further work on the premises. All Seller employees and subcontractors who will be working at such locations shall be covered by Seller'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 bids, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that Seller represents all contractors, third parties, and/or subcontractors Seller has assembled for this project. The Purchaser is required to negotiate only with Seller, as Seller'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 Seller must obtain the written approval of Purchaser before subcontracting any portion of this Agreement. No such approval by Purchaser of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of Purchaser in addition to the total fixed price agreed upon in 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 Purchaser may deem necessary.

8.4 Seller represents and warrants that any subcontract agreement Seller enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Purchaser, and that the subcontractor acknowledges that no privity of contract exists between the Purchaser and the subcontractor and that the Seller is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with the Seller. The Seller 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 Seller's failure to pay any and all amounts due by Seller 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 Seller and the Purchaser, where such dispute affects the subcontract.

ARTICLE 9 AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of Purchaser 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 Purchaser for the payments or performance due under this Agreement, Purchaser shall have the right to immediately terminate this Agreement, without damage, penalty, cost or expense to Purchaser of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Purchaser shall have the sole right to determine whether funds are available for the payments or performances due under this Agreement.

ARTICLE 10 TERMINATION

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) Purchaser may terminate the Agreement in whole or in part without the assessment of any penalties upon thirty (30) days written notice to Seller if Seller becomes the subject of bankruptcy, reorganization, liquidation or receivership proceedings, whether voluntary or involuntary, or (d) Purchaser may terminate the Agreement without the assessment of any penalties for any reason after giving thirty (30) days written notice specifying the effective date thereof to Seller. Upon termination, Seller shall refund any and all applicable

unexpended prorated annual service fees previously paid by Purchaser. The provisions of this Article do not limit either party's right to pursue any other remedy available at law or in equity.

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. Seller expressly agrees that under no circumstances shall Purchaser be obligated to pay an attorneys fee, prejudgment interest or the cost of legal action to Seller. Further, nothing in this Agreement shall affect any statutory rights Purchaser 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 section of this Agreement.

ARTICLE 15 HOLD HARMLESS

To the fullest extent allowed by law, Seller shall indemnify, defend, save and hold harmless, protect and exonerate Purchaser, and the State, 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 the negligence or willful acts or omissions of Seller 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

Seller shall notify Purchaser in writing within five (5) business days of Seller filing bankruptcy, reorganization, liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Seller or Purchaser by any entity that may result in litigation related in any way to this Agreement and/or

which may affect the Seller's performance under this Agreement. Failure of the Seller to provide such written notice to Purchaser shall be considered a material breach of this Agreement and the Purchaser 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

Seller 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. Purchaser's address for notice is: John Davis, Executive Director, Mississippi Department of Human Services, 750 North State St., Jackson, Mississippi 39202. Seller's address for notice is: **INSERT NAME, TITLE, AND 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

Seller shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Agreement. The Purchaser, any state or federal agency authorized to audit Purchaser, and/or any of their duly authorized representatives, shall have unimpeded, prompt access to this Agreement and to any of the Seller's bid, 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 Seller's office as applicable where such records are kept during normal business hours. All records relating to this Agreement shall be retained by the Seller 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 DISPUTES

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

ARTICLE 21 COMPLIANCE WITH LAWS

21.1 Seller shall comply with, and all activities under this Agreement shall be subject to, all Purchaser 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, Seller 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.

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

ARTICLE 22 CONFLICT OF INTEREST

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

ARTICLE 23 SOVEREIGN IMMUNITY

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

ARTICLE 24 CONFIDENTIAL INFORMATION

24.1 Seller shall treat all Purchaser 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 Purchaser. In the event that Seller receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, Seller shall promptly inform Purchaser and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive the termination or completion of this Agreement, shall continue in full force and effect, and shall be binding upon the Seller and its agents, employees, successors, assigns, subcontractors, or any party or entity claiming an interest in this Agreement on behalf of or under the rights of the Seller following any termination or completion of this Agreement.

24.2 With the exception of any Attachment 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 Seller. MDHS will provide third party notice to Seller of any

requests received by MDHS for any such confidential Attachments so as to allow Seller the opportunity to protect the information by court order as outlined in MDHS Public Records Procedures.

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

ARTICLE 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 Seller on the basis of draftsmanship or preparation hereof.

ARTICLE 26 NON-SOLICITATION OF EMPLOYEES

Seller and Purchaser agree not to employ or to solicit for employment, directly or indirectly, each other'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 Purchaser and the Seller 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 27 ENTIRE AGREEMENT

27.1 This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating hereto, including all terms of any unsigned or "shrink-wrap" license included in any package, media or electronic version of Seller-furnished software, or any "click-wrap" or "browse-wrap" license presented in connection with a purchase via the internet. The IFB No.IT1001 and Seller's Bid in response thereto are hereby incorporated into and made a part of this Agreement.

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

- A.** This Agreement signed by both parties;
- B.** Any Attachments to this Agreement;
- C.** IFB No. IT1001 and written addenda, and
- D.** Seller's Bid, as accepted by Purchaser, in response to the IFB IT1001.

27.3 The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by the Seller. The documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof; provided, however, that in the event an issue is

addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority, that is, the highest document begins with the first listed document (“A. This Agreement”) and the lowest document is listed last (“D. Seller’s Bid”).

ARTICLE 28 SURVIVAL

Articles 4, 11, 15, 19, 24, 25, 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 29 DEBARMENT AND SUSPENSION CERTIFICATION

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

ARTICLE 30 COMPLIANCE WITH ENTERPRISE SECURITY POLICY

Seller and Purchaser understand and agree that all products and services provided by Seller 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 Seller 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 31 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 ITS posting the Agreement and any subsequent amendments and change orders to the website, any attachments

which contain trade secrets or other proprietary information and are labeled as “confidential” will be redacted by ITS. Notwithstanding the preceding, however, it is understood and agreed that pursuant to §25-61-9(7) of the Mississippi Code of 1972, as amended, the contract provisions specifying the commodities purchased or the services provided; the price to be paid; and the term of this Agreement shall not be deemed a trade secret or confidential commercial or financial information and shall thus not be redacted.

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

Mississippi Department of Human

INSERT VENDOR NAME

Services

By: _____

By: _____

Authorized Signature

Authorized Signature

Printed Name: John Davis

Printed Name: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____

ATTACHMENT D
EXCEPTION SUMMARY FORM

List and clearly explain any exceptions, for Articles in the Standard Contract, in the table below.

MDHS Standard Contract Article	Bidder Proposal Reference	Brief Explanation of Exception	MDHS Acceptance (sign here only)
(Reference specific contract article to which exception is taken)	(Page, section, items in Bidder's proposal where exception is explained)	(Short description of exception being made)	