



RFP No: 3744

INVITATION: Sealed proposals, subject to the attached conditions, will be received at this office until April 24, 2014 @ **3:00 p.m.** Central Time for the acquisition of the products/services described below for Mississippi Department of Information Technology Services.

Submissions offered for inclusion on the TWO-WAY RADIO EXPRESS PRODUCTS LIST (EPL) to be used in the acquisition of specific categories of two-way radios and accessories for the STATE OF MISSISSIPPI.

The Vendor must submit proposals and direct inquiries to:

Kenny Wilson or Tina O'neal
Technology Consultant
Information Technology Services
3771 Eastwood Drive
Jackson, MS 39211
(601) 432-8218
Kenny.Wilson@its.ms.gov or Tina.Oneal@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. 3744
due April 24, 2014 @ 3:00 p.m., CST
ATTENTION: Kenny Wilson

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. 3744.

- _____ 1) One clearly marked original response 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) Vendor response to *EPL Overview* (Section VII)
- _____ 7) Point-by-point response to *Technical Specifications* (Section IX)
- _____ 8) Vendor response to *Cost Information Submission for Sellers* (Section X)
- _____ 9) *References* (Section XIII)
- _____ 10) Vendor response to *Sales Reporting*, if applicable (Section XII)
 - Incumbent Vendors awarded under current Two-Way Radio EPL 3657 must submit Vendors' sales report with the proposal response to RFP 3744
- _____ 11) Vendor has paid the proposal submission fee per the directions in *Technical Specifications* (Section IX)
- _____ 12) *EPL Master Purchase Agreement* (Appendix A or B), two copies of signature page with original signatures. (Sellers only)

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**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 *Master Purchase Agreement* in Appendix A or Appendix B 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

A *Proposal Bond* is not required for this procurement.

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 responses 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 three (1) 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 for Sellers* 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 for Sellers*.
 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.
 - 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: Kenny Wilson, Technology Consultant, 3771 Eastwood Drive, Jackson, MS 39211, 601-432-8218, Kenny.Wilson@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.

1. **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.

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

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

3. **Proposal as Property of State**

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

4. **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

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.

5. **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.

6. **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.

7. **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*.

8. **Multiple Awards**

ITS reserves the right to make multiple awards.

9. **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.

10. **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.

11. **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.

12. **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 the 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.

13. **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:

- 13.1 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.

- 13.2 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.
- 13.3 That the individual is proficient in spoken and written English;
- 13.4 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.
- 13.5 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.

14. **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.

15. **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 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.

16. **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.

17. **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.

18. **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.

19. **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 *Master Purchase Agreement* in Appendix A or Appendix B, 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 *Master Purchase Agreement* attached as Appendix A or Appendix B, 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

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.

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 eleven (11) 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 for Sellers* 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 for Sellers* 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 and requires the execution of a non-disclosure agreement prior to accessing the policy. The Vendor may request individual sections of the Enterprise Security Policy or request the entire document. Prior to the Vendor receiving the requested policy information, the Vendor must sign and submit the non-disclosure agreement found on the **ITS** website, <http://www.its.ms.gov>, as follows: hover over "Services" at the top of the screen; select "Information Security", on the right hand side of the page, click on the link "Policy & Plans". The form can be found at the "Enterprise Security Policy" link under the "Third Party" heading. The complete web address is shown below:

<http://www.its.ms.gov/Services/Pages/ENTERPRISE-SECURITY-POLICY.aspx>

Vendor must provide contact information (name, email address, phone number) that can be used to 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 is not required to include a proposal bond with its RFP proposal.

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

The Vendor is not required to include the price of a performance bond or irrevocable bank letter of credit with his RFP proposal.

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 3744.

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 **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 *Master Purchase Agreement* in Appendix A or Appendix B, 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 by copying and pasting the following link into an internet browser: 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.

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. **Value-added vs Mail-order Designation**

Please review the explanation of Value-added Vendor and Mail-order Vendor qualifications in Section VIII, item 9. Indicate below whether Vendor qualifies itself as a Value-added Vendor or as a Mail-order Vendor

_____ Value-added Vendor

_____ Mail-order Vendor

7. **Reseller Groups: Questions for Sellers**

For an explanation of Reseller Groups, see Section VIII, item 8

- 7.1 List the Reseller Groups to which you belong.
 - 7.1.1 Each seller must list the Reseller Groups in which the seller expects to participate. **ITS** will verify seller's group membership with the manufacturer.

7.1.2 Each seller should contact the Manufacturer Reseller Group representatives listed on the EPL website by clicking on the link: <http://dsitspe01.its.ms.gov/its/RadioEPLOnline.nsf/VendorPrint?OpenForm> and request group membership. Be sure to let them know if you are requesting "Value-added" status or "Mail-order" status as the manufacturers have limited room in their group for Mail-order Vendors.

7.2 Any Reseller Group member must submit a complete RFP binder response, as detailed in the RFP Response Checklist on page 2 of this RFP, and this response must be received by **ITS** by the proposal opening date and time stated in the RFP Project Schedule in Section VIII, item 3.

8. **Order and Remit Address**

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

Order Address:

Remit Address (if different):

9. **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

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 EPL OVERVIEW

1. Format of Proposal

- 1.1 Respond to the sections in the same order as the RFP, using the “RFP Response Checklist” at the front of this RFP as your guide.

2. Request for Proposal Overview

- 2.1 Responses to this RFP will be used to produce an EXPRESS PRODUCTS LIST (EPL) that provides **ITS** clients and staff with an economical, flexible mechanism to acquire Two-Way Radio products in full compliance with all purchasing requirements.
- 2.2 The EPL is available for review on the **ITS** Website at: <http://www.its.ms.gov/Procurement/Pages/3744.aspx>
- 2.3 The EPL will have a specified dollar limit up to which clients may make purchases from the EPL without coming through **ITS** for approval.
- 2.4 **ITS** EPL clients include state agencies and institutions of higher learning which are under **ITS** purview and local government entities such as cities, counties, local school districts, and community colleges which are not under **ITS** purview.
- 2.4.1 All EPL clients may make routine purchases from the EPL up to the specified dollar limits under as defined in the **ITS** Procurement Handbook, Section 011-030 *Procurement Instruments: Express Products Lists (EPLs)*.
- 2.4.2 EPL clients may be authorized to make planned purchases from the EPL over the specified dollar limits in line with their current technology plan under the **Planned Purchases Procedure**, as defined in the **ITS** Procurement Handbook, Section 013-080.
- 2.4.3 All EPL clients may make purchases from the EPL over the specified dollar limits only with prior approval from **ITS**.
- 2.4.4 **ITS** clients are not required to use EPLs for their purchases.
- 2.5 This EPL will be used to make list(s) of quality products in defined categories available to state customers from reputable sources at the best possible prices.
- 2.6 Pricing is a major concern of **ITS**. Therefore, Vendors must submit pricing structure comparable to national pricing trends, the General Services Administration (GSA), other statewide contracts, or other prominent pricing benchmark in terms of volume discounts.

- 2.7 Submission of a proposal will not automatically qualify Vendor's products for placement on the Express Products List. **ITS** performs an evaluation of hardware/software offerings before placing the lowest and best offerings on the published EPL.
- 2.8 Each EPL is unique to **ITS**, administered under **ITS** policies and procedures, and not to be construed to apply or operate in any other manner by either Vendors or governmental entities.
- 2.9 It is the intent of **ITS** that an EPL is a multi-award list. However, **ITS** reserves the right to make a single award EPL.
- 2.10 By submitting a proposal for consideration and inclusion in the EPL, a Vendor is professing a willingness to provide customer service to ANY customer from the State of Mississippi qualified to use the EPL. As a condition for remaining on the EPL, Vendor must be willing to support our customers with timely telephone responses to their calls for information regarding the products and pricing proposed by your company, including but not limited to timely provision of "written quotes."
- 2.11 Any Vendor violating EPL policy may be removed for one or more EPL cycles and a bond may be required with Vendor's next proposal submittal.
3. **Right to Use Express Products List Proposals as General RFPs**
ITS uses EPL products in combination with General RFPs in many routine procurements. **ITS** reserves the right to use the Vendor's EPL response in the same capacity as a General RFP. A General RFP is an unpublished collection of Vendors' proposals for particular types of products or services used internally by **ITS** to solicit configurations and pricing through the Letter of Configuration (LOC) process on a project by project basis.
4. **Price Changes During Award or Renewal Period**
All pricing proposed should be your best proposal pricing. These costs are not-to-exceed costs. Vendor is required to pass any price decreases on to the customer. Vendor is also encouraged to provide quantity discounts to customers on EPL offerings should large quantities be purchased from the EPL.
5. **Restriction on Advertising**
The Vendor must receive written approval from the State before advertising or referencing the award of a 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. The following guidelines pertain specifically to the use of Express Products Lists.

- 5.1 Acceptable guidelines for marketing EPL products include:
- 5.1.1 Vendor's reference of any EPL should include a description of the EPL, the EPL RFP number, and the valid dates for that EPL. EPLs go out of date and **ITS** maintains several types of EPLs.
 - 5.1.2 **ITS** recommends that you reference our website in any marketing publications or provide a link to our website from your website. <http://www.its.ms.gov>.
 - 5.1.3 Any description or interpretation of **ITS** EPL policy or reproduction of individual Vendor offerings should be an exact, current, and complete quotation with the source identified. Examples include the published EPL, the **ITS** procurement handbook, or the RFP number in question.

5.2 *Unacceptable references of **ITS** EPLs include:*

- 5.2.1 Do not imply that your EPL products are exclusive in any way or that you are the only EPL award. Government clients must still evaluate your EPL offerings with others on the list to determine "lowest and best" qualification.
- 5.2.2 The EPL is **NOT** a "State Contract" as used by the Department of Finance and Administration (DFA) Office of Purchase and Travel. Because the procedures for using DFA "State Contracts" differ from using **ITS** EPLs, we ask that you not use this terminology.
- 5.2.3 Do not mix marketing of EPL products with non-EPL products as this may imply that those non-EPL products are also on the EPL.

6. **Minimum Legal Requirements**

It is the intent of **ITS** that the Master Purchase Agreement, which is a requirement of some EPLs, and the Terms and Conditions of this RFP provide the contractual basis for purchases made from the EPL, and that additional contracts among **ITS**, the Vendor, or the EPL customer will not prove necessary. However, should an EPL customer require a custom contract at the time of sale to define a particular project, additional appropriate terms and conditions needed on a project may be negotiated between the Vendor and EPL Customer. Vendor must be willing to include any or all of the requirements detailed in Section IV to any contract if required by **ITS**.

7. **Master Purchase Agreement**

- 7.1 Due to the need for uniformity among EPL Vendors, a valid proposal for an EPL RFP must include a *Master Purchase Agreement* with **NO EXCEPTIONS**.
- 7.2 After the proposal opening, evaluation, and notice of award, **ITS** will send each awarded Vendor originals of the completed *Master Purchase*

Agreement for the Vendor to sign and return. **ITS** will execute the contract and return a signed original to the Vendor.

- 7.3 The purchase order from any individual customer will serve as a supplement to this agreement. Additional terms and conditions may be negotiated between the customer and Vendor at the time of sale, as needed.
- 7.4 American Recovery and Reinvestment Act (ARRA) of 2009
- 7.4.1 While ARRA requirements are still evolving and some current EPLs were established prior to the establishment of federal rules concerning the use of ARRA funds, to the best of our knowledge and current assessment, **ITS** believes the EPLs are valid purchase instrument for the use of ARRA funds.
- 7.4.2 **ITS** recommends that customers using these instruments for purchases using ARRA funds obtain written quotations from multiple EPL sellers, that the request for quotations state that ARRA funds will be used for the purchase, and that all quotations be maintained in the purchase file.
- 7.4.3 **ITS** recommends that the customers using this EPL for purchases using ARRA funds work with the Vendor to ensure that they have adequate contractual protection as recommended by the Mississippi Office of the State Auditor. To see recommended articles for consideration for inclusion in an ARRA contract, see “ARRA EPL Information for Stimulus Purchases” on the **ITS** website <https://www.its.ms.gov/Procurement/Pages/EPLs.aspx> or see the Department of Finance and Administration site, http://www.mmr.state.ms.us/statewide_applications/Stimulus/index.shtml.
- 7.4.4 **ITS** has created two versions of the Master Purchase Agreement and sellers may elect to execute either contract. **ITS** recommends that sellers choose Appendix B, that includes the ARRA terms and conditions.
- 7.4.4.1 Appendix A – Master Purchase Agreement – Non-ARRA version.
- 7.4.4.2 Appendix B – Master Purchase Agreement – ARRA version. This purchase agreement is the same as Appendix A with the following additions:
- New sub-article 9.8
 - Exhibit A – Additional ARRA terms
- 7.4.5 Each seller’s record published on the **ITS** Two-Way Radio EPL will have a field labeled “ARRA Participant” with either a “YES” or

“NO” designation. The ARRA “YES” designation denotes that the seller has agreed to work with EPL customers to fulfill purchases that are funded by ARRA and that those sellers have signed the Master Purchase Agreement with the additional ARRA terms and conditions. The “NO” designation indicates that the seller has not agreed to participate in ARRA funded projects and has NOT signed the **ITS** Master Purchase Agreement with ARRA terms.

8. Substitutions

- 8.1 Substitutions are not authorized under RFP No. 3744.
- 8.2 If a product has been discontinued or is not available due to a national constraint, the manufacturer that is sponsoring the EPL Website should update the manufacturer’s website with replacement product.
- 8.3 Sellers that are part of the Reseller Group are asked to contact the manufacturer representative for the Reseller Group to report any errors, omissions, or backlogs in distribution and alert the manufacturer regarding the need for updated products and pricing.
- 8.4 A substitution will be allowed for certain components or options of a base system as long as the component being substituted from that listed on the manufacturer website is equivalent or better technically and is the same or lower cost as the component being substituted. In no event is there authority to substitute a different product for the base system.
- 8.4.1 *Example of an allowed substitution:* A specific microphone or belt clip needed by a customer that is not on the standard base system. The seller can make a substitution for the same price or lower.
- 8.4.2 *Example of an allowed substitution:* The manufacturer has a set base product on the manufacturer’s EPL Website such as a single band P25 mobile radio. That product is not immediately available to the reseller in the distribution channel, but the same base radio with a multi-band is available for immediate delivery. The reseller can offer the enhanced system at the same or better cost instead of waiting for production of the original model.
- 8.5 **ITS EPL AUDIT INTEGRITY.** It is the responsibility of every customer using the EPL to maintain proper records to reflect that all procurements from the EPL are made in accordance with **ITS** policies and procedures. It is the responsibility of every participating EPL Vendor to facilitate the customer in this regard. The purchase order must match the product on the approved Manufacturer EPL Website unless there has been a component substitution made in accordance with the published EPL guidelines. The purchase order price may be lower than, but may not exceed the published EPL pricing. In the case of a substitution, the seller must provide a formal written explanation

regarding the manner in which the component substitution complied with the corresponding EPL guidelines.

- 8.6 Products or services purchased in conjunction with EPL products that are not specifically described and authorized on the published EPL are “**Non-EPL Items**” and the authority for purchasing such items must come from public purchasing dollar limitations or other procurement tools. An item being substituted through the substitution policy outlined above is still considered an EPL item. Customer must keep a printed copy of the Manufacturer EPL Website page showing the products being purchased as well as the written explanation regarding the substitution. Non-EPL items should be listed as such on the purchase order or Vendor quotation to avoid confusion and for later audit purposes.

9. **Transition Between Cycles**

Vendor should recognize that the EPL procedure is cyclical. There may be interim periods between the expiration of an old EPL and the introduction of a new EPL or the issuance of corrections or updates to a working list. **ITS** must evaluate each cycle’s new proposals before the new list can go into effect. Also, acquisition approvals already in process using old proposals must have time to be completed and the purchase order process may overlap from an old EPL cycle into the new. Therefore, during these transition and overlapping periods, **ITS** will allow the customer to use the previous EPL to complete purchases, and Vendors should strive to honor all products and pricing on either the old or new EPL list.

10. **ITS Acceptance of Vendor’s Proposal**

10.1 *Manufacturer as the Reseller Group sponsor and EPL Website sponsor*

10.1.1 **ITS** will evaluate each manufacturer’s initial proposal, including the Reseller Group membership list, proposed discounts, and other requirements specified in the RFP. The EPL team will notify each manufacturer of any deficiencies and provide an opportunity to make any corrections.

10.1.2 The EPL team will evaluate the test URL for the Manufacturer EPL Website as described in Section VIII and work with the manufacturer to make any corrections.

10.1.3 **ITS** will send the manufacturer an approval notification when the test URL has been approved and all deficiencies corrected. The manufacturer will change the test URL to the final live URL and **ITS** will link the Manufacturer EPL Website to the **ITS** EPL Interactive Website.

10.2 *Sellers*

10.2.1 **ITS** will evaluate each seller’s initial proposal, including the seller’s qualifications, service fees, Value-added or Mail-order status, Reseller Group memberships, and other requirements specified in

the RFP. The EPL team will notify each seller of any deficiencies and provide an opportunity to make any corrections.

10.2.2 **ITS** will send an approval notification to each seller.

10.2.3 **ITS** will notify each seller in a particular Reseller Group when that manufacturer's EPL Website has been approved by **ITS** and linked to the **ITS** EPL Interactive Website.

10.2.4 Sellers should understand that not all Manufacturer EPL Websites may be approved and authorized on the June 1, 2014 target date for EPL 3744 to commence. Sellers may only commence selling product for those Manufacturer EPL Websites that have been approved by **ITS** and are linked to the **ITS** EPL Interactive Website at:

<http://www.its.ms.gov/Procurement/Pages/EPL-Interactives.aspx>

10.3 **ITS** reserves the right to revoke approval subsequent to original acceptance. **ITS** will notify the Vendor in writing if approval is revoked.

11. Evaluation and Use

11.1 The State's intent in issuing an EPL RFP is to develop and publish a list of approved Vendors, products, and services from which Mississippi government and educational entities can make legal purchases. The EPL evaluation process includes initial evaluation by **ITS** as well as a subsequent evaluation by each EPL customer based on its specific needs. Factors considered in the evaluation process include, but are not limited to:

11.1.1 Lowest initial and ongoing costs

11.1.2 Technical merit

11.1.3 Substantiated product quality

11.1.4 The Vendor's past performance on contracts

11.1.5 The Vendor's ability to provide service, maintenance, and training

11.1.6 The Vendor quality/strength/location

11.1.7 The Vendor's cooperation during the evaluation process in providing **ITS** staff with adequate responses to requests for clarification regarding products or services offered in the submitted response or in providing the EPL customer with responses to requests for product information or discounted pricing.

11.2 In **ITS'** evaluation to select items to be included on the EPL, the scope, minimum specifications, and pricing for each product will be evaluated.

- 11.2.1 Individual products outside the scope of the product categories and specifications described in Section IX must be removed from the Manufacturer EPL Website when requested by **ITS**.
- 11.2.2 **ITS** will periodically review the Manufacturer EPL Website pricing to determine that the State is receiving a discount from List or manufacturer's commercial pricing. Products with unacceptable pricing must either be removed from the Manufacturer EPL Website or have the price decreased in line with the discounts proposed in the manufacturer's RFP response to Section XI.

12. **Publication, Clarification, Corrections**

- 12.1 The Two-Way Radio EPL will be available on the **ITS** website. This includes:
 - 12.1.1 Instructions for Use
 - 12.1.2 Link to the EPL Website developed by the approved Vendor(s)
 - 12.1.3 List(s) of the approved Vendors, the vendors' contacts, purchase order information, remittance information, and the vendors' service fees
 - 12.1.4 Lists of the approved sellers in each Reseller Group, the vendors' contacts, purchase order information, remittance information, and the vendors' service fees, if proposed.
- 12.2 The EPL product descriptions and pricing will reside on each individual Manufacturer EPL Website that has been approved by **ITS** and linked to our website.
- 12.3 All customers will be asked to access the Manufacturer EPL Websites by coming through the **ITS** website to ensure the Vendor is still in good standing and to be able to access additional information as posted by **ITS**.
- 12.4 **ITS** will NOT maintain an archive of the approved products from the Manufacturer EPL Website. Each manufacturer is responsible for either archiving previous price lists on their site or saving customer "eQuotes" as described in Section VIII.

SECTION VIII EPL PROCESS SPECIFICATIONS

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

Manufacturers and resellers selling and receiving payments directly should answer all questions in this section. Manufacturers responding **ONLY** on behalf of a Reseller Group and not selling or receiving payments directly do **NOT** have to respond to the *EPL Process Specifications*, Section VIII

- 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.
 - 1.6.1 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. **General Overview and Background**

- 2.1 The intent of this Request for Proposal (RFP) is to select vendors who will fulfill the requirement of providing two-way radios and accessories for the State of Mississippi’s Express Products List (EPL) for purchase by State agencies and governmental entities.

- 2.2 This request for proposal is issued by the Department of Information Technology Services (**ITS**) for routine acquisitions of traditional two-way radios and accessories for the State of Mississippi. Vendors must take care to limit the proposal to the subject matter of this RFP.
- 2.3 **ITS** evaluates the proposals from this RFP and will approve manufacturer hosted “Mississippi Manufacturer EPL Websites” that include products within the RFP scope with pricing approved by **ITS**. The Manufacturer EPL Websites include links to the manufacturer’s “Reseller Group” consisting of sellers jointly approved by the manufacturer and **ITS** to participate in the EPL. **ITS** customers obtain the Two-Way Radio EPL Instructions for Use from the **ITS** Web Site or by requesting a copy. Customers are able to place their purchase orders directly with EPL Vendors after performing their own comparative evaluation using the Manufacturer EPL Websites created for each Reseller Group.
- 2.4 The EPL produced from these proposals will be valid through May 31, 2017.
- 2.5 The dollar limitation for the Two-Way Radio EPL will be as follows
 - 2.5.1 \$200,000 per fiscal year (July – June)
July – June is the fiscal year for most EPL customers. The dollar limitation period is July through June regardless if an entity’s fiscal year is different.
 - 2.5.2 For K-12 Schools, the dollar limitation is interpreted to be \$200,000 per school or campus per fiscal year with a maximum dollar limitation of \$1,000,000 per school district per fiscal year for a project that spans multiple schools within the district.
 - 2.5.3 **ITS** is requiring the customer to solicit quotations from two or more EPL vendors for all amounts over fifty thousand dollars (\$50,000). ***ITS** reserves the right to reconsider the dollar limitations during the EPL Cycle.*
 - 2.5.4 The customer is responsible for obtaining any required Wireless Communication Commission approvals, as outlined in Item 5 of this section, prior to making purchases from the Two-Way Radio EPL.

3. **Procurement Project Schedule**

Task	Date
First Advertisement Date for RFP	03/11/14
Second Advertisement Date for RFP	03/18/14
Deadline for Vendor’s Written Questions	3:00 p.m. Central Time on 03/28/14
Deadline for Questions Answered and Posted to ITS Web Site	04/11/14
Open Proposals	04/24/14

Evaluation of Proposals	04/24/14 – 05/15/14
EPL Approval Notifications Sent to Vendors	05/15/14
Contract Execution	05/15/14 – 05/31/14
Two-Way Radio EPL 3744 Publish Date	06/01/14
New manufacturers may submit proposals for Reseller Groups and Manufacturer EPL Websites to be processed by ITS as time permits	06/01/14 – 03/31/17 or until replacement RFP is released
Proposals for new sellers may be submitted by 3:00 p.m. Central Time at these 6 month updates	11/15/2014, 05/15/2015, 11/15/2015, 05/15/2016, 11/15/2016, 3:00 p.m. Central Time
Two-Way Radio EPL 3744 Expiration Date	05/31/17

4. Changes this EPL Cycle

4.1 Vendors must be aware that changes have been made to this EPL submission that differs from the previous Two-Way Radio RFP No. 3657 EPL submission to include guidelines for administrative fees that will be assessed as follows:

4.1.1 **ITS** will assess a one-time fee for Vendors to participate in the EPL RFP process. This Fee will cover the cost of validating and processing the Vendor’s RFP response. See *Item 13 of this section – EPL Process Specifications*.

4.1.2 **ITS** will assess a one percent (1%) administrative fee based on the total amount of sales that are reported by the awarded vendor(s). See *Section XII, Item 2 – Marketing/Sales Report*.

4.1.3 **ITS** will require each awarded vendor to sign a *Master Purchase Agreement*. After the proposal opening, evaluation, and notice of award, **ITS** will send each awarded Vendor originals of the completed *Master Purchase Agreement* and the Vendor must sign it and return it to **ITS**. **ITS** will execute the contract and return a signed original to the Vendor. See *Section VII, Item 7 – EPL Overview*.

5. Wireless Communication Commission (WCC)

Senate Bill 2514, 2005 Regular Session, established the Mississippi Wireless Communication Commission to ensure critical personnel have effective communications services available in emergency situations. The enabling legislation specifically directs the Commission to implement a statewide wireless communications system for state and local governments that enables interoperability between various wireless communications technologies. The Commission is further tasked with the responsibility for approving all wireless communication purchases within the state and for setting forth rules and regulations governing these purchases.

5.1 *Dollar Limits*

- 5.1.1 < or = \$100,000; no WCC review required. Normal public purchasing guidelines followed including use of **ITS** Express Products Lists (EPLs)
- 5.1.2 > \$100,000 but < \$250,000; requires review and approval of WCC Review Committee. Normal public purchasing guidelines followed including use of **ITS** Express Products Lists (EPLs).
- 5.1.3 > \$250,000; requires review and approval of WCC Review Committee AND the Commission. Normal public purchasing guidelines followed.

5.2 *Statewide Bid*

- 5.2.1 The WCC has made a statewide single award for the MSWIN Radio Network to Motorola. There still is a need for the Two Way Radio EPL for replacement equipment for existing systems and MSWIN compatible radios from other manufactures.
- 5.2.2 During the life cycle of the Two-Way Radio EPL 3744, **ITS** reserves all rights to change the scope of the EPL categories, products and services in order to coordinate with any statewide radio award.

6. **Scope**

- 6.1 It is the intent of **ITS** by issuing this RFP to select a group of Vendors from whom prices and/or quotes can be obtained in order to provide the materials and labor needed to satisfy requests for traditional two-way radio equipment from State agencies, institutions, community colleges, and governing authorities of Mississippi, otherwise referred to as state entities. Radio driven applications such as SCADA, radio activated warning sirens, and response systems are specifically excluded from the scope of this EPL.
- 6.2 Well-established manufacturers, suppliers, and distributors are able to integrate Commercial Off-The-Shelf (COTS) technology out of the box and offer the customer installation services. **ITS** recognizes that acquisition of this technology is generally considered routine in nature and this technology comes with established, industry-standard warranties.
- 6.3 This EPL is not expected to meet one hundred percent of a customer's needs. Non-EPL items may be acquired using other appropriate procurement mechanisms justified by the cost or specifications (e.g., two quotes, single-sourced acquisitions, or request for proposal. **ITS** can also work with the customer and Vendor using our General RFP process).

7. **Updates to the EPL**

7.1 *New Sellers*

7.1.1 New sellers, whether a reseller or a manufacturer choosing to sell directly, who were not awarded under the original RFP proposal opening April 24, 2014, may submit a proposal to RFP 3744 at any Six Month Update scheduled by **ITS** as follows:

7.1.1.1 11/15/2014

7.1.1.2 05/15/2015

7.1.1.3 11/15/2015

7.1.1.4 05/15/2016

7.1.1.5 11/15/2016

7.1.2 The contract date for any new sellers added to the RFP 3744 will be co-terminus with the original three-year primary term of RFP 3744 or any extension thereof.

7.2 *New Manufacturers Sponsoring a Reseller Group*

7.2.1 Manufacturers sponsoring a Reseller Group may submit a Reseller Group response at any time after the original RFP opening date of April 24, 2014 until the release of the next Two-Way Radio EPL RFP, which is tentatively planned for June 1, 2017.

7.2.2 The Reseller Group response and the required Manufacturer EPL Website for any new manufacturer will be processed by **ITS** as time permits after all original proposals have been processed.

7.3 *Changes to the Manufacturer's EPL Website and the Reseller Group Membership during the EPL Term.*

7.3.1 Manufacturers whose websites have been approved may request additions to their Reseller Group membership at any time during the EPL cycle. **ITS** will process these requests as time permits. Manufacturers may only designate sellers who have been approved by **ITS** during either the initial RFP opening date of April 24, 2014 or the 6 month Update described above.

7.3.2 Manufacturers wishing to remove a reseller from their reseller group must provide both **ITS** and the reseller thirty (30) days written notice.

7.3.3 Manufacturers will be able to update their individual product sites at will during the EPL cycle as described below in Section VIII item 11.

- 7.3.4 Sellers may request changes to their vendor contact information at any time. **ITS** will process the request as time permits. Sellers should print the sellers' vendor page from the Two-Way Radio EPL Interactive and make needed edits by hand. Then FAX or scan/e-mail the corrected page to the EPL Team.
- 7.4 *Lack of Participation in Update Process*
 - 7.4.1 Vendors are required to respond to **ITS** requests for information in order to remain on the EPL.
 - 7.4.2 Manufacturers that fail to keep their websites updated, after due notification from **ITS**, will have their website approval retracted until corrections are made.
- 7.5 The official version of the EPL is comprised of the Instructions for Use, the EPL Interactive, and related documents residing on the **ITS** Website in conjunction with approved Manufacturer EPL Websites.
- 7.6 **ITS** will NOT keep an archive of the Manufacturer EPL Websites. Customers must carefully document their purchases. Manufacturers are required to keep records of their product information and pricing as described below in Section VIII item 11.
- 8. **Reseller Groups: Manufacturers Proposing Products and Pricing on Behalf of Resellers**
 - 8.1 **ITS** will limit participation on the new Two-Way Radio EPL exclusively to the Manufacturer-sponsored Reseller Group Model. Manufacturers propose the products and not-to-exceed pricing information on behalf of their resellers.
 - 8.2 *Who Proposes the Products and Product Pricing?*
 - 8.2.1 The manufacturer is required to host a Manufacturer EPL Website with the product and pricing information. The Manufacturer EPL Website will have links back to the **ITS** Website, which will publish the contract information, instructions, and Reseller Group information.
 - 8.2.2 Individual reseller pricing proposals are not allowed under RFP 3744. All pricing proposals must come from manufacturers submitting a Reseller Group on behalf of named resellers. Manufacturers that wish to participate directly to sell their products may do so by sponsoring a Reseller Group.
 - 8.3 *Reseller Group Information*
 - 8.3.1 Each manufacturer will have a page on the Two-Way Radio EPL Interactive. The manufacturer page includes a list of approved

product categories and approved sellers by product category, as well as the link to the Manufacturer EPL Website.

8.3.2 Each seller will have a page on the Two-Way Radio EPL Interactive that includes the “Purchase Order To”, “Remit To,” installation and service hourly rates, and a list of approved manufacturers and product categories.

8.4 *Who Holds Contractual Responsibilities?*

The contractual obligations are dependent on who is designated to receive payments.

8.4.1 If the manufacturer is proposing the product information and pricing under a Reseller Group, and payments are directed to the reseller, then the reseller must submit a complete binder response: the reseller holds the contractual obligations for the products and services they sell.

8.4.2 If the manufacturer sells directly as part of the Reseller Group and payments are directed to the manufacturer, then the manufacturer holds the contractual obligations for the products and services they sell directly.

8.5 *Membership of the Reseller Group*

It is **ITS'** intent in establishing Reseller Groups, based on input from EPL clients, to provide for a more flexible and updateable EPL by combining the approved resellers from a common manufacturer into one group, publishing uniform configurations and a not-to-exceed price. EPL clients also want the flexibility to order directly from the manufacturer when that is their best alternative and when that manufacturer sells directly.

8.5.1 The Reseller Group must have a minimum of two (2) Value-added Resellers. There is not a maximum number of Value-added Resellers.

8.5.2 In some instances, a manufacturer may rely on established partnerships with resellers that **ITS** traditionally has designated as a “*Mail-order Vendor*” and wish to add that *Mail-order Vendor* to the Reseller Group. **ITS** will allow the manufacturer to propose no more than three (3) resellers designated as a *Mail-order Vendor* to their Reseller Group.

8.5.3 If a manufacturer elects to sell directly as part of the manufacturer's Reseller Group, this does not affect the minimum requirement of two Value-added resellers nor does it affect the maximum limit of three Mail-order Vendors.

8.5.4 **ITS** acknowledges the authority of the manufacturer to determine which resellers may sell in the Reseller Group, subject to **ITS** approval. **ITS** reserves the right to examine the reseller's ability to

provide services as part of the Reseller Group, as appropriate to the specific category, and make the final determination as to the reseller's inclusion as a Reseller Group member.

8.5.5 **ITS'** primary focus is that membership in the Reseller Group is comprised of Value-added Vendors and, when appropriate, their manufacturer who sells directly. It is our preference that no traditional Mail-order Vendors be added to the group unless they bring unique qualifications, value, or expertise to the group.

8.5.6 It is **ITS'** intent, in choosing to produce a multi-award Express Products List, to provide our customers a broad selection of well established manufacturers in specific categories of Commercial Off-The-Shelf (COTS) technology. Mississippi is largely a rural state, and therefore, it is also important to provide our customers with a selection of Value-added sellers that can support them from a geographically, logistically available office. Therefore, the "Geographical Territory" model where the manufacturer makes the decision of which reseller may sell in which county or areas is not acceptable on this EPL. Any EPL approved seller may sell to any Mississippi customer. Our preference is to allow any Value-added seller, who has the expertise to sell, install and service a manufacturer's products and has completed required training, certifications and related requirements, to be included in the manufacturer's Reseller Group.

8.5.7 It is not acceptable for a distributor or a reseller/business partner to make the decisions regarding Reseller Group membership. This is a conflict of interest. **ITS** will only work directly with the manufacturer regarding Reseller Group issues. Resellers should work directly with **ITS'** manufacturer representative to understand the manufacturer's standards for membership. Membership should not be unreasonably withheld for those resellers that meet **ITS'** Value-added standards and the manufacturer's technical and certification requirements. **ITS** reserves the right to waive this requirement for a "Manufacturer Representative" designated in long term relationships to handle such issues for the manufacturer.

8.6 *One Price for All Members of a Reseller Group*
Manufacturers selling directly must propose the same set of products and have the same not-to-exceed prices for these products for themselves and for all their named resellers in order to qualify for a Reseller Group.

8.7 *Reseller/Manufacturer Obligations*
Manufacturers may have their own Reseller Agreements describing any obligations and processes required of a reseller in order to be a member in good standing of the manufacturer's Reseller Group. Both the manufacturer and reseller have an obligation to the State to adhere to the RFP

requirements, including both remaining within the not-to-exceed pricing proposed by the manufacturer on behalf of its resellers as well as ensuring the products proposed meet specifications. It is the expectation of the State that the manufacturers will work with their resellers throughout the Two-Way Radio EPL cycle to ensure that this pricing commitment is followed.

8.7.1 Should manufacturers experience cost increases, it is the expectation of the State that the manufacturer will not require that the reseller solely absorb the price increase but that the manufacturer and reseller will work together towards a solution.

8.7.2 Manufacturers are reminded, per *Technical Specifications*, Section IX, that all pricing proposals include basic freight charges, FOB Destination. In determining the EPL Price, please take shipping charges into consideration.

8.8 *Maximum Number of Products that May be Proposed*

There is no limit as to how many products a manufacturer may propose on the Manufacturer EPL Website, as long as those products are within the EPL scope and specifications.

8.9 *Evaluation*

The products and pricing proposed by a manufacturer on behalf of named resellers still must go through a cost evaluation and specification evaluation. Participation in the Reseller Groups is not a guarantee that all or even some of a manufacturer's submission will be selected for the EPL. Please be reminded that it is a goal of the EPL to make lists of quality products in defined categories available to state customers from reputable sources at the best possible prices.

8.10 *Current Marketing Report Requirement*

Section XII of this RFP outlines sales reporting requirements for Vendors whose products are accepted on the EPL. In the case of Reseller Groups, the entity required to submit the marketing report would follow the "Remit To" payment. If the manufacturer is receiving the payment, the manufacturer is then required to track the sales and submit the marketing report. If the reseller receives the payment, then each reseller named by the manufacturer is required to submit this report.

8.11 **ITS** reserves the right to make adjustments to the Reseller Group model during the Two-Way Radio EPL Cycle, including during the RFP clarification, evaluation, and publication phases.

9. **Vendor Qualification for all Sellers**

9.1 Sellers will be categorized either as a Value-added Vendor or as a Mail-order Vendor. **ITS** reserves the right to use these categories in the EPL evaluation.

9.2 *Value-added Vendor*

9.2.1 *Value-added Vendors* are those who can address a customer's needs for delivery, installation, custom integration, training, consulting, and "hand holding" with in-house staff and same or next-day on-site support to the degree required by their Mississippi customers. *Value-added Vendors* have directly invested in staff, training resources, and physical facilities logistically available to Mississippi EPL customers. These are the Vendors who possess established in-house resources to provide two-way radios and system integration.

9.2.2 *Value-added Vendors* are those prime parties who are capable of providing the on-site warranty service directly and coordinate these services between the customer and the manufacturer to the degree that the process to activate the on-site service call is transparent to the customer. Therefore the customers will not have to fend for themselves with remote 1-800 support.

9.2.3 *Value-added Vendors* must have an office or service center within 200 miles of a Mississippi border in order to be considered "logistically available to Mississippi EPL customers." "Virtual" or "Home" offices do not meet this standard.

9.3 *Mail-order Vendor*

Mail-order Vendors are those who typically offer goods and services either through the mail [drop ship] or involving a third-party (usually for installation, service and support, warranty or other value-added services.)

9.4 *Vendors selling directly must qualify themselves as a Value-added Vendor or as a Mail-order Vendor in the RFP Questionnaire, Section VI, Item 6.*

9.4.1 **ITS** reserves the right to make the final, sole determination of which group a Vendor is appropriately classified and will reclassify a Vendor as necessary. References may be used in the determination of Vendor qualification.

9.5 *Vendor Fees*

9.5.1 Value-added Vendors are required to propose all appropriate service fees for this EPL in order to be awarded Value-added status. Failure to submit a response to the service fees will move your proposal to the Mail-order category.

- 9.5.2 It is optional for Mail-order Vendors to provide services or to propose the service fees.
- 9.5.3 **ITS** reserves the right to clarify a Vendor's service fees. This includes allowing a proposer to supplement its proposal within three business days of proposal opening to provide said fees for those "Value-added" vendors that inadvertently omitted this mandatory spreadsheet, upon notification by the **ITS** EPL Team that the spreadsheet was omitted or unreadable. This clarification of vendor service fees also includes the right by **ITS** to request that service fees appreciably higher than those proposed by other vendors be reduced to conform with the highest accepted proposal.
- 9.5.4 All service rates are not-to-exceed prices and may be lowered but not raised during the EPL one year term.
- 9.5.5 Services fees will be proposed in spreadsheet format as defined in Section X, *Cost Information for Sellers*. **ITS** is soliciting and will publish these three (3) rates.
- 9.5.5.1 Hourly Rate for basic installation services
- 9.5.5.2 Hourly Rate for project manager/engineer/advanced technician
- 9.5.5.3 Hourly Rate for travel
- 9.5.6 The Two-Way Radio EPL is NOT a services RFP nor may any of these service fees be used for warranty work. It is the intent of **ITS** that service fees are to be used in conjunction with the initial installation and configuration of equipment purchased from this RFP.
- 9.5.6.1 The use of the Two-Way Radio EPL Service Fee as the procurement authority for ongoing maintenance support or for consulting services is prohibited. This EPL does not provide procurement authority for using the service rates after the initial purchase and installation.
- 9.5.6.2 **ITS** encourages the manufacturers to propose additional enhanced warranty options as part of their Manufacturer EPL Website. Sellers are encouraged to discuss these extended warranties with their customers.
- 9.5.7 Seller should propose hourly rates based upon standard business hours of 8 to 5 Central Time, Monday – Friday, excluding holidays. Should customers have needs for after-hours services, Seller may

optionally charge up to one and one-half (1 ½) times the seller's service rate, provided Seller has supplied a written estimate and advised the customer of the after-hours charge.

9.5.8 The Travel Hourly Rate covers the time and cost of travel within state boundaries. This rate may not be used on out-of-state travel.

9.5.8.1 Any Travel Hourly Rate may not exceed the Seller's highest hourly rate proposed.

9.5.8.2 For Vendors with multiple service center locations, **ITS** expects a good faith effort on the part of any Vendor to tailor the customer service needs with the lowest costs and expenses possible.

9.5.9 Vendor must provide to the customer at the time of sale a not-to-exceed estimate of installation and any travel fees to be used in conjunction with services. Travel fees are negotiated between the Vendor and customer and should include the following considerations:

9.5.9.1 Is the estimate for one-way or two-way travel?

9.5.9.2 Is the estimate per technician or per vehicle?

9.5.9.3 If there is a need for extended on-site work involving per diem charges for meals, mileage, hotels, airfare, etc., customer would authorize these charges through other public purchasing procedures. They are not authorized under this EPL.

9.6 Vendor is solely responsible for all delivery and implementation subject to formal customer acceptance. **ITS** does not encourage the use of subcontractors. Any use thereof must be transparent to the customer with all transactions and payment conducted directly with the Two-Way Radio EPL Vendor. Any subcontractors must be named in Section XIII and responding Vendor must provide references for those subcontractors. Should a Vendor need to add additional subcontractors during the term of the EPL, the Vendor must submit those names and references to ITS EPL Team for approval.

Most of the items in Section VIII from this point forward require that the Vendor respond with specific information "Acknowledge" is not an appropriate response to these items.

10. **Company Profile for Sellers**

Sellers should respond to this section with specific information. If the service is not offered by a Mail-order vendor, respond with "Not Applicable."

10.1 Vendor must provide information detailing the company's qualifications. This information must include the following company background information.

- 10.1.1 Date established (minimum one year requirement),
- 10.1.2 Corporate status. Is the company incorporated? If so, what is the State of incorporation? If not a corporation, explain the type business structure – example, LLC, partnership.
- 10.1.3 Ownership information including public or private, parent company and subsidiaries, and any changes in control. In particular, explain if the company has had a name change, merger or division within the last year that would explain that the "date established" meets the one year requirement due to such changes in ownership.
- 10.1.4 Corporate office location,
- 10.1.5 Office location(s) that serve Mississippi. List the office locations that will be used to provide support to Mississippi. Designate for each office whether it is used for sales, installation and/or after purchase support. Provide street addresses for each. If any are a home or virtual office, provide that information.
- 10.1.6 If servicing Mississippi clients from out-of-state facilities, describe in detail how the proposing Vendor will provide the Value-added requirements described in this RFP.
- 10.1.7 Number of years on the following **ITS** EPLs. (Approximate)
 - 10.1.7.1 Two-Way Radio EPL
 - 10.1.7.2 E-911 EPL
- 10.1.8 Please describe how Vendor has participated in other **ITS** contracts.
- 10.2 *Financial*
 - 10.2.1 Financial information provided in response to this section will be deemed confidential as provided through **ITS** Open Records policy and procedures. If submitting data as part of a parent company, differentiate the parent company data from the responding Vendor's finances. If relying on the financial data of a parent company, supply documentation from the parent company guaranteeing the responding Vendor's performance under this RFP.
 - 10.2.2 Is the proposing Vendor under federal bankruptcy proceedings? If so, please describe.
 - 10.2.3 Vendor must provide most recent annual report or current audited financial statements, which must include a letter from a CPA or accounting firm indicating that the financial records have been

reviewed. At a minimum, the report should include assets/liabilities and an income / revenue report.

10.2.4 Alternatively, Vendor may demonstrate the financial ability to provide products and services of at least \$100,000.00 by the following:

10.2.4.1 Vendor must provide a letter from its major supplier or distributor or banker of other guarantor(s) showing available line of credit for EPL purchases up to at least \$100,000.00.

10.2.4.2 Credit letters may be from multiple sources, for instance a \$50,000 line of credit from your bank and a \$50,000 line of credit from your distributor.

10.2.5 In cases where there are problems during the EPL cycle due to Vendor inability to finance purchase, **ITS** reserves the right to take corrective action, up to and including disqualification from participation in the EPL process.

10.3 *Staff*

10.3.1 Describe the number of staff who are employees of the Vendor.

10.3.2 Provide the names of staff you anticipate being used for the Two-Way Radio EPL contract. For each, include:

10.3.2.1 Are they administration, sales or technical staff or estimate the portion of each if multi-roled.

10.3.2.2 Do they work full time for Vendor? Indicate if any of the named employees are part-time or contract employees working on Mississippi accounts for Vendor.

10.3.2.3 What location do they work out of? Is this a physical office location of Vendor's company or are personnel working out of a "virtual office"?

10.3.2.4 For technical staff, include technical certifications they hold. (Example: APCO Radio Technician, NABER Two-Way Radio Technician, CETa, USMSS, WCM)

10.3.2.5 Will the same technicians be used for installation and later for maintenance?

10.3.3 If Vendor relies on out-of-state resources to coordinate with Mississippi staffing, please describe how these resources are utilized.

- 10.3.4 Describe your company's manufacturer certifications for products proposed beyond the basic authority to sell for each manufacturer proposed. Example: Gold, Platinum, Premier, Silver, etc.
- 10.4 *Describe Vendor's process for*
 - 10.4.1 Handling sales and quotation requests
 - 10.4.2 Tracking the delivery of products
 - 10.4.3 Installation
 - 10.4.4 Billing
- 10.5 Describe Vendor services specific to products proposed, i.e. vehicle installations, radio programming, and any other related services such as consulting, authorized repair facility, etc.
- 10.6 Describe training resources and facilities.
- 10.7 Provide Vendor's website address.
 - 10.7.1 Demonstrate how Vendor will provide online support for sales information.
- 10.8 Provide specific examples of how Vendor provides Value-added services for Mississippi customers.
- 10.9 The proposing Value-added Vendor ensures the warranty, regardless of manufacturer or manufacturer's warranty.
 - 10.9.1 Demonstrate how proposing Vendor provides or coordinates with the manufacturer(s) for seamless service.
- 10.10 Demonstrate how proposing Vendor receives an initial service call on products under on-site warranty.
 - 10.10.1 Demonstrate how vendor handles initial on-site call
 - 10.10.2 Determine how initial on-site call is affected by client location.
 - 10.10.3 Briefly describe Vendor's technical support organization and problem resolution process.
- 10.11 Describe under what conditions third-party support be used in lieu of in-house staff.
- 10.12 Describe response time for initial call response, on-site personnel response, and resolution. Include average time as well as a not-to-exceed time frame for each type of response.

11. Mississippi Manufacturer EPL Website Requirements

- 11.1 The manufacturer must develop a Manufacturer EPL Website residing on manufacturer's servers and domain name. This website will, at minimum, house the manufacturer's product and pricing information.
- 11.1.1 Distributors or individual resellers may not host the EPL site. Should the manufacturer elect to use a distributor or business partner to assist with the website, this should be transparent to **ITS**. **ITS'** correspondence and relationship must be directly with the manufacturer. **ITS** reserves the right to waive this requirement for a "Manufacturer Representative" designated in long term relationships to handle such issues for the manufacturer.
- 11.2 Only manufacturers sponsoring an **ITS** approved Reseller Group under this RFP are eligible to participate.
- 11.3 The manufacturer will provide both a test URL and a final URL that will be linked by **ITS** to our website.
- 11.3.1 Manufacturers who currently have an approved Manufacturer EPL Website under RFP 3657, will need to supply a test URL for RFP 3744. Once the test URL has been approved for RFP 3744, replace the current EPL 3657 site with the approved site and inform the **ITS** EPL Team what the final URL link will be.
- 11.3.2 For manufacturers that have published a Manufacturer EPL Website under RFP 3657, all references to those EPLs must be removed by June 1, 2014.
- 11.4 The Manufacturer EPL Website does not have to be completed by the RFP opening date. The EPL Team will work with the manufacturers after the proposal opening to review the manufacturers' test website. When approved, the EPL Team will certify the site and link the site to the **ITS** EPL Interactive Website and the Two-Way Radio EPL Instructions for Use. Priority will be given in the website review and certification process to those manufacturers whose sites are ready first.
- 11.5 The Website Target Date for RFP 3744 is June 1, 2014. Those websites not approved by that date will continue to be reviewed by the EPL Team and will be added to the EPL Interactive once approved.
- 11.6 Each Manufacturer EPL Website must include basic contract information and links which will be furnished to the manufacturer by the EPL Team after the proposal opening in the form of a Checklist. At minimum, this will include:
- 11.6.1 Reference to "Two-Way Radio Express Products List (EPL) 3744"
- 11.6.2 Reference to contract term: "This EPL Website is valid through May 31, 2017"

- 11.6.3 Dollar Limit for expenditures from the EPL
- 11.6.4 Link to the **ITS** EPL Interactive Website:
<http://www.its.ms.gov/Procurement/Pages/EPL-Interactives.aspx>
- 11.6.5 Link to the list of approved resellers for the manufacturer, which is hosted on the **ITS** EPL Interactive Website. This link must be prominent on the opening page. The **ITS** EPL Team will supply this link to each manufacturer during the website testing phase.
- 11.6.6 Product descriptions and the discounted cost to the State
- 11.7 *Website Specifications*
 - 11.7.1 There must not be a password or special login to access the website.
 - 11.7.2 Products on the website must only be within those categories listed and must meet the requirements shown in Section IX, *Technical Specifications*.
 - 11.7.3 The products must have adequate description for the customer to discern what the product is.
 - 11.7.4 Products must be current, with end-of-life products deleted. However, manufacturers are encouraged to consider whether an end-of-life product in their product line may still be available in the distribution channel for a reasonable length of time before removal from their Manufacturer EPL Website.
 - 11.7.5 The website must not have a true “shopping cart” that allows online payment or obligates the customer to purchase. The website is a “quote tool” only.
 - 11.7.6 The website must only list the manufacturer’s branded products.
 - 11.7.7 There must not be any “Home” or “Consumer” versions of the manufacturer’s products on the website.
- 11.8 *Website Options*
 - 11.8.1 The Manufacturer EPL Website may have a link to the manufacturer’s main home page or commercial section only if clearly identified as such.
 - 11.8.2 The Manufacturer EPL Website may have links to product literature for the EPL products.

- 11.8.3 Any links to product literature, any menu bars, any side frames that have links to the commercial website must follow these guidelines:
- 11.8.3.1 **ITS** preference is that there are no links or menus that take the customer out of the approved Manufacturer EPL Website except those linking back to **ITS** or a single clearly identified link to the manufacturer's regular commercial site.
 - 11.8.3.2 Menu top, bottom, and side bars that move the customer from the approved Manufacturer EPL Website to the commercial site need to have the links disabled or have an interim page that warns the customer they are leaving the Mississippi EPL site.
 - 11.8.3.3 **ITS** reserves the right to work with individual manufacturers on menu bar issues. The primary purpose of any menu bar restrictions is to ensure that it is clear if leaving the EPL Website and to protect the EPL customer to avoid any confusion or possible misuse of the manufacturer's commercial site.
 - 11.8.3.4 It is imperative that the Manufacturer EPL Website NOT mistakenly take the customer from the approved EPL site to products or services that have not been approved and for which the customer has no procurement authority.
- 11.8.4 *Configurators*
In **ITS** feedback sessions with our customers, it was strongly recommended and preferred that the website have a "configurator" allowing the customer to add options to a base system; save that configuration as an "eQuote", "saved cart", or configuration; and reference the quote to their resellers; and use the quote in the ordering process.
- 11.8.4.1 Although **ITS** is not making a "configurator" a requirement at this time, it is strongly recommended for more complex systems such as servers.
 - 11.8.4.2 Should the manufacturer elect to provide such a "configurator", the manufacturer must also include the ability to save the configuration or quote or to email the configuration to the customer.
 - 11.8.4.3 eQuotes or Saved Configurations must be saved and available for recall for a minimum of thirty days.

11.8.5 *Static Price Spreadsheets*

Manufacturers may alternatively choose to publish their price list as a spreadsheet.

11.8.5.1 This is acceptable in particular for those product lines with fewer accessory or option choices.

11.8.5.2 The spreadsheet must include basic accessories and it must be clear which accessories may be used with which base products.

11.8.5.3 If the manufacturer maintains a List Price, or MSRP, please include a column for list price in addition to the column for the discounted price to the State.

11.8.5.4 If the spreadsheet is in Excel, the manufacturer is asked to also include an Adobe PDF version. Although many of our customers prefer Excel in order to copy or paste, some customers have difficulty formatting and printing from Excel and therefore spreadsheets should be in Adobe and can optionally be also available in Excel.

11.9 *Archiving of pricing*

11.9.1 Under this RFP, **ITS** will no longer keep such archived files. Customers must take responsibility to print the Manufacturer EPL Website quotations. Both manufacturer and seller are asked to assist the customer in locating, printing, and saving the EPL quotation.

11.9.2 If using a “configurator” and “eQuote” website, the eQuote must be archived or be available to the customer or the resellers for a minimum of thirty (30) days from the generation of the eQuote.

11.9.3 If using a static spreadsheet or price list, all lists must remain on the manufacturer website throughout the EPL one year term. Each spreadsheet should clearly show the date. Example:

Company Name Price List – 8/7/2014
Company Name Price List – 7/22/2014
Company Name Price List – 5/1/2014

11.10 *Product and Price Changes on Manufacturer Website*

11.10.1 New products may be added, products deleted, and products edited on the Manufacturer EPL Website at any time, including price changes. It is not necessary to receive additional permission from **ITS**.

- 11.10.2 There is not a maximum or minimum number of products that have to be proposed.
- 11.10.3 **ITS** will review the price list and website at least monthly. The manufacturer will be required at our monthly review to certify their website still meets EPL specifications.
- 11.10.4 Should a manufacturer RAISE a price on a system or any component or accessory of a system, the manufacturer must honor the lower price for thirty (30) days from the time last posted on the website or from the time an eQuote is generated.

11.11 *Miscellaneous Website Requirements*

- 11.11.1 During the pilot phase for the Manufacturer EPL Websites, **ITS** noticed that some sites were blocked by the State's filtering software, Websense. These sites were rejected as "uncategorized". The State requests that the manufacturers work with their technical staff and EPL customers to resolve this problem.
- 11.11.2 Vendors must test vendor websites using multiple browsers and multiple browser versions for both Windows and Mac systems.
- 11.11.3 Please update your website or do maintenance before or after the core hours of 8–5 Central Time, Monday – Friday, when possible. Alternatively, if the site is down for maintenance or updates, please show a replacement page such as "Website is being Updated" to avoid customer complaints.
- 11.11.4 "Energy Star," "Green," or similar designations are frequently requested by State customers. If these are available for your products, please include these descriptions on your site.

11.12 ***ITS** hosting of Manufacturer Sites*

- 11.12.1 **ITS** is aware that a small number of manufacturers have policies that restrict them from being able to host a special site on their own domain as requested in this RFP. In such a case, the manufacturer may petition **ITS** as part of the RFP response to host the site on **ITS'** servers using **ITS'** domain name. This approach should be an exception and must be documented as a true constraint, not simply because a manufacturer rep is busy or is having trouble getting resources within the company. If hosting a site as described herein is not possible for your company, please make this request in response to this RFP item and supply a complete explanation as well as certification that your company cannot deploy such a site and does not host a similar site for other governmental entities. If approved, **ITS** will set up a very simple

site on our server and domain and work with your manufacturer team on the price lists to post in Adobe.

11.12.2 Similarly, should the EPL Team and the manufacturer web team not be able to reach approval for the test websites due to any technical issues, **ITS** reserves the right to consider offering such a simple website on our server.

11.12.3 Should **ITS** host such sites, note that the flexibility of price changes at the will of the manufacturer will be lost. Any price changes or website changes will be made as time permits by the EPL Team.

11.12.4 There will be a non-refundable fee payable up front should **ITS** host the site.

11.12.4.1 The amount under RFP 3744 will be \$1000.00 for a six month period. **ITS** will invoice the Manufacturer at the beginning of the initial six-month period and each six-month period thereafter.

11.12.4.2 The fee is payable by check to Information Technology Services and will be due at such time as the manufacturer and **ITS** have agreed upon a test site, before the site is made live for customer use.

11.12.4.3 This is a non-refundable fee should the manufacturer elect to produce the manufacturer's own site before the end of the next six month period.

11.13 **ITS Manufacturer EPL Website Project Manager**

11.13.1 Tina O'Neal on the EPL Team will coordinate and approve Manufacturer EPL Websites during the EPL term. You may address questions directly to Anthony at:

Tina O'Neal
601-432-8162
tina.oneal@its.ms.gov or eplteam@its.ms.gov

12. **Statement of Understanding**

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

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

12.1.2 **Vendor must deliver a written document to Kenny Wilson at ITS by March 28, 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 Kenny Wilson to verify the receipt of their document. **Documents received after the deadline will be rejected.**

- 12.2 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 April 11, 2014.
- 12.3 The requirements in this RFP apply to two-way radios for which the Vendor is an authorized reseller. It is the intent of this RFP that the winning Vendor or Vendors will be able to provide two-way radios to **ITS** customers using the most appropriate licensing program for each entity. This may involve providing a customer with a detailed analysis and comparison of the choices of how to buy two-way radios and helping each customer decide on the program and pricing that best fits their needs.
- 12.4 Vendor must be aware that **ITS** wants the most satisfying combination of price and performance within the constraints of this RFP.
- 12.5 The primary term of any contracts signed as a result of this RFP will be for three (3) years. At the end of the initial term, the contract may be extended, upon the written consent of both parties, the length of which will be agreed upon by the parties.
- 12.6 **ITS** deems performance of a Vendor on outstanding contracts and support of the customer after the sale to be of critical importance. Therefore, in the evaluation process for a contract award of new project RFPs, Vendors with good performance ratings on existing accounts will be at a decided advantage while Vendors with poor performance ratings will be at a decided disadvantage or be subject to disqualification at the discretion of the State.
- 12.7 Vendor is solely responsible for all delivery and implementation subject to formal customer acceptance. **ITS** does not encourage the use of subcontractors. Any use thereof must be transparent to the customer with all transactions and payment conducted directly with the awarded Vendor(s).
- 12.8 The State reserves the right to request proposals for the selection of new resellers at the end of the contract term or at any time deemed necessary during the contract.
- 12.9 The State reserves the right to deal directly with or buy directly from the manufacturer.

13. RFP Vendor Registration Requirements and Instructions

- 13.1 **ITS** is charging a fee for Vendors to participate in the EPL RFP process. This fee will cover the cost of validating and processing the Vendor's RFP response. **ITS** has partnered with Mississippi Interactive (MSI) to develop and maintain a registration application.
- 13.2 The Vendor will pay a proposal processing fee of \$150.00 plus an eGovernment transaction fee and a MSI processing fee for the RFP response. The vendor will have two payment options: credit card (VISA, MasterCard, American Express or Discover) or ACH/eCheck. The transaction fees are outlined below for each payment option:
- 13.2.1 Each credit card transaction will have the following fees: \$150.00 **ITS** fee plus a \$2.25 eGovernment transaction fee and a 2.2% MSI processing fee of \$3.35 for a total of \$155.60.
- 13.2.2 Each ACH/eCheck transaction will have the following fees: \$150.00 **ITS** fee plus a \$2.25 eGovernment transaction fee and a \$0.25 MSI processing fee for a total of \$152.50.
- 13.3 Provided below is an outline of the steps for the registration process:
- 13.3.1 Go to the EPL RFP Vendor Registration application located at: www.ms.gov/its/epl_registration/
- 13.3.2 The Vendor will be prompted to provide contact information.
- 13.3.3 Once all contact and ordering information has been provided, the Vendor will be directed to a "disclaimer" page. The following message will be displayed:
- "In order to make payment and complete your registration, you will be redirected to the Mississippi Enterprise Payment System. You will be guided through the payment process and then be returned here to receive your payment confirmation and any additional requirements that may apply. By using this payment system, you attest that you are the account holder or have the written authority to use said account for the purpose of completing the financial obligations and that sufficient funds are available."
- 13.3.4 Next, the Vendor will be sent to MSI's common checkout page (CCP). A Transaction Summary will be displayed and the Vendor will be prompted to select their method of payment (credit card/ACH) then complete the payment process.
- 13.3.5 After the payment has been successfully transmitted, the Vendor will be generated a receipt confirmation for the Vendor's records. This receipt will also be e-mailed to them at the e-mail provided in the CCP.

- 13.3.6 The Vendor's registration number will be listed on the "receipt" page. The number should look similar to the following: 3744-001
Provide this registration number in response to this item.
 - 13.4 The Vendor's proposal will not be processed unless the Vendor has completed this process and provided a registration number.
 - 13.5 It is the Vendor's responsibility to check if their company has already registered. **ITS** is not responsible for duplicate payments.
14. **Value Added Services**
- 14.1 The Vendor is requested to provide details on those goods and services that he is able to provide over and above this RFP's requirements. These services and characteristics should set the Vendor's company apart from competitors. The Vendor must provide all costs for these services.

SECTION IX TECHNICAL SPECIFICATIONS

Section II, item 9.11 of this RFP requires the Vendor to respond to the *Technical Specifications* section with a point-by-point response to each requirement. Please ignore the directions given in Section II, item 9.11. Do **not** submit a point-by-point response to Section IX *Technical Specifications*.

1. **Technical Requirements**

If any component(s) necessary for operation of the requested system is omitted from Vendor's proposal, Vendor must be willing to provide the component(s) at no additional cost. This includes, but is not limited to, all cabling, connectors, raceway, etc. necessary to render the configuration fully operational.

2. **Two-Way Radio Product Categories**

Listed below is a summary of the Two-Way Radio EPL categories that may be proposed. Vendors are not required to propose products in all categories. There is not a minimum or maximum number of products that must be proposed in a category.

2.1 Radio

2.2 Radio Accessories

3. **Radios**

3.1 Scope, Category Definition, and Minimum Specifications

3.1.1 The focus of this category is to provide the base radio systems.

3.1.2 Type of equipment include:

3.1.2.1 Base Station/Repeater (Paging terminals proposed here)

3.1.2.2 Dispatch Console (Console furniture proposed as an option)

3.1.2.3 Mobile

3.1.2.4 Mobile Data

3.1.2.5 Portable/Handheld

3.1.2.6 Receiver

3.1.2.7 Vehicular Repeater

3.1.2.8 No single item should exceed the cost of the EPL dollar limit.

- 3.1.2.9 One year parts and labor or exchange warranty.
- 3.1.3 Exclusions
 - 3.1.3.1 Radio activated warning sirens
 - 3.1.3.2 Response system
 - 3.1.3.3 SCADA
 - 3.1.3.4 Products that exceed the EPL dollar limit.

4. **Radio Accessories**

- 4.1 Scope, Category Definition, and Minimum Specifications
 - 4.1.1 Type of equipment include
 - 4.1.1.1 Antenna
 - 4.1.1.2 Cable
 - 4.1.1.3 Combiner/Multicouple
 - 4.1.1.4 Duplexer
 - 4.1.1.5 Headset
 - 4.1.1.6 Microphone
 - 4.1.1.7 Modem
 - 4.1.1.8 Rack/Cabinet
 - 4.1.1.9 RF Test Equipment
 - 4.1.1.10 Voice Recorders

5. **Global Minimum Specifications**

- 5.1 Only commercially-branded products may be proposed.
- 5.2 All products must be available for both government and education purchase.
- 5.3 Pricing must be for all EPL users, not just one segment such as education.
- 5.4 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 proposal price. Destination is the point of use.

- 5.5 Freight must be FOB Destination for a standard delivery. If the delivery is beyond a standard delivery such as “white glove treatment” or because of weight/size, the freight/transportation charges may be line-itemed.
- 5.6 Upon the agency’s request, Vendor should provide demonstration units of the proposed equipment at no charge.
- 5.7 Vendor should be able to provide installation and service statewide on all equipment proposed. These costs should be provided in your cost submission.
- 5.8 Vendor should provide an interim “loaner” to minimize the user’s down time.
- 5.9 The service and warranty shall not be voided if the State should decide to install the proposed equipment.
- 5.10 Vendor will be responsible for the shipping charges to and from the service center during the warranty period.

6. Warranty

- 6.1 General Warranty Requirements and Definitions
 - 6.1.1 Vendor must provide a minimum one-year warranty covering all parts and labor to correct any defect in the proposed equipment. This warranty period must become effective from the delivery date of Vendor’s products/services
 - 6.1.2 “On-Site Warranty”: If an on-site warranty is proposed, the warrantor will, without charge, repair or replace a defective product. During the “on-site” period, the warrantor must come to the customer’s site to repair or pick-up the defective product. If the required warranty specifies “Parts and Labor”, the warrantor must replace or repair the defective product but it is the customer’s responsibility to return the defective product to the warrantor for repair. This includes “return to depot”, “carry-in”, or “shipping to warrantor”, subject to shipping charges as defined below.
 - 6.1.3 The warranty must include the BASE Product and any EPL-published items purchased with the base product.
 - 6.1.4 The “BASE Product” includes the components required to meet the minimum specifications as outlined for each of the categories.
 - 6.1.5 The “Internal EPL Components” are those selected from the EPL options at the time of purchase that are internal to the product.
 - 6.1.6 Non-EPL items are NOT automatically covered in the BASE Product or as an EPL Component purchased with the base

product. Customer and Vendor must negotiate a warranty separately if needed. NOTE: Vendor-defined options in any open-ended specifications are EPL items.

6.1.7 Charges for shipping and handling must be borne by the Vendor during the on-site warranty period or for the first year of the warranty in the item are not covered by an on-site warranty.

6.1.8 After the expiration of the first year (for items without on-site coverage) or of the on-site warranty period and for the remainder of the warranty period, Vendor is required to pay shipping from the manufacturer or repair facility back to the customer, however, Vendor is not required to pay shipping from the customer to the manufacturer or repair facility.

6.2 For software that is part of the management of the EPL hardware and either included with the base system or proposed as an optional accessory, the following warranty applies

6.2.1 Vendor will warrant software against defects in workmanship of product for a period of ninety (90) days from the date of sale of the licensed software or the system on which the software is loaded, whichever is applicable.

7. **Additional Requirements**

7.1 **ITS** acknowledges that the specifications within this RFP are not exhaustive. Rather, they reflect the known requirements that must be met by the proposed system. Vendors must specify, here, what additional components may be needed and are proposed in order to complete each configuration.

SECTION X COST INFORMATION SUBMISSION FOR SELLERS

Only Vendors that are Sellers should respond to this section. This requirement includes resellers as well as manufacturers that choose to sell directly as part of their Reseller Group.

1. Directions for Submitting RFP Electronic Files

- 1.1 The Vendor must submit media formatted for a Windows platform. A CD is preferred but if the Vendor cannot submit a CD, a jump drive is acceptable.
- 1.2 Information must be submitted in spreadsheet format. Do not use tables from word processing applications. Template spreadsheets are available for download. The link is noted in item 3 below. You are EXPECTED to use these templates. The templates are in Microsoft Excel format. If you do not have access to Excel, then you may re-create the spreadsheets using Lotus 1-2-3.
- 1.3 The media must be labeled with VENDOR NAME and RFP No. 3744.

2. Overview of Cost Information Submission

- 2.1 The Seller does NOT propose product information and pricing as part of their RFP response. The product and pricing information will be submitted by each manufacturer sponsoring a Reseller Group through the manufacturer's EPL Website.
- 2.2 The Seller DOES propose service fees as defined below.
 - 2.2.1 Sellers seeking the designation of "Value-added Vendor" MUST propose service fees.
 - 2.2.2 Sellers proposing as "Mail-order Vendors" MAY propose service fees.
 - 2.2.3 Mail-order Vendors that do not offer services must submit the service fee spreadsheet showing "Not Available" for each service fee category they do not offer.

3. The Vendor is required to submit electronic and paper copies of two (2) spreadsheets in support of this Two-Way Radio EPL RFP:

3.1 *Vendor Contact Information Sheet*
[Label file as 3744contacts.xls]

3.2 *Service Fee*
[Label file as 3744fees.xls]

3.3 These spreadsheet templates are available for download in Excel at:

<http://www.its.ms.gov/Procurement/Pages/3744.aspx>

4. Official Copy of Proposal

The information on your media is considered the official copy. The Vendor must include paper copies of the two (2) spreadsheets in the binder (one copy of Vendor Contact Information and one copy of Service Fees.)

5. Vendor Contact Information

The Vendor is required to complete and submit the *Vendor Contact Information Sheet* provided in Excel format on the Two Way RFP download page:

<http://www.its.ms.gov/Procurement/Pages/3744.aspx>

Print a paper copy of the spreadsheet for your proposal packet AND include a CD with the electronic file.

6. Service Fees

6.1 The Service Fee categories detailed in Section VIII: *EPL Process Specifications* of this RFP must be used

6.2 All Sellers must submit this spreadsheet. Mail-order Vendors are not required to submit service fees and should show individual fees as "Not Available" if not being proposed.

6.3 Do not show the service rates as "Included." Vendor may show the Travel Rate as "Included."

Company Name:		
Service Fee	Rate	Specify if there is a COST, if the fee is INCLUDED, or if the fee is Not applicable (N/A)
Hourly Rate for basic installation services	\$	
Hourly Rate for project manager/engineer/advanced technician	\$	
Hourly Rate for travel	\$	

**SECTION XI
MANUFACTURER SPONSORING RESELLER GROUP QUESTIONNAIRE**

1. Directions

All manufacturers sponsoring a Reseller Group must complete this Section XI and a *Manufacturer Sponsoring Reseller Group Form* (page 73 of this section). If you are a manufacturer ONLY sponsoring a Reseller Group and NOT receiving payments directly, Section XI is your only RFP response requirement. If you are a manufacturer also selling directly, a full response to the entire RFP is required. Please refer to the RFP Checklist on page 2 for assistance.

1.1 Manufacturer's Name

1.2 State of Incorporation

1.3 Prime Contact person for your Manufacturer Reseller Group.
Provide: Name, telephone, FAX, email, and a mailing address

1.4 Backup Person(s) for your Manufacturer Reseller Group.
Provide: Name, telephone, FAX, and email

1.4.1 In addition to your prime contact, these persons will also receive notifications concerning the EPL throughout the EPL cycle such as update notices, vendor meeting notices, or correspondence concerning your group.

1.5 Contact Person for EPL Website administration.
Provide: Name, telephone, FAX, and email

1.6 Note that the above contact persons are for the EPL Team only. They are not published for customers.

1.7 Is the manufacturer under any bankruptcy proceedings?

2. Acknowledgement of Manufacturer Requirements

You must acknowledge below by checking both blanks.

2.1 _____ Yes, our company will participate in Two-Way Radio EPL RFP 3744 by sponsoring a "Reseller Group." We have reviewed the responsibilities in sponsoring a Reseller Group as described in RFP 3744 and agree to its terms and conditions.

2.2 _____ Yes, our company will participate in Two-Way Radio EPL RFP 3744 by creating and maintaining a Manufacturer EPL Website. We have reviewed the responsibilities and requirements regarding the manufacturer's EPL Website as described in RFP 3744 and agree to its terms and conditions.

3. **List of Approved Resellers**

List the approved resellers that will be authorized for your Reseller Group. You must have at least two (2) "Value-added" resellers to form a group but there is no maximum number of Value-added resellers. You may have up to three (3) "Mail-order" resellers. Please list the company name for each reseller. It is not necessary for you to provide the contact person or contact information as each reseller provides this separately to ITS.

3.1 List of Reseller Group company names:

3.2 Will the manufacturer also sell directly as part of the Reseller Group? If so, please include the manufacturer name in the group listing in question 3.1 above.

4. **Categories of Products**

The Two-Way Radio EPL scope has a limited number of product categories that may be purchased through this RFP. They are listed in Section IX, *Technical Specifications*. Please check the product categories from RFP 3744 that your company sells and plans to include on your Mississippi EPL Website.

- Radios
- Radio Accessories

5. **Pricing**

You must answer the following question regarding the proposed pricing for your website and Reseller Group. Note that it is not acceptable for the manufacturers to propose retail price in their submission with the supposition that the reseller will discount the price at time of quotation. It is expected that the manufacturers propose a discounted cost based upon a quantity of one. The reseller could further discount the price at the time of quotation, in particular in the case of a quantity discount. The information provided by the manufacturer in response to this question will not be published but may be used during the ITS evaluation and also used to ensure the State is receiving proper discounts during the update process throughout the RFP cycle. The products and pricing proposed by a manufacturer on behalf of named Value-added resellers still must go through a cost evaluation and specification evaluation.

5.1 Does the manufacturer maintain a "List" price list or "MSRP" or similar designation price list? If yes, please explain and provide an electronic copy if available or a URL to a website where the price list may be accessed.

5.2 Does the manufacturer have a GSA schedule or price list? If yes, please explain and provide an electronic copy if available or a URL to a website where the price list may be accessed.

5.3 Does the manufacturer maintain some other price list that can be used as a "benchmark" by the State? If yes, please explain and provide an electronic copy if available or a URL to a website where the price list may be accessed.

- 5.4 Explain the cost basis used by the manufacturer to propose pricing on behalf of the named resellers for Two-Way Radio EPL 3744. This explanation might include reference to a standard manufacturer price list or GSA schedule, for example, and the percentage discount off of list being used in your proposal.
- 5.5 What method will be used to calculate the pricing throughout the contract period?

6. **Website URL**

- 6.1 **ITS** will contact your company after the proposal opening date and provide you with a check list for your website and begin working with the contacts above for website approval. If you already have a test URL of a website for **ITS**, please provide it here.
- 6.2 The **ITS** EPL Team will work with each manufacturer to ensure that the manufacturer's website meets the RFP requirements. Those manufacturers who already have a website prototype ready at the RFP opening date will be given priority in processing.

MANUFACTURER SPONSORING RESELLER GROUP FORM

Original signature of authorized company representative required below.

Name of Company

Date

Authorized Signature

Title

Typed or Printed Name

Return this form with original signature as your Manufacturer response to RFP 3744. All responses received by **ITS** no later than **April 24, 2014, 3:00 p.m. Central Time** will be processed with the initial RFP 3744 evaluation for award by June 1, 2014. Manufacturer responses received after April 24, 2014, will be processed by **ITS** as time permits. **FAX or E-Mail is NOT acceptable.**

Kenny Wilson
Information Technology Services
3771 Eastwood Drive
Jackson, MS 39211
Phone: 601-432-8218
E-Mail: kenny.wilson@its.ms.gov

SECTION XII MARKETING / SALES REPORT

1. Overview

- 1.1 Vendors whose products are awarded under this RFP **MUST** maintain a record of sales to be reported on a quarterly basis to **ITS**.
- 1.2 Within fifteen (15) calendar days following the completion of each quarter, the Vendor should submit a Marketing/Sales Report identifying all Express Products Lists (“EPL”) sales to **ITS**. Upon receipt of the report, **ITS** will review the Marketing/Sales Report and assess a one percent (1%) EPL Administrative Fee based on the total amount of sales that are reported, in accordance with Mississippi Code Section 25-53-29 (4).
- 1.3 The EPL Administrative Fee is used by the State to defray the costs associated with soliciting, awarding and administering Express Products Lists, and is referenced in the Master Purchase Agreements for Express Product List (EPL).
- 1.4 The EPL Administrative Fee is the responsibility of the Vendor. The EPL Administrative Fee will not be charged directly to the customer in the form of a separate line item.

2. Fee Amount

- 2.1 Unless defined differently within the Master Purchase Agreement, the EPL Administrative Fee shall be one percent (1.0%) of quarterly sales receipts under an active Master Purchase Agreement.
- 2.2 The EPL Administrative Fee percentage is applicable to amounts where the Vendor has received a purchase order.

3. Method of Assessment

- 3.1 At the completion of each quarter, the Vendor reviews all sales in preparation for submission of their Marketing/Sales Report.
- 3.2 The Vendor identifies all sales receipts transacted by customers using the Express Products List (EPL) as their procurement instrument.
- 3.3 After receiving the Vendor’s Marketing/Sales Report, the Mississippi Department of Information Technology Services (**ITS**) will review said report and assess the one percent (1.0 %) EPL Administrative Fee based on the total amount of sales listed in the Marketing/Sales Report.

4. **Submission Schedule**

4.1 Within fifteen (15) days following the end of the quarter, the Vendor must submit their Marketing/Sales Report to the Department of Information Technology Services.

4.2 Vendors will be invoiced by the end of the month following the Fiscal Quarter with payment of the EPL Administrative Fee due by the last day of the following month. Below is a sample EPL Administrative Fee Submission schedule:

- **Fiscal Quarter 1** (June 1st – August 31st)
Marketing/Sales Report Due by September 15th
Invoice Received from **ITS** by October 1st
Payment Due by October 30th
- **Fiscal Quarter 2** (September 1st - November 31st)
Marketing/Sales Report Due by December 15th
Invoice Received from **ITS** by January 1st
Payment Due by January 31st
- **Fiscal Quarter 3** (December 1st – February 28th)
Marketing/Sales Report Due by March 15th
Invoice Received from **ITS** by April 1st
Payment Due by April 30th
- **Fiscal Quarter 4** (March 1st – May 31st)
Marketing/Sales Report Due by June 15th
Invoice Received from **ITS** by July 1st
Payment Due by July 31st

5. **Vendor Penalties**

5.1 Vendor failure to submit a Marketing/Sales Report within 3 working days after the due date will result in a suspension from the EPL. Vendor is subject to reinstatement after sending in the delinquent Marketing/Sales Report and making payment for the quarterly administrative fees.

5.2 Vendor failure to submit payment of the EPL quarterly administrative fees by the due date will result in an immediate suspension until all outstanding fees are paid in full. Vendor is subject to reinstatement after all delinquent fees are bought current.

6. **Report Format**

6.1 Vendors must include the following fields in the Marketing/Sales Report submitted at the completion of each quarter:

6.1.1 Date

- 6.1.2 Client Name
- 6.1.3 Purchase Order Number
- 6.1.4 Purchase Order Summary
- 6.1.5 Total

6.2 The following table shows an example of an acceptable marketing/sales report:

Date	Client Name	Purchase Order #	Purchase Order Summary	Total
04/25/2014	MDOT	PO 249463	10 Motorola XX999 Mobile Radios	\$15,517.00
			10 Decibel Glass Mount Antennas	\$454.00
			Installation	\$100.00
04/25/2013	Bureau of Narcotics	PO 229885	7 M/A-COM Handheld Radios	\$1,302.00
01/13/2013	MSU	PO 222257	5 Kenwood 999XX Base Stations	\$8,620.00
			50' of 1/2" Andrew Coaxial Cable	\$300.00
Total				\$26,293.00

Vendors may reference the links below to verify whether a client is under **ITS** purview or a government organization that uses **ITS** EPLs by choice. Both of these categories of customers should be included in the Marketing/Sales report:

- State Agencies
http://www.ms.gov/agency_directory/default.aspx
- Institutions of Higher Learning (IHLs)
<http://www.ms.gov/content/Pages/CollegesUniversities.aspx>
- Community Colleges (CC)
<http://www.ms.gov/content/Pages/CollegesUniversities.aspx>
- Governing Authorities - any PUBLIC city or county government including public libraries and hospitals

7. Report Information

- 7.1 Failure to provide quarterly sales information will be cause for disqualification from evaluation in the next Two-Way Radio EPL cycle.

- 7.2 If there were no sales during a reporting period, the Vendor must submit a Marketing/Sales Report showing "No Sales".
- 7.3 **ITS** reserves the right to request more detailed sales information on an individual basis.
- 7.4 **ITS** will compile the individual reports into a Summary Marketing/Sales Report. The Summary Marketing/Sales Report will not show individual client names, only total sales from each Vendor. The Summary Marketing/Sales Report will become the property of **ITS** with the right to publish, reproduce or distribute without notification. Vendor's submission of a response to this RFP will constitute acceptance of this policy. Vendors may request a copy of this report under the **ITS** Open Records Procedure.
- 7.5 Any requests other than the Summary Marketing/Sales Report for copies of an individual Vendor's marketing/sales report or any other information that is part of the Vendor's proposal will fall under **ITS** open records policy as defined in the **ITS** Procurement Handbook.
- 7.6 It is not necessary to submit a paper copy of your marketing/sales report.
- 7.7 The **ITS** staff places a high value on this historical information. We acknowledge the effort entailed in compiling this information and offer our appreciation in advance.
- 7.8 Incumbent Vendors awarded under Two-Way Radio EPL **ITS** must submit their 2013 report with their proposal response to RFP 3744 in response to this section, showing sales thus far in 2014.

SECTION XIII REFERENCES

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

1. References

- 1.1 The Vendor must provide at least three (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 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**

- 2.1 The Vendor's proposal must identify any subcontractor that will be used and include the name of the company, telephone number, contact person, type of work subcontractor will perform, number of certified employees to perform said work, and three (3) references for whom the subcontractor has performed work that the State may contact. Forms for providing subcontractor information and references are included at the end of this section.
- 2.2 Unless otherwise noted, the requirements found in the References section may be met through a combination of Vendor and subcontractor references and experience. Vendor's proposal should clearly indicate any mandatory experience requirements met by subcontractors. NOTE: The State reserves the right to eliminate from further consideration proposals in which the prime Vendor does not, in the State's sole opinion, provide substantive value or investment in the total solution proposed. (i.e. the State does not typically accept proposals in which the prime Vendor is only a brokering agent.)

REFERENCE FORM

Complete three (3) Reference Forms.

Contact Name:

Company Name:

Address:

Phone #:

E-Mail:

Project Start Date:

Project End Date:

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

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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:

APPENDIX A
MASTER PURCHASE AGREEMENT
Non-ARRA

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**.

Due to the need for uniformity among EPL Vendors, the terms of the Master Purchase Agreement are non-negotiable.

**Non-ARRA Version
PROJECT 40729
EXPRESS PRODUCTS LIST (“EPL”)
MASTER PURCHASE & MAINTENANCE AGREEMENT FOR TWO-WAY RADIOS
BETWEEN
INSERT VENDOR NAME
AND
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES
AS CONTRACTING AGENT FOR THE
AGENCIES, INSTITUTIONS AND GOVERNING AUTHORITIES OF THE
STATE OF MISSISSIPPI**

This Master Purchase and Maintenance Agreement for Two-Way radios and accessories (hereinafter referred to as “EPL Agreement”) is entered into by and between **INSERT VENDOR NAME**, a **INSERT STATE OF INCORPORATION** corporation having its principal offices at **INSERT VENDOR STREET ADDRESS** (hereinafter referred to as “Seller”) and the 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 governmental agencies, governing authorities, and educational institutions of the State of Mississippi (hereinafter referred to as “Purchaser”). ITS and Purchaser are sometimes collectively referred to herein as “State”.

WHEREAS, Seller is an authorized dealer of certain two-way radios and accessories; and

WHEREAS, ITS, desires to acquire an Express Products List (“EPL”) Agreement containing the terms and conditions which will govern any orders placed by a Purchaser during the term of this EPL Agreement for the acquisition, installation and maintenance of two-way radios and accessories (hereinafter referred to as “Products”) and services from Seller that were listed in the published EPL as a result of Request for Proposals (“RFP”) Number 3744;

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

ARTICLE 1 TERM OF AGREEMENT

Unless terminated as prescribed elsewhere herein, this EPL Agreement will become effective on the date it is signed by all parties (the “Effective Date”) and will continue in effect through May 31, 2017, or until all warranties provided by Seller to Purchaser have expired, whichever occurs last. At the end of the initial term, the EPL Agreement may, upon the written agreement of the parties, be renewed for additional terms, the length of which will be agreed upon by the parties. Sixty (60) days prior to the expiration of the initial or any renewal term of this EPL Agreement, Seller shall notify ITS in writing of the

impending expiration and thereafter ITS shall notify Seller of its intent to either renew or cancel the EPL Agreement.

ARTICLE 2 MODIFICATION OR RENEGOTIATION

This EPL Agreement and any supplement and/or purchase order thereto 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 EPL Agreement and pertinent supplement and/or purchase order if federal and/or state revisions of any applicable laws or regulations make changes in this EPL Agreement and any pertinent supplement and/or purchase order necessary.

ARTICLE 3 INCLUDED PARTIES

Seller will accept orders from and furnish the Products and services under this EPL Agreement to any governmental agency, governing authority or educational institution within Mississippi authorized to use the published EPL, in line with ITS policies and procedures, at prices not to exceed those prices specified in the published EPL.

ARTICLE 4 ADDITIONAL TERMS AND CONDITIONS

All provisions in this EPL Agreement are in addition to the requirements of RFP No. 3744 and the published EPL, which are both incorporated into and made a part of this EPL Agreement.

ARTICLE 5 ORDERS

5.1 The State does not guarantee that it will purchase any minimum amount under this EPL Agreement.

5.2 When a Purchaser decides to procure any Products and/or services from Seller, the Purchaser shall execute a supplement and/or purchase order to be signed by Seller and an authorized representative of the Purchaser. The supplement and/or purchase order shall set forth the Products/services to be procured; the prices for same; the warranty period, the specific details of the transaction, including but not limited to the equipment to be maintained, the maintenance plan selected, the prices for the maintenance service and the length of the desired maintenance term, if maintenance is applicable, as well as any additional terms and conditions agreed to by the parties. All supplements and/or purchase orders shall be governed by, and incorporate by reference, the terms and conditions of this EPL Agreement. The terms and conditions of this EPL Agreement shall supersede any conflicting terms and conditions set forth in any document provided by Seller or its subcontractors. The parties agree that the Purchaser has the right to adjust the quantities of purchases based upon the availability of funding or as determined necessary by the Purchaser.

5.3 Seller guarantees its pricing for the duration of each EPL cycle in accordance with the Update provisions stated in the RFP. In the event there is a national price decrease of the Products proposed during that time, Seller agrees to extend the new, lower pricing to Purchaser.

5.4 The parties acknowledge and agree that Purchaser may, from time to time, order and receive Products from Seller that it determines upon initiating implementation, are not all needed to complete a project order. In such cases, the parties agree to arrange returns on a mutually satisfactory basis, provided the Products ordered maintain their packaging and returns are initiated by Purchaser within thirty (30) days of receipt of the Products from Seller, subject to return authorization by Seller.

ARTICLE 6 METHOD OF PAYMENT

6.1 Once the Products have been accepted by Purchaser as prescribed in Article 7 herein or there has been lack of notice to the contrary, Seller shall submit an invoice for the cost and shall certify that the billing is true and correct. Services will be invoiced as they are rendered. Seller shall submit invoices and supporting documentation electronically during the term of this EPL 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. All payments shall be in United States currency. Payments by state agencies using the Statewide Automated Accounting System (“SAAS”) shall be made and remittance information provided electronically as directed by the State. These payments by SAAS agencies shall be deposited into the bank account of the Seller’s choice. Seller understands and agrees that Purchaser is exempt from the payment of taxes. No payment, including final payment, shall be construed as acceptance of defective Products or incomplete work, and Seller shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the Article herein titled “Entire Agreement”.

6.2 If payment of undisputed amounts is not made to Seller within forty-five (45) days of Purchaser’s receipt of the invoice, Purchaser shall be liable to Seller for interest at a rate of one and one-half percent (1 ½%) per month (or such lesser rate as may be the maximum permissible rate under the law) on the unpaid balance from the expiration of such forty-five (45) day period until such time as payment is made. This provision for late payments shall apply only to undisputed amounts for which payment has been authorized.

6.3 Acceptance by Seller of the last payment from the Purchaser under a supplement and/or purchase order shall operate as a release of all claims against the State by Seller and any subcontractors or other persons supplying labor or materials used in the performance of any work under a supplement and/or purchase order.

ARTICLE 7 DELIVERY, RISK OF LOSS, INSTALLATION, AND ACCEPTANCE

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

7.2 Seller shall assume and shall bear the entire risk of loss and damage to the Products from any cause whatsoever while in transit and at all times throughout its possession thereof, with risk of loss passing to Purchaser upon installation.

7.3 If installation by Seller is required, Seller shall complete installation of the Products pursuant to the requirements of the Purchaser based on the guidelines specified in RFP No. 3744.

7.4 If installation by Seller is required, Seller shall be responsible for installing all Products in accordance with all state, federal and industry standards for such items. Further, Seller acknowledges that installation of the Products shall be accomplished with minimal interruption of Purchaser's normal day to day operations.

7.5 Seller warrants that all Products shall be properly delivered, installed and integrated, if necessary, for acceptance testing within the scheduling deadlines set forth by Purchaser as the site is deemed ready for installation. If installation by Seller is required, Seller shall provide Purchaser with an installation schedule identifying the date, time and location within the scheduling deadlines agreed to by the parties.

7.6 Unless a different acceptance period is agreed upon by Seller and the Purchaser and specified in the supplement and/or purchase order, Purchaser shall accept or reject the Products provided by Seller after a thirty (30) calendar day testing period utilizing testing criteria developed jointly by the parties. During the acceptance period, Purchaser shall have the opportunity to evaluate and test the Products to confirm that they perform without any defects and perform pursuant to the specifications set forth in RFP No. 3744 and the published EPL. Purchaser may be deemed to have accepted the Product at the end of the thirty (30) day period, unless Purchaser notifies Seller that the Product fails to perform as stated herein.

7.7 In the event the Product fails to perform as stated in Article 7.6 herein, Purchaser shall notify Seller. Unless a different period of time is agreed upon by the Seller and Purchaser and specified in the supplement and/or purchase order, Seller shall, within four (4) working days, correct the defects identified by Purchaser or replace the defective Product. If Seller is unable to correct the defects or replace the defective Product, Purchaser reserves the right to return the Product to Seller at Seller's expense; to cancel the supplement and/or purchase order, and to cancel this EPL Agreement as to itself only.

7.8 Upon receipt of a corrected or replaced Product, Purchaser shall have another acceptance period as set forth in Article 7.6 herein, in which to reevaluate/retest such Product.

7.9 If, after Seller has tendered to Purchaser Seller's attempt to correct the Product, Purchaser again determines the Product to have a defect, Purchaser may take such actions as it deems appropriate, including but not limited to, either (i) notifying Seller

that it has elected to keep the Product despite such defects; (ii) returning the Product to Seller and providing Seller with an opportunity to deliver a substitute Product acceptable to Purchaser within the time period specified by Purchaser, or (iii) returning the Product to Seller at Seller's expense and canceling the supplement and/or purchase order pursuant to Article 18.4 herein.

7.10 It is understood by the Seller that Purchaser will not sign the acceptance document until the following conditions have been met: (a) the network and equipment have operated for fourteen (14) consecutive days of operation with no problems, however, should the fourteen (14) day period be interrupted as a direct result of matters beyond Seller's reasonable control, the parties agree that when the interruption is cleared, rather than re-starting such fourteen (14) day period, Purchaser shall have however many days of the fourteen (14) day period that are left in which to determine whether the network and equipment will operate without problems; (b) the quality and level of transmission from the Purchaser's equipment back to the DEMARC is consistent with the published specifications for the system, however, problems that arise on the Central Office side of the DEMARC are Purchaser's responsibility to resolve with its Service Provider, though Seller will work with the Purchaser and its Service Provider to determine the cause of the problem; (c) the agreed upon training program for system administrators and station user personnel has been satisfactorily completed, and (d) the system documentation is complete and on file at Purchaser's offices.

7.11 During warranty and post-warranty services, Seller shall be responsible for damage to Purchaser's Products from power surges, lightning or any other foreign voltage. None of these events shall be excluded from coverage as acts of God.

ARTICLE 8 TITLE TO EQUIPMENT

Title to the hardware Products provided under this EPL Agreement shall pass to Purchaser upon its acceptance of the hardware Product.

ARTICLE 9 WARRANTIES

9.1 Seller represents and warrants that it has the right to sell the Products provided under this EPL Agreement.

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

9.3 Seller represents and warrants that unless otherwise specified in RFP No. 3744 and/or the published EPL, each Product delivered for new installations shall be delivered new and not as a "used, substituted, rebuilt, refurbished or reinstalled" Product. It is understood that parts supplied by Seller during maintenance may be new or refurbished and warranted as new.

9.4 Seller represents and warrants that it has and will obtain and pass through to Purchaser any and all warranties obtained or available from the manufacturer/licensor of the Product.

9.5 Seller represents and warrants that all hardware Products provided pursuant to this EPL Agreement shall, for the warranty period specified in the supplement and/or purchase order or in the published EPL, whichever is longer, be free from defects in material, manufacture, design and workmanship. Seller's obligation pursuant to this warranty shall include, but is not limited to, the repair or replacement of the hardware Product, or the redoing of the faulty installation, at no cost to Purchaser. Response times and maintenance requirements during the warranty period shall be as specified in Article 15 herein. In the event Seller can not repair or replace the hardware Product during the warranty period, Seller shall refund the purchase price of the hardware Product, and Purchaser shall have the right to terminate the supplement and/or purchase order and this EPL Agreement in whole or in part, solely as between those two parties. Purchaser's rights hereunder are in addition to any other rights Purchaser may have.

9.6 Seller represents and warrants that all Products provided by Seller shall meet or exceed the minimum specifications set forth in RFP No. 3744 and the published EPL.

9.7 Seller represents and warrants that all software Products provided pursuant to this EPL Agreement shall, for the warranty period specified in the supplement and/or purchase order or in the published EPL, whichever is longer, be free from reproducible defects and provide Purchaser complete functionality necessary for the operation of the system. Seller's obligation pursuant to this warranty shall include, but is not limited to, the repair of all reproducible defects or the replacement of the software Product, at no cost to Purchaser. In the event Seller is unable to repair or replace the software Product during the warranty period, Purchaser shall be entitled to a full refund of the price paid for the defective software Product, and Purchaser shall have the right to terminate the supplement and/or purchase order and this EPL Agreement in whole or in part, solely as between those two parties. Purchaser's rights hereunder are in addition to any other rights Purchaser may have.

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

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

9.10 Seller represents and warrants that the Products, as delivered to Purchaser, do 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.

9.11 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.

ARTICLE 10 INFRINGEMENT INDEMNIFICATION

10.1 Seller represents and warrants to the best of its knowledge that neither the Products, replacement parts, their 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. Purchaser shall notify Seller promptly in writing of any infringement claim of which it has knowledge, and shall cooperate with Seller in the defense of such

claim by supplying information, all at Seller's expense. Seller shall, to the extent authorized by Mississippi law, have sole control of the defense of such suit and all negotiations for its settlement, and Seller, at its own expense, shall defend or settle any and all infringement actions filed against Seller or Purchaser which involve the Products provided under this EPL Agreement and shall pay all costs, attorney fees, settlements, damages and judgment finally awarded against Purchaser.

10.2 If, in any such suit arising from such claim, the continued use of the Products for the purpose intended is enjoined or threatened to be enjoined by any court of competent jurisdiction, Seller shall, at its own expense: (i) first procure for Purchaser the right to continue using the Product, or upon failing to procure such right; (b) modify or replace the Product or components thereof with non-infringing Products so it becomes non-infringing while maintaining substantially similar functionality, or upon failing to secure either such right, (c) request Purchaser to return the infringing items to Seller and Seller shall refund the hardware purchase price and/or software license fees previously paid by Purchaser for the Products Purchaser may no longer use. Said refund shall be paid within ten (10) working days of notice to Purchaser to discontinue said use.

10.3 Seller shall have no indemnification obligations to Purchaser under this Article for any breach of the preceding warranties caused directly by: (i) infringement resulting from the combination or use of the Product with other items not provided by Seller; (ii) infringement resulting from material modification of the Product by someone other than Seller, its agents or subcontractors or Purchaser's employees who were working at Seller's direction; or (iii) infringement resulting from Purchaser's use of an allegedly infringing version of the Product if the alleged infringement would have been avoided by the use of a different version Seller made available to Purchaser at no cost to Purchaser, as long as the new or corrected version did not adversely affect the Purchaser's system's functionality.

ARTICLE 11 EMPLOYMENT STATUS

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

11.2 Seller represents that it is qualified to perform the duties to be performed under a supplement and/or purchase order and this EPL Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the required duties. 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.

ARTICLE 12 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS

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

ARTICLE 13 STAFFING; PROJECT MANAGEMENT; TRAINING, AND SERVICES

13.1 Seller will render all services under a supplement and/or purchase order in a professional and workmanlike manner. Seller guarantees that the personnel assigned to perform services pursuant to a supplement and/or purchase order will function in the capacity for which their services were acquired throughout the duration of the project as long as the personnel are employed by Seller, and any failure by Seller to so provide these persons shall entitle the Purchaser to terminate the supplement and/or purchase order for cause subject to the terms and conditions of Article 18.4 herein. Seller will, within ten (10) working days of Purchaser's request, replace any Seller personnel that are rendering services on-site at a Purchaser facility if Purchaser considers the personnel to be unacceptable and provides Seller with notice to that effect, provided that such replacement does not violate any law or governmental regulation applicable to such personnel replacement. Seller will not permanently divert any Seller personnel assigned to provide services under a supplement and/or purchase order from meeting work schedules developed and approved under the supplement and/or purchase order unless approved in writing by the Purchaser. In the event of Seller personnel loss or redirection, the services will be performed by Seller without interruption using other Seller personnel, and Seller shall report in required status reports its efforts and progress in finding replacements and the effect of the absence of those personnel. All substitute personnel assigned to the project shall have equal or greater ability, experience and qualifications than the departing personnel. If Purchaser reasonably determines that any Seller personnel providing services on-site does not possess the requisite skill sets to perform services for which he/she has been assigned, then upon Purchaser providing Seller with notice to that effect, Seller shall replace such Seller personnel.

13.2 Unless otherwise agreed to in a supplement and/or purchase order, in each instance in which Seller is providing Purchaser with services, Seller and Purchaser will develop a project plan that identifies each party's responsibilities for such services. The project plan will describe in detail the schedule for and the scope of services that Seller shall provide. Purchaser will establish the overall project direction, including assigning and managing the Purchaser's project personnel team. Seller shall designate and identify for Purchaser a Seller project manager to serve as an interface to Purchaser and to oversee and manage Seller's responsibilities in connection with each project plan. Seller's responsibilities include, without limitation, providing Purchaser with periodic status reports on the project. Purchaser must assign a project manager who

will assume responsibility for management of the project. If the parties do not develop a project plan in any instance, Seller shall nonetheless provide Purchaser with services on an as-directed basis.

13.3 When ordered by Purchaser, Seller agrees to provide Purchaser with consulting; implementation; training; technical support, and modification services pursuant to the requirements set forth in the supplement and/or purchase order. Seller agrees to provide, upon delivery, all user documentation and technical manuals needed to fully acquaint the user with operation of all of the Products.

ARTICLE 14 CHANGE ORDER RATE AND PROCEDURE

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

14.2 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 Purchaser nor Seller shall be obligated to execute such a change order; and if no such change order is executed, Seller shall not be obliged or authorized to perform services beyond the scope of the supplement and/or purchase order and the contract documents. All executed change orders shall be incorporated into previously defined deliverables.

14.3 With respect to any change orders issued in accordance with this Article, Seller shall be compensated for work performed under a change order according to the not-to-exceed hourly rates specified in the published EPL. Unless agreed to otherwise in a supplement and/or purchase order, Seller agrees that each change order rate shall be a “fully loaded rate”, that is, it includes the cost of travel expenses, per diem, and all other expenses and incidentals incurred by Seller in the performance of the change order. 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 the supplement and/or purchase order.

14.4 Upon agreement of Seller and the Purchaser to enter into a change order, they 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 negotiated, fixed number of professional services hours that will be necessary to implement the work. 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 Seller to complete the work required by that change order. It is understood, however, that Seller will not be financially responsible for delays caused directly by Purchaser.

The project work plan will be revised as necessary in accordance with Article 14.6 herein.

14.5 Seller will include in the progress reports delivered under the supplement and/or purchase order, the status of work performed under all then current change orders.

14.6 In the event Seller and the Purchaser enter into a change order which increases or decreases the time required for the performance of any part of the work under the supplement and/or purchase order, 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.

14.7 The Purchaser shall promptly review all revised project work plans submitted under the supplement and/or purchase order, and shall notify 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 Seller or within such other time period as may be agreed to by the parties.

ARTICLE 15 WARRANTY AND MAINTENANCE REQUIREMENTS

15.1 When a governmental agency or institution decides to procure any maintenance services from Seller, the agency/institution shall execute a supplement and/or purchase order to be signed by Seller and an authorized representative of the Purchaser. The supplement and/or purchase order shall set forth the equipment to be maintained, the prices for the maintenance service and the length of the desired maintenance term. All supplements and/or purchase orders shall be governed by, and incorporate by reference, the terms and conditions of this EPL Agreement.

15.2 Seller agrees to provide all travel, labor and material/parts required to maintain the equipment listed in the supplement and/or purchase order during the warranty period and during any post warranty maintenance period. Unless different response and turnaround times and a different type and time of coverage are agreed upon in a supplement and/or purchase order, the response times, turnaround times and type and time of coverage shall be as set forth in this Article. Further, if maintenance is ordered by Purchaser, Seller warrants that it will provide services to the Purchaser as set out herein in Articles 15.3 through 15.10.

15.3 Seller shall provide all routine and emergency maintenance necessary to maintain the equipment listed in the supplement and/or purchase order in good operating condition. Maintenance shall cover the entire system including, but not limited to, the switching system, electronic station instruments, and miscellaneous equipment. System damage as a result of lightning or any other foreign voltage shall not be excluded from coverage as acts of God.

15.4 Seller agrees to maintain in house, most frequently used supply replacement parts needed to service the equipment, placing special emphasis on critical components. Replacement and upgrade parts will be new or refurbished and warranted as new, 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 the Purchaser at the time of replacement, and title to parts removed for replacement will, at the time of replacement, pass to Seller.

15.5 The Seller agrees to provide routine maintenance, which includes but is not limited to, manufacturer approved software and firmware upgrades, at least once a quarter, based on the specific needs of the equipment during normal business hours. Seller shall respond on-site for routine service requests no later than the next business day. Routine maintenance may be performed concurrently with emergency maintenance activities. Seller must record all activities related to routine maintenance on a log to be retained on-site.

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

15.7 Seller shall accept the equipment as qualifying for maintenance coverage without having to re-certify the equipment, as long as Purchaser, on supplements and/or purchase orders, purchases a maintenance contract within ninety (90) days of the warranty expiration.

15.8 Sixty (60) days prior to the expiration of the maintenance services provided under the supplement and/or purchase order, Seller shall notify the Purchaser of the impending expiration and the Purchaser shall have thirty (30) days in which to notify Seller of its intention to either renew or cancel any further maintenance. Unless a different cap on maintenance costs is agreed upon by the Purchaser and Seller, Seller guarantees that the cost for the maintenance services shall not increase by more than five percent (5%) per year.

ARTICLE 16 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS

16.1 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 any given Purchaser project. The Purchaser is only required to negotiate with Seller, as Seller's commitments are binding on all proposed contractors, third parties, and subcontractors.

16.2 Neither party to a supplement and/or purchase order and this EPL Agreement may assign or otherwise transfer the supplement and/or purchase order and this EPL 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. The supplement

and/or purchase order and this EPL Agreement shall be binding upon the parties' respective successors and assigns.

16.3 Seller must obtain the written approval of Purchaser before subcontracting any portion of the supplement and/or purchase order and this EPL 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 the supplement and/or purchase order. All subcontracts shall incorporate the terms of the supplement and/or purchase order and this EPL Agreement and shall be subject to the terms and conditions of same and to any conditions of approval that Purchaser may deem necessary.

16.4 Seller represents and warrants that any subcontract agreement Seller enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Purchaser, and that the subcontractor acknowledges that no privity of contract exists between the Purchaser and the subcontractor and that Seller is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with Seller. Seller shall indemnify and hold harmless the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses 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.

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

ARTICLE 17 AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of Purchaser to proceed under this EPL Agreement and the supplement and/or purchase order 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 EPL Agreement. If the funds anticipated for the fulfillment of this EPL Agreement and the supplement and/or purchase order are, at any time, 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 EPL Agreement, Purchaser shall have the right to immediately terminate the supplement and/or purchase order and this EPL Agreement as to itself only, 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 the supplement and/or purchase order and this EPL Agreement. Any payment due Seller for services rendered by Seller prior to termination and received by Purchaser shall be paid.

ARTICLE 18 TERMINATION

18.1 Termination Upon Mutual Agreement: A supplement and/or purchase order may be terminated in whole or in part upon the mutual written agreement of Seller and the Purchaser.

18.2 Termination Due To Bankruptcy: Should Seller become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or execute an assignment for the benefit of its creditors, the Purchaser may, upon the giving of thirty (30) days prior written notice, terminate a supplement and/or purchase order and this EPL Agreement without the assessment of any penalties, solely as between those two parties.

18.3 Termination Other Than For Cause: A Purchaser may terminate a supplement and/or purchase order and this EPL Agreement as to itself only, in whole or in part and without the assessment of any penalties, for any reason by giving thirty (30) calendar days written notice specifying the effective date thereof to Seller. Any payment due Seller for services rendered by Seller prior to termination and received by Purchaser shall be paid.

18.4 Termination For Cause: Either Purchaser or Seller may terminate a supplement and/or purchase order and this EPL Agreement solely as between themselves and without the assessment of any penalties upon a material breach by the other party upon thirty (30) calendar days prior written notice unless the defaulting party cures such breach within such thirty (30) calendar-day period. Provided that, if the Purchaser terminates a supplement and/or purchase order and this EPL Agreement solely as between those two parties because of Seller's inability to cure material defects after notice and opportunity to cure as provided for in Article 7, the Purchaser may terminate the supplement and/or purchase order and this EPL Agreement solely as between those two parties without also providing the notice and opportunity to cure required in this Article. The non-defaulting party may also pursue any remedy available to it in law or in equity.

18.5 Termination of EPL Agreement: ITS may terminate this EPL Agreement for any reason without the assessment of any penalties after giving thirty (30) calendar days written notice specifying the effective date thereof to Seller, but any supplement and/or purchase order entered into prior to the termination date of this EPL Agreement shall survive the termination of the EPL Agreement. The terms of this EPL Agreement shall survive its termination/expiration with respect to any un-expired supplements/purchase orders.

18.6 Refund Of Unexpended Fees: Upon termination of a supplement and/or purchase order, Seller shall refund any and all applicable unexpended pro-rated maintenance/service or other fees previously paid by the Purchaser.

ARTICLE 19 GOVERNING LAW

This EPL Agreement and each supplement and/or purchase order shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. Seller expressly agrees that under no circumstances shall Purchaser or ITS be obligated to pay an attorneys fee, prejudgment interest or the cost of legal action to Seller, unless so ordered by a court of final appeal. Further, nothing in this EPL Agreement shall affect any statutory rights Purchaser may have that cannot be waived or limited by contract.

ARTICLE 20 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 EPL Agreement. A waiver by either party, 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 that party.

ARTICLE 21 SEVERABILITY

If any term or provision of a supplement and/or purchase order or this EPL 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 the supplement and/or purchase order or this EPL Agreement shall be valid and enforceable to the fullest extent permitted by law provided that the Purchaser's purpose for entering into the supplement and/or purchase order can be fully achieved by the remaining portions of the supplement and/or purchase order that have not been severed.

ARTICLE 22 CAPTIONS

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

ARTICLE 23 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 the supplement and/or purchase order and this EPL Agreement. Seller's obligations as set forth in this Article are expressly conditioned upon the following: (a) that Purchaser shall notify Seller of any claim or suit of which Purchaser has knowledge, (b) that Seller shall, to the extent authorized by Mississippi law, have sole control of the defense or settlement of any claim or suit, and (c) Purchaser shall, at

Seller's expense, cooperate with Seller by supplying information, to facilitate the settlement or defense of any such claim or suit.

ARTICLE 24 THIRD PARTY ACTION NOTIFICATION

Seller shall notify the State 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 a supplement/purchase order or this EPL Agreement and/or which may affect the Seller's performance under the supplement/purchase order or this EPL Agreement. Failure of the Seller to provide such written notice to the State shall be considered a material breach of the supplement/purchase order and this EPL Agreement and the State 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 25 AUTHORITY TO CONTRACT

Seller warrants that it is a validly organized business with valid authority to enter into this EPL Agreement; that entry into and performance under this EPL 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 EPL 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 a supplement and/or purchase order and this EPL Agreement.

ARTICLE 26 NOTICE

Any notice required or permitted to be given under this EPL 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 usual business address. ITS' address for notice is: Craig P. Orgeron, Ph.D., Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. Seller's address for notice is: **INSERT NAME, TITLE, & ADDRESS OF VENDOR PERSON FOR NOTICE**. 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 27 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 EPL Agreement and the supplement and/or purchase order. The Purchaser, ITS, any state or federal agency authorized to audit Purchaser, and/or any of their duly authorized representatives, shall, at their expense and upon prior reasonable written notice to Seller, have access to this EPL Agreement, supplements/purchase orders, and to any of Seller's proposals, books, documents,

papers and/or records that are pertinent to the supplement/purchase order and this EPL Agreement to make copies, audits, 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 EPL Agreement and the supplement and/or purchase order shall be retained by Seller for three (3) years from the date of receipt of final payment under this EPL Agreement and the supplement and/or purchase order. 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. Notwithstanding the preceding, in no event will Seller disclose its confidential or proprietary cost and pricing data under this Article.

ARTICLE 28 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 liability insurance. Seller will, upon request, furnish Purchaser with a certificate of conformity providing the aforesaid coverage.

ARTICLE 29 DISPUTES

29.1 Should disputes arise with respect to the supplement and/or purchase order or this EPL Agreement, Seller and Purchaser agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes. Seller agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under the supplement/purchase order and/or this EPL Agreement. Should Seller fail to continue without delay to perform its responsibilities under the supplement/purchase order and/or this EPL Agreement in the accomplishment of all work, any additional costs incurred by Seller or Purchaser as a result of such failure to proceed shall be borne by Seller and Seller shall make no claim against Purchaser for such costs.

29.2 If Seller and Purchaser cannot resolve a dispute within ten (10) calendar days following written notification by either party of the existence of said dispute, then the following procedure shall apply:

A. The parties agree to resolve such matters through submission of their dispute to the Executive Director of ITS, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the parties within ten (10) calendar days after presentation of such dispute for his/her decision.

B. Purchaser may withhold payments on disputed items pending resolution of the dispute. The withholding of such payments shall not constitute cause for termination or suspension of the supplement/purchase order and/or this EPL Agreement by Seller.

C. The Executive Director's decision shall not be a final determination of the parties rights and obligations under the terms of this EPL Agreement. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.

ARTICLE 30 COMPLIANCE WITH LAWS

Seller shall comply with, and all activities under a supplement and/or purchase order and this EPL 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 the supplement and/or purchase order and this EPL Agreement because of race, creed, color, sex, age, national origin or disability.

ARTICLE 31 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 the supplement and/or purchase order and this EPL Agreement as to itself only.

ARTICLE 32 SOVEREIGN IMMUNITY

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

ARTICLE 33 CONFIDENTIAL INFORMATION

33.1 Seller shall treat all Purchaser data and information to which it has access by its performance under a supplement and/or purchase order and this EPL 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 the supplement and/or purchase order or this EPL Agreement and shall continue in full force and effect and shall be binding upon Seller and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in the supplement and/or purchase order or this EPL Agreement on behalf of, or under the rights of the Seller following any termination or completion of the supplement and/or purchase order or this EPL Agreement.

33.2 The foregoing obligations do not apply to information which: (a) is or becomes known by the Seller without an obligation to maintain its confidentiality; (b) is or becomes generally known to the public through no act or omission of Seller, or (c) is independently developed by Seller without use of confidential or proprietary information.

33.3 With the exception of any attached exhibits which are labeled as "confidential", the parties understand and agree that the supplement/purchase order and this EPL Agreement, including any amendments and/or change orders thereto, do 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. It is understood by Seller that copies of this executed EPL Agreement may be distributed to the governmental agencies, governing authorities, and educational institutions of the State of Mississippi.

ARTICLE 34 EFFECT OF SIGNATURE

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

ARTICLE 35 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS

The Purchaser shall own all files, work papers, documentation, and/or other material, electronic or otherwise, collected and created in connection with work performed under a supplement and/or purchase order, whether completed or in progress, except for: (a) Seller's internal administrative and quality assurance files and internal project correspondence; (b) documents, objects or things owned by Seller and pre-existing the work performed under the supplement and/or purchase order, and (c) documents, objects or things in which Seller has no right to transfer ownership. As to such documents, objects and things, Seller shall convey such right or interest to the extent allowed by law. Seller shall deliver such documents and work papers to Purchaser upon termination or completion of the supplement and/or purchase order. The foregoing notwithstanding, Seller shall be entitled to retain a set of such work papers only after receiving written permission from the Purchaser.

ARTICLE 36 STATE PROPERTY

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

ARTICLE 37 NEWS RELEASES

News releases pertaining to a supplement and/or purchase order or this EPL Agreement or the products, study, data, or project to which it relates will not be made without prior written Purchaser approval, and then only in accordance with the explicit written instructions from Purchaser.

ARTICLE 38 SURVIVAL

Articles 9, 10, 15, 19, 23, 27, 32, 33, 35, 41, and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of the supplement and/or purchase order or this EPL Agreement.

ARTICLE 39 ENTIRE AGREEMENT

39.1 This EPL 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 “shrink-wrap”, “clickwrap”, or “browse-wrap” license included in any package, media or electronic or online version of Seller-furnished software. The published EPL, supplement and/or purchase order, RFP No. 3744, and Seller’s Proposal submitted in response to RFP No. 3744 are hereby incorporated into and made a part of this EPL Agreement as far as the individual Purchaser is concerned.

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

- A.** The Exception Summary as agreed to by ITS and Seller;
- B.** This EPL Agreement signed by Seller and ITS;
- C.** The published EPL as approved by Seller;
- D.** RFP No. 3744, including all addenda;
- E.** Official written correspondence from ITS to Sellers;
- F.** Official written correspondence from Sellers to ITS when clarifying Seller’s proposal;
- G.** Seller’s Proposal, as accepted by ITS, in response to RFP No. 3744, and
- H.** The supplement and/or purchase order signed by Seller and Purchaser.

39.3 The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by 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. The Exception Summary”) and the lowest document is listed last (“H. The supplement and/or purchase order”).

ARTICLE 40 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 EPL 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 EPL Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

ARTICLE 41 NON-SOLICITATION OF EMPLOYEES

Seller and Purchaser agree not to employ or to solicit for employment, directly or indirectly, each other's employees until at least one (1) year after the expiration/termination of the supplement and/or purchase order unless mutually agreed to the contrary in writing by the Purchaser and 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 42 SERVICES

When ordered by Purchaser, Seller agrees to provide consulting, training and technical support services pursuant to the requirements set forth in the supplement/purchase order, and/or RFP No. 3744 and the published EPL.

ARTICLE 43 COMPLIANCE WITH ENTERPRISE SECURITY POLICY

Seller and Purchaser understand and agree that all products and services provided by Seller under this EPL 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 EPL Agreement and require the Seller to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

ARTICLE 44 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 EPL Agreement shall be posted to the State of Mississippi's accountability

website at: <http://www.transparency.mississippi.gov>. Prior to ITS posting the EPL Agreement to the website, any attached exhibits which contain trade secrets or other proprietary information and are labeled as “confidential” will be redacted by ITS.

ARTICLE 45 EPL ADMINISTRATIVE FEES

Within fifteen (15) calendar days following the completion of each quarter, Seller shall submit its Marketing/Sales Report identifying all Express Products Lists (“EPL”) sales to ITS. Upon receipt of same, ITS will review the Marketing/Sales Report and assess a one percent (1%) administrative fee based on the total amount of sales that are reported. ITS will thereafter invoice Seller for their administrative fees, with said invoice being mailed to the “bill-to” address provided by Seller. Seller understands and agrees that the EPL administrative fee is the responsibility of the Seller and is not to be charged to the Purchaser in the form of a separate line item. Seller agrees to remit its payment of the administrative fee to ITS each quarter within thirty (30) calendar days of the invoice date (hereinafter referred to as “Due Date”). It is understood and agreed by the parties that in the event Seller fails to submit its Marketing/Sales Report within fifteen (15) calendar days following completion of a quarter or in the event Seller fails to remit its payment of the quarterly administrative fees by the Due Date, Seller will be immediately suspended from participation in the EPL until such time as the Marketing/Sales Report is received by ITS and all outstanding administrative fees have been paid in full.

ARTICLE 46 FORCE MAJEURE

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

ARTICLE 47 LIABILITY ISSUES

Unless jointly agreed otherwise in writing, Seller’s liability shall not exceed twice the total amount paid by Purchaser to Seller under the applicable supplement and/or purchase order. In no event will Seller be liable to Purchaser for special, indirect, consequential or incidental damages including lost profits, lost savings or lost revenues of any kind unless Seller was advised of the possibility of such loss or damage or unless such loss or damage could have been reasonably foreseen. Excluded from this or any liability limitation are claims related to fraud; bad faith; infringement issues; bodily

injury; death; physical damage to tangible personal property and real property, and the intentional and willful misconduct or gross negligent acts of Seller. The language contained herein tending to limit the liability of the Seller will apply to Purchaser to the extent it is permitted and not prohibited by the laws or constitution of Mississippi. Further, the parties understand and agree that the Seller is precluded from relying on any contractual damages limitation language within this article where the Seller acts fraudulently or in bad faith.

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

**State of Mississippi, Department of
Information Technology Services, on
behalf of the agencies and institutions
of the State of Mississippi**

INSERT VENDOR NAME

By: _____

**Authorized Signature
Signature**

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

Title: Executive Director

Date: _____

By: _____

Authorized

Printed Name: _____

Title: _____

Date: _____

APPENDIX B
MASTER PURCHASE AGREEMENT
ARRA Version

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**.

Due to the need for uniformity among EPL Vendors, the terms of the Master Purchase Agreement are non-negotiable.

**ARRA Version
PROJECT 40729
EXPRESS PRODUCTS LIST (“EPL”)
MASTER PURCHASE & MAINTENANCE AGREEMENT FOR TWO-WAY RADIOS
BETWEEN
INSERT VENDOR NAME
AND
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES
AS CONTRACTING AGENT FOR THE
AGENCIES, INSTITUTIONS AND GOVERNING AUTHORITIES OF THE
STATE OF MISSISSIPPI**

This Master Purchase and Maintenance Agreement for Two-Way radios and accessories (hereinafter referred to as “EPL Agreement”) is entered into by and between **INSERT VENDOR NAME**, a **INSERT STATE OF INCORPORATION** corporation having its principal offices at **INSERT VENDOR STREET ADDRESS** (hereinafter referred to as “Seller”) and the 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 governmental agencies, governing authorities, and educational institutions of the State of Mississippi (hereinafter referred to as “Purchaser”). ITS and Purchaser are sometimes collectively referred to herein as “State”.

WHEREAS, Seller is an authorized dealer of certain two-way radios and accessories; and

WHEREAS, ITS, desires to acquire an Express Products List (“EPL”) Agreement containing the terms and conditions which will govern any orders placed by a Purchaser during the term of this EPL Agreement for the acquisition, installation and maintenance of two-way radios and accessories (hereinafter referred to as “Products”) and services from Seller that were listed in the published EPL as a result of Request for Proposals (“RFP”) Number 3744;

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

ARTICLE 1 TERM OF AGREEMENT

Unless terminated as prescribed elsewhere herein, this EPL Agreement will become effective on the date it is signed by all parties (the “Effective Date”) and will continue in

effect through May 31, 2017, or until all warranties provided by Seller to Purchaser have expired, whichever occurs last. At the end of the initial term, the EPL Agreement may, upon the written agreement of the parties, be renewed for additional terms, the length of which will be agreed upon by the parties. Sixty (60) days prior to the expiration of the initial or any renewal term of this EPL Agreement, Seller shall notify ITS in writing of the impending expiration and thereafter ITS shall notify Seller of its intent to either renew or cancel the EPL Agreement.

ARTICLE 2 MODIFICATION OR RENEGOTIATION

This EPL Agreement and any supplement and/or purchase order thereto 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 EPL Agreement and pertinent supplement and/or purchase order if federal and/or state revisions of any applicable laws or regulations make changes in this EPL Agreement and any pertinent supplement and/or purchase order necessary.

ARTICLE 3 INCLUDED PARTIES

Seller will accept orders from and furnish the Products and services under this EPL Agreement to any governmental agency, governing authority or educational institution within Mississippi authorized to use the published EPL, in line with ITS policies and procedures, at prices not to exceed those prices specified in the published EPL.

ARTICLE 4 ADDITIONAL TERMS AND CONDITIONS

All provisions in this EPL Agreement are in addition to the requirements of RFP No. 3744 and the published EPL, which are both incorporated into and made a part of this EPL Agreement.

ARTICLE 5 ORDERS

5.1 The State does not guarantee that it will purchase any minimum amount under this EPL Agreement.

5.2 When a Purchaser decides to procure any Products and/or services from Seller, the Purchaser shall execute a supplement and/or purchase order to be signed by Seller and an authorized representative of the Purchaser. The supplement and/or purchase order shall set forth the Products/services to be procured; the prices for same; the warranty period, the specific details of the transaction, including but not limited to the equipment to be maintained, the maintenance plan selected, the prices for the maintenance service and the length of the desired maintenance term, if maintenance is applicable, as well as any additional terms and conditions agreed to by the parties. All supplements and/or purchase orders shall be governed by, and incorporate by

reference, the terms and conditions of this EPL Agreement. The terms and conditions of this EPL Agreement shall supersede any conflicting terms and conditions set forth in any document provided by Seller or its subcontractors. The parties agree that the Purchaser has the right to adjust the quantities of purchases based upon the availability of funding or as determined necessary by the Purchaser.

5.3 Seller guarantees its pricing for the duration of each EPL cycle in accordance with the Update provisions stated in the RFP. In the event there is a national price decrease of the Products proposed during that time, Seller agrees to extend the new, lower pricing to Purchaser.

5.4 The parties acknowledge and agree that Purchaser may, from time to time, order and receive Products from Seller that it determines upon initiating implementation, are not all needed to complete a project order. In such cases, the parties agree to arrange returns on a mutually satisfactory basis, provided the Products ordered maintain their packaging and returns are initiated by Purchaser within thirty (30) days of receipt of the Products from Seller, subject to return authorization by Seller.

ARTICLE 6 METHOD OF PAYMENT

6.1 Once the Products have been accepted by Purchaser as prescribed in Article 7 herein or there has been lack of notice to the contrary, Seller shall submit an invoice for the cost and shall certify that the billing is true and correct. Services will be invoiced as they are rendered. Seller shall submit invoices and supporting documentation electronically during the term of this EPL 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. All payments shall be in United States currency. Payments by state agencies using the Statewide Automated Accounting System ("SAAS") shall be made and remittance information provided electronically as directed by the State. These payments by SAAS agencies shall be deposited into the bank account of the Seller's choice. Seller understands and agrees that Purchaser is exempt from the payment of taxes. No payment, including final payment, shall be construed as acceptance of defective Products or incomplete work, and Seller shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the Article herein titled "Entire Agreement".

6.2 If payment of undisputed amounts is not made to Seller within forty-five (45) days of Purchaser's receipt of the invoice, Purchaser shall be liable to Seller for interest at a

rate of one and one-half percent (1 ½%) per month (or such lesser rate as may be the maximum permissible rate under the law) on the unpaid balance from the expiration of such forty-five (45) day period until such time as payment is made. This provision for late payments shall apply only to undisputed amounts for which payment has been authorized.

6.3 Acceptance by Seller of the last payment from the Purchaser under a supplement and/or purchase order shall operate as a release of all claims against the State by Seller and any subcontractors or other persons supplying labor or materials used in the performance of any work under a supplement and/or purchase order.

ARTICLE 7 DELIVERY, RISK OF LOSS, INSTALLATION, AND ACCEPTANCE

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

7.2 Seller shall assume and shall bear the entire risk of loss and damage to the Products from any cause whatsoever while in transit and at all times throughout its possession thereof, with risk of loss passing to Purchaser upon installation.

7.3 If installation by Seller is required, Seller shall complete installation of the Products pursuant to the requirements of the Purchaser based on the guidelines specified in RFP No. 3744.

7.4 If installation by Seller is required, Seller shall be responsible for installing all Products in accordance with all state, federal and industry standards for such items. Further, Seller acknowledges that installation of the Products shall be accomplished with minimal interruption of Purchaser's normal day to day operations.

7.5 Seller warrants that all Products shall be properly delivered, installed and integrated, if necessary, for acceptance testing within the scheduling deadlines set forth by Purchaser as the site is deemed ready for installation. If installation by Seller is required, Seller shall provide Purchaser with an installation schedule identifying the date, time and location within the scheduling deadlines agreed to by the parties.

7.6 Unless a different acceptance period is agreed upon by Seller and the Purchaser and specified in the supplement and/or purchase order, Purchaser shall accept or reject the Products provided by Seller after a thirty (30) calendar day testing period utilizing testing criteria developed jointly by the parties. During the acceptance period, Purchaser shall have the opportunity to evaluate and test the Products to confirm that they perform without any defects and perform pursuant to the specifications set forth in RFP No.

3744 and the published EPL. Purchaser may be deemed to have accepted the Product at the end of the thirty (30) day period, unless Purchaser notifies Seller that the Product fails to perform as stated herein.

7.7 In the event the Product fails to perform as stated in Article 7.6 herein, Purchaser shall notify Seller. Unless a different period of time is agreed upon by the Seller and Purchaser and specified in the supplement and/or purchase order, Seller shall, within four (4) working days, correct the defects identified by Purchaser or replace the defective Product. If Seller is unable to correct the defects or replace the defective Product, Purchaser reserves the right to return the Product to Seller at Seller's expense; to cancel the supplement and/or purchase order, and to cancel this EPL Agreement as to itself only.

7.8 Upon receipt of a corrected or replaced Product, Purchaser shall have another acceptance period as set forth in Article 7.6 herein, in which to reevaluate/retest such Product.

7.9 If, after Seller has tendered to Purchaser Seller's attempt to correct the Product, Purchaser again determines the Product to have a defect, Purchaser may take such actions as it deems appropriate, including but not limited to, either (i) notifying Seller that it has elected to keep the Product despite such defects; (ii) returning the Product to Seller and providing Seller with an opportunity to deliver a substitute Product acceptable to Purchaser within the time period specified by Purchaser, or (iii) returning the Product to Seller at Seller's expense and canceling the supplement and/or purchase order pursuant to Article 18.4 herein.

7.10 It is understood by the Seller that Purchaser will not sign the acceptance document until the following conditions have been met: (a) the network and equipment have operated for fourteen (14) consecutive days of operation with no problems, however, should the fourteen (14) day period be interrupted as a direct result of matters beyond Seller's reasonable control, the parties agree that when the interruption is cleared, rather than re-starting such fourteen (14) day period, Purchaser shall have however many days of the fourteen (14) day period that are left in which to determine whether the network and equipment will operate without problems; (b) the quality and level of transmission from the Purchaser's equipment back to the DEMARC is consistent with the published specifications for the system, however, problems that arise on the Central Office side of the DEMARC are Purchaser's responsibility to resolve with its Service Provider, though Seller will work with the Purchaser and its Service Provider to determine the cause of the problem; (c) the agreed upon training program for system administrators and station user personnel has been satisfactorily

completed, and (d) the system documentation is complete and on file at Purchaser's offices.

7.11 During warranty and post-warranty services, Seller shall be responsible for damage to Purchaser's Products from power surges, lightning or any other foreign voltage. None of these events shall be excluded from coverage as acts of God.

ARTICLE 8 TITLE TO EQUIPMENT

Title to the hardware Products provided under this EPL Agreement shall pass to Purchaser upon its acceptance of the hardware Product.

ARTICLE 9 WARRANTIES

9.1 Seller represents and warrants that it has the right to sell the Products provided under this EPL Agreement.

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

9.3 Seller represents and warrants that unless otherwise specified in RFP No. 3744 and/or the published EPL, each Product delivered for new installations shall be delivered new and not as a "used, substituted, rebuilt, refurbished or reinstalled" Product. It is understood that parts supplied by Seller during maintenance may be new or refurbished and warranted as new.

9.4 Seller represents and warrants that it has and will obtain and pass through to Purchaser any and all warranties obtained or available from the manufacturer/licensor of the Product.

9.5 Seller represents and warrants that all hardware Products provided pursuant to this EPL Agreement shall, for the warranty period specified in the supplement and/or purchase order or in the published EPL, whichever is longer, be free from defects in material, manufacture, design and workmanship. Seller's obligation pursuant to this warranty shall include, but is not limited to, the repair or replacement of the hardware Product, or the redoing of the faulty installation, at no cost to Purchaser. Response times and maintenance requirements during the warranty period shall be as specified in Article 15 herein. In the event Seller can not repair or replace the hardware Product during the warranty period, Seller shall refund the purchase price of the hardware Product, and Purchaser shall have the right to terminate the supplement and/or purchase order and this EPL Agreement in whole or in part, solely as between those

two parties. Purchaser's rights hereunder are in addition to any other rights Purchaser may have.

9.6 Seller represents and warrants that all Products provided by Seller shall meet or exceed the minimum specifications set forth in RFP No. 3744 and the published EPL.

9.7 Seller represents and warrants that all software Products provided pursuant to this EPL Agreement shall, for the warranty period specified in the supplement and/or purchase order or in the published EPL, whichever is longer, be free from reproducible defects and provide Purchaser complete functionality necessary for the operation of the system. Seller's obligation pursuant to this warranty shall include, but is not limited to, the repair of all reproducible defects or the replacement of the software Product, at no cost to Purchaser. In the event Seller is unable to repair or replace the software Product during the warranty period, Purchaser shall be entitled to a full refund of the price paid for the defective software Product, and Purchaser shall have the right to terminate the supplement and/or purchase order and this EPL Agreement in whole or in part, solely as between those two parties. Purchaser's rights hereunder are in addition to any other rights Purchaser may have.

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

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

9.10 Seller represents and warrants that the Products, as delivered to Purchaser, do 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.

9.11 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.

9.12 Seller understands and agrees that some, all or none of the purchases made under this EPL Agreement may be funded by the American Recovery and Reinvestment Act of 2009 (hereinafter referred to as "ARRA") and, as such, represents and warrants that for any ARRA purchases, it will comply with the requirements of ARRA as set forth in Exhibit A, which is attached hereto and incorporated herein by reference and will maintain adequate records to verify its full compliance with those requirements.

ARTICLE 10 INFRINGEMENT INDEMNIFICATION

10.1 Seller represents and warrants to the best of its knowledge that neither the Products, replacement parts, their 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. Purchaser shall notify Seller promptly in writing of any infringement claim of which it has knowledge, and shall cooperate with Seller in the defense of such claim by supplying information, all at Seller's expense. Seller shall, to the extent authorized by Mississippi law, have sole control of the defense of such suit and all negotiations for its settlement, and Seller, at its own expense, shall defend or settle any and all infringement actions filed against Seller or Purchaser which involve the Products provided under this EPL Agreement and shall pay all costs, attorney fees, settlements, damages and judgment finally awarded against Purchaser.

10.2 If, in any such suit arising from such claim, the continued use of the Products for the purpose intended is enjoined or threatened to be enjoined by any court of competent jurisdiction, Seller shall, at its own expense: (i) first procure for Purchaser the right to continue using the Product, or upon failing to procure such right; (b) modify or replace the Product or components thereof with non-infringing Products so it becomes non-infringing while maintaining substantially similar functionality, or upon failing to secure either such right, (c) request Purchaser to return the infringing items to Seller and Seller shall refund the hardware purchase price and/or software license fees previously paid by Purchaser for the Products Purchaser may no longer use. Said refund shall be paid within ten (10) working days of notice to Purchaser to discontinue said use.

10.3 Seller shall have no indemnification obligations to Purchaser under this Article for any breach of the preceding warranties caused directly by: (i) infringement resulting from the combination or use of the Product with other items not provided by Seller; (ii) infringement resulting from material modification of the Product by someone other than Seller, its agents or subcontractors or Purchaser's employees who were working at Seller's direction; or (iii) infringement resulting from Purchaser's use of an allegedly infringing version of the Product if the alleged infringement would have been avoided by the use of a different version Seller made available to Purchaser at no cost to Purchaser, as long as the new or corrected version did not adversely affect the Purchaser's system's functionality.

ARTICLE 11 EMPLOYMENT STATUS

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

11.2 Seller represents that it is qualified to perform the duties to be performed under a supplement and/or purchase order and this EPL Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to

perform the required duties. 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.

ARTICLE 12 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS

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

ARTICLE 13 STAFFING; PROJECT MANAGEMENT; TRAINING, AND SERVICES

13.1 Seller will render all services under a supplement and/or purchase order in a professional and workmanlike manner. Seller guarantees that the personnel assigned to perform services pursuant to a supplement and/or purchase order will function in the capacity for which their services were acquired throughout the duration of the project as long as the personnel are employed by Seller, and any failure by Seller to so provide these persons shall entitle the Purchaser to terminate the supplement and/or purchase order for cause subject to the terms and conditions of Article 18.4 herein. Seller will, within ten (10) working days of Purchaser's request, replace any Seller personnel that are rendering services on-site at a Purchaser facility if Purchaser considers the personnel to be unacceptable and provides Seller with notice to that effect, provided that such replacement does not violate any law or governmental regulation applicable to such personnel replacement. Seller will not permanently divert any Seller personnel assigned to provide services under a supplement and/or purchase order from meeting work schedules developed and approved under the supplement and/or purchase order unless approved in writing by the Purchaser. In the event of Seller personnel loss or redirection, the services will be performed by Seller without interruption using other Seller personnel, and Seller shall report in required status reports its efforts and progress in finding replacements and the effect of the absence of those personnel. All substitute personnel assigned to the project shall have equal or greater ability, experience and qualifications than the departing personnel. If Purchaser reasonably determines that any Seller personnel providing services on-site does not possess the requisite skill sets to perform services for which he/she has been assigned, then upon

Purchaser providing Seller with notice to that effect, Seller shall replace such Seller personnel.

13.2 Unless otherwise agreed to in a supplement and/or purchase order, in each instance in which Seller is providing Purchaser with services, Seller and Purchaser will develop a project plan that identifies each party's responsibilities for such services. The project plan will describe in detail the schedule for and the scope of services that Seller shall provide. Purchaser will establish the overall project direction, including assigning and managing the Purchaser's project personnel team. Seller shall designate and identify for Purchaser a Seller project manager to serve as an interface to Purchaser and to oversee and manage Seller's responsibilities in connection with each project plan. Seller's responsibilities include, without limitation, providing Purchaser with periodic status reports on the project. Purchaser must assign a project manager who will assume responsibility for management of the project. If the parties do not develop a project plan in any instance, Seller shall nonetheless provide Purchaser with services on an as-directed basis.

13.3 When ordered by Purchaser, Seller agrees to provide Purchaser with consulting; implementation; training; technical support, and modification services pursuant to the requirements set forth in the supplement and/or purchase order. Seller agrees to provide, upon delivery, all user documentation and technical manuals needed to fully acquaint the user with operation of all of the Products.

ARTICLE 14 CHANGE ORDER RATE AND PROCEDURE

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

14.2 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 Purchaser nor Seller shall be obligated to execute such a change order; and if no such change order is executed, Seller shall not be obliged or authorized to perform services beyond the scope of the supplement and/or purchase order and the contract documents. All executed change orders shall be incorporated into previously defined deliverables.

14.3 With respect to any change orders issued in accordance with this Article, Seller shall be compensated for work performed under a change order according to the not-to-

exceed hourly rates specified in the published EPL. Unless agreed to otherwise in a supplement and/or purchase order, Seller agrees that each change order rate shall be a “fully loaded rate”, that is, it includes the cost of travel expenses, per diem, and all other expenses and incidentals incurred by Seller in the performance of the change order. 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 the supplement and/or purchase order.

14.4 Upon agreement of Seller and the Purchaser to enter into a change order, they 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 negotiated, fixed number of professional services hours that will be necessary to implement the work. 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 Seller to complete the work required by that change order. It is understood, however, that Seller will not be financially responsible for delays caused directly by Purchaser. The project work plan will be revised as necessary in accordance with Article 14.6 herein.

14.5 Seller will include in the progress reports delivered under the supplement and/or purchase order, the status of work performed under all then current change orders.

14.6 In the event Seller and the Purchaser enter into a change order which increases or decreases the time required for the performance of any part of the work under the supplement and/or purchase order, 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.

14.7 The Purchaser shall promptly review all revised project work plans submitted under the supplement and/or purchase order, and shall notify 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 Seller or within such other time period as may be agreed to by the parties.

ARTICLE 15 WARRANTY AND MAINTENANCE REQUIREMENTS

15.1 When a governmental agency or institution decides to procure any maintenance services from Seller, the agency/institution shall execute a supplement and/or purchase order to be signed by Seller and an authorized representative of the Purchaser. The

supplement and/or purchase order shall set forth the equipment to be maintained, the prices for the maintenance service and the length of the desired maintenance term. All supplements and/or purchase orders shall be governed by, and incorporate by reference, the terms and conditions of this EPL Agreement.

15.2 Seller agrees to provide all travel, labor and material/parts required to maintain the equipment listed in the supplement and/or purchase order during the warranty period and during any post warranty maintenance period. Unless different response and turnaround times and a different type and time of coverage are agreed upon in a supplement and/or purchase order, the response times, turnaround times and type and time of coverage shall be as set forth in this Article. Further, if maintenance is ordered by Purchaser, Seller warrants that it will provide services to the Purchaser as set out herein in Articles 15.3 through 15.10.

15.3 Seller shall provide all routine and emergency maintenance necessary to maintain the equipment listed in the supplement and/or purchase order in good operating condition. Maintenance shall cover the entire system including, but not limited to, the switching system, electronic station instruments, and miscellaneous equipment. System damage as a result of lightning or any other foreign voltage shall not be excluded from coverage as acts of God.

15.4 Seller agrees to maintain in house, most frequently used supply replacement parts needed to service the equipment, placing special emphasis on critical components. Replacement and upgrade parts will be new or refurbished and warranted as new, 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 the Purchaser at the time of replacement, and title to parts removed for replacement will, at the time of replacement, pass to Seller.

15.5 The Seller agrees to provide routine maintenance, which includes but is not limited to, manufacturer approved software and firmware upgrades, at least once a quarter, based on the specific needs of the equipment during normal business hours. Seller shall respond on-site for routine service requests no later than the next business day. Routine maintenance may be performed concurrently with emergency maintenance activities. Seller must record all activities related to routine maintenance on a log to be retained on-site.

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

15.7 Seller shall accept the equipment as qualifying for maintenance coverage without having to re-certify the equipment, as long as Purchaser, on supplements and/or purchase orders, purchases a maintenance contract within ninety (90) days of the warranty expiration.

15.8 Sixty (60) days prior to the expiration of the maintenance services provided under the supplement and/or purchase order, Seller shall notify the Purchaser of the impending expiration and the Purchaser shall have thirty (30) days in which to notify Seller of its intention to either renew or cancel any further maintenance. Unless a different cap on maintenance costs is agreed upon by the Purchaser and Seller, Seller guarantees that the cost for the maintenance services shall not increase by more than five percent (5%) per year.

ARTICLE 16 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS

16.1 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 any given Purchaser project. The Purchaser is only required to negotiate with Seller, as Seller's commitments are binding on all proposed contractors, third parties, and subcontractors.

16.2 Neither party to a supplement and/or purchase order and this EPL Agreement may assign or otherwise transfer the supplement and/or purchase order and this EPL 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. The supplement and/or purchase order and this EPL Agreement shall be binding upon the parties' respective successors and assigns.

16.3 Seller must obtain the written approval of Purchaser before subcontracting any portion of the supplement and/or purchase order and this EPL 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 the supplement and/or purchase order. All subcontracts shall incorporate the terms of the supplement and/or purchase order and this EPL Agreement and shall be subject to the terms and conditions of same and to any conditions of approval that Purchaser may deem necessary.

16.4 Seller represents and warrants that any subcontract agreement Seller enters into shall contain a provision advising the subcontractor that the subcontractor shall have no

lien and no legal right to assert control over any funds held by the Purchaser, and that the subcontractor acknowledges that no privity of contract exists between the Purchaser and the subcontractor and that Seller is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with Seller. Seller shall indemnify and hold harmless the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses 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.

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

ARTICLE 17 AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of Purchaser to proceed under this EPL Agreement and the supplement and/or purchase order 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 EPL Agreement. If the funds anticipated for the fulfillment of this EPL Agreement and the supplement and/or purchase order are, at any time, 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 EPL Agreement, Purchaser shall have the right to immediately terminate the supplement and/or purchase order and this EPL Agreement as to itself only, 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 the supplement and/or purchase order and this EPL Agreement. Any payment due Seller for services rendered by Seller prior to termination and received by Purchaser shall be paid.

ARTICLE 18 TERMINATION

18.1 Termination Upon Mutual Agreement: A supplement and/or purchase order may be terminated in whole or in part upon the mutual written agreement of Seller and the Purchaser.

18.2 Termination Due To Bankruptcy: Should Seller become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or execute an assignment for the benefit of its creditors, the Purchaser may, upon the giving of thirty

(30) days prior written notice, terminate a supplement and/or purchase order and this EPL Agreement without the assessment of any penalties, solely as between those two parties.

18.3 Termination Other Than For Cause: A Purchaser may terminate a supplement and/or purchase order and this EPL Agreement as to itself only, in whole or in part and without the assessment of any penalties, for any reason by giving thirty (30) calendar days written notice specifying the effective date thereof to Seller. Any payment due Seller for services rendered by Seller prior to termination and received by Purchaser shall be paid.

18.4 Termination For Cause: Either Purchaser or Seller may terminate a supplement and/or purchase order and this EPL Agreement solely as between themselves and without the assessment of any penalties upon a material breach by the other party upon thirty (30) calendar days prior written notice unless the defaulting party cures such breach within such thirty (30) calendar-day period. Provided that, if the Purchaser terminates a supplement and/or purchase order and this EPL Agreement solely as between those two parties because of Seller's inability to cure material defects after notice and opportunity to cure as provided for in Article 7, the Purchaser may terminate the supplement and/or purchase order and this EPL Agreement solely as between those two parties without also providing the notice and opportunity to cure required in this Article. The non-defaulting party may also pursue any remedy available to it in law or in equity.

18.5 Termination of EPL Agreement: ITS may terminate this EPL Agreement for any reason without the assessment of any penalties after giving thirty (30) calendar days written notice specifying the effective date thereof to Seller, but any supplement and/or purchase order entered into prior to the termination date of this EPL Agreement shall survive the termination of the EPL Agreement. The terms of this EPL Agreement shall survive its termination/expiration with respect to any un-expired supplements/purchase orders.

18.6 Refund Of Unexpended Fees: Upon termination of a supplement and/or purchase order, Seller shall refund any and all applicable unexpended pro-rated maintenance/service or other fees previously paid by the Purchaser.

ARTICLE 19 GOVERNING LAW

This EPL Agreement and each supplement and/or purchase order shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. Seller expressly

agrees that under no circumstances shall Purchaser or ITS be obligated to pay an attorneys fee, prejudgment interest or the cost of legal action to Seller, unless so ordered by a court of final appeal. Further, nothing in this EPL Agreement shall affect any statutory rights Purchaser may have that cannot be waived or limited by contract.

ARTICLE 20 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 EPL Agreement. A waiver by either party, 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 that party.

ARTICLE 21 SEVERABILITY

If any term or provision of a supplement and/or purchase order or this EPL 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 the supplement and/or purchase order or this EPL Agreement shall be valid and enforceable to the fullest extent permitted by law provided that the Purchaser's purpose for entering into the supplement and/or purchase order can be fully achieved by the remaining portions of the supplement and/or purchase order that have not been severed.

ARTICLE 22 CAPTIONS

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

ARTICLE 23 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 the supplement and/or purchase order and this EPL Agreement. Seller's obligations as set forth in this Article are expressly conditioned upon the following: (a) that Purchaser shall notify Seller of any claim or suit of which Purchaser has knowledge, (b) that Seller shall, to the extent authorized by Mississippi law, have

sole control of the defense or settlement of any claim or suit, and (c) Purchaser shall, at Seller's expense, cooperate with Seller by supplying information, to facilitate the settlement or defense of any such claim or suit.

ARTICLE 24 THIRD PARTY ACTION NOTIFICATION

Seller shall notify the State 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 a supplement/purchase order or this EPL Agreement and/or which may affect the Seller's performance under the supplement/purchase order or this EPL Agreement. Failure of the Seller to provide such written notice to the State shall be considered a material breach of the supplement/purchase order and this EPL Agreement and the State 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 25 AUTHORITY TO CONTRACT

Seller warrants that it is a validly organized business with valid authority to enter into this EPL Agreement; that entry into and performance under this EPL 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 EPL 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 a supplement and/or purchase order and this EPL Agreement.

ARTICLE 26 NOTICE

Any notice required or permitted to be given under this EPL 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 usual business address. ITS' address for notice is: Craig P. Orgeron, Ph.D., Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. Seller's address for notice is: **INSERT NAME, TITLE, & ADDRESS OF VENDOR PERSON FOR NOTICE**. 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 27 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 EPL Agreement and the supplement and/or purchase order. The Purchaser, ITS, any state or federal agency authorized to audit Purchaser, and/or any of their duly authorized representatives, shall, at their expense and upon prior reasonable written notice to Seller, have access to this EPL Agreement, supplements/purchase orders, and to any of Seller's proposals, books, documents, papers and/or records that are pertinent to the supplement/purchase order and this EPL Agreement to make copies, audits, 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 EPL Agreement and the supplement and/or purchase order shall be retained by Seller for three (3) years from the date of receipt of final payment under this EPL Agreement and the supplement and/or purchase order. 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. Notwithstanding the preceding, in no event will Seller disclose its confidential or proprietary cost and pricing data under this Article.

ARTICLE 28 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 liability insurance. Seller will, upon request, furnish Purchaser with a certificate of conformity providing the aforesaid coverage.

ARTICLE 29 DISPUTES

29.1 Should disputes arise with respect to the supplement and/or purchase order or this EPL Agreement, Seller and Purchaser agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes. Seller agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under the supplement/purchase order and/or this EPL Agreement. Should Seller fail to continue without delay to perform its responsibilities under the supplement/purchase order and/or this EPL Agreement in the accomplishment of all work, any additional costs incurred by Seller or Purchaser as a result of such failure to proceed shall be borne by Seller and Seller shall make no claim against Purchaser for such costs.

29.2 If Seller and Purchaser cannot resolve a dispute within ten (10) calendar days following written notification by either party of the existence of said dispute, then the following procedure shall apply:

A. The parties agree to resolve such matters through submission of their dispute to the Executive Director of ITS, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the parties within ten (10) calendar days after presentation of such dispute for his/her decision.

B. Purchaser may withhold payments on disputed items pending resolution of the dispute. The withholding of such payments shall not constitute cause for termination or suspension of the supplement/purchase order and/or this EPL Agreement by Seller.

C. The Executive Director's decision shall not be a final determination of the parties rights and obligations under the terms of this EPL Agreement. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.

ARTICLE 30 COMPLIANCE WITH LAWS

Seller shall comply with, and all activities under a supplement and/or purchase order and this EPL 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 the supplement and/or purchase order and this EPL Agreement because of race, creed, color, sex, age, national origin or disability.

ARTICLE 31 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 the supplement and/or purchase order and this EPL Agreement as to itself only.

ARTICLE 32 SOVEREIGN IMMUNITY

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

ARTICLE 33 CONFIDENTIAL INFORMATION

33.1 Seller shall treat all Purchaser data and information to which it has access by its performance under a supplement and/or purchase order and this EPL 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 the supplement and/or purchase order or this EPL Agreement and shall continue in full force and effect and shall be binding upon Seller and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in the supplement and/or purchase order or this EPL Agreement on behalf of, or under the rights of the Seller following any termination or completion of the supplement and/or purchase order or this EPL Agreement.

33.2 The foregoing obligations do not apply to information which: (a) is or becomes known by the Seller without an obligation to maintain its confidentiality; (b) is or becomes generally known to the public through no act or omission of Seller, or (c) is independently developed by Seller without use of confidential or proprietary information.

33.3 With the exception of any attached exhibits which are labeled as “confidential”, the parties understand and agree that the supplement/purchase order and this EPL Agreement, including any amendments and/or change orders thereto, do 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. It is understood by Seller that copies of this executed EPL Agreement may be distributed to the governmental agencies, governing authorities, and educational institutions of the State of Mississippi.

ARTICLE 34 EFFECT OF SIGNATURE

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

ARTICLE 35 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS

The Purchaser shall own all files, work papers, documentation, and/or other material, electronic or otherwise, collected and created in connection with work performed under a supplement and/or purchase order, whether completed or in progress, except for: (a)

Seller's internal administrative and quality assurance files and internal project correspondence; (b) documents, objects or things owned by Seller and pre-existing the work performed under the supplement and/or purchase order, and (c) documents, objects or things in which Seller has no right to transfer ownership. As to such documents, objects and things, Seller shall convey such right or interest to the extent allowed by law. Seller shall deliver such documents and work papers to Purchaser upon termination or completion of the supplement and/or purchase order. The foregoing notwithstanding, Seller shall be entitled to retain a set of such work papers only after receiving written permission from the Purchaser.

ARTICLE 36 STATE PROPERTY

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

ARTICLE 37 NEWS RELEASES

News releases pertaining to a supplement and/or purchase order or this EPL Agreement or the products, study, data, or project to which it relates will not be made without prior written Purchaser approval, and then only in accordance with the explicit written instructions from Purchaser.

ARTICLE 38 SURVIVAL

Articles 9, 10, 15, 19, 23, 27, 32, 33, 35, 41, and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of the supplement and/or purchase order or this EPL Agreement.

ARTICLE 39 ENTIRE AGREEMENT

39.1 This EPL 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 "shrink-wrap", "clickwrap", or "browse-wrap" license included in any package, media or electronic or online version of Seller-furnished software. The published EPL, supplement and/or purchase order, RFP No. 3744, and Seller's Proposal submitted in response to RFP No. 3744 are hereby incorporated into and made a part of this EPL Agreement as far as the individual Purchaser is concerned.

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

- A.** The Exception Summary as agreed to by ITS and Seller;
- B.** This EPL Agreement signed by Seller and ITS;
- C.** The published EPL as approved by Seller;
- D.** RFP No. 3744, including all addenda;
- E.** Official written correspondence from ITS to Sellers;
- F.** Official written correspondence from Sellers to ITS when clarifying Seller's proposal;
- G.** Seller's Proposal, as accepted by ITS, in response to RFP No. 3744, and
- H.** The supplement and/or purchase order signed by Seller and Purchaser.

39.3 The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by 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. The Exception Summary") and the lowest document is listed last ("H. The supplement and/or purchase order").

ARTICLE 40 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 EPL 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 EPL Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

ARTICLE 41 NON-SOLICITATION OF EMPLOYEES

Seller and Purchaser agree not to employ or to solicit for employment, directly or indirectly, each other's employees until at least one (1) year after the expiration/termination of the supplement and/or purchase order unless mutually agreed to the contrary in writing by the Purchaser and 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 42 SERVICES

When ordered by Purchaser, Seller agrees to provide consulting, training and technical support services pursuant to the requirements set forth in the supplement/purchase order, and/or RFP No. 3744 and the published EPL.

ARTICLE 43 COMPLIANCE WITH ENTERPRISE SECURITY POLICY

Seller and Purchaser understand and agree that all products and services provided by Seller under this EPL 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 EPL Agreement and require the Seller to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

ARTICLE 44 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 EPL Agreement shall be posted to the State of Mississippi's accountability website at: <http://www.transparency.mississippi.gov>. Prior to ITS posting the EPL Agreement to the website, any attached exhibits which contain trade secrets or other proprietary information and are labeled as "confidential" will be redacted by ITS.

ARTICLE 45 EPL ADMINISTRATIVE FEES

Within fifteen (15) calendar days following the completion of each quarter, Seller shall submit its Marketing/Sales Report identifying all Express Products Lists ("EPL") sales to

ITS. Upon receipt of same, ITS will review the Marketing/Sales Report and assess a one percent (1%) administrative fee based on the total amount of sales that are reported. ITS will thereafter invoice Seller for their administrative fees, with said invoice being mailed to the "bill-to" address provided by Seller. Seller understands and agrees that the EPL administrative fee is the responsibility of the Seller and is not to be charged to the Purchaser in the form of a separate line item. Seller agrees to remit its payment of the administrative fee to ITS each quarter within thirty (30) calendar days of the invoice date (hereinafter referred to as "Due Date"). It is understood and agreed by the parties that in the event Seller fails to submit its Marketing/Sales Report within fifteen (15) calendar days following completion of a quarter or in the event Seller fails to remit its payment of the quarterly administrative fees by the Due Date, Seller will be immediately suspended from participation in the EPL until such time as the Marketing/Sales Report is received by ITS and all outstanding administrative fees have been paid in full.

ARTICLE 46 FORCE MAJEURE

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

ARTICLE 47 LIABILITY ISSUES

Unless jointly agreed otherwise in writing, Seller's liability shall not exceed twice the total amount paid by Purchaser to Seller under the applicable supplement and/or purchase order. In no event will Seller be liable to Purchaser for special, indirect, consequential or incidental damages including lost profits, lost savings or lost revenues of any kind unless Seller was advised of the possibility of such loss or damage or unless such loss or damage could have been reasonably foreseen. Excluded from this or any liability limitation are claims related to fraud; bad faith; infringement issues; bodily injury; death; physical damage to tangible personal property and real property, and the intentional and willful misconduct or gross negligent acts of Seller. The language

contained herein tending to limit the liability of the Seller will apply to Purchaser to the extent it is permitted and not prohibited by the laws or constitution of Mississippi. Further, the parties understand and agree that the Seller is precluded from relying on any contractual damages limitation language within this article where the Seller acts fraudulently or in bad faith.

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

**State of Mississippi, Department of
Information Technology Services, on
behalf of the agencies and institutions
of the State of Mississippi**

INSERT VENDOR NAME

By: _____
Authorized Signature

By: _____
Authorized Signature

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

Printed Name: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____

EXHIBIT A

Reporting and Registration Requirements Under Section 1512 of the American Recovery and Reinvestment Act of 2009.

The recipient* agrees to the following reporting and registration requirements of Section 1512 of the American Recovery and Reinvestment Act and in accordance with 2 CFR § 176.50, if applicable:

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their first tier recipients must maintain current registrations in the [System](#) for Award Management (SAM) (<https://www.sam.gov>) at all times during which they have active federal awards funded with Recovery Act funds. SAM is the official U.S. Government system that consolidated the capabilities of the Central Contractor Registration (CCR) and other vendor registration systems. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the System for Award Management.

(d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed.

(e) The contractor shall ensure that all subcontracts and other contracts for goods and services for an ARRA-funded project have the mandated provisions of this directive in their contracts. Pursuant to title XV, Section 1512 of the ARRA, the State shall require that the contractor provide reports and other employment information as evidence to document the number of jobs created or jobs retained by this contract from the contractor's own workforce and any sub-contractors. No direct payment will be made for providing said reports, as the cost for same shall be included in the various items in the contract.

*As used here and hereafter, recipient means “any entity other than an individual that receives Recovery Act funds in the form of a grant, cooperative agreement or loan directly from the Federal Government.” 2 CFR § 176.30.

Required Use of American Iron, Steel, and Manufactured Goods Not Covered Under International Agreements Under Section 1605 of the American Recovery and Reinvestment Act of 2009.

The recipient agrees to the following required use of American Iron, Steel, and Manufactured Goods of Section 1605 of the American Recovery and Reinvestment Act and in accordance with 2 CFR §176.140 when awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work that does not involve iron, steel, and/or manufactured goods covered under international agreements, if applicable:

(a) *Definitions.* As used in this award term and condition—

(1) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—

- (i) Processed into a specific form and shape; or
- (ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) *Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multiState, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Domestic preference.*

(1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows: [Award official to list applicable excepted materials or indicate 'none']

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that—

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act.*

(1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—

- (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
 - (B) Unit of measure;
 - (C) Quantity;
 - (D) Cost;
 - (E) Time of delivery or availability;
 - (F) Location of the project;
 - (G) Name and address of the proposed supplier; and
 - (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.
- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.
- (iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.
- (iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is

nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC ITEMS COST COMPARISON			
Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.] [Include other applicable supporting information.] [*Include all delivery costs to the construction site.]			

**Required Use of American Iron, Steel, and Manufactured Goods
Covered Under International Agreements Under Section 1605 of the
American Recovery and Reinvestment Act of 2009.**

The recipient agrees to the following required use of American Iron, Steel, and Manufactured Goods (covered under International Agreements) of Section 1605 of the of the Recovery and Reinvestment Act and in accordance with 2 CFR §176.160 when awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work that involves iron, steel, and/or manufactured goods materials covered under international agreements, if applicable:

(a) *Definitions.* As used in this award term and condition—

Designated country—

- (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom);
- (2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or
- (3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

Designated country iron, steel, and/or manufactured goods—

- (1) Is wholly the growth, product, or manufacture of a designated country; or
- (2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good

distinct from the materials from which it was transformed.

Domestic iron, steel, and/or manufactured good—

- (1) Is wholly the growth, product, or manufacture of the United States; or
- (2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

Foreign iron, steel, and/or manufactured good means iron, steel, and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

Manufactured good means a good brought to the construction site for incorporation into the building or work that has been—

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

Public building and *public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multiState, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation,

bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Iron, steel, and manufactured goods.*

(1) The award term and condition described in this section implements—

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.

(3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:

[Award official to list applicable excepted materials or indicate ‘none’]

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of

this section if the Federal Government determines that—

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.*

(1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient

could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic

iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC ITEMS COST COMPARISON			
Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
<small>[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.] [Include other applicable supporting information.] [*Include all delivery costs to the construction site.]</small>			

Wage Rate Requirements under Section 1606 of the American Recovery and Reinvestment Act.

The recipient agrees to the following wage rate requirements of Section 1606 of the Recovery and Reinvestment Act and in accordance with 2 CFR §176.190 when issuing announcements or requesting applications for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair, if applicable:

When issuing announcements or requesting applications for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair the agency shall use the award term described in the following paragraphs:

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the DavisBacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard DavisBacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard DavisBacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of DavisBacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

Recipient Responsibilities regarding tracking and documenting Expenditures under the American Recovery and Reinvestment Act of 2009.

The recipient agrees to the following tracking and documenting responsibilities required by Section 1606 of the Recovery and Reinvestment Act and in accordance with 2 CFR §176210, if applicable:

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111– 5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 “Uniform Administrative Requirements for Grants and Agreements” and OMB Circular A–102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A–102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A–133, “Audits of States, Local Governments, and NonProfit Organizations,” recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF–SAC) required by OMB Circular A–133. OMB Circular A–133 is available at http://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a133_compliance/2013/pt6.pdf. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF–SAC by CFDA number, and inclusion of the prefix “ARRA” in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF–SAC.

(c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

Requirement to Comply with Provision of Section 902 of the American Recovery and Reinvestment Act of 2009

Section 902 of the ARRA requires that each contract awarded using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to:

(1) Examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and (2) Interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Accordingly, the Comptroller General and his representatives shall have the authority and rights prescribed under Section 902 of the ARRA with respect to contracts funded with recovery funds made available under the ARRA. Section 902 further states that nothing in 902 shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

Required Whistleblower Protection Under Section 1553 of the American Recovery and Reinvestment Act of 2009.

Section 1153 of Division A, Title XV of the American Recovery and Reinvestment Act of 2009, P.L. 111-5, provides protections for certain individuals who make specified disclosures relating to recovery Act funds. Any non-federal employer receiving recovery funds is required to post a notice of the rights and remedies provided under this section of the Act.

Required Provision Noting Authority of Inspector General in of Section 1515(a) of the American Recovery and Reinvestment Act of 2009

Section 1515(a) of the ARRA provides authority for any representatives of the United States Inspector General to examine any records or interview any employee or officers working on this contract. The contractor is advised that representatives of the Inspector General have the authority to examine any record and interview any employee or officer of the contractor, its subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.

Required Provision to Comply with NEPA and NHPA
Construction, Renovation, and Remodeling Projects Only

ARRA funded projects may be required to comply with the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and related statutes, including requirements for plans and projects to be reviewed and documented in accordance with those processes. If the ARRA program from which funds are to be expended requires such language, then NEPA and NHPA requirements may need to be included in contracts or sub-grants. Such language would be dependent on federal oversight agency guidance.

Requirement to Acknowledge Availability and Use of Funds

Contractors understand and acknowledge that any and all payment of funds or the continuation thereof is contingent upon funds provided solely by ARRA or required state matching funds. Pursuant to Section 1604 of the ARRA, contractors agree not to undertake or make progress toward any activity using recovery funds that will lead to the development of such activity as casinos or other gambling establishments, aquariums, zoos, golf courses, swimming pools or any other activity specifically prohibited by the Recovery Act.

Requirement Regarding Federal, State and Local Tax Obligations

By submission of a proposal, contractors and subcontractors assert and self-certify that all Federal, State and local tax obligations have been or will be satisfied prior to receiving recovery funds.

Requirement to Comply with Anti-Discrimination and Equal Opportunity Statutes

Pursuant to Section 1.7 of the guidance memorandum issued by the United States Office of Management and Budget on April 3, 2009, ARRA Recovery funds must be distributed in accordance with all anti-discrimination and equal opportunity statutes, regulations, and Executive Orders pertaining to the expenditure of funds.

Requirement to Comply With All Other ARRA Requirements

The contractor will comply with any other requirements of ARRA, upon notification by this entity.

**Requirement to Comply with E-Verification Provision of Section 71-11-3 of the
Mississippi Code of 1972, as amended**

The respondent represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act (§71-11-3 of the Mississippi Code of 1972, as amended) 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. Contractor agrees to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State. Contractor 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. Contractor understands and agrees that any breach of these warranties may subject contractor 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;
- (b) the loss of any license, permit, certification, or other document granted to contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year or both.
- (c) In the event of such termination/cancellation, contractor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.