

Attachment E

Standard Contract Terms and Conditions

MISSISSIPPI TRANSPORTATION COMMISSION
STANDARD CONTRACT

This Contract is made and entered into by and between the Mississippi Transportation Commission ("the Commission" or "MTC"), a body corporate of the State of Mississippi, acting by and through the duly authorized Executive Director of the Mississippi Department of Transportation (MDOT"), and _____ (Vendor), who is duly registered to do business in the State of Mississippi and whose address is _____, on the ____ day of _____, 20____, under the following terms and conditions.

1. **SCOPE OF SERVICES.** Vendor will provide the items as set forth in Sealed RFX No. _____, as agreed to therein. Vendor does hereby grant, bargain, sell and warrant the above described materials, equipment, and/or supplies and agree that they are according to the approved plans, specifications and requirements of said Commission as set out in the attached RFQF and "Notice and Instructions to Bidders," both of which are by reference made a part of this Contract. Any and all labor or work to be performed under this Contract shall be performed in accordance with same. The said materials, equipment, supplies and/or work shall be to the complete satisfaction to the MDOT Executive Director, in accordance with the terms of this Contract.
2. **CONTRACT TERM.** The term and/or period of performance under this Contract shall begin on _____ and end no later than _____.
3. _____
4. **CONSIDERATION.** Consideration for performance of this Contract shall be as set forth herein:

Having been duly advertised in accordance with all applicable laws of the State of Mississippi, and the attached RFQF having been duly received/awarded, the Commission agrees to pay Vendor and Vendor hereby agrees to accept the prices given in said proposal/bid as full compensation for furnishing _____ during the Contract term on an as needed basis, Delivered Statewide, as set forth in RFX Number _____.

5. **COMPLIANCE WITH LAWS.** Contractor/Vendor understands that the Commission is an equal opportunity employer. Executive Order 11246 requires that the Commission do business with organizations that are in compliance with Title VII of the 1964 Civil Rights Act, as amended. During the performance of any contract with the Commission, the Contractor/Vendor (the "Vendor") agrees to be bound by provisions of Section 202 of Executive Order 11246, as amended, and Executive Orders 11701, 11625, and 11758. The Commission and MDOT maintain a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state or local laws. All such discrimination is unlawful and Contractor/Vendor agrees during the term of the agreement that Contractor/Vendor will strictly adhere to this policy in its employment practices and provision of services. Contractor/Vendor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of

Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

6. **E-VERIFICATION.** The Vendor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§71-11-1 *et seq.* 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. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification (**Attachment C**). Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:
 - a. termination of this contract for goods or services 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/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. In the event of such cancellation/termination, Contractor/Vendor would also be liable for any additional costs incurred by the State due to the Contract cancellation or loss of license or permit to do business in the State.
7. **E-PAYMENT.** Contractor/Vendor agrees to accept all payments in United States currency via the State of Mississippi’s electronic payment and remittance vehicle. The agency agrees to make payment in accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies,” which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 *et seq.*
8. **PAYMODE.** Payments by state agencies using the State’s accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Contractor’s choice. The State may, at its sole discretion, require Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

9. **APPLICABLE LAW.** Commission contracts are governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor/Vendor shall comply with all applicable federal, state, and local laws and regulations.
10. **NO LIMITATION OF LIABILITY.** Nothing in this agreement shall be interpreted as excluding or limiting any tort liability of Contractor for harm caused by the intentional or reckless conduct of Contractor or for damages incurred through the negligent performance of duties by Contractor or the delivery of products that are defective due to negligent construction.
11. **ANTI-ASSIGNMENT/SUBCONTRACTING.** Contractor/Vendor acknowledges that it was selected by the Commission to perform the services/work required hereunder based, in part, upon Contractor's/Vendor's special skills and expertise. Contractor/Vendor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the Commission, which the Commission may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the Commission of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the Commission in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the Commission may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.
12. **MODIFICATION OR RENEGOTIATION.** This agreement may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or state revisions of any applicable laws or regulations make changes in this agreement necessary.
13. **TRANSPARENCY.** This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 et seq. and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 et seq. Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.
14. **REPRESENTATIONS REGARDING CONTINGENT FEES AND GRATUITIES.** Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or proposal. Contractor represents

that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204(Gratuities) of the Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations.

15. **AVAILABILITY OF FUNDS:** It is expressly understood and agreed that the obligation of the Commission to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi Legislature, and/or the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or the State of Mississippi to appropriate funds, or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the Commission, the Commission shall have the right to terminate this agreement without damage, penalty, cost or expenses to the Commission of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

16. STOP WORK ORDER

- a. *Order to Stop Work:* The Commission, may, by written order to Contractor/Vendor at any time, and without notice to any Surety, require Contractor/Vendor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding 90 days after the order is delivered to Contractor/Vendor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Contractor/Vendor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Commission shall either:
- i. Cancel the stop work order; or,
 - ii. Terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this Contract.
- b. *Cancellation or Expiration of the Order:* If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension of thereof expires, Contractor/Vendor shall have the right to return to work. An appropriate adjustment shall be made in the delivery schedule or Contractor price, or both, and the contract shall be modified in writing accordingly, if;
- i. the stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract and,
 - ii. Contractor/Vendor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Chief Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.

- c. *Termination of Stopped Work:* If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.
- d. *Adjustments of Price:* Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment clause of this contract.

17. TRADE SECRETS, COMMERCIAL AND FINANCIAL INFORMATION. It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

18. TERMINATION FOR CONVENIENCE.

- a. *Termination.* The Commission or designee may, when the interests of the Agency so require, terminate this contract in whole or in part, for the convenience of the Agency. The Commission or designee shall give written notice of the termination to Contractor/Vendor specifying the part of the contract terminated and when termination becomes effective.
- b. *Contractor's Obligations.* Contractor/Vendor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor/Vendor will stop work to the extent specified. Contractor/Vendor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor/Vendor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Commission or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

19. TERMINATION FOR DEFAULT

- a. *Default.* If Contractor/Vendor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Commission or designee may notify Contractor/Vendor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Commission or designee, such officer may terminate Contractor's/Vendor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Commission or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by

the Commission or designee. Contractor/Vendor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

- b. *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the Chief Procurement Officer, Contractor/Vendor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor/Vendor in which the State has an interest.
- c. *Compensation.* Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the Commission or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
- d. *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor/Vendor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor/Vendor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor/Vendor has notified the Commission or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor/Vendor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the Commission or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).
- e. *Erroneous Termination for Default.* If, after notice of termination of Contractor's/Vendor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause

providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.

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

20. **TERMINATION UPON BANKRUPTCY** This contract may be terminated in whole or in part by the Commission upon written notice to Contractor/Vendor, if Contractor/Vendor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor/Vendor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.
21. **ATTORNEY'S FEES AND EXPENSES.** Subject to other terms and conditions of this agreement, in the event Contractor defaults in any obligations under this agreement, Contractor shall pay to the Commission all costs and expenses (including, without limitation, investigative fees, court costs, and attorney's fees) incurred by the State in enforcing this agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the customer be obligated to pay any attorney's fees or costs of legal action to Contractor.
22. **FAILURE TO ENFORCE.** Failure by the Commission at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the Commission to enforce any provision at any time in accordance with its terms.
23. **FINAL PAYMENT.** Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract, or as a termination settlement under this contract, Contractor shall execute and deliver to the Commission a release of all claims against the Commission arising under, or by virtue of, the contract, except claims which are specifically exempted by Contractor to be set forth therein. Unless otherwise provided in this contract, by state law, or otherwise expressly agreed to by the parties in this contract, final payment under the contract or settlement upon termination of this contract shall not constitute waiver of the Commission's claims against Contractor under this contract.
24. **INDEMNIFICATION.** To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the agency, its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorney's fees, arising out of or caused by Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement. In the State's

sole discretion, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the State. Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc. without the State's concurrence, which the State shall not unreasonably withhold.

25. **INTEGRATED AGREEMENT/MERGER.** This agreement, including all contract documents, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This agreement may be altered, amended, or modified only by a written document executed by the Commission and Contractor. Contractor acknowledges that it has thoroughly read all contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this agreement shall not be construed or interpreted in favor of or against the Commission or Contractor on the basis of draftsmanship or preparation hereof.
26. **PRIORITY.** The contract consists of this Standard Contract, any other agreement or exhibits, the invitation for bids [number] (hereinafter "IFB" and attached as Schedule []), and the response bid by [Contractor] dated [date] (hereinafter "Bid" and attached as Schedule []). Any ambiguities, conflicts or questions of interpretation of this contract shall be resolved by first reference to this Standard Contract, then to any other agreement or exhibits and, if still unresolved, by reference to the IFB and, if still unresolved, by reference to the bid. Omission of any term or obligation from this agreement or attached Schedules [] or [] shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract.
27. **TAXES.** The Vendor is liable for all taxes. Sections 27-65-1, *et seq.*, and 27-67-1, *et seq.*, of the Mississippi Code exempt the Commission and other State institutions from State sales and use taxes. Likewise the Commission will not pay excise or personal property taxes and if the Vendor is liable for these they should be taken into consideration in formulating the pricing of bids. It is the Vendor's responsibility to contact local taxing authorities in the state and county where equipment will be located to determine possible taxing liabilities in connection therewith.
28. **NOTICES.** All notices required or permitted to be given under this agreement must be in writing and personally delivered or sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. 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.