

MISSISSIPPI TEXTBOOK CONTRACT

ATTACHMENT H



2026

Certain terms and conditions are required for contracting. Therefore, the Offeror shall assure agreement and compliance with the following standard terms and conditions.

1. AUTHORITY TO CONTRACT FOR TEXTBOOKS

The MDE, acting under and by virtue of authority rested in it in Section 37-43-19 of the Mississippi Code of 1972, According to Section 37-43-19 of the Mississippi Code of 1972, Annotated, the Mississippi Department of Education has authority to contract for textbooks in the state of Mississippi, called for on the XX day of month, year, competitive bids from textbook publishers for furnishing content area and grade level textbooks/instructional materials to the schools of Mississippi; that according to said call for bids (**Appendix B**), sealed bids (**Appendix C**) were submitted by various textbook publishers; that representatives of the MDE opened said bids and after having fully investigated the said bids and books submitted did on the XX day of month, year, select and adopt as required by law said books to be used in the schools of Mississippi for 5 years with option to renew for two additional years on a one year basis from the first day of month, year; and that all said acts and things done by the MDE preceding the execution of the contract were and are regular, legal, and binding upon the parties hereto.

2. BLIND PERSONS' LITERACY RIGHTS AND EDUCATION

That the said Company/Publisher has agreed, per MS Code Section 37-23-199, to furnish the MDE and NIMAC with NIMAS files for literary and nonliterary subjects. The Company/Publisher understands that all books purchased must have appropriate accompanying reproduction files. Any extension of time to provide said files, must be mutual agreed upon in writing, not to exceed thirty (30) days. Failure to adhere to this provision by the Company/Publisher shall forfeit not only this contract but also all monies paid out for such book or books and also forfeit said books to the Department.

3. MATERIALS ACCESS FOR EDUCATOR PREPARATION PROVIDERS

That the said Company/Publisher has agreed to provide Educator Preparation Providers (EPPs) limited digital access and requested print samples for instructional purposes for preparing candidates for teacher licensure with the Mississippi Department of Education in accordance with Miss. Code Ann. § 37-3-2.

4. BOND GUARANTEE

That the said Company/Publisher has agreed and guaranteed by its bond in the sum of bond amount to furnish the said books at the prices named below in compliance with the provisions of law, and to faithfully, honestly, and exactly perform each provision of this contract, with payment of reasonable attorney's fees in case of recovery in any suit upon the same.

5. CONTRACT PRICING

That the said Company/Publisher has agreed to furnish the said books at the said prices and in such quantities as shall be ordered by the MDE and in the manner hereinafter set forth for a period of 5 years from contract start date. This period may be extended from year to year not to exceed two additional years at the discretion of the MDE at no increase in price as provided by law. The said Company/Publisher must agree that any and all pricing options, combination of books and resources, consumable work texts, web-based resources, digital licenses, and/or other iterations

or versions of textbooks/instructional programs selected for adoption shall be included in the state contract pricing for the textbook/instructional program. **The Company/Publisher agrees that the total contract price for any adopted instructional materials program, including all print materials, digital resources, licenses, and other components of a multi-year instructional materials bundle, shall be paid in full at the time of the initial purchase. No special payment plans, installment agreements, deferred payment schedules, financing arrangements, or other alternative payment structures shall be permitted. Publishers shall not assess additional fees for continued access to any component included in the original bundle during the contract term. Freight for authorized recurring shipments of consumable or replacement materials shall be the only recurring charge permitted under this contract.**

6. DEPOSITORY INVENTORY

That the said Company/Publisher shall establish a depository at the procured regional depository; and the said Company/Publisher shall keep a supply of the said instructional materials in the regional depository sufficient to meet promptly the demands of the MDE, and upon requisition of the MDE shall, transportation charges prepaid, ship said instructional materials at said wholesale prices to various shipping points designated by the MDE and for such service the Company/Publisher shall make no charge except the actual cost of transportation from its depository at the procured regional depository, to the point or points designated. Payment for instructional materials and related shipping for nonpublic schools shall be made directly to the depository by the MDE. Each local public school district will be held responsible for payment of products provided under this contract and all associated shipping charges. The MDE will not be liable for any obligations incurred by the local school districts. That the said Company/Publisher shall have the books to be furnished by it in its depository at the procured regional depository, so that the same shall be available to the schools of the state by [April 1, 2027](#). That the said Company/Publisher will provide public digital access to the adopted instructional materials to be included on the review site.

7. MINIMUM MANUFACTURING STANDARDS AND SPECIFICATIONS

That the said books furnished by said Company/Publisher under this contract shall, at all times, during the existence of the same be manufactured equal to, or more than, the official sample copy and to, or more than, the Official Minimum Manufacturing Standards and Specifications approved by the State Textbook Directors Association, Charleston, SC, April 19, 1950, and adopted by the Mississippi Textbook Board on July 27, 1950, the same specifications being revised annually by the National Association of State Textbook Administrators.

8. UNIFORM OWNERSHIP LABEL

It is further understood and agreed that the said Company/Publisher shall print the uniform ownership label on the inside front cover of the books that are reused annually.

9. TEXTBOOK AGENTS

The said Company/Publisher shall not employ any school officials or employees to act as agents or attorneys for selling textbooks in this state.

10. ENUMERATION OF DUTIES UNDER LAW

The textbook law in Section 37-43-1 through 37-43-59 of the Mississippi Code of 1972 regulating the adoption, purchase and use of uniform textbooks, shall be considered as a part of this contract, and the enumeration in this contract of the duties of the said Company/Publisher shall not be taken as excluding any duties and obligations fixed by the said law or laws, but the said Company/Publisher shall be held to the performance of all the duties and obligations enumerated

in this said law, or laws and to be subject to all the liabilities fixed thereby, whether the same are mentioned in this contract or not.

11. TEXTBOOK MANUFACTURING STANDARDS

Per Mississippi Code, Annotated, of 1972, Section 37-43-23, the said Company/Publisher shall continue to measure up to the same standards as are required in the contract, said standards to include printing, binding, cover boards, mechanical makeup, and any other relevant points as set out in the plans and specifications as fixed by the board. Failure to adhere to this provision by keeping said books up to said standards shall forfeit not only this contract but also all monies paid out for such book or books and also forfeit said books to the Department.

12. UNIFORM PRICING AGREEMENT

The Company/Publisher will reduce prices automatically to the State of Mississippi whenever the same or a similar book is offered for sale at any place in the United States at a price lower than that specified in this contract. It is understood and agreed that where a slight or immaterial variation in the text or a slight or immaterial addition or reduction of the subject matter or number of pages is made therein, the same shall be deemed and considered the same or a similar book. Whether the book is the same or similar book shall be decided by the Department and its decision shall be final.

13. TEXTBOOK PRICING AGREEMENT

That the Company/Publisher is not now furnishing under any contract currently entered into by it with any state, county or school district in the United States where like conditions are now prevailing as in this state and under the laws of this state, as to the method of distributing books to the consumer, the same book or books at prices less than the prices stipulated in this contract.

14. MODIFICATION OR RENEGOTIATION

This agreement may be modified, altered, or changed only by a written agreement signed by the parties hereto. 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.

15. CONTRACT ASSIGNMENT/SUBCONTRACTING

Company/Vendor acknowledges that it was selected by the MDE to perform the services required hereunder based, in part, upon Company/Vendor's special skills and expertise. Company/Vendor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the MDE, which may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of the Company/Vendor's obligations hereunder without the consent of the MDE shall be null and void.

Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the MDE may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

MDE reserves the right to request changes in personnel assigned to the project. The MDE Project Manager must pre-approve any changes in key personnel through the contract term. Substitutions are not permitted without written approval of the MDE Program Project Manager.

16. TERMINATION FOR DEFAULT

(1) **Default.** If the MDE gives the Company/Vendor a notice that the personal or professional services are being provided in a manner that is deficient, the Company/Vendor shall have 30 days to cure the deficiency. If the Company/Vendor fails to cure the deficiency, the MDE may

terminate the contract for default, and the Company/Vendor will be liable for the additional cost to the MDE to procure the personal and professional services from another source. Termination under this paragraph could result in the Company/Vendor being excluded from future contract awards pursuant to Chapter 15 of the Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations. Any termination wrongly labelled as a termination for default shall be deemed a termination for convenience.

(2) **Company/Vendor's Duties.** Notwithstanding termination of the contract and subject to any directions from the Agency Head or designee, the Company/Vendor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Company/Vendor in which the State has an interest.

(3) **Excuse for Nonperformance or Delayed Performance.** Except with respect to defaults of Subcontractors, the Company/Vendor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Company/Vendor to make progress in the prosecution of the work hereunder which endangers such performance) if the Company/Vendor has notified the Agency Head or Designee of the MDE within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a Subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the Company/Vendor shall not be deemed to be in default, unless the services to be furnished by the Subcontractor were reasonably obtainable from other sources in sufficient time to permit the Company/Vendor to meet the contract requirements.

Upon request of the Company/Vendor, the Agency Head or Designee of the MDE shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Company/Vendor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "Subcontractor" means Subcontractor at any tier).

(4) **Erroneous Termination for Default.** If, after notice of termination of the Company/Vendor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the MDE, be the same as if the notice of termination had been issued pursuant to such clause.

(5) **Additional Rights and Remedies.** The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

17. TERMINATION FOR CONVENIENCE

(1) **Termination.** The MDE may, when the interests of the Agency so require, terminate this contract in whole or in part, for the convenience of the Agency. The MDE shall give written notice of the termination to Company/Vendor specifying the part of the contract terminated and when termination becomes effective. Company/Vendor shall incur no further obligations in connection with the terminated work, and on the date set in the notice of termination, Company/Vendor will stop work to the extent specified. Company/Vendor shall complete the

work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(2) **Company/Vendor's Obligations.** The Company/Vendor shall incur no further obligations in connection with the terminated work, and on the date set in the notice of termination, the Company/Vendor will stop work to the extent specified. The Company/Vendor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Company/Vendor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency Head or designee may direct the Company/Vendor to assign the Company/Vendor's right, title, and interest under terminated orders or subcontracts to the State. The Company/Vendor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

18. INDEPENDENT CONTRACTOR STATUS

Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the MDE. Nothing contained herein shall be deemed or construed by the MDE, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the MDE and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the MDE or Contractor hereunder, creates or shall be deemed to create a relationship other than the independent relationship of the MDE and Contractor.

Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the MDE. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the MDE, and the MDE shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees.

The MDE shall not withhold from the contract payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the MDE shall not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the MDE for its employees.

19. ACCESS TO RECORDS

Company/Vendor agrees that the MDE, or any of its duly authorized representatives, at any time during the term of this agreement, shall have access to, and the right to audit and examine any pertinent books, documents, papers, and records of Company/Vendor related to Company/Vendor's charges and performance under this agreement. Such records shall be kept by the Company/Vendor for a period of three (3) years after final payment under this agreement, unless the MDE authorizes their earlier disposition. Company/Vendor agrees to refund to the MDE any overpayment disclosed by any such audit. However, if any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the 3-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it.

20. APPLICABLE LAW

The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of law provisions, and any litigation with respect thereto shall

be brought in the courts of the State. Company/Vendor shall comply with applicable federal, state, and local laws and regulations.

21. COMPLIANCE WITH LAWS

The Company/Vendor understands that the MDE is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, or any other consideration made unlawful by federal, State, or local laws. All such discrimination is unlawful, and the Company/Vendor agrees during the term of the agreement that the Company/Vendor will strictly adhere to this policy in its employment practices and provision of services. The Company/Vendor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

22. PERSONNEL

The Company/Vendor agrees that, at all times, the employees of Company/Vendor furnishing any of the services specified under this agreement shall do so in a proper, workmanlike, and dignified manner.

23. AUTHORITY TO CONTRACT

The Company/Vendor certifies (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) 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 (d) 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.

24. REPRESENTATION REGARDING CONTINGENT FEES

The Company/Vendor represents that it has not retained a person to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in the Company/Vendor's bid or proposal.

25. STATE AGENT OR EMPLOYEE BENEFIT

The Company/Vendor warrants that no elected or appointed officer or other employee of the State of Mississippi 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.

26. AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of the MDE to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing time fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the MDE, the MDE shall have the right upon ten (10) working days written notice to Company/Vendor, to terminate this agreement without damage, penalty, cost or expenses to the MDE of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

27. REPRESENTATION REGARDING GRATUITIES

Contractor represents that it has not, is not, and will not offer, give, or agree to give any employee or former employee of the MDE a gratuity or offer of employment in connection with any approval, disapproval, recommendation, development, or any other action or decision related to the solicitation and resulting contract. Contractor further represents that no employee or former employee of the MDE has or is soliciting, demanding, accepting, or agreeing to accept a gratuity or offer of employment for the reasons previously stated; any such action by an employee or former employee in the future, if any, will be rejected by the contractor. Contractor further represents that it is in compliance with the Mississippi Ethics in Government laws, codified at Mississippi Code Annotated §§ 25-4-101 through 25-4-121, and has not solicited any employee or former employee to act in violation of said law.

28. TRUST

The Company/Vendor represents that it is not a member of, or connected with, any trust. In the event that it is established that this provision has been violated, the contract shall be forfeited, and monies paid out under this contract shall be returned to the state, and all books heretofore purchased under said contract shall be kept by the state or the public school district when purchased the textbooks. (Miss. Code Ann. § 37-43-27).

29. E-VERIFICATION

If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act and will register and participate in the status verification system for all newly hired employees. Mississippi Code Ann. §§ 71-11-1 and 71-11-3. Contractor agrees to provide a copy of each verification upon request of the MDE, subject to approval by any agencies of the United States Government. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject the Contractor to the following: termination of this contract for services 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.

- (1) termination of this contract and exclusion pursuant to Chapter 15 of the Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations;
- (2) 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; or,
- (3) both. In the event of such cancellation/termination, Contractor would also be liable for any additional cost incurred by the State due to Contract cancellation or loss of license or permit to do business in the state.

30. ASSIGNED COPYRIGHT

No copyright is assigned, except as stated by the Company/Publisher.

31. COPYRIGHTS

The Company/Publisher agrees the MDE shall determine the disposition of the title to and the rights under any copyright by Company/Publisher or employees on copyrightable material first produced or composed under this agreement; provided, however, that the parties acknowledge that they do not contemplate any copyrightable material being first produced or composed under this agreement. With respect to all copyrighted (or copyrightable) work not first produced or composed by the Company/Publisher in the performance of this agreement, but which is incorporated in the material furnished under the agreement, the Company/Publisher acknowledges that the MDE and schools purchasing these materials have certain fair use rights

under the United States Copyright Act; however, Company/Publisher does not grant further rights to reproduce any printed materials, and, for digital materials, users' rights are set forth in the Company/Publisher's standards terms of use for access to such materials.

The Company/Publisher further agrees that all material produced and/or delivered under this contract will not, to the best of the Company/Publisher's knowledge, infringe upon the copyright or any other proprietary rights of any third party. Should any aspect of the materials become, or in the Company/Publisher's opinion be likely to become, the subject of any infringement claim or suit, the Company/Publisher shall procure the rights to such material or replace or modify the material to make it non-infringing.

32. DISCLOSURE OF CONFIDENTIAL INFORMATION

In the event that either party to this agreement received 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 confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by State law. This Section shall survive the termination or completion of this agreement. The parties agree that this Section is subject to and superseded by Mississippi Code Ann. §§ 25-61-1, *et seq.*

33. EXCEPTIONS TO CONFIDENTIAL INFORMATION

The Company/Vendor and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("the Disclosing Party") which:

- a. is rightfully known to the recipient prior to negotiations leading to this agreement, other than information obtained in confidence under prior engagements;
- b. is generally known or easily ascertainable by non-parties of ordinary skill in the business of the customer;
- c. is released by the Disclosing Party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
- d. is independently developed by the recipient without any reliance on Confidential Information;
- e. is or later becomes part of the public domain or may be lawfully obtained by the MDE or the Company/Vendor from any non-party; or
- f. is disclosed with the Disclosing Party's prior written consent.

34. BOARD APPROVAL

It is understood that if this contract requires approval by the Mississippi State Board of Education, and this contract is not approved by the Mississippi State Board of Education, it is void, and no payment shall be made hereunder.

35. COMPANY/VENDOR COMPLIANCE WITH LAWS

Company/Vendor understands that the MDE is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful, and Company/Vendor agrees during the term of the agreement that Company/Vendor will strictly adhere to this policy in its employment practices and provision of services.

The Company/Vendor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

Compliance with Miss. Code Ann. § 37-11-81: Since the execution of the original contract, the Mississippi Legislature enacted Miss. Code Ann. § 37-11-81, which charges vendors who provide online or digital content with assuring that the vendor will block, prohibit, and prevent a person from sending, receiving, viewing, or downloading materials that are:

- (i) Child pornography;
- (ii) Materials that depict or promote child sexual exploitation or trafficking;
- (iii) Obscene materials;
- (iv) Inappropriate materials depicting or dealing with matters of sex, cruelty, and violence in a manner likely to be injurious or harmful to a child; or
- (v) Materials that are sexually oriented

Miss. Code Ann. § 37-11-81(2)(c) defines which material is considered obscene, and § 37-11-91(3) lays out the penalties for failing to abide by this law. Both MDE and Contractor agree to abide by the regulations laid out in Miss. Code Ann. § 37-11-81.

36. INDEMNIFICATION

To the fullest extent allowed by law, the Company/Vendor shall indemnify, defend, save and hold harmless, protect, and exonerate the agency, its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorney's fees, arising out of or caused by the Company/Vendor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement. In the State's sole discretion, upon approval of the Office of the Mississippi Attorney General, the Company/Vendor may be allowed to control the defense of any such claim, suit, etc. In the event the Company/Vendor defends said claim, suit, etc., the Company/Vendor shall use legal counsel acceptable to the Office of the Mississippi Attorney General. The Company/Vendor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. The Company/Vendor shall not settle any claim, suit, etc., without the concurrence of the Office of the Mississippi Attorney General, which shall not be unreasonably withheld.

37. REQUIRED PUBLIC RECORDS AND TRANSPARENCY

Upon execution of a contract, the provisions of the contract which contain the personal or professional services provided, the unit prices, the overall price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information pursuant to Mississippi Code Annotated § 25-61-9(7). The contract shall be posted publicly on www.transparency.ms.gov and shall be available for at the Agency for examination, inspection, or reproduction by the public. The contractor acknowledges and agrees that the MDE and this contract are subject to the Mississippi Public Records Act of 1983 codified at Mississippi Code Annotated §§ 25-61-1, et seq. and its exceptions, Mississippi Code Annotated § 79-23-1, and the Mississippi Accountability and Transparency Act of 2008, codified at Mississippi Code Annotated §§ 27-104-151, et seq.

38. CONTRACTOR PERSONNEL

The MDE shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by the Contractor. If the MDE reasonably rejects staff or subcontractors, the Contractor shall provide replacement staff or subcontractors who are satisfactory to the MDE in a timely manner and at no additional cost to the MDE. The day-to-day supervision and control of Contractor's employees and subcontractors is the sole responsibility of Contractor.

Contractor agrees that, at all times, the employees of the contractor furnishing or performing any of the services specified under this agreement shall do so in a proper, workmanlike, and dignified manner.

39. INFORMATION DESIGNATED BY CONTRACTOR AS CONFIDENTIAL

Any disclosure of those materials, documents, data, and other information which Company/Vendor has designated in writing as proprietary and confidential shall be subject to the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1. As provided in the contract, the personal or professional services to be provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information.

Any liability resulting from the wrongful disclosure of confidential information on the part of Contractor or its subcontractor(s) shall rest with Contractor. Disclosure of any confidential information by Contractor or its subcontractor(s) without the express written approval of the MDE may result in the immediate termination of this agreement.

40. LEGAL AND TECHNICAL SUPPORT

The Company/Vendor shall utilize its knowledge and understanding of applicable legal standards and comply with recognized professional standards and generally accepted measurement principles applicable to assessments and uses of the type described in this contract, including but not limited to standards relating to validity and reliability. The Company/Vendor shall consult with the MDE concerning its implementation of the requirements of this section. In the event of a challenge in which the validity or reliability of the use of an assessment developed under this contract is an issue (other than a challenge based on infringement of copyright or other proprietary rights of a third party), the Company/Vendor shall cooperate with the MDE and/or the State of Mississippi in the defense of the assessment and shall provide reasonable technical and legal support with regard to the Company/Vendor's activities under this contract without additional charges to the MDE or the State.

41. TRADE SECRETS, COMMERCIAL AND FINANCIAL INFORMATION

It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

42. TERMINATION UPON BANKRUPTCY

This contract may be terminated in whole or in part by the MDE upon written notice to the Company/Vendor, if the Company/Vendor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by the Company/Vendor of an assignment for the benefit of its creditors. In the event of such termination, the Company/Vendor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

43. UNSATISFACTORY WORK

If, at any time during the contract term, the service performed, or work done by the Company/Vendor is considered by the Agency to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, the Company/Vendor shall, on being notified by the Agency, immediately correct such deficient

service or work. In the event the Company/Vendor fails, after notice, to correct the deficient service or work immediately, the Agency shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of the Company/Vendor.

44. CONFIDENTIALITY

The MDE is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act of 1983. Miss. Code Ann. §§ 25-61-1 et seq. If a public records request is made for any information provided to the MDE by Contractor, the MDE shall follow provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information – unless Contractor has previously indicated the information is not trade secret or confidential commercial and financial information. The MDE shall not be liable to the Contractor for disclosure of information required by court order or required by law.

45. CONTRACT RIGHTS

Contract rights do not vest in any party until a contract is legally executed. The MDE is under no obligation to award a contract following the issuance of this solicitation.

46. THIRD PARTY ACTION NOTIFICATION

Contractor shall give the customer prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this agreement.

47. STOP WORK ORDER

The MDE may, by written order to the Contractor at any time, require the Contractor to stop all or any part of the work called for by this contract. This order shall be for a period of time specified by the MDE. Upon receipt of such an order, Contractor shall forthwith comply with its terms and take all reasonable steps to minimize any further cost to the MDE. Upon expiration of the stop work order, Contractor shall resume providing the services which were subject to the stop work order, unless the MDE has terminated that part of the agreement or terminated the agreement in its entirety. The MDE is not liable for payment for services which were not rendered due to the stop work order.

48. STATE PROPERTY

Contractor will be responsible for the proper custody and care of any state-owned property furnished for Contractor's use in connection with the performance of this agreement. Contractor will reimburse the state for any loss or damage, normal wear and tear excepted.

49. RENEWAL OF CONTRACT

The contract may be renewed at the discretion of the MDE for the term specified in the solicitation under the same prices, terms, and conditions as in the original contract. The total number of renewal years permitted shall not exceed the term specified in the solicitation.

50. RECOVERY OF MONEY

Whenever, under the contract, any sum of money shall be recoverable from or payable by Contractor to the MDE, the same amount may be deducted from any sum due to Contractor under the contract or under any other contract between Contractor and the MDE. The rights of the MDE are in addition and without prejudice to any other right the MDE may have to claim the amount of any loss or damage suffered by the MDE on account of the acts or omissions of the Contractor.

51. PRICE CERTIFICATION

Any Offeror submitting a response to this solicitation agrees and certifies that it will honor its pricing and all terms and conditions herein for the duration of the contract term described in this solicitation. By submitting a response hereto, Offeror agrees to accept a contract pursuant to the requirements of Section 14.15 of the Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations if so requested by the procuring Agency.

52. PRICE ADJUSTMENT

(1) Price Adjustment Methods. Any adjustments in contract price, pursuant to a clause in this contract, shall be made in one or more of the following ways:

- a. must be stated in the solicitation describing the method in which any price adjustment will be calculated, the triggering event that makes the price adjustment clause be enacted.
- b. by agreement on a fixed price adjustment before commencement of the
- c. Additional performance;
- d. by unit prices specified in the contract;
- e. by the costs attributable to the event or situation covered by the clause, plus
- f. appropriate profit or fee, all as specified in the contract; or,
- g. by the price escalation clause.

(2) Submission of Cost or Pricing Data. Contractor shall provide cost or pricing data for any price adjustments.

53. INFRINGEMENT INDEMNIFICATION

Contractor warrants that the materials and deliverables provided to the MDE under this agreement, and their use by the MDE, will not infringe or constitute an infringement of any copyright, patent, trademark, or other proprietary right. Should any such items become the subject of an infringement claim or suit, Contractor shall defend the infringement action and/or obtain for the MDE the right to continue using such items without additional cost to the Agency. Should Contractor fail to obtain for the MDE the right to use such items, Contractor shall suitably modify them to make them non-infringing or substitute equivalent software or other items at Contractor's expense.

In the event the above remedial measures cannot possibly be accomplished, and only in that event, Contractor may require the MDE to discontinue using such items, in which case Contractor will refund to the MDE the fees previously paid by the MDE for the items the customer may no longer use, and shall compensate the MDE for the lost value of the infringing part to the phase in which it was used, up to and including the contract price for said phase. Said refund shall be paid within 10 business days of notice to the MDE to discontinue said use.

Scope of Indemnification: Provided that the MDE promptly notifies Contractor in writing of any alleged infringement claim of which it has knowledge, Contractor shall defend, indemnify, and hold harmless the MDE against any such claims, including but not limited to any expenses, costs, damages and attorney fees that a court finally awards for infringement based on the programs and deliverables provided under this agreement.

In the MDE's sole discretion, upon approval of the Office of the Mississippi Attorney General and the MDE, the Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the Office of the Mississippi Attorney General and the MDE. Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the MDE shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc., without the concurrence

of the Office of the Mississippi Attorney General and the MDE, which shall not be unreasonably withheld.

54. FAILURE TO DELIVER

In the event of failure of the Contractor to deliver services in accordance with the contract terms and conditions, the MDE, after due oral or written notice, may procure the services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the MDE may have.

55. FAILURE TO ENFORCE DOES NOT CONSTITUTE WAIVER

Failure by the MDE at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the MDE to enforce any provision at any time in accordance with its terms.

56. EXCEPTIONS TO SOLICITATION

Offerors taking exception to any part of the solicitation shall clearly indicate such exceptions in its offer. Failure to indicate any exception will be interpreted as the Offeror's intent to comply fully with the requirements as written. Conditional or qualified offers, unless specifically allowed, shall be subject to rejection in whole or in part.

57. EXPENSES INCURRED IN THE PROCUREMENT PROCESS

All parties participating in the procurement process with regard to this solicitation shall bear their own costs of participation, pursuant to Section 1.4.4 of the Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations.

58. ENTIRE AGREEMENT

This agreement, including all contract documents, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, irrespective of whether written or oral. This agreement may be altered, amended, or modified only by a written document executed by the MDE and Contractor. Contractor acknowledges that it has thoroughly read all contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this agreement shall not be construed or interpreted in favor of or against the MDE or Contractor on the basis of draftsmanship or preparation hereof.

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