



## RFP No: 3757

---

INVITATION: Sealed proposals, subject to the attached conditions, will be received at this office until **July 22, 2014 @ 3:00 p.m.** Central Time for the acquisition of the products/services described below for Mississippi Wireless Communication Commission.

Implementation of a Voice Over Internet Protocol (VOIP) on a P25 statewide network

MANDATORY VENDOR CONFERENCE: Thursday, June 26, 2014 at 3:00 p.m. Central Time

NOTE: THIS RFP CONTAINS MANDATORY REQUIREMENTS TO WHICH NO EXCEPTION MAY BE TAKEN. SEE SECTION VII, ITEM 2, FOR DETAILS.

---

**The Vendor must submit proposals and direct inquiries to:**

Donna Hamilton  
Technology Consultant  
Information Technology Services  
3771 Eastwood Drive  
Jackson, MS 39211  
(601) 432-8114  
Donna.Hamilton@its.ms.gov

To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the package. The following must be clearly typed on a label affixed to the package in a clearly visible location:

PROPOSAL, SUBMITTED IN RESPONSE TO  
RFP NO. 3757  
due July 22, 2014 @ 3:00 p.m.,  
ATTENTION: Donna Hamilton

---

**Craig P. Orgeron, Ph.D.**  
**Executive Director, ITS**

## ITS RFP Response Checklist

---

---

RFP Response Checklist: These items should be included in your response to RFP No. 3757.

- \_\_\_\_\_ 1) One clearly marked original response and 5 identical copies of the complete proposal. Label the front and spine of the three-ring loose-leaf binder with the Vendor name and RFP number. Include the items listed below inside the binder. Please DO NOT include a copy of the RFP in the binder.
- \_\_\_\_\_ 2) *Submission Cover Sheet*, signed and dated. (Section I)
- \_\_\_\_\_ 3) *Proposal Bond*, if applicable (Section I)
- \_\_\_\_\_ 4) *Proposal Exception Summary*, if applicable (Section V)
- \_\_\_\_\_ 5) Vendor response to *RFP Questionnaire* (Section VI)
- \_\_\_\_\_ 6) Point-by-point response to *Technical Specifications* (Section VII)
- \_\_\_\_\_ 7) Vendor response to *Cost Information Submission* (Section VIII)
- \_\_\_\_\_ 8) *References* (Section IX)

**Table of Contents**

---

SECTION I.....	4
SUBMISSION COVER SHEET & CONFIGURATION SUMMARY .....	4
PROPOSAL BONDS.....	5
SECTION II .....	6
PROPOSAL SUBMISSION REQUIREMENTS .....	6
SECTION III .....	10
VENDOR INFORMATION.....	10
SECTION IV .....	14
LEGAL AND CONTRACTUAL INFORMATION .....	14
SECTION V .....	26
PROPOSAL EXCEPTIONS.....	26
PROPOSAL EXCEPTION SUMMARY FORM .....	28
SECTION VI.....	29
RFP QUESTIONNAIRE.....	29
SECTION VII.....	32
TECHNICAL SPECIFICATIONS.....	32
SECTION VIII.....	46
COST INFORMATION SUBMISSION .....	46
SECTION IX.....	49
REFERENCES.....	49
REFERENCE FORM .....	51
SUBCONTRACTOR REFERENCE FORM.....	52
EXHIBIT A .....	53
STANDARD CONTRACT.....	53

**SECTION I  
SUBMISSION COVER SHEET & CONFIGURATION SUMMARY**

Provide the following information regarding the person responsible for the completion of your proposal. This person should also be the person the Mississippi Department of Information Technology Services, (ITS), should contact for questions and/or clarifications.

Name \_\_\_\_\_ Phone # \_\_\_\_\_  
Address \_\_\_\_\_ Fax # \_\_\_\_\_  
\_\_\_\_\_ E-mail \_\_\_\_\_

Subject to acceptance by ITS, the Vendor acknowledges that by submitting a proposal AND signing in the space indicated below, the Vendor is contractually obligated to comply with all items in this Request for Proposal (RFP), including the Standard Contract in Exhibit A if included herein, except those listed as exceptions on the Proposal Exception Summary Form. If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions. This acknowledgement also contractually obligates any and all subcontractors that may be proposed. Vendors who sign below may not later take exception to any point during contract negotiations. The Vendor further certifies that the company represented here is an authorized dealer in good standing of the products/services included in this proposal.

\_\_\_\_\_/\_\_\_\_\_  
**Original signature** of Officer in Bind of Company/Date

Name (typed or printed) \_\_\_\_\_  
Title \_\_\_\_\_  
Company name \_\_\_\_\_  
Physical address \_\_\_\_\_  
State of Incorporation \_\_\_\_\_

---

**CONFIGURATION SUMMARY**

The Vendor must provide a summary of the main components of products/services offered in this proposal using 100 words or less.

**PROPOSAL BONDS**

Please attach the required Proposal Bond here.

## SECTION II PROPOSAL SUBMISSION REQUIREMENTS

The objective of the Proposal Submission Requirements section is to provide Vendors with the information required to submit a response to this Request for Proposal (RFP). A Vendor who has responded to previous RFPs issued by **ITS** should not assume that the requirements are the same, as changes may have been made.

1. Failure to follow any instruction within this RFP may, at the State's sole discretion, result in the disqualification of the Vendor's proposal.
2. The State has no obligation to locate or acknowledge any information in the Vendor's proposal that is not presented under the appropriate outline according to these instructions and in the proper location.
3. The Vendor's proposal must be received, in writing, by the office of **ITS** by the date and time specified. **ITS** is not responsible for any delays in delivery or expenses for the development or delivery of proposals. Any proposal received after proposal opening time will be returned unopened. Any proposal received with insufficient postage will be returned unopened.
4. Proposals or alterations by fax, e-mail, or phone will not be accepted.
5. Original signatures are required on one copy of the Submission Cover Sheet and Configuration Summary, and the Vendor's original submission must be clearly identified as the original. The Vendor's original proposal must include the Proposal Bond, (if explicitly required in Section IV).
6. **ITS** reserves the right to reject any proposals, including those with exceptions, prior to and at any time during negotiations.
7. **ITS** reserves the right to waive any defect or irregularity in any proposal procedure.
8. The Vendor may intersperse their response following each RFP specification but must not otherwise alter or rekey any of the original text of this RFP. If the State determines that the Vendor has altered any language in the original RFP, the State may, in its sole discretion, disqualify the Vendor from further consideration. The RFP issued by **ITS** is the official version and will supersede any conflicting RFP language submitted by the Vendor.
9. The Vendor must conform to the following standards in the preparation of the Vendor's proposal:
  - 9.1 The Vendor is required to submit one clearly marked original response and **5** identical copy/copies of the complete proposal, including all sections and exhibits, in three-ring binders.
  - 9.2 To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the package. A label containing the information on the

- RFP cover page must be clearly typed and affixed to the package in a clearly visible location.
- 9.3 Number each page of the proposal.
  - 9.4 Respond to the sections and exhibits in the same order as this RFP.
  - 9.5 Label and tab the responses to each section and exhibit, using the corresponding headings from the RFP.
  - 9.6 If the Vendor does not agree with any item in any section, then the Vendor must list the item on the *Proposal Exception Summary Form*. (See Section V for additional instructions regarding Vendor exceptions.)
  - 9.7 Occasionally, an outline point in an attachment requests information which is not applicable to the products/services proposed. If the Vendor is certain the point does not apply to the given RFP, the Vendor should respond with "NOT APPLICABLE."
  - 9.8 Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
  - 9.9 When an outline point/attachment is a statement provided for the Vendor's information only, the Vendor need only read that point. The Vendor acknowledges having read and accepting, or taking exception to, all sections by signing the *Submission Cover Sheet* and providing a *Proposal Exception Summary Form*.
  - 9.10 Where a minimum requirement has been identified, respond by stating the item (e.g., device name/model number, guaranteed response time) proposed and how it will meet the specifications.
  - 9.11 The Vendor must fully respond to each requirement within the *Technical Specifications* by fully describing the manner and degree by which the proposal meets or exceeds said requirements.
10. It is the responsibility of the Vendor to clearly identify all costs associated with any item or series of items in this RFP. The Vendor must include and complete all parts of the cost proposal in a clear and accurate manner. **Omissions, errors, misrepresentations, or inadequate details in the Vendor's cost proposal may be grounds for rejection of the Vendor's proposal. Costs that are not clearly identified will be borne by the Vendor.** The Vendor must complete the *Cost Information Submission* in this RFP, which outlines the minimum requirements for providing cost information. The Vendor should supply supporting details as described in the *Cost Information Submission*.
  11. **ITS** reserves the right to request additional information or clarification of a Vendor's proposal. The Vendor's cooperation during the evaluation process in providing **ITS** staff with adequate responses to requests for clarification will be considered a factor in the evaluation of the Vendor's overall responsiveness. Lack of such cooperation or failure to

provide the information in the manner required may, at the State's discretion, result in the disqualification of the Vendor's proposal.

12. Unsolicited clarifications and updates submitted after the deadline for proposals will be accepted or rejected at the sole discretion of **ITS**.
13. Unsolicited clarifications in the evaluation and selection of lowest and best proposal will be considered only if all the following conditions are met:
  - 13.1 A clarification to a proposal that includes a newly announced product line or service with equal or additional capability to be provided at or less than the proposed price will be considered.
  - 13.2 Information provided must be in effect nationally and have been formally and publicly announced through a news medium that the Vendor normally uses to convey customer information.
  - 13.3 Clarifications must be received early enough in the evaluation process to allow adequate time for re-evaluation.
  - 13.4 The Vendor must follow procedures outlined herein for submitting updates and clarifications.
  - 13.5 The Vendor must submit a statement outlining the circumstances for the clarification.
  - 13.6 The Vendor must submit one clearly marked original and 5 copies of the clarification.
  - 13.7 The Vendor must be specific about which part of the original proposal is being changed by the clarification (i.e., must include exact RFP reference to section and outline point).
14. **Communications with State**

From the issue date of this RFP until a Vendor is selected and the selection is announced, responding Vendors or their representatives may not communicate, either orally or in writing regarding this RFP with any statewide elected official, state officer or employee, member of the legislature or legislative employee except as noted herein. To ensure equal treatment for each responding Vendor, all questions regarding this RFP must be submitted in writing to the State's contact person for the selection process, and not later than the last date for accepting responding Vendor questions provided in this RFP. All such questions will be answered officially by the State in writing. All such questions and answers will become addenda to this RFP, and they will be posted to the ITS web site. Vendors failing to comply with this requirement will be subject to disqualification.

  - 14.1 The State's contact person for the selection process is: Donna Hamilton, Technology Consultant, 3771 Eastwood Drive, Jackson, MS 39211, 601-432-8114, Donna.Hamilton@its.ms.gov.

- 14.2 Vendor may consult with State representatives as designated by the State's contact person identified in 14.1 above in response to State-initiated inquiries. Vendor may consult with State representatives during scheduled oral presentations and demonstrations excluding site visits.

### SECTION III VENDOR INFORMATION

The objective of the Vendor Information section of this RFP is to provide Vendors with information required to respond to the RFP successfully.

15. **Interchangeable Designations**

The terms "Vendor" and "Contractor" are referenced throughout this RFP. Generally, references to the "Vendor" are used in conjunction with the proposing organization and procurement process leading up to the final RFP selection and award. The term "Contractor" denotes the role assumed, post-award, by the winning Vendor. Additionally, the terms "State of Mississippi," "State" or "ITS" may be used interchangeably throughout this RFP to denote the political entity issuing the RFP and requesting responses from Vendors throughout these specifications. References to a specific agency, institution or other political entity represent the client or customer on whose behalf ITS is issuing the RFP.

16. **Vendor's Responsibility to Examine RFP**

Vendors must examine all documents, forms, specifications, standard provisions, and instructions.

17. **Proposal as Property of State**

All written proposal material becomes the property of the State of Mississippi.

18. **Written Amendment to RFP**

Any interpretation of an **ITS** RFP will be made by written amendment only. The State will not be responsible for any other explanation of this RFP. A copy of any amendment will be posted on the **ITS** website, together with the associated RFP specification. Vendors are required to check the **ITS** website periodically for RFP amendments before the proposal opening date at:

[http://www.its.ms.gov/Procurement/Pages/RFPS\\_Awaiting.aspx](http://www.its.ms.gov/Procurement/Pages/RFPS_Awaiting.aspx)

Any and all amendments will be posted no later than noon, seven days prior to the proposal opening date listed on the cover page of this RFP. If you are unable to access the **ITS** website, you may contact the **ITS** technology consultant listed on page one of this RFP and request a copy.

19. **Oral Communications Not Binding**

Only transactions which are in writing from **ITS** may be considered official. No negotiations, decisions, or actions shall be executed by any Vendor as a result of any discussions with any State employee.

20. **Vendor's Responsibility for Delivery**

Vendors must ensure, through reasonable and sufficient follow-up, proper compliance with, and fulfillment of all schedules and deliverables specified within the body of this RFP. The State will not be responsible for the failure of any delivery medium for submission of information to or from the Vendor, including but not limited to, public and private carriers, U.S. mail, Internet Service Providers, facsimile, or e-mail.

21. **Evaluation Criteria**

The State's intent in issuing this RFP is to award a contract to the lowest and best responsive Vendor who meets specifications, considering price and other factors. The Vendor's past performance, cooperation, and ability to provide service and training are general factors that will be weighed in the selection process. More specific information concerning evaluation criteria is presented in *Technical Specifications*.

22. **Multiple Awards**

ITS reserves the right to make multiple awards.

23. **Right to Award in Whole or Part**

ITS reserves the right to approve an award by individual items or in total, whichever is deemed to be in the best interest of the State of Mississippi.

24. **Right to Use Proposals in Future Projects**

The State reserves the right to evaluate the awarded proposal from this RFP, including all products and services proposed therein, along with the resulting contractual terms, for possible use in future projects if (a) it is deemed to be in the best interest of the State to do so; and (b) the Vendor is willing to extend a cost less than or equal to that specified in the awarded proposal and resulting contract. A decision concerning the utilization of a Vendor's proposal for future projects is solely at the discretion of the State and requires the agreement of the proposing Vendor. The State's decision to reuse an awarded proposal will be based upon such criteria as: (1) the customer's business requirements; (2) elapsed time since the award of the original project; and/or (3) research on changes in the Vendor, market, and technical environments since the initial award.

25. **Price Changes During Award or Renewal Period**

A price increase will not be accepted during the award period or the renewal period, unless stipulated in the contract. However, the State will always take advantage of price decreases.

26. **Right to Request Information**

The State reserves the right to request information relative to a Vendor's references and financial status and to visit a Vendor's facilities during normal working hours. The State also reserves the right to request a current financial statement, prepared and certified by an independent auditing firm, and reserves the right to require that Vendors document their financial ability to provide the products and services proposed up to the total dollar amount of the Vendor's cost proposal. The State reserves the right to request information about the Vendor from any previous customer of the Vendor of whom the State is aware, even if that customer is not included in the Vendor's list of references.

27. **Vendor Personnel**

For RFPs including professional services specifications, the Vendor will be required to provide and/or certify the following for each individual included in the Vendor's proposal:

- 27.1 A direct telephone number at which the individual may be contacted for a telephone interview. The State will pay toll charges in the continental United States. The Vendor must arrange a toll-free number for all other calls.

- 27.2 That, if onsite interviews are required, the individual can be at the specified location in Mississippi within the timeframe specified. All costs associated with onsite interviews will be the responsibility of the Vendor.
- 27.3 That the individual is proficient in spoken and written English;
- 27.4 That the individual is a U.S. citizen or that the individual meets and will maintain employment eligibility requirements in compliance with all INS regulations. The Vendor must provide evidence of identification and employment eligibility prior to the award of a contract that includes any personnel who are not U. S. citizens.
- 27.5 That the personnel assigned to a project will remain a part of the project throughout the duration of the contract as long as the personnel are employed by the Vendor, unless replaced by the Vendor at the request of the State. This requirement includes the responsibility for ensuring all non-citizens maintain current INS eligibility throughout the duration of the contract.

28. **Vendor Imposed Constraints**

The Vendor must specifically document what limitations, if any, exist in working with any other Contractor acting in the capacity of the State's business partner, subcontractor or agent who may be managing any present or future projects; performing quality assurance; integrating the Vendor's software; and/or providing web-hosting, hardware, networking or other processing services on the State's behalf. The project relationship may be based on roles as either equal peers; supervisory – subordinate; or subordinate – supervisory, as determined by the State. The State recognizes that the Vendor may have trade secrets, intellectual property and/or business relationships that may be subject to its corporate policies or agreements. The State must understand these issues in order to decide to what degree they may impact the State's ability to conduct business for this project. These considerations will be incorporated accordingly into the proposal evaluation and selection process. The understanding reached between the Vendor and the State with regard to this business relationship precludes the Vendor from imposing any subsequent limitations of this type in future project undertakings by the State.

29. **Best and Final Offer**

The State reserves the right to solicit Best and Final Offers (BAFOs) from Vendors, principally in situations in which proposal costs eclipse available funding or the State believes none of the competing proposals presents a Best Value (lowest and best proposal) opportunity. Because of the time and expense incurred by both the Vendor community and the State, BAFOs are not routinely conducted. Vendors should offer their best pricing with the initial solicitation. Situations warranting solicitation of a BAFO will be considered an exceptional practice for any procurement. Vendors that remain in a competitive range within an evaluation may be requested to tender Best and Final Offers, at the sole discretion of the State. All such Vendors will be provided an equal opportunity to respond with a Best and Final Offer under a procedure to be defined by the State that encompasses the specific, refined needs of a project, as part of the BAFO solicitation. The State may re-evaluate and amend the original project specifications should it be deemed necessary in order to improve the opportunity for

attaining Best Value scenarios from among the remaining competing Vendors. All BAFO proceedings will be uniformly conducted, in writing and subject to solicitation by the State and receipt from the Vendors under a precise schedule.

30. **Restriction on Advertising**

The Vendor must receive written approval from the State before advertising or referencing the award of the contract or the services being provided. The Vendor must agree not to refer to awards in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the State of Mississippi.

31. **Rights Reserved to Use Existing Product Contracts**

The State reserves the right on turnkey projects to secure certain products from other existing **ITS** contracts if it is in its best interest to do so. If this option is exercised, then the awarded Vendor must be willing to integrate the acquisition and implementation of such products within the schedule and system under contract.

32. **Additional Information to be Included**

In addition to answering each specification within this RFP, the Vendor must include complete product/service information, including product pictorials and technical/descriptive literature relative to any product/service offered with the proposal. Information submitted must be sufficiently detailed to substantiate that the products/services offered meet or exceed specifications.

33. **Valid Contract Required to Begin Work**

The successful Vendor should not commence any billable work until a valid contract has been executed. Any work done by the successful Vendor prior to the execution of the contract is done at the Vendor's sole risk. The State is under no obligation to pay for work done prior to the execution of a contract.

## SECTION IV LEGAL AND CONTRACTUAL INFORMATION

The objective of the *Legal and Contractual Information* section is to provide Vendors with information required to complete a contract or agreement with **ITS** successfully.

1. **Acknowledgment Precludes Later Exception**

By signing the *Submission Cover Sheet*, the Vendor is contractually obligated to comply with all items in this RFP, including the *Standard Contract* in Exhibit A if included herein, except those specifically listed as exceptions on the *Proposal Exception Summary Form*. If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions. Vendors who respond to this RFP by signing the *Submission Cover Sheet* may not later take exception to any item in the RFP during contract negotiations. This acknowledgement also contractually obligates any and all subcontractors that may be proposed. No exceptions by subcontractors or separate terms and conditions will be entertained after the fact.

2. **Failure to Respond as Prescribed**

Failure to respond as described in Section II: *Proposal Submission Requirements* to any item in the sections and exhibits of this RFP, including the *Standard Contract* attached as Exhibit A, if applicable, shall contractually obligate the Vendor to comply with that item.

3. **Contract Documents**

**ITS** will be responsible for all document creation and editorial control over all contractual documentation related to each procurement project. The following documents will normally be included in all contracts between **ITS** and the Vendor:

- 3.1 The Proposal Exception Summary Form as accepted by **ITS**;
- 3.2 Contracts which have been signed by the Vendor and **ITS**;
- 3.3 **ITS'** Request for Proposal, including all addenda;
- 3.4 Official written correspondence from **ITS** to the Vendor;
- 3.5 Official written correspondence from the Vendor to **ITS** when clarifying the Vendor's proposal; and
- 3.6 The Vendor's proposal response to the **ITS** RFP.

4. **Order of Precedence**

When a conflict arises regarding contract intent due to conflicting statements in documents included in the contract, the order of precedence of each document is as listed above unless modification of order is negotiated and agreed upon by both **ITS** and the winning Vendor.

5. **Additional Contract Provisions**

The contract will also include such additional provisions, which are not inconsistent or incompatible with the material terms of this RFP, as may be agreed upon by the parties. All of the foregoing shall be in such form and substance as prescribed by the State.

6. **Contracting Agent by Law**

The Executive Director of **ITS** is, by law, the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of computer and telecommunications equipment, systems, software, and services (Section 25-53-1, et seq., of the Mississippi Code Annotated). **ITS** is issuing this RFP on behalf of the procuring agency or institution. **ITS** and the procuring agency or institution are sometimes collectively referred to within this RFP as "State."

7. **Mandatory Legal Provisions**

- 7.1 The State of Mississippi is self-insured; all requirements for the purchase of casualty or liability insurance are deleted.
- 7.2 Any provisions disclaiming implied warranties shall be null and void. See Mississippi Code Annotated Sections 11-7-18 and 75-2-719(4). The Vendor shall not disclaim the implied warranties of merchantability and fitness for a particular purpose.
- 7.3 The Vendor shall have no limitation on liability for claims related to the following items:
- 7.3.1 Infringement issues;
  - 7.3.2 Bodily injury;
  - 7.3.3 Death;
  - 7.3.4 Physical damage to tangible personal and/or real property; and/or
  - 7.3.5 The intentional and willful misconduct or negligent acts of the Vendor and/or Vendor's employees or subcontractors.
- 7.4 All requirements that the State pay interest (other than in connection with lease-purchase contracts not exceeding five years) are deleted.
- 7.5 Any contract negotiated under this RFP will be governed by and construed according to the laws of the State of Mississippi. Venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi.
- 7.6 Any contract negotiated under this RFP is cancelable in the event the funding authority does not appropriate funds. Notice requirements to Vendor cannot exceed sixty (60) days.

- 7.7 The State of Mississippi does not waive its sovereign immunities or defenses as provided by law by entering into this contract with the Vendor, Vendor agents, subcontractors, or assignees.
- 7.8 The State will deliver payments to the Vendor within forty-five (45) days after receipt of invoice and receipt, inspection, and approval of Vendor's products/services. No late charges will exceed 1.5% per month on any unpaid balance from the expiration of said period until payment is delivered. See Section 31-7-305 of the Mississippi Code Annotated. Seller understands and agrees that Purchaser is exempt from the payment of taxes.
- 7.9 The State shall not pay any attorney's fees, prejudgment interest or the cost of legal action to or for the Vendor.

8. **Approved Contract**

- 8.1 Award of Contract - A contract is considered to be awarded to a proposer once the proposer's offering has been approved as lowest and best proposal through:
  - 8.1.1 Written notification made to proposers on **ITS** letterhead, or
  - 8.1.2 Notification posted to the **ITS** website for the project, or
  - 8.1.3 CP-1 authorization executed for the project, or
  - 8.1.4 The ITS Board's approval of same during an open session of the Board.
- 8.2 **ITS** statute specifies whether **ITS** Director approval or **ITS** Board approval is applicable for a given project, depending on the total lifecycle cost of the contract.
- 8.3 A contract is not deemed final until five (5) working days after either the award of contract or post procurement review, as stipulated in the **ITS** Protest Procedure and Policy. In the event of a valid protest, the State may, at its sole discretion, continue the procurement or stay the procurement in accordance with the **ITS** Protest Procedure and Policy. If the procurement is stayed, the contract is not deemed final until the protest is resolved.

9. **Contract Validity**

All contracts are valid only if signed by the Executive Director of **ITS**.

10. **Order of Contract Execution**

Vendors will be required to sign contracts and to initial all contract changes before the Executive Director of **ITS** signs.

11. **Availability of Funds**

All contracts are subject to availability of funds of the acquiring State entity and are contingent upon receipt by the winning Vendor of a purchase order from the acquiring State entity.

12. **CP-1 Requirement**

All purchase orders issued for goods and services acquired from the awarded Vendor under this RFP must be encoded by the Customer agency with a CP-1 approval number assigned by **ITS**. This requirement does not apply to acquisitions that by policy have been delegated to State entities.

13. **Requirement for Electronic Payment and Invoicing**

13.1 Payments to the awarded Vendor for all goods and services acquired under this RFP by state agencies that make payments through the Statewide Automated Accounting System ("SAAS") will be made electronically, via deposit to the bank account of the Vendor's choice. The awarded Vendor must enroll and be activated in PayMode™, the State's current vehicle for sending and receiving electronic payments, prior to receiving any payments from state agencies. There is no charge for a Vendor to enroll or receive payments via PayMode. For additional information on PayMode, including registration instructions, Vendors should visit the following website: <http://portal.paymode.com/ms/>. Vendors may also request assistance from the Mississippi Management and Reporting System (MMRS) Call Center regarding PayMode registration by contacting [mash@dfa.state.ms.us](mailto:mash@dfa.state.ms.us).

13.2 For state agencies that make payments through SAAS, the awarded Vendor is required to submit electronically all invoices for goods and services acquired under this RFP, along with appropriate supporting documentation, as directed by the State. Should the requirement for electronic invoicing be implemented during the term of the project contract, the State will work with the Vendor to determine a reasonable timeframe for initiating electronic invoicing.

13.3 Items 13.1 and 13.2 only apply to state agencies that make payments through SAAS. Payments and invoices for all other entities will conform to their standard methods of payment to contractors.

14. **Time For Negotiations**

14.1 All contractual issues must be successfully negotiated within fifteen (15) working days from the Vendor's initial receipt of the project contract from **ITS**, unless **ITS** consents to extend the period. Failure to complete negotiations within the stated time period constitutes grounds for rejection of the Vendor's response to this RFP. **ITS** may withdraw the proposal award and begin negotiations with the next ranked Vendor immediately or pursue any other option.

- 14.2 Negotiations shall be limited to items to which the Vendor has noted as exceptions on their Proposal Exception Summary Form, as well as any new items that the State may require. All contract changes requested by the Vendor related to such exceptions noted in Vendor's proposal shall be submitted three (3) working days prior to scheduled negotiations, unless **ITS** consents to a different period.
15. **Prime Contractor**  
The selected Vendor will be designated the prime contractor in the proposal, and as such, shall be solely responsible for all products/services offered in the proposal and for the fulfillment of the contract with the State.
16. **Sole Point of Contact**  
**ITS** will consider the selected Vendor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.
- 16.1 The Vendor must acknowledge and agree that in matters of proposals, clarifications, negotiations, contracts and resolution of issues and/or disputes, the Vendor represents all contractors, third parties and/or subcontractors the Vendor has assembled for this project. The Vendor's commitments are binding on all such parties and consequently the State is only required to negotiate with the Vendor.
- 16.2 Furthermore, the Vendor acknowledges and agrees to pass all rights and/or services related to all general consulting, services leasing, software licensing, warranties, hardware maintenance and/or software support to the State from any contractor, third party or subcontractor without the State having to negotiate separately or individually with any such parties for these terms or conditions.
- 16.3 Should a proposing Vendor wish to assign payment of any or all charges resulting from this contract to a third party, Vendor must disclose that fact in his/her proposal, along with the third party's name, address, nature of business, and relationship to the proposing Vendor, the reason for and purpose of the assignment, and all conditions of the assignment, including but not limited to a copy of an assignment document to be executed by the State, the Vendor, and the third party. Such assignments will be accepted or rejected at the sole discretion of the State. Vendor must clearly and definitively state in his/her proposal whether the proposal is contingent upon the requested assignment of payments. Whenever any assignment of payment is requested, the proposal, contract, and assignment document must include language specifically guaranteeing that the proposing Vendor is solely and fully liable and responsible for the performance of its obligations under the subject contract. No assignment of payment will be considered at the time of purchase unless such assignment was fully disclosed in the Vendor's proposal and subsequently accepted by the State.

17. **ITS Approval of Subcontractor Required**

Unless provided in the contract, the Vendor shall not contract with any other party for furnishing any of the contracted work or services without the consent, guidance, and written approval of the State. **ITS** reserves the right of refusal and the right to request replacement of a subcontractor due to unacceptable work or conduct. This provision should not be interpreted as requiring the approval of individual contracts of employment between the Vendor and personnel assigned for services under the contract.
18. **Inclusion of Subcontract Agreements**

Copies of any agreements to be executed between the Vendor and any subcontractors must be included in the Vendor's proposal.
19. **Negotiations with Subcontractor**

In order to protect the State's interest, **ITS** reserves the right to attempt to resolve the contractual disagreements that may arise between the Vendor and its subcontractor after award of the contract.
20. **References to Vendor to Include Subcontractor**

All references in the RFP to "Vendor" shall be construed to encompass both the Vendor and its subcontractors.
21. **Outstanding Vendor Obligations**
  - 21.1 Any Vendor who presently owes the State of Mississippi money pursuant to any contract for which **ITS** is the contracting agent and who has received written notification from **ITS** regarding the monies owed, must submit, with the proposal, a certified check in the amount due and owing in order for the proposal in response to this RFP to be considered. For a Vendor currently in bankruptcy as of the RFP submission date, this requirement is met, if and only if, **ITS** has an active petition before the appropriate bankruptcy court for recovery of the full dollar amount presently owed to the State of Mississippi by that Vendor. If the Vendor has emerged from bankruptcy by the RFP submission date, the Vendor must pay in full any amount due and owing to the State, as directed in the court-approved reorganization plan, prior to any proposal being considered.
  - 21.2 Any Vendor who is presently in default on existing contracts for which **ITS** is the contracting agent, or who otherwise is delinquent in the performance of any such contracted obligations, is in the sole judgment of the State required to make arrangement for fulfilling outstanding obligations to the satisfaction of the State in order for the proposal to be considered.
  - 21.3 The State, at its sole discretion, may reject the proposal of a Vendor with any significant outstanding financial or other obligations to the State or who is in bankruptcy at the time of proposal submission.

22. **Equipment Condition**

For all RFPs requiring equipment, the Vendor must furnish only new equipment in response to **ITS** specifications, unless an explicit requirement for used equipment is otherwise specified.

23. **Delivery Intervals**

The Vendor's proposal must specify, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, delivery and installation intervals after receipt of order.

24. **Pricing Guarantee**

The Vendor must explicitly state, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, how long the proposal will remain valid. Unless stated to the contrary in the *Technical Specifications*, pricing must be guaranteed for a minimum of ninety (90) days.

25. **Shipping Charges**

For all RFPs requiring shipment of any product or component, all products must be delivered FOB destination to any location within the geographic boundaries of the State with all transportation charges prepaid and included in the RFP proposal or LOC quotation. Destination is the point of use.

26. **Amortization Schedule**

For all RFPs requiring equipment, contracts involving the payment of interest must include an amortization schedule clearly documenting the amount of interest payable over the term of the contract.

27. **Americans with Disabilities Act Compliance for Web Development and Portal Related Services**

All Web and Portal development work must be designed and implemented in compliance with the Electronic and Information Technology Accessibility Standards associated with Section 508 of the Rehabilitation Act and with the Web Accessibility Initiative (WAI) of the W3C.

28. **Ownership of Developed Software**

28.1 When specifications require the Vendor to develop software for the State, the Vendor must acknowledge and agree that the State is the sole owner of such developed software with exclusive rights to use, alter, or distribute the software without restriction. This requirement applies to source code, object code, and documentation.

28.2 The State may be willing to grant the Vendor a nonexclusive license to use the State's software subject to devising acceptable terms and license fees. This requirement is a matter of State Law, and not negotiable.

29. **Ownership of Custom Tailored Software**

In installations where the Vendor's intellectual property is modified and custom-tailored to meet the needs of the State, the Vendor must offer the State an application license

entitling the State to use, and/or alter the software without restriction. These requirements apply to source code, object code and documentation.

30. **Terms of Software License**

The Vendor acknowledges and agrees that the term of all software licenses provided to the State shall be perpetual unless stated otherwise in the Vendor's proposal.

31. **The State is Licensee of Record**

The Vendor must not bypass the software contracting phase of a project by licensing project software intended for State use in its company name. Upon award of a project, the Vendor must ensure that the State is properly licensed for all software that is proposed for use in a project.

32. **Compliance with Enterprise Security Policy**

Any solution proposed in response to this RFP must be in compliance with the State of Mississippi's Enterprise Security Policy. The Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines and covers the following topics: web servers, email, virus prevention, firewalls, data encryption, remote access, passwords, servers, physical access, traffic restrictions, wireless, laptop and mobile devices, disposal of hardware/media, and application assessment/certification. Given that information security is an evolving technology practice, the State reserves the right to introduce new policy during the term of the contract resulting from this RFP and require the Vendor 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.

The Enterprise Security Policy is available to third parties on a need-to-know basis. The Vendor may request individual sections of the Enterprise Security Policy or request the entire document. Vendor must provide contact information (name, email address, phone number) to the State's contact person identified in Section II, Item 14.1 who will coordinate the secure delivery of the requested information.

33. **Negotiating with Next-Ranked Vendor**

Should the State cease doing business with any Vendor selected via this RFP process, for any reason, the State reserves the right to initiate negotiations with the next ranked Vendor.

34. **Disclosure of Proposal Information**

Vendors should be aware that any information in a proposal may be subject to disclosure or reproduction under the Mississippi Public Records Act of 1983, defined in Section 25-61-1 et seq. of the Mississippi Code Annotated. All disclosures of proposal information will be made in compliance with the **ITS** Public Records Procedures established in accordance with the Mississippi Public Records Act. The **ITS** Public Records Procedures are available in Section 019-010 of the **ITS** Procurement Handbook, on the **ITS** Internet site at:

<http://dsitspe01.its.ms.gov/its/procman.nsf/f4ad43bd44ad9d8c86256daa0063e1f0/bb780b5a8360c3138625765d004e4aff?OpenDocument> or from **ITS** upon request.

As outlined in the Third Party Information section of the **ITS** Public Records Procedures, **ITS** will give written notice to any affected Vendor of a request to view or reproduce the Vendor's proposal or portion thereof. **ITS** will not, however, give such notice with respect to summary information prepared in connection with the State's review or evaluation of a Vendor's proposal, including, but not limited to, written presentations to the **ITS** Board or other approving bodies, and/or similar written documentation prepared for the project file. In addition, **ITS** will not provide third-party notice for requests for any contract executed as a result of this RFP, with the exception of information contained in contract exhibits identified and labeled as confidential during the contract negotiation process. **ITS** will provide third-party notice of requests for any such confidential exhibits to allow Vendor the opportunity to protect the information by court order as outlined in the **ITS** Public Records Procedures.

Summary information and contract terms, as defined above, become the property of **ITS**, who has the right to reproduce or distribute this information without notification.

Vendors should further be aware that requests for disclosure of proposal and contract information are sometimes received by **ITS** significantly after the proposal opening date. **ITS** will notify the signatory "Officer in Bind of Company" provided in Section I of this RFP for Notification of Public Records Requests in the event information is requested that your company might wish to consider protecting as a trade secret or as confidential commercial or financial information. If the "Officer in Bind of Company" should not be used for notification of public records requests, Vendor should provide the alternative contact information in response to this RFP item.

35. **Risk Factors to be Assessed**

The State will assess risk factors that may initially exist within a given procurement and that may develop over the course of a procurement process as facts become known. The State, at its sole discretion, may employ the following mechanisms in mitigating these risks: proposal bonding, performance bonding, progress payment plan with retainage, inclusion of liquidated damages, and withholding payment for all portions of the products/services acquired until final acceptance. The Vendor must agree to incorporate any or all of the above terms and conditions into the customer agreement.

36. **Proposal Bond**

The Vendor must include a proposal bond in the amount of \$7,500.00 with its RFP proposal. Vendor is specifically disallowed from taking exception to the proposal bond requirement. Proposals without proposal bonds will be rejected.

The security must be in the form of a bond, irrevocable letter of credit, certified check, or cashier's check (hereinafter, "security") payable to the **Mississippi Wireless Communication Commission**, to be held by their contracting agent, the Mississippi Department of Information Technology Services, and must be placed in the front of the Vendor's proposal. The submission of an acceptable security is a condition precedent to a valid proposal, and the amount of the security is not negotiable or contestable. Any proposal received without the security will be rejected and returned to the Vendor without further consideration.

The security binds the Vendor to the commitments made in writing in the Vendor's proposal. The security will be forfeited in the event the awarded Vendor, at any time during the contract negotiation process, refuses to honor commitments made in its proposal, reneges on pricing, takes exception to any term or condition that was not addressed in the Vendor's written proposal, or fails to execute a contract as anticipated in the RFP and the Vendor's proposal, including documented exceptions, within fifteen (15) working days after the Vendor's initial receipt of the project contract from **ITS**, unless an extension is agreed to by **ITS**.

As stated in the RFP, the Vendor may take exception to any point without incurring any liability to provide items to which an exception has been taken. Likewise, the State has no obligation to accept any proposed exception. Should the State decide, at its sole discretion and at any point in the process, that an exception is NOT acceptable, **ITS** will reject the Vendor's proposal and return the Vendor's security.

The Vendor's security will be returned promptly after **ITS** and the successful Vendor have executed a contract or within ninety (90) days after opening the proposals if no letter of intent to award a contract has been sent. In the event that the successful Vendor fails to accept and sign the mutually negotiated contract, that Vendor shall be disqualified and **ITS** shall initiate negotiations with the next ranked Vendor until a contract is successfully negotiated, or **ITS** elects to cancel the procurement. The securities of all remaining Vendors will be returned when a contract has been successfully negotiated and executed, or when the procurement is canceled.

37. **Performance Bond/Irrevocable Bank Letter of Credit**

The Vendor must include the price of a performance bond or irrevocable bank letter of credit with its RFP proposal. The cost of the bond or letter of credit must be shown as a separate line item in the *Cost Information Submission*. The performance bond or letter of credit must be procured at the Vendor's expense prior to the execution of the contract and may be invoiced to **Mississippi Wireless Communication Commission** after contract initiation only if itemized in the *Cost Information Submission* and in the executed contract. **The final decision as to the requirement for a Performance Bond or Irrevocable Bank Letter of Credit will be made upon contract award and is at the State's sole discretion.**

If a Performance Bond /Irrevocable Bank Letter of Credit is required, the Vendor must procure and submit to **ITS**, on behalf of **Mississippi Wireless Communication Commission**, with the executed contract, (a) a performance bond from a reliable surety company authorized to do business in the State of Mississippi or (b) an irrevocable bank letter of credit that is acceptable to the State. The Performance Bond or the Irrevocable Letter of Credit shall be for the total amount of the contract or an amount mutually agreed upon by the State and the successful Vendor and shall be payable to **Mississippi Wireless Communication Commission**, to be held by their contracting agent, the Mississippi Department of Information Technology Services. No contract resulting from this RFP will be valid until the required Performance Bond or Irrevocable Bank Letter of Credit has been received and found to be in proper form and amount. The Vendor agrees that the State has the right to request payment for a partial amount or the full amount of the Irrevocable Letter of Credit/Performance bond should the products/services being procured hereunder not be provided in a manner consistent with

this RFP and the Vendor's proposal by the delivery dates agreed upon by the parties. The State may demand payment by contacting the bank issuing the letter of credit or the bonding company issuing the performance bond and making a written request for full or partial payment. The issuing bank/bonding company is required to honor any demand for payment from the State within fifteen (15) days of notification. The letter of credit/performance bond shall cover the entire contract period, with the exception of post-warranty maintenance and support, and shall not be released until final acceptance of all products and deliverables required herein or until the warranty period, if any, has expired, whichever occurs last. If applicable, and at the State's sole discretion, the State may, at any time during the warranty period, review Vendor's performance and performance of the products/services delivered and determine that the letter of credit/performance bond may be reduced or released prior to expiration of the full warranty period.

38. **Responsibility for Behavior of Vendor Employees/Subcontractors**

The Vendor will be responsible for the behavior of all its employees and subcontractors while on the premises of any State agency or institution. Any Vendor employee or subcontractor acting in a manner determined by the administration of any State agency or institution to be detrimental, abusive, or offensive to any of the staff or student body of any State agency or institution will be asked to leave the premises and can be suspended from further work on the premises.

39. **Protests**

The Executive Director of **ITS** and/or the Board Members of **ITS** or their designees shall have the authority to resolve Vendor protests in connection with the selection for award of a contract. Copies of the protest procedures are available on the **ITS** Internet site - **ITS** Protest Procedure and Policy, Section 019-020, **ITS** Procurement Handbook at:

<http://dsitspe01.its.ms.gov/its/procman.nsf/f4ad43bd44ad9d8c86256daa0063e1f0/f227957c9c49a38a8625767900790c4e?OpenDocument> or from **ITS** upon request.

40. **Protest Bond**

Potential Vendors may protest any of the specifications of this RFP on the belief that the specification is unlawful, unduly restrictive, or unjustifiably restraining to competition. Any such protest must be in writing and submitted to the **ITS** Executive Director along with the appropriate protest bond within five (5) working days of the Official Release of the RFP, as defined in the **ITS** Protest Procedure and Policy. The outside of the envelope must be marked "Protest" and must specify RFP number **3757**.

As a condition precedent to filing any protest related to this procurement, the Vendor must procure, submit to the **ITS** Executive Director with its written protest, and maintain in effect at all times during the course of the protest or appeal thereof, a protest bond in the full amount of the total estimated project lifecycle cost or **\$250,000.00**, whichever is less. The total estimated project lifecycle cost will be the amount used by **ITS** in the computation of cost points, as the low cost in the denominator of the cost evaluation formula. The bond shall be accompanied by a duly authenticated or certified document evidencing that the person executing the bond is a licensed Mississippi agent for the bonding company. This certified document shall identify the name and address of the person or entity holding the protest bond and shall identify a contact person to be

notified in the event that the State is required to take action against the bond. The protest bond shall not be released to the protesting Vendor until the protest is finally resolved and the time for appealing said protest has expired. The protest bond shall be procured at the protesting Vendor's expense and be payable to the Mississippi Department of Information Technology Services. Prior to approval of the protest bond, **ITS** reserves the right to review the protest bond and require the protesting Vendor to substitute an acceptable bond in such form as the State may reasonably require. The premiums on such bond shall be paid by the protesting Vendor. The State may claim against the protest bond as specified in Section 25-53-5 (n) of the Mississippi Code of 1972, as amended during the 1998 Mississippi legislative session, in addition to all other rights and remedies the State may have at law or in equity.

Should the written protest submitted by the Vendor fail to comply with the content requirements of **ITS'** protest procedure and policy, fail to be submitted within the prescribed time limits, or fail to have the appropriate protest bond accompany it, the protest will be summarily dismissed by the **ITS** Executive Director.

41. **Mississippi Employment Protection Act**

Effective July 1, 2008, Vendor acknowledges that if awarded, it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Vendor will agree to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State.

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

Vendor acknowledges that violating the E-Verify Program (or successor thereto) requirements subjects Vendor to the following: (a) cancellation of any state or public contract and ineligibility for any state or public contract for up to three (3) years, with notice of such cancellation being made public, or (b) the loss of any license, permit, certification or other document granted to Vendor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. Vendor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

## SECTION V PROPOSAL EXCEPTIONS

Please return the *Proposal Exception Summary Form* at the end of this section with all exceptions to items in any Section of this RFP listed and clearly explained or state "No Exceptions Taken." If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions to any item in this RFP document.

1. Unless specifically disallowed on any specification herein, the Vendor may take exception to any point within this RFP, including a specification denoted with "shall" or "must," as long as the following are true:
  - 1.1 The specification is not a matter of State law;
  - 1.2 The proposal still meets the intent of the RFP;
  - 1.3 A *Proposal Exception Summary Form* is included with Vendor's proposal; and
  - 1.4 The exception is clearly explained, along with any alternative or substitution the Vendor proposes to address the intent of the specification, on the *Proposal Exception Summary Form*.
2. The Vendor has no liability to provide items to which an exception has been taken. **ITS** has no obligation to accept any exception. During the proposal evaluation and/or contract negotiation process, the Vendor and **ITS** will discuss each exception and take one of the following actions:
  - 2.1 The Vendor will withdraw the exception and meet the specification in the manner prescribed;
  - 2.2 **ITS** will determine that the exception neither poses significant risk to the project nor undermines the intent of the RFP and will accept the exception;
  - 2.3 **ITS** and the Vendor will agree on compromise language dealing with the exception and will insert same into the contract; or
  - 2.4 None of the above actions is possible, and **ITS** either disqualifies the Vendor's proposal or withdraws the award and proceeds to the next ranked Vendor.
3. Should **ITS** and the Vendor reach a successful agreement, **ITS** will sign adjacent to each exception which is being accepted or submit a formal written response to the *Proposal Exception Summary* responding to each of the Vendor's exceptions. The *Proposal Exception Summary*, with those exceptions approved by **ITS**, will become a part of any contract on acquisitions made under this RFP.
4. An exception will be accepted or rejected at the sole discretion of the State.
5. The State desires to award this RFP to a Vendor or Vendors with whom there is a high probability of establishing a mutually agreeable contract, substantially within the

standard terms and conditions of the State's RFP, including the *Standard Contract* in Exhibit A, if included herein. As such, Vendors whose proposals, in the sole opinion of the State, reflect a substantial number of material exceptions to this RFP, may place themselves at a comparative disadvantage in the evaluation process or risk disqualification of their proposals.

6. For Vendors who have successfully negotiated a contract with **ITS** in the past, **ITS** requests that, prior to taking any exceptions to this RFP, the individual(s) preparing this proposal first confer with other individuals who have previously submitted proposals to **ITS** or participated in contract negotiations with **ITS** on behalf of their company, to ensure the Vendor is consistent in the items to which it takes exception.

**PROPOSAL EXCEPTION SUMMARY FORM**

List and clearly explain any exceptions, for all RFP Sections and Exhibits, in the table below.

ITS RFP Reference	Vendor Proposal Reference	Brief Explanation of Exception	ITS Acceptance (sign here only if accepted)
(Reference specific outline point to which exception is taken)	(Page, section, items in Vendor's proposal where exception is explained)	(Short description of exception being made)	
1.			
2.			
3.			
4.			
5.			
6.			
7.			

## SECTION VI RFP QUESTIONNAIRE

Please answer each question or provide the information as requested in this section.

1. **Statewide Automated Accounting System (SAAS) Information for State of Mississippi Vendor File**

1.1 **SAAS Vendor Code:** Any Vendor who has not previously done business with the State and has not been assigned a SAAS Vendor code should furnish a signed copy of an IRS W-9 form with the proposal. A copy of the W-9 Form can be obtained at the following link on the **ITS** website:

<http://www.its.ms.gov/Procurement/Pages/Vendor.aspx>

Vendors who have previously done business with the State should furnish **ITS** with their SAAS Vendor code.

SAAS Vendor Code: \_\_\_\_\_ OR Signed W-9 Form Attached: \_\_\_\_\_

1.2 **Vendor Self-Certification Form:** The State of Mississippi, in an effort to capture participation by minority Vendors, asks that each Vendor review the State of Mississippi Minority Vendor Self Certification Form. This information is for tracking/reporting purposes only, and will not be used in determining which Vendor will be chosen for the project. Any Vendor who can claim status as a Minority Business Enterprise or a Woman Business Enterprise in accordance with the definitions on this form and who has not previously submitted a form to the State of Mississippi should submit the completed form with the proposal. A copy of the Minority Vendor Self-Certification Form can be obtained at: [http://www.mississippi.org/assets/docs/minority/minority\\_vendor\\_selfcertform.pdf](http://www.mississippi.org/assets/docs/minority/minority_vendor_selfcertform.pdf). Please direct any questions about minority certification in Mississippi to the Minority Business Enterprise Division of the Mississippi Development Authority by telephone at (601) 359-3448 or via email at [minority@mississippi.org](mailto:minority@mississippi.org).

Minority Vendor Self-Certification Form Included: \_\_\_\_\_  
Minority Vendor Self-Certification Form Previously Submitted: \_\_\_\_\_  
Not claiming Minority/Women Business Enterprise Status: \_\_\_\_\_

2. **Certification of Authority to Sell**

The Vendor must certify Vendor is a seller in good standing, authorized to sell and able to deliver all items and related services proposed in the State of Mississippi in the time frame specified. Does the Vendor make these certifications? (A yes or no answer is required.)

3. **Certification of No Conflict of Interest**

Mississippi law clearly forbids a direct or indirect conflict of interest of a company or its employees in selling to the State. The Vendor must answer and/or provide the following:

- 3.1 Does there exist any possible conflict of interest in the sale of items to any institution within **ITS** jurisdiction or to any governing authority? (A yes or no answer is required.)
- 3.2 If the possibility of a conflict does exist, provide a list of those institutions and the nature of the conflict on a separate page and include it in your proposal. The Vendor may be precluded from selling to those institutions where a conflict of interest may exist.

4. **Pending Legal Actions**

- 4.1 Are there any lawsuits or other legal proceedings against the Vendor that pertain to any of the software, hardware, or other materials and/or services which are a part of the Vendor's proposal? (A yes or no answer is required.)
- 4.2 If so, provide a copy of same and state with specificity the current status of the proceedings.

5. **Non-Disclosure of Social Security Numbers**

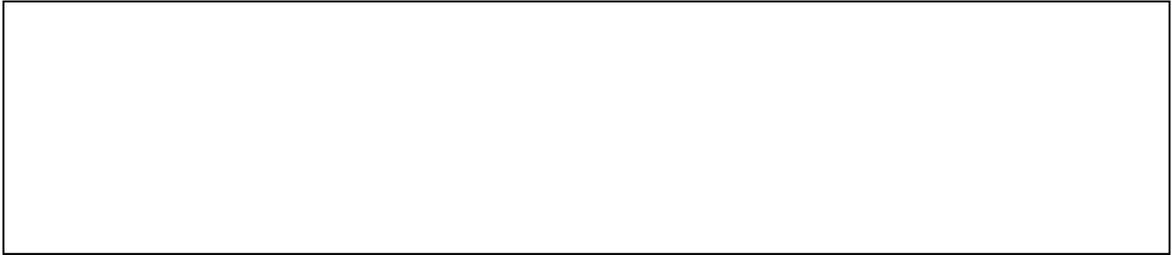
Does the Vendor acknowledge that any information system proposed, developed, or modified under this RFP that disseminates, in any form or manner, information or material that contains the Social Security Number of an individual, has mechanisms in place to prevent the inadvertent disclosure of the individual's Social Security Number to members of the general public or to persons other than those persons who, in the performance of their duties and responsibilities, have a lawful and legitimate need to know the individual's Social Security Number? This acknowledgement is required by Section 25-1-111 of the Mississippi Code Annotated.

6. **Order and Remit Address**

The Vendor must specify both an order and a remit address:

Order Address:

Remit Address (if different):



7. **Web Amendments**

As stated in Section III, **ITS** will use the **ITS** website to post amendments regarding RFPs before the proposal opening at:

[http://www.its.ms.gov/Procurement/Pages/RFPS\\_Awaiting.aspx](http://www.its.ms.gov/Procurement/Pages/RFPS_Awaiting.aspx)

**ITS** may post clarifications until noon seven days prior to the proposal opening date listed on the cover page of this RFP or the posted extension date, if applicable.

Vendors may list any questions or items needing clarification discovered in the week prior to the proposal opening in a written format at the beginning of the proposal binder or in the comment section for the individual offering.

Does the Vendor certify that they have reviewed a copy of the **ITS** amendments for RFPs as above stated? (A yes or no answer is required.)

## **SECTION VII TECHNICAL SPECIFICATIONS**

### **1. How to Respond to this Section**

- 1.1 Beginning with Item 2.1 of this section, label and respond to each outline point in this section as it is labeled in the RFP.
- 1.2 The Vendor must respond with “ACKNOWLEDGED,” “WILL COMPLY” or “AGREED” to each point in this section. In addition, many items in this RFP require detailed and specific responses to provide the requested information. Failure to provide the information requested will result in the Vendor receiving a lower score for that item, or, at the State’s sole discretion, being subject to disqualification.
- 1.3 “ACKNOWLEDGED” should be used when no vendor response or vendor compliance is required. “ACKNOWLEDGED” simply means the vendor is confirming to the State that he read the statement. This is commonly used in the RFP sections where the agency’s current operating environment is described or where general information is being given about the project.
- 1.4 “WILL COMPLY” or “AGREED” are used interchangeably to indicate that the vendor will adhere to the requirement. These terms are used to respond to statements that specify that a vendor or vendor’s proposed solution must comply with a specific item or must perform a certain task.
- 1.5 If the Vendor cannot respond with “ACKNOWLEDGED,” “WILL COMPLY,” or “AGREED,” then the Vendor must respond with “EXCEPTION.” (See Section V, for additional instructions regarding Vendor exceptions.)
- 1.6 Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
- 1.7 In addition to the above, Vendor must provide explicit details as to the manner and degree to which the proposal meets or exceeds each specification.

### **2. Mandatory Provisions in Technical Requirements for this RFP**

- 2.1 Certain items in the technical specifications of this RFP are MANDATORY. Vendors are specifically disallowed from taking exception to these mandatory requirements, and proposals that do not meet all mandatory requirements are subject to immediate disqualification.
- 2.2 Mandatory requirements are those features classified as “M” (Mandatory) in the Requirements Matrix in Section VII, Item 12: *Technical Specifications – Requirements Matrix*. “Meeting a mandatory requirement” means the Vendor is able to respond “E” (exceeds specifications) or “X” (exists in base version of software package).

2.3 Participation in the Vendor Web Conference on Thursday, June 26, 2014 at 3:00 p.m. Central Time, is mandatory for any Vendor who intends to submit an RFP response. No exceptions will be granted to this requirement. Any proposal received from a Vendor who did not have an authorized representative signed in at the Vendor Conference will be rejected.

2.3.1 To access the Vendor Web Conference, Vendor must contact Donna Hamilton via email (Donna.Hamilton@its.ms.gov) no later than 3:00 p.m. Central Time, Wednesday, June 25, 2014, to receive instructions on how to enter into the web conference.

3. **Procurement Project Schedule**

<b>Task</b>	<b>Date</b>
First Advertisement Date for RFP	06/10/14
Second Advertisement Date for RFP	06/17/14
Mandatory Vendor Conference	3:00 p.m. Central Time on 06/26/14
Deadline for Vendor's Written Questions	3:00 p.m. Central Time on 07/01/14
Deadline for Questions Answered and Posted to ITS Web Site	07/14/14
Open Proposals	07/22/14
Evaluation of Proposals	07/22/14 – 08/08/14
Contract Negotiation	08/08/14 – 08/29/14

4. **Statement of Understanding**

4.1 Vendors may request additional information or clarifications to this RFP using the following procedure:

4.1.1 Vendors must clearly identify the specified paragraph(s) in the RFP that is in question.

4.1.2 Vendor must deliver a written document to Donna Hamilton at ITS by Tuesday, July 1, 2014 at 3:00 p.m. Central Time. This document may be delivered by hand, mail, email, or fax. Address information is given on page one of this RFP. The fax number is (601) 713-6380. **ITS WILL NOT BE RESPONSIBLE FOR DELAYS IN THE DELIVERY OF QUESTION DOCUMENTS.** It is solely the responsibility of the vendor that the clarification document reaches **ITS** on time. Vendors may contact Donna Hamilton to verify the receipt of their document. Documents received after the deadline will be rejected.

4.2 All questions will be compiled and answered, and a written document containing all questions submitted and corresponding answers will be posted on the **ITS** web site by close of business on Monday, July 14, 2014.

## 5. General Overview

In June 2007, the State of Mississippi executed a contract with Motorola Inc. for a phase 2 P25 700 MHz trunked radio system consisting of 135 RF sites, 14 dispatch locations, and a loop protected route digital microwave transport network. The system, which is referred to as the Mississippi Wireless Information Network (MSWIN), has design requirements which include OTAR, OTAP, 97% statewide area coverage reliability, seamless roaming, and alternate routing between wide area controllers. To date the MSWIN is fully operational, providing mission critical communication to approximately 12,000 state and local public safety subscribers.

In its continuing effort to further public safety interoperability the State of Mississippi Wireless Communication (WCC) is soliciting proposals for a unified P25, VoIP push to talk (PTT) solution to be added to its P25, phase 2, statewide network. The solution will extend P25 features and functionality to public safety smartphone users anywhere in the public cellular 3G, 4G, LTE and Wi-Fi network(s). Upon its implementation the WCC will offer public safety executives and managers the ability to interoperate with the Mississippi Wireless Information Network (MSWIN) subscribers by way of voice and text messages and pass real-time location information to appropriately equipped devices.

## 6. Architecture

6.1 **MANDATORY** – The proposed system must interface to the MSWIN CORE or to the P25 ISSI. VoIP PTT systems repeating “off air” talkgroup traffic are not permitted.

6.2 Firewall

**MANDATORY** - The Vendor’s proposal shall include a ‘firewall’ located at the network gateway server. The firewall shall protect the resources of the MSWIN private network from users from other networks. The firewall configuration shall conform to the State of Mississippi’s Enterprise Security Policy. Please refer to Section IV, Item 32 for additional information regarding the policy.

6.3 VoIP PTT Gateway

**MANDATORY** - The VoIP gateway shall provide the interface with the broadband carrier’s 3G/4G network.

6.4 Subscriber Units

The Vendor may propose ruggedized smartphones and tablets. Subscriber equipment shall be equipped with all necessary hardware and software to provide ‘out of the box’ functionality.

6.5 VOIP PTT Application

**MANDATORY** - The Vendors solution shall include downloadable applications for the following operating systems (OS).

- Apple IOS
- Android OS
- Windows OS

6.5.1 Vendor's proposal shall include a description of each feature and function for each OS. Where features and functionality differ from one OS to the other, the proposal shall include comparative listings.

## 7. **Functional Elements – MANDATORY**

The proposed solution must support each of the following features:

- 7.1 Group Voice Call - Initiate/receive group calls with P25 IDs on both broadband and LMR networks, either clear or with P25 encryption.
- 7.2 Individual Voice Call - Initiate/receive individual calls with P25 IDs (or aliases) on both broadband and LMR networks.
- 7.3 AES Encryption - Supports P25 AES encrypted calls.
- 7.4 Emergency/Distress Call - Initiate/receive alerts when other broadband PTT users or LMR users declare an emergency.
- 7.5 Announcement Group Calls - Broadband PTT talkgroups associated with a P25 announcement group receive simultaneous communication with multiple groups.
- 7.6 Talkgroup Scanning – Broadband PTT subscribers can monitor up to 16 prioritized talkgroups.
- 7.7 Late Call or Late Entry - Allows users to “late enter” calls in progress.
- 7.8 P25 Confirmed Calls - Broadband PTT subscribers can initiate P25 confirmed calls to LMR user.
- 7.9 Priority/Preemption - Broadband PTT multi-level call prioritization allowing calls to either queue or preempt based on network priorities/policies.
- 7.10 P25 OTAR AES Encryption - Key Management Broadband PTT subscribers can be included in OTAR crypto-nets, enabling encryption keys managed by network Key Management Facilities.
- 7.11 Text Messaging – Send / receive text messaging to / from broadband PTT group members.

## 8. **System Components, Software Compatibility and Convergence**

- 8.1 **MANDATORY** - The VOIP PTT Broadband solution shall function as a unified P25, broadband PTT VOIP system. The vendor shall describe the

components, interfaces, information flow, and functionality that comprise the system.

- 8.2 **MANDATORY** - The Vendor must furnish and install system components and/or software, together with any and all associated equipment provided, as an integrated system that shall operate in accordance with the technical specifications and representations stated in this RFP.
- 8.3 **MANDATORY** - Software delivered and programmed shall be compatible with all components in the system as well as uniform and transparent in operation.

## 9. Technology Roadmap

- 9.1 Vendor must provide a summary of its current products/applications and/or platforms and future projections of products/applications or platforms it plans to deliver for supporting Broadband VOIP PTT, P25 and conventional LMR networks.
- 9.2 Areas to be presented and addressed must include, but not be limited to, the following:
- 9.2.1 Backward and forward product compatibility. Forward product compatibility is defined as products that will be compatible with or without upgrade, with new products or systems contained in the Vendors Technology Roadmap.
- 9.2.2 Planned obsolescence of the proposed solution's life-cycle to include system component availability, maintenance support, and software support.
- 9.2.3 Anticipated proposed product life-cycle.

## 10. Project Plan

### 10.1 Statement of Work

Vendor shall submit, as part of Vendor's proposal, an initial Statement of Work that includes, but is not limited to the following:

#### 10.1.1 Detailed Design Review

A detailed design review process will be conducted by the State and Vendor after contract signing to finalize the technical and work effort details. This process will result in a Detailed Design Plan (DDP) which will be signed by the Vendor and the State. At a minimum this DDP must include, but not be limited to:

- architecture,
- network configuration,
- IP addressing scheme,

- software components (database, security software, etc.),
- data storage devices, and
- equipment necessary to make the system fully functional.

**11. Vendor’s Proposed Project Schedule**

- 11.1 Each Vendor must include in the proposal a preliminary project schedule.
- 11.2 The Vendor’s proposed preliminary project schedule must be prepared using Microsoft Project and depict the major project activities, resources, durations, and milestones.
- 11.3 Vendor must provide both a printed and electronic copy of the schedule as part of their proposal. At a minimum, the preliminary schedule must include the following major activities and milestones.

<b>Activity No.</b>	<b>Activity Description</b>
1	Contract Execution
2	Detailed Design Review
3	Equipment Installation
4	Acceptance Testing
5	Training
6	System Go Live
7	Project Close Out

**12. Vendor Project Organization**

12.1 The State is seeking the services of a vendor or multi-vendor team with extensive expertise and experience related to the development of public safety conventional and P25 LMR voice and data systems. The State desires to contract with an established company specializing manufacturer and the deployment of public safety communication wireless networks. Any prime vendor partnering with other solution providers is required to submit the Corporate Information for itself and partners as outlined in Section VII, along with a signed copy of the partnering agreement(s) between the parties as part of the response to this RFP.

12.2 Corporate Information

The Vendor must provide information on the corporation to include parent Corporation and any subsidiaries if appropriate.

12.2.1 The Vendor must describe the corporate organization size and organizational structure and state whether the Vendor is based locally, regionally, nationally or internationally as well as its relationship to any parent firms, or subsidiaries.

- 12.2.2 If incorporated, the Vendor must provide the name of the state of incorporation. (Note: in order to execute a contract, the Vendor's firm must be licensed in the state of Mississippi on or before the date the contract is executed).
- 12.2.3 The Vendor must provide a copy of its most recent annual report, including consolidated balance sheets and related statements of income, stockholders' or partners equity, and changes in financial position, for each of the three fiscal years preceding the end of the most recent fiscal year; or a credit rating number from an industry-accepted credit rating firm; or the report of an auditor's unqualified opinion of the financial stability of the firm.
- 12.2.4 Vendor must provide a list of any subcontractors proposed for this work, including their assigned roles and responsibilities. Vendor must describe methods and procedures for directing and controlling subcontractors.

### 12.3 Project Staffing Plan

- 12.3.1 The Vendor must develop and include in the proposal a project-staffing plan that identifies assigned key project personnel and clearly defines the organization that will design, develop, and deploy the system. Staffing plan must identify a reporting structure for problem escalation and resolution. The Project Manager must be identified that has responsibility to oversee and manager all aspects of the project.
- 12.3.2 The Vendor must provide resumes and references for each key individual to be assigned to the project. Resumes must reflect qualifications and recent experience relevant to the scope of work indicated in this RFP. Each resume must include at least three references that can be contacted to verify the individual's qualifications and experience. For each reference, list the individual's name, title, company name or organization, email address, mailing address, and telephone number. Resumes for key personnel to be supplied by subcontracting with other organizations must also be provided. Resumes must be limited to two pages per person.
- 12.3.3 Methodology of interfacing with the State (documentation, project meetings, reports, schedule monitoring) including exchange of information and documentation management.
- 12.3.4 Upon award, the Vendor must commit the proposed key personnel by name for the duration of the project. All project personnel, both key and others, must have previous experience appropriate to the proposed project assignment. Technical personnel must possess all requisite skills appropriate to their assignments.

12.3.5 Key individuals must be available to work on the project upon contract execution. The State expects all named individuals to remain with their respective assignments as called for in the project staffing plan except for extreme circumstances beyond the Vendor's control. Any replacement or substitution of Vendor's project staff requires approval from the State prior to replacement or substitution.

12.3.6 The Vendor's Project Manager must be empowered to authorize changes to the contract and work in concert with the State Project Manager on the design, implementation, and commissioning of the system.

#### 12.4 State Resources Required

12.4.1 The Vendor must identify State personnel resources that will be required to align with its proposed project team to ensure an effective project design, implementation, and commissioning of the system during all phases. Included in the Vendor's recommendation for State project personnel, must be roles, such as Project Manager, etc., skill sets, educational requirements, certifications/endorsements, and an estimate of the percentage of time the identified State resources will need to be dedicated to the project.

### 13. Testing and Acceptance

13.1 This section describes the State's requirements for testing and acceptance. As a condition of acceptance by the State, the Vendor and the State will jointly perform application and equipment demonstrations and systems testing to prove the functionality as defined by the technical and functional specifications defined in Section VII. Detailed test plans for field testing (in MS) and acceptance testing will be developed by the Vendor and reviewed and approved by the State prior to execution.

#### 13.2 Test Plans

The test plans must consist of procedures, check lists, forms, test equipment requirements, and recommended State personnel involvement. The tests must be conducted to completely verify all features, functions, and specifications.

##### 13.2.1 Field Tests

Test plans for each of the tests must be developed by the Vendor and submitted to the State for approval, and modified by mutual agreement. After agreement, the Vendor must modify the test accordingly. Tests will not be considered valid tests unless the test plan has received prior written State approval. All tests will be monitored by the State and only State monitored tests will be considered valid.

### 13.3 Testing Documentation

All tests executed must be documented according to the approved test plans. All records kept during the Testing and Acceptance Process must be made available to the State at any time and provided to the State as part of the System deliverable documentation.

### 13.4 The documentation must consist of:

1. Test Checklists, which must be based on the specification and functional criteria for system hardware and software,
2. Test Exception Reports which must contain test items that failed and require corrective action or resolution,
3. Data sheets displaying the inputs and outputs from the testing process, and
4. A record of items observed during the tests.

### 13.5 Testing Checklist(s)

Test checklists must be associated with a particular type of equipment or feature test and must be filled out during the testing. Each test must be based on the specification or functional criteria, and must either receive a Pass or Fail as determined by the State. These test checklists must be a running record of the status of the tests. The associated set of test checklists for all system components must be assembled into a binder and provided to the State for future reference. Each test checklist form must contain:

- The component being tested,
- Date test was performed,
- List of all tests,
- The expected level or result for each test,
- The measured result to be manually recorded,
- Pass/Fail box to be approved by the State,
- An Exception Report identifier if a Fail,
- A signature block(s) for the Vendor and the State's representative(s).

### 13.6 Test Exception Report

The Test Exception Report will be a record of all items that did not meet the terms and conditions of this contract and require corrective action or resolution. This information must be kept electronically to allow for sorting and reporting the items as required. All Exception Report items must be addressed until each item has been resolved. Exception Report resolution must be associated with the System Acceptance Milestones.

As a cover sheet, the Exception Report will have signature blocks for Vendor and State Project Director execution related to final closeout of the Exception

Report.

**14. Training**

**14.1 General**

The Vendor must develop a comprehensive training program for WCC staff members. Training must be conducted in Jackson, Mississippi at a location to be provided by the State.

**14.2** The Vendor must provide training for four (4) individuals as designated by the State in a classroom environment and to a sufficient level to allow the personnel to operate the system hardware and software in an efficient manner and make add moves and changes to the system. Training must include, but not be limited to the following:

- System Administration training
- Integration and operations
- Configuring user accounts permissions and device/user parameters
- Configuring encryption and provisioning
- Managing licenses
- Operating subscriber devices

**15. Warranty and Post Warranty Maintenance Program**

**15.1 General**

The Vendor must provide Warranty and Post Warranty Maintenance Program services. The Program services must cover all installed equipment to include:

- All hardware and software installed.
- Single point of contact warranty services and for problem resolution

**15.2** The Program services must be categorized as follows:

- 2 Year Base Warranty Period
- 3 Year Optional Post Warranty Period (Total of 5 years)

**15.3** During the Warranty and Post Warranty periods, all devices shall be replaced with an 'Exchange' unit and shipped for depot maintenance. Remove and replace vendor equipment, and ship defective unit for repair.

**15.4** During the Warranty and Post Warranty periods, all software shall be kept at the then current release level. Installation, configuration, and scheduling of software upgrades are the responsibility of the vendor with prior review and approval by the State.

15.5 Vendor shall submit a preliminary Warranty and Post Warranty SOW as part of their proposal. The final SOW will be negotiated during contracting phase of this procurement. The Vendor may include recommendations for quantity and location of spare equipment to expedite the replacement process.

15.6 Response time for service of equipment is defined as follows:

A twenty-four hour, seven days a week priority response is required for failure of the Application Server. The vendor is required to provide 2 hour remote response and 4 hour on site if issues are not resolved.

15.7 Base Warranty and Maintenance Period

15.7.1 Vendor must provide all inclusive Warranty Period services commencing upon the achievement of Final System Acceptance.

15.7.2 Vendor must fully describe the 2 Year Warranty Period for all system elements to include services for remedial and preventative maintenance as well as response times, resolution times, and criteria for troubleshooting and return to service of system components and critical system infrastructure.

## 16. Scoring Methodology

16.1 An Evaluation Team composed of WCC and **ITS** staff will review and evaluate all proposals. All information provided by the Vendors, as well as any other information available to evaluation team, will be used to evaluate the proposals.

16.1.1 Each category included in the scoring mechanism is assigned a weight between one and 100.

16.1.2 The sum of all categories, other than Value-Add, equals 100 possible points.

16.1.3 Value-Add is defined as product(s) or service(s), exclusive of the stated functional and technical requirements and provided to the State at no additional charge, which, in the sole judgment of the State, provide both benefit and value to the State significant enough to distinguish the proposal and merit the award of additional points. A Value-Add rating between 0 and 5 may be assigned based on the assessment of the evaluation team. These points will be added to the total score.

16.1.4 For the evaluation of this RFP, the Evaluation Team will use the following categories and possible points:

Category	Possible Points
Non-Cost Categories:	
Technical Requirements (6,7,8)	25
Vendor Requirements (9,10,11,12)	20
Support Services (13, 14, 15)	20
<b>Total Non-Cost Points</b>	<b>65</b>
Cost	35
<b>Total Base Points</b>	<b>100</b>
Value Add	5
<b>Maximum Possible Points</b>	<b>105</b>

16.2 The evaluation will be conducted in four stages as follows:

16.2.1 Stage 1 – Selection of Responsive/Valid Proposals – Each proposal will be reviewed to determine if it is sufficiently responsive to the RFP requirements to permit a complete evaluation. A responsive proposal must comply with the instructions stated in this RFP with regard to content, organization/format, Vendor experience, number of copies, bond requirement, timely delivery, and must be responsive to all mandatory requirements. No evaluation points will be awarded in this stage. Failure to submit a complete proposal may result in rejection of the proposal.

16.2.2 Stage 2 – Non-cost Evaluation (all requirements excluding cost)

16.2.2.1 Non-cost categories and possible point values are as follows:

Non-Cost Categories	Possible Points
Technical Requirements	25
Vendor Requirements	20
Support Services	20
<b>Maximum Possible Points</b>	<b>65</b>

16.2.2.2 Proposals meeting fewer than 80% of the requirements in the non-cost categories may be eliminated from further consideration.

16.2.2.3 ITS scores the non-cost categories on a 10-point scale, with 9 points for meeting the requirement. The ‘Meets Specs’ score for each category is 90% of the total points allocated for that category. For example, the ‘Support Services’ category was allocated 20 points; a proposal that fully met all requirements in that section would have scored 18 points. The additional 10% is used for a proposal that exceeds the requirement for

an item in a way that provides additional benefits to the state.

16.3 Stage 3 – Cost Evaluation

16.3.1 Points will be assigned using the following formula:

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

Where:

A = Total lifecycle cost of lowest valid proposal

B = Total lifecycle cost of proposal being scored

n = Maximum number of points allocated to cost for acquisition

16.3.2 Cost categories and maximum point values are as follows:

<b>Cost Category</b>	<b>Possible Points</b>
Lifecycle Cost	35
<b>Maximum Possible Points</b>	<b>35</b>

16.4 Stage 4 – Selection of the successful Vendor

16.4.1 On-site Demonstrations and Interviews

16.4.1.1 At the discretion of the State, evaluators may request interviews, on-site presentations, demonstrations or discussions with any and all Vendors for the purpose of system overview and/or clarification or amplification of information presented in any part of the proposal.

16.4.1.2 If requested, Vendors must be prepared to make on-site demonstrations of system functionality and/or proposal clarifications to the evaluation team and its affiliates within seven calendar days of notification. Each presentation must be made by the project manager being proposed by the Vendor to oversee implementation of this project.

16.4.1.3 Proposed key team members must be present at the on-site demonstration. The evaluation team reserves the right to interview the proposed key team members during this onsite visit.

16.4.1.4 Although on-site demonstrations may be requested, the demonstration will not be allowed in lieu of a written proposal.

#### 16.4.2 Site Visits

16.4.2.1 At the State's option, Vendors that remain within a competitive range must be prepared to provide a reference site within seven calendar days of notification. If possible, the reference site should be in the Southeastern region of the United States. Vendor must list potential reference sites in the proposal.

16.5 Final Quantitative Evaluation - Following any requested presentations, demonstrations, and/or site visits, the Evaluation Team will re-evaluate any technical/functional scores as necessary. The technical/functional and cost scores will then be combined to determine the Vendor's final score.

## **SECTION VIII COST INFORMATION SUBMISSION**

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

### **1. Cost Proposal**

- 1.1 The Vendor's cost proposal must include all costs to completely engineer, furnish and install, configure, optimize, test, train the users, perform warranty and post warranty maintenance for the system proposed.
- 1.2 Costs must include the pro rata of mobilization, overhead, profit and/or other costs that cannot be uniquely associated with a specific site or equipment component.
- 1.3 The Vendor must submit cost data for the proposed system using Tables VIII-1 through VIII-3. Tables may be expanded as needed. Cost data must be presented in Microsoft Excel Spreadsheets. The content of the Vendor's cost proposal must be based upon the states requirements and the costs proposed to the State of Mississippi.

### **2. Cost Components**

#### **2.1 General**

The cost components of the proposed system are composed of the following elements:

- Firewall
- VOIP PTT Broadband Gateway to include all necessary hardware, ancillary equipment and software.
- Software license(s)
- Deliver and installation costs
- Program management
- Training
- Warranty and Post Warranty Program

It is the State's intent to obtain cost granularity for each of the cost elements noted. Vendor should maximize the degree and level of detail in proposed cost summaries.

3. **Table VIII-1**

3.1 Implementation Cost Template

Item	Description	Quantity	Unit Cost		10% Retainage on Deliverables	Total Cost
			Equipment / Software	Services		
1	Project Management and Administration					
2	2 yr Base Warranty & Maintenance					
3	Packet (ISSI) Gateway					
4	VOIP PTT Broadband Gateway					
5	Talkgroup Software License	1				
6	Talkgroup Software License	Enter Qty talkgroups				
7	Smartphone License	1 each				
8	Smartphone License	Enter Qty(s)				

4. **Table VIII-2**

4.1 Warranty and Operations Support Programs

The Vendor must include all costs for Warranty and Operations Support Programs.

ELEMENT	COST
3 Year Optional Post Warranty Period (Total of 5 Years)	
Post Warranty Maintenance Program – Year 3	
Post Warranty Maintenance Program – Year 4	
Post Warranty Maintenance Program – Year 5	
Total	

5. **Table VIII-3**

5.1 Other

Description	COST
Performance Bond	
Change Order Rate(s)	

## SECTION IX REFERENCES

Please return the following Reference Forms, and if applicable, Subcontractor Reference Forms.

### 1. References

- 1.1 The Vendor must provide at least 3 references consisting of Vendor accounts that the State may contact. Required information includes customer contact name, address, telephone number, email address, and engagement starting and ending dates. Forms for providing reference information are included later in this RFP section. The Vendor must make arrangements in advance with the account references so that they may be contacted at the Project team's convenience without further clearance or Vendor intercession.
- 1.2 Any of the following may subject the Vendor's proposal to being rated unfavorably relative to these criteria or removed from further consideration, at the State's sole discretion:
  - 1.2.1 Failure to provide reference information in the manner described;
  - 1.2.2 Inability of the State to substantiate minimum experience or other requirements from the references provided;
  - 1.2.3 Non-responsiveness of references to the State's attempts to contact them; or
  - 1.2.4 Unfavorable references that raise serious concerns about material risks to the State in contracting with the Vendor for the proposed products or services.
- 1.3 References should be based on the following profiles and be able to substantiate the following information from both management and technical viewpoints:
  - 1.3.1 The reference installation must be for a project similar in scope and size to the project for which this RFP is issued;
  - 1.3.2 The reference installation must have been operational for at least six (6) months.
- 1.4 The State reserves the right to request information about the Vendor from any previous customer of the Vendor of whom the State is aware, including the procuring agency and/or other agencies or institutions of the State, even if that customer is not included in the Vendor's list of references, and to utilize such information in the evaluation of the Vendor's proposal.
- 1.5 Unless otherwise indicated in the Scoring Methodology in Section VII, reference information available to the State will be used as follows:

- 1.5.1 As documentation supporting mandatory experience requirements for companies, products, and/or individuals, as required in this RFP;
  - 1.5.2 To confirm the capabilities and quality of a Vendor, product, or individual for the proposal deemed lowest and best, prior to finalizing the award.
- 1.6 The State reserves the right to forego reference checking when, at the State's sole discretion, the evaluation team determines that the capabilities of the recommended Vendor are known to the State.

## 2. **Subcontractors**

The Vendor's proposal must identify any subcontractor that will be used and include the name of the company, telephone number, contact person, type of work subcontractor will perform, number of certified employees to perform said work, and three (3) references for whom the subcontractor has performed work that the State may contact. Forms for providing subcontractor information and references are included at the end of this section.

Unless otherwise noted, the requirements found in the References section may be met through a combination of Vendor and subcontractor references and experience. Vendor's proposal should clearly indicate any mandatory experience requirements met by subcontractors. NOTE: The State reserves the right to eliminate from further consideration proposals in which the prime Vendor does not, in the State's sole opinion, provide substantive value or investment in the total solution proposed. (i.e. the State does not typically accept proposals in which the prime Vendor is only a brokering agent.)

## REFERENCE FORM

### Complete 3 Reference Forms.

Contact Name:

Company Name:

Address:

Phone #:

E-Mail:

Project Start Date:

Project End Date:

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

--

### SUBCONTRACTOR REFERENCE FORM

**Complete a separate form for each subcontractor proposed.**

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

Scope of services/products to be provided by subcontractor:

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

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

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

**EXHIBIT A  
STANDARD CONTRACT**

A properly executed contract is a requirement of this RFP. After an award has been made, it will be necessary for the winning Vendor 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 RFP.

If Vendor cannot comply with any term or condition of this Standard Contract, Vendor must list and explain each specific exception on the *Proposal Exception Summary Form* included in Section V.

**PROJECT NUMBER 40531  
TURNKEY AGREEMENT  
BETWEEN  
INSERT VENDOR NAME  
AND  
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES  
AS CONTRACTING AGENT FOR THE  
MISSISSIPPI WIRELESS COMMUNICATION COMMISSION**

This Turnkey 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 Wireless Communication Commission located at 412 East Woodrow Wilson, Mail Code 6601, Jackson, Mississippi 39216 (hereinafter referred to as "Purchaser"). ITS and Purchaser are sometimes collectively referred to herein as "State."

**WHEREAS**, Purchaser, pursuant to Request for Proposals ("RFP") Number 3757, requested proposals for the acquisition of certain equipment, software, installation services, and technical support (collectively "Turnkey Operation") necessary for the implementation of a Voice Over Internet Protocol (VOIP) on a P25 statewide network; and

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

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

**ARTICLE 1 PERIOD OF PERFORMANCE**

**1.1** This Agreement will become effective on the date it is signed by all parties and will continue in effect until all tasks required herein, including any post warranty

maintenance/support specified in Exhibit A, have been completed. Seller agrees to complete all tasks required under this Agreement, with the exception of warranty service and post warranty maintenance, on or before October 1, 2014, or within such other period as may be agreed to by the parties.

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

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

**2.1** The Seller agrees to provide Purchaser with a turnkey system consisting of equipment, software, installation services, technical support, maintenance, and training for the implementation of a Voice Over Internet Protocol (VOIP) on a P25 statewide network. Seller agrees to facilitate the integration of the hardware and software for the particular purpose set forth in RFP No. 3757. Seller further agrees that the system, as set forth in RFP No. 3757 and Seller's Proposal in response thereto, shall operate efficiently and optimally in light of industry standards and as further specified in RFP No. 3757 and Seller's Proposal in response thereto. RFP No. 3757 and Seller's Proposal as accepted by the State in response thereto are incorporated herein by reference.

**2.2** In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that: (a) Seller is solely responsible for all products and services being provided in this project; (b) Seller is responsible for the fulfillment of this project; and (c) Seller represents all contractors, third parties, and/or subcontractors Seller has assembled for this project. The Purchaser is required to negotiate only with Seller, as Seller's commitments, as specified in this Agreement, are binding on all proposed contractors, third parties, and subcontractors.

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

Subject to the terms and conditions set forth herein, Seller agrees to provide, at the location specified by Purchaser, and Purchaser agrees to buy as needed the equipment, software, and services listed in the attached Exhibit A, which is incorporated herein and at the purchase price set forth therein, but in no event will the total compensation to be paid hereunder exceed the specified sum of **\$INSERT TOTAL DOLLAR AMOUNT**, unless prior written authorization from ITS has been obtained. Purchaser shall submit a purchase order signed by a representative of Purchaser itemizing the items to be purchased. The purchase order shall be subject to the terms and conditions of this Agreement. The parties agree that Purchaser reserves the right to adjust the quantities of purchases based upon the availability of funding or as determined necessary by Purchaser. Seller guarantees pricing for a period of one (1) year from the effective date of this Agreement. In the event there is a national price decrease of the products specified in Seller's Proposal during this time, Seller agrees to extend the new, lower pricing to Purchaser.

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

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

**4.2** Seller shall complete installation of hardware and software pursuant to the requirements set forth in RFP No. 3757 and Article 5 herein. Seller acknowledges that installation of the system shall be accomplished with minimal interruption of Purchaser's normal day-to-day operations.

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

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

#### **ARTICLE 5 SCHEDULE AND ACCEPTANCE**

**5.1** Seller warrants that all equipment and software shall be properly delivered, installed, and integrated for acceptance testing within the scheduling deadlines set forth by Purchaser, as the site is deemed ready for installation. Seller shall provide Purchaser with an installation schedule identifying the date, time, and location within the scheduling deadlines set forth in RFP No. 3757, or as may be agreed to by the parties.

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

**5.3** Seller shall provide all documentation for the software and equipment being tested before acceptance testing will begin. Purchaser shall have ten (10) working days to review each deliverable and to either notify Seller of acceptance or to provide Seller a detailed list of deficiencies that must be remedied prior to payment being made. In the event the Purchaser notifies the Seller of deficiencies, the Seller, at Seller's sole expense, shall correct such deficiencies within five (5) working days, unless the Purchaser consents in writing to a longer period of time.

**5.4** Upon notification by Seller that the turnkey system has been fully implemented and is ready for final system acceptance testing, Purchaser shall have thirty (30) calendar days to evaluate and test the system to confirm that it performs without any defects and performs

pursuant to the specifications set forth in RFP No. 3757 and the Seller's Proposal in response thereto. Seller shall participate, as agreed upon by both parties, in the acceptance testing of the system by providing technical staff at Purchaser's location to provide assistance in demonstrating all functions of the system. The Purchaser's official representative must sign off on each application to ensure that the applications meet the functional and technical requirements. In the event that one (1) or more applications supplied by Seller are not accepted, the Seller shall correct the deficiencies or provide, at its own expense, whatever software or equipment that may be required to meet the acceptance criteria within five (5) working days or a mutually agreed upon time period. In the event the system fails to perform to Purchaser's satisfaction, Purchaser shall immediately notify Seller. Seller, at Seller's sole expense, shall correct defects identified by Purchaser within five (5) working days, or such other period as the parties may agree upon. The thirty (30) calendar day testing period will be extended by system down-time. In the event Seller is unable to repair or replace the defective product, the Purchaser reserves the right to return the defective product to Seller at Seller's expense and to cancel this Agreement.

#### **ARTICLE 6 TITLE TO EQUIPMENT**

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

#### **ARTICLE 7 SOFTWARE**

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

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

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

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

#### **ARTICLE 8 CONVERSION AND TRAINING**

Seller shall, for the fees specified in the attached Exhibit A, provide the conversion activities specified in RFP No. 3757 and Seller's Proposal, as accepted by Purchaser in response thereto, as well as onsite operational training for four (4) individuals. Seller and Purchaser shall mutually agree on the time for the training and an outline of the training to be provided. Seller specifically understands and agrees that Purchaser will not accept the system until Seller completes the conversion and training requirements. Seller agrees to provide, upon delivery, all user documentation and technical manuals needed to fully acquaint the user with operation of the hardware and software.

#### **ARTICLE 9 CONSIDERATION AND METHOD OF PAYMENT**

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

**9.2** The Seller and the Purchaser agree to the Deliverable Schedule as set forth in the Payment Schedule and Deliverables List included as Exhibit A to this Agreement. The Seller will receive payment in the amount indicated in Article 9.1 herein, less retainage to be withheld in accordance with the Retainage Article herein, upon written acceptance by the Purchaser of each of the deliverables defined therein. The parties agree that as the project work plan is revised by written agreement of the parties during the term of this Agreement, the anticipated dates for acceptance of deliverables and for the corresponding payments to the Seller, but not the amounts of those payments, may likewise be revised only by written agreement of the parties.

**9.3** Upon written acceptance, as set forth in Article 5 herein, by the Purchaser of a deliverable which has an associated payment, the Seller will invoice the Purchaser for the invoice amount of that payment as indicated in the attached Exhibit A, less retainage to be withheld in accordance with the Retainage Article herein. Seller shall certify that the billing is true and correct. Seller shall submit invoices and supporting documentation to Purchaser electronically at any time during the term of this Agreement using the processes and procedures identified by the State. Purchaser agrees to pay Seller in accordance with Mississippi law on

“Timely Payments for Purchases by Public Bodies,” Sections 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the State within forty-five (45) days of receipt of the invoice. Seller understands and agrees that Purchaser is exempt from the payment of taxes. All payments should be made 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.”

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

#### **ARTICLE 10 WARRANTIES**

**10.1** Seller represents and warrants that all equipment and software provided by Seller shall meet or exceed the minimum specifications set forth in RFP No. 3757 and Seller’s Proposal in response thereto.

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

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

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

**10.5** Seller represents and warrants that all software furnished will be free from material defects for a period of one (1) year after acceptance and will provide Purchaser complete functionality necessary for the operation of the system as stated in RFP No. 3757 and the Seller’s Proposal in response thereto. Seller’s obligations pursuant to this warranty shall include, but are not limited to, the correction of all defects in the software and the repair or replacement of the software at no cost to Purchaser. In the event Seller cannot repair or replace the

software, Seller shall at the State's election, either refund the fees paid for the software and for any services that directly relate to the defective software, or secure alternate software acceptable to the Purchaser which will insure functionality of the system.

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

**10.7** Seller represents and warrants that the turnkey system is fit for the particular purpose set forth in this Agreement and RFP No. 3757, with regard to Purchaser's foreseeable or projected needs.

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

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

**10.10** Seller represents and warrants that all work performed hereunder, including but not limited to consulting, conversion, training, technical support, and maintenance, shall be performed by competent personnel, shall be of professional quality consistent with generally accepted industry standards for the performance of such services, and shall comply in all respects with the requirements of this Agreement. For any breach of this warranty, the Seller shall, for a period of ninety (90) days from the performance of service, perform the services again, at no cost to the Purchaser, or if the Seller is unable to perform the services as warranted, the Seller shall reimburse the Purchaser the fees paid to the Seller for the unsatisfactory services.

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

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

**10.13** Seller represents and warrants that the turnkey system furnished will be free from material defects for a period of after final acceptance of the complete system and will provide Purchaser complete functionality necessary for the operation of the system as stated in RFP No. 3757 and the Seller's Proposal in response thereto. This warranty shall cover all components of the system, including but not limited to all programs, screens, reports, subroutines, utilities, file structures, documentation, interfaces, or other items provided by the Seller. This warranty will apply to the base package, plus any customized programs, screens, reports, subroutines, interfaces, utilities, file structures, documentation, or other items proposed and delivered by the Seller specifically for this project. The Seller shall give immediate high priority attention to any mission critical corrections that are needed. If the system does not function accordingly, Seller shall, at the State's election within five (5) working days and at no cost to Purchaser, either correct the defects identified, replace the products with products that are compliant with this warranty, or refund the fees paid for the products and for any services that directly relate to the defective product.

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

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

**10.16** If applicable under the given circumstances, Seller represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Seller agrees to maintain records of such compliance and, upon request of the

State and approval of the Social Security Administration or Department of Homeland Security where required, to provide a copy of each such verification to the State. Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Seller understands and agrees that any breach of these warranties may subject Seller to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Seller by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Seller would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

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

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

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

to which it may be entitled at law or in equity.

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

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

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

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

**12.2** Seller will respond by telephone within two (2) hour to requests for warranty repair service twenty-four (24) hours a day, seven (7) and will come on-site with the necessary crash kit within four (4) hours from the point the call is made to service critical components and within eight (8) hours from the point the call is made to service all other peripherals and related software and computer equipment. Should the Seller fail to respond within such time, Seller shall pay the Purchaser \$100.00 per hour for every hour of delay. The warranty includes all parts, labor, and travel.

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

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

**12.5** Seller agrees to provide preventive maintenance based on the specific needs of the equipment during normal business hours and at intervals specified in RFP No. 3757 and Seller's Proposal as accepted by the State in response thereto. Preventive maintenance may be performed concurrently with remedial maintenance activity. Seller must record all activities related to preventive maintenance on a log to be retained on-site.

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

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

**12.8** Seller shall provide, for the periods set forth in Exhibit A, software support services as specified in RFP No. 3757 and Seller's Proposal, as accepted by Purchaser, in response thereto, with said support to include, but not be limited to, the following: (a) upon notification of software errors, Seller shall provide all remedial support and assistance needed to correct the errors which affect the operation of the software; (b) the provision of regular updates, new releases, and enhancements as they are released, but no less than one (1) annually; (c) unlimited toll-free technical telephone support in the operation of the software system twenty-four (24) hours a day, seven (7) days a week, with a guaranteed one (1) hour telephone response time; priority placement in the support queue shall be given to all system locking situations or problems claimed by Purchaser to be a mission critical process; and (d) on-site support in the operation of the software products if reasonably convenient or necessary in the opinion of the Seller. It is further understood that in the event the software product lines are discontinued, Seller shall be responsible for supporting the last software release implemented by the Purchaser for a minimum of five (5) years thereafter, with the same level of support as described in this Article. Should Seller migrate away from the database currently required for the software installed for Purchaser to a different database, Seller shall provide updated product and new database licensing to Purchaser at no cost to Purchaser.

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

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

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

**13.2** Seller will respond by telephone within two (2) hour to requests for unscheduled remedial maintenance twenty-four (24) hours a day, seven (7) days a week, and will come on-site with the necessary crash kit within four (4) hours from the point the call is made to service critical components and within eight (8) hours from the point the call is made to service all other peripherals and related software and computer equipment. Should the Seller fail to respond within such time, Seller shall pay the Purchaser \$100.00 per hour for every hour of delay.

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

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

**13.5** Seller agrees to provide preventive maintenance based on the specific needs of the equipment during normal business hours and at intervals specified in RFP No. 3757 and Seller's Proposal as accepted by the State in response thereto. Preventive maintenance may be performed concurrently with remedial maintenance activity. Seller must record all activities related to preventive maintenance on a log to be retained on-site.

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

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

**13.8** Seller shall provide, for the periods set forth in Exhibit A, software support services as specified in RFP No. 3757 and Seller's Proposal, as accepted by Purchaser, in response thereto, with said support to include, but not be limited to, the following: (a) upon notification of software errors, Seller shall provide all remedial support and assistance needed to correct the errors which affect the operation of the software; (b) the provision of regular updates, new releases, and enhancements as they are released, but no less than one (1) annually; (c) unlimited toll-free technical telephone support in the operation of the software system twenty-

four hours (24) a day, seven (7) days a week, with a guaranteed one (1) hour telephone response time; priority placement in the support queue shall be given to all system locking situations or problems claimed by Purchaser to be a mission critical process; and (d) on-site support in the operation of the software products if reasonably convenient or necessary in the opinion of the Seller. It is further understood that in the event the software product lines are discontinued, Seller shall be responsible for supporting the last software release implemented by the Purchaser for a minimum of five (5) years thereafter, with the same level of support as described in this Article. Should Seller migrate away from the database currently required for the software installed for Purchaser to a different database, Seller shall provide updated product and new database licensing to Purchaser at no cost to Purchaser.

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

#### **ARTICLE 14 EMPLOYMENT STATUS**

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

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

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

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

#### **ARTICLE 15 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS**

Seller will be responsible for the behavior of all its employees and subcontractors while on the premises of any Purchaser location. Any employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive, or offensive to any of the staff will be asked to leave the premises and may be suspended from further work on the premises. All Seller employees and subcontractors who will be working at such locations to install or repair Products shall be covered by Seller's comprehensive general liability insurance policy.

#### **ARTICLE 16 MODIFICATION OR RENEGOTIATION**

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

#### **ARTICLE 17 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS**

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

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

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

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

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

#### **ARTICLE 18 AVAILABILITY OF FUNDS**

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

#### **ARTICLE 19 TERMINATION**

Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be terminated, in whole or in part, as follows: (a) upon the mutual, written agreement of the parties; (b) by Purchaser, without the assessment of any penalties, upon thirty (30) days written notice to Seller, if Seller becomes the subject of bankruptcy, reorganization, liquidation, or receivership proceedings, whether voluntary or involuntary; (c) by Purchaser, without the assessment of any penalties, for any reason after giving thirty (30) days written notice specifying the effective date thereof to Seller; or (d) by either party in the event of a breach of a material term or provision of this Agreement where such breach continues for thirty (30) days after the breaching party receives written notice from the other party. Upon termination, Seller shall refund to Purchaser any and all applicable unexpended prorated annual support fees/charges, previously paid by Purchaser. In the event of termination, Seller shall be paid for satisfactory work completed or services rendered by Seller in connection with this Agreement and accepted by Purchaser as of the date of receipt of notification of termination. In no case shall said compensation exceed the total contract price. The provisions of this Article do not limit either party's right to pursue any other remedy available at law or in equity.

#### **ARTICLE 20 GOVERNING LAW**

This Agreement shall be construed and governed in accordance with the laws of the State of Mississippi, and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. Seller expressly agrees that under no circumstances shall Purchaser or ITS be obligated to pay an attorney's fee, prejudgment interest, or the cost of legal action to Seller. Further, nothing in this Agreement shall affect any statutory rights Purchaser may have that cannot be waived or limited by contract.

#### **ARTICLE 21 WAIVER**

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

#### **ARTICLE 22 SEVERABILITY**

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

#### **ARTICLE 23 CAPTIONS**

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

#### **ARTICLE 24 HOLD HARMLESS**

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

#### **ARTICLE 25 THIRD PARTY ACTION NOTIFICATION**

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

#### **ARTICLE 26 AUTHORITY TO CONTRACT**

Seller warrants that it is a validly organized business with valid authority to enter into this Agreement, that entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind, and notwithstanding any other provision of this Agreement to the contrary, that there are no existing

legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

#### **ARTICLE 27 NOTICE**

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by electronic means, provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their business address listed herein. ITS' address for notice is: Craig P. Orgeron, Ph.D., Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. Purchaser's address for notice is: Ms. Vicki B. Helfrich, Executive Officer, Mississippi Wireless Communication Commission, 412 East Woodrow Wilson, Mail Code 6601, Jackson, Mississippi 39216. 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 28 RECORD RETENTION AND ACCESS TO RECORDS**

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

#### **ARTICLE 29 INSURANCE**

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

#### **ARTICLE 30 DISPUTES**

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

### **ARTICLE 31 COMPLIANCE WITH LAWS**

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

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

### **ARTICLE 32 CONFLICT OF INTEREST**

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

### **ARTICLE 33 SOVEREIGN IMMUNITY**

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

### **ARTICLE 34 CONFIDENTIAL INFORMATION**

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

**34.2** With the exception of any attached exhibits which are labeled as "confidential", the

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

#### **ARTICLE 35 EFFECT OF SIGNATURE**

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

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

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

#### **ARTICLE 37 NON-SOLICITATION OF EMPLOYEES**

Seller agrees not to employ or to solicit for employment, directly or indirectly, any of the Purchaser's employees until at least one (1) year after the expiration/termination of this Agreement, unless mutually agreed to the contrary in writing by the Purchaser and the Seller, and provided that such an agreement between these two entities is not a violation of the laws of the State of Mississippi or the federal government.

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

**38.1** This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings, and agreements, written or oral, between the parties relating hereto, including all terms of any unsigned or "shrink-wrap" license included in any package, media, or electronic version of Seller-furnished software, or any "click-wrap" or "browse-wrap" license presented in connection with a purchase via the Internet. The RFP No. 3757 and Seller's Proposal in response to RFP No. 3757 are hereby incorporated into and made a part of this Agreement.

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

- A.** This Agreement signed by both parties;

- B. Any exhibits attached to this Agreement;
- C. RFP No. 3757 and written addenda; and
- D. Seller's Proposal, as accepted by Purchaser, in response to RFP No. 3757.

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

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

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

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

#### **ARTICLE 40 SURVIVAL**

Articles 9, 10, 11, 12, 13, 20, 24, 28, 33, 34, 36, 37, and all other articles, which by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this Agreement.

#### **ARTICLE 41 DEBARMENT AND SUSPENSION CERTIFICATION**

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

property; and (d) have, within a three (3) year period preceding this Agreement, had one or more public transactions (federal, state, or local) terminated for cause or default.

#### **ARTICLE 42 COMPLIANCE WITH ENTERPRISE SECURITY POLICY**

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

#### **ARTICLE 43 RETAINAGE**

To secure the Seller's performance under this Agreement, the Seller agrees that the Purchaser shall hold back as retainage ten percent (10%) of each amount payable, including amounts payable under Change Orders, under this Agreement. The retainage amount will continue to be held until final acceptance of the system by the State and the expiration of the warranty period.

#### **ARTICLE 44 STATUTORY AUTHORITY**

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

#### **ARTICLE 45 TRANSPARENCY**

In accordance with the Mississippi Accountability and Transparency Act of 2008, §27-104-151, et seq., of the Mississippi Code of 1972, as Amended, the American Accountability and Transparency Act of 2009 (P.L. 111-5), where applicable, and §31-7-13 of the Mississippi Code of 1972, as amended, where applicable, a fully executed copy of this Agreement shall be posted to the State of Mississippi's accountability website at: <https://www.transparency.mississippi.gov>. Prior to Purchaser posting the Agreement to the website, any attached exhibits which contain trade secrets or other proprietary information and are labeled as "confidential" will be redacted by Purchaser.

#### **ARTICLE 46 LIQUIDATED DAMAGES**

It is agreed by the parties hereto that time is of the essence and that in the event of a delay in the delivery and installation deadlines or delay in the satisfactory completion and acceptance of the services provided for herein, damage shall be sustained by Purchaser. In the event of a delay as described herein, Seller shall pay Purchaser, within five (5) calendar days from the

date of receipt of notice, fixed and liquidated damages of \$500.00 dollars per day for each calendar day of delay caused by Seller. Purchaser may offset amounts due it as liquidated damages against any monies due Seller under this Agreement. Purchaser will notify Seller in writing of any claim for liquidated damages pursuant hereto on or before the date Purchaser deducts such sums from money payable to Seller. Any liquidated damages assessed are in addition to and not in limitation of any other rights or remedies of Purchaser.

#### **ARTICLE 47 PERFORMANCE BOND**

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

#### **ARTICLE 48 PERSONNEL ASSIGNMENT GUARANTEE**

Seller guarantees that the personnel assigned to this project will remain a part of the project throughout the duration of the Agreement, as long as the personnel are employed by the Seller and are not replaced by Seller pursuant to the third paragraph of the Article herein titled "Employment Status." Seller further agrees that the assigned personnel will function in the capacity for which their services were acquired throughout the life of the Agreement, and any failure by Seller to so provide these persons shall entitle the State to terminate this Agreement for cause. Seller agrees to pay the Purchaser fifty percent (50%) of the total contract amount if any of the assigned personnel is removed from the project prior to the ending date of the contract for reasons other than departure from Seller's employment or replacement by Seller pursuant to the third paragraph of the Article herein titled "Employment Status." Subject to the

State's written approval, the Seller may substitute qualified persons in the event of the separation of the incumbents therein from employment with Seller or for other compelling reasons that are acceptable to the State and may assign additional staff to provide technical support to Purchaser. The replacement personnel shall have equal or greater ability, experience, and qualifications than the departing personnel and shall be subject to the prior written approval of the Purchaser. The Seller shall not permanently divert any staff member from meeting work schedules developed and approved under this Agreement, unless approved in writing by the Purchaser. In the event of Seller personnel loss or redirection, the services performed by the Seller shall be uninterrupted and the Seller shall report in required status reports its efforts and progress in finding replacements and the effect of the absence of those personnel.

#### **ARTICLE 49 ESCROW OF SOURCE CODE**

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

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

**49.3** Upon Purchaser's written request, the escrow agent shall promptly conduct, at Seller's expense, a Verification of the deposit materials in accordance with Purchaser's requirements and with the requirements herein stated. "Verification" as used herein, means a procedure or

process to determine the accuracy, completeness, sufficiency and quality of the deposit materials at a level of detail reasonably requested by Purchaser. Verification may include, as required by Purchaser (or by a third party on behalf of Purchaser), file listing, compilation, size comparison, function comparison and on-line comparison services. A copy of the verification results shall be immediately provided by the escrow agent to the State.

**49.4** Purchaser (or a third party on behalf of Purchaser) reserves the right from time to time and at any time to cause Verification of the deposit materials and to examine the deposit materials to verify conformance to the requirements of RFP No. 3757, the Seller's Proposal, as accepted by Purchaser, in response thereto, and this Agreement, all at Seller's expense. Except as otherwise required by Purchaser (or by a third party on behalf of Purchaser and reasonably approved by Seller), all Verification tasks shall be performed solely by employees of escrow agent and, at Purchaser's option, of Purchaser or a third party engaged by Purchaser (subject to Seller's reasonable approval of Purchaser), without interference from Seller; provided, however, that if and to the extent requested by Purchaser (or by a third party on behalf of Purchaser), Seller shall at Seller's expense provide to escrow agent and/or Purchaser all reasonably necessary assistance and cooperation in connection with the performance of any Verification. Any Verification performed by the escrow agent or a third party engaged by the escrow agent (and acceptable to Purchaser) shall be performed in a good, workmanlike, timely and professional manner by qualified persons fully familiar with the requirements, materials and technology involved in performing such Verifications.

**49.5** Seller shall, at its expense, implement a procedure whereby the escrow agent shall notify Purchaser of all deposits to the software escrow based on software release updates. It is understood and agreed that updates shall occur at least on a quarterly basis.

## **ARTICLE 50 CHANGE ORDER RATE AND PROCEDURE**

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

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

**50.3** With respect to any change orders issued in accordance with this Article, the Seller shall be compensated for work performed under a change order according to the hourly change order rate specified in the attached Exhibit A, which is incorporated herein. If there is a service that is not defined in the change order rate, the Seller and the State will negotiate the rate. The Seller agrees that each change order rate shall be a "fully loaded" rate, that is, it includes the cost of

all materials, travel expenses, per diem, and all other expenses and incidentals incurred by the Seller in the performance of the change order. The Seller shall invoice the Purchaser upon acceptance by the Purchaser of all work documented in the change order, and the Purchaser shall pay invoice amounts on the terms set forth in this Agreement.

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

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

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

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

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

State of Mississippi, Department of  
Information Technology Services, on  
behalf of Mississippi Wireless  
Communication Commission

**INSERT VENDOR NAME**

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

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

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

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

Title: Executive Director

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

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

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

