

Memorandum for General RFP Configuration

To: Vendor with current valid proposal for General RFP #3616 for Computer Hardware and Software

From: David L. Litchliter 

CC: ITS Project File Number 38876

Date: August 26, 2010

Subject: Letter of Configuration (LOC) Number 38876 for the procurement of wireless access and Network Access Control (NAC) equipment for the Mississippi Department of Information Technology Services (ITS)

Contact Name: Paula Conn

Contact Phone Number: 601-359-4411

Contact E-mail Address: Paula.Conn@its.ms.gov

The Mississippi Department of Information Technology Services (ITS) is seeking the hardware, software, and services described below. Our records indicate that your company currently has a valid proposal on file at ITS in response to General RFP #3616 for Computer Hardware and Software. Our preliminary review of this proposal indicates that your company offers products, software, and/or services that may meet the requirements of this project; therefore, we are requesting your configuration assistance for the components described below.

1. GENERAL LOC INSTRUCTIONS

- 1.1 Beginning with Item 2, label and respond to each outline point as it is labeled in the LOC.
- 1.2 The Vendor must respond with "ACKNOWLEDGED," "WILL COMPLY," or "AGREED" to each point in the LOC including the attached *Standard Purchase Agreement*, (Attachment D), as follows:
 - 1.2.1 "ACKNOWLEDGED" should be used when a Vendor response or Vendor compliance is not required. "ACKNOWLEDGED" simply means the Vendor is confirming to the State that he read the statement. This is commonly used in sections where the agency's current operating

environment is described or where general information is being given about the project.

- 1.2.2 “WILL COMPLY” or “AGREED” are used interchangeably to indicate that the Vendor will adhere to the requirement. These terms are used to respond to statements that specify that a Vendor or Vendor’s proposed solution must comply with a specific item or must perform a certain task.
- 1.3 If the Vendor cannot respond with “ACKNOWLEDGED,” “WILL COMPLY,” or “AGREED,” then the Vendor must respond with “EXCEPTION.” (See instructions in Item 11 regarding Vendor exceptions.)
- 1.4 Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested in addition to “WILL COMPLY” or “AGREED”.
- 1.5 In addition to the above, Vendor must provide explicit details as to the manner and degree to which the proposal meets or exceeds each specification.

2. GENERAL OVERVIEW AND BACKGROUND

ITS is seeking the Wireless Access and NAC equipment listed in Attachment A. This equipment will be installed at 3775 Eastwood Drive in Jackson, Mississippi. The buildings, currently under construction by the Department of Finance and Administration’s Bureau of Building, Grounds, and Real Property Management (BOB), will be occupied by ITS during the time frame ranging from October 1 to December 31, 2010.

3. PROCUREMENT PROJECT SCHEDULE

Task	Date
Release of LOC	Thursday, August 26, 2010
Deadline for Vendors’ Written Questions	Tuesday, August 31, 2010, 3:00 P.M. CDT
Addendum with Vendors’ Questions and Answers	Thursday, September 2, 2010
Proposals Due	Monday, September 13, 2010, 3:00 P.M. CDT
Proposal Evaluation	September 14—16, 2010
Notification of Award	Friday, September 17, 2010
Contract Negotiations	September 20—October 1, 2010
Delivery of Equipment	Monday, November 1, 2010
Installation	See 4.5
Acceptance	30 calendar days from completion of installation

4. STATEMENTS OF UNDERSTANDING

- 4.1 The Vendor must provide pricing for all hardware, software, maintenance, and support for the proposed solution.
- 4.2 Proposed equipment must be new from the manufacturer and qualify for warranty and maintenance services.
- 4.3 Vendor must be aware that ITS reserves the right to make additional purchases at the proposed prices for a six (6) month period.
- 4.4 Vendor must be aware that the specifications detailed below are minimum requirements. Should Vendor choose to exceed the requirements, Vendor must indicate in what manner the requirements are exceeded.
- 4.5 It is the State's intention that the hardware and software ship to the attention of Roger Graves with ITS at 3775 Eastwood Drive, Jackson, Mississippi, 39211 on or before November 1, 2010. The installation of the equipment will commence upon notification by ITS.
- 4.6 Vendor acknowledges that if awarded, it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Vendor will agree to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State.

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

Vendor acknowledges that violating the E-Verify Program (or successor thereto) requirements subjects Vendor to the following: (a) cancellation of any state or public contract and ineligibility for any state or public contract for up to three (3) years, with notice of such cancellation being made public, or (b) the loss of any license, permit, certification or other document granted to Vendor by an agency, department or governmental entity for the right to do business in Mississippi for

up to one (1) year, or (c) both. Vendor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

- 4.7 From the issue date of this LOC until a Vendor is selected and the selection is announced, responding Vendors or their representatives may not communicate, either orally or in writing regarding this LOC with any statewide elected official, state officer or employee, member of the legislature or legislative employee except as noted herein. To ensure equal treatment for each responding Vendor, all questions regarding this LOC must be submitted in writing to the State's Contact Person for the selection process, no later than the last date for accepting responding Vendor questions provided in this LOC. All such questions will be answered officially by the State in writing. All such questions and answers will become addenda to this LOC. **Vendors failing to comply with this requirement will be subject to disqualification.**

4.7.1 The State contact person for the selection process is: Paula Conn, Technology Consultant, 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201, 601-359-4411, Paula.Conn@its.ms.gov.

4.7.2 Vendor may consult with State representatives as designated by the State contact person identified in 4.7.1 above in response to State-initiated inquiries. Vendor may consult with State representatives during scheduled oral presentations and demonstrations excluding site visits.

- 4.8 Subject to acceptance by ITS, the Vendor acknowledges that by submitting a proposal, the Vendor is contractually obligated to comply with all items in this LOC, including the Standard Purchase Agreement, Attachment D if included herein, except those listed as exceptions on the Proposal Exception Summary Form. If no Proposal Exception Summary Form is included, the Vendor is indicating that he takes no exceptions. This acknowledgement also contractually obligates any and all subcontractors that may be proposed. Vendors may not later take exception to any point during contract negotiations.

5. FUNCTIONAL/TECHNICAL SPECIFICATIONS

- 5.1 Vendor must provide pricing for the equipment listed in Attachment A, *Product List and Cost Proposal*.
- 5.2 Vendor must detail (by part number and/or description) any items that are functionally equivalent and substituted for the item listed in Attachment A.

- 5.3 If any component(s) necessary for operation of the requested system is omitted from Vendor's proposal, Vendor must be willing to provide the component(s) at no additional cost. This includes, but is not limited to, all cabling, connectors, etc. necessary to render the configuration fully operational. Vendor must indicate any items to be provided by ITS.
- 5.4 In addition to providing the equipment listed in Attachment A, the awarded Vendor will conduct a site survey at both the new ITS office building and the new ITS data center to determine appropriate placement and installation of the wireless access points. The site survey will occur after ITS personnel occupy the buildings.

6. INSTALLATION

- 6.1 Vendor must provide not-to-exceed cost for installation (see Attachment A). Installation will include: unpacking, setup, physical installation of the equipment, installation of peripherals, and meeting with ITS staff to verify installation requirements.
- 6.2 Vendor must indicate if Vendor personnel or manufacturer personnel will provide the installation. If Vendor personnel, Vendor must provide documentation substantiating authorization to provide installation.
- 6.3 Vendor must detail the installation approach and plan. The NAC Equipment will be installed prior to and/or during the move into the new building. The Wireless Access equipment will be installed after the site survey is completed.
- 6.4 The Vendor must include a price for installation of the Wireless Equipment and a separate price for the installation of the NAC Equipment (see Attachment A).

7. WARRANTY/MAINTENANCE

- 7.1 Vendors must state the warranty period for each item proposed, during which time maintenance need not be paid. Warranty must include at a minimum parts and labor.
- 7.2 If warranty period is less than three years, Vendor must provide pricing to extend the warranty to three years for each item proposed.
- 7.3 Vendors must detail what is included in the standard warranty for each item proposed.

- 7.4 Vendor must indicate whether warranty/maintenance service is available past the three years for each item proposed. Specify annual cost, if any, and period of extension.
- 7.5 Vendor must state if warranty is on-site or depot for each item proposed.
 - 7.5.1 If depot, Vendor must indicate maximum turn around time from shipment of hardware.
 - 7.5.2 If on-site, when the Vendor receives an initial service call on products, who makes the initial on-site call?
 - 7.5.3 If on-site, then Vendor must provide details on how a call is initiated and all steps involved in getting the item repaired.
- 7.6 Vendor must indicate what the response time will be for responding to the initial call, coming on-site, and providing a resolution. This detail must include an average response time as well as a not-to-exceed time-frame for each type of response.
- 7.7 Vendor must specify escalation procedures for the State should a warranty call not be handled to the State's satisfaction.

8. MANUFACTURER DIRECT MAINTENANCE

- 8.1 ITS understands that the maintenance requested in this LOC may be provided directly by the manufacturer. If Vendor is the named manufacturer and will be supplying the maintenance services directly, Items 8.1.4 through 8.1.13 do not have to be completed.
 - 8.1.1 Responding Vendor must clarify whether he is the named manufacturer and will be supplying the maintenance services directly or whether he is a third party reseller selling the maintenance services on behalf of the manufacturer.
 - 8.1.2 Responding Vendor must explain his understanding of when or whether the manufacturer will ever sell the maintenance services directly and, if so, under what circumstances.
 - 8.1.2.1 If the responding Vendor to this LOC will only be reselling manufacturer's maintenance services, it is ITS' understanding that this is basically a "pass through" process.

- 8.1.2.2 Please provide a detailed explanation of the relationship of who will be providing the requested maintenance, to whom the purchase order is made, and to whom the remittance will be made. If there is a difference in the year one maintenance purchase versus subsequent years of maintenance, the responding Vendor must clarify and explain.
- 8.1.3 Manufacturer Direct Maintenance when sold directly through the manufacturer: Fixed Cost
- 8.1.3.1 If responding Vendor is the direct manufacturer, he must propose annual fixed pricing for three years of the requested maintenance. Vendor must provide all details of the maintenance/support and all associated costs.
- 8.1.3.2 It is ITS' preference that the Manufacturer's proposal is a not-to-exceed firm commitment. In the event that the manufacturer cannot commit to a fixed cost for the subsequent years of maintenance after year one, Manufacturer must specify the annual maintenance increase ceiling offered by his company on the proposed products. Vendor must state his policy regarding increasing maintenance charges. Price escalations for Maintenance shall not exceed a 5% increase per year.
- 8.1.4 Manufacturer Direct Maintenance when sold through 3rd Party: Fixed Cost-Plus Percentages
- 8.1.4.1 In the case of a third-party "pass-through" ITS realizes that the responding reseller may not be able to guarantee a fixed price for maintenance after year one since his proposal is dependent on the manufacturer's pricing or possibly on a distributor's pricing.
- 8.1.4.2 It is ITS' preference that the responding reseller work with the manufacturer to obtain a commitment for a firm fixed price over the requested maintenance period.
- 8.1.5 In the event that the responding reseller cannot make a firm fixed maintenance proposal for all the years requested, the responding reseller is required to provide a fixed percentage for his mark-up on the manufacturer direct maintenance that he is selling as a third party reseller in lieu of a price ceiling based on a percentage yearly increase.

- 8.1.5.1 In this scenario, Resellers must include in the Pricing Spreadsheets the price the Vendor pays for the maintenance and the percentage by which the final price to the State of Mississippi exceeds the Vendor's cost for the maintenance (i.e. cost-plus percentage).
- 8.1.5.2 Alternatively, Resellers may propose a fixed percentage for their mark down on the manufacturer's direct maintenance based on a national benchmark from the manufacturer, such as GSA, Suggested Retail Price (SRP) or the manufacturer's web pricing. This national benchmark pricing must be verifiable by ITS during the maintenance contract.
- 8.1.6 The cost-plus/minus percentage will be fixed for the term specified in the LOC. To clarify, the State's cost for the products will change over the life of the award if the price the Vendor must pay for a given product increases or decreases. However, the percentage over Vendor cost which determines the State's final price WILL NOT change over the life of the award.
- 8.1.7 ITS will use this percentage in evaluating cost for scoring purposes.
- 8.1.8 The cost-plus/minus percentage applies to new products added in the categories covered by the Cost Matrix as well as the products that are listed.
- 8.1.9 Periodic Cost-Plus Verification - At any time during the term of this contract, the State reserves the right to request from the awarded Vendor, access to and/or a copy of the Manufacturer's Base Pricing Structure for pricing verification. This pricing shall be submitted within seven (7) business days after the State's request. Failure to submit this pricing will be cause for Contract Default.
 - 8.1.9.1 Vendor Cost is defined as the Vendor's invoice cost from the distributor or manufacturer.
 - 8.1.9.2 The Vendor's Proposed State Price is defined as the Vendor Cost plus the proposed percentage mark-up.
- 8.1.10 Vendor must also indicate how future pricing information will be provided to the State during the term of the contract.
- 8.1.11 Vendor must indicate from whom he buys the maintenance: directly from the manufacturer or from what distributor.

- 8.1.12 Vendor must be aware that only price increases resulting from an increase in price by the manufacturer or distributor will be accepted. The Vendor's proposed percentage markup or markdown for these items, as well as the Vendor's percentage markup or markdown for any new items, MUST stay the same as what was originally proposed. Vendor must provide ITS with the suggested retail price.
- 8.1.13 Pricing proposed for the State MUST equal the Vendor's invoice cost from the distributor or manufacturer plus the maximum percentage markup that the reseller will add OR the manufacturer's national benchmark minus the cost percentage proposed.

9. REFERENCES

- 9.1 Vendor must provide at least three (3) references. A form for providing reference information is attached as Attachment B. ITS requires that references be from completed and/or substantially completed jobs that closely match this request. Reference information must include, at a minimum,
 - 9.1.1 Entity
 - 9.1.2 Supervisor's name
 - 9.1.3 Supervisor's telephone number
 - 9.1.4 Supervisor's e-mail address
 - 9.1.5 Length of Project
 - 9.1.6 Brief Description of Project to include Vendor's specific role in the project
- 9.2 The Vendor must make arrangements in advance with the account references so that they may be contacted at the Project team's convenience without further clearance or Vendor intercession. Failure to provide this information in the manner described may subject the Vendor's proposal to being rated unfavorably relative to these criteria or disqualified altogether at the State's sole discretion.
- 9.3 References that are no longer in business cannot be used. Inability to reach the reference will result in that reference deemed non-responsive.
- 9.4 Vendors receiving negative references may be eliminated from further consideration.

- 9.5 ITS reserves the right to request information about the Vendor from any previous customer of the Vendor of whom ITS or ITS is aware, even if that customer is not included in the Vendor's list of references.

10. ADDITIONAL REQUIREMENTS

- 10.1 ITS acknowledges that the specifications within this LOC are not exhaustive. Rather, they reflect the known requirements that must be met by the proposed system. Vendors must specify, here, what additional components may be needed and are proposed in order to complete each configuration.
- 10.2 Vendor must specify the discounted price for each item.
- 10.3 Freight is FOB destination. No itemized shipping charges will be accepted.
- 10.4 Vendor must provide all technical specifications and manuals (documentation) at the point of sale.
- 10.5 If Vendor proposes more than one alternative (no more than two), Vendor is responsible for identifying the alternative believed to be the best fit to meet the specified requirements.
- 10.6 When completing Attachment A, *Product List and Cost Proposal Form*, Vendor must provide a cost for each item, even if the cost is \$0.00. Do not leave any cost fields blank. Though not required, Vendors are encouraged to submit cost information using the MS Excel Spreadsheet that is included as a separate file.
- 10.7 Vendor must state qualifications to include organization of the company, number of years in business, number of years products/services of similar scope/size to this project have been sold, partnerships, etc.
- 10.8 A properly executed contract is a requirement of this LOC. After an award has been made, it will be necessary for the winning Vendor to execute a Purchase Agreement with ITS. A *Standard Purchase Agreement*, Attachment D, has been attached for your review. The inclusion of this Purchase Agreement does not preclude ITS from, at its sole discretion, negotiating additional terms and conditions with the selected Vendor(s) specific to the project(s) covered by this LOC. If Vendor can not comply with any term or condition of this Purchase Agreement, Vendor must list and explain each specific exception on the *Proposal Exception Summary Form*, Attachment C, explained in Item 11 and attached to this LOC. Winning Vendor must be willing to sign the attached Purchase Agreement within 10 working days of the notice of award. If the Purchase Agreement is not executed within the 10 working day period, ITS reserves the

right to terminate negotiations with the winning Vendor and proceed to negotiate with the next lowest and best Vendor in the evaluation.

- 10.9 Vendor must provide the state of incorporation of the company and a name, title, address, telephone number and e-mail for the "Notice" article of the contract.

11. PROPOSAL EXCEPTIONS

- 11.1 Vendor must return the attached *Proposal Exception Summary Form*, Attachment C, with all exceptions listed and clearly explained or state "No Exceptions Taken." If no Proposal Exception Summary Form is included, the Vendor is indicating that no exceptions are taken.
- 11.2 Unless specifically disallowed on any specification herein, the Vendor may take exception to any point within this memorandum, including a specification denoted as mandatory, as long as the following are true:
- 11.2.1 The specification is not a matter of State law;
 - 11.2.2 The proposal still meets the intent of the procurement;
 - 11.2.3 A *Proposal Exception Summary Form* (Attachment C) is included with Vendor's proposal; and
 - 11.2.4 The exception is clearly explained, along with any alternative or substitution the Vendor proposes to address the intent of the specification, on the *Proposal Exception Summary Form* (Attachment C).
- 11.3 The Vendor has no liability to provide items to which an exception has been taken. ITS has no obligation to accept any exception. During the proposal evaluation and/or contract negotiation process, the Vendor and ITS will discuss each exception and take one of the following actions:
- 11.3.1 The Vendor will withdraw the exception and meet the specification in the manner prescribed;
 - 11.3.2 ITS will determine that the exception neither poses significant risk to the project nor undermines the intent of the procurement and will accept the exception;
 - 11.3.3 ITS and the Vendor will agree on compromise language dealing with the exception and will insert same into the contract; or,

- 11.3.4 None of the above actions is possible, and ITS either disqualifies the Vendor's proposal or withdraws the award and proceeds to the next ranked Vendor.
- 11.4 Should ITS and the Vendor reach a successful agreement, ITS will sign adjacent to each exception which is being accepted or submit a formal written response to the Proposal Exception Summary responding to each of the Vendor's exceptions. The Proposal Exception Summary, with those exceptions approved by ITS, will become a part of any contract on acquisitions made under this procurement.
- 11.5 An exception will be accepted or rejected at the sole discretion of the State.
- 11.6 The State desires to award this LOC to a Vendor or Vendors with whom there is a high probability of negotiating a mutually agreeable contract, substantially within the standard terms and conditions of the State's LOC, including the *Standard Purchase Agreement*, Attachment D, if included herein. As such, Vendors whose proposals, in the sole opinion of the State, reflect a substantial number of material exceptions to this LOC, may place themselves at a comparative disadvantage in the evaluation process or risk disqualification of their proposals.
- 11.7 For Vendors who have successfully negotiated a contract with ITS in the past, ITS requests that, prior to taking any exceptions to this LOC, the individual(s) preparing this proposal first confer with other individuals who have previously submitted proposals to ITS or participated in contract negotiations with ITS on behalf of their company, to ensure the Vendor is consistent in the items to which it takes exception.
- 12. SCORING METHODOLOGY**
- ITS will use cost to determine the lowest and best proposal. Please note that failure to follow the instructions found in this LOC may result in Vendor proposal being rejected, regardless of cost.
- 13. INSTRUCTIONS TO SUBMIT PRODUCT AND COST INFORMATION**
- Please use the attached *Product List and Cost Proposal* (Attachment A) to provide cost information. Follow the instructions on the form. Incomplete forms will not be processed.
- 14. DELIVERY INSTRUCTIONS**
- 14.1 **Vendor must deliver the response to Paula Conn at ITS no later than Monday, September 13, 2010, at 3:00 P.M. (Central Time).** Responses may be delivered by hand, via regular mail, overnight delivery, e-mail, or by fax. Fax

number is (601) 354-6016. ITS WILL NOT BE RESPONSIBLE FOR DELAYS IN THE DELIVERY OF PROPOSALS. It is solely the responsibility of the Vendor that proposals reach ITS on time. Vendors should contact Paula Conn to verify the receipt of their proposals. Proposals received after the deadline will be rejected.

- 14.2 If you have any questions concerning this request, please e-mail Paula Conn of ITS at Paula.Conn@its.ms.gov. **Any questions concerning the specifications detailed in this LOC must be received no later than Tuesday, August 31, 2010, at 3:00 P.M. (Central Time).**

Enclosures: Attachment A, *Product List and Cost Proposal*
Attachment B, *Reference Information Form*
Attachment C, *Proposal Exception Summary Form*
Attachment D, *Standard Purchase Agreement*

**ATTACHMENT A
PRODUCT LIST AND COST PROPOSAL**

**Company
Name:** _____

Date: _____

Contact Name: _____

Phone #: _____

Contact E-mail: _____

MFG#	DESCRIPTION	QTY	UNIT COST	EXTENDED COST	WARRANTY PERIOD	EXTENDED POST-WARRANTY COST
AIR-CT5508-50-K9	5508 Series Controller for up to 50 APs	1				
AIR-PWR-CORD-NA	AIR Line Cord, North America	1				
GLC-T=	1000Base-T SFP	4				
LIC-CT5508-50	50 AP Base License	1				
LIC-CT5509-BASE	Base Software License	1				
SWC5500K9-70	Cisco Unified Wireless controller SW Release 7.0	1				
CON-SNT-CT0850	SMARTNET 8x5xNBD 5508 Series Controller	1				
AIR-CAP3502I-AK910	802.11a/g/n Controller-based 10APs w/CleanAir; Int; A Reg Domain	5				
AIR-CAP3502I-ABULK	BOM Level Bulk Pack PID for -A	50				
WCS-PLUS-UPG-100X	Cisco WCS Plus Upgrade for 100 APs-Promo for AIR3500 EcoPack	5				
S3G1RK9W8-12423JA	Cisco 3500 Series IOS Wireless LAN Controller-based Recovery	5				
CON-SAU-WCSPU100	SW App Supp + Upgrade Cisco WCS Plus Upgrade	1				
CON-SNT-C352IA10	SMARTNET 8x5xNBD 802.11a/g/n Controller-based 10APs w/CleanAir	5				
CON-SNT-CAP352IA	SMARTNET 8x5xNBD 802.11a/g/n Controller-based AP w/CleanAir; Int; A Reg Domain	50				

**ATTACHMENT B
REFERENCE INFORMATION FORM**

The information provided below will be used to contact references.

Entity	
Supervisor's Name	
Supervisor's Title	
Supervisor's Telephone #	
Supervisor's E-Mail Address	
Length of Project	
Brief Description of Project	

Entity	
Supervisor's Name	
Supervisor's Title	
Supervisor's Telephone #	
Supervisor's E-Mail Address	
Length of Project	
Brief Description of Project	

Entity	
Supervisor's Name	
Supervisor's Title	
Supervisor's Telephone #	
Supervisor's E-Mail Address	
Length of Project	
Brief Description of Project	

ATTACHMENT C
PROPOSAL EXCEPTION SUMMARY FORM

ITS LOC Reference	Vendor Proposal Reference	Brief Explanation of Exception	ITS Acceptance (sign here only if accepted)
(Reference specific outline point to which exception is taken)	(Page, section, items in Vendor's proposal where exception is explained)	(Short description of exception being made)	

ATTACHMENT D
STANDARD PURCHASE AGREEMENT
PROJECT NUMBER 38876
PURCHASE AGREEMENT
BETWEEN
INSERT VENDOR NAME
AND
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY 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 ADDRESS** (hereinafter referred to as "Seller"), and Mississippi Department of Information Technology Services having its principal place of business at 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201 (hereinafter referred to as "ITS" and/or "Purchaser").

WHEREAS, Purchaser, pursuant to Letter of Configuration Number 38876 dated **INSERT DATE OF PUBLICATION** (hereinafter referred to as "LOC"), based on General Request for Proposals ("RFP") No. 3616, requested proposals for the acquisition of wireless access and NAC equipment and software (hereinafter referred to as "Products") as listed in Exhibit A which is attached hereto and incorporated herein; 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 This Agreement will become effective on the date it is signed by all parties and will continue in effect until all tasks required herein, including any post warranty maintenance/support specified in Exhibit A, have been completed. Seller agrees to complete all tasks required under this Agreement, with the exception of warranty service, on or before the close of business on November 1, 2010, or within such other period as may be agreed to by the parties.

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 and the issuance by ITS of the CP-1 Acquisition Approval Document.

ARTICLE 2 FURNISHING OF EQUIPMENT

2.1 Subject to the terms and conditions set forth herein, Seller agrees to provide and Purchaser agrees to buy as needed, the Products listed in the attached Exhibit A 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 from ITS

has been obtained. Purchaser shall submit a purchase order signed by a representative of Purchaser itemizing the Products 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 a period of six (6) months from the effective date of this Agreement. In the event there is a national price decrease of the Products bid during this time, Seller agrees to extend the new, lower pricing to Purchaser.

2.2 The Products provided by Seller shall meet or exceed the minimum specifications set forth in the LOC, General RFP No. 3616 and the Seller's Proposals in response thereto.

ARTICLE 3 DELIVERY, RISK OF LOSS, INSTALLATION AND ACCEPTANCE

3.1 Seller shall deliver the Products to the location specified by Purchaser and pursuant to the delivery schedule set forth by Purchaser.

3.2 Seller shall assume and shall bear the entire risk of loss and damage to the Products from any cause whatsoever while in transit and at all times throughout its possession thereof.

3.3 Seller shall complete installation of the Products pursuant to the requirements set forth in the LOC. Seller acknowledges that installation shall be accomplished with minimal interruption of Purchaser's normal day to day operations.

3.4 Seller shall be responsible for replacing, restoring or bringing to at least original condition any damage to floors, ceilings, walls, furniture, grounds, pavements, sidewalks, and the like caused by its personnel and operations during the installation, subject to final approval of ITS. The repairs will be done only by technicians skilled in the various trades involved, using materials and workmanship to match those of the original construction in type and quality.

3.5 Seller shall be responsible for installing all equipment, cable and materials in accordance with all State, Federal and industry standards for such items.

3.6 Purchaser shall accept or reject the Products provided by Seller after a thirty (30) calendar day testing period utilizing testing criteria developed by Purchaser. During the acceptance period, Purchaser shall have the opportunity to evaluate and test the Products to confirm that it performs without any defects and performs pursuant to the specifications set forth in the LOC and General RFP No. 3616. Purchaser shall notify Seller in writing of its acceptance of the Products.

3.7 In the event the Product fails to perform as stated above, Purchaser shall notify Seller. Seller shall, within two (2) working days and at Seller's sole expense, correct the defects identified by Purchaser or replace the defective Product. Purchaser reserves the right to return the defective Product to Seller at the Seller's expense and to cancel this Agreement.

ARTICLE 4 TITLE TO EQUIPMENT

Title to the equipment provided under this Agreement shall pass to Purchaser upon its acceptance of the equipment.

ARTICLE 5 CONSIDERATION AND METHOD OF PAYMENT

5.1 Once the Products have been accepted by Purchaser as prescribed in Article 3 herein, Seller shall submit an invoice for the cost and shall certify that the billing is true and correct. Services will be invoiced as they are rendered. 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. Purchaser agrees to pay Seller in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Sections 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the State within forty-five (45) days of receipt of the invoice. Seller understands and agrees that Purchaser is exempt from the payment of taxes. All payments shall be in United States currency. Payments by state agencies using the Statewide Automated Accounting System ("SAAS") shall be made and remittance information provided electronically as directed by the State. These payments by SAAS agencies shall be deposited into the bank account of the Seller's choice. No payment, including final payment, shall be construed as acceptance of defective Products or incomplete work, and the Seller shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the article herein titled "Entire Agreement".

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

ARTICLE 6 WARRANTIES

6.1 Seller represents and warrants that Seller has the right to sell the equipment and license the software provided under this Agreement.

6.2 Seller represents and warrants that Purchaser shall acquire good and clear title to the equipment purchased hereunder, free and clear of all liens and encumbrances.

6.3 Seller represents and warrants that each unit of equipment delivered shall be delivered new and not as "used, substituted, rebuilt, refurbished or reinstalled" equipment.

6.4 Seller represents and warrants that it has and will obtain and pass through to Purchaser any and all warranties obtained or available from the licensor of software or the manufacturer of the equipment.

6.5 Seller represents and warrants that all equipment provided pursuant to this Agreement shall, for a period of twelve (12) months from the date of acceptance of each item of equipment, be free from defects in material, manufacture, design and workmanship. Seller's obligation pursuant to this warranty shall include, but is not limited to, the repair or replacement of the equipment at no cost to Purchaser. In the event Seller cannot repair or replace an item of equipment during the warranty period, Seller shall refund the purchase price of the equipment, and refund any fees paid for services that directly relate to the defective hardware.

6.6 Seller represents and warrants that the Products provided by Seller shall meet or exceed the minimum specifications set forth in the LOC, General RFP No. 3616 and Seller's Proposals in response thereto.

6.7 Seller represents and warrants that all software furnished shall be free from material defects for a period of twelve (12) months after acceptance and will function in accordance with the specifications as stated in the LOC, General RFP No. 3616 and the Seller's Proposals in response thereto. If the software does not function accordingly, Seller shall, at no cost to Purchaser, replace the software or refund the fees paid for the software and for any services that directly relate to the defective software.

6.8 Seller represents and warrants that there is no disabling code or lockup program or device embedded in the software provided to Purchaser. Seller further agrees that it will not, under any circumstances including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Purchaser's use of the software and/or which would restrict Purchaser from accessing its data files or in any way interfere with the transaction of Purchaser's business. For any breach of this warranty, Seller at its expense shall, within five (5) working days after receipt of notification of the breach, deliver Products to Purchaser that are free of such disabling code, lockup program or device.

6.9 Seller represents and warrants that the software, as delivered to Purchaser, does not contain a computer virus. For any breach of this warranty, Seller, at its expense, shall, within five (5) working days after receipt of notification of the breach, deliver Products to Purchaser that are free of any virus and shall be responsible for repairing, at Seller's expense, any and all damage done by the virus to Purchaser's site.

6.10 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.

6.11 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 (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. 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.

6.12 Seller represents and warrants that the system provided pursuant to this Agreement will pass both internal security audits and independent security audits. For any breach of the preceding warranty at any time during which the system is covered by warranty, maintenance and/or support, Seller shall, at its own expense and at no cost to Purchaser, remediate any defect, anomaly or security vulnerability in the system by repairing and/or replacing any and all components of the system necessary in order for the system to be secure.

6.13 Seller represents and warrants that no official or employee of Purchaser, 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 Seller 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 Seller also warrants that in the performance of this Agreement no person having any such known interests shall be employed.

6.14 The Seller 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 Seller, terminate the right of the Seller to proceed under this Agreement if it is found, after notice and hearing by the ITS Executive Director or his/her designee, that gratuities in the form of entertainment, gifts, jobs, or otherwise were offered or given by the Seller to any officer or employee of the State of Mississippi with a view toward securing this Agreement or securing favorable treatment with respect to the award, or amending or making of any determinations with respect to the performing of such contract, provided that the existence of the facts upon which the ITS Executive Director makes such findings shall be in issue and may be reviewed in any competent court. In the event this Agreement is terminated under this article, the State of Mississippi shall be entitled to pursue the same remedies against the Seller as it would pursue in the event of a breach of contract by the Seller, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

ARTICLE 7 INFRINGEMENT INDEMNIFICATION

Seller represents and warrants that neither the hardware, replacement parts nor software, their elements or the use thereof violates or infringes upon any copyright, patent, trademark, servicemark, trade secret or other proprietary right of any person or entity. Seller, at its own expense, shall defend or settle any and all infringement actions filed against Seller or Purchaser which involve the hardware, software or other items provided under this Agreement and shall pay all settlements, as well as all costs, attorney fees, damages and judgment finally awarded against Purchaser. If the continued use of the products for the purpose intended is threatened to be enjoined or is enjoined by any court of competent jurisdiction, Seller shall, at its expense: (a) first procure for Purchaser the right to continue using such products, or upon failing to procure such right; (b) modify or replace them with non-infringing products, or upon failing to secure either such right, (c) refund to Purchaser the purchase price or software license fees previously paid by Purchaser for the products Purchaser may no longer use. Said refund shall be paid within ten (10) working days of notice to Purchaser to discontinue said use.

ARTICLE 8 EMPLOYMENT STATUS

8.1 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.

8.2 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.

8.3 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.

8.4 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 9 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 to

install or repair Products shall be covered by Seller's comprehensive general liability insurance policy.

ARTICLE 10 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 11 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS

11.1 In matters of proposals, 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.

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

11.3 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.

11.4 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.

11.5 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 12 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 13 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. The provisions of this Article do not limit either party's right to pursue any other remedy available at law or in equity.

ARTICLE 14 GOVERNING LAW

This Agreement shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. 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 15 WAIVER

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

ARTICLE 16 SEVERABILITY

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

ARTICLE 17 CAPTIONS

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

ARTICLE 18 HOLD HARMLESS

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

ARTICLE 19 THIRD PARTY ACTION NOTIFICATION

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 20 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 21 NOTICE

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their business address listed herein. ITS' address for notice is: Mr. David L. Litchliter, Executive Director, Mississippi Department of Information Technology Services, 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201. The Seller's address for notice is: INSERT VENDOR NOTICE INFORMATION. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

ARTICLE 22 RECORD RETENTION AND ACCESS TO RECORDS

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 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 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 23 INSURANCE

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

ARTICLE 24 DISPUTES

Any dispute concerning a question of fact under this Agreement which is not disposed of by agreement of the Seller and Purchaser shall be decided by the Executive Director of ITS 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 25 COMPLIANCE WITH LAWS

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.

ARTICLE 26 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 27 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 28 CONFIDENTIAL INFORMATION

28.1 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.

28.2 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 Seller. ITS will provide third party notice to Seller of any requests received by ITS for any such confidential exhibits so as to allow Seller the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

ARTICLE 29 EFFECT OF SIGNATURE

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

ARTICLE 30 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS

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

ARTICLE 31 NON-SOLICITATION OF EMPLOYEES

Seller agrees not to employ or to solicit for employment, directly or indirectly, any of the Purchaser'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 32 ENTIRE AGREEMENT

32.1 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 LOC, General RFP No. 3616 and Seller’s Proposals in response thereto are hereby incorporated into and made a part of this Agreement.

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

- A. This Agreement signed by both parties;
- B. Any exhibits attached to this Agreement;
- C. LOC;
- D. General RFP No. 3616 and written addenda, and
- E. Seller’s Proposals, as accepted by Purchaser, in response to the LOC and General RFP No. 3616.

32.3 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 (“E. Seller’s Proposals”).

ARTICLE 33 SURVIVAL

Articles 6, 7, 14, 18, 22, 27, 28, 30, 31, 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 34 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 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 35 NETWORK SECURITY

Seller and Purchaser understand and agree that the State of Mississippi's Enterprise Security Policy mandates that all remote access to and/or from the State network must be accomplished via a Virtual Private Network (VPN). If remote access is required at any time during the life of this Agreement, Seller and Purchaser agree to implement/maintain a VPN for this connectivity. This required VPN must be IPSec-capable (ESP tunnel mode) and will terminate on a Cisco VPN-capable device (i.e. VPN concentrator, PIX firewall, etc.) on the State's premises. Seller agrees that it must, at its expense, implement/maintain a compatible hardware/software solution to terminate the specified VPN on the Seller's premises. The parties further understand and agree that the State protocol standard and architecture are based on industry-standard security protocols and manufacturer engaged at the time of contract execution. The State reserves the right to introduce a new protocol and architecture standard and require the Seller to comply with same, in the event the industry introduces a more secure, robust protocol to replace IPSec/ESP and/or there is a change in the manufacturer engaged.

ARTICLE 36 PERSONNEL ASSIGNMENT GUARANTEE

Seller guarantees that the personnel assigned to this project will remain a part of the project throughout the duration of the Agreement as long as the personnel are employed by the Seller and are not replaced by Seller pursuant to the third paragraph of the Article herein titled "Employment Status". Seller further agrees that the assigned personnel will function in the capacity for which their services were acquired throughout the life of the Agreement, and any failure by Seller to so provide these persons shall entitle the State to terminate this Agreement for cause. Seller agrees to pay the Purchaser fifty percent (50%) of the total contract amount if any of the assigned personnel is removed from the project prior to the ending date of the contract for reasons other than departure from Seller's employment or replacement by Seller pursuant to the third paragraph of the Article herein titled "Employment Status". Subject to the State's written approval, the Seller may substitute qualified persons in the event of the separation of the incumbents therein from employment with Seller or for other compelling reasons that are acceptable to the State, and in such event, will be expected to assign additional staff to provide technical support to Purchaser within thirty calendar days or within such other mutually agreed upon period of time, or the Purchaser may, in its sole discretion, terminate this Agreement immediately without the necessity of providing thirty (30) days notice. The replacement personnel shall have equal or greater ability, experience and qualifications than the departing personnel, and shall be subject to the prior written approval of the Purchaser. The Seller shall not permanently divert any staff member from meeting work schedules developed and approved under this Agreement unless approved in writing by the Purchaser. In the event of Seller personnel loss or redirection, the services performed by the Seller shall be uninterrupted and the Seller shall report in required status reports its efforts and progress in finding replacements and the effect of the absence of those personnel.

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

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

INSERT VENDOR NAME

By: _____
Authorized Signature

By: _____
Authorized Signature

Printed Name: David L. Litchliter

Printed Name: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____

EXHIBIT A