Memorandum for General RFP Configuration

To: Vendor with current valid proposal for General RFP #36083849 for Computer Hardware/Software and Telephone Equipment/Services

From: Craig P. Orgeron, Ph.D.

CC: ITS Project File Number 40563ITS Project File Number 45209

Date: June 19, 2019

Subject: Letter of Configuration (LOC) Number 4177545209 for the purchase and installation on inside communication cablethe purchase and installation of audio visual equipment for Jones College (JC)

Contact Name: Chris NixChris Nix

Contact Phone Number: 601-432-8041

Contact E-mail Address: Chris.NixChris.Nix@its.ms.gov

The Mississippi Department of Information Technology Services (ITS) is seeking the hardware and services described below on behalf of Jones College (JC)MSU. Our records indicate that your company currently has a valid proposal on file at ITS in response to General RFP #3849 for Computer Hardware/Software and Telephone Equipment/Services. Our preliminary review of this proposal indicates that your company offers products and services that may meet the requirements of this project; therefore, we are requesting your configuration assistance for the components described below.

GENERAL LOC INSTRUCTIONS

* 1. Beginning with Item 2, label and respond to each outline point as it is labeled in the LOC.
  2. The Vendor must respond with “ACKNOWLEDGED,” “WILL COMPLY,” or “AGREED” to each point in the LOC including the attached *Turnkey Agreement* (Attachment D), as follows:
     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.
     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.
  3. If the Vendor cannot respond with “ACKNOWLEDGED,” “WILL COMPLY,” or “AGREED,” then the Vendor must respond with “EXCEPTION.” (See instructions in Item 14 regarding Vendor exceptions.)
  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”.
  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.

MANDATORY Provisions in Technical Requirements for this LOC

* 1. Certain items in the technical specifications of this LOC are **MANDATORY**.  Vendors are specifically disallowed from taking exception to these **MANDATORY** requirements, and proposals that do not meet all **MANDATORY** requirements are subject to immediate disqualification.
  2. A **MANDATORY** Vendor Conference will be held on Tuesday, June 25, 2019 at 10:00 a.m. Central Time on the campus in Ellisville, Mississippi. Any proposal received from a Vendor who did not have an authorized representative at the Vendor Conference will be rejected. No exceptions will be granted to this requirement.

GENERAL OVERVIEW AND BACKGROUND

Jones College MSU(JC) is upgrading projectors for 19 classrooms in Ellisville, Mississippi. This Letter of Configuration (LOC) will be used to purchase and install Audio Visual equipment for the project.

PROCUREMENT PROJECT SCHEDULE

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| Release of LOC | Wednesday, June 19, 2019 |
| **MANDATORY** Vendor Conference | Tuesday, June 25, 2019 at 10:00 a.m. Central Time |
| Deadline for Vendors’ Written Questions | Friday, June 28, 2019 at 3:00 p.m. Central Time |
| Addendum with Vendors’ Questions and Answers | Wednesday, July 10, 2019 |
| Proposals Due | Wednesday, July 17, 2019 at 3:00 p.m. Central Time |
| Proposal Evaluation | Wednesday, July 17, 2019 – Tuesday, July 23, 2019 |
| Notification of Award | Wednesday, July 24, 2019 |
| Begin Contract Negotiations | Thursday, July 25, 2019 |
| Installation Begins | Monday, August 12, 2019 |
| Acceptance | 30 days after completion |

STATEMENTS OF UNDERSTANDING

* 1. The Vendor must provide pricing for all hardware, maintenance, and support for the proposed solution.
  2. Proposed equipment must be new from the manufacturer and qualify for warranty and maintenance services. Refurbished or like-new equipment is unacceptable.
  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. Vendor must be aware that ITS reserves the right to award this project to one or more Vendors if advantageous to the State.
  5. 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.
  6. All specifications listed in this document are intended to be open and competitive. Vendors are encouraged to question any specification that appears to be closed and/or restricts competition.
  7. Please be aware that this procurement, in its entirety, is a component of a construction project being managed by the Mississippi Department of Finance and Administration Bureau of Building, Grounds, and Real Property Management (BoB). Any estimated completion date provided herein is a good-faith estimate based on the current project schedule. Construction delays may occur due to unforeseen circumstance outside of ITS’ and the awarded Vendor’s control that prevent the Vendor from completing some or all of the obligations for this award by the projected date (e.g., delay in need for delivery of equipment).
  8. Vendor will invoice the Bureau of Building with GS# 208-060. The GS number must be used on all correspondence and invoices to BoB. The invoice must be sent to BOBinvoices@its.ms.gov for processing. Additional information will be provided at time of the award.
  9. The State reserves the right to solicit Best and Final Offers (BAFOs) from Vendors, principally in situations in which proposal costs eclipse available funding or the State believes none of the competing proposals presents a Best Value (lowest and best proposal) opportunity. Because of the time and expense incurred by both the Vendor community and the State, BAFOs are not routinely conducted. Vendors should offer their best pricing with the initial solicitation. Situations warranting solicitation of a BAFO will be considered an exceptional practice for any procurement. Vendors that remain in a competitive range within an evaluation may be requested to tender Best and Final Offers, at the sole discretion of the State. All such Vendors will be provided an equal opportunity to respond with a Best and Final Offer under a procedure to be defined by the State that encompasses the specific, refined needs of a project, as part of the BAFO solicitation. The State may re-evaluate and amend the original project specifications should it be deemed necessary in order to improve the opportunity for attaining Best Value scenarios from among the remaining competing Vendors. All BAFO proceedings will be uniformly conducted, in writing and subject to solicitation by the State and receipt from the Vendors under a precise schedule.
  10. 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 and approval of the Social Security Administration or Department of Homeland Security, where required, provide a copy of each such verification to the State.
  11. 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. 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.
  12. Any solution or service proposed in response to this LOC must be in compliance with the State of Mississippi’s Enterprise Security Policy.  The Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines and is established to safeguard the State’s information technology (IT) assets from unauthorized use, access, disclosure, modification, or destruction. Given that information security is an evolving technology practice, the State reserves the right to introduce new policy during the term of the contract resulting from this LOC and require the Vendor to ensure the solution or service complies with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.  Vendors wanting to view the Enterprise Security Policy should contact the Technology Consultant listed in 5.14 below.
  13. Any cloud or vendor-hosted solution proposed in response to this LOC must be in compliance with the State of Mississippi’s Enterprise Cloud and Offsite Hosting Security Policy.  The Enterprise Cloud and Offsite Hosting Security Policy is based on industry-standard best practices, policy, and guidelines and augments the Enterprise Security Policy. Given that information security is an evolving technology practice, the State reserves the right to introduce new policy during the term of the contract resulting from this LOC and require the Vendor to ensure the cloud or vendor-hosted solution complies with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.  Vendors wanting to view the Enterprise Cloud and Offsite Hosting Security Policy should contact the Technology Consultant listed in 5.14 below.
  14. 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.**
      1. The State contact person for the selection process is: Chris Nix Technology Consultant, 3771 Eastwood Drive, Jackson, Mississippi 39211, 601-432-8041, Chris.Nix@its.ms.gov.
      2. Vendor may consult with State representatives as designated by the State contact person identified in 5.14.1 above in response to State-initiated inquiries. Vendor may consult with State representatives during scheduled oral presentations and demonstrations excluding site visits.
  15. 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 *Turnkey 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.
  16. Vendor will be responsible for all necessary permits including city, county, state, and federal permits and regulations prior to beginning work.
  17. Vendor must follow all **SAFETY GUIDELINES as instituted by O.S.H.A.** Any individual member of the selected Vendor’s project team that violates these guidelines will be instructed to leave the project site immediately.

FUNCTIONAL/TECHNICAL SPECIFICATIONS

* 1. Vendors are to use the Excel spreadsheet labeled Attachment E that lists the required equipment, for providing costs. It is **MANDATORY** that Vendors provide unit cost for all items. It is preferred that installation and professional services be provided as a unit cost as well. Unit costs are used by the State to increase or decrease the number of items being purchased, based on need or on budget available. Vendors are to remember that if the spreadsheet and the floor plans differ, Vendors are to provide the higher cost quantities. If additional lines are needed, Vendors may add as many lines as necessary.
  2. Scope of Work
     1. 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, raceway, racks, etc. necessary to render the configuration fully operational. It shall be the responsibility of the Vendor to understand the intent of the designs and to respond with a fully operational AV system(s) meeting the design specifications, whether an item is listed or not.
     2. In addition to the specifications and requirements found in this LOC, the LOC package includes one document not directly attached to this LOC. This document is labeled as Attachment E (45209 JC AV Equipment and Cost Details.xlsx) based on JC requirements.
     3. In responding to the LOC, any deviation from these performance specifications shall be remedied by the awarded Vendor at the awarded Vendor’s expense. Remedied action may include, but not be limited to, design and replacement of all or part of the system.
     4. The Vendor shall work closely with JC’s IT staff to ensure proper implementation of all networked devices, network controlled devices, control panel layouts, and the proposed AV solution.
  3. Industry Standards
     1. All equipment and installation practices, where applicable standards have been established, shall be built and installed to the latest standards of the following institutions:
        1. NFPA 70, National Electric Codes (NEC)
        2. EIA Compliance: Comply with the following Electronic Standards
           1. Sound Systems, EIA-160
           2. Loudspeakers, Dynamic Magnetic Structures and Impedance, EIA-299-A
           3. Racks, Panels, and associated equipment, EIA-310-A
           4. Amplifiers for Sound Equipment, SE-101-A
           5. Speakers for Sound Equipment, SE-103
        3. TIA/EIA-568-B Telecommunications Cabling Standard
        4. TIA/EIA-607 Telecommunications Grounding
        5. BICSI Telecommunications Distribution
        6. Methods Manual (Eleventh Edition)
        7. Federal Communications Commission (FCC) Part 15
        8. Audio Engineering Society (AES)
     2. In addition to the above, all equipment and materials shall be UL listed unless otherwise noted herein or on the drawings.
     3. Vendors will comply with all local codes as they apply to the work found within this LOC.
  4. Sound Reinforcement
     1. The sound reinforcement system shall provide reinforcement of live and sourced audio signals and perform with seamless electro acoustic coverage of the entire seating space. The proposed system shall support reinforcement of live microphones and playback of audio from video sources, compact discs, and other high quality audio sources.
     2. The sound reinforcement system shall include a configurable Digital Audio Signal Processing (DSP) system.
     3. It is the sole responsibility of the awarded Vendor to provide or obtain specific high level programming of the DSP.
     4. The configuration of the DSP shall include, but not be limited to, audio signal flow, user interface, user interface clients, control logic, IP connectivity, and analog control as required.
     5. The awarded Vendor shall deliver flash media with copies of the final program configurations for all programmable and software-based systems at the expiration of the system warranty. Such source code shall be provided without security and without constraint for full access by the owner.
     6. The awarded Vendor shall provide programming from qualified engineers to perform DSP programming, authorized by the manufacturer of the systems as shown in the spreadsheet (Attachment E).
  5. Projection
     1. Projection systems are designed to support a wide variety of media sources, specified by the end-user. Additional support has been included for auxiliary and future undefined sources to the fullest extent possible or practical.
     2. Projection systems are designed based on the latest products at the time of design and within guidelines provided by the end-user; however, parameters are subject to change. The Vendor shall coordinate the implementation of the projection system to ensure the latest technology, at no additional cost to the State or to JC.
     3. The Vendor shall coordinate all required source materials with the end-user to ensure compatibility with the source media and delivery devices.
     4. Projection signals shall be configured with digital transport systems and sources as shown on the drawings. The Vendor shall supply the latest technology in compliance with the intent of the design drawings, including but not limited to, transmission electronics, cabling, and/or optical transports, content licensing, resolution compatibility, etc.
     5. A centralized high quality, high definition capable video projector shall be installed in the center of the space area shown on the drawings. This projector shall provide high quality, high definition images to the projection screens. The work includes comprehensive requirements for integration of the projection screen for control, power, and proper configuration and management of the projection screen.
     6. Projection screens, including fixed and motorized type, shall be coordinated by the awarded Vendor for proper position, control, image configuration, and to ensure maximum brightness and contrast.
     7. The awarded Vendor shall employ the services of a factory-authorized technician to configure the projectors on site during testing.
     8. The Vendor shall provide a lens configuration required to meet the field conditions.
     9. All conditions that may impact the project geometry shall be coordinated by the awarded Vendor by verifying field conditions.
  6. Cabling
     1. Wire, cable, and signal conductors shall be new and unused.
     2. All wiring shall be plenum rated except for wire installed in equipment racks, portable cables, and wire installed in conduit or raceway systems.
     3. All cable installed in ceiling space shall be plenum.
     4. Other equipment and/or component cables and conductors shall be constructed with stranded wire, shielded as required with the number of conductors and gauge required by the manufacturer for proper operation of the item supported.
     5. Wire and cable for any device, whether specifically listed, shown on the drawings or not, shall be supplied in accordance with the requirements of the device manufacturer and the National Electric Code.
     6. All cable shall be labeled with an industrial-type label, such as Thomas & Betts WES Series or equivalent. All labels shall include WSL self-laminating vinyl construction, shall be corrosion and weather resistant, 1 mil. Thickness, nominal, with contrasting lettering. Each physical cable or wire will be labeled at each end

INSTALLATION

* 1. Vendor will furnish and install components, equipment, devices, accessories, wire, cabinetry, materials, parts, incidental items, and other items necessary for a full, complete working system, whether specified within the LOC or on the attached AV drawings or not.
  2. Installation of all items, whether specified or not, shall be installed in accordance with the manufacturer’s recommendations.
  3. Vendor shall provide all custom software programming and all graphical user interfaces, for the AV systems they are integrating, including OFCI components. Vendor shall meet with the Owner / Operator(s) and discuss the Owner / Operator’s AV control requirements. The AV contractor is to provide, for approval by Owner / Operator(s), at least three (3) weeks prior to system commissioning, screen shots of all custom software GUI control pages for Owner / Operator(s) review and comment. The AV control system programmer shall be a Crestron Certified Programmer.
  4. Installation shall be performed in accordance within accepted practices of the broadcast, communications, and electronics industries. Wiring and termination work shall meet or exceed such standards in all phases of the work.
  5. Equipment shall be held firmly in place with proper mounting hardware, suspension, or rigging materials. Equipment attached to any building structure, sub-structure, or other load-bearing member shall be self-supporting. All mounting or rigging hardware shall be installed with a safety factor of at least three times the required load.
  6. Equipment shall be installed to provide reasonable and normal safety to the operator or end-user.
  7. Adequate ventilation shall be provided for any heat-producing component, group of components, or integrated equipment enclosure.
  8. Vendor shall furnish all systems to accommodate future additions, expansion, and service using modular, solid-state components when possible.
  9. All equipment shall be designed and rated for continuous operations and shall bear the mark of any applicable agency for jurisdiction of such including, but not limited to UL, CUL, and CE.
  10. The installation requirements specified in the LOC including any and all attachments, shall govern the design, fabrication, and installation of the system. In the case of a discrepancy between these overall system standards and the individual equipment item specifications, or manufacturer’s recommendations, the most stringent shall apply.
  11. The Vendor will maintain logical installation schedule to maximize efficiency with other jobsite conditions and trades.
  12. The Vendor will store all materials as required to insure quality and condition for integration into the work.
  13. Vendor will coordinate installation of different components, owner-furnished items and other items as necessary to ensure maximum service and maintenance access.
  14. Vendor will provide a not-to-exceed cost for installation as described in the LOC. Please see *Cost Information Submission Summary* (Attachment A).
  15. Vendor must provide and install all cabling required to complete a turnkey system.
      1. Raceway: Vendor shall
         1. Install all cable as required regardless of conduit access.
         2. Field-verify raceway systems.
         3. Be responsible for getting cabling from open LAT areas to AV room, MDF or IDF as required.
      2. Terminations
         1. Awarded Vendor shall not splice system cabling unless specifically directed ITS.
         2. All cable shall be pulled directly from the source connector to the equipment enclosure without any junctions. Vendor will pull all cable through J-boxes and pull-boxes with adequate service loops in accordance with industry-standard practices.
         3. All terminations shall be performed using terminal blocks and/or punch blocks as indicated on the drawings and specified herein.
         4. Circuits terminating to terminal blocks shall be terminated using appropriate spade lugs. All spade lug terminations shall be crimped and soldered.
         5. In lieu of manufacturer’s recommendation, Vendor will tin all bare wire connections prior to termination.
         6. Un-terminated signal shields or drain conductors shall be individually insulated with clear heat-shrink insulation tubing and attached to the cable with an additional section of heat-shrink tubing.
         7. Vendor will maintain 12” of service loop at all connectors.
  16. AV System Manuals
      1. Notebooks as described below shall be assembled by the Vendor for all AV systems furnished under this contract. The Vendor shall forward the notebooks and field drawings, with all wire numbers, to ITS for review.
      2. The following information shall be placed in the notebooks: table of contents, section tabs with labels, final as built wiring diagrams of all systems, system operating instructions and manufacturer’s manuals.
      3. Oversized drawings will be folded to 8 ½ x 11 in. and inserted individually in properly punched Mylar sheet protectors.
      4. If delivered electronically, all sheets shall be included in one pdf with the index tabs.
      5. Vendor shall provide the source code for the control system in this package.

1. **TRAINING**
   1. It is **MANDATORY** that the awarded Vendor provide a total of ten hours of on-the-job training sessions on the AV systems for JC designated personnel.
   2. Training will consist of five 2-hour sessions, instructing JC designated personnel on the operation and maintenance of the system.
   3. Training will include instruction in the proper use of all equipment including the proper techniques of microphone use.
   4. This training will occur after the systems are operational and at times established by ITS and JC.
   5. The cost of training, if any, will be included as a line item on *Attachment A, Cost Information Submission Summary*.
   6. Should Vendor fail to include the cost for training, Vendor will be required to provide said training at no cost to the State or JC.
2. **WARRANTY/MAINTENANCE**
   1. Vendor must state the length of warranty for proposed installation.
   2. It is **MANDATORY** that Vendor provide a twelve (12) month next business day on-site diagnostic warranty covering all materials and labor to correct any defect in the AV system and installation.
   3. Warranty will begin upon acceptance of the installed system.
3. **ADDITIONAL REQUIREMENTS**
   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.
   2. Vendors must acknowledge that the State reserves the right to increase or decrease quantities based on unit cost provided in Vendors’ proposals. This includes deleting equipment in its entirety for a specific area.
   3. Vendors must provide the requested brand of equipment where possible as this equipment interfaces with standards established throughout the campus of JC. Vendors are allowed in certain cases to provide “equivalent”.
      1. Vendor must provide documentation to substantiate “equivalent”. It is necessary to provide documentation (cut-sheets) for the requested equipment.
      2. Acceptance of “equivalent” is at the sole discretion of the State.
         1. Should the State accept equivalent, Vendor will provide forty (40) hours of onsite training sessions on the audio visual system at no cost to the State for JC designated personnel.
      3. In those situations where the manufacturer is not named, Vendors must provide documentation (submittals) for the proposed equipment.
   4. If a specific piece of equipment has been discontinued or replaced by a newer model, the Vendor shall submit the proposed replacement model number and type, noting the model number and type it is replacing.
      1. If the substitution is required after the award, the replacement model number must be at the same or lower cost than the model being replaced.
      2. The acceptance of any and all replacements or substitutions is at the sole discretion of the State.
   5. Vendor must specify the discounted price for each item. Freight is FOB destination. No itemized shipping charges will be accepted.
   6. 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.
   7. 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 Turnkey Agreement with ITS. A *Standard Turnkey Agreement* has been attached for your review. The inclusion of this Agreement does not preclude ITS from, at its sole discretion, negotiating additional terms and conditions with the selected Vendor(s) specific to the projects covered by this LOC. If Vendor cannot comply with any term or condition of this Turnkey Agreement, Vendor must list and explain each specific exception on the *Proposal Exception Summary Form* explained in Item 14 and attached to this LOC. Winning Vendor must be willing to sign the attached Turnkey Agreement within 10 working days of the notice of award. If the Turnkey Agreement is not executed within 10 working day period, ITS reserves the right to negotiate with the next lowest and best vendor in the evaluation.
   8. Performance Bond/Irrevocable Bank Letter of Credit
      1. The Vendor must include the price of a performance bond or irrevocable bank letter of credit with its LOC response. The cost of the bond or letter of credit must be shown as a separate line item in the *Cost Information Submission Summary*. The performance bond or letter of credit must be procured at the Vendor’s expense prior to the execution of the contract. The final decision as to the requirement for a Performance Bond or Irrevocable Bank Letter of Credit will be made upon contract award and is at the State’s sole discretion.
      2. If a Performance Bond/Irrevocable Bank Letter of Credit is required, the Vendor must procure and submit to ITS, on behalf of Jones College MSU(JC), with the executed contract, (a) a performance bond from a reliable surety company authorized to do business in the State of Mississippi or (b) an irrevocable bank letter of credit that is acceptable to the State. The Performance Bond or the Irrevocable Letter of Credit shall be for the total amount of the contract or an amount mutually agreed upon by the State and the successful Vendor and shall be payable to Jones College MSU(JC), to be held by their contracting agent, the Mississippi Department of Information Technology Services. No contract resulting from LOC Number 45209 will be valid until the required Performance Bond or Irrevocable Bank Letter of Credit has been received and found to be in proper form and amount. The Vendor agrees that the State has the right to request payment for a partial amount or the full amount of the Irrevocable Letter of Credit/Performance Bond should the products/services being procured hereunder not be provided in a manner consistent with this LOC and the Vendor’s proposal by the delivery dates agreed upon by the parties. The State may demand payment by contacting the bank issuing the letter of credit or the bonding company issuing the performance bond and making a written request for full or partial payment. The issuing bank/bonding company is required to honor any demand for payment from the State within fifteen (15) days of notification. The letter of credit/performance bond shall cover the entire contract period, with the exception of post-warranty maintenance and support, and shall not be released until final acceptance of all products and deliverables required herein or until the warranty period, if any, has expired, whichever occurs last.
   9. Payment Bond/Irrevocable Bank Letter of Credit
      1. The Vendor must include the price of a payment bond or irrevocable bank letter of credit with its LOC response. The cost of the bond or letter of credit must be shown as a separate line item in the *Cost Information Submission Summary*. The payment bond or letter of credit must be procured at the Vendor’s expense prior to the execution of the contract. The final decision as to the requirement for a Payment Bond or Irrevocable Bank Letter of Credit will be made upon contract award and is at the State’s sole discretion.
      2. If a Payment Bond/Irrevocable Bank Letter of Credit is required, the Vendor must procure and submit to ITS, on behalf of Jones College MSU(JC), with the executed contract, (a) a performance bond from a reliable surety company authorized to do business in the State of Mississippi or (b) an irrevocable bank letter of credit that is acceptable to the State. The Payment Bond or the Irrevocable Letter of Credit shall be for the total amount of the contract or an amount mutually agreed upon by the State and the successful Vendor and shall be payable to Jones College MSU(JC), to be held by their contracting agent, the Mississippi Department of Information Technology Services. No contract resulting from LOC Number 45209 will be valid until the required Payment Bond or Irrevocable Bank Letter of Credit has been received and found to be in proper form and amount. The Vendor agrees that the State has the right to request payment for a partial amount or the full amount of the Irrevocable Letter of Credit/Payment Bond should the products/services being procured hereunder not be provided in a manner consistent with this LOC and the Vendor’s proposal by the delivery dates agreed upon by the parties. The State may demand payment by contacting the bank issuing the letter of credit or the bonding company issuing the payment bond and making a written request for full or partial payment. The issuing bank/bonding company is required to honor any demand for payment from the State within fifteen (15) days of notification. The letter of credit/payment bond shall cover the entire contract period, with the exception of post-warranty maintenance and support, and shall not be released until final acceptance of all products and deliverables required herein or until the warranty period, if any, has expired, whichever occurs last.
   10. 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. Vendor must provide a unit cost for additional plenum CAT6 cable drops for AV.
   12. Vendor must provide an order address.
   13. Vendor must provide a remit address.
   14. Vendor must provide their Tax Payer ID number.
4. **VENDOR QUALIFICATIONS**
   1. It is **MANDATORY** Vendor to have been involved in the execution of professional AV systems of this type for a period of five (5) years or more, and shall have completed at least three (3) systems installations within the last five (5) years. Vendor must state how many years they have been involved in the execution of professional AV systems.
   2. It is **MANDATORY** Vendor to be an authorized dealer for all major pieces of equipment proposed or be securing all major components from an authorized dealer or distributor. Vendor must submit documentation within their response of dealer status or that all major components proposed are being secured from an authorized dealer. Failure to provide such documentation may be grounds for disqualification.
   3. It is **MANDATORY** that Vendor maintain a minimum certification for all staff members with an acceptable industry certification program. Vendor must submit with their response documentation underwriting this certification. Failure to provide proper qualifications shall be grounds for disqualification or, if after award, dismissal.
   4. It is **MANDATORY** the integrator be an employee of the awarded Vendor or an approved subcontractor. For subcontractors, ITS and JC reserve the right to accept or reject the proposed integrator. The qualified project engineer responsible for all engineering and integration work must meet at least three of the following **MANDATORY** requirements (Vendor must state which three and submit documentation with their proposal response.):
      1. University graduate engineer in electrical or electronic engineering.
      2. Minimum 5 years of experience in design, implementation, troubleshooting, and management of large scale, integrated electronic systems at the component and device level.
      3. Possess a current CTS-D or CTS-I certification in good standing as issued by the International Communications Industries Association InfoComm.
      4. Has direct experience in the implementation of at least five systems of similar scope within the last five years.
      5. Certified, factory-trained and possess required hardware and/or software tools in applicable technology for products documented in the system drawings.
   5. It is **MANDATORY** the Vendor maintain a fully equipped and staffed organization capable of performing the installation and maintenance for systems of this type. Failure to document adequate staff throughout the installation and warranty shall be cause for termination or dismissal.
5. **REFERENCES**
   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,
      1. Entity
      2. Supervisor’s name
      3. Supervisor’s telephone number
      4. Supervisor’s e-mail address
      5. Start date of project
      6. End date of project
      7. Total project cost
      8. Description of Project to include Vendor’s specific role in the project
   2. Vendors receiving negative references may be eliminated from further consideration.
   3. 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.
   4. References that are no longer in business cannot be used. Inability to reach the reference will result in that reference deemed non-responsive.
   5. References should be based on the following profiles and be able to substantiate the following information from both management and technical viewpoints:
      1. The reference installation must be for a project similar in scope and size to the project for which this LOC is issued;
      2. The reference installation must have been operational for at least six (6) months.
      3. The reference installation must have been completed within the last five (5) years.
   6. Any of the following may subject the Vendor’s proposal to being rated unfavorably relative to these criteria or removed from further consideration, at the State’s sole discretion:
      1. Failure to provide reference information in the manner described;
      2. Inability of the State to substantiate minimum experience or other requirements from the references provided;
      3. Non-responsiveness of references to the State's attempts to contact them; or
      4. Unfavorable references that raise serious concerns about material risks to the State in contracting with the Vendor for the proposed products or services.
   7. The State reserves the right to request information about the Vendor from any previous customer of the Vendor of whom the State is aware, including the procuring agency and/or other agencies or institutions of the State, even if that customer is not included in the Vendor’s list of references, and to utilize such information in the evaluation of the Vendor's proposal.
   8. Unless otherwise indicated in the Scoring Methodology in Item 15, reference information available to the State will be used as follows:
      1. As documentation supporting **MANDATORY** experience requirements for companies, products, and/or individuals, as required in this LOC;
      2. To confirm the capabilities and quality of a Vendor, product, or individual for the proposal deemed lowest and best, prior to finalizing the award.
   9. The State reserves the right to forego reference checking when, at the State's sole discretion, the evaluation team determines that the capabilities of the recommended Vendor are known to the State.
6. **SUBCONTRACTORS**
   1. The Vendor’s proposal must identify any subcontractor that will be used and include the name of the company, telephone number, contact person, type of work subcontractor will perform, number of certified employees to perform said work, and three (3)three (3) references for whom the subcontractor has performed work that the State may contact. Forms for providing subcontractor information and references are included at the end of this section.
   2. Unless otherwise noted, the requirements found in the References section may be met through a combination of Vendor and subcontractor references and experience. Vendor's proposal should clearly indicate any **MANDATORY** experience requirements met by subcontractors. NOTE: The State reserves the right to eliminate from further consideration proposals in which the prime Vendor does not, in the State's sole opinion, provide substantive value or investment in the total solution proposed. (i.e., the State does not typically accept proposals in which the prime Vendor is only a brokering agent.)
7. **PROPOSAL EXCEPTIONS**
   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.
   2. Unless specifically disallowed on any specification herein, the Vendor may take exception to any point within this memorandum as long as the following are true:
      1. The specification is not a matter of State law;
      2. The proposal still meets the intent of the procurement;
      3. A *Proposal Exception Summary Form* (Attachment C) is included with Vendor’s proposal; and
      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).
   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:
      1. The Vendor will withdraw the exception and meet the specification in the manner prescribed;
      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;
      3. ITS and the Vendor will agree on compromise language dealing with the exception and will insert same into the contract; or,
      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.
   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.
   5. An exception will be accepted or rejected at the sole discretion of the State.
   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 *Turnkey 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.
   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.
8. **SCORING METHODOLOGY**
   1. An Evaluation Team composed of JC and ITS staff will review and evaluate all proposals. All information provided by the Vendors, as well as any other information available to evaluation team, will be used to evaluate the proposals.
      1. Each category included in the scoring mechanism is assigned a weight between one and 100.
      2. The sum of all categories equals 100 possible points.
      3. For the evaluation of this LOC, the Evaluation Team will use the following categories and possible points:

|  |  |
| --- | --- |
| **Category** | **Possible Points** |
| Cost | 100 |
| **Total Base Points** | **100** |
| **Maximum Possible Points** | **100** |

* 1. The evaluation will be conducted in three stages as follows:
     1. Stage 1 – Selection of Responsive/Valid Proposals – Each proposal will be reviewed to determine if it is sufficiently responsive to the LOC requirements to permit a complete evaluation. A responsive proposal must comply with the instructions stated in this LOC with regard to content, organization/format, Vendor experience, timely delivery, and must be responsive to all **MANDATORY** requirements. No evaluation points will be awarded in this stage. Failure to submit a complete proposal may result in rejection of the proposal.
  2. Stage 2 – Cost Evaluation
     1. Points will be assigned using the following formula:

(1-((B-A)/A))\*n

Where:

A = Total lifecycle cost of lowest valid proposal

B = Total lifecycle cost of proposal being scored

n = Maximum number of points allocated to cost for this acquisition

In simpler terms, lowest price gets a perfect score. A proposal that is 20% more expensive than the lowest priced offering gets 20% fewer points.

* 1. When the above formula would result in a negative cost score (i.e. the lifecycle cost of the proposal being scored is more than twice that of the lowest valid proposal), the cost score is set to zero, rather than deducting points from the Vendor's score.
  2. Cost categories and maximum point values are as follows:

|  |  |
| --- | --- |
| **Cost Category** | **Possible Points** |
| Lifecycle Cost | 100 |
| **Maximum Possible Points** | **100** |

* 1. Stage 3 – Selection of the successful Vendor

1. **PROPOSAL SUBMISSION**
   1. Please use the attached *Cost Information Submission Summary* (Attachment A) and the Excel Spreadsheet (Attachment E) to provide cost information. Follow the instructions on the form. Incomplete forms will not be processed.
   2. In addition to providing Cost Information using both Attachments A and E and *Proposal Exception Summary Form* (if applicable), Vendors must submit a proposal in response to this LOC as explained in Item 1. Vendors who do not provide this detail may be eliminated from further consideration.
   3. If Vendor is claiming status as a Minority Business Enterprise or Woman Business Enterprise, the Vendor must include a copy of their Minority Vendor Self-Certification Form with their LOC response. A copy of the Minority Vendor Self-Certification Form can be obtained at:

<http://www.mississippi.org/assets/docs/minority/minority_vendor_selfcertform.pdf>

Please direct any questions about minority certification in Mississippi to the Minority Business Enterprise Division of the Mississippi Development Authority by telephone at (601) 359-3448 or via email at [minority@mississippi.org](mailto:minority@mississippi.org).

* 1. Vendor must provide a copy of their Certificate of Liability Insurance with their LOC response.
  2. Vendor must provide documentation of their E-Verify compliance with their LOC response.

1. **DELIVERY INSTRUCTIONS**
   1. **Vendor must deliver the response to Chris Nix at ITS no later than Wednesday, July 17, 2019** **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) 713-6380. 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 Chris Nix to verify the receipt of their proposals. Proposals received after the deadline will be rejected.
   2. If you have any questions concerning this request, please e-mail Chris Nix of ITS at Chris.Nix@its.ms.gov. **Any questions concerning the specifications detailed in this LOC must be received no later than Friday, June 28, 2019 at 3:00 p.m. Central Time.**

Enclosures: Attachment A, Cost Information Submission Summary

Attachment B, Reference Information and/or Subcontractor Information Form

Attachment C, Proposal Exception Summary Form

Attachment D, Turnkey Agreement

Separate Attachment: Attachment E, 45209 JC AV Equipment and Cost Details.xlsx

**ATTACHMENT A**

**COST INFORMATION SUBMISSION SUMMARY**

Vendors must propose a summary of all applicable project costs in the matrix that follows. The matrix must be supplemented by a cost itemization fully detailing the basis of each cost category. The level of detail must address the following elements as applicable: item, description, quantity, retail, discount, extension, and deliverable. **Any cost not listed in this section may result in the Vendor providing those products or services at no charge to the State or face disqualification**.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **ITS Technology Consultant Name:** | | **Chris Nix** | **RFP #** | **3849** |
| **Company Name:** |  | | **Date:** |  |
| **Contact Name:** |  | | **Phone #:** |  |

**Contact E-mail:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Vendors are to use the attached Excel spreadsheet labeled 45209 JC AV Equipment and Cost Details.xlsx, which lists the required equipment, to provide costs. It is **MANDATORY** that Vendors provide unit cost for all items. Installation and professional services must be provided as a unit cost as well. Unit costs are used by the State to increase or decrease the number of items being purchased, based on need or on budget available. Vendors are to remember that where the spreadsheet and the floor plans differ, Vendors are to provide the higher cost quantities. If additional lines are needed, Vendors may add as many lines as necessary.

**Summary Cost:**

|  |  |
| --- | --- |
| Total Cost AV System |  |
| Total Cost Installation / Configuration |  |
| Total Cost for Training |  |
| Total Cost for Performance Bond |  |
| Total Cost for Payment Bond |  |
| **GRAND TOTAL** |  |

**CHANGE ORDER RATES:**

Fully loaded hourly rate for Integrator \_\_\_\_\_\_\_\_\_\_\_\_

Fully loaded hourly rate for Installation Technician \_\_\_\_\_\_\_\_\_\_\_\_

Fully loaded unit cost of additional CAT6 drop \_\_\_\_\_\_\_\_\_\_\_\_

(Fully loaded rate shall include any travel, lodging, meals, and/or per diem)

**ATTACHMENT B**

**REFERENCE INFORMATION FORM**

**Complete three (3) Reference Forms.**

Contact Name:

Company Name:

Address:

Phone #:

E-Mail:

Project Start Date:

Project End Date:

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

**SUBCONTRACTOR REFERENCE FORM**

Complete a separate form for each subcontractor proposed.

Contact Name:

Company name:

Address:

Phone #:

E-Mail:

Scope of services/products to be provided by subcontractor:

**Complete three (3) Reference Forms for each Subcontractor.**

Contact Name:

Company name:

Address:

Phone #:

E-Mail:

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

## 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**

**PROJECT NUMBER** **45209**

**TURNKEY AGREEMENT**

**BETWEEN**

**VENDOR NAME**

**AND**

**MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES**

**AS CONTRACTING AGENT FOR THE**

**MISSISSIPPI BUREAU OF BUILDING, GROUNDS & REAL PROPERTY MANAGEMENT**

**ON BEHALF OF THE**

**JONES COLLEGE**

This Turnkey Agreement (hereinafter referred to as “Agreement”) is entered into by and between VENDOR NAME, a STATE OF INCORPORATION corporation having its principal place of business at VENDOR ADDRESS (hereinafter referred to as “Seller”), and Mississippi Department of Information Technology Services having its principal place of business at 3771 Eastwood Drive, Jackson, Mississippi 39211 (hereinafter referred to as “ITS”), as contracting agent for the Mississippi Bureau of Building, Grounds & Real Property Management (“BOB”) on behalf of the Jones College located at 900 South Court Street, Ellisville, Mississippi 39437 (hereinafter referred to as “Purchaser”). ITS and Purchaser are sometimes collectively referred to herein as “State.”

**WHEREAS**, Purchaser, pursuant to Letter of Configuration Number 45209 dated INSERT DATE OF PUBLICATION (herein after referred to as “LOC”), based on General Request for Proposals (“RFP”) Number 3849, requested proposals for the acquisition of certain equipment, software, installation services, and technical support (collectively “Turnkey Operation”) necessary for the implementation of an audio visual system; and

**WHEREAS**, Seller was the successful proposer in an open, fair, and competitive procurement process to provide the system and services described above;

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

**ARTICLE 1 PERIOD OF PERFORMANCE**

**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 and post warranty maintenance, on or before COMPLETION DATE, 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 approval of the project by BOB’s Public Procurement Review Board, receipt of Award Letter by Seller and issuance by ITS of the CP-1 Acquisition Approval Document.

**ARTICLE 2 TURNKEY OPERATION AND INSTALLATION**

**2.1** The Seller agrees to provide Purchaser with a turnkey system consisting of equipment, software, installation services, technical support, maintenance, and training for the implementation of an audio visual system. Seller agrees to facilitate the integration of the hardware and software for the particular purpose set forth in the LOC and General RFP No. 3849. Seller further agrees that the system, as set forth in the LOC, General RFP No. 3849 and Seller’s Proposals in response thereto, shall operate efficiently and optimally in light of industry standards and as further specified in LOC, General RFP No. 3849 and Seller’s Proposals in response thereto. The LOC, General RFP No. 3849 and Seller’s Proposals as accepted by the State in response thereto are incorporated herein by reference.

**2.2** In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that: (a) Seller is solely responsible for all products and services being provided in this project; (b) Seller is responsible for the fulfillment of this project; and (c) 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, as specified in this Agreement, are binding on all proposed contractors, third parties, and subcontractors.

**ARTICLE 3 PURCHASE OF EQUIPMENT AND PURCHASE ORDERS**

Subject to the terms and conditions set forth herein, Seller agrees to provide, at the location specified by Purchaser, and Purchaser agrees to buy as needed the equipment, software, and services listed in the attached Exhibit A, which is incorporated herein 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 $TOTAL COMPENSATION, unless prior written authorization from ITS has been obtained. Purchaser shall submit a purchase order signed by a representative of Purchaser itemizing the items 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 specified in Seller’s Proposal during this time, Seller agrees to extend the new, lower pricing to Purchaser.

**ARTICLE 4 DELIVERY, INSTALLATION, AND RISK OF LOSS**

**4.1** Seller shall deliver the hardware and software to the location specified by Purchaser and pursuant to the delivery schedule set forth by Purchaser.

**4.2** Seller shall complete installation of hardware and software pursuant to the requirements set forth in the LOC and Article 5 herein. Seller acknowledges that installation of the system shall be accomplished with minimal interruption of Purchaser’s normal day-to-day operations.

**4.3** Seller shall assume and shall bear the entire risk of loss and damage to the hardware/software from any cause whatsoever while in transit and at all times throughout its possession thereof.

**4.4** 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.

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

**ARTICLE 5 SCHEDULE AND ACCEPTANCE**

**5.1** Seller warrants that all equipment and software shall be properly delivered, installed, and integrated for acceptance testing within the scheduling deadlines set forth by Purchaser, as the site is deemed ready for installation. Seller shall provide Purchaser with an installation schedule identifying the date, time, and location within the scheduling deadlines set forth in the LOC or as may be agreed to by the parties.

**5.2** During the project initiation, Seller and Purchaser will develop a mutually agreed upon project plan including the division of responsibility between Purchaser’s staff and Seller’s staff. It is understood by the parties that the project work plan must be in place prior to any other work being performed. Once this mutually agreed upon project plan, which will identify specific time frames and deliverable target dates for this project, has been developed, it will be incorporated into and made a part of this Agreement. The dates in the project plan will define the agreed upon period of performance. The parties acknowledge that the project plan will evolve and change from time to time, upon the mutual written agreement of both parties. The parties agree that the deliverables and schedule set forth in the latest version of the project plan will take precedence over any prior plans.

**5.3** Seller shall provide all documentation for the software and equipment being tested before acceptance testing will begin. Purchaser shall have ten (10) working days to review each deliverable and to either notify Seller of acceptance or to provide Seller a detailed list of deficiencies that must be remedied prior to payment being made. In the event the Purchaser notifies the Seller of deficiencies, the Seller, at Seller’s sole expense, shall correct such deficiencies within ten (10) working days, unless the Purchaser consents in writing to a longer period of time.

**5.4** Upon notification by Seller that the turnkey system has been fully implemented and is ready for final system acceptance testing, Purchaser shall have thirty (30) calendar days to evaluate and test the system to confirm that it performs without any defects and performs pursuant to the specifications set forth in the LOC, General RFP No. 3849 and the Seller’s Proposals in response thereto. Seller shall participate, as agreed upon by both parties, in the acceptance testing of the system by providing technical staff at Purchaser’s location to provide assistance in demonstrating all functions of the system. The Purchaser’s official representative must sign off on each application to ensure that the applications meet the functional and technical requirements. In the event that one (1) or more applications supplied by Seller are not accepted, the Seller shall correct the deficiencies or provide, at its own expense, whatever software or equipment that may be required to meet the acceptance criteria within ten (10) working days or a mutually agreed upon time period. In the event the system fails to perform to Purchaser’s satisfaction, Purchaser shall immediately notify Seller. Seller, at Seller’s sole expense, shall correct defects identified by Purchaser within ten (10) working days, or such other period as the parties may agree upon. The thirty (30) day testing period will be extended by system down-time. In the event Seller is unable to repair or replace the defective product, the Purchaser reserves the right to return the defective product to Seller at Seller’s expense and to cancel this Agreement.

**ARTICLE 6 TITLE TO EQUIPMENT**

Title to the hardware provided under this Agreement shall pass to Purchaser upon acceptance of the system.

**ARTICLE 7 SOFTWARE**

**7.1** Seller shall furnish the software to Purchaser as set forth in purchase orders submitted and executed by Purchaser, and shall acquire the right to license the software to Purchaser. For purposes of this Article, the term “Purchaser” means the University of Southern Mississippi, its employees, and any third party consultants or outsourcers engaged by Purchaser who have a need to know and who shall be bound by the terms and conditions of this license and Agreement.

**7.2** Seller accepts sole responsibility for: (a) Purchaser’s system configuration, design, and requirements; (b) the selection of the software to achieve Purchaser’s intended results; (c) the results obtained from the software; and (d) modifications, changes, or alterations to the software provided by Seller.

**7.3** Seller understands and agrees that Purchaser shall have: (a) a non-exclusive, non-transferable, enterprise-wide unlimited, and perpetual license for the software listed in Exhibit A; (b) the right to use and customize the software products and the related documentation for Purchaser’s business operations in accordance with the terms and conditions of this Agreement; (c) unlimited use by licensed users of the software products acquired for Purchaser’s operations; (d) use of such software products with a backup platform system, should it be deemed necessary by Purchaser; (e) the right to copy such software for safekeeping, backup, and disaster recovery purposes; (f) the right to combine the software with other programs and modules, and the right to create interfaces to other programs; and (g) the right to reproduce any and all physical documentation supplied under the terms of this Agreement.

**7.4** Purchaser agrees that, except as noted herein, it will not otherwise copy, translate, modify, adapt, decompile, disassemble, or reverse engineer any of the software without the prior written consent of Seller. All title and proprietary rights, whether tangible or intangible, including but not limited to copyright, trademark, and trade secret rights, in and to the software are retained by the Seller or the third party software manufacturer as applicable. Purchaser agrees to reproduce and include the copyright, trademark, and other proprietary rights notices on any copies made of the software and documentation.

**ARTICLE 8 TRAINING**

Seller shall, for the fees specified in the attached Exhibit A, provide the training specified in the LOC and Seller’s proposal, as accepted by Purchaser in response thereto, as well as five 2-hour onsite training sessions on the audio visual system for Purchaser’s designated personnel. Seller and Purchaser shall mutually agree on the time for the training and an outline of the training to be provided. Seller specifically understands and agrees that Purchaser will not accept the system until Seller completes the training requirements. Seller agrees to provide, upon delivery, all user documentation and technical manuals needed to fully acquaint the user with operation of the hardware and software.

**ARTICLE 9 CONSIDERATION AND METHOD OF PAYMENT**

**9.1** Except as provided in the Change Order Rate and Procedure Article of this Agreement, the total compensation to be paid to the Seller by the Purchaser shall not exceed the fixed price of $INSERT AMOUNT for all hardware, software, products, services, travel, performances and expenses under this Agreement, payable as described in Exhibit A, unless prior written authorization from ITS has been obtained. Authorization of payments is subject to the written approval of the Purchaser.

**9.2** Upon notification from Purchaser of its final acceptance of the system, Seller shall submit an invoice for payment of the system and for services rendered at the prices set forth in Exhibit A, including an invoice for warranty service, but excluding post warranty maintenance charges. Seller shall certify that the billing is true and correct. 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. BOB 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 should be made in United States currency. Payments by state agencies using Mississippi’s Accountability System for Government Information and Collaboration (MAGIC) shall be made and remittance information provided electronically as directed by the State. The payments by these agencies shall be deposited into the bank account of the Seller’s choice. 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.”

**9.3** Acceptance by the Seller of the last payment from the BOB 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 the work under this Agreement.

**ARTICLE 10 WARRANTIES**

**10.1** Seller represents and warrants that all equipment and software provided by Seller shall meet or exceed the minimum specifications set forth in the LOC, General RFP No. 3849 and Seller’s Proposals in response thereto.

**10.2** For a period of one (1) year after acceptance, Seller represents and warrants that the equipment provided pursuant to this Agreement shall operate without defects in material and workmanship. All equipment provided by Seller shall be covered by the manufacturer’s warranties, beginning upon acceptance of the system. Seller’s obligations pursuant to these warranties shall include, but are not limited to, the correction of all defects in the system and the repair or replacement of the equipment at no cost to Purchaser. In the event Seller cannot repair or replace an item of equipment, Seller shall at the State’s election, either refund the purchase price of the equipment and refund any fees paid for services that directly relate to the defective equipment, or, secure alternate equipment acceptable to the Purchaser that will insure functionality of the system.

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

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

**10.5** Seller represents and warrants that all software furnished will be free from material defects for a period of one (1) year after acceptance and will provide Purchaser complete functionality necessary for the operation of the system as stated in the LOC, General RFP No. 3849 and the Seller’s Proposals in response thereto. Seller’s obligations pursuant to this warranty shall include, but are not limited to, the correction of all defects in the software and the repair or replacement of the software at no cost to Purchaser. In the event Seller cannot repair or replace the software, Seller shall at the State’s election, either refund the fees paid for the software and for any services that directly relate to the defective software, or secure alternate software acceptable to the Purchaser which will insure functionality of the system.

**10.6** Seller represents and warrants that each unit of hardware delivered shall be delivered new and not as “used, substituted, rebuilt, refurbished, or reinstalled” equipment.

**10.7** Seller represents and warrants that the turnkey system is fit for the particular purpose set forth in this Agreement and the LOC with regard to Purchaser’s foreseeable or projected needs.

**10.8** 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 and replacement parts supplied to Seller.

**10.9** Seller represents and warrants that Seller shall maintain all equipment provided hereunder, pursuant to the manufacturer’s warranty policies throughout the equipment manufacturer’s specified warranty period.

**10.10** Seller represents and warrants that all work performed hereunder, including but not limited to consulting, conversion, training, technical support, and maintenance, shall be performed by competent personnel, 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 the performance of service, perform the services again, at no cost to the Purchaser, or if the Seller is unable to perform the services as warranted, the Seller shall reimburse the Purchaser the fees paid to the Seller for the unsatisfactory services.

**10.11** Seller represents and warrants that there is no disabling code or a 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 or a lockup program or device.

**10.12** 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.

**10.13** Seller represents and warrants that the turnkey system furnished will be free from material defects for a period of one (1) year after final acceptance of the complete system and will provide Purchaser complete functionality necessary for the operation of the system as stated in the LOC, General RFP No. 3849 and the Seller’s Proposals in response thereto. This warranty shall cover all components of the system, including but not limited to all programs, screens, reports, subroutines, utilities, file structures, documentation, interfaces, or other items provided by the Seller. This warranty will apply to the base package plus any customized programs, screens, reports, subroutines, interfaces, utilities, file structures, documentation, or other items proposed and delivered by the Seller specifically for this project. The Seller shall give immediate high priority attention to any mission critical corrections that are needed. If the system does not function accordingly, Seller shall, at the State’s election within five (5) working days and at no cost to Purchaser, either correct the defects identified, replace the products with products that are compliant with this warranty, or refund the fees paid for the products and for any services that directly relate to the defective product.

**10.14** Seller represents and warrants that upon completion of the project the Seller and all subcontractors shall convey to Purchaser copies of all interim reports, data collection forms, and any working papers that support the final acceptance of the system.

**10.15** Seller represents and warrants that it presently has and will continue to maintain, at its own expense, throughout the term of this Agreement, valid licenses for all software, trademarks, service marks, patents and copyrighted material and any other proprietary information of a third party that it will deploy in support of all products Seller uses in the performance of this Agreement. Seller further represents and warrants that upon Purchaser’s request, Seller shall pass through such licenses to Purchaser at no cost to Purchaser. In the event the licenses are passed through to Purchaser, such licenses shall name the Purchaser as the license holder of record and such licenses shall be established in such a manner so as to survive the termination/expiration of this Agreement. For any breach of the preceding warranty, Seller at its own expense shall within five (5) business days after receipt of notification of the breach, secure and/or pass through, as applicable, the necessary licenses. Failure of the Seller to secure and/or pass through such licenses 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.

**10.16** If applicable under the given circumstances, 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.

**10.17** 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.

**10.18** Seller represents and warrants that no official or employee of Purchaser or of ITS, 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.

**10.19** 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 11 INFRINGEMENT INDEMNIFICATION**

Seller represents and warrants that neither the software, its elements, nor the use thereof violates or infringes on 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 software 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 while maintaining substantially similar software functionality or data/informational content, or upon failing to secure either such right; (c) refund to Purchaser the 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 12 SYSTEM MAINTENANCE DURING WARRANTY**

**12.1** Seller agrees to provide on-site warranty service on all software, equipment, and any other devices that would be included within them for the periods specified and fixed prices noted in Exhibit A.

**12.2** Seller will respond by telephone within one (1) hour to requests for warranty repair service Monday through Friday, 8:00 A.M. to 5:00 P.M. (Central Time), and will come on-site with the necessary crash kit within four (4) hours from the point the call is made to service critical components and within eight (8) hours from the point the call is made to service all other peripherals and related software and computer equipment. Should the Seller fail to respond within such time, Seller shall pay the Purchaser $100.00 per hour for every hour of delay. The warranty includes all parts, labor, and travel.

**12.3** Seller agrees it will maintain in house the most frequently used supply replacement parts needed to service the equipment. Replacement parts will be new and not used or refurbished and will either be manufactured by and/or meet the minimum specifications established by the manufacturer of the equipment. Title to all replacement parts installed in the equipment will pass to Purchaser at the time of replacement, and title to parts removed for replacement will, at the time of replacement, pass to Seller.

**12.4** Seller agrees to a maximum eight (8) hour turnaround from the point the call is made on all repairs not requiring parts ordering and a maximum two (2) working days on all other repairs. If the repairs have not been made within these designated time frames, Seller shall pay the Purchaser $100.00 per hour for every hour of delay. If after two (2) days the item has not been repaired, a compatible loaner unit will be provided by Seller at no expense to Purchaser.

**12.5** Seller agrees to provide preventive maintenance based on the specific needs of the equipment during normal business hours and at intervals specified in the LOC and Seller’s Proposal as accepted by the State in response thereto. Preventive maintenance may be performed concurrently with remedial maintenance activity. Seller must record all activities related to preventive maintenance on a log to be retained on-site.

**12.6** Maintenance does not cover damage to equipment caused by Purchaser’s abuse or neglect; damage caused by an act of God (flood, earthquake, lightning, etc.) or loss due to fire or theft; neglect, misuse, alterations, or deviation from intended machine use; maintenance or repair of the machine performed by persons other than Seller, or maintenance or removal of alterations or attachments.

**12.7** The parties understand and agree that Purchaser reserves the right to cancel warranty service on all or part of the equipment as Purchaser deems necessary.

**12.8** Seller shall provide, for the periods set forth in Exhibit A, software support services as specified in the LOC, General RFP No. 3849 and Seller’s Proposals, as accepted by Purchaser, in response thereto, with said support to include, but not be limited to, the following: (a) upon notification of software errors, Seller shall provide all remedial support and assistance needed to correct the errors which affect the operation of the software; (b) the provision of regular updates, new releases, and enhancements as they are released, but no less than one (1) annually; (c) unlimited toll-free technical telephone support in the operation of the software system twenty-four hours, seven days per week, with a guaranteed one (1) hour telephone response time; priority placement in the support queue shall be given to all system locking situations or problems claimed by Purchaser to be a mission critical process; and (d) on-site support in the operation of the software products if reasonably convenient or necessary in the opinion of the Seller. It is further understood that in the event the software product lines are discontinued, Seller shall be responsible for supporting the last software release implemented by the Purchaser for a minimum of five (5) years thereafter, with the same level of support as described in this Article. Should Seller migrate away from the database currently required for the software installed for Purchaser to a different database, Seller shall provide updated product and new database licensing to Purchaser at no cost to Purchaser.

**12.9** Sixty (60) days prior to expiration of the warranty service on the software and each item of equipment, Seller shall notify Purchaser in writing of the impending warranty expiration, and Purchaser shall have thirty (30) days in which to notify Seller of its decision to either subscribe to Post Warranty Maintenance or to forgo Post Warranty Maintenance.

**ARTICLE 13 POST WARRANTY SYSTEM MAINTENANCE**

**13.1** Upon Purchaser’s notification to Seller, pursuant to Article 12.9 herein, of Purchaser’s decision to subscribe to Post Warranty Maintenance, the Seller agrees to provide on-site preventive and remedial maintenance necessary to maintain the software and equipment and any other devices that would be included within them for the time periods specified and fixed prices noted in Exhibit A. The maintenance includes all parts, labor, and travel.

**13.2** Seller will respond by telephone within one (1) hour to requests for unscheduled remedial maintenance Monday through Friday, 8:00 A.M. to 5:00 P.M. (Central Time), and will come on-site with the necessary crash kit within four (4) hours from the point the call is made to service critical components and within eight (8) hours from the point the call is made to service all other peripherals and related software and computer equipment. Should the Seller fail to respond within such time, Seller shall pay the Purchaser $100.00 per hour for every hour of delay.

**13.3** Seller agrees it will maintain in house the most frequently used supply replacement parts needed to service the equipment. Replacement parts will be new and not used or refurbished and will either be manufactured by and/or meet the minimum specifications established by the manufacturer of the equipment. Title to all replacement parts installed in the equipment will pass to Purchaser at the time of replacement, and title to parts removed for replacement will, at the time of replacement, pass to Seller.

**13.4** Seller agrees to a maximum eight (8) hour turnaround from the point the call is made on all repairs not requiring parts ordering and a maximum two (2) working days on all other repairs. If the repairs have not been made within these designated time frames, Seller shall pay the Purchaser $100.00 per hour for every hour of delay. If after two (2) days the item has not been repaired, a compatible loaner unit will be provided by Seller at no expense to Purchaser.

**13.5** Seller agrees to provide preventive maintenance based on the specific needs of the equipment during normal business hours and at intervals specified in the LOC and Seller’s Proposal as accepted by the State in response thereto. Preventive maintenance may be performed concurrently with remedial maintenance activity. Seller must record all activities related to preventive maintenance on a log to be retained on-site.

**13.6** Maintenance does not cover damage to equipment caused by Purchaser’s abuse or neglect; damage caused by an act of God (flood, earthquake, lightning, etc.) or loss due to fire or theft; neglect, misuse, alterations, or deviation from intended machine use; maintenance or repair of the machine performed by persons other than Seller, or maintenance or removal of alterations or attachments.

**13.7** The parties understand and agree that Purchaser reserves the right to add other equipment to be maintained or to cancel maintenance on all or part of the equipment as Purchaser deems necessary.

**13.8** Seller shall provide, for the periods set forth in Exhibit A, software support services as specified in the LOC, General RFP No. 3849 and Seller’s Proposals, as accepted by Purchaser, in response thereto, with said support to include, but not be limited to, the following: (a) upon notification of software errors, Seller shall provide all remedial support and assistance needed to correct the errors which affect the operation of the software; (b) the provision of regular updates, new releases, and enhancements as they are released, but no less than one (1) annually; (c) unlimited toll-free technical telephone support in the operation of the software system twenty-four hours, seven days per week with a guaranteed one (1) hour telephone response time; priority placement in the support queue shall be given to all system locking situations or problems claimed by Purchaser to be a mission critical process; and (d) on-site support in the operation of the software products if reasonably convenient or necessary in the opinion of the Seller. It is further understood that in the event the software product lines are discontinued, Seller shall be responsible for supporting the last software release implemented by the Purchaser for a minimum of five (5) years thereafter, with the same level of support as described in this Article. Should Seller migrate away from the database currently required for the software installed for Purchaser to a different database, Seller shall provide updated product and new database licensing to Purchaser at no cost to Purchaser.

**13.9** Sixty (60) days prior to the expiration of the Post Warranty Maintenance term, Seller shall notify Purchaser in writing of the impending expiration, and Purchaser shall have thirty (30) days in which to notify Seller of its intention to either renew or cancel any further maintenance. In no event shall the cost for maintenance services increase by more than five percent (5%) per year.

**ARTICLE 14 EMPLOYMENT STATUS**

**14.1** 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.

**14.2** 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.

**14.3** 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.

**14.4** 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 15 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 and/or student body 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 16 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 17 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS**

**17.1** 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.

**17.2** 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.

**17.3** 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.

**17.4** 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, 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.

**17.5** 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 18 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 19 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) by Purchaser, 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; (c) by Purchaser, without the assessment of any penalties, for any reason after giving thirty (30) days written notice specifying the effective date thereof to Seller; or (d) by either party in the event of a breach of a material term or provision of this Agreement where such breach continues for thirty (30) days after the breaching party receives written notice from the other party. Upon termination, Seller shall refund to Purchaser any and all applicable unexpended prorated annual support fees/charges, previously paid by Purchaser. In the event of termination, Seller shall be paid for satisfactory work completed or services rendered by Seller in connection with this Agreement and accepted by Purchaser as of the date of receipt of notification of termination. In no case shall said compensation exceed the total contract price. The provisions of this Article do not limit either party’s right to pursue any other remedy available at law or in equity.

**ARTICLE 20 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 or ITS be obligated to pay an attorney’s 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 21 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 22 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 23 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 24 HOLD HARMLESS**

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

**ARTICLE 25 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 26 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 27 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: Craig P. Orgeron, Ph.D., Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. Purchaser’s address for notice is: Jesse R. Smith, President, Jones College, 900 South Court Street, Ellisville, Mississippi 39437. BOB’s address for notice is: Mr. Calvin Sibley, Director, Mississippi Bureau of Building, Grounds and Real Property Management, 501 North West Street, Suite 1401B Woolfolk Building, Jackson, Mississippi 39201. The Seller’s address for notice is: 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 28 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, ITS, 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 29 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 30 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 31 COMPLIANCE WITH LAWS**

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

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

**ARTICLE 32 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 33 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 34 CONFIDENTIAL INFORMATION**

**34.1** 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.

**34.2** 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.

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

**ARTICLE 35 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 36 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS**

All data, electronic or otherwise, collected by Seller and all documents, notes, programs, databases (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 37 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 38 ENTIRE AGREEMENT**

**38.1** 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. 3849 and Seller’s Proposals in response thereto are hereby incorporated into and made a part of this Agreement.

**38.2** 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. 3849 and written addenda; and

**E.** Seller’s Proposals, as accepted by Purchaser, in response to the LOC and General RFP No. 3849.

**38.3** 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 Proposal”).

**ARTICLE 39 STATE PROPERTY AND LOCATION OF WORK**

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

**39.2** All work provided in connection with this contract will be required to be performed on-site in the Purchaser’s offices in Hattiesburg, Mississippi, unless written approval is received from the State. Seller accepts full responsibility for all problems arising out of a decision to perform off-site work.

**ARTICLE 40 SURVIVAL**

Articles 10, 11, 12, 13, 20, 24, 28, 33, 34, 36, 37, 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 41 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 transactions (federal, state, or local) terminated for cause or default.

**ARTICLE 42 COMPLIANCE WITH ENTERPRISE SECURITY POLICY**

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

**ARTICLE 43 COMPLIANCE WITH ENTERPRISE CLOUD AND OFFSITE HOSTING SECURITY**

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

**ARTICLE 44 STATUTORY AUTHORITY**

By virtue of Section 25-53-21 of the Mississippi Code Annotated, as amended, the Executive Director of ITS is the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of information technology equipment, software, and services. The parties understand and agree that ITS as contracting agent is not responsible or liable for the performance or non-performance of any of Purchaser’s or Seller’s contractual obligations, financial or otherwise, contained within this Agreement. The parties further acknowledge that ITS is not responsible for ensuring compliance with any guidelines, conditions, or requirements mandated by Purchaser’s funding source.

**ARTICLE 45 TRANSPARENCY**

In accordance with the Mississippi Accountability and Transparency Act of 2008, §27-104-151, et seq., of the Mississippi Code of 1972, as Amended, the American Accountability and Transparency Act of 2009 (P.L. 111-5), where applicable, and §31-7-13 of the Mississippi Code of 1972, as amended, where applicable, a fully executed copy of this Agreement and any subsequent amendments and change orders shall be posted to the State of Mississippi’s accountability website at: https://www.transparency.mississippi.gov. Prior to ITS posting the Agreement and any subsequent amendments and change orders to the website, any attached exhibits which contain trade secrets or other proprietary information and are labeled as “confidential” will be redacted by ITS. Notwithstanding the preceding, however, it is understood and agreed that pursuant to §25-61-9(7) of the Mississippi Code of 1972, as amended, the contract provisions specifying the commodities purchased or the services provided; the price to be paid; and the term of this Agreement shall not be deemed a trade secret or confidential commercial or financial information and shall thus not be redacted.

**ARTICLE 46 LIQUIDATED DAMAGES**

It is agreed by the parties hereto that time is of the essence and that in the event of a delay in the delivery and installation deadlines or delay in the satisfactory completion and acceptance of the services provided for herein, damage shall be sustained by Purchaser. In the event of a delay as described herein, Seller shall pay Purchaser, within five (5) calendar days from the date of receipt of notice, fixed and liquidated damages of $250.00 per day for each calendar day of delay caused by Seller. Purchaser may offset amounts due it as liquidated damages against any monies due Seller under this Agreement. Purchaser will notify Seller in writing of any claim for liquidated damages pursuant hereto on or before the date Purchaser deducts such sums from money payable to Seller. Any liquidated damages assessed are in addition to and not in limitation of any other rights or remedies of Purchaser.

**ARTICLE 47 PERFORMANCE BOND**

As a condition precedent to the formation of this Agreement, the Seller must provide a performance bond as herein described. To secure the Seller’s performance, the Seller shall procure, submit to the State with this executed Agreement, and maintain in effect at all times during the course of this Agreement a performance bond in the total amount of this Agreement. The bond shall be accompanied by a duly authenticated or certified document evidencing that the person executing the bond is a licensed Mississippi agent for the bonding company. This certified document shall identify the name and address of the person or entity holding the performance bond and shall identify a contact person to be notified in the event the State is required to take action against the bond. The term of the performance bond shall be concurrent with the term of this Agreement, with the exception of post-warranty maintenance and support, and shall not be released to Seller until final acceptance of all products and deliverables required herein or until the warranty period, if any, has expired, whichever occurs last. If applicable, and at the State’s sole discretion, the State may, at any time during the warranty period, review Seller’s performance and performance of the products/services delivered and determine that the Seller’s performance bond may be reduced or released prior to expiration of the full warranty period. The performance bond shall be procured at Seller’s expense and be payable to Purchaser. The cost of the bond may be invoiced to the Purchaser after project initiation only if itemized in the Seller’s cost proposal and in the attached Exhibit A. Prior to approval of the performance bond, the State reserves the right to review the bond and require Seller to substitute an acceptable bond in such form as the State may reasonably require. The premiums on such bond shall be paid by Seller. The bond must specifically refer to this Agreement and shall bind the surety to all of the terms and conditions of this Agreement. If the Agreement is terminated due to Seller’s failure to comply with the terms thereof, Purchaser may claim against the performance bond.

**ARTICLE 48 PAYMENT BOND**

As a condition precedent to the formation of the agreement between Contractor and Customer, the Contractor shall provide a payment bond as herein described. To secure the prompt payment of all persons supplying labor or materials used in the performance of work under this Supplement, the Contractor shall procure, submit to the State with this executed Agreement, and maintain in effect at all times during the course of its work under this Supplement, a payment bond in the amount of this Agreement. The bond shall be made by a surety company which is authorized to do business in the State of Mississippi and listed on the United States Treasury Department’s list of acceptable sureties. The bond shall be accompanied by a duly authenticated or certified document identifying the name and address of the person or entity holding the payment bond, and identifying a contact person to be notified in the event action against the bond is necessary. The term of the payment bond shall be concurrent with the term of this Agreement and shall not be released to Contractor until all services required under same have been completed and accepted by Customer, and all persons supplying labor or materials in the performance of work under this Agreement have been paid in full by the Contractor. The payment bond shall be procured at Contractor’s expense and be payable to the State of Mississippi. Prior to approval of the payment bond, the State reserves the right to review the bond and require Contractor to substitute an acceptable bond in such form as the State may reasonably require. The premiums on such bond shall be paid by Contractor. The bond must specifically refer to the LOC and this Agreement and shall bind the surety to all of the terms and conditions of this Agreement.

**ARTICLE 49 CHANGE ORDER RATE AND PROCEDURE**

**49.1** It is understood that the State may, at any time, by a written order, make changes in the scope of the project. No changes in scope are to be conducted or performed by the Seller except by the express written approval of the State. The Seller shall be obligated to perform all changes requested by the Purchaser which have no price or schedule effect.

**49.2** The Seller shall have no obligation to proceed with any change that has a price or schedule effect until the parties have mutually agreed in writing thereto. Neither the State nor the Seller shall be obligated to execute such a change order; if no such change order is executed, the Seller shall not be obliged or authorized to perform services beyond the scope of this Agreement and the contract documents. All executed change orders shall be incorporated into previously defined deliverables.

**49.3** With respect to any change orders issued in accordance with this Article, the Seller shall be compensated for work performed under a change order according to the hourly change order rate specified the attached Exhibit A, which is incorporated herein. If there is a service that is not defined in the change order rate, the Seller and the State will negotiate the rate. The Seller agrees that each change order rate shall be a “fully loaded” rate, that is, it includes the cost of all materials, travel expenses, per diem, and all other expenses and incidentals incurred by the Seller in the performance of the change order. The Seller shall invoice the Purchaser upon acceptance by the Purchaser of all work documented in the change order, and the Purchaser shall pay invoice amounts on the terms set forth in this Agreement.

**49.4** Upon agreement of the parties to enter into a change order, the parties will execute such a change order setting forth in reasonable detail the work to be performed thereunder, the revisions necessary to the specifications or performance schedules of any affected project work plan, and the estimated number of professional services hours that will be necessary to implement the work contemplated therein. The price of the work to be performed under any change order will be determined based upon the change order rate; however, the change order will be issued for a total fixed dollar amount and may not be exceeded regardless of the number of hours actually expended by the Seller to complete the work required by that change order. The project work plan will be revised as necessary.

**49.5** The Seller will include in the progress reports delivered under this Agreement the status of work performed under all then current change orders.

**49.6** In the event the Seller and the State enter into a change order which increases or decreases the time required for the performance of any part of the work under this Agreement, the Seller shall submit to the Purchaser a revised version of the project work plan, clearly indicating all changes, at least five (5) working days prior to implementing any such changes.

**49.7** The Purchaser shall promptly review all revised project work plans submitted under this Agreement and shall notify the Seller of its approval or disapproval, in whole or in part, of the proposed revisions, stating with particularity all grounds for any disapproval, within ten (10) working days of receiving the revisions from the Seller. If the Purchaser fails to respond in such time period or any extension thereof, the Purchaser shall be deemed to have approved the revised project work plan.

**ARTICLE 50 FORCE MAJEURE**

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war or terrorism, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the “Force Majeure Events”). When such a cause arises, the Seller shall notify the Purchaser immediately in writing of the cause of its inability to perform; how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate this Agreement.

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

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| **State of Mississippi, Department of**  **Information Technology Services, on behalf of** **Jones College** |  | **INSERT VENDOR NAME** |
| **By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |  | **By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Authorized Signature** |  | **Authorized Signature** |
| **Printed Name: Craig P. Orgeron, Ph.D.** |  | **Printed Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Title: Executive Director** |  | **Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |  | **Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |

**EXHIBIT A**