



## RFP No: 3760

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INVITATION: Sealed proposals, subject to the attached conditions, will be received at this office until June 11, 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 IT Hardware Express Products List (EPL) to be used in the acquisition of Windows-based desktop and mobile computers, displays, printers, plotters, projectors, interactive whiteboards, servers, thin clients, storage, UPS, racks, switches, wireless components, video conferencing equipment, and related services for the State of Mississippi.
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**The Vendor must submit proposals and direct inquiries to:**

Kenny Wilson or Tina O'Neal Technology Consultants Information Technology Services 3771 Eastwood Drive Jackson, MS 39211 (601) 432-8218 kenny.wilson@its.ms.gov or tina.oneal@its.ms.gov
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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. 3760 due June 11, 2014 @ 3:00 p.m., ATTENTION: Kenny Wilson or Tina O'Neal
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**Craig P. Orgeron, Ph.D.**  
**Executive Director, ITS**

## ITS RFP Response Checklist

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RFP Response Checklist: These items should be included in your response to RFP No. 3760.

### Manufacturer Only

- \_\_\_\_\_ 1) Binder containing original response
- \_\_\_\_\_ 2) Point-by-point response to *IT Hardware Processes* (Section VIII)
- \_\_\_\_\_ 3) Point-by-point response to *Manufacturer Information Submission* (Section XI)
- \_\_\_\_\_ 4) Vendor has paid the proposal submission fee per the directions in *IT Hardware Processes* (Section VIII), Item 5

### Seller Only

- \_\_\_\_\_ 1) Binder containing original response
- \_\_\_\_\_ 2) *Submission Cover Sheet*, signed and dated (Section I)
- \_\_\_\_\_ 3) *Proposal Exception Summary*, if applicable (Section V)
- \_\_\_\_\_ 4) Response to *RFP Questionnaire* (Section VI)
- \_\_\_\_\_ 5) Point-by-point response to *IT Hardware Processes* (Section VIII)
- \_\_\_\_\_ 6) Media (CD or USB flash drive) containing two Excel files as detailed in *Cost Information Submission for Sellers* (Section X)
- \_\_\_\_\_ 7) Printout of the two Excel files as detailed in *Cost Information Submission for Sellers* (Section X)
- \_\_\_\_\_ 8) Point-by-point response to *Seller Information Submission* (Section XIII)
- \_\_\_\_\_ 9) *References* (Section XIV)
- \_\_\_\_\_ 10) *EPL Purchase Agreement* (Exhibit A or B), two copies of signature page with original signatures
- \_\_\_\_\_ 11) Vendor has paid the proposal submission fee per the directions in *IT Hardware Processes* (Section VIII), Item 5

Manufacturers selling direct must supply all information noted for both Manufacturers and Sellers.

Manufacturers selling direct will only pay the proposal submission fee once for this RFP.

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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 Standard Contract in Exhibits A-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

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**CONFIGURATION SUMMARY**

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

This RFP does not require the Vendor to provide a configuration summary.

## **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 their response following each RFP specification but must not otherwise alter or rekey any of the original text of this RFP. If the State determines that the Vendor has altered any language in the original RFP, the State may, in its sole discretion, disqualify the Vendor from further consideration. The RFP issued by **ITS** is the official version and will supersede any conflicting RFP language submitted by the Vendor.
9. The Vendor must conform to the following standards in the preparation of the Vendor's proposal:
  - 9.1 The Vendor is required to submit one clearly marked original response, including all sections and exhibits, in a three-ring binder.
  - 9.2 To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the package. A label containing the information on the RFP cover page must be clearly typed and affixed to the package in a clearly visible location.

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

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

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

  - 14.1 The State's contacts for the selection process are: Kenny Wilson and Tina O'Neal, Technology Consultants, 3771 Eastwood Drive, Jackson, MS 39211, 601-432-8218 or 601-432-8162, [kenny.wilson@its.ms.gov](mailto:kenny.wilson@its.ms.gov) or [tina.oneal@its.ms.gov](mailto:tina.oneal@its.ms.gov).
  - 14.2 Vendor may consult with State representatives 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](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 their financial ability to provide the products and services proposed up to the total dollar amount of the Vendor's cost proposal. The State reserves the right to request information about the Vendor from any previous customer of the Vendor of whom the State is aware, even if that customer is not included in the Vendor's list of references.

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 their best pricing with the initial solicitation. Situations warranting solicitation of a BAFO will be considered an exceptional practice for any procurement. Vendors that remain in a competitive range within an evaluation may be requested to tender Best and Final Offers, at the sole discretion of the State. All such Vendors will be provided an equal opportunity to respond with a Best and Final Offer under a procedure to be defined by the State that encompasses the specific, refined needs of a project, as part of the BAFO solicitation. The State may re-evaluate and amend the original project specifications should it be deemed necessary in order to improve the opportunity for

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

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

2. **Failure to Respond as Prescribed**

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

3. **Contract Documents**

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

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

4. **Order of Precedence**

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

5. **Additional Contract Provisions**

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

6. **Contracting Agent by Law**

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

7. **Mandatory Legal Provisions**

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

- 7.7 The State of Mississippi does not waive its sovereign immunities or defenses as provided by law by entering into this contract with the Vendor, Vendor agents, subcontractors, or assignees.
- 7.8 The State will deliver payments to the Vendor within forty-five (45) days after receipt of invoice and receipt, inspection, and approval of Vendor's products/services. No late charges will exceed 1.5% per month on any unpaid balance from the expiration of said period until payment is delivered. See Section 31-7-305 of the Mississippi Code Annotated. Seller understands and agrees that Purchaser is exempt from the payment of taxes.
- 7.9 The State shall not pay any attorney's fees, prejudgment interest or the cost of legal action to or for the Vendor.
8. **Approved Contract**
- 8.1 Award of Contract - A contract is considered to be awarded to a proposer once the proposer's offering has been approved as lowest and best proposal through:
- 8.1.1 Written notification made to proposers on **ITS** letterhead, or
- 8.1.2 Notification posted to the **ITS** website for the project, or
- 8.1.3 CP-1 authorization executed for the project, or
- 8.1.4 The **ITS** Board's approval of same during an open session of the Board.
- 8.2 **ITS** statute specifies whether **ITS** Director approval or **ITS** Board approval is applicable for a given project, depending on the total lifecycle cost of the contract.
- 8.3 A contract is not deemed final until five (5) working days after either the award of contract or post procurement review, as stipulated in the **ITS** Protest Procedure and Policy. In the event of a valid protest, the State may, at its sole discretion, continue the procurement or stay the procurement in accordance with the **ITS** Protest Procedure and Policy. If the procurement is stayed, the contract is not deemed final until the protest is resolved.
9. **Contract Validity**  
All contracts are valid only if signed by the Executive Director of **ITS**.
10. **Order of Contract Execution**  
Vendors will be required to sign contracts and to initial all contract changes before the Executive Director of **ITS** signs.



**11. Availability of Funds**

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

**12. CP-1 Requirement**

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

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

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

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

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

**14. Time For Negotiations**

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

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

17. **ITS Approval of Subcontractor Required**  
Unless provided in the contract, the Vendor shall not contract with any other party for furnishing any of the contracted work or services without the consent, guidance, and written approval of the State. **ITS** reserves the right of refusal and the right to request replacement of a subcontractor due to unacceptable work or conduct. This provision should not be interpreted as requiring the approval of individual contracts of employment between the Vendor and personnel assigned for services under the contract.
18. **Inclusion of Subcontract Agreements**  
Copies of any agreements to be executed between the Vendor and any subcontractors must be included in the Vendor's proposal.
19. **Negotiations with Subcontractor**  
In order to protect the State's interest, **ITS** reserves the right to attempt to resolve the contractual disagreements that may arise between the Vendor and its subcontractor after award of the contract.
20. **References to Vendor to Include Subcontractor**  
All references in the RFP to "Vendor" shall be construed to encompass both the Vendor and its subcontractors.
21. **Outstanding Vendor Obligations**
  - 21.1 Any Vendor who presently owes the State of Mississippi money pursuant to any contract for which **ITS** is the contracting agent and who has received written notification from **ITS** regarding the monies owed, must submit, with the proposal, a certified check in the amount due and owing in order for the proposal in response to this RFP to be considered. For a Vendor currently in bankruptcy as of the RFP submission date, this requirement is met, if and only if, **ITS** has an active petition before the appropriate bankruptcy court for recovery of the full dollar amount presently owed to the State of Mississippi by that Vendor. If the Vendor has emerged from bankruptcy by the RFP submission date, the Vendor must pay in full any amount due and owing to the State, as directed in the court-approved reorganization plan, prior to any proposal being considered.
  - 21.2 Any Vendor who is presently in default on existing contracts for which **ITS** is the contracting agent, or who otherwise is delinquent in the performance of any such contracted obligations, is in the sole judgment of the State required to make arrangement for fulfilling outstanding obligations to the satisfaction of the State in order for the proposal to be considered.
  - 21.3 The State, at its sole discretion, may reject the proposal of a Vendor with any significant outstanding financial or other obligations to the State or who is in bankruptcy at the time of proposal submission.

**22. Equipment Condition**

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

**23. Delivery Intervals**

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

**24. Pricing Guarantee**

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

**25. Shipping Charges**

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

**26. Amortization Schedule**

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

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

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

**28. Ownership of Developed Software**

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

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

**29. Ownership of Custom Tailored Software**

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

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

**30. Terms of Software License**

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

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

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

**32. Compliance with Enterprise Security Policy**

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

The Enterprise Security Policy is available to third parties on a need-to-know basis 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. See Rule 210.2: 019-010 in

<http://www.its.ms.gov/Procurement/Documents/ISS%20Procurement%20Manual.pdf>  
(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 its 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. See Rule 210.3: 019-020 in

<http://www.its.ms.gov/Procurement/Documents/ISS%20Procurement%20Manual.pdf>  
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 3760.

As a condition precedent to filing any protest related to this procurement, the Vendor must procure, submit to the **ITS** Executive Director with its written protest, and maintain in effect at all times during the course of the protest or appeal thereof, a protest bond in the full amount of the total estimated project lifecycle cost or \$250,000.00, whichever is less. The total estimated project lifecycle cost will be the amount used by **ITS** in the computation of cost points, as the low cost in the denominator of the cost evaluation formula. The bond shall be accompanied by a duly authenticated or certified document evidencing that the person executing the bond is a licensed Mississippi agent for the bonding company. This certified document shall identify the name and address of the person or entity holding the protest bond and shall identify a contact person to be notified in the event that the State is required to take action against the bond. The protest bond shall not be released to the protesting Vendor until the protest is finally resolved and the time for appealing said protest has expired. The protest bond shall be procured at the protesting Vendor's expense and be payable to the Mississippi Department of Information Technology Services. Prior to approval of the protest bond, **ITS** reserves the right to review the protest bond and require the protesting Vendor to substitute an acceptable bond in such form as the State may reasonably require. The premiums on such bond shall be paid by the protesting Vendor. The State may claim against the protest bond as specified in Section 25-53-5 (n) of the Mississippi Code of 1972, as amended during the 1998 Mississippi legislative session, in addition to all other rights and remedies the State may have at law or in equity.

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

41. **Mississippi Employment Protection Act**

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

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

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



## SECTION V PROPOSAL EXCEPTIONS

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

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

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

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

### PROPOSAL EXCEPTION SUMMARY FORM

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

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

## SECTION VI RFP QUESTIONNAIRE

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

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

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

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

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

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

- 1.2 **Vendor Self-Certification Form:** The State of Mississippi, in an effort to capture participation by minority Vendors, asks that each Vendor review the State of Mississippi Minority Vendor Self Certification Form. This information is for tracking/reporting purposes only, and will not be used in determining which Vendor will be chosen for the project. Any Vendor who can claim status as a Minority Business Enterprise or a Woman Business Enterprise in accordance with the definitions on this form and who has not previously submitted a form to the State of Mississippi should submit the completed form with the proposal. A copy of the Minority Vendor Self-Certification Form can be obtained at:

[http://www.mississippi.org/assets/docs/minority/minority\\_vendor\\_selfcertform.pdf](http://www.mississippi.org/assets/docs/minority/minority_vendor_selfcertform.pdf). Please direct any questions about minority certification in Mississippi to the Minority Business Enterprise Division of the Mississippi Development Authority by telephone at (601) 359-3448 or via email at [minority@mississippi.org](mailto:minority@mississippi.org).

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

2. **Certification of Authority to Sell**

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

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

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

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

4. **Pending Legal Actions**

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

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

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

6. **Contracts**

A properly executed *EPL Purchase Agreement* (Exhibits A-B) with no exceptions is a requirement of this RFP. It will become a part of any contract resulting from this proposal. **ITS** recommends that the customer and Vendor evaluate the need for additional contracts at the time of purchase.

- 6.1 The *EPL Purchase Agreement* must be executed by all published Vendors that are selling directly (Sellers) in order to participate in this EPL.
- 6.2 The terms of the *EPL Purchase Agreement* are non-negotiable. No edits or changes in the terms and conditions of this document will be made. Sellers unwilling to execute this agreement should not submit a response to this RFP.
- 6.3 Do not submit the entire agreement. Follow the directions below:

- 6.3.1 Make two photocopies of the signature page of the *EPL Purchase Agreement*.
- 6.3.2 Fill in the company name in the appropriate blanks.
- 6.3.3 Execute both copies with original signatures by the authorized officer of your company.
- 6.3.4 Return both executed copies of the signature page in your RFP binder.
- 6.4 After the proposal opening, **ITS** will send each approved Seller a completed *EPL Purchase Agreement* executed by **ITS**.
- 6.5 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 Seller at the time of sale, as needed.
- 6.6 **ITS** has created two versions of the *EPL Purchase Agreement* and Sellers may elect to execute either contract.
  - 6.6.1 Exhibit A: EPL Purchase Agreement - Non-ARRA version
  - 6.6.2 Exhibit B: EPL Purchase Agreement - ARRA version

ARRA stands for American Recovery and Reinvestment Act of 2009. The “ARRA” version is the same as Exhibit A with the following additions

    - 6.6.2.1 Sub-article 9
    - 6.6.2.2 Addendum 1
- 6.7 More information regarding ARRA is provided below:
  - 6.7.1 To the best of our knowledge and current assessment, **ITS** believes the EPLs are valid purchase instruments for the use of ARRA funds.
  - 6.7.2 **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.
  - 6.7.3 **ITS** recommends that customers using this EPL for purchases using ARRA funds work with those EPL Sellers that have executed contracts with the 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 at <http://www.its.ms.gov/Procurement/Pages/EPLs.aspx> or see the Department of Finance and Administration site [http://www.mmrs.state.ms.us/statewide\\_applications/Stimulus/index.shtml](http://www.mmrs.state.ms.us/statewide_applications/Stimulus/index.shtml).

- 6.8 Each Seller’s record published on the **ITS** EPL Interactive website 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 *EPL 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** *EPL Purchase Agreement* with ARRA terms.

Indicated below which version of the contract the Seller is choosing to execute:

\_\_\_\_\_ ARRA

\_\_\_\_\_ Non-ARRA

7. **Value-add vs Mail-order Designation**

Indicate below whether Seller qualifies itself as a “Value-add” Seller or “Mail-order” Seller based on the qualifications defined in Section VIII: *IT Hardware Processes*.

\_\_\_\_\_ Value-add Seller

\_\_\_\_\_ Mail-order Seller

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

- 8.1 List the Reseller Groups in which you expect to participate. **ITS** will verify the Seller’s group membership with the Manufacturer.

- 8.2 Include any confirmation documentation from the Manufacturer if available. Documentation may be in the form of an e-mail or letter from the Manufacturer authorizing you to be part of their group. The documentation should mention the IT Hardware EPL Reseller Group. Documentation showing that you are an authorized reseller for the Manufacturer does not provide authorization to be in the group.

- 8.3 The Seller is expected to contact the Manufacturer of the group to verify membership. Do not list Manufacturers without contacting them first. The **ITS** Manufacturer contact for each existing group is posted on the RFP download page at <http://www.its.ms.gov/Procurement/Pages/3760.aspx>. Be sure to let them know if you are requesting “Value-add” status or “Mail-order” status.

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/3760.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 EXPRESS PRODUCTS LIST OVERVIEW

### 1. Express Products List Information

- 1.1 Responses to this RFP will be used to produce an Express Products List (EPL) that provides **ITS** customers and staff with an economical, flexible mechanism to acquire frequently-requested routine items in full compliance with all purchasing requirement.
- 1.2 The current version of the EPL to be published from this RFP is available for review on the **ITS** website at <http://www.its.ms.gov/Procurement/Pages/EPLs.aspx>.
- 1.3 The EPL has a specified dollar limit up to which customers may make purchases from the EPL without coming through **ITS** for approval.
- 1.4 **ITS** EPL customers include state agencies and institutions of higher learning which are under **ITS** purview. Also included are local government and public educational entities such as cities, counties, local school districts, and community colleges all of which are not under **ITS** purview.
  - 1.4.1 All EPL customers may make routine purchases from the EPL up to the specified dollar limits under **Procurement Instruments: Express Products Lists (EPLs)** as defined in the **ITS** Procurement Handbook. See Rule 206.2: 011-030 in <http://www.its.ms.gov/Procurement/Documents/ISS%20Procurement%20Manual.pdf>.
  - 1.4.2 EPL customers 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. See Rule 207.7: 013-080 in <http://www.its.ms.gov/Procurement/Documents/ISS%20Procurement%20Manual.pdf>.
  - 1.4.3 All EPL customers may make purchases from the EPL over the specified dollar limits only by coming through **ITS** for approval.
  - 1.4.4 **ITS** customers are not required to use EPLs for their purchases.
- 1.5 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 pricing.
- 1.6 Pricing is a major concern of **ITS**. Therefore, Vendors must submit their pricing structure comparable to national pricing trends, the GSA, other

statewide contracts, or other prominent pricing benchmark in terms of volume discounts.

- 1.7 Submission of an RFP proposal will not automatically qualify Vendor's products for placement on the EPL. **ITS** performs an evaluation of EPL offerings before placing the lowest and best offerings on the published EPL.
  - 1.8 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/educational entities.
  - 1.9 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.
  - 1.10 By submitting a proposal for consideration and inclusion on 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".
  - 1.11 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.
2. **Format of Proposal**  
Respond to the sections and exhibits, using the "RFP Response Checklist" at the front of this RFP as your guide.
  3. **Right to Use EPL 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 **ITS** 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 EPLs.

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 expiration date 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. EPL customers 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 Purchasing, Travel, and Fleet Management. 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 *EPL 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**.

## SECTION VIII IT HARDWARE PROCESSES

### 1. How to Respond to this Section

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

### 2. EPL Overview

- 2.1 The IT Hardware EPL RFP allows Vendors to propose specifically defined products/services in the following hardware categories: Windows-based desktop and mobile computers, engineering and GIS-level workstations, monitors, printers/scanners, large format printers and scanners/plotters, projectors, interactive devices, servers, storage, UPS, racks, switches, wireless components, thin client systems, video conferencing equipment, audio/visual components, and set up and service costs.

- 2.2 The IT Hardware EPL uses a Manufacturer-Sponsored Reseller Group model. Manufacturers propose product and pricing and name which Sellers may resell their product through the EPL. The Manufacturers create a special EPL website to publish their approved price lists. Customers access the EPL information by going through **ITS'** EPL Interactive. Each approved Seller and Manufacturer has a page on the Interactive listing various details relevant to the particular Vendor. The Manufacturer's page has a link to the special EPL website showing their approved EPL price list. The customer can view listings of the approved Sellers and Manufacturers or search within the Interactive based upon category, Seller, and/or Manufacturer.
- 2.3 **ITS** evaluates the proposals and approves the Manufacturer and Sellers based on the RFP scope with pricing approved by **ITS**. The Reseller Groups are built from Sellers jointly approved by the Manufacturers and **ITS**. An *Instructions for Use* document is published on the **ITS** website for both customers and Vendors to understand the policies for using the EPL. Customers are able to place their purchase orders directly with EPL Sellers after performing their own comparative evaluation using the Manufacturer EPL websites created for each Reseller Group.
- 2.4 All Vendors (Manufacturers and Sellers) must submit a response to this RFP to be considered for inclusion on the EPL.
- 2.5 The EPL produced from these proposals will be valid through June 30, 2017.
- 2.6 The dollar limitation for this EPL will be as follows
- 2.6.1 \$200,000 per project 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.
- 2.6.2 For purchases over \$50,000, the customer must obtain quotations from two or more EPL Sellers.
- 2.6.3 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.
- 2.6.4 The dollar limitation is "project" driven. For example, desktop replacement might be considered a different project from a switch/networking upgrade. Customers may reference guidelines regarding the definition of a project from the **ITS** Procurement Handbook. See Rule 203.5: 005-600 in <http://www.its.ms.gov/Procurement/Documents/ISS%20Procurement%20Manual.pdf>.

### 3. Procurement Project Schedule

Task	Date
First Advertisement Date for RFP	5/13/2014
Second Advertisement Date for RFP	5/20/2014
Deadline for Vendor's Written Questions	3:00 p.m. Central Time on 5/28/2014
Deadline for Questions Answered and Posted to ITS Website	6/4/2014
Open Proposals	3:00 p.m. Central Time on 6/11/2014
Evaluation of Proposals and Manufacturer Websites	6/11/2014 - 6/30/2014
EPL Approval Notifications Sent to Vendors (tentative)	6/30/2014
IT Hardware EPL 3760 Publish Date (tentative)	7/1/2014
Proposals for new Reseller Groups may be submitted at any time within the noted range. Responses will be processed by ITS as time permits.	After initial opening through 4/1/2017 or until replacement RFP is released
Proposal for new Sellers may be submitted by 3:00 p.m. Central Time at these 6-month update periods	12/4/2014 6/4/2015 12/3/2015 6/2/2016 12/1/2016
IT Hardware EPL 3760 Expiration Date	6/30/2017

### 4. Changes This EPL Cycle

- 4.1 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 5 of this section.
- 4.2 ITS will assess a one percent (1%) administrative fee based on the total amount of sales that are reported by the approved Vendor(s). See Section XII: *Marketing/Sales Report*.

### 5. RFP Vendor Registration Requirements and Instructions

- 5.1 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.
- 5.2 The Vendor will pay a proposal processing fee of \$150 plus associated eGovernment fees for the RFP response. The Vendor will have two payment options. Associated total charges are outline below:

- 5.2.1 \$155.60 for each credit card transaction (VISA, MasterCard, American Express, or Discover)
- 5.2.2 \$152.50 for each ACH/eCheck transaction
- 5.3 Provided below is an outline of the steps for the registration process:
  - 5.3.1 Go the EPL RFP Vendor Registration application located at:  
[http://www.ms.gov/its/epl\\_registration](http://www.ms.gov/its/epl_registration)
  - 5.3.2 The Vendor will be prompted to provide contact information.
  - 5.3.3 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.”*
  - 5.3.4 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 this method of payment (credit card/ACH) to complete the payment process.
  - 5.3.5 The Vendor’s registration number will be listed on the “receipt” page. The number should look similar to the following: 3760-001.  
  
Provide this registration number below in response to this item:  
  
**Vendor Registration Number #3760-\_\_\_\_\_**
  - 5.3.6 If the systems “times-out”, you will need to clear your cache before trying again.
- 5.4 The Vendor’s proposal will not be processed unless the Vendor has completed this process and provided a registration number.

## 6. Scope

- 6.1 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.

- 6.2 It is **ITS'** intent in establishing Reseller Groups, based on input from EPL customers, to provide for a more flexible and updateable EPL by combining the approved resellers from a common manufacturer into one (1) group, publishing uniform configurations and a not-to-exceed price. EPL customers also want the flexibility to order directly from the manufacturer when that is their best alternative and when that manufacturer sells directly.
  - 6.3 **ITS** reserves the right to make adjustments to the Reseller Group model during the EPL cycle, including during the RFP clarification, evaluation, and publication phases.
  - 6.4 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 (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 who were not approved under the original RFP proposal opening, may submit a proposal to this RFP at any Six-Month Update scheduled by **ITS** as follows:
      - 7.1.1.1 December 4, 2014
      - 7.1.1.2 June 4, 2015
      - 7.1.1.3 December 3, 2015
      - 7.1.1.4 June 2, 2016
      - 7.1.1.5 December 1, 2016
    - 7.1.2 The contract date for any new Sellers added to this RFP will be co-terminus with the original three-year primary term of this RFP 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 until the release of the next IT Hardware EPL RFP, which is tentatively planned for April 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 or the Six-Month Updates described above.
- 7.3.2 Manufacturers wishing to remove a Seller from their Reseller Group must provide both **ITS** and the Seller 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 in Section XI: *Manufacturer Information Submission*.
- 7.3.4 Sellers may request changes to their vendor contact information at any time. **ITS** will process the request as time permits.
- 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's published price lists. Customers must carefully document their purchases. Manufacturers are required to keep records of their product information and pricing as described in Section XI: *Manufacturer Information Submission*.

## 8. **Manufacturer and Seller Responsibilities**

- 8.1 **ITS** limits participation on this EPL exclusively to the Manufacturer-sponsored Reseller Group Model.
- 8.2 Manufacturers are responsible for providing product and pricing for their resellers by the following means:
- 8.2.1 Host a special website for the EPL
- 8.2.2 Propose product and not-to-exceed pricing on this website

- 8.2.3 Name Sellers from the EPL pool as members of their Reseller Group
  - 8.3 Sellers are not allowed to propose product directly. They are responsible for customer contact by the following means:
    - 8.3.1 Provide **ITS** with contact information for sales, ordering, and payment
    - 8.3.2 Provide hourly rates for service fees
    - 8.3.3 Provide a report of sales on a quarterly basis as noted in Section XII: *Marketing/Sales Reports*
  - 8.4 Contractual Responsibilities
    - 8.4.1 Any Vendor receiving payments holds the contractual obligations for the products and services sold through this EPL.
    - 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 The *EPL Purchase Agreement* provides in Articles 7.7 and 7.8 for circumstances when the customer may test and evaluate the purchased product to ensure it is not defective and that it performs to the specifications published in the EPL. The *EPL Purchase Agreement* does not provide for “buyer’s remorse”, where the customer may send back a product because the customer has changed his mind or wants something else. If the delivered product is defective, the customer may return the product if the Seller is notified within the ten (10) working day acceptance period. It would be at the Seller’s discretion whether to accept a return for non-defective equipment and whether to charge the customer a “re-stocking” fee in order to take back unwanted products. The customer assumes responsibility for all “re-stocking” fees in this instance as a condition for using the EPL.
9. **Service Fees**
- 9.1 **ITS** is allowing Sellers to propose service fees to be used in conjunction with the initial installation and configuration of equipment purchased from this RFP.

The three (3) fees are listed below:

    - 9.1.1 Hourly Rate for basic installation services
    - 9.1.2 Hourly Rate for project manager/engineer/advanced technician
    - 9.1.3 Hourly Rate for travel

- 9.2 These fees are not-to-exceed prices. Sellers may pass on lower fees at any time. However, the published fees may only be changed at the six-month update periods noted earlier in this section.
- 9.3 This EPL is not a services RFP nor may any of these service fees be used for warranty/maintenance work.
- 9.3.1 The use of an IT Hardware EPL service fee as the procurement authority for ongoing maintenance support or for consulting services is prohibited.
- 9.3.2 This EPL does not provide procurement authority for using the service fees after the initial purchase and installation.
- 9.4 **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 Seller should propose hourly rates based upon standard business hours of 8 x 5, 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 service rate, provided Seller has supplied a written estimate and advised the customer of the after-hours charge.
- 9.6 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.
- 9.6.1 Any Travel Hourly Rate may not exceed the Seller's highest hourly rate proposed.
- 9.6.2 For Sellers with multiple service center locations, **ITS** expects a good faith effort on the part of any Seller to tailor the customer service needs with the lowest costs and expenses possible.
- 9.7 Seller 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 Seller and customer and should include the following considerations:
- 9.7.1 One-way or two-way travel estimates.
- 9.7.2 Per technician/vehicle estimates.
- 9.7.3 If there is a need for extended on-site work involving per diem charges for meals, mileage, hotels, airfare, etc., the customer would authorize these charges through other public purchasing procedures. These charges are not authorized under this EPL.
- 9.8 Seller 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 IT Hardware EPL Seller. Any sub-contractors must be named in Section XIV: *References* and responding Seller must provide references for those sub-contractors. Should a Seller need to add additional sub-contractors during the term of the EPL, they must submit those names and references to **ITS** for approval.

## 10. **Seller Classifications**

10.1 Sellers will be categorized either as “Value-add” or “Mail-order”.

### 10.2 Value-add Definition

10.2.1 Value-add Sellers 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. They have directly invested in staff, training resources, and physical facilities logistically available to Mississippi customers. They possess established in-house resources to provide integration across a diverse spectrum of technology such as LANs, WANs, Internet, multimedia applications, computer-aided/assisted courseware, and administrative applications.

10.2.2 These are the Sellers 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.

### 10.2.3 Value-add Classification Requirements

10.2.3.1 The Seller must have a “brick-n-mortar” office or service center within 200 miles of a Mississippi border in order to be considered “logistically available to Mississippi customers. “Virtual” or “Home” offices do not meet this standard.

10.2.3.2 The Seller must propose all appropriate service fees as defined in item 9 above.

### 10.3 Mail-order Definition

10.3.1 “Traditional” Mail-order Sellers 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).

- 10.3.2 **ITS** also considers as Mail-order those Sellers who have “value-add” qualities but do not meet the 200 mile requirement noted under Value-add Classification Requirements.
  - 10.3.3 Proposing service fees is optional for Mail-order Sellers.
  - 10.3.4 If Sellers do not propose the service fees, they are automatically classified as Mail-order regardless of their value-add qualities and location.
  - 10.4 **ITS** reserves the right to clarify a Seller’s service fees. This includes allowing a proposer to supplement its proposal within three (3) business days of proposal opening to provide said fees for those Value-add Sellers that inadvertently omitted this mandatory spreadsheet, upon notification by **ITS** that the spreadsheet was omitted or unreadable. This clarification of service fees also includes the right by **ITS** to request that service fees appreciably higher than those proposed by other Sellers be reduced to conform with the highest accepted proposal.
  - 10.5 Sellers will qualify themselves as Value-add or Mail-order in Section VI: *RFP Questionnaire*. **ITS** reserves the right to make the final, sole determination of how the Seller is classified and will reclassify the Seller as necessary. References may be used in the determination of Seller qualification.
11. **Membership of the Reseller Group**
- 11.1 At minimum, a Reseller Group must contain two Value-add Sellers.
  - 11.2 In addition to the minimum, a Reseller Group may be comprised of the following:
    - 11.2.1 As many Value-add Sellers as are approved on the EPL
    - 11.2.2 Maximum of five Mail-order Sellers per category within a group
    - 11.2.3 Manufacturer selling direct
  - 11.3 Additional requirements regarding the inclusion of Mail-order Sellers
    - 11.3.1 A Manufacturer could have a diversity of Sellers among the different categories such as a different set of Sellers for servers than for video conferencing. Therefore, the Manufacturer could have more than five Mail-order Sellers in the group but not exceed the per category limit.
    - 11.3.2 Mississippi is largely a rural state and it is important to provide our customers with a selection of Sellers that can support them from a geographically, logistically available office. Therefore it is our preference that no traditional Mail-order Sellers be added to the

group unless they bring unique qualifications, value, or expertise to the group.

- 11.3.3 In some instances, a Manufacturer may rely on established partnerships with Sellers that **ITS** traditionally has designated as Mail-order and wish to add to the group.
  - 11.4 If a Manufacturer elects to be included as a Seller within the group, the Manufacturer's status does not count towards the minimum Value-add requirement nor does it detract from the maximum Mail-order allocation.
  - 11.5 A Seller does not have to be approved for all categories a Manufacturer proposes. Example: Sellers approved for the Manufacturer's printing category may not be authorized for the desktop category.
  - 11.6 All Sellers approved for a single category must be able to sell any products proposed within that category. Example: A Manufacturer has different storage product lines. Five Sellers are authorized to sell the lower level storage but only three can sell the high-end. Either the Manufacturer allows the three who can sell all of the products or the Manufacturer does not include the exclusive product line in the price list.
  - 11.7 Any Seller may sell to any Mississippi customer. The model of "geographical territory" is not allowed within a Reseller Group.
  - 11.8 **ITS** acknowledges the authority of the Manufacturer to determine which Sellers may sell in the Reseller Group, subject to **ITS** approval. **ITS** reserves the right to examine the Seller'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 inclusion as a Reseller Group member.
12. **Miscellaneous Reseller Group Model Stuff**
- 12.1 It is not acceptable for a distributor or a seller/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. Sellers should work directly with **ITS'** Manufacturer representatives to understand the Manufacturer's standards for membership. Membership should not be unreasonably withheld for those Sellers that meet **ITS'** Value-add standards and the Manufacturer's technical and certification requirements.
  - 12.2 Manufacturers may have their own reseller agreements describing any obligations and processes required of a Seller in order to be a member in good standing of the Manufacturer's group.
  - 12.3 The Manufacturer proposes a not-to-exceed EPL price for each product. Sellers may quote lower pricing to the customers.

- 12.4 Both the Manufacturer and Seller 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 Sellers as well as ensuring the products proposed meet specifications. It is the expectation of the State that the Manufacturers will work with their Sellers throughout the EPL cycle to ensure that this pricing commitment is followed.
- 12.5 The products and pricing proposed by a Manufacturer must go through cost and specification evaluations. A Manufacturer's participation in the EPL does not guarantee that all or even some of a Manufacturer's submission will be selected for the EPL. Remember that the goal of the EPL is to make lists of quality products in defined categories available to State customers from reputable sources at the best possible prices.
- 12.6 There is no limit as to how many products a Manufacturer may propose on the EPL as long as those products are within the EPL scope and specifications.
- 12.7 Should Manufacturers experience cost increases, it is the expectation of the State that the Manufacturer will not require that the Seller solely absorb the price increase but that the Manufacturer and Seller will work together towards a solution.
- 12.8 All pricing proposals must include basic freight charges, FOB Destination. In determining the EPL price, take shipping charges into consideration. Shipping is addressed in more detail within Section IX: *Technical Specifications*.
- 13. **ITS** has worked with both Customer and Vendor Steering Committees in setting Technical Specifications for the IT Hardware EPL that will provide protection to customers in their purchases. To waive any of these minimum specifications in the purchase of items from the EPL, customers will be required to send a request to **ITS** for approval to waive the minimum specification and work with the Seller to negotiate reduced pricing for that product. Examples of such items include:
  - 13.1 Systems with no operating system. If customers require systems without the OS in order to load an alternative OS, they should submit a request to **ITS** for approval to waive the minimum Windows OS specifications and to negotiate with the Seller for a reduced price.
  - 13.2 Systems with a reduced warranty period. Base warranty requirements are described in Section IX. If customers wish to purchase a less expensive system with a shorter warranty for situations where the warranty is less critical, they should submit a request to **ITS** for approval to waive the minimum warranty specification and negotiate for a reduced price.
- 14. **Substitutions**
  - 14.1 In general, substitutions are not authorized under this RFP.

- 14.2 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 website with replacement product.
- 14.3 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.
- 14.4 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
  - 14.4.1 Example of an allowed substitution: A specific video card or NIC is needed by a customer that is not on the standard base system. The Seller can substitute the requested card for the same or lower price.
  - 14.4.2 Example of an allowed substitution: The Manufacturer has a set base product on the EPL price list such as a server, desktop, or notebook. That product is not immediately available to the Seller in the distribution channel but the same base with a higher hard drive or memory is available for immediate delivery. The Seller can offer the enhanced system at the same or better cost instead of waiting for production of the original model.

## 15. **ITS EPL Audit Integrity**

- 15.1 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 Seller to facilitate the customer in this regard.

The purchase order must match the product on the approved 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.

Customers must keep a printed copy of the EPL price list or configurator quote showing the products being purchased as well as the written explanation regarding any substitution.

- 15.2 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. Non-EPL items should be listed as such on the purchase order or Seller's quotation to avoid confusion and for later audit purposes.

16. **Transition Between Cycles**

Vendors should recognize that the EPL procedure is cyclical. There may be interim periods between the expiration of an old EPL and the approval of responses for the replacement EPL. At the expiration date of the old EPL, **ITS** will pull down the data from the old EPL Interactive and replace it with data from the new responses. Manufacturers must disable or remove their old EPL websites. **ITS** will send each Manufacturer and its Reseller Group members approval for using the Manufacturer's new EPL website at such time as each site is ready and approved. Sellers may not issue new quotations using the old EPL after the expiration date of that EPL. **ITS** understands that Sellers may have issued quotations to a customer up to and until the last valid date of the old EPL and that, in good faith, the Seller and customer need time for acquisition approvals already in process using old proposals 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 old EPL to complete their purchase, as long as that process was started in good faith before the old EPL's expiration, and vendors should strive to honor all products and pricing on either the old or new EPL list.

17. **ITS Acceptance of Vendor's Proposal**

17.1 Manufacturer as the Reseller Group Sponsor and EPL Website Sponsor

17.1.1 **ITS** will evaluate each Manufacturer's initial proposal, including the Reseller Group membership list, proposed discounts, and other requirements specified in the RFP. The Manufacturer will be notified of any deficiencies and provided with an opportunity to make any corrections.

17.1.2 **ITS** will evaluate the test URL for the Manufacturer's EPL website and will work with the Manufacturer to make any corrections.

17.1.3 **ITS** will send the Manufacturer notification when the test site has been approved. The Manufacturer will change the test URL to the final live URL and **ITS** will link the website to the **ITS** EPL Interactive.

17.2 Sellers

17.2.1 **ITS** will evaluate each Seller's initial proposal, including Seller's qualifications, service fees, Seller status (Value-add or Mail-order), Reseller Group memberships, and other requirements specified in the RFP. The Seller will be notified of any deficiencies and provided an opportunity to make any corrections.

- 17.2.2 **ITS** will send the Seller notification along with the Seller's copy of the *EPL Purchase Agreement* as executed by **ITS** once the Seller is valid and is approved for at least one (1) Reseller Group.
- 17.2.3 **ITS** will notify each Seller within a particular Reseller Group when that group is approved and has been activated on the EPL Interactive.
- 17.2.4 Sellers should understand that not all Manufacturers may be approved and authorized on the July 1, 2014 target date for publishing. Sellers may only begin selling product for those Manufacturers that have been approved by **ITS** and activated on the EPL Interactive.
- 17.3 **ITS** reserves the right to revoke approval subsequent to original acceptance. **ITS** will notify the vendor in writing if approval is revoked.
- 17.4 In **ITS'** evaluation to select items to be included on the EPL, the scope, minimum specifications, and pricing for each product will be evaluated.
  - 17.4.1 Individual products outside the scope of the product categories and specifications describe in Section IX: *Technical Specifications* must be removed from the Manufacturer's EPL website when requested by **ITS**.
  - 17.4.2 **ITS** will periodically review the Manufacturer's EPL website and 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 or have the price decreased in line with the discounts proposed in the Manufacturer's response to the RFP.
- 18. **Publication, Clarification, Corrections**
  - 18.1 The IT Hardware EPL Interactive will be available on the **ITS** website at the following address:  
  
<http://dsitspe01.its.ms.gov/its/EPLOnline.nsf/VendorPrint?OpenForm>
  - 18.2 The EPL Interactive will contain the following information:
    - 18.2.1 Page for each approved Manufacturer containing a link to the Manufacturer's EPL website, approved categories, and approved Sellers
    - 18.2.2 Page for each approved Seller containing contact information, ordering and payment information, services fees, and Seller's Reseller Groups
    - 18.2.3 Link to the "Instructions and Archives"

- 18.2.4 Category Search
- 18.3 The “Instructions and Archives” section will contain the following information:
  - 18.3.1 Instructions for Use
  - 18.3.2 EPL Purchase Agreement
  - 18.3.3 Minimum specifications from the RFP
  - 18.3.4 Lists of approved Manufactures and Sellers
- 18.4 The EPL product and pricing information will reside on each Manufacturer’s EPL website.
- 18.5 To access the various Manufacturer EPL sites, customers must come through the **ITS** EPL Interactive to ensure the Manufacturer and Seller are still in good standing and to be able to access additional information as posted by **ITS**.
- 18.6 **ITS** will not maintain an archive of the approved products. Each Manufacturer is responsible for either archiving previous price lists on its EPL site or saving customer “eQuotes” as described in Section XI: *Manufacturer’s Submission Information*.

## SECTION IX TECHNICAL SPECIFICATIONS

Section II, Item 9.11 of this RFP requires the Vendor to respond to the *Technical Specification* section with a point-by-point response to each requirement. However, for this RFP Vendors will not submit a point-by-point response but will sign off on the specifications within this section in their respective sections: Section XI: *Manufacturer Information Submission* and Section XIII: *Seller Information Submission*.

### 1. **IT Hardware Product Categories**

Listed below is a summary of the IT Hardware EPL categories that may be proposed. Vendors are not required to propose products in all categories. There is not a minimum number of products that must be proposed in a category.

- 1.1 Desktop-based Computers
- 1.2 Mobile-based Computers
- 1.3 Engineering and GIS-level Workstations
- 1.4 Desktop Monitors
- 1.5 Printers/Scanners
- 1.6 Large Format Printers and Scanners/Plotters
- 1.7 Projectors
- 1.8 Interactive Devices (whiteboards, voting devices, displays)
- 1.9 Large Displays
- 1.10 Servers
- 1.11 Storage
- 1.12 UPS
- 1.13 Racks
- 1.14 Switches
- 1.15 Wireless Components
- 1.16 Thin Client Systems
- 1.17 Video Conferencing
- 1.18 Audio/Video Components

## 2. **Global Exclusions**

- 2.1 Products with an EPL discounted price exceeding the EPL dollar limit of \$200,000.
- 2.2 Products designated for use outside the United States.
- 2.3 Application software.
- 2.4 Products including cellular service plans.
- 2.5 Professional development and training as it applies to applications and not how to operate/manage the proposed hardware.
- 2.6 Products designed for home use.
- 2.7 Products such as projector screens, charging carts, tables, chairs, and podiums are considered furniture and fall under Department of Finance and Administration's (DFA) purview. Exceptions to this exclusion, if any, will be noted within the individual categories.
- 2.8 Security or surveillance products to include software security as well as hardware.

## 3. **Global Requirements**

- 3.1 Only the Manufacturer-branded products may be proposed.
- 3.2 All products, options, and accessories must be available for any EPL customer.
- 3.3 The proposed EPL not-to-exceed price is for any EPL customer. Sellers can quote lower pricing.
- 3.4 All Reseller Group members listed for a particular category must be able to sell all products proposed for that category.
- 3.5 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-items.
- 3.6 Only software needed to manage or run the hardware may be proposed.
- 3.7 Only commercially-branded products may be proposed.

## 4. **Warranty**

- 4.1 General Warranty Requirements and Definitions

- 4.1.1 “On-Site Warranty”: 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.
  - 4.1.2 “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.
  - 4.1.3 The warranty must include the BASE Product and any EPL-published items purchased with the base product.
  - 4.1.4 The “BASE Product” includes the components required to meet the minimum specifications as outlined for each of the categories.
  - 4.1.5 The “Internal EPL Components” are those selected from the EPL options at the time of purchase that are internal to the product.
  - 4.1.6 Non-EPL items are not automatically covered in the BASE Product or as an EPL Component purchased with the base product. Customer and Seller must negotiate a warranty separately if needed. NOTE: Vendor-defined options in any open-ended specifications are EPL items.
  - 4.1.7 Charges for shipping and handling must be borne by the Seller during the on-site warranty period or for the first year of the warranty if the items are not covered by an on-site warranty.
  - 4.1.8 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, Seller is required to pay shipping from the manufacturer or repair facility back to the customer, however, Seller is not required to pay shipping from the customer to the manufacturer or repair facility.
- 4.2 EPL Product Categories Requiring Warranties Over One (1) Year
- 4.2.1 *Desktop-based Computers* must have a minimum three (3) years parts and labor or exchange with the first year on-site for the Base Product and all Internal EPL Components.
  - 4.2.2 *Engineering/GIS – Level Workstations* must have a minimum three (3) years parts and labor or exchange with the first year on-site for the Base Product and all Internal EPL Components.
  - 4.2.3 *Servers* must have a minimum three (3) years on-site for the Base product and all Internal EPL Components.

- 4.2.4 The *Keyboard* and *Mouse* are considered plug-and-play items. Therefore Sellers may opt to exchange the keyboard and mouse in lieu of coming on-site, with Seller paying shipping both to and from the manufacturer or repair facility. Should the Seller choose not to provide on-site service, the replacement keyboard or mouse should be shipped first, with instructions for the customer to return the damaged keyboard or mouse in the same box.
- 4.2.5 EPL proposed *External Components*, such as a USB drive, must have a minimum one (1) year warranty, on-site or exchange. If using exchange in lieu of on-site, Seller must pay shipping both to and from the manufacturer or repair facility. Should the Seller choose not to provide on-site service, the replacement item should be shipped first, with instructions for the customer to return the damaged component in the same box.
- 4.3 One (1) Year Parts and Labor or Exchange: Mobile-based Computers, Desktop Monitors, Printers/Scanners, Large Format Printers and Scanners/Plotters, Projectors, Interactive Devices, Large Displays, Storage, UPS, Racks, Switches, Wireless Components, Thin Client Systems, Video Conference Equipment, Audio/Visual Components
- 4.3.1 The *BASE Product* and all *Internal EPL Components* must have a minimum one (1) year parts and labor or exchange warranty.
- 4.3.2 EPL proposed *External Components* must have a minimum one (1) year parts and labor or exchange warranty.
- 4.3.3 If using exchange in lieu of repair. Seller must pay shipping both to and from the manufacturer or repair facility.
- 4.3.4 Exception: For the projectors, the minimum warranty requirement does not include the lamp.
- 4.4 Seller 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.
- This warranty specification only applies to software that is part of the management of the EPL hardware and either included with the base system or proposed as an optional accessory.
- 4.5 Manufacturers that provide warranties that exceed the minimum length of warranty required in this EPL must still ensure that the **ITS** EPL warranty requirements are met for the initial periods stated above. Should a Manufacturer offer a warranty period longer than the base minimum EPL warranty, Manufacturer and Seller must provide the customer with the warranty description for the extended period.

- 4.6 Due to the fluidity of this EPL, a Manufacturer might accidentally propose a product with a warranty less than the minimum specification. If this occurs, the Manufacturer will be required to honor the minimum warranty for that category without additional cost to the customer.

5. **Scope and Category Minimum Specifications**

Detailed for each category is a scope or category definition, minimum specifications, products that are excluded, and a list of required accessories and upgrades. Additional global minimum specifications and warranty requirements are provided in items 2 through 4 in this section.

5.1 Desktop-based Computers

5.1.1 Scope, Category Definition, and Minimum Specifications

- 5.1.1.1 Any commercially-branded personal computer that is designed to reside in a single location to provide single-user processing.
- 5.1.1.2 It may be a desktop configuration, a tower configuration, or an all-in-one unit.
- 5.1.1.3 It may operate as a stand-alone unit or as a node on a LAN.
- 5.1.1.4 It uses a Windows domain-compliant version of a Microsoft operating system such as Windows 7 Professional or Windows 8 Professional.
- 5.1.1.5 Must include or have proposed as an option a keyboard and mouse.
- 5.1.1.6 Components must be FCC Class B certified.
- 5.1.1.7 System must be fully configured prior to shipment. This configuration must include any pre-ordered hardware options supplied by the base manufacturer. The customer has the right to waive the requirement of configuration of pre-ordered hardware options.
- 5.1.1.8 Three (3) years parts and labor or exchange warranty with first year on-site. Refer to item 4: "Warranty" for additional requirements.

5.1.2 Exclusions

- 5.1.2.1 Systems using processor designed for gaming use.
- 5.1.2.2 Systems with no operating system in order that an alternative OS such as Linux may be loaded. If



customers require systems without the Windows OS in order to load an alternative OS, they should submit a request to **ITS** for approval to waive the minimum Windows OS specifications and to negotiate with the Seller for a reduced price.

5.1.2.3 COMPONENTS/OPTIONS that are excluded:

5.1.2.3.1 Software other than the operating system.

5.1.2.3.2 Displays that are not branded and/or warranted by the system manufacturer.

5.1.2.4 Refer to item 2: "Global Exclusions" for any additional exclusions.

5.1.3 Required Accessories and/or Upgrades

At a minimum, Manufacturer must provide the following options/upgrades, if available, for that product.

5.1.3.1 Processors

5.1.3.2 Memory

5.1.3.3 Hard drives

5.1.3.4 Warranty

5.2 Mobile-based Computers

5.2.1 Scope, Category Definition, and Minimum Specifications

5.2.1.1 Any commercially-branded personal computer that is designed for mobility to provide single-user processing, including word processing and spreadsheets.

5.2.1.2 It may be a notebook, a ruggedized notebook, a tablet PC, slate (touchscreen pad), or netbook.

5.2.1.3 It may operate as a stand-alone unit or as a node on a LAN.

5.2.1.4 For notebooks and tablet PCs, it must use a Windows domain-compliant version of a Microsoft operating system such as Windows 7 Professional or Windows 8 Professional.

5.2.1.5 For slates and netbooks, a Windows domain-compliant version of a Microsoft operating system is preferred but

not required. **ITS** reserves the right to reject products not using the above noted OS.

- 5.2.1.6 Screen size of at least 7".
- 5.2.1.7 Must include an AC cord.
- 5.2.1.8 Must include a pointing device or stylus. Slates may alternatively be touch screen driven only.
- 5.2.1.9 System must be fully configured prior to shipment. This configuration must include any pre-ordered hardware options supplied by the base manufacturer. The customer has the right to waive the requirement of configuration of pre-ordered hardware options.
- 5.2.1.10 One (1) year parts and labor or exchange warranty. Refer to item 4: "Warranty" for additional requirements.

#### 5.2.2 Exclusions

- 5.2.2.1 Chromebooks.
- 5.2.2.2 Systems using processors designed for gaming use.
- 5.2.2.3 Handheld devices such as smart phones.
- 5.2.2.4 Handheld devices without general computing ability such as book readers, Kindles, Nook, etc.
- 5.2.2.5 COMPONENTS/OPTIONS that are excluded:
  - 5.2.2.5.1 Software other than the operating system.
  - 5.2.2.5.2 Cellular service options.
- 5.2.2.6 Refer to item 2: "Global Exclusions" for any additional exclusions.

#### 5.2.3 Required Accessories and/or Upgrades

At a minimum, Manufacturer must provide the following options/upgrades, if available, for that product.

- 5.2.3.1 Processors
- 5.2.3.2 Memory
- 5.2.3.3 Hard drives

- 5.2.3.4 Port replicators/docking station/cradle
- 5.2.3.5 Warranty
- 5.2.3.6 Wi-Fi
- 5.2.3.7 OS business/Pro versions

### 5.3 Engineering and GIS-level Workstations

#### 5.3.1 Scope, Category Definition, and Minimum Specifications

- 5.3.1.1 Any commercially-branded personal computer designed for technical or scientific applications. Typically considered a high-end system. Intended primarily to be used by one person at a time, they are commonly connected to a LAN and run multi-user operating systems.
- 5.3.1.2 It may be a desktop, tower, or mobile configuration.
- 5.3.1.3 It may have multiple sockets.
- 5.3.1.4 It may operate as a stand-alone unit or as a node on a LAN.
- 5.3.1.5 It uses a Windows domain-compliant version of a Microsoft operating system such as Windows 7 Professional or Windows 8 Professional.
- 5.3.1.6 Must include or have proposed as an option a keyboard and mouse.
- 5.3.1.7 Components must be FCC Class B certified.
- 5.3.1.8 System must be fully configured prior to shipment. This configuration must include any pre-ordered hardware options supplied by the base manufacturer. The customer has the right to waive the requirement of configuration of pre-ordered hardware options.
- 5.3.1.9 Three (3) years parts and labor or exchange warranty with first year on-site. Refer to item 4: "Warranty" for additional requirements.

#### 5.3.2 Exclusions

- 5.3.2.1 Gaming systems.
- 5.3.2.2 Home system with a high-end graphics card.

5.3.2.3 COMPONENTS/OPTIONS that are excluded:

5.3.2.3.1 Software other than the operating system.

5.3.2.3.2 Displays that are not branded and/or warranted by the system manufacturer.

5.3.2.4 Refer to item 2: "Global Exclusions" for any additional exclusions.

5.3.3 Required Accessories and/or Upgrades

At a minimum, Manufacturer must provide the following options/upgrades, if available, for that product.

5.3.3.1 Processors

5.3.3.2 Memory

5.3.3.3 Hard drives

5.3.3.4 Warranty

5.4 Desktop Monitors

5.4.1 Scope, Category Definition, and Minimum Specifications

5.4.1.1 Any LCD or touchscreen display up to 24".

5.4.1.2 If the monitor is DVI capable, a DVI to VGA cable must be included or proposed as an option.

5.4.1.3 One (1) Year parts and labor or exchange warranty. Refer to item 4: "Warranty" for additional requirements.

5.4.2 Exclusions

5.4.2.1 CRT monitors.

5.4.2.2 Refer to item 2: "Global Exclusions" for any additional exclusions.

5.4.3 Required Accessories and/or Upgrades

At a minimum, Manufacturer must provide the following options/upgrades, if available, for that product.

5.4.3.1 Cables

5.4.3.2 Warranty

## 5.5 Printers/Scanners

### 5.5.1 Scope, Category Definition, and Minimum Specifications

- 5.5.1.1 Any standalone scanner designed for routine office network and desktop printing.
- 5.5.1.2 Any printer designed for routine office network and desktop printing.
- 5.5.1.3 It may be black and white or color.
- 5.5.1.4 The multi-functioning device must have printing capability as a standard base component.
- 5.5.1.5 It may be print only or print with copy, scan, and/or fax capability.
- 5.5.1.6 It may be laser, thermal, liquid ink, or solid ink.
- 5.5.1.7 If proposing a pre-networked printer, NIC must be Ethernet 10/100 at minimum.
- 5.5.1.8 Include toner/ink and all necessary start-up supplies. *It is highly suggested that the customer contact Seller for information regarding toner capacity, toner yield, and any other variables that may affect total cost of ownership.*
- 5.5.1.9 If providing toner/ink cartridges as an option, these cartridges may only be purchased from the EPL at the time of initial printer purchase.
- 5.5.1.10 One (1) year parts and labor or exchange warranty. Refer to item 4: "Warranty" for additional requirements.

### 5.5.2 Exclusions

- 5.5.2.1 Line printers.
- 5.5.2.2 Special application printers.
- 5.5.2.3 Multifunction devices that have no print capability as a standard base function.
- 5.5.2.4 Printers using roll paper or "ft/hour" instead of "page per minute".
- 5.5.2.5 Application-specific document imaging scanners requiring specialized software.

5.5.2.6 Furniture is excluded. However, Manufacturer's branded printer stand may be proposed.

5.5.2.7 Refer to item 2: "Global Exclusions" for any additional exclusions.

5.5.3 Required Accessories and/or Upgrades  
At a minimum, Manufacturer must provide the following options/upgrades, if available, for that product.

5.5.3.1 Paper drawers and accessories

5.5.3.2 Memory

5.5.3.3 Cables

5.5.3.4 Warranty

## 5.6 Large Format Printers and Scanners/Plotters

5.6.1 Scope, Category Definition, and Minimum Specifications

5.6.1.1 Any printer, scanner, or plotter designed for GIS-type printing/plotting.

5.6.1.2 Compatible with Engineering/GIS applications (Examples are MicroStation, Imagine, Esri, Intergraph, CAD)

5.6.1.3 One (1) year parts and labor or exchange warranty. Refer to item 4: "Warranty" for additional requirements.

5.6.2 Exclusions

5.6.2.1 Furniture is excluded. However, Manufacturer's branded printer stand may be proposed.

5.6.2.2 Refer to item 2: "Global Exclusions" for any additional exclusions.

5.6.3 Required Accessories and/or Upgrades  
At a minimum, Manufacturer must provide the following options/upgrades, if available, for that product.

5.6.3.1 Warranty

## 5.7 Projectors

5.7.1 Scope, Category Definition, and Minimum Specifications

- 5.7.1.1 Any device that projects a video signal from a computer.
  - 5.7.1.2 May be proposed with or without a lens. If lens is not included, then at least one (1) lens must be proposed as an option.
  - 5.7.1.3 Must include a wireless remote control with plug and play presentation control (not software driven). This may be proposed as an option if not a standard accessory.
  - 5.7.1.4 If projector is DVI capable, a DVI to VGA cable must be included or proposed as an option.
  - 5.7.1.5 FCC Class A certified.
  - 5.7.1.6 One (1) year parts and labor or exchange warranty not including lamp. Refer to item 4: "Warranty" for additional requirements.
- 5.7.2 Exclusions
  - 5.7.2.1 Projection screens.
  - 5.7.2.2 Refer to item 2: "Global Exclusions" for any additional exclusions.
- 5.7.3 Required Accessories and/or Upgrades

At a minimum, Manufacturer must provide the following options/upgrades, if available, for that product.

  - 5.7.3.1 Spare lamp
  - 5.7.3.2 Ceiling mount kit
  - 5.7.3.3 Cables
  - 5.7.3.4 Warranty
- 5.8 Interactive Devices (whiteboards, voting devices, touch display, etc.)
  - 5.8.1 Scope, Category Definition, and Minimum Specifications
    - 5.8.1.1 Types of devices that may be proposed are interactive whiteboards, slates or tablets, student response/voting systems, bundle systems with manufacturer-branded components, and accessories that are integrated and branded/warranted by the manufacturer.

- 5.8.1.2 One (1) year parts and labor or exchange warranty. Refer to item 4: "Warranty" for additional requirements.
  - 5.8.2 Exclusions
    - 5.8.2.1 Point of Sale devices.
    - 5.8.2.2 Refer to item 2: "Global Exclusions" for any additional exclusions.
  - 5.8.3 Required Accessories and/or Upgrades

At a minimum, Manufacturer must provide the following options/upgrades, if available, for that product.

    - 5.8.3.1 Warranty
- 5.9 Large Displays
  - 5.9.1 Scope, Category Definition, and Minimum Specifications
    - 5.9.1.1 Large displays over 24 inches to include touchscreen, LCD, plasma, HDTV, and digital signage.
    - 5.9.1.2 One (1) year parts and labor or exchange warranty. Refer to item 4: "Warranty" for additional requirements.
  - 5.9.2 Exclusions
    - 5.9.2.1 Furniture is excluded. However, Manufacturer's branded monitor stand may be proposed.
    - 5.9.2.2 Refer to item 2: "Global Exclusions" for any additional exclusions.
  - 5.9.3 Required Accessories and/or Upgrades

At a minimum, Manufacturer must provide the following options/upgrades, if available, for that product.

    - 5.9.3.1 Cables
    - 5.9.3.2 Mounts
    - 5.9.3.3 Warranty
- 5.10 Servers
  - 5.10.1 Scope, Category Definition, and Minimum Specifications
    - 5.10.1.1 Any commercially-branded computer capable of operating in a Windows environment and designed to



run software applications under the heavy demand of a network environment.

- 5.10.1.2 It may be a single-socket, 2-socket, or multi-socket server.
- 5.10.1.3 Configurations may be rack mount, tower, or blade.
- 5.10.1.4 Components must be FCC Class B certified.
- 5.10.1.5 The server must be proposed without an operating system.
- 5.10.1.6 System must be fully configured prior to shipment. This configuration must include any pre-ordered hardware options supplied by the base manufacturer. The customer has the right to waive the requirement of configuration of pre-ordered hardware options.
- 5.10.1.7 Three (3) years on-site parts and labor warranty with next business day response (Monday through Friday, 8 to 5). Warranty on external components may be on-site or exchange. Refer to item 4: "Warranty" for additional requirements.

#### 5.10.2 Exclusions

- 5.10.2.1 Servers not capable of operating in a Windows environment.
- 5.10.2.2 COMPONENTS/OPTIONS that are excluded:
  - 5.10.2.2.1 Operating System.
  - 5.10.2.2.2 Displays that are not branded and/or warranted by the system manufacturer.
  - 5.10.2.2.3 Options other than displays that are covered under another category such as UPS, printers, switches, racks, storage.
- 5.10.2.3 Refer to item 2: "Global Exclusions" for any additional exclusions.

#### 5.10.3 Required Accessories and/or Upgrades

At a minimum, Manufacturer must provide the following options/upgrades, if available, for that product.

##### 5.10.3.1 Processors

- 5.10.3.2 Memory
- 5.10.3.3 Hard drives
- 5.10.3.4 Warranty
- 5.11 Storage
  - 5.11.1 Scope, Category Definition, and Minimum Specifications
    - 5.11.1.1 The intent of this category is to provide storage devices used to perform on-site backups in a LAN environment. Also, the intent is to provide primary storage appropriate to the level of servers on the EPL and for backup of these servers.
    - 5.11.1.2 Storage types that may be included are shown below:
      - 5.11.1.2.1 Tape Storage: Internal or external single tape, autoloaders, and small-scale tape libraries
      - 5.11.1.2.2 NAS
      - 5.11.1.2.3 SAN
    - 5.11.1.3 One (1) year parts and labor or exchange warranty. Refer to item 4: "Warranty" for additional requirements.
  - 5.11.2 Exclusions
    - 5.11.2.1 Virtual backup or storage devices.
    - 5.11.2.2 Cloud-based services.
    - 5.11.2.3 Refer to item 2: "Global Exclusions" for any additional exclusions.
  - 5.11.3 Required Accessories and/or Upgrades
    - At a minimum, Manufacturer must provide the following options/upgrades, if available, for that product.
    - 5.11.3.1 Tape cartridges
    - 5.11.3.2 Hard drives
    - 5.11.3.3 Warranty

5.12        UPS

5.12.1      Scope, Category Definition, and Minimum Specifications

5.12.1.1    This category is for uninterruptible power supplies (UPS) designed for personal computer, server, and network backup.

5.12.1.2    One (1) year parts and labor or exchange warranty. Refer to item 4: "Warranty" for additional requirements.

5.12.2      Exclusions

5.12.2.1    Large-scale or "enterprise" solutions that are intended for a server farm or enterprise-type environments.

5.12.2.2    Chillers.

5.12.2.3    Refer to item 2: "Global Exclusions" for any additional exclusions.

5.12.3      Required Accessories and/or Upgrades

At a minimum, Manufacturer must provide the following options/upgrades, if available, for that product.

5.12.3.1    Remote Network Management Card

5.12.3.2    Warranty

5.13        Rack

5.13.1      Scope, Category Definition, and Minimum Specifications

5.13.1.1    Racks proposed in the category should be designed for computer and networking equipment.

5.13.1.2    Types of racks include 19-inch open frame, 2x enclosures, and 4x enclosures.

5.13.1.3    One (1) year parts and labor or exchange warranty. Refer to item 4: "Warranty" for additional requirements.

5.13.2      Exclusions

5.13.2.1    Large-scale or "enterprise" solutions that are intended for a server farm or enterprise-type environments.

5.13.2.2    Refer to item 2: "Global Exclusions" for any additional exclusions.

- 5.13.3 Required Accessories and/or Upgrades  
At a minimum, Manufacturer must provide the following options/upgrades, if available, for that product.
  - 5.13.3.1 Shelves
  - 5.13.3.2 Keyboard Drawer/Tray
  - 5.13.3.3 Warranty
- 5.14 Switches
  - 5.14.1 Scope, Category Definition, and Minimum Specifications
    - 5.14.1.1 The intent of this category is to provide switches for local area network (LAN) use. Products in this category utilizing fiber and/or gigabit are intended to provide a low-end solution for these technologies within the general focus of this EPL.
    - 5.14.1.2 Types of switches that may be included are 10/100, 100BaseT, Gigabit, 10GB, or Fiber. These switches may be chassis-based, standalone, or rack mounted using the port types just mentioned.
    - 5.14.1.3 One (1) year parts and labor or exchange warranty. Refer to item 4: "Warranty" for additional requirements.
  - 5.14.2 Exclusions
    - 5.14.2.1 Traditional routers.
    - 5.14.2.2 Refer to item 2: "Global Exclusions" for any additional exclusions.
  - 5.14.3 Required Accessories and/or Upgrades  
At a minimum, Manufacturer must provide the following options/upgrades, if available, for that product.
    - 5.14.3.1 Modules
    - 5.14.3.2 Warranty
- 5.15 Wireless Components
  - 5.15.1 Scope, Category Definition, and Minimum Specifications
    - 5.15.1.1 The intent of this category is to provide the customer with the ability to add to or upgrade existing LAN-based

wireless solutions or provide LAN-based wireless connectivity for DATA.

5.15.1.2 The following is a list of the types of components that may be proposed:

5.15.1.2.1 Antennas

5.15.1.2.2 APs

5.15.1.2.3 Authentication

5.15.1.2.4 Bridges

5.15.1.2.5 Cables

5.15.1.2.6 Centralized Management Server or Appliance Software

5.15.1.2.7 Mounts/Enclosures

5.15.1.2.8 Option Cards

5.15.1.2.9 Power Injectors

5.15.1.2.10 Software

5.15.1.2.11 Wi-Fi Cards

5.15.1.3 One (1) year parts and labor or exchange warranty. Refer to item 4: "Warranty" for additional requirements.

5.15.1.4 **ITS** highly recommends that the customer obtain a site survey from Seller before making any wireless purchases. However, **ITS** makes no requirements for a site survey at this time. One of the hourly rates for services may be used for the purpose of a site survey.

5.15.2 Exclusions

5.15.2.1 Wireless video

5.15.2.2 Wireless voice

5.15.2.3 Refer to item 2: "Global Exclusions" for any additional exclusions

5.15.3 Required Accessories and/or Upgrades

At a minimum, Manufacturer must provide the following options/upgrades, if available, for that product.

5.15.3.1    Warranty

5.16        Thin Client Systems

5.16.1      Scope, Category Definition, and Minimum Specifications

5.16.1.1    A thin client system is a network computer without a hard disk drive. These systems are designed to be especially small so that the bulk of the data processing occurs on the server.

5.16.1.2    One (1) year parts and labor or exchange warranty. Refer to item 4: "Warranty" for additional requirements.

5.16.2      Exclusions

5.16.2.1    Refer to item 2: "Global Exclusions" for any additional exclusions.

5.16.3      Required Accessories and/or Upgrades

At a minimum, Manufacturer must provide the following options/upgrades, if available, for that product.

5.16.3.1    Warranty

5.17        Video Conferencing Equipment

5.17.1      Scope, Category Definition, and Minimum Specifications

5.17.1.1    The focus of this category is to provide customers with endpoint equipment for long distance learning and two-way or one-way video conferencing.

5.17.1.2    Types of equipment include

5.17.1.2.1    CODECS

5.17.1.2.2    CSU/DSU

5.17.1.2.3    Video Streaming

5.17.1.2.4    Video Conferencing System Control Pads

5.17.1.2.5    Firewall Traversal Solutions

5.17.1.2.6    Gatekeepers

5.17.1.2.7    MCUs

5.17.1.2.8 Video Conferencing Software

5.17.1.3 One (1) year parts and labor or exchange. Refer to item 4: "Warranty" for additional requirements.

5.17.2 Exclusions

5.17.2.1 MCU, bridges, or networking equipment appropriate for use at the central control of the Statewide Network.

5.17.2.2 Paging systems.

5.17.2.3 Systems requiring tailored room construction.

5.17.2.4 COMPONENTS/OPTIONS that are excluded:

5.17.2.4.1 VOIP.

5.17.2.4.2 Furniture is excluded unless it is an option to the manufacturer's base product such as the CODEC manufacturer's branded cart or a printer stand for a manufacturer's printer.

5.17.2.5 Refer to item 2: "Global Exclusions" for any additional exclusions.

5.17.3 Required Accessories and/or Upgrades

At a minimum, Manufacturer must provide the following options/upgrades, if available, for that product.

5.17.3.1 Warranty

5.18 Audio/Visual Components

5.18.1 Scope, Category Definition, and Minimum Specifications

5.18.1.1 The focus of this category is to provide the pieces and parts to complete a video conferencing system.

5.18.1.2 Types of equipment include

5.18.1.2.1 Microphones

5.18.1.2.2 Speakers

5.18.1.2.3 Distribution Amps

5.18.1.2.4 Switchers

- 5.18.1.2.5 Cameras
- 5.18.1.2.6 Document Cameras
- 5.18.1.2.7 Touch Panels
- 5.18.1.2.8 Remotes
- 5.18.1.2.9 Archiving Components
- 5.18.1.3 One (1) year parts and labor or exchange warranty.  
Refer to item 4: "Warranty" for additional requirements.
- 5.18.2 Exclusions
  - 5.18.2.1 Video Surveillance.
  - 5.18.2.2 Refer to item 2: "Global Exclusions" for any additional exclusions.
- 5.18.3 Required Accessories and/or Upgrades  
At a minimum, Manufacturer must provide the following options/upgrades, if available, for that product.
  - 5.18.3.1 Warranty

## 6. Leveraging State Technology Resources

- 6.1 **ITS** statute, **House Bill 1450, Section 3**. Section 25-53-5, Mississippi Code of 1972 Amended, article (t), requires that **ITS**, the authority, shall manage one or more State Data Centers to provide information technology services on a cost-sharing basis to all State agencies. This is done in an effort to promote consolidation and cooperation in the acquisition of technology infrastructure for State government and that **ITS** acquires and operates the information technology necessary to provide services to the State agencies in a manner that maximizes efficiency and economy. Budgetary constraints require us to assess how we do business and to consider Mississippi State government as one enterprise, and where possible, build a technology infrastructure once, to be used by many.
- 6.2 Pooling one-time purchasing and operating power on items that work across the enterprise (servers, storage, networking, software tools, etc.)
  - 6.2.1 Results in savings to the State as a whole.
  - 6.2.2 Improves and enhances the security and reliability of the State's information and business systems.
  - 6.2.3 Optimizes the efficient use of the State's information technology assets.



- 6.2.4 Leverages the investment in the State Data Center to the fullest extent.
- 6.3 Customers are encouraged to explore existing State resources, including those available at the State Data Center, in an effort to effectively share resources and leverage the State's investments in technology.
- 6.4 Customers may use off-site backup, but are encouraged to consider the benefits of the **ITS** Data Center that offers storage and is staffed 24 x 7 x 365 days a year.
- 6.5 **ITS** will publish in the *Instructions for Use* for this EPL an additional instruction to the customer as follows: "Prior to purchasing high-end storage items, you are highly encouraged to consider off-site backup solutions as well as storage opportunities offered by **ITS**."
- 6.6 **ITS** reserves the right to limit the use of this EPL to our customers, particularly agencies, due to legislation or to ensure more effective use of the State Data Center.

## **SECTION X COST INFORMATION SUBMISSION FOR SELLERS**

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

### **1. Overview of Cost Information Submission**

- 1.1 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.
- 1.2 In response to this section, the Seller will provide the following:
  - 1.2.1 Contact information to include sales contacts, place order address, and remit payment address.
  - 1.2.2 Service fees as defined in Section VIII: IT Hardware Processes.

### **2. Directions for Submitting Contact Information and Service Fees**

- 2.1 Seller must download and complete the two Excel files shown below. These files are located on the RFP download page at <http://www.its.ms.gov/Procurement/Pages/3760.aspx>
  - 2.1.1 Seller Contact Information
  - 2.1.2 Service Fee
- 2.2 You will submit a CD or USB flash drive containing these two Excel files.
  - 2.2.1 The submitted media must be formatted for a Windows platform
  - 2.2.2 Do not include any additional information on this media.
  - 2.2.3 An electronic version of your entire RFP response is not requested.
  - 2.2.4 These two Excel files on your media are considered the official copy.
  - 2.2.5 Label the CD or media with your company name and RFP No 3760.
- 2.3 Print both files and include the paper copy in your response.
  - 2.3.1 The paper will stand as a backup in case there is a problem reading the electronic media.

2.3.2 Refer to Section VIII: *IT Hardware Processes*, Item 10.4 regarding how missing services fees are handled.

3. **Additional Information Regarding Service Fee Submission**

- 3.1 Seller will provide pricing for the three (3) rates noted in Section VIII: *IT Hardware Processes*.
- 3.2 All Sellers must submit this spreadsheet. If you are a "Mail-order" Seller and do not wish to propose these fees, show each line item as "Not Applicable" or "N/A".
- 3.3 Sellers may show the travel rate as "Included". The other two rates must show a cost if the Seller is proposing as "Value-add".

## **SECTION XI MANUFACTURER INFORMATION SUBMISSION**

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

- 1.1 Respond to this section only if you are a Manufacturer sponsoring a Reseller Group.
- 1.2 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.

### **2. Company and Contact Information**

- 2.1 Manufacturer's Name
- 2.2 State of Incorporation
- 2.3 Is the Manufacturer under any bankruptcy proceedings?
- 2.4 Prime Contact
  - 2.4.1 Provide name, e-mail, telephone, fax, and mailing address for the prime contact with your company.
  - 2.4.2 This is the person **ITS** will contact for any questions regarding your response and the Reseller Group. Also, this is the person we will direct Sellers to for questions regarding group membership, product, and pricing.
- 2.5 Backup Contact(s)
  - 2.5.1 Provide name, e-mail, and telephone of a backup or multiple backups to the prime contact.
  - 2.5.2 In addition to your prime contact, the backup(s) will also receive notifications concerning the EPL throughout the cycle such as update notices, vendor meeting notices, or correspondence concerning your group.
- 2.6 Contact for your EPL website  
Provide name, e-mail, and telephone for the person **ITS** will contact with questions regarding the EPL website for your group.
- 2.7 Note that the above contacts will not be published on the IT Hardware EPL Interactive.

### **3. List of Approved Reseller Group Members**

- 3.1 Will the Manufacturer also sell directly as part of the Reseller Group?

- 3.2 List below the company name for each member of your Reseller Group.
- 3.3 Are all Reseller Group members authorized for all categories you are proposing? If not, make notations by each Seller's company name in item 3.2 above to indicate which categories are approved.

4. **Categories of Products**

The IT Hardware EPL scope has a limited number of product categories that may be purchased through this RFP. They are listed in Section IX: *Technical Specifications*. Check the product categories that your company sells and plans to include on your EPL website.

- ☐ Desktop-based Computers
- ☐ Mobile-based Computers
- ☐ Engineering and GIS-Level Workstations
- ☐ Desktop Monitors
- ☐ Printers/Scanners
- ☐ Large Format Printers and Scanners/Plotters
- ☐ Projectors
- ☐ Interactive Devices (whiteboards, voting devices, displays)
- ☐ Large Displays
- ☐ Servers
- ☐ Storage
- ☐ UPS
- ☐ Racks
- ☐ Switches
- ☐ Wireless Components
- ☐ Thin Client Systems
- ☐ Video Conferencing Equipment
- ☐ Audio Visual Components

5. **Pricing**

It is not acceptable to propose retail pricing with the supposition that the Seller will discount the price at time of quotation. The Manufacturer is expected to propose a discounted cost based upon a quantity of one (1). The Seller 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 the following questions 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.

- 5.1 Explain the cost basis used by the Manufacturer to propose pricing on behalf of the Reseller Group for this EPL. 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.
- 5.2 What method will be used to calculate the pricing throughout the contract period?
- 5.3 Does the Manufacturer maintain a “List”, “MSRP”, or similar designation price list? If yes, explain and provide, if available, an electronic copy or a URL where the price list may be accessed.
- 5.4 Does the Manufacturer have a GSA schedule or price list? If yes, explain and provide, if available, an electronic copy or URL to a website where the price list may be accessed.
- 5.5 Does the Manufacturer maintain some other price list that can be used as a “benchmark” by the State? If yes, explain and provide, if available, an electronic copy or a URL to a website where the price list may be accessed
- 5.6 If the Manufacturer is using a configurator, what method can **ITS** use to validate the discount being provided?

## 6. **Manufacturer EPL Website Requirements**

### 6.1 General Information

- 6.1.1 The Manufacturer must develop an EPL website residing on the Manufacturer’s server and domain name. This website will, at minimum, house the Manufacturer’s product and pricing information.
- 6.1.2 Distributors or individual Sellers may not host the EPL site. Any assistance provided to the Manufacturer by a distributor or business partner should be transparent to **ITS**. **ITS’** correspondence and relationship must be directly with the Manufacturer.
- 6.1.3 The Manufacturer will provide both a test URL and a final URL that will be linked by **ITS** to our website.
- 6.1.4 Manufacturers who currently have an approved website under IT Hardware EPL 3658 will need to supply a test site URL for this RFP. Once the test site has been approved, the new site can replace the current EPL 3658 site.
- 6.1.5 If you have a test site ready for **ITS** to review, provide the URL here.

- 6.1.6 The Manufacturer is not required to have a test site ready in order to submit a response to this RFP. However, priority evaluation/review will be given to those Manufacturers whose sites are ready first.
- 6.1.7 The target date for publishing is July 1, 2014. Those websites not approved by the time we are ready to publish will continue to be reviewed and will be added to the EPL Interactive once approved.

## 6.2 Product and Price Changes

- 6.2.1 There is not a maximum or minimum number of products that must be proposed.
- 6.2.2 Manufacturers may update (add, edit, delete) product and pricing on their EPL website at any time without initial approval from **ITS**. However, **ITS** reserves the right to require a Manufacturer to submit a price list for pre-approval in cases where there has been a history of non-compliant price lists being posted.
- 6.2.3 Manufacturers may update their product multiple times within a month.
- 6.2.4 Should a Manufacturer raise a price on any product, the Manufacturer must honor the lower price for thirty (30) days from the time last posted on the website or from the time an e-quote is generated.

## 6.3 Static Price Lists vs Configurator

Manufacturers have two methods of displaying their proposed products:

### 6.3.1 Static Price Lists Requirements

- 6.3.1.1 It must be posted as an Adobe PDF file.
- 6.3.1.2 The list should be legible when printed.
- 6.3.1.3 Proposed 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 the price list.
- 6.3.1.4 Manufacturers must create a price list that is easy to follow. It is not to be used as a "look-up by part number" document.
- 6.3.1.5 Do not propose your entire catalog. Review your products and propose those that are pertinent to the

EPL customers. Remember that you can update your product and pricing at any time.

6.3.1.6 The header/footer must contain the following:

6.3.1.6.1 "IT Hardware EPL 3760"

6.3.1.6.2 Manufacturer's name

6.3.1.6.3 The date of posting or as close to posting date as possible

6.3.1.6.4 Consecutive page numbers

6.3.1.7 Product information to be included:

6.3.1.7.1 Part number

6.3.1.7.2 Product description that provides the customer with adequate information to discern what the product is

6.3.1.7.3 List or MSRP

6.3.1.7.4 EPL Price (The word "EPL" should be in the heading for this column)

6.3.2 Configurator Requirements

6.3.2.1 The site must include the ability to save the configuration as an "e-quote" or a "saved cart" for printing or e-mailing the configuration to the customer.

6.3.2.2 "E-quotes"/"saved carts" must be available for recall for a minimum of thirty days.

6.3.2.3 The site cannot have a "true" shopping cart that allows the customer to buy online. The sites are for quote purposes only.

6.3.3 Archiving of Pricing

6.3.3.1 If using a configurator, the saved e-quote/cart must be archived or be available to the customer or the Seller for a minimum of thirty days from the generation of the e-quote/cart.

6.3.3.2 If using static price lists, the Manufacturer must maintain an archive of price lists on the EPL website



dating back a minimum of 12 months or through the initially posted price list for this EPL.

6.3.3.3 Do not include price lists that were posted for previous EPLs.

6.3.3.4 Include the full date (month, day, and year) of the price list in the label on your EPL website.

#### 6.3.4 Basic Requirements

6.3.4.1 The Manufacturer's EPL website must contain the following information. This information should be prominently displayed on the page. The customer should not have to spend a lot of time looking for this information

6.3.4.2 EPL title displayed exactly as "IT Hardware Express Products List (EPL) 3760"

6.3.4.3 EPL expiration date displayed exactly as "EPL Expiration Date: June 30, 2017"

6.3.4.4 Dollar limit language displayed exactly as "The purchase limit is \$200,000 per project per fiscal year (July - June) for the IT Hardware EPL without additional approval from **ITS**. For purchases over \$50,000, the customer **MUST** obtain quotations from two or more EPL Sellers."

6.3.4.5 Link to the **ITS** main EPL page:  
<http://www.its.ms.gov/Procurement/Pages/EPLs.aspx>

6.3.4.6 Link to the Manufacturer's Reseller Group page on the **ITS** website. This link will be provided after receipt of the Manufacturer's proposal.

6.3.4.7 Price list.

6.3.4.8 Price list archives section (This is not required until the Manufacturer changes the initial price list.)

#### 6.3.5 Additional Website Requirements

6.3.5.1 There must not be a password or special login to access the website.

6.3.5.2 Manufacturers may have an additional link to their commercial site as long as it is clearly labeled as such and links to product literature pdfs.

6.3.5.3 With a few exceptions, there must not be any links that allow the customer to navigate away from the EPL website without warning. It is imperative that the Manufacturer's EPL website does not mistakenly allow the customer to navigate from the approved EPL site to products or services that have not been approved and for which the customer has no procurement authority. **ITS'** preference it to have only the links referenced in "Basic Requirements" and the link to the Manufacturer's commercial site.

6.3.5.4 Below are options if the Manufacturer cannot remove non-compliant links:

6.3.5.4.1 Disable all links except for those listed in "Basic Requirements" and the link to the commercial site or product literature pdfs.

6.3.5.4.2 Provide an interim page alerting customers that they are leaving the approved EPL site.

6.3.5.4.3 Create a Word version of the site and post it as a PDF.

6.3.5.4.4 **ITS** reserves the right to work with a Manufacturer on a case-by-case scenario to work through any issues.

6.3.5.5 Test your website using multiple browsers including multiple versions for both Windows and Apple systems.

6.3.5.6 Do not give out the URL to customers and do not publish the URL on your commercial site. Customers must access your site by navigating through the **ITS** EPL Interactive.

6.3.5.7 Try to schedule website updates before or after the core hours of 8 - 5 Central time, Monday - Friday. As an alternative, supply a replacement page noting that the site is down for maintenance. It is very frustrating for a customer to receive a "Page not Found" when trying to access the site.

## 6.3.6 Monthly Certification Requirements

6.3.6.1 After the initial "activation" or "publication" of the Manufacturer's Reseller Group, the Manufacturer will be required to "certify" its site on a monthly basis for the remainder of the EPL cycle.

- 6.3.6.2 Upon activation, **ITS** will send the Manufacturer monthly certification instructions and a blank certification form.
  - 6.3.6.3 **ITS** reserves the right to “deactivate” a Reseller Group for non-compliance. This deactivation can occur because a Manufacturer does not submit the certification form within the stated time frame or because the website and/or price list do not conform to the specifications laid out within this RFP.
  - 6.3.6.4 If a Reseller Group has been deactivated, no Seller within that group may sell that Manufacturer’s product using the EPL as the procurement authority.
  - 6.3.6.5 **ITS** will activate the Reseller Group after reviewing the site for all noted corrections.
- 6.3.7 **ITS** Hosting of Manufacturer Sites
- 6.3.7.1 **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 their 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 representative is busy or is having trouble getting resources within the company. If hosting a site as described herein is not possible for your company, 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 do 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.
  - 6.3.7.2 Similarly, should **ITS** and the Manufacturer web team not be able to reach approval for the test site due to technical issues, **ITS** reserves the right to consider offering the solution noted in item 6.3.7.1 above.
  - 6.3.7.3 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 **ITS**.

- 6.3.7.4 There will be a non-refundable fee payable up front for an **ITS**-hosted site.
  - 6.3.7.4.1 The amount under this RFP will be \$1000 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.
  - 6.3.7.4.2 The fee 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.
  - 6.3.7.4.3 This is a non-refundable fee should the manufacturer elect to produce its own site before the end of the next six month period.

**7. Acknowledgement of Manufacturer Requirements**

- \_\_\_\_\_ We have read and understand all amendments/clarifications as referenced in Section VI: *RFP Questionnaire*, Item 9.
- \_\_\_\_\_ We have read and understand all points within Section VII: *EPL Overview*.
- \_\_\_\_\_ We have read and understand all points within Section IX: *Technical Specifications*.
- \_\_\_\_\_ We have read and understand the information regarding the new EPL Administrative Fee and have modeled our discounts accordingly.
- \_\_\_\_\_ Yes, our company will participate in the IT Hardware EPL 3760 by sponsoring a "Reseller Group". We have reviewed the responsibilities in sponsoring a "Reseller Group" as describe in Section VIII: *IT Hardware Processes* and this section *Manufacturer Information Submission*.
- \_\_\_\_\_ Yes, our company will participate in the IT Hardware EPL 3760 by creating and maintaining an EPL website. We have reviewed the responsibilities and requirements regarding the Manufacturer's EPL website as described in Section VIII: *IT Hardware Processes*, Section IX: *Technical Specifications*, this section: *Manufacturer Information Submission*, and Section XII: *Marketing/Sales Report*.

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 3760. All responses received by **ITS** no later than the original opening date will be processed with the initial RFP evaluation. Manufacturer responses received after the initial opening date will be processed by **ITS** as time permits.

## **SECTION XII MARKETING/SALES REPORT**

### **1. Overview**

- 1.1 Sellers whose products are approved under this RFP must maintain a record of EPL sales to be reported on a quarterly basis to **ITS**.
- 1.2 Within fifteen (15) calendar days following the completion of each EPL quarter, the Seller should submit a Marketing/Sales report identifying all EPL sales to **ITS**. Upon receipt of the report, **ITS** will review the 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 EPLs, and is referenced in the Master Purchase Agreements for EPLs.
- 1.4 The EPL Administrative Fee is the responsibility of the Seller. This 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%) of quarterly sales receipts under an active Master Purchase Agreement.
- 2.2 The EPL Administrative Fee percentage is applicable to amounts where the Seller has received a purchase order.

### **3. Method of Assessment**

- 3.1 At the completion of each quarter, the Seller reviews all sales in preparation for submission of the Marketing/Sales report.
- 3.2 The Seller identifies all sales receipts transacted by customers using the EPL as the procurement instrument.
- 3.3 After receiving the Seller's Marketing/Sales report, **ITS** will review said report and assess the one percent (1%) EPL Administrative Fee based on the total amount of sales listed in the report.

### **4. Submission Schedule**

- 4.1 Within fifteen (15) days following the end of the quarter, the Seller must submit their Marketing/Sales report to **ITS**.

- 4.2 Sellers will be invoiced by the end of the month following the EPL Quarter with payment of the EPL Administrative Fee due by the last day of the following month.

Listed below is a sample of an EPL Administrative Fee Submission Schedule:

- **EPL Quarter 1** (July 1<sup>st</sup> - September 30<sup>th</sup>)  
Marketing/Sales report due by October 15<sup>th</sup>  
Invoice received from **ITS** by November 1<sup>st</sup>  
Fee Payment due by November 30<sup>th</sup>
- **EPL Quarter 2** (October 1<sup>st</sup> - December 31<sup>th</sup>)  
Marketing/Sales report due by January 15<sup>th</sup>  
Invoice received from **ITS** by February 1<sup>st</sup>  
Fee Payment due by February 28<sup>th</sup>
- **EPL Quarter 3** (January 1<sup>st</sup> - March 31<sup>th</sup>)  
Marketing/Sales report due by April 15<sup>th</sup>  
Invoice received from **ITS** by May 1<sup>st</sup>  
Fee Payment due by May 31<sup>th</sup>
- **EPL Quarter 4** (April 1<sup>st</sup> - June 30<sup>th</sup>)  
Marketing/Sales report due by July 15<sup>th</sup>  
Invoice received from **ITS** by August 1<sup>st</sup>  
Fee Payment due by August 31<sup>th</sup>

## 5. **Seller Penalties**

- 5.1 Seller's failure to submit a Marketing/Sales report within three (3) working days after the due date will result in a suspension from the EPL. Seller is subject to reinstatement after sending in the delinquent report and making payment for the quarterly administrative fees.
- 5.2 Seller's failure to submit payment on the EPL quarterly administrative fees by the due date will result in an immediate suspension until all outstanding fees are paid in full. Seller is subject to reinstatement after all delinquent fees are brought current.

## 6. **Report Format**

- 6.1 Sellers must include the following fields in the Marketing/Sales report submitted at the completion of each EPL quarter:
- 6.1.1 Purchase Order Date
  - 6.1.2 Customer 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:

PO Date	Customer	PO #	PO Summary	Total
7/6/14	MDOT	249463	10 Dell Optiplex	\$15,017
8/10/14	JSU	229885	2 HP tablets	\$6,014
9/15/14	Hinds CC	222257	8 Extreme Summit switches	\$36,568
9/22/14	Jones County Schools	275589	1 Howard 17 5008 Server	\$2,440
Total Sales				\$60,039

6.3 Sellers should not include private schools, private colleges, or federal government agencies in the Marketing/Sales report.

6.4 Sellers may reference the links below to verify whether a customer 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/Pages/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>
- K-12  
<http://www.mde.k12.ms.us/map?ShowList=1>
- 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 IT Hardware EPL cycle.

7.2 Sellers will be required to e-mail their Marketing/Sales report in Excel format. A Word or PDF file is not acceptable.



- 7.3 Sellers will be notified where to send the e-mail after they have been added to the EPL.
- 7.4 If there were no sales during a reporting period, the Seller will submit an e-mail with “no sales” in the body. An Excel file is not necessary to report “no sales”.
- 7.5 **ITS** reserves the right to request more detailed sales information on an individual basis.
- 7.6 **ITS** will compile individual reports into a Summary Marketing/Sales report. This summary report will not show individual customers, only the total sales from each Seller broken down by customer type: Agency, IHL, Community College, K-12, Governing Authority. The summary report will become the property of **ITS** with the right to publish, reproduce, or distribute without notification. Seller's submission of a response to this RFP will constitute acceptance of this policy. Sellers may request a copy of this report under the **ITS** Public Records Policy and Procedures (Rule 210.2: 019-010 of the **ITS** Procurement Handbook at <http://www.its.ms.gov/Procurement/Documents/ISS%20Procurement%20Manual.pdf>.
- 7.7 Any requests for copies of an individual Seller's Marketing/Sales report or any other information that is part of the Seller's proposal will fall under **ITS'** Public Records Policy and Procedures.
- 7.8 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.

## SECTION XIII SELLER INFORMATION SUBMISSION

### 1. Acknowledgement of RFP Requirements

\_\_\_\_\_ We have read and understand all points within Section VII: *EPL Overview*.

\_\_\_\_\_ We have read and understand all points within Section IX: *Technical Specifications*.

\_\_\_\_\_ We have read and understand all points within Section XII: *Marketing/Sales Reports*.

### 2. Company Profile for Sellers

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

2.1 Seller must provide information detailing the company's qualifications. This information must include the following company background information.

2.1.1 Date established (minimum one (1) year requirement)

2.1.2 Corporate status. Is the company incorporated? If so, what is the State of incorporation? If not a corporation, explain the type of business structure such as LLC, partnership.

2.1.3 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 (1) year requirement due to such changes in ownership.

2.1.4 Corporate office location.

2.1.5 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.

2.1.6 If servicing Mississippi customers from out-of-state facilities, describe in detail how the proposing Seller will provide the value-added requirements described in this RFP.

2.1.7 Number of years on the previous IT Hardware EPL.

2.1.8 Describe how Seller has participated in other **ITS** contracts such as Software EPLs or General RFPs.

## 2.2 Financial

- 2.2.1 Financial information provided in response to this section will be deemed confidential as provided through **ITS'** Public Records Policy and Procedures. If submitting data as part of a parent company, differentiate the parent company data from the responding Seller's finances. If relying on the financial data of a parent company, supply documentation from the parent company guaranteeing the responding Seller's performance under this RFP.
- 2.2.2 Is the proposing Seller under federal bankruptcy proceedings? If so, describe.
- 2.2.3 Seller must provide proof that they are financially capable of fulfilling large orders. The Seller must provide this information in one of two ways:
- 2.2.3.1 Option 1: Seller 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.
- 2.2.3.2 Option 2: Seller must provide a letter from its major supplier, distributor, or banker, or other guarantor(s) showing available line of credit for EPL purchases up to at least \$100,000. Proof of credit may be split among multiple sources. For instance you may supply a \$50,000 line of credit letter from your company's bank and a \$50,000 line of credit letter from your distributor.
- 2.2.4 Proof of financial stability must be based on the company, not an individual.
- 2.2.5 In cases where there are problems during the EPL cycle due to Seller's inability to finance purchases, **ITS** reserves the right to take corrective action, up to and including disqualification from participation in the EPL process.

## 2.3 Staff

- 2.3.1 Describe the number of staff who are employees of the Seller.
- 2.3.2 Provide the names of staff you anticipate being used for the IT Hardware EPL contract. For each, include:
- 2.3.2.1 Are they administration, sales, or technical staff? If they are multi-roled, estimate the portion of each.

- 2.3.2.2 Do they work full time for the Seller? Indicate if any of the named employees are part-time or contract employees working on Mississippi accounts for the Seller.
  - 2.3.2.3 What location do they work out of? Is this a physical office location of the Seller's company or are personnel working out of a "virtual office"?
  - 2.3.2.4 For technical staff, include technical certifications they hold. Examples: CNE, MCSE, COMPTIA, A+ Certified
  - 2.3.2.5 Will the same technicians be used for installation and later for maintenance?
- 2.3.3 If Seller relies on out-of-state resources to coordinate with Mississippi staffing, describe how these resources are utilized.
- 2.3.4 Describe your company's manufacturer certifications for products proposed beyond the basic authority to sell for each manufacturer proposed.
- 2.4 Describe Seller's process for
  - 2.4.1 Handling sales and quotation requests
  - 2.4.2 Tracking the delivery of products
  - 2.4.3 Installation
  - 2.4.4 Billing
- 2.5 Describe Seller's services specific to products proposed such as servers, switches, video conferencing. Also describe any other related services such as consulting, authorized repair facility, etc.
- 2.6 Describe training resources and facilities.
- 2.7 What is Seller's website address? Does Seller have online support for sales information?
- 2.8 Provide specific examples of how Seller provides value-added services for Mississippi customers.
- 2.9 The proposing "Value-add" Seller ensures the warranty, regardless of manufacturer or manufacturer's warranty. How does the proposing Seller provide or coordinate with the manufacturer(s) for seamless service?
- 2.10 When the proposing Seller receives an initial service call on products under on-site warranty, who makes the initial on-site call? Does it depend on the

customer's location? Briefly describe Seller's technical support organization and problem resolution process.

- 2.11 Under what conditions would third-party support be used in lieu of in-house staff?
- 2.12 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.

## **SECTION XIV REFERENCES**

Return the following Reference Forms, and if applicable, Subcontractor Reference Forms.

### **1. References**

- 1.1 The Seller must provide at least five (5) references consisting of Seller 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 Seller 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 Seller intercession.
- 1.2 Any of the following may subject the Seller'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 Seller 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 one (1) year.
  - 1.3.3 Sellers seeking "Value-Add" status must include Mississippi references. If there are no Mississippi references, then Seller must submit those that are within the 200-mile "Value-add" area.
- 1.4 The State reserves the right to request information about the Seller from any previous customer of the Seller 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 Seller's list of references, and to utilize such information in the evaluation of the Seller'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 Seller, 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 Seller are known to the State.

## **2. Subcontractors**

The Seller'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.

Seller'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 Seller 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 Seller is only a brokering agent.)

## REFERENCE FORM

### Complete five (5) 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:

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**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:

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**EXHIBIT A**  
**EPL PURCHASE AGREEMENT**  
**Non-ARRA Version**

1. Only those Vendors classified as Sellers will execute the *EPL Purchase Agreement*.
2. Sellers have a choice between two versions of the agreement. This exhibit does not include the ARRA language. If the Seller wishes to work with customers using ARRA funding, the Seller must choose to execute Exhibit B.
3. Due to the uniformity among EPL Sellers, the terms of the *EPL Purchase Agreement* are non-negotiable. No edits or changes in the terms and conditions of this document will be made.
4. Seller will only return two (2) copies of the executed signature page. Both copies must be executed with original signatures by the authorized officer of your company.
5. Do not return the entire agreement.
6. Once a Seller has been approved and membership has been confirmed for at least one (1) Reseller Group. **ITS** will merge the signature pages with the full agreement and execute both copies. One (1) executed original will be returned to the Seller.

**PROJECT NUMBER 40731  
EXPRESS PRODUCTS LIST PURCHASE AGREEMENT  
IT HARDWARE EPL RFP NUMBER 3760  
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 Express Products List Purchase Agreement (hereinafter referred to as "EPL Agreement") is entered into by and between **INSERT VENDOR NAME**, a **INSERT STATE OF INCORPORATION** corporation having its principal place of business at **INSERT VENDOR ADDRESS** (hereinafter referred to as "Seller"), and 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 authorized to use the Express Products List (EPL) (hereinafter referred to as "Purchaser"). ITS and Purchaser are sometimes collectively referred to herein as "State".

**WHEREAS**, Seller is an authorized dealer of certain information technology equipment; and

**WHEREAS**, ITS desires to acquire an EPL Agreement containing the terms and conditions which will govern any orders placed by the Purchaser during the term of this EPL Agreement for information technology equipment and software ("Products") and installation and services from Seller that were listed in the published EPL as a result of Request for Proposals ("RFP") Number 3760;

**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 the close of business on June 30, 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 ITS and Seller, 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. 3760 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 certain 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/purchase order to be signed by Seller and an authorized representative of the Purchaser. The supplement/purchase order shall set forth the Products/services to be procured; the prices for same; any warranty period, the specific details of the transaction, as well as any additional terms and conditions agreed to by the parties. All supplements/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 pricing for the term of this EPL. 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.

### **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 to Purchaser 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 Purchaser within forty-five (45) days of receipt of the invoice. All payments shall be made in United States currency. Payments by state agencies using the Statewide Automated Accounting System ("SAAS") shall be made and remittance information provided electronically as directed by the State. These payments by SAAS agencies shall be deposited into the bank account of the Seller's choice. 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 the Seller shall remain responsible and liable for full

performance in strict compliance with the contract documents specified in the article herein titled "Entire Agreement".

**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 1/2 %) 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 the Seller of the last payment from the Purchaser under a supplement/purchase order shall operate as a release of all claims for payment against the State by the Seller and any subcontractors or other persons supplying labor or materials used in the performance of any work under a supplement/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. Risk of loss to the Products will pass to Purchaser upon delivery.

**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. 3760.

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

**7.5** 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. 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.

**7.6** Seller shall be responsible for replacing, restoring or bringing to at least original condition any damage to floors, ceilings, walls, furniture, grounds, pavements, sidewalks, and the like caused by its personnel and operations during the installation, subject to final approval of Purchaser. The repairs will be done only by technicians skilled in the various trades involved, using materials and workmanship to match those of the original construction in type and quality.

**7.7** Unless a different acceptance period is agreed upon by the Purchaser and Seller and specified in the supplement/purchase order, Purchaser shall have a ten (10) working day testing period during which time Purchaser shall have the opportunity to evaluate and test the Products to confirm that it performs without any defects and performs pursuant to the specifications set forth in RFP No. 3760 and the published EPL. Purchaser may be deemed to have accepted

the Product at the end of the ten (10) working day testing period, unless Purchaser notifies Seller that the product fails to perform as stated herein.

**7.8** In the event the Product fails to perform as stated in Article 7.7 herein, Purchaser shall notify Seller. Unless a different period of time is agreed upon by the Seller and Purchaser and specified in the supplement/purchase order, Seller shall, within four (4) working days, correct the defects identified by Purchaser or replace the defective Product. If Seller neither corrects the defect nor replaces the defective product, Purchaser reserves the right to return the Product to Seller at the Seller's expense; to cancel the purchase order, and to cancel this EPL Agreement as to itself only.

**7.9** Upon receipt of a corrected or replaced Product, Purchaser shall have another acceptance period as set forth in Article 7.7 herein, in which to reevaluate/retest such Product.

**7.10** 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 purchase order. Purchaser may also pursue any remedy available to it in law or in equity.

## **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 hardware and license the software Products provided under this EPL Agreement.

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

**9.3** Seller represents and warrants that unless otherwise specified in RFP No. 3760 and/or the published EPL, each Product delivered shall be delivered new and not as a "used, substituted, rebuilt, refurbished or reinstalled" Product.

**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** Unless a longer warranty period is specified in the RFP, the purchase order or the published EPL, Seller represents and warrants that all hardware Products provided pursuant to this EPL Agreement shall be free from defects in material, manufacture, design and workmanship for a period of one (1) year after acceptance. 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. In the event Seller can not repair or replace the hardware Product during the warranty period within ten (10) working days after receipt of notice of the defect, Seller shall refund the purchase price of the hardware Product

and refund any fees paid for services that directly relate to the defective hardware Product, and Purchaser shall have the right to terminate the purchase order and this EPL Agreement in whole or in part, solely as between those two entities. 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. 3760 and the published EPL.

**9.7** Unless a longer warranty period is specified in the purchase order, Seller represents and warrants that all software Products provided pursuant to this EPL Agreement shall be free from material defects and provide Purchaser complete functionality necessary for the operation of the system for a period of ninety (90) days after acceptance. Seller's obligations pursuant to this warranty shall include, but are not limited to, the repair of all defects or the replacement of the software Product at the expense of Seller. In the event Seller is unable to repair or replace the software Product within ten (10) working days after receipt of notice of the defect, Purchaser shall be entitled to a full refund of the fees paid and shall have the right to cancel the purchase order and to terminate this EPL Agreement in whole or in part, solely as between those two entities. Purchaser's rights hereunder are in addition to any other rights Purchaser may have.

**9.8** Unless a different warranty period is specified in the published EPL, Seller represents and warrants, for a period of ninety (90) days from performance of the service, that all work hereunder, including but not limited to, consulting, training and technical support, has been performed in a good and workmanlike manner and consistent with generally accepted industry standards. For any breach of this warranty, Seller shall 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, 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 there are no computer viruses contained in the Products delivered to Purchaser. 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 the supplement/purchase order and this EPL 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 represents and warrants that no official or employee of Purchaser or of ITS, and no other public official of the State of Mississippi who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of said project, voluntarily acquire any personal interest, direct or indirect, in the purchase order.

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

## **ARTICLE 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 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 settlements, as well as all costs, legal fees, damages and judgment finally awarded against Purchaser.



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

**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 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 duties required under this EPL Agreement. Such personnel shall not be deemed in any way directly or indirectly, expressly or by implication, to be employees of Purchaser. Seller shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Seller nor employees of Seller are entitled to state retirement or leave benefits.

#### **ARTICLE 12 ASSIGNMENT AND SUBCONTRACTS**

Neither party may assign, subcontract or otherwise transfer this EPL Agreement or its obligations hereunder.

#### **ARTICLE 13 AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of Purchaser to proceed under this EPL Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of federal and/or state funds for the performances required under this EPL Agreement. It is understood that Purchaser will not issue a purchase order unless the Purchaser has committed funding for such purchase order. If the funds anticipated for the fulfillment of this EPL Agreement are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to Purchaser for the payments or performance due under this EPL Agreement, Purchaser shall have the right to immediately terminate 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 this EPL Agreement. Any payment due Seller for services rendered by Seller prior to the date of receipt of notification of termination and received by Purchaser, shall be paid.

#### **ARTICLE 14 TERMINATION**

**14.1 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.

**14.2 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.

**14.3 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.

**14.4 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. The non-defaulting party may also pursue any remedy available to it in law or in equity.

**14.5 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.

**14.6 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 15 GOVERNING LAW**

This EPL Agreement and each supplement/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. Further, nothing in this EPL Agreement shall affect any statutory rights Seller and Purchaser may have that cannot be waived or limited by contract.

#### **ARTICLE 16 WAIVER**

Failure of either party 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 17 SEVERABILITY**

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

#### **ARTICLE 18 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 19 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 20 THIRD PARTY ACTION NOTIFICATION**

Seller shall notify ITS and Purchaser in writing within five (5) business days of Seller filing bankruptcy, reorganization, liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Seller or Purchaser by any entity that may result in litigation related in any way to the 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 ITS and Purchaser 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 21 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/purchase order and this EPL Agreement.

## **ARTICLE 22 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. 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 23 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 24 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 25 DISPUTES**

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

## **ARTICLE 26 COMPLIANCE WITH LAWS**

Seller shall comply with, and all activities under the supplement/purchase order and this EPL Agreement shall be subject to, all Purchaser policies and procedures of which Seller has knowledge, and all applicable federal, State of Mississippi, and local laws and regulations 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/purchase order and this EPL Agreement because of race, creed, color, sex, age, national origin or disability.

## **ARTICLE 27 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 cancel the purchase order and to terminate this EPL Agreement as to itself only.

## **ARTICLE 28 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 29 CONFIDENTIAL INFORMATION**

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

**29.2** Purchaser shall treat all documents it receives from the Seller that are marked "Confidential" by the Seller as confidential and proprietary and shall not disclose such documents to a third party without Seller's specific written consent. In the event that the Purchaser receives notice that a third party requests divulgence of such confidential information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, the Purchaser shall promptly inform the Seller and thereafter respond in conformity with such subpoena to the extent mandated by state or federal law.

**29.3** The parties understand and agree that this EPL Agreement does not constitute confidential information, and will be reproduced and distributed by the State without notification to Seller.

### **ARTICLE 30 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 31 SERVICES**

When ordered by Purchaser, Seller agrees to provide consulting, training and technical support services pursuant to the requirements set forth in RFP No. 3760 and the published EPL.

### **ARTICLE 32 SURVIVAL**

Articles 9, 10, 15, 19, 23, 28, 29, and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this EPL Agreement.

### **ARTICLE 33 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 34 ENTIRE AGREEMENT**

**34.1** This EPL Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and, with the exception of the operating system, supersedes any conflicting negotiations, understandings and agreements, written or oral, between the parties relating hereto, including all terms of any unsigned "shrink-wrap" license included in any package, media or electronic version of Seller-furnished software, or "clickwrap" or "browse-wrap" license presented in connection with a purchase via the Internet. The published EPL; the actual purchase order and any mutually agreed upon supplementary terms and conditions; RFP No. 3760, and Seller's Proposal submitted in response to RFP No. 3760 are hereby incorporated into and made a part of this EPL Agreement as far as the individual Purchaser is concerned.

**34.2** 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, and all attachments;
- C. The published EPL;
- D. RFP No. 3760, including all addendums;
- E. Official written correspondence from ITS to Sellers;
- F. Official written correspondence from Seller to ITS when clarifying Seller's proposal;
- G. Seller's Proposal, as accepted by ITS, in response to RFP No.3760, and
- H. The actual supplement/purchase order, or additional contract terms between Purchaser and Seller if required.

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

#### **ARTICLE 35 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 and any subsequent amendments and change orders shall be posted to the State of Mississippi's accountability website at: <https://www.transparency.mississippi.gov>. Prior to Purchaser posting the EPL Agreement and any subsequent amendments and change orders to the website, any attached exhibits which contain trade secrets or other proprietary information and are labeled as "confidential" will be redacted by Purchaser.

#### **ARTICLE 36 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 37 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 38 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 39 LIABILITY ISSUES**

Unless jointly agreed otherwise in writing, Seller's liability for a specific project shall not exceed twice the total amount paid by Purchaser to Seller under the applicable supplement/purchase order. In no event will Seller be liable to a 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 a 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**

**INSERT VENDOR NAME**

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

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

Title: Executive Director

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

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

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

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

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

**EXHIBIT B**  
**EPL PURCHASE AGREEMENT**  
**ARRA Version**

1. Only those Vendors classified as Sellers will execute the *EPL Purchase Agreement*.
2. Sellers have a choice between two versions of the agreement. This exhibit contains the ARRA language. If the Seller does not wish to work with customers using ARRA funding, the Seller must choose to execute Exhibit A.
3. Due to the uniformity among EPL Sellers, the terms of the *EPL Purchase Agreement* are non-negotiable. No edits or changes in the terms and conditions of this document will be made.
4. Seller will only return two (2) copies of the executed signature page. Both copies must be executed with original signatures by the authorized officer of your company.
5. Do not return the entire agreement.
6. Once a Seller has been approved and membership has been confirmed for at least one (1) Reseller Group. **ITS** will merge the signature pages with the full agreement and execute both copies. One (1) executed original will be returned to the Seller.

**PROJECT NUMBER 40731  
EXPRESS PRODUCTS LIST PURCHASE AGREEMENT  
IT HARDWARE EPL RFP NUMBER 3760  
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 Express Products List Purchase Agreement (hereinafter referred to as "EPL Agreement") is entered into by and between **INSERT VENDOR NAME**, a **INSERT STATE OF INCORPORATION** corporation having its principal place of business at **INSERT VENDOR ADDRESS** (hereinafter referred to as "Seller"), and 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 authorized to use the Express Products List ("EPL") (hereinafter referred to as "Purchaser"). ITS and Purchaser are sometimes collectively referred to herein as "State".

**WHEREAS**, Seller is an authorized dealer of certain information technology equipment; and

**WHEREAS**, ITS desires to acquire an EPL Agreement containing the terms and conditions which will govern any orders placed by the Purchaser during the term of this EPL Agreement for information technology equipment and software ("Products") and installation and services from Seller that were listed in the published EPL as a result of Request for Proposals ("RFP") Number 3760;

**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 the close of business on June 30, 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 ITS and Seller, 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. 3760 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 certain 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/purchase order to be signed by Seller and an authorized representative of the Purchaser. The supplement/purchase order shall set forth the Products/services to be procured; the prices for same; any warranty period, the specific details of the transaction, as well as any additional terms and conditions agreed to by the parties. All supplements/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 pricing for the term of this EPL. 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.

### **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 to Purchaser 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 Purchaser within forty-five (45) days of receipt of the invoice. All payments shall be made in United States currency. Payments by state agencies using the Statewide Automated Accounting System ("SAAS") shall be made and remittance information provided electronically as directed by the State. These payments by SAAS agencies shall be deposited into the bank account of the Seller's choice. 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 the Seller shall remain responsible and liable for full

performance in strict compliance with the contract documents specified in the article herein titled "Entire Agreement".

**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 1/2 %) 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 the Seller of the last payment from the Purchaser under a supplement/purchase order shall operate as a release of all claims for payment against the State by the Seller and any subcontractors or other persons supplying labor or materials used in the performance of any work under a supplement/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. Risk of loss to the Products will pass to Purchaser upon delivery.

**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. 3760.

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

**7.5** 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. 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.

**7.6** Seller shall be responsible for replacing, restoring or bringing to at least original condition any damage to floors, ceilings, walls, furniture, grounds, pavements, sidewalks, and the like caused by its personnel and operations during the installation, subject to final approval of Purchaser. The repairs will be done only by technicians skilled in the various trades involved, using materials and workmanship to match those of the original construction in type and quality.

**7.7** Unless a different acceptance period is agreed upon by the Purchaser and Seller and specified in the supplement/purchase order, Purchaser shall have a ten (10) working day testing period during which time Purchaser shall have the opportunity to evaluate and test the Products to confirm that it performs without any defects and performs pursuant to the specifications set forth in RFP No. 3760 and the published EPL. Purchaser may be deemed to have accepted

the Product at the end of the ten (10) working day testing period, unless Purchaser notifies Seller that the product fails to perform as stated herein.

**7.8** In the event the Product fails to perform as stated in Article 7.7 herein, Purchaser shall notify Seller. Unless a different period of time is agreed upon by the Seller and Purchaser and specified in the supplement/purchase order, Seller shall, within four (4) working days, correct the defects identified by Purchaser or replace the defective Product. If Seller neither corrects the defect nor replaces the defective product, Purchaser reserves the right to return the Product to Seller at the Seller's expense; to cancel the purchase order, and to cancel this EPL Agreement as to itself only.

**7.9** Upon receipt of a corrected or replaced Product, Purchaser shall have another acceptance period as set forth in Article 7.7 herein, in which to reevaluate/retest such Product.

**7.10** 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 purchase order. Purchaser may also pursue any remedy available to it in law or in equity.

## **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 hardware and license the software Products provided under this EPL Agreement.

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

**9.3** Seller represents and warrants that unless otherwise specified in RFP No. 3760 and/or the published EPL, each Product delivered shall be delivered new and not as a "used, substituted, rebuilt, refurbished or reinstalled" Product.

**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** Unless a longer warranty period is specified in the RFP, the purchase order or the published EPL, Seller represents and warrants that all hardware Products provided pursuant to this EPL Agreement shall be free from defects in material, manufacture, design and workmanship for a period of one (1) year after acceptance. 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. In the event Seller can not repair or replace the hardware Product during the warranty period within ten (10) working days after receipt of notice of the defect, Seller shall refund the purchase price of the hardware Product

and refund any fees paid for services that directly relate to the defective hardware Product, and Purchaser shall have the right to terminate the purchase order and this EPL Agreement in whole or in part, solely as between those two entities. 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. 3760 and the published EPL.

**9.7** Unless a longer warranty period is specified in the purchase order, Seller represents and warrants that all software Products provided pursuant to this EPL Agreement shall be free from material defects and provide Purchaser complete functionality necessary for the operation of the system for a period of ninety (90) days after acceptance. Seller's obligations pursuant to this warranty shall include, but are not limited to, the repair of all defects or the replacement of the software Product at the expense of Seller. In the event Seller is unable to repair or replace the software Product within ten (10) working days after receipt of notice of the defect, Purchaser shall be entitled to a full refund of the fees paid and shall have the right to cancel the purchase order and to terminate this EPL Agreement in whole or in part, solely as between those two entities. Purchaser's rights hereunder are in addition to any other rights Purchaser may have.

**9.8** Unless a different warranty period is specified in the published EPL, Seller represents and warrants, for a period of ninety (90) days from performance of the service, that all work hereunder, including but not limited to, consulting, training and technical support, has been performed in a good and workmanlike manner and consistent with generally accepted industry standards. For any breach of this warranty, Seller shall 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, 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 there are no computer viruses contained in the Products delivered to Purchaser. 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 the supplement/purchase order and this EPL 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 represents and warrants that no official or employee of Purchaser or of ITS, and no other public official of the State of Mississippi who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of said project, voluntarily acquire any personal interest, direct or indirect, in the purchase order.

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

**9.14** 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 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 settlements, as well as all costs, legal fees, damages and judgment finally awarded against Purchaser.

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

**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 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 duties required under this EPL Agreement. Such personnel shall not be deemed in any way directly or indirectly, expressly or by implication, to be employees of Purchaser. Seller shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Seller nor employees of Seller are entitled to state retirement or leave benefits.

## **ARTICLE 12 ASSIGNMENT AND SUBCONTRACTS**

Neither party may assign, subcontract or otherwise transfer this EPL Agreement or its obligations hereunder.

## **ARTICLE 13 AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of Purchaser to proceed under this EPL Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of federal and/or state funds for the performances required under this EPL Agreement. It is understood that Purchaser will not issue a purchase order unless the

Purchaser has committed funding for such purchase order. If the funds anticipated for the fulfillment of this EPL Agreement are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to Purchaser for the payments or performance due under this EPL Agreement, Purchaser shall have the right to immediately terminate 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 this EPL Agreement. Any payment due Seller for services rendered by Seller prior to the date of receipt of notification of termination and received by Purchaser, shall be paid.

#### **ARTICLE 14 TERMINATION**

**14.1 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.

**14.2 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.

**14.3 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. The non-defaulting party may also pursue any remedy available to it in law or in equity.

**14.5 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.

**14.6 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 15 GOVERNING LAW**

This EPL Agreement and each supplement/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. Further, nothing in this EPL Agreement shall affect any statutory rights Seller and Purchaser may have that cannot be waived or limited by contract.

#### **ARTICLE 16 WAIVER**

Failure of either party 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 17 SEVERABILITY**

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

#### **ARTICLE 18 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 19 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 20 THIRD PARTY ACTION NOTIFICATION**

Seller shall notify ITS and Purchaser in writing within five (5) business days of Seller filing bankruptcy, reorganization, liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Seller or Purchaser by any entity that may result in litigation related in any way to the

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 ITS and Purchaser 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 21 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/purchase order and this EPL Agreement.

#### **ARTICLE 22 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. 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 23 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 24 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 25 DISPUTES**

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

## **ARTICLE 26 COMPLIANCE WITH LAWS**

Seller shall comply with, and all activities under the supplement/purchase order and this EPL Agreement shall be subject to, all Purchaser policies and procedures of which Seller has knowledge, and all applicable federal, State of Mississippi, and local laws and regulations 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/purchase order and this EPL Agreement because of race, creed, color, sex, age, national origin or disability.

## **ARTICLE 27 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 cancel the purchase order and to terminate this EPL Agreement as to itself only.

## **ARTICLE 28 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 29 CONFIDENTIAL INFORMATION**

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

**29.2** Purchaser shall treat all documents it receives from the Seller that are marked "Confidential" by the Seller as confidential and proprietary and shall not disclose such documents to a third party without Seller's specific written consent. In the event that the Purchaser receives notice that a third party requests divulgence of such confidential information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, the Purchaser shall promptly inform the Seller and

thereafter respond in conformity with such subpoena to the extent mandated by state or federal law.

**29.3** The parties understand and agree that this EPL Agreement does not constitute confidential information, and will be reproduced and distributed by the State without notification to Seller.

### **ARTICLE 30 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 31 SERVICES**

When ordered by Purchaser, Seller agrees to provide consulting, training and technical support services pursuant to the requirements set forth in RFP No. 3760 and the published EPL.

### **ARTICLE 32 SURVIVAL**

Articles 9, 10, 15, 19, 23, 28, 29, and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this EPL Agreement.

### **ARTICLE 33 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 34 ENTIRE AGREEMENT**

**34.1** This EPL Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and, with the exception of the operating system, supersedes any conflicting negotiations, understandings and agreements, written or oral, between the parties relating hereto, including all terms of any unsigned "shrink-wrap" license included in any package, media or electronic version of Seller-furnished software, or "clickwrap" or "browse-

wrap” license presented in connection with a purchase via the Internet. The published EPL; the actual purchase order and any mutually agreed upon supplementary terms and conditions; RFP No. 3760, and Seller’s Proposal submitted in response to RFP No. 3760 are hereby incorporated into and made a part of this EPL Agreement as far as the individual Purchaser is concerned.

**34.2** 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, and all attachments;
- C. The published EPL;
- D. RFP No. 3760, including all addendums;
- E. Official written correspondence from ITS to Sellers;
- F. Official written correspondence from Seller to ITS when clarifying Seller’s proposal;
- G. Seller’s Proposal, as accepted by ITS, in response to RFP No.3760, and
- H. The actual supplement/purchase order, or additional contract terms between Purchaser and Seller if required.

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

## **ARTICLE 35 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 and any subsequent amendments and change orders shall be posted to the State of Mississippi’s accountability website at: <https://www.transparency.mississippi.gov>. Prior to Purchaser posting the EPL Agreement and any subsequent amendments and change orders to the website, any attached exhibits which contain trade secrets or other proprietary information and are labeled as “confidential” will be redacted by Purchaser.

## **ARTICLE 36 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 37 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 38 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 39 LIABILITY ISSUES**

Unless jointly agreed otherwise in writing, Seller's liability for a specific project shall not exceed twice the total amount paid by Purchaser to Seller under the applicable supplement/purchase order. In no event will Seller be liable to a 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 a 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**

**INSERT VENDOR NAME**

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

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

Title: Executive Director

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

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

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

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

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.

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\*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 .....			
<small>[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]</small> <small>[Include other applicable supporting information.]</small> <small>[*Include all delivery costs to the construction site.]</small>			

**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.]</small> <small>[Include other applicable supporting information.]</small> <small>[*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 §176.210, 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](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.