

**DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES**  
**3771 Eastwood Drive**  
**Jackson, Mississippi 39211**  
**(601) 432-8000**

**INVITATION:** Sealed bids, subject to the conditions herein stated and attached hereto, will be received at this office **until 3:00 p.m. Central Time on Thursday, September 20, 2012**, and then publicly opened for furnishing the products/services as described below for the Mississippi Department of Human Services.

**DESCRIPTION**

---

For the acquisition and delivery by September 28, 2012, of Two Citrix NetScaler MPX 8200s (Enterprise Edition) for the Mississippi Department of Human Services:

- Bidder Information
  - Attachment A: Bid Form and Specifications
  - Attachment B: Reference Form
  - Attachment C: Standard Contract
  - Attachment D: Exception Summary Form
- 

Bidder must submit bid and attachments to:

Attn: Renee Murray  
Technology Consultant  
Dept. of Information Technology Services  
3771 Eastwood Drive  
Jackson, MS 39211  
(601) 432-8146

To prevent opening by unauthorized individuals, your bid should be placed in a sealed envelope and plainly identified as follows:

SUBMITTED IN RESPONSE TO REQUEST FOR BID NUMBER 3697.

---

Craig Orgeron, Executive Director

**REQUEST FOR BID  
BIDDER INFORMATION  
PROJECT 40099**

This document contains general information for bidders responding to a Request for Bid issued by the ITS on behalf of the Mississippi Department of Human Services.

**I. Miscellaneous Conditions and Information**

1. Bidders are expected to examine all documents, forms, specifications, standard provisions and all instructions. Failure to do so will be at the bidder's risk.
2. Any bid not received in writing at this office by the date and time specified will be declared a late bid. The State will not be responsible for any delays in delivery. It is solely the responsibility of the bidder that bids reach the opening on time. Any bid received after closing time will be returned unopened.
3. Bids or alterations by fax, e-mail or phone will not be accepted.
4. All bid openings are open to the public. The ITS staff will read a summary of each bidder's bid received prior to the deadline. Any information provided in the bid which contains trade secrets or confidential commercial or financial information, and which bidder does not wish to be disclosed other than for purposes of evaluation, must be clearly labeled on each sheet as "confidential". All confidential information must be bound separately from other bid documents.
5. All disclosures of bid information to interested parties will be made in compliance with ITS policies and procedures established in accordance with the Mississippi Public Records Act of 1983 defined in Section 25-16-1 et seq. of the Mississippi Code.
6. No negotiations, decisions, or actions shall be executed by any bidder as a result of any discussions with any state employee. Only transactions which are in writing from ITS may be considered official.
7. ITS reserves the right to reject any and all bids and to waive any defect or informality in any bid or bid procedure.
8. Bidder must provide three (3) verifiable references for projects with similar size and scope. Required information includes name, address, telephone number, and length of time the account has been a reference. A Reference Form for providing reference information is included in Attachment B. The Bidder must make arrangements in advance with the account references so that they may be contacted at the Project team's convenience without further clearance or Bidder intercession. Failure to provide this information in the manner described may subject the Bidder's proposal to being rated unfavorably relative to these criteria or disqualified altogether at the State's sole discretion.

References should be based on the following profiles and be able to substantiate the

following information from both management and technical viewpoints:

- The reference installation product/service must be configured similarly or identically to this RFB; and
  - The reference installation must have been operational for at least six (6) months.
9. All bid material submitted in writing shall become the property of the State.
  10. Expenses for the development and delivery of bids are entirely the responsibility of the bidder and shall not be chargeable to the State.

## **II. Format and Content of Bid**

1. The Bidder is required to submit four (4) identical copies of his bid.
2. The Bidder should note that original signatures are required on each copy of the bid.
3. The Bidder must complete all forms included in this RFB in their entirety.
4. The State reserves the right to reject bids from bidders who submit incomplete bids.

## **III. Clarifications and Updates After the Bid Opening Date and Time**

Bid clarifications and updates submitted after the bid opening date and time will be accepted or rejected at the sole discretion of ITS. ITS will accept no price increases for a 90-day period after the bid opening. However, the State will always take advantage of price decreases. ITS will consider updates in the evaluation and selection of lowest and best bid only if: (a) The update provided is in effect nationally and has been publicly announced; and (b) the update is received early enough in the evaluation process to allow adequate time for re-evaluation. Bidders must follow the procedure outlined below in submitting updates to bids:

1. The Bidder must submit a statement outlining the circumstances under which he is submitting a clarification or update to the original bid.
2. The Bidder must submit updates in four (4) copies and in the format of the specifications of only those pages in the bid document that should replace the old pages or that should be added. The revised pages must be marked as a bid clarification or update, dated, and page numbered.

**ATTACHMENT A  
BID FORM**

**I. Specifications**

Bidder must deliver by September 28, 2012, two (2) Citrix NetScaler MPX 8200 Enterprise Edition along with the 450W AC Power Supply and provide at least 1 year gold maintenance to the Mississippi Department of Human Services. Any cost not listed in this section may result in the Bidder providing those products or services at no charge to the State or face disqualification. The State reserves the right to purchase all, a portion of, or none of these items:

<b>Item #</b>	<b>Item Description</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Extended Price</b>
I.1	Citrix NetScaler MPX 8200 Enterprise Edition (6x10/100/1000 and 6x1000Base-X SFP (P/N 3005704-EZ)	2	\$	\$
I.2	Citrix NetScaler MPX (7500, 9500, 8200, 10500, 12500) 450W AC Power Supply Easy (P/N EW3Z0000590)	2	\$	\$
I.3	1 Year - Gold Maintenance Citrix NetScaler MPX 8200 Enterprise Edition (P/N 4011623)	2	\$	\$
<b>TOTAL</b>				\$
I.4	Fully Loaded Hourly Change Order Rate (must include all travel and miscellaneous expenses in this rate)		\$	

**II. Optional Items**

<b>Item #</b>	<b>Item Description</b>	<b>Quantity</b>	<b>Unit Price or Hourly Rate</b>	<b>Extended Price</b>
II.1	Installation of two (2) Citrix NetScalers MPX 8200 Enterprise Edition	# ___ of hrs	\$	\$
II.2	Configuration of two (2) Citrix NetScalers MPX 8200 Enterprise Edition	# ___ of hrs	\$	\$
II.3	2 Years – Gold Maintenance Citrix NetScaler MPX 8200 Enterprise Edition (P/N 4011626)	2	\$	\$
II.4	3 Years - Gold Maintenance Citrix NetScaler MPX 8200 Enterprise Edition (P/N 4011629)	2	\$	\$
II.5	Miscellaneous supplies needed for installation of equipment with Gold Maintenance*		\$	\$

<b>Item #</b>	<b>Item Description</b>	<b>Quantity</b>	<b>Unit Price or Hourly Rate</b>	<b>Extended Price</b>
II.6	1 Year – Silver Maintenance Citrix NetScaler MPX 8200 Enterprise Edition (P/N 4011622)	2	\$	\$
II.7	2 Years – Silver Maintenance Citrix NetScaler MPX 8200 Enterprise Edition (P/N 4011625)	2	\$	\$
II.8	3 Years - Silver Maintenance Citrix NetScaler MPX 8200 Enterprise Edition (P/N 4011628)	2	\$	\$
II.9	Miscellaneous supplies needed for installation of equipment with Silver Maintenance*		\$	\$
II.10	1 Year – Bronze Maintenance Citrix NetScaler MPX 8200 Enterprise Edition (P/N 4011621)	2	\$	\$
II.11	2 Years - Bronze Maintenance Citrix NetScaler MPX 8200 Enterprise Edition (P/N 4011624)	2	\$	\$
II.12	3 Years - Bronze Maintenance Citrix NetScaler MPX 8200 Enterprise Edition (P/N 4011627)	2	\$	\$
II.13	Miscellaneous supplies needed for installation of equipment with Bronze Maintenance*		\$	\$

\* - Bidder must provide detailed information about any miscellaneous supplies required for installation and/or configuration.

This is to certify that the bidder will be responsible for the delivery by September 28, 2012 of (2) Two Citrix NetScalers MPX 8200 Enterprise Edition along with the 450W AC Power Supply and 1 year of gold maintenance for the Mississippi Department of Human Services. Please accept this as my/our formal bid for the delivery of (2) Two Citrix NetScalers MPX 8200 Enterprise Edition and 1 year of gold maintenance as per specifications stipulated by ITS.

---

**Original Signature of Officer in Bind of Company**

Name (Typed) \_\_\_\_\_

Title \_\_\_\_\_

Company Name \_\_\_\_\_

Date \_\_\_\_\_

**ATTACHMENT B  
REFERENCE FORM**

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

Contact Name:  
Company Name:  
Address:  
Phone #:  
E-Mail:

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

--

**ATTACHMENT C  
STANDARD CONTRACT**

A properly executed contract is a requirement of this RFB. After an award has been made, it will be necessary for the winning Bidder to execute a contract with **ITS**. 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 RFB.

If Bidder cannot comply with any term or condition of this Standard Contract, Bidder must list and explain each specific exception on the Exception Summary Form included in Attachment D. If no Exception Summary Form is included, the Bidder is indicating that he takes no exceptions. Bidders who fail to take exception to any point in the RFB or the Standard Contract may not later do so during contract negotiations.

**PROJECT NUMBER 40099  
PURCHASE AGREEMENT  
BETWEEN  
INSERT VENDOR NAME  
AND  
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES  
AS CONTRACTING AGENT FOR THE  
MISSISSIPPI DEPARTMENT OF HUMAN SERVICES**

This Purchase Agreement (hereinafter referred to as “Agreement”) is entered into by and between **INSERT VENDOR NAME**, a **INSERT STATE OF INCORPORATION** corporation having its principal place of business at **INSERT VENDOR ADDRESS** (hereinafter referred to as “Seller”), and Mississippi Department of Information Technology Services having its principal place of business at 3771 Eastwood Drive, Jackson, Mississippi 39211 (hereinafter referred to as “ITS”), as contracting agent for the Mississippi Department of Human Services located at 750 North State Street, Jackson, Mississippi 39202 (hereinafter referred to as “Purchaser”). ITS and Purchaser are sometimes collectively referred to herein as “State”.

**WHEREAS**, Purchaser, pursuant to Request for Bids (“RFB”) No. 3697, requested proposals for the acquisition of certain equipment and services (hereinafter referred to as “Products”) as listed in Exhibit A which is attached hereto and incorporated herein; and

**WHEREAS**, Seller was the successful proposer in an open, fair and competitive procurement process;

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

## **ARTICLE 1 TERM OF AGREEMENT**

**1.1** This Agreement will become effective on the date it is signed by all parties and will continue in effect until all tasks required herein, including any post warranty maintenance/support specified in Exhibit A, have been completed. Seller agrees to deliver all equipment and complete all tasks required under this Agreement, with the exception of warranty service, on or before the close of business on September 28, 2012, or within such other period as may be agreed to by the parties.

**1.2** This Agreement will become a binding obligation on the State only upon the issuance of a valid purchase order by the Purchaser following contract execution and the issuance by ITS of the CP-1 Acquisition Approval Document.

## **ARTICLE 2 FURNISHING OF EQUIPMENT AND SERVICES**

**2.1** Subject to the terms and conditions set forth herein, Seller agrees to provide and Purchaser agrees to buy as needed, the Products listed in the attached Exhibit A and at the purchase price set forth therein, but in no event will the total compensation to be paid hereunder exceed the specified sum of **\$INSERT AMOUNT** unless prior written authorization from ITS has been obtained. Purchaser shall submit a purchase order signed by a representative of Purchaser itemizing the Products to be purchased. The purchase order shall be subject to the terms and conditions of this Agreement. The parties agree that Purchaser reserves the right to adjust the quantities of purchases based upon the availability of funding or as determined necessary by Purchaser. Seller guarantees pricing for a period of two (2) years from the effective date of this Agreement. In the event there is a national price decrease of the Products bid during this time, Seller agrees to extend the new, lower pricing to Purchaser.

**2.2** The Products provided by Seller shall meet or exceed the minimum specifications set forth in RFB No. 3697 and the Seller's Proposal in response thereto.

## **ARTICLE 3 DELIVERY, RISK OF LOSS, AND ACCEPTANCE**

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

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

**3.3** Purchaser shall accept or reject the Products provided by Seller after a thirty (30) day testing period utilizing testing criteria developed by Purchaser. During the acceptance period, Purchaser shall have the opportunity to evaluate and test the Products to confirm that it performs without any defects and performs pursuant to the specifications set forth in RFB No. 3697. Purchaser shall notify Seller in writing of its acceptance of the Products.

**3.4** In the event the Product fails to perform as stated above, Purchaser shall notify Seller. Seller shall, within five (5) working days and at Seller's sole expense, correct the defects identified by Purchaser or replace the defective Product. Purchaser reserves the right to return the defective Product to Seller at the Seller's expense and to cancel this Agreement.

#### **ARTICLE 4 TITLE TO EQUIPMENT**

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

#### **ARTICLE 5 CONSIDERATION AND METHOD OF PAYMENT**

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

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

#### **ARTICLE 6 WARRANTIES**

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

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

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

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

**6.5** Seller represents and warrants that all equipment provided pursuant to this Agreement shall, for a period of one (1) year from the date of acceptance of each item of equipment, be free from defects in material, manufacture, design and workmanship. Seller’s obligation pursuant to this warranty shall include, but is not limited to, the repair or replacement of the equipment at no cost to Purchaser. In the event Seller cannot repair or replace an item of equipment during the warranty period, Seller shall refund the purchase price of the equipment, and refund any fees paid for services that directly relate to the defective hardware.

**6.6** Seller represents and warrants that the Products provided by Seller shall meet or exceed the minimum specifications set forth in RFB No. 3697 and Seller's Proposal in response thereto.

**6.7** Seller represents and warrants that its services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of this Agreement. For any breach of this warranty, the Seller shall, for a period of ninety (90) days from performance of the service, perform the services again, at no cost to Purchaser, or if Seller is unable to perform the services as warranted, Seller shall reimburse Purchaser the fees paid to Seller for the unsatisfactory services.

**6.8** If applicable under the given circumstances, Seller represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Seller agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security where required, to provide a copy of each such verification to the State. Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Seller understands and agrees that any breach of these warranties may subject Seller to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Seller by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Seller would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

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

**6.10** Seller represents and warrants that no official or employee of Purchaser or of ITS, and no other public official of the State of Mississippi who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of said project, voluntarily acquire any personal interest, direct or indirect, in this Agreement. The Seller warrants that it has removed any material conflict of interest prior to the signing of this Agreement, and that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its responsibilities under this Agreement. The Seller also warrants that in the performance of this Agreement no person having any such known interests shall

be employed.

**6.11** The Seller represents and warrants that no elected or appointed officer or other employee of the State of Mississippi, nor any member of or delegate to Congress has or shall benefit financially or materially from this Agreement. No individual employed by the State of Mississippi shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom. The State of Mississippi may, by written notice to the Seller, terminate the right of the Seller to proceed under this Agreement if it is found, after notice and hearing by the ITS Executive Director or his/her designee, that gratuities in the form of entertainment, gifts, jobs, or otherwise were offered or given by the Seller to any officer or employee of the State of Mississippi with a view toward securing this Agreement or securing favorable treatment with respect to the award, or amending or making of any determinations with respect to the performing of such contract, provided that the existence of the facts upon which the ITS Executive Director makes such findings shall be in issue and may be reviewed in any competent court. In the event this Agreement is terminated under this article, the State of Mississippi shall be entitled to pursue the same remedies against the Seller as it would pursue in the event of a breach of contract by the Seller, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

#### **ARTICLE 7 INFRINGEMENT INDEMNIFICATION**

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

#### **ARTICLE 8 EMPLOYMENT STATUS**

**8.1** Seller shall, during the entire term of this Agreement, be construed to be an independent contractor. Nothing in this Agreement is intended to nor shall it be construed to create an employer-employee relationship or a joint venture relationship.

**8.2** Seller represents that it is qualified to perform the duties to be performed under this Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the duties required under this Agreement. Such personnel shall not be deemed in any way directly or indirectly, expressly or by implication, to be employees of Purchaser. Seller shall pay, when due, all salaries and wages of its employees, and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation, and any other withholdings that may be required. Neither Seller nor employees of Seller are entitled to state retirement or leave benefits.

**8.3** Any person assigned by Seller to perform the services hereunder shall be the employee of Seller, who shall have the sole right to hire and discharge its employee. Purchaser may, however, direct Seller to replace any of its employees under this Agreement. If Seller is notified within the first eight (8) hours of assignment that the person is unsatisfactory, Seller will not charge Purchaser for those hours.

**8.4** It is further understood that the consideration expressed herein constitutes full and complete compensation for all services and performances hereunder, and that any sum due and payable to Seller shall be paid as a gross sum with no withholdings or deductions being made by Purchaser for any purpose from said contract sum.

#### **ARTICLE 9 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS**

Seller will be responsible for the behavior of all its employees and subcontractors while on the premises of any Purchaser location. Any employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive, or offensive to any of the staff ~~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 10 MODIFICATION OR RENEGOTIATION**

This Agreement may be modified only by written agreement signed by the parties hereto, and any attempt at oral modification shall be void and of no effect. The parties agree to renegotiate the Agreement if federal and/or state revisions of any applicable laws or regulations make changes in this Agreement necessary.

#### **ARTICLE 11 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS**

**11.1** In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that Seller represents all contractors, third parties, and/or subcontractors Seller has assembled for this project. The Purchaser is required to negotiate only with Seller, as Seller's commitments are binding on all proposed contractors, third parties, and subcontractors.

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

**11.3** Seller must obtain the written approval of Purchaser before subcontracting any portion of this Agreement. No such approval by Purchaser of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of Purchaser in addition to the total fixed price agreed upon in this Agreement. All subcontracts shall incorporate the terms of this Agreement and shall be subject to the terms and conditions of this Agreement and to any conditions of approval that Purchaser may deem necessary.

**11.4** Seller represents and warrants that any subcontract agreement Seller enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Purchaser, and that the subcontractor acknowledges that no privity of contract exists between the Purchaser and the subcontractor and that the Seller is solely

liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with the Seller. The Seller shall indemnify and hold harmless the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Seller's failure to pay any and all amounts due by Seller to any subcontractor, materialman, laborer or the like.

**11.5** All subcontractors shall be bound by any negotiation, arbitration, appeal, adjudication or settlement of any dispute between the Seller and the Purchaser, where such dispute affects the subcontract.

#### **ARTICLE 12 AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of Purchaser to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds for the performances required under this Agreement. If the funds anticipated for the fulfillment of this Agreement are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to Purchaser for the payments or performance due under this Agreement, Purchaser shall have the right to immediately terminate this Agreement, without damage, penalty, cost or expense to Purchaser of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Purchaser shall have the sole right to determine whether funds are available for the payments or performances due under this Agreement.

#### **ARTICLE 13 TERMINATION**

Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be terminated, in whole or in part, as follows: (a) upon the mutual, written agreement of the parties; (b) If either party fails to comply with the terms of this Agreement, the non-defaulting party may terminate the Agreement upon the giving of thirty (30) days written notice unless the breach is cured within said thirty (30) day period; (c) Purchaser may terminate the Agreement in whole or in part without the assessment of any penalties upon thirty (30) days written notice to Seller if Seller becomes the subject of bankruptcy, reorganization, liquidation or receivership proceedings, whether voluntary or involuntary, or (d) Purchaser may terminate the Agreement without the assessment of any penalties for any reason after giving thirty (30) days written notice specifying the effective date thereof to Seller. The provisions of this Article do not limit either party's right to pursue any other remedy available at law or in equity.

#### **ARTICLE 14 GOVERNING LAW**

This Agreement shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. Seller expressly agrees that under no circumstances shall Purchaser 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 15 WAIVER**

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a

modification of the terms of this Agreement. A waiver by the State, to be effective, must be in writing, must set out the specifics of what is being waived, and must be signed by an authorized representative of the State.

#### **ARTICLE 16 SEVERABILITY**

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

#### **ARTICLE 17 CAPTIONS**

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

#### **ARTICLE 18 HOLD HARMLESS**

To the fullest extent allowed by law, Seller shall indemnify, defend, save and hold harmless, protect and exonerate Purchaser, 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 19 THIRD PARTY ACTION NOTIFICATION**

Seller shall notify Purchaser in writing within five (5) business days of Seller filing bankruptcy, reorganization, liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Seller or Purchaser by any entity that may result in litigation related in any way to this Agreement and/or which may affect the Seller's performance under this Agreement. Failure of the Seller to provide such written notice to Purchaser shall be considered a material breach of this Agreement and the Purchaser may, at its sole discretion, pursue its rights as set forth in the Termination Article herein and any other rights and remedies it may have at law or in equity.

#### **ARTICLE 20 AUTHORITY TO CONTRACT**

Seller warrants that it is a validly organized business with valid authority to enter into this Agreement; that entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual or other agreement of any kind, and notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

#### **ARTICLE 21 NOTICE**

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their business address listed herein. ITS'

address for notice is: Craig P. Orgeron, Ph.D., Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. Purchaser's address for notice is: Mr. Tim Ragland, Chief Systems Information Officer, Mississippi Department of Human Services, 750 North State Street, Jackson, Mississippi 39202. The Seller's address for notice is: **INSERT VENDOR NOTICE INFORMATION**. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

#### **ARTICLE 22 RECORD RETENTION AND ACCESS TO RECORDS**

Seller shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Agreement. The Purchaser, ITS, any state or federal agency authorized to audit Purchaser, and/or any of their duly authorized representatives, shall have unimpeded, prompt access to this Agreement and to any of the Seller's proposals, books, documents, papers and/or records that are pertinent to this Agreement to make audits, copies, examinations, excerpts and transcriptions at the State's or Seller's office as applicable where such records are kept during normal business hours. All records relating to this Agreement shall be retained by the Seller for three (3) years from the date of receipt of final payment under this Agreement. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the three (3) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.

#### **ARTICLE 23 INSURANCE**

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

#### **ARTICLE 24 DISPUTES**

Any dispute concerning a question of fact under this Agreement which is not disposed of by agreement of the Seller and Purchaser shall be decided by the Executive Director of ITS or his/her designee. This decision shall be reduced to writing and a copy thereof mailed or furnished to the parties. Disagreement with such decision by either party shall not constitute a breach under the terms of this Agreement. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.

#### **ARTICLE 25 COMPLIANCE WITH LAWS**

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

#### **ARTICLE 26 CONFLICT OF INTEREST**

Seller shall notify Purchaser of any potential conflict of interest resulting from the representation of or service to other clients. If such conflict cannot be resolved to Purchaser's satisfaction, Purchaser reserves the right to terminate this Agreement.

#### **ARTICLE 27 SOVEREIGN IMMUNITY**

By entering into this Agreement with Seller, the State of Mississippi does in no way waive its sovereign immunities or defenses as provided by law.

#### **ARTICLE 28 CONFIDENTIAL INFORMATION**

**28.1** Seller shall treat all Purchaser data and information to which it has access by its performance under this Agreement as confidential and shall not disclose such data or information to a third party without specific written consent of Purchaser. In the event that Seller receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, Seller shall promptly inform Purchaser and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive the termination or completion of this Agreement, shall continue in full force and effect, and shall be binding upon the Seller and its agents, employees, successors, assigns, subcontractors, or any party or entity claiming an interest in this Agreement on behalf of or under the rights of the Seller following any termination or completion of this Agreement.

**28.2** With the exception of any attached exhibits which are labeled as "confidential", the parties understand and agree that this Agreement, including any amendments and/or change orders thereto, does not constitute confidential information, and may be reproduced and distributed by the State without notification to Seller. ITS will provide third party notice to Seller of any requests received by ITS for any such confidential exhibits so as to allow Seller the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

#### **ARTICLE 29 EFFECT OF SIGNATURE**

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

#### **ARTICLE 30 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS**

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

#### **ARTICLE 31 NON-SOLICITATION OF EMPLOYEES**

Seller agrees not to employ or to solicit for employment, directly or indirectly, any of the Purchaser's employees until at least one (1) year after the expiration/termination of this Agreement unless

mutually agreed to the contrary in writing by the Purchaser and the Seller and provided that such an agreement between these two entities is not a violation of the laws of the State of Mississippi or the federal government.

#### **ARTICLE 32 ENTIRE AGREEMENT**

**32.1** This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating hereto, including all terms of any unsigned or “shrink-wrap” license included in any package, media or electronic version of Seller-furnished software, or any “click-wrap” or “browse-wrap” license presented in connection with a purchase via the internet. The RFB No. 3697 and Seller’s Proposal in response to RFB No. 3697 are hereby incorporated into and made a part of this Agreement.

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

- A. This Agreement signed by both parties;
- B. Any exhibits attached to this Agreement;
- C. RFB No. 3697 and written addenda, and
- D. Seller’s Proposal, as accepted by Purchaser, in response to RFB No. 3697.

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

#### **ARTICLE 33 SURVIVAL**

Articles 6, 7, 14, 18, 22, 27, 28, 30, 31, and all other articles, which by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this Agreement.

#### **ARTICLE 34 DEBARMENT AND SUSPENSION CERTIFICATION**

Seller certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes

or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

### **ARTICLE 35 COMPLIANCE WITH ENTERPRISE SECURITY POLICY**

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

### **ARTICLE 36 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 37 CHANGE ORDER RATE AND PROCEDURE**

**37.1** 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 Contractor except by the express written approval of the State. The Contractor shall be obligated to perform all changes requested by the Customer, which have no price or schedule effect.

**37.2** The Contractor 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 Contractor shall be obligated to execute such a change order; and if no such change order is executed, the Contractor 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.

**37.3** With respect to any change orders issued in accordance with this Article, the Contractor shall be compensated for work performed under a change order according to the hourly change order rate of **\$INSERT AMOUNT**. If there is a service that is not defined in the change order rate, the Contractor and the State will negotiate the rate. The Contractor agrees that this 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 Contractor in the performance of the change order. The Contractor shall invoice the Customer upon acceptance by the Customer of all work documented in the change order, and the Customer shall pay invoice amounts on the terms set forth in this Agreement. The Contractor acknowledges and agrees that the fully-loaded change order hourly rates in Exhibit A must remain valid for the duration of the Agreement, with annual increases not to exceed the lesser of a five percent increase or an increase in the consumer price index, all Urban Consumer U.S. City Average (C.P.I.-U).

**37.4** 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 Contractor to complete the work required by that change order. The project work plan will be revised as necessary.

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

**37.6** In the event the Contractor 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 Contractor shall submit to the Customer a revised version of the project work plan, clearly indicating all changes, at least five (5) working days prior to implementing any such changes.

**37.7** The Customer shall promptly review all revised project work plans submitted under this Agreement, and shall notify the Contractor 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 Contractor. If the Customer fails to respond in such time period or any extension thereof, the Customer 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  
Human Services**

**INSERT VENDOR NAME**

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

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

**Printed Name: Craig P. Orgeron, Ph.D.**

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

**Title: Executive Director**

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

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

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

**Mississippi Department of Human Services**

**By:** \_\_\_\_\_  
**Richard A. Berry**

**Title: Executive Director**

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

**EXHIBIT A**

**ATTACHMENT D  
EXCEPTION SUMMARY FORM**

**List and clearly explain any exceptions, for Articles in the Standard Contract, in the table below.**

<b>ITS Standard Contract Article</b>	<b>Bidder Proposal Reference</b>	<b>Brief Explanation of Exception</b>	<b>ITS Acceptance (sign here only if accepted)</b>
(Reference specific contract article to which exception is taken)	(Page, section, items in Bidder's proposal where exception is explained)	(Short description of exception being made)	