

# Memorandum for General RFP Configuration

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**To:** Vendors with a current valid proposal for **RFP 3364-Mainframe and Distributed Systems and RFP 3361 - Windows/Unix Hardware and Software**

**From:** David L. Litchlitter

**CC:** LaNeal Posey –MDOT

**Date:** February 18, 2004

**Project Number:** 34987

**Response Due Date:** Thursday, February 26, 2004 by 3:00p.m.

**Contact Name:** Patricia Whitley

**Contact Phone/Fax Number:** 601 359-2634 / 601 354-6016Fax

**Contact E-mail Address:** [whitley@its.state.ms.us](mailto:whitley@its.state.ms.us)

**Re:** SUN Server for MS Department of Transportation

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The Mississippi Department of Information Technology Services (ITS) is seeking to acquire a SunFire 1280 Server for the MS Department of Transportation. Our records indicate that your company currently has a valid proposal on file at ITS in response to RFP 3364-Mainframe and Distributed Systems and RFP 3361 for Windows/Unix Hardware and Software Products. Our preliminary review of this proposal indicates that your company offers hardware products or services that are appropriate for the requirements of this project. Therefore, we are requesting your configuration assistance for the items described below. Due to the extremely competitive pricing of products and services, and to ensure that every necessary component of the product is included in each vendor's proposal, we are asking that you submit a written response for the requested products and/or services. Vendors will be evaluated and qualified based on price, product offerings, etc.

## 1. BACKGROUND INFORMATION

In a prior procurement, MDOT established a Sun Microsystems hardware and software standard for its Unix application environment. Currently MDOT's processing environment includes a Sun Enterprise 10000 Server environment running Sun Solaris 2.6 operating system software and Sybase 11.9.2. There are 2 – T3 storage units attached to the E10K. The MDOT computer room equipment is running at gigabit speed with a DS3 connection to the ITS communication's backbone across the wide area network. Via this arrangement, the MDOT computer room supports statewide users on 5 major applications, including the Tier Technologies' based Financial Management System and AASHTO's Site Manager Construction Management System. The requested equipment will be used along with the existing Sun 10K server to implement an Oracle database platform.

## 2. HARDWARE REQUIREMENTS

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Because of the agency's Sun standard, Vendor must propose the Sun Microsystems components Sun Fire 1280 and configured as requested below. Vendor is expected to utilize their expertise to assure the completeness of the configuration and the compatibility of all components. All proposed equipment must be new from the manufacturer, Sun and of quality for full Sun warranty and maintenance services.

- 2.1 Vendor must propose a Sun Fire 1280 server configured with
  - 2.1.1 2 processor/memory boards,
  - 2.1.2 8 – 1.2GHz UltraSparcIII Cu with 8MB cache each
  - 2.1.3 16GB of memory
  - 2.1.4 2 - 73GB 10000 RPM Ultra3 SCSI Disks
  - 2.1.5 Read Write CD-ROM Drive
  - 2.1.6 2 Gigabit ethernet ports
  - 2.1.7 4 power supplies
  - 2.1.8 Standby integrated system controller
  - 2.1.9 Single Fibre Channel 2GB PCI Network Adapter
  - 2.1.10 Solaris 9 installed
  - 2.1.11 Solaris 9 System Administration Media Kit for English SPARC platform
- 2.2 Vendor must propose, for optional consideration by the agency, one Sun Enterprise 10000 motherboard and 4 – 400Mhz processors to upgrade the existing 10K server.
- 2.3 Vendor must propose two (2) Sun Blade 1500 Workstations configured with:
  - 2.3.1 1Ghz UltraSparcIIIi processor with 1MB L2 cache
  - 2.3.2 4GB DDR Error correction memory
  - 2.3.3 2 ATA100 80GB 7200RPM hard disk drives
  - 2.3.4 1394a (Firewire)
  - 2.3.5 5 PCI slots
  - 2.3.6 Read/Write CD-ROM Drive
  - 2.3.7 10/100/1000 Ethernet Port
  - 2.3.8 Solaris preinstalled operating environment
  - 2.3.9 Star Office 6.0 preinstalled
  - 2.3.10 Sun XVR -100 graphics accelerator
  - 2.3.11 Sun PCI III co-processor card

### **3. PRODUCT WARRANTY**

- 3.1 Vendor must propose the standard Sun warranty coverage for all products listed above. Vendor must specify the warranty period, during which time maintenance need not be paid. Warranty must cover at minimum, 4 hour onsite response to service calls, 8am to 5pm, Monday through Friday. Coverage must also include 2 hour telephone response 24 hours a day, 7 days a week. Please describe the proposed warranty plan including the initial length of the warranty term.
- 3.2 Is extended warranty available? If so, specify the cost and time period of extension or specify that extended warranty coverage beyond the initial time period is not available.

### **4. MAINTENANCE**

Vendor must state the cost to provide ongoing maintenance on the products identified above. The maintenance must include, at minimum, 4 hour onsite response to service calls, 8am to 5pm, Monday through Friday. Coverage must also include 2 hour telephone response 24 hours a day, 7 days a week. Vendor must identify the key terms of the proposed maintenance

**5. ADDITIONAL REQUIREMENTS**

- 5.1 To the degree possible, Vendor must be aware that any award resulting from this request will be handled under the terms and conditions of the State’s existing Master Sun Agreement or the Agency’s Sun support agreement. Exhibit A - Standard Turnkey Agreement is attached for vendors who require a contract direct to his/her company. If so, Vendor must clearly state this term in response to this requirement.
- 5.2 For optional consideration by the agency, Vendor must propose onsite installation of the proposed products and identify all associated costs.
- 5.3 Vendor must specify the delivery interval proposed by his/her company.
- 5.4 Vendor must provide all technical specifications and manuals (documentation) at the point of sale.
- 5.5 Other Information - Vendor may provide any other information relevant to the purchase of the components identified above such as vendor item #'s if different from the manufacturer numbers listed above (but required to place an order), changes to ‘Place Order To’ or ‘Make Payment To’ addresses, etc.

**6. COSTS**

- 6.1 Vendor must specify the discounted price for each item.
- 6.2 Vendor must propose all costs associated with this acquisition, including freight and insurance and those listed below, as necessary. Specified freight costs must be FOB destination to the MDOT Central Office Building, Jackson, Mississippi. The listing below is intended to provide summary costs. Vendor is required to also provide a full cost itemization as a supplement to Vendor’s proposal response.
  - 6.2.1 Hardware Costs \_\_\_\_\_
  - 6.2.2 Software Costs \_\_\_\_\_
  - 6.2.3 Installation Costs \_\_\_\_\_
  - 6.2.4 Equipment Warranty Costs \_\_\_\_\_
  - 6.2.5 Equipment Maintenance Costs \_\_\_\_\_
  - 6.2.6 Freight/Insurance Costs \_\_\_\_\_
  - 6.2.7 Travel Costs \_\_\_\_\_
  - 6.2.8 Other Costs – Identify: \_\_\_\_\_  
\_\_\_\_\_
  - 6.2.9 Change order rate: \_\_\_\_\_
  - 6.2.10 Change order period: \_\_\_\_\_ year(s)
- 6.3 For optional consideration by the agency, Vendor must specify a change order rate (or rates if multiple positions are proposed) that will be guaranteed should the agency identify a need for future services outside the scope of this project. The rate must be fully loaded and include all necessary expenses, with the exception of travel expenses. Vendor must specify the time period for which his/her company is willing to extend this change order rate.

6.4 The State will use all cost, technical specifications, and value added information to evaluate the lowest and best responder.

**7. INSTRUCTIONS TO SUBMIT PRODUCT AND COST INFORMATION**

7.1 Vendor must label each page of proposal as follows:

\_\_\_\_\_ (Insert Company Name)  
**Response to Project # 34987 - MDOT Sun Server**  
**Page \_\_\_\_\_ of \_\_\_\_\_**

7.2 Vendor must deliver this response to Patricia Whitley at ITS. Responses may be delivered by hand, via mail, email or by fax. Fax number is (601) 354-6016. **ITS WILL NOT BE RESPONSIBLE FOR DELAYS IN THE DELIVERY OF PROPOSALS.** It is solely the responsibility of the vendor that proposals reach ITS on time. Vendors should contact Patricia Whitley at telephone number 601 359-2634 (email address: [whitley@its.state.ms.us](mailto:whitley@its.state.ms.us)) to verify the receipt of their proposals. Proposals received after the deadline will be rejected.

## EXHIBIT A – STANDARD CONTRACT

A properly executed contract may be required for this LOC. The inclusion of this contract 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.

**PROJECT NUMBER 34987**  
**TURNKEY AGREEMENT**  
**BETWEEN**  
**INSERT NAME OF VENDOR**  
**AND**  
**MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES**  
**AS CONTRACTING AGENT FOR**  
**MISSISSIPPI DEPARTMENT OF TRANSPORTATION**

This Turnkey Agreement (hereinafter referred to as “Agreement”) is entered into by and between INSERT NAME OF VENDOR, a SPECIFY STATE OF INCORPORATION corporation having its principal place of business at SPECIFY BUSINESS ADDRESS (hereinafter referred to as “Seller”) and Mississippi Department of Information Technology Services having its principal place of business at 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201 (hereinafter referred to as “ITS”), as contracting agent for Mississippi Department of Transportation located at 401 North West Street, Jackson, Mississippi 39201 (hereinafter referred to as “Purchaser”). ITS and Purchaser are sometimes collectively referred to herein as “State”.

**WHEREAS**, Purchaser, pursuant to Request for Proposals (“RFP”) Number 3361 , requested proposals for the acquisition of certain equipment, software, installation services and technical support (collectively “Turnkey Operation”) necessary for the implementation of SPECIFY THE SYSTEM, ETC. THAT IS BEING IMPLEMENTED ; 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 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 SPECIFY 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 issuance of a valid purchase order by the Purchaser following contract execution and the issuance by ITS of the CP-1 Acquisition Approval Document.

### **ARTICLE 2 TURNKEY OPERATION AND INSTALLATION**

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 SPECIFY THE SYSTEM, ETC. THAT IS BEING IMPLEMENTED. Seller agrees to facilitate the integration of the hardware and software for the particular purpose set forth in RFP No. 3361. Seller further agrees that the system as set forth in RFP No. 3361 and Seller’s Proposal in response thereto, shall operate efficiently and optimally in light of industry standards and as further specified in RFP No. 3361 and Seller’s Proposal in response thereto. RFP No. 3361 and Seller’s Proposal as accepted by the State in response thereto are incorporated herein by reference.

### **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 \$**INSERT AMOUNT** unless prior written authorization from ITS has been obtained. Purchaser shall submit a purchase order signed by a representative of Purchaser itemizing the 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 **INSERT #** days. 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 RFP No. 3361 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 RFP No. 3361, or as may be agreed to by the parties.

**5.2** Upon notification by Seller that the turnkey system has been implemented for acceptance testing, Purchaser shall have thirty (30) days to evaluate and test the system to confirm that it performs without any defects and performs pursuant to the specifications set forth in RFP No. 3361 and the Seller's Proposal in response thereto. In the event the system fails to perform to Purchaser's satisfaction, Purchaser shall immediately notify Seller. Seller shall correct defects identified by Purchaser within four (4) working days, or such other period as the parties may agree upon, subject to equipment delivery delays. The thirty (30) day testing period will be extended by system down-time. The Purchaser reserves the right to return defective equipment and software 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**

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. Each License Agreement shall be perpetual unless terminated and shall be subject to and superseded by the terms and conditions of this Agreement. Any provision of the applicable License Agreement that violates the laws of the State of Mississippi, or any provision that is contrary to the Official Opinion of the Attorney General of the State of Mississippi shall be null and void.

## **ARTICLE 8 TRAINING**

Seller shall, for the fees specified in the attached Exhibit A, provide {INSERT DESCRIPTION OF THE TRAINING TO BE PROVIDED, i.e., is it on-site? # of days? # of participants? Will the training be system administration, operational and setup procedures, trouble shooting methods, etc?}

.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** Upon notification from Purchaser of its acceptance of the system, Seller shall submit an invoice for payment of the system and for services 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. Purchaser agrees to pay Seller in accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies”, Sections 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the State within forty-five (45) days of receipt of the invoice. Seller understands and agrees that Purchaser is exempt from the payment of taxes. All payments shall be in United States currency. 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”.

**9.2** Acceptance by the Seller of the last payment from the Purchaser shall operate as a release of all claims against the State by the Seller and any subcontractors or other persons supplying labor or materials used in the performance of 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 RFP No. 3361 and Seller’s Proposal in response thereto.

**10.2** For a period of SPECIFY WARRANTY PERIOD 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 refund the purchase price of the equipment, and refund any fees paid for services that directly relate to the defective equipment. Furthermore, Seller shall recommend and, with the concurrence of Purchaser, secure alternate equipment which 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 SPECIFY WARRANTY PERIOD after acceptance and will provide Purchaser complete functionality necessary for the operation of the system as stated in RFP No. 3361 and the Seller’s Proposal in response thereto. If the software does not function accordingly, Seller shall, at no cost to Purchaser, replace the software or refund the fees paid for the software and for any services that directly relate to the defective software. In the event of a refund, Seller shall recommend and, with the concurrence of Purchaser, secure alternate software 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 RFP No. 3361 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, training, technical support and maintenance, shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of this Agreement. For any breach of this warranty, the Seller shall, for a period of ninety (90) days from 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 lockup program or device embedded in the software provided to Purchaser. Seller further agrees that it will not, under any circumstances including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Purchaser's use of the software and/or which would restrict Purchaser from accessing its data files or in any way interfere with the transaction of Purchaser's business. For any breach of this warranty, Seller at its expense shall, within five (5) working days after receipt of notification of the breach, deliver Products to Purchaser that are free of such disabling code, lockup program or device.

**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.

#### **ARTICLE 11 INFRINGEMENT INDEMNIFICATION**

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

#### **ARTICLE 12 MAINTENANCE DURING WARRANTY**

**12.1** Seller agrees to provide on-site warranty service on all 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) IF MONDAY-FRIDAY & 8-5 IS NOT CORRECT, INSERT CORRECT DAYS & TIMES, 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 computer equipment. IF THE DESIRED RESPONSE TIMES ARE DIFFERENT, PLEASE CHANGE Should the Seller fail to respond within such time, Seller shall pay the Purchaser \$INSERT AMOUNT per hour for every hour of delay. The warranty includes all parts, labor and travel.

**12.3** Seller agrees it will maintain in house, 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 DESIRED REPAIR TIMES ARE DIFFERENT, PLEASE CHANGE If the repairs have not been made within these designated time frames, Seller shall pay the Purchaser \$ INSERT AMOUNT 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.

**12.5** Seller agrees to provide preventive maintenance based on the specific needs of the equipment during normal business hours and at intervals specified by Seller. 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** Sixty (60) days prior to expiration of the warranty service on 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 place the item of equipment under Post Warranty Maintenance or to forgo Post Warranty Maintenance on that particular item of equipment.

### **ARTICLE 13 POST WARRANTY MAINTENANCE**

**13.1** Upon Purchaser's notification to Seller pursuant to Article 12.8 herein, of Purchaser's decision to place an item of equipment under Post Warranty Maintenance, the Seller agrees to provide on-site preventive and remedial maintenance necessary to maintain the 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) IF MONDAY-FRIDAY & 8-5 IS NOT CORRECT, INSERT CORRECT DAYS & TIMES, 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 computer equipment. IF THE DESIRED RESPONSE TIMES ARE DIFFERENT, PLEASE CHANGE Should the Seller fail to respond within such time, Seller shall pay the Purchaser \$ SPECIFY AMOUNT per hour for every hour of delay.

**13.3** Seller agrees it will maintain in house, 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 DESIRED REPAIR TIMES ARE DIFFERENT, PLEASE CHANGE If the repairs have not been made within these designated time frames, Seller shall pay the Purchaser \$ SPECIFY AMOUNT 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.

**13.5** Seller agrees to provide preventive maintenance based on the specific needs of the equipment during normal business hours and at intervals specified by Seller. 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** Sixty (60) days prior to the expiration of the Post Warranty Maintenance service on each item of equipment, 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 seven (7) percent 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 ASSIGNMENT AND SUBCONTRACTS**

**17.1** 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.

**17.2** 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.

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

**17.4** 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 PRIOR TO START UP OF WARRANTY SERVICE OR POST WARRANTY MAINTENANCE**

Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be terminated, in whole or in part, as follows: (a) upon the mutual, written agreement of the parties; (b) If either party fails to comply with the terms of this Agreement, the non-defaulting party may terminate the Agreement upon the giving of thirty (30) days written notice unless the breach is cured within said thirty (30) day period; (c) Purchaser may terminate the Agreement in whole or in part upon thirty (30) days written notice to Seller if Seller becomes the subject of bankruptcy, reorganization, liquidation or receivership proceedings, whether voluntary or involuntary, or (d) Purchaser may terminate the Agreement for any reason after giving thirty (30) days written notice specifying the effective date thereof to Seller. The provisions of this Article do not limit either party's right to pursue any other remedy available at law or in equity.

#### **ARTICLE 20 TERMINATION OF WARRANTY SERVICE OR POST WARRANTY MAINTENANCE**

Purchaser has the option of canceling warranty service or post warranty maintenance on all or part of the equipment, upon a thirty (30) day notice to Seller. Upon termination, Seller shall refund any and all applicable unexpended pro-rated service fees previously paid by Purchaser.

#### **ARTICLE 21 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 attorneys fee, prejudgment interest or the cost of legal action to Seller. Further, nothing in this Agreement shall affect any statutory rights Purchaser may have that cannot be waived or limited by contract.

#### **ARTICLE 22 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 23 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 24 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 25 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 26 THIRD PARTY ACTION NOTIFICATION**

Seller shall give Purchaser prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Seller 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.

#### **ARTICLE 27 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 28 NOTICE**

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by facsimile provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at their business address listed herein. ITS' address for notice is: Mr. David L. Litchlitter, Executive Director, Mississippi Department of Information Technology Services, 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201. Purchaser's address for notice is: [SPECIFY NAME, TITLE, AGENCY NAME & ADDRESS FOR PURCHASER](#) . The Seller's address for notice is: [SPECIFY NAME, TITLE, COMPANY NAME & ADDRESS](#) . 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 29 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

any of the Seller's books, documents, papers and/or records that are pertinent to this Agreement to make audits, examinations, excerpts and transcriptions at the Seller's office where such records are kept during Seller's 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 30 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 31 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 32 COMPLIANCE WITH LAWS**

Seller shall comply with, and all activities under this Agreement shall be subject to, all Purchaser policies and procedures, and all applicable federal, state and local laws, regulations, policies and procedures as now existing and as may be amended or modified. Specifically, but not limited to, Seller shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of this Agreement because of race, creed, color, sex, age, national origin or disability.

#### **ARTICLE 33 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 34 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 35 CONFIDENTIAL INFORMATION**

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 and 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.

#### **ARTICLE 36 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 37 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS**

All data, electronic or otherwise, collected by Seller and all documents, notes, programs, data bases (and all applications thereof), files, reports, studies, and/or other material collected and prepared by Seller in connection with this Agreement,

whether completed or in progress, shall be the property of Purchaser upon completion of this Agreement or upon termination of this Agreement. Purchaser hereby reserves all rights to the databases and all applications thereof and to any and all information and/or materials prepared in connection with this Agreement. Seller is prohibited from use of the above described information and/or materials without the express written approval of Purchaser.

#### **ARTICLE 38 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 39 ENTIRE AGREEMENT**

**39.1** 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 RFP No. 3361 and Seller's Proposal in response to RFP No. 3361 are hereby incorporated into and made a part of this Agreement.

**39.2** 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. RFP No. 3361 and written addenda, and
- D. Seller's Proposal, as accepted by Purchaser, in response to RFP No. 3361.

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

#### **ARTICLE 40 STATE PROPERTY**

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.

#### **ARTICLE 41 SURVIVAL**

Articles [{list the article numbers which pertain to ?warranties?; ?yr.2000 warranties?; ?infringement indemnification?; ?maintenance during warranty?; ?post warranty maintenance?; ?governing laws?; ?hold harmless?; ?record retention?; ?sovereign immunity?; ?confidential information?; ?ownership of documents?, and ?non-solicitation of employees?}](#) 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 42 DEBARMENT AND SUSPENSION CERTIFICATION**

Seller certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing

a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

#### **ARTICLE 43 NETWORK SECURITY**

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

#### **ARTICLE 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.

#### **ARTICLE 45 LIQUIDATED DAMAGES**

**NOTE TO TECHNOLOGY CONSULTANT: YOU & THE AGENCY NEED TO DECIDE WHETHER TO INCLUDE THIS PROVISION ON LIQUIDATED DAMAGES. IF DON'T INCLUDE, THEN DELETE THIS ARTICLE & RENUMBER REMAINING ARTICLES.**

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 SPECIFY DOLLAR AMOUNT dollars (\$INSERT #) 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 46 PERFORMANCE BOND**

**NOTE TO TECHNOLOGY CONSULTANT: YOU & THE AGENCY NEED TO DECIDE WHETHER TO INCLUDE THIS PROVISION ON PERFORMANCE BOND. IF DON'T INCLUDE, THEN DELETE THIS ARTICLE.**

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 amount of SPECIFY DOLLAR AMOUNT . 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 and shall not be released to Seller until all services required herein have been completed and

accepted by Purchaser. The performance bond shall be procured at Seller's expense and be payable to the State of Mississippi. 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 47 PERSONNEL ASSIGNMENT GUARANTEE**

##### NOTE TO TECHNOLOGY CONSULTANT: YOU & THE AGENCY NEED TO DECIDE WHETHER TO INCLUDE THIS PROVISION ON PERSONNEL GUARANTEE

Seller guarantees that the personnel assigned to this project will remain a part of the project throughout the duration of the Agreement as long as the personnel are employed by the Seller and are not replaced by Seller pursuant to the third paragraph of the Article herein titled "Employment Status". Seller further agrees that the assigned personnel will function in the capacity for which their services were acquired throughout the life of the Agreement, and any failure by Seller to so provide these persons shall entitle the State to terminate this Agreement for cause. Seller agrees to pay the Purchaser fifty percent (50%) of the total contract amount if any of the assigned personnel is removed from the project prior to the ending date of the contract for reasons other than departure from Seller's employment or replacement by Seller pursuant to the third paragraph of the Article herein titled "Employment Status". Subject to the State's written approval, the Seller may substitute qualified persons in the event of the separation of the incumbents therein from employment with Seller or for other compelling reasons that are acceptable to the State, and may assign additional staff to provide technical support to Purchaser. The replacement personnel shall have equal or greater ability, experience and qualifications than the departing personnel, and shall be subject to the prior written approval of the Purchaser. The Seller shall not permanently divert any staff member from meeting work schedules developed and approved under this Agreement unless approved in writing by the Purchaser. In the event of Seller personnel loss or redirection, the services performed by the Seller shall be uninterrupted and the Seller shall report in required status reports its efforts and progress in finding replacements and the effect of the absence of those personnel.

#### **ARTICLE 48 ESCROW OF SOURCE CODE**

##### NOTE TO TECHNOLOGY CONSULTANT: YOU & THE AGENCY NEED TO DECIDE WHETHER TO INCLUDE THIS PROVISION ON SOURCE CODE PROTECTION

**48.1** With the execution of this Agreement, the Seller shall place and maintain a current copy of the data dictionary, documentation, object code and source code in escrow, and shall furnish Purchaser with a copy of the escrow agreement and the name and address of the agent. The escrow agreement shall authorize the escrow agent to release, at no cost to Purchaser, the data dictionary, documentation, object code and source code to Purchaser if and when the Purchaser is deemed to have a right under this Article. The Seller shall pay all costs of providing and maintaining the escrow agreement, including the fees of the escrow agent. The copy of the source code placed in escrow shall be reproduced and maintained on magnetic tape or disk using a commonly accepted data recording protocol. Program documentation sufficient to allow a competent programmer to use and maintain the source code programs must accompany the source code. When a change is made to the object code or source code by or on behalf of the Seller during the term of the escrow agreement, the revised code, including the change, shall be delivered to the escrow agent not later than thirty (30) calendar days after the change is effected by or on behalf of the Seller.

**48.2** Provided that the Purchaser is not then in substantial default under this Agreement, the Seller shall provide to Purchaser, at no cost and within ten (10) calendar days after receipt of Purchaser's written request for it, one (1) complete copy of the data dictionary, documentation, object code and source code used in the preparation of the software and custom modifications to the source code and object code as a result of this Agreement, brought up to date as of the date of delivery of such source code to Purchaser, upon the occurrence of any of the following events: (a) any or all material part of the source code or object code is generally made available, with or without additional cost, to other users of comparable software; or (b) the Seller's or the software manufacturer's cessation, for any reason, to do business; or (c) the Seller or the software manufacturer discontinues maintenance of the software; or (d) bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or other similar proceedings are instituted by or against the Seller or the software manufacturer.

#### **ARTICLE 49 CHANGE ORDER RATE AND PROCEDURE**

NOTE TO TECHNOLOGY CONSULTANT: YOU & THE AGENCY NEED TO DECIDE WHETHER TO INCLUDE THIS PROVISION ON CHANGE ORDER RATE, ETC.

**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; and 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 in SPECIFY EITHER ?SELLER?S PROPOSAL IN RESPONSE TO RFP NO. XX? OR ?THE ATTACHED EXHIBIT B? 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.

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

**State of Mississippi, Department  
of Information Technology Services,  
on behalf of Mississippi Department of  
Transportation**

**Insert Name of Vendor**

**By:** \_\_\_\_\_  
**Authorized Signature**

**By:** \_\_\_\_\_  
**Authorized Signature**

**Printed Name: David L. Litchliter**

**Printed Name:** \_\_\_\_\_

**Title: Executive Director**

**Title:**

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_