



**SAMPLE  
INSTRUCTIONS FOR QUOTATIONS  
FOR GOODS OR SERVICES DURING EMERGENCY CONDITIONS**

1. Unless otherwise required, submit only one copy of each quotation.
2. Quotes, amendments thereto or withdrawal requests received after the time of the opening will be void regardless of when they were mailed.
3. Quote prices on units specified with packing included or predelivery check, title and inspection when applicable to motor vehicle.
4. Attach complete specifications for any permitted substitutions offered, or when amplification is desirable or necessary.
5. If specifications or descriptive papers are submitted with quotations, enter bidder's name thereon.
6. If the article quoted upon has a trade name or brand, show same in quote.
7. Sample, when required, must be submitted, free of expense unless otherwise specified, in accordance with the conditions and instructions in the body of this notice.
8. Show delivery time required after order is received (see below).
9. Address and mark quotes as indicated in the notice.

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**CONDITIONS**

1. The (NAME OF ENTITY) reserves the right to reject any and all quotations, and to waive all informalities.
2. Unit prices will govern over extended prices, unless otherwise stated.
3. Payment in connection with discount offered will be computed from the time of inspection and/or acceptance.
4. All material and products offered must be guaranteed to meet the requirements of the specifications indicated, given or referred to.
5. Prices quotes must be based upon payment in 45 days. Discounts for payment in less than 45 days will not be considered in making award.
6. The right is reserved for the (NAME OF ENTITY) to make an award which is determined to be in the best interest of the (NAME OF ENTITY).
7. The right is reserved to reject any quotations in which the delivery time indicated is considered sufficient to delay the operation for which the commodity is intended.
8. Unless otherwise indicated by the (NAME OF ENTITY), prices must be firm for not less than 30 days.
9. The successful bidder shall indemnify and save harmless the (NAME OF ENTITY) and all its officers, agents, and employees from all suits or claims of any character brought by reason in infringing on any patent trade mark, or copyright.
10. Ambiguous quotes which are uncertain as to terms, delivery, quantity, or compliance with specifications may be rejected or otherwise disregarded.
11. Any contract entered into by the (NAME OF ENTITY) resulting from this notice shall be subject to cancellation at the end of any fiscal or appropriated year unless otherwise provided by law.
12. Quotes shall be submitted on (NAME OF ENTITY) prepared proposal forms only, unless otherwise requested.

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**BID**

I, the undersigned, certify that this proposal does not violate any federal or state antitrust laws.

In compliance with the invitation, and subject to all conditions thereof, the undersigned offers and agrees, if this quotation is accepted within \_\_\_\_\_ days from date of opening, to furnish any or all items quoted on at prices as set forth after the item and make delivery, within \_\_\_\_\_ days after receipt of order, delivered, all transportation costs included and prepaid and unless otherwise stated and accepted herein, I agree to complete this proposed contract in less than \_\_\_ days after issue date of purchase order.

Bidder should place an "X" before one of the following statements

\_\_\_ This is a quotation for commodities or equipment to be sold to the entity and delivered as set forth herein.

\_\_\_ This is a quotation for rental of equipment. I am in substantial agreement with the terms and conditions set forth in the attached Rental Agreement For Use by Mississippi Departments and Vendors, any requested deviations from these terms and conditions are set forth in an attached sheet. (please note that deviations may cause the quote to be rejected)

\_\_\_ This is a quotation for services. I am in substantial agreement with the terms and conditions set forth in the attached Personal Services Agreement, any requested deviations from these terms and conditions are set forth in an attached sheet. (please note that deviations may cause the quote to be rejected)

\_\_\_\_\_  
Bidder Street or P.O. Box

\_\_\_\_\_  
City State Zip Telephone

By \_\_\_\_\_ Title: \_\_\_\_\_  
(Quotes must be signed in ink)

RENTAL AGREEMENT  
FOR USE BY MISSISSIPPI DEPARTMENTS  
AND VENDORS  
(applicable to equipment rental transactions)

The Agreement is entered into by and between \_\_\_\_\_ (hereinafter referred to as "Customer"), and \_\_\_\_\_ (hereinafter referred to as "Vendor"). This Agreement becomes effective upon signature by Customer and Vendor, and shall take precedence over all agreements and understandings between the parties. Vendor, by its acceptance hereof, agrees to rent to Customer, and Customer, by its acceptance hereof, agrees to rent from Vendor, the equipment, including applicable software and services to render it continually operational, listed in Exhibit A, which is attached hereto and incorporated herein.

1. CUSTOMER ACCOUNT ESTABLISHMENT
  - A. A separate Vendor Customer Number will be required for each specific customer/installation location.
  - B. The Customer is identified as the entity on the first line of the "bill-to" address. All invoices and notices of changes will be sent to the "bill-to" address.
  - C. "Ship-to" and/or "Installed-at" address is the location to which the initial shipment of equipment/supplies will be made and the address to which service representatives will respond. Subsequent shipments of supplies for installed equipment will also be delivered to the "installed-at" address unless otherwise requested.
  - D. Unless creditworthiness for this Customer Number has been previously established by Vendors, Vendor's Credit Department may conduct a credit investigation for this Order. Notwithstanding delivery of equipment, Vendor may revoke this Order by written notice to the Customer if credit approval is denied within thirty (30) days after the date this Rental Agreement is accepted for Vendor by an authorized representative.
2. EQUIPMENT SELECTION, PRICES, AND AGREEMENT: The Customer has selected and Vendor agrees to provide the equipment, including applicable software and services to render it continually operational, identified on Exhibit A attached to this Rental Agreement. The specific prices, inclusive of applicable transportation charges, are as set forth on the attached Exhibit A. The parties understand and agree that the Customer is exempt from the payment of taxes.
3. SHIPPING AND TRANSPORTATION: Vendor agrees to pay all non-priority, ground shipping, transportation, rigging and drayage charges for the equipment from the equipment's place of manufacture to the installation address of the equipment as specified under this Agreement. If any form of express shipping method is requested, it will be paid for by Customer.
4. RISK OF LOSS OR DAMAGE TO EQUIPMENT: While in transit, Vendor shall assume and bear the entire risk of loss and damage to the equipment from any cause whatsoever. If, during the period the equipment is in Customer's possession, due to gross negligence of the customer, the equipment is lost or damaged, then, the customer shall bear the cost of replacing or repairing said equipment.
5. DELIVERY, INSTALLATION, ACCEPTANCE, AND RELOCATION:
  - A. DELIVERY: Vendor shall deliver the equipment to the location specified by Customer and pursuant to the delivery schedule agreed upon by the parties. If, through no fault of the Customer, Vendor is unable to deliver the equipment or software, the prices, terms and conditions will remain unchanged until delivery is made by Vendor. If, however, Vendor does not deliver the equipment or software within ten (10) working days of the delivery due date,

Customer shall have the right to terminate the order without penalty, cost or expense to Customer of any kind whatsoever.

- B. INSTALLATION SITE: At the time of delivery and during the period Vendor is responsible for maintenance of the equipment, the equipment installation site must conform to Vendor's published space, electrical and environmental requirements; and the Customer agrees to provide, at no charge, reasonable access to the equipment and to a telephone for local or toll free calls.
  - C. INSTALLATION DATE: The installation date of the equipment shall be that date as is agreed upon by the parties, if Vendor is responsible for installing the equipment.
  - D. ACCEPTANCE: Unless otherwise agreed to by the parties, Vendor agrees that Customer shall have ten (10) working days from date of delivery and installation, to inspect, evaluate and test the equipment to confirm that it is in good working order.
  - E. RELOCATION: Customer may transfer equipment to a new location by notifying Vendor in writing of the transfer at least thirty (30) calendar days before the move is made. If Vendor is responsible for maintenance of the equipment, this notice will enable Vendor to provide technical assistance in the relocation efforts, if needed, as well as to update Vendor's records as to machine location. There will be no cessation of rental charges during the period of any such transfer. The Vendor's cost of moving and reinstalling equipment from one location to another is not included in this Agreement, and Customer agrees to pay Vendor, after receipt of invoice of Vendor's charges with respect to such moving of equipment, which will be billed to Customer in accordance with Vendor's standard practice then in effect for commercial users of similar equipment or software.
6. RENTAL TERM: The rental term for each item of equipment shall be that as stated in the attached Exhibit A. If the customer desires to continue renting the equipment at the expiration of the original rental agreement, the customer must enter into a new rental agreement which shall be separate from this agreement. There will be no automatic renewals allowed. There shall be no option to purchase.
7. OWNERSHIP: Unless the Customer has obtained title to the equipment, title to the equipment shall be and remain vested at all times in Vendor or its assignee and nothing in this Agreement shall give or convey to Customer any right, title or interest therein, unless purchased by Customer. Nameplates, stencils or other indicia of Vendor's ownership affixed or to be affixed to the equipment shall not be removed or obliterated by Customer.
8. PAYMENTS:
- A. INVOICING AND PAYMENTS: The charges for the equipment, software or services covered by this Rental Agreement are specified in the attached Exhibit A. Charges for any partial month for any item of equipment shall be prorated based on a thirty (30) day month. Vendor shall submit an invoice with the appropriate documentation to Customer. Customer agrees to make payment 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 by Customer within forty-five (45) days of the date the invoice is received and the goods are inspected and accepted.
  - B. METER READINGS: If applicable, the Customer shall provide accurate and timely meter readings at the end of each applicable billing period on the forms or other alternative means specified by Vendor. Vendor shall have the right, upon reasonable prior notice to Customer, and during Customer's regular business hours, to inspect the equipment and to monitor the meter readings. If Customer meter readings are not received in the time to be

agreed upon by the parties, the meter readings may be obtained electronically or by other means or may be estimated by Vendor subject to reconciliation when the correct meter reading is received by Vendor.

- C. COPY CREDITS: If applicable, if a copier is being rented, the Customer will receive one (1) copy credit for each copy presented to Vendor which, in the Customer's opinion, is unusable and also for each copy which was produced during servicing of the equipment. Copy credits will be issued only if Vendor is responsible for providing equipment services or maintenance services (except time and materials maintenance). Copy credits will be reflected on the invoice as a reduction in the total copy volume, except for run length plans which will be credited at a specific copy credit rate as shown on the applicable price list.
9. USE OF EQUIPMENT: Customer shall operate the equipment according to the manufacturer's specifications and documented instructions. Customer agrees not to employ or use additional attachments, features or devices on the equipment or make changes or alterations to the equipment covered hereby without the prior written consent of Vendor in each case, which consent shall not be unreasonably withheld.
10. MAINTENANCE SERVICES, EXCLUSIONS, AND REMEDIES:
- A. SERVICES: If Vendor is responsible for providing equipment services, maintenance services (except for time and materials), or warranty services: (1) Vendor shall install and maintain the equipment and make all necessary adjustments and repairs to keep the equipment in good working order. (2) Parts required for repair may be used or reprocessed in accordance with Vendor's specifications and replaced parts are the property of Vendor, unless otherwise specifically provided on the price lists. (3) Services will be provided during Customer's usual business hours. (4) If applicable, Customer will permit Vendor to install, at no cost to Customer, all retrofits designated by Vendor as mandatory or which are designed to insure accuracy of meters.
- B. EXCLUSIONS: The following is not within the scope of services: (1) Provision and installation of optional retrofits. (2) Services connected with equipment relocation. (3) Installation/removal of accessories, attachments or other devices. (4) Exterior painting or refinishing of equipment. (5) Maintenance, installation or removal of equipment or devices not provided by Vendor. (6) Performance of normal operator functions as described in applicable Vendor operator manuals. (7) Performance of services necessitated by accident; power failure; unauthorized alteration of equipment or software; tampering; service by someone other than Vendor; causes other than ordinary use; interconnection of equipment by electrical, or electronic or mechanical means with noncompatible equipment, or failure to use operating system software. If Vendor provides, at the request of the Customer, any of the services noted above, the Customer may be billed by Vendor at a rate not to exceed the Master State Prices Agreement between the Vendor and the State of Mississippi, or in the absence of such agreement at the then current time and materials rates.
- C. REMEDIES: If during the period in which Vendor is providing maintenance services, Vendor is unable to maintain the equipment in good working order, Vendor will, at no additional charge, provide either an identical replacement or another product that provides equal or greater capabilities.
11. HOLD HARMLESS: Vendor agrees that it will, and hereby does, indemnify, defend and hold harmless Customer from and against any and all claims, damages, losses, costs and expenses of every kind and nature, including court costs and attorney fees and claims for damages resulting from or arising out of any infringement claim or claim of bodily injury, death or damage to real or tangible personal property caused by Vendor and/or its partners, principals, agents, employees or subcontractors in the performance of this Agreement. Customer will promptly notify Vendor in writing of any claim to be indemnified hereunder, of which Customer has knowledge, and Vendor

in turn will promptly notify Customer of any such claim. Vendor shall, at its sole expense, control the defense of such suit to the extent allowed by Mississippi law. The parties agree to cooperate with one another in the defense of any such matter.

12. ALTERATIONS, ATTACHMENTS, AND SUPPLES:

- A. If Customer makes an alteration, attaches a device or utilizes a supply item that increases the cost of services, Vendor will either propose an additional service charge or request that the equipment be returned to its standard configuration or that use of the supply item be discontinued. If, within five (5) days of such proposal or request, Customer does not remedy the problem or agree in writing to do so within a reasonable amount of time, Vendor shall have the right to terminate this Agreement as provided herein. If Vendor believes that an alteration, attachment or supply item affects the safety of Vendor personnel or equipment users, Vendor shall notify Customer of the problem and may withhold maintenance until the problem is remedied.
- B. Unless Customer has obtained title to the equipment free and clear of any Vendor security interest, Customer may not remove any ownership identification tags on the equipment or allow the equipment to become fixtures to real property.

13. ASSIGNMENT:

- A. BY CUSTOMER: Without the prior consent of Vendor, which consent shall not be unreasonably withheld, Customer shall not (1) assign, transfer or pledge all or any part of this Agreement or software licensed by Vendor, or (2) resell, lease, lend or permit a lien or encumbrance of any kind against the equipment unless Customer has obtained title to the equipment free and clear of any Vendor security interest.
- B. BY VENDOR: Vendor shall not assign its rights or delegate its duties hereunder without the prior written consent of Customer, which consent shall not be unreasonably withheld.

14. GOVERNING LAW: This Agreement shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. Vendor expressly agrees that under no circumstances shall Customer be obligated to pay an attorneys fee or the cost of legal action to Vendor. Notwithstanding any other provisions of this Agreement between the parties, all activities and performances of the parties with respect to the equipment, software or services herein shall be subject to all applicable laws, regulations, policies and procedures of the United States of America, or any agency thereof, the State of Mississippi or any agency thereof, or any local governments or political subdivisions that may affect the performance of services hereunder.

15. NOTICE: Any notice required or permitted to be given under this Agreement shall be in writing and sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at their usual business address. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other of any change of address.

16. 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.

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

18. 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.
19. THIRD PARTY ACTION NOTIFICATION Vendor shall give Customer prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Vendor by any entity that may result in litigation related in any way to this Agreement.
20. AUTHORITY TO CONTRACT: Vendor 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.
21. RECORD RETENTION AND ACCESS TO RECORDS: Vendor shall maintain and make available to Customer, any financial records, supporting documents, statistical records and all other records pertinent to the services performed under this Agreement. These records shall be maintained for at least three (3) years; however, if any litigation or other legal action, by or on behalf of the State has begun that is not completed at the end of the three (3) year period, or if audit findings, 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.
22. EXTRAORDINARY CIRCUMSTANCES: If either party is rendered unable, wholly or in part, by reason of strikes, accidents, acts of God, weather conditions or any other acts beyond its control and without its fault or negligence to comply with any obligations or performance required under this Agreement, then such party shall have the option to suspend its obligations or performance hereunder until the extraordinary performance circumstances are resolved. If the extraordinary performance circumstances are not resolved within a reasonable period of time, however, the non-defaulting party shall have the option, upon prior written notice, of terminating the Agreement.
23. TERMINATION: This Agreement may be terminated as follows: (a) Customer and vendor mutually agree to the termination, or (b) If either party fails to comply with the terms and conditions of this Agreement and that breach continues for thirty (30) days after the defaulting party receives written notice from the other party, then the non-defaulting party has the right to terminate this Agreement. The non-defaulting party may also pursue any remedy available to it in law or in equity. Upon termination, all obligations of Customer to make payments required hereunder shall cease.
24. AVAILABILITY OF FUNDS: It is expressly understood and agreed that the fulfillment of the conditions of this agreement by Customer is conditioned upon the receipt of governmental funding. If the funds anticipated for the fulfillment of this Agreement are, at any time, not forthcoming or insufficient, Customer shall have the right to terminate this Agreement, without damage, penalty, cost or expense to Customer of any kind whatsoever.
25. MODIFICATION OR RENEGOTIATION: This Agreement may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the Agreement if federal and/or state revision of any applicable laws or regulations make changes in this Agreement necessary.
26. WARRANTIES: Vendor warrants that the equipment, when operated according to the manufacturer's specifications and documented instructions, shall perform the functions indicated by the specifications and documented literature. Vendor may be held liable for any damages caused by failure of the equipment to function according to specifications and documented literature published by the manufacturer



of the equipment. The State may be held liable for any damages caused by failure to operate the equipment according to the specifications and documented instructions.

28. ENTIRE AGREEMENT: This agreement constitutes the entire agreement of the parties with respect to the equipment, software or services described herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating hereto. No terms, conditions, understandings, usages of the trade, course of dealings or agreements, not specifically set out in this Agreement or incorporated herein, shall be effective or relevant to modify, vary, explain or supplement 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.

Witness my signature this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Vendor: \_\_\_\_\_

By: \_\_\_\_\_

Authorized Signature

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

Title: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

\_\_\_\_\_

Witness my signature this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

State of Mississippi: \_\_\_\_\_

By: \_\_\_\_\_

Authorized Signature

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

Title: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

\_\_\_\_\_

EXHIBIT "A"  
RENTAL AGREEMENT  
FOR USE BY  
MISSISSIPPI DEPARTMENTS AND VENDORS  
(Applicable to Equipment Rental Transactions)

The following, when signed by the Customer and the Vendor shall be considered to be a part of the rental agreement between the parties.

Vendor    Company    Name:  
\_\_\_\_\_

Customer    Agency    Name:  
\_\_\_\_\_

Bill to Address: \_\_\_\_\_

Ship to Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Description of Equipment, Software, or Services  
Price

Delivery                          Schedule                          and                          Installation  
Date: \_\_\_\_\_

Rental Term: Number of Months \_\_\_\_\_ Start Date \_\_\_\_\_  
End Date \_\_\_\_\_

Modifications:

Vendor Signature

Customer Signature

# Sample Contract

Personal Services Agreement  
Between the  
(Name of Entity)  
And the  
(NAME OF CONTRACTOR)

## Section 1

This Personal Service Contract is made by and between the (Name of Entity), a State Agency/Governing Authority, (the "(entity abbreviation)") whose address is (Entity address), and the (NAME OF CONTRACTOR) (the "Contractor"), whose address is (ADDRESS OF CONTRACTOR), on the \_\_\_\_\_ day of \_\_\_\_\_, 2006, under the following terms and conditions:

## Section 2

Scope of Services:

## Section 3

Term:

Contract Start Date:

Contract End Date:

## Section 4

Consideration:

## Section 5.0

### STANDARD TERMS AND CONDITIONS

#### 5.1 Access to Records

The Contractor agrees that the (ENTITY) or any of its duly authorized representatives, at any time during the term of this agreement, shall have access to, and the right to audit and examine any pertinent books, documents, papers, and records of Contractor related to Contractor's charges and performance under this agreement. Contractor shall keep such records for a period of five (5) years after final payment under this agreement. Contractor agrees to refund to the (ENTITY) any overpayment disclosed by any such audit. However, if any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of 5-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it.

#### 5.2 Applicable Law

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

litigation with respect thereto shall be brought in the courts of the State of Mississippi. The Contractor shall comply with applicable federal, state, and local laws and regulations.

### 5.3 Assignment

Contractor shall not assign or subcontract in whole or in part, its right or obligations under this agreement without prior written consent of the (ENTITY). Any attempted assignment or subcontract without said consent shall be void and of no effect. However, if approved by the (ENTITY) in writing, the Contractor may assign or subcontract for those services described herein provided that any subcontracts include appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by the Contractor and the (ENTITY) and to ensure that the (ENTITY) is indemnified, saved, and held harmless from and against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a contract in those matters described in the contract between the (ENTITY) and the Contractor.

The Contractor shall expressly understand and agree that he/she shall assume and be solely responsible for all legal and financial responsibilities related to the execution of a subcontract.

The Contractor shall agree and understand that utilization of a subcontractor to provide any of the equipment or services in the contract shall in no way relieve the Contractor of the responsibility for providing the equipment or services as described and set forth herein.

All subcontracts must be in writing. All subcontractors shall comply with the applicable provisions of federal and State laws, regulations and policies. All subcontractors shall comply with the provisions of the contract and shall include at least the following:

A description of services to be provided or other activities performed. This description shall be in such form as to permit the state agency to ascertain definitively which contractual obligations have been subcontracted.

Provisions for release to the Contractor any information necessary for the Contractor to perform any of its obligations under the contract including, but not limited to, compliance with all reporting requirements.

Provision(s) that the facilities and records of the subcontractor shall be open to inspection by the Contractor and appropriate state and federal agencies and the records, or copies thereof, shall be provided to the Contractor, upon request, for transfer to subsequent subcontractors for review by the state agency.

Provision(s) that the subcontractor shall maintain records and provide access to same in accordance with Section 5.1 of this RFP.

#### 5.4 Authority to Contract

Contractor warrants (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind, and (d) notwithstanding any other provision of this agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

#### 5.5 Availability of Funds

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

#### 5.6 Change in Scope of Work

The (ENTITY) may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. The Contractor may make no claims that the scope of the project or of the Contractor's services has been changed, requiring changes to the amount of compensation to the Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the (ENTITY) and the Contractor.

If the Contractor believes that any particular work is not within the scope of the project, is a material change, or will otherwise require more compensation to the Contractor, the Contractor must immediately notify the (ENTITY) in writing of this belief. If the (ENTITY) believes that the particular work is within the scope of the contract as written, the Contractor will be ordered to and shall continue with the work as changed and at the cost stated for the work within the scope.

#### 5.7 Confidential Information

"Confidential Information" shall mean (a) those materials, documents, data, and other information which the Contractor has designated in writing as proprietary

and confidential, and (b) all data and information which the Contractor acquires as a result of its contact with and efforts on behalf of the customer and any other information designated in writing as confidential by the (ENTITY). Each party to this agreement agrees to protect all confidential information provided by one party to the other; to treat all such confidential information as confidential to the extent that confidential treatment is allowed under State and/or federal law, and, except as otherwise required by law, not to publish or disclose such information to any third party without the other party's written permission, and to do so by using those methods and procedures normally used to protect the party's own confidential information. Any liability resulting from the wrongful disclosure of confidential information on the part of the Contractor or its subcontractor shall rest with Contractor. Disclosure of any confidential information by the Contractor or its subcontractor without the express written approval of (ENTITY) shall result in the immediate termination of this agreement.

In the event that either party to this agreement 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 confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by State law. This Section shall survive the termination or completion of this agreement. The parties agree that this Section is subject to and superseded by the Mississippi Code of 1972, Annotated, §25-61-1, et.seq, regarding Public Access to Public Records.

Offeror and the (ENTITY) shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("the Disclosing Party") which (a) is rightfully known to the recipient prior to negotiations leading to this agreement, other than information obtained in confidence under prior engagements; (b) is generally known or easily ascertainable by non-parties of ordinary skill in the business of the customer; (c) is released by the Disclosing Party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction; (d) is independently developed by the recipient without any reliance on Confidential Information; (e) is or later becomes part of the public domain or may be lawfully obtained by the (ENTITY) or the Offeror from any non-party, or (f) is disclosed with the Disclosing Party's prior written consent.

## 5.8 Copyrights

Contractor (i) agrees that the (ENTITY) shall determine the disposition of the title to and the rights under any copyright by Contractor or employees on copyrightable material first produced or composed under this agreement, and (ii) hereby grants to the State a royalty free, nonexclusive, irrevocable license to reproduce, translate, publish, use and dispose of, and to authorize others to do so, all copyrighted or (copyrightable) work not first produced or composed by Contractor in the performance of this agreement, but which is incorporated in the

material furnished under the agreement, provided that such license shall be only to the extent Contractor now has, or prior to the completion or full final settlements of this agreement may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

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

It is understood that the (ENTITY) shall have unlimited, royalty free license to use, reproduce, translate, or publish the instruments, software, and methodologies provided, developed and produced by the Contractor under this Agreement.

#### 5.9 Compliance With Laws

The Contractor understands that the (ENTITY) is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, or any other consideration made unlawful by federal, State, or local laws. All such discrimination is unlawful and the Contractor agrees during the term of the agreement that the Contractor will strictly adhere to this policy in its employment practices and provision of services. The Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified. The Contractor ensures that any person assigned to perform services hereunder meets the employment eligibility requirements of the immigration and naturalization laws including, but not limited to, the Immigration Reform and Control Act of 1986.

#### 5.10 Indemnification

To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the (ENTITY), its employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement. In the (ENTITY)'s sole discretion, the Contractor may be allowed to control the defense of any such claim, suit, etc. In the event the Contractor defends said claim, suit, etc., the Contractor shall use legal counsel acceptable to the (ENTITY); the Contractor shall be solely responsible for all costs and/or expenses associated with such



defense, and the (ENTITY) shall be entitled to participate in said defense. The Contractor shall not settle any claim, suit, etc. without the (ENTITY)'s concurrence, which the (ENTITY) shall not unreasonably withhold. In the event the Contractor fails to comply with the dictates of this section, the (ENTITY) shall have the right to seek any legal remedy that may be available.

#### 5.11 Independent Contractor Status

The Contractor acknowledges that, if awarded a contract, they shall, at all times, be regarded as an independent Contractor and shall at no time act as an agent for the (ENTITY). Nothing contained herein shall be deemed or construed by the (ENTITY), the Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the (ENTITY) and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the (ENTITY) or the Contractor hereunder, creates or shall be deemed to create a relationship other than the independent relationship of the (ENTITY) and the Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the (ENTITY). Neither the Contractor nor its employees shall, under any circumstances, be considered servants, agents or employees of the (ENTITY); and the (ENTITY) shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. The (ENTITY) shall not withhold from the contract payments to the Contractor any federal or State unemployment taxes, federal or State income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the (ENTITY) shall not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the (ENTITY) for its employees.

#### 5.12 Legal and Technical Support

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

#### 5.13 Modification or Renegotiation

This agreement may be modified, altered or changed only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if

federal and/or State revisions of any applicable laws or regulations make changes in this agreement necessary.

#### 5.14 Ownership of Documents and Work Papers

The (ENTITY) shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the Project which is the subject of this Agreement, except for the Contractor's internal administrative and quality assurance files and internal Project correspondence. The Contractor shall deliver such documents and work papers to the (ENTITY) upon termination or completion of each engagement under the Agreement. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from the (ENTITY) and subject to any copyright protections.

#### 5.15 Patents and Royalties

If the Contractor uses any design, device, or material covered by patent or copyright, it is mutually agreed and understood without exception that the contract price includes all royalties or costs arising from the use of such design, device, or materials in any way in the work. The Contractor covenants to save, defend, keep and hold harmless, and indemnify the (ENTITY) and all of its officers, departments, agencies, agents, and employees from and against all claims, loss, damage, injury, fines, penalties, and cost - including court costs and attorney's fees, charges, liability, and exposure, however caused - for or on account of any copyright or patented or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by the (ENTITY).

#### 5.16 Price Adjustment

Submission of Cost or Pricing Data. The Contractor shall provide data supporting any requested adjustment subject to the provisions of Section 3-403 (Cost or Pricing Data) of the Mississippi Personal Service Contract Procurement Regulations.

#### 5.17 Procurement Regulations

The contract shall be governed by the applicable provisions of the Mississippi Personal Services Contract Review Board Regulations which can be found at <http://www.spb.state.ms.us/SPB%20Documents/CRB/CRB%20pubs.html>

#### 5.18 Representation Regarding Contingent Fees

The Contractor represents that it has not retained a person to solicit or secure a State contract upon an agreement or understanding for a commission,

percentage, brokerage, or contingent fee, except as disclosed in the Contractor's bid or proposal.

#### 5.19 Representation Regarding Gratuities

The Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 7-204 (Gratuities) of the Mississippi Personal Service Contract Procurement Regulations.

#### 5.20 Right to Audit

The Contractor shall maintain such financial records and other records as may be prescribed by the State or by applicable federal and State laws, rules, and regulations. The Contractor shall retain these records for a period of five (5) years after final payment, or until they are audited by the State of Mississippi or any of its duly authorized representatives, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent 5-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.

#### 5.21 Right to Inspect Facility

The (ENTITY) may at reasonable times, inspect the place of business of a Contractor or any subcontractor that is related to the performance of any Contract awarded by the (ENTITY).

#### 5.22 Stop Work Order

Order to stop work. The (ENTITY), may by written order to the Contractor at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to the Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the (ENTITY) shall either:

Cancel the stop work order; or

Terminate the work covered by such order as provided in the 'Termination for Default Clause' or the 'Termination for Convenience Clause' of this contract.

Cancellation or Expiration of the Order. If a stop work order issued under this clause is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the Contractor shall have

the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if:

The stop work results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

The Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the (ENTITY) decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

Termination of Stopped Work. If a stop work order is not cancelled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

Adjustments of Price. Any adjustment in administrative fee calculations made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

#### 5.23 Termination for Default

Default. If the Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the (ENTITY) may notify the Contractor in writing of the delay or nonperformance and if not cured in ten days or any longer time specified in writing by the (ENTITY), the (ENTITY) may terminate the Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the (ENTITY) may procure similar supplies or services in a manner and upon terms deemed appropriate by the (ENTITY). The Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the (ENTITY), the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the (ENTITY) has an interest.

Compensation. Payment for completed services delivered and accepted by the (ENTITY) shall be made according to the terms set forth in the agreement. The (ENTITY) may withhold from amounts due the Contractor such sums as the (ENTITY) deems to be necessary to protect the State against loss because of

outstanding liens or claims of former lien holders and to reimburse the (ENTITY) for the excess costs incurred in procuring similar goods and services.

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

#### 5.24 Termination for Convenience

Termination. The (ENTITY) may, when the interests of the (ENTITY) so require, terminate this contract in whole or in part, for the convenience of the (ENTITY). The (ENTITY) shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

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

#### 5.25 Insurance

The Contractor acknowledges that they shall maintain workers' compensation insurance, which shall inure to the benefit of the Contractor's personnel, and automobile liability insurance as prescribed by law. The Contractor also acknowledges that \$1,000,000 general liability and employee fidelity bond insurance must be maintained. The State shall require a certificate of conformity as a requirement to awarding a contract.

#### 5.26 Debarment

By submitting a bid, the Offeror certifies that it is not currently debarred from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi and that it is not an agent of a person or entity that is currently debarred from submitting bids for contracts issued by any political subdivision or agency of the State of Mississippi.

#### 5.27 Payments

Payments by state agencies using the Statewide Automated Accounting System (SAAS) shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account



