REQUEST FOR PROPOSALS

RFP Number: 3120000970

To Provide: Day Services

Issue Date: November 22, 2016

CLOSING LOCATION

South Mississippi Regional Center

1170 West Railroad Street

Long Beach, MS 39560

PROPOSAL COORDINATOR

Jackie Barraco, Business Services Branch Director

Telephone: (228) 867-1306

Fax: (228) 214-5562

E-Mail: JRabion@smrc.ms.gov

CLOSING DATE AND TIME

Proposals must be received by 10:00 a.m., December 13, 2016

SECTION 1

1.1 Proposal Acceptance Period

The original and four copies of the proposal, five copies total, shall be signed and submitted in a sealed envelope or package to South Mississippi Regional Center no later than the time and date specified for receipt of proposals. Timely submission is the responsibility of the respondent. Proposals received after the specified time shall be rejected and returned to the respondent unopened. The envelope or package shall be marked with the proposal opening date and time, and the number of the request for proposals. The time and date of receipt shall be indicated on the envelope or package by the Business Services Department. Each page of the proposal and all attachments shall be identified with the name of the respondent. Modifications or additions to any portion of the procurement document may be cause for rejection of the proposal. The South Mississippi Regional Center reserves the right to decide, on a case-by-case basis, whether to reject a proposal with modifications or additions as non-responsive. As a precondition to proposal acceptance, the South Mississippi Regional Center may request the respondent to withdraw or modify those portions of the proposal deemed non-responsive that do not affect quality, quantity, price, or delivery of the service.

1.1.1 Timeline

The request for proposals will be issued in the legal notices section of The Sun Herald on November 22 and 29, 2016. Additionally, the request for proposals will be advertised on the Mississippi Contract/Procurement Opportunity Search Portal for 14 consecutive days beginning November 22, 2016. The request for proposals will be mailed to a sufficient number of potential respondents to promote competition. Requests for proposals can be obtained at South Mississippi Regional Center, 1170 West Railroad Street, Long Beach, MS 39560, until December 12, 2016, at 4:30 p.m. The deadline for submitting questions is Tuesday, December 6, 2016 at 4:30 p.m. South Mississippi Regional Center will respond to questions with answers being distributed to prospective respondents by Thursday, December 8, 2016 through an amendment to this request for proposals. Proposals must be received by 10:00 a.m. on Tuesday, December 13, 2016. The date set for opening is Tuesday, December 13, 2016 at 10:30 a.m. at South Mississippi Regional, 1170 West Railroad Street, Long Beach, MS, 39560.

1.1.2 Rejection of Proposals

Proposals which do not conform to the requirements set forth in this Request for Proposals may be rejected by South Mississippi Regional Center. Proposals may be rejected for reasons which include, but are not limited to, the following:

1) The proposal contains unauthorized amendments to the requirements of the Request for Proposals.
2) The proposal is conditional.
3) The proposal is incomplete or contains irregularities which make the proposal indefinite or ambiguous.
4) The proposal is received late.
5) The proposal is not signed by an authorized representative of the party.

6) The proposal contains false or misleading statements or references.
7) The proposal does not offer to provide all services required by the Request for Proposal.

1.2 Expenses Incurred in Preparing Offers

The South Mississippi Regional Center accepts no responsibility for any expense incurred by the respondent in the preparation and presentation of an offer. Such expenses shall be borne exclusively by the respondent.

1.3 Proprietary Information

The respondent should mark any and all pages of the proposal considered to be proprietary information which may remain confidential in accordance with Mississippi Code Annotated §§ 25-61-9 and 79-23-1 (1972, as amended). Any pages not marked accordingly will be subject to review by the general public after award of the contract. Requests to review the proprietary information will be handled in accordance with applicable legal procedures.

1.4 Registration with Mississippi Secretary of State

By submitting a proposal, the respondent certifies that it is registered to do business in the State of Mississippi as prescribed by the Mississippi Secretary of State or, if not already registered, that it will do so within seven (7) business days of being offered an award. Sole proprietors are not required to register with the Mississippi Secretary of State. *(This section applies only to independent contractors)*

1.5 Debarment

By submitting a proposal, the respondent certifies that it is not currently debarred from submitting proposals for contracts issued by any political subdivision or agency of the State of Mississippi or Federal government and that it is not an agent of a person or entity that is currently debarred from submitting proposals for contracts issued by any political subdivision or agency of the State of Mississippi.

1.6 Competitive Proposals

Discussions may be conducted with respondents who submit proposals determined to be reasonably susceptible of being selected for award. Likewise, South Mississippi Regional Center also reserves the right to accept any proposal as submitted for contract award, without substantive negotiation of proposed terms, services or prices. For these reasons, all parties are advised to propose their most favorable terms initially.

1.7 Additional Information

Questions about the contract portions of the procurement document must be submitted in writing to Jackie Barraco at 1170 West Railroad Street, Long Beach, MS 39560/Fax (228) 214-5562/JRabion@smrc.ms.gov. Questions concerning the technical portions of the procurement document should be directed to Jackie Barraco at 1170 West Railroad Street, Long Beach, MS 39560/Fax (228) 214-5562/JRabion@smrc.ms.gov.

Respondents are cautioned that any statements made by contact persons that cause a material change to any portion of the procurement document shall not be relied upon unless subsequently ratified by a formal written amendment to the procurement document.

1.8 Type of Contract

Compensation for services will be in the form of a firm fixed price agreement.

1.9 Written Proposals

All proposals shall be in writing.

SECTION 2

2.1 Purpose

The South Mississippi Regional Center is seeking to establish a contract for day services for up to 20 individuals with intellectual and developmental disabilities residing at Robert Lott Community Homes in Poplarville, MS. Day services are part of the active treatment process which is specific programming designed to assist people served at South Mississippi Regional Center in skill acquisition and maintenance. Active treatment is necessary to maintain licensure as an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID). It is understood that any contract resulting from RFP 3120000970 requires approval by the Personal Service Contract Review Board. If any contract resulting from RFP 3120000970 is not approved by the Personal Service Contract Review Board, it is void and no payment shall be made.

2.2 Scope of Services

1. The provider will provide services for up to 20 people within a 15 mile radius of the Robert Lott Community Homes in Poplarville, MS.
2. Provider will maintain primary responsibility for the environment, equipment, supplies and activities for South Mississippi Regional Center persons served. The Provider and South Mississippi Regional Center will coordinate a daily schedule as part of a weekly/monthly schedule which is posted and available for BIDD and ICF/IID surveyors or other oversight entities. This schedule will include all of the activities, training and contract work time frames specified. All staff and people served will be made aware of and will follow the daily schedule to ensure active treatment (ICF/IID regulations) and BIDD operational standards are being followed.
3. Provider will supply paper products and goods (disposable plates, toilet tissue, paper towels, office supplies, soap, dishwashing detergent, janitorial products, etc.). South Mississippi Regional Center will provide specialized items such as wipes, protective undergarments, etc. that are directly related to the persons served by South Mississippi Regional Center and not for general consumption. A storage drawer or area will be available for South Mississippi Regional Center supplies to be stored and locked.
4. South Mississippi Regional Center will provide sufficient staff to accompany and provide care for the people served. Said staff will be responsible for assisting persons served by, in self-care, programming, dietary management, transportation, and any related activities. South Mississippi Regional Center staff will receive

direction/instruction from Provider's Program Director as to specific duties or tasks staff are responsible for directing during the day. When changes occur to the schedule, the Provider will inform South Mississippi Regional Center staff of the changes and any additional directives. Schedule changes must be posted in a location accessible to all staff, people served and monitoring entities.

5. South Mississippi Regional Center will be responsible for the salaries, benefits, travel reimbursements and other incidental costs pertaining to the South Mississippi Regional Center staff who work with the people served by South Mississippi Regional Center.

6. Provider will provide activities and training opportunities designed to meet regulations of an Intermediate Care Facility for Individuals with Developmental Disabilities, otherwise known as an "ICF/IID" (previously known as ICF/MR). People served will be engaged in "active treatment", specific programming related to acquisition or maintainment of skill development. Programs will be developed with the Interdisciplinary Team and center around the people being served, highlighting their needs and preferences. Formal training and programming will be reflected on the daily/weekly/monthly schedule. South Mississippi Regional Center staff will ensure those formal programs are carried out, completed and documented.

7. Provider interacts and presides as a part of the Interdisciplinary Team and meets with South Mississippi Regional Center staff to resolve concerns of the person being served, their family and team members and will participate in the Individual Support Planning (ISP) processes. Additionally, Provider will attend South Mississippi Regional Center Team or ISP meetings regularly to stay abreast of issues, concerns, or problems and to be aware of the person's decision to continue to attend the Provider's program or if the person chooses a partial or full retirement program.

8. South Mississippi Regional Center staff are responsible for maintaining files/records and writing training programs and maintaining data related to goals and processes of people being served. South Mississippi Regional Center staff will write training objectives (formal programs) for ICF/IID people. South Mississippi Regional Center staff will perform required annual assessment paperwork to include the Comprehensive Functional Assessment (CFA). Data will be maintained by South Mississippi Regional Center staff in a binder accessible to the Provider; however, South Mississippi Regional Center staff will translate this data into the applicable training database for monitoring, progress and achievement purposes. South Mississippi Regional Center staff will revise programs according to progress.

9. Provider's Program Director will directly communicate with supervisory staff at South Mississippi Regional Center Poplarville Community Programs to address any staff issues or concerns, even those involving disciplinary matters. South Mississippi Regional Center is responsible for ensuring appropriate disciplinary actions are delivered to South Mississippi Regional Center staff. Both parties will work together to ensure that policies and procedures are adhered to and order maintained. Should South Mississippi Regional Center staff have questions regarding programs, services, staff, activities, etc., those will be communicated to the Director of the Poplarville Community Homes. The Director of Poplarville Community Homes will contact the Provider Waiver Services Director to discuss and resolve the matter. The Provider is encouraged to hold regularly scheduled staff meetings to include Provider and South Mississippi Regional Center staff

to address various issues, concerns, ideas, and matters pertaining to people served.
10. Provider will perform all fire drills, fire department inspections, fire extinguisher checks, disaster drills, water temperature monitoring – all required of BIDD and ICF/IID programs. A folder will be kept on site which is accessible to ICF/IID maintenance personnel for purposes of disclosure to ICF/IID surveyors who require seeing this documentation annually.
11. South Mississippi Regional Center staff is responsible for the transporting, preparing and serving of meals, snacks and fluids for persons served through South Mississippi Regional Center. They will also ensure appropriate dietary textures, restrictions guidelines are followed per physician's orders as outlined in the South Mississippi Regional Center Feeding Fact Sheets and Individual Support Plans. South Mississippi Regional Center will provide and maintain adaptive equipment required for mealtimes. South Mississippi Regional Center staff will be responsible for ensuring any adaptive equipment is present, operational and being utilized by people from South Mississippi Regional Center program.
12. Provider will be responsible for maintaining the environment, the upkeep and the monthly utilities, including rent, water/sewer, phone, pest control, lawn maintenance and electricity. Provider will be responsible for all janitorial services.
13. South Mississippi Regional Center will maintain responsibility of ensuring required inservice training such as CPR or MANDT, is carried out by South Mississippi Regional Center Training Resources department. Additionally, South Mississippi Regional Center will provide all South Mississippi Regional Center new employee orientation through the South Mississippi Regional Center main campus prior to job specific training onsite. Provider will not be responsible to provide this training. Training required by the ICF/IID regulations will be provided by South Mississippi Regional Center to South Mississippi Regional Center staff. There may be select trainings or inservices that may be provided to Provider staff including, but not limited to, ISP specific training needs.
14. Provider will submit itemized bill or invoice summarizing duties performed and applicable fees. Robert Lott Community Home Director will sign and verify hours/charges and in turn submit to the Business Office. From that point, the Business Office will ensure the invoice is processed for payment. Payment of invoice will be made no later than 30 days after receipt of invoice.
15. In addition to the BIDD Serious Incident Report process, the Provider will become familiar with the ICF/IID policy related to reporting serious incidents/accidents and aid in ensuring that process is followed thoroughly. Additionally, the Provider will become familiar with South Mississippi Regional Center abuse and neglect policies and procedures aimed at ensuring suspected abuse and neglect is reported immediately and documentation is accurately secured. Reports will be provided to the South Mississippi Regional Center Risk Management Director.
16. Either party may terminate this agreement with a thirty (30) day written notice.
17. Unethical or unprofessional behavior will warrant immediate termination of this agreement.

2.3 Term

The term of the contract shall be for a period of five (5) months, February 1, 2017 through June 30, 2017. Upon written agreement of both parties at least 90 days prior to each contract anniversary date, the contract may be renewed by the South Mississippi Regional Center for a period of 4 successive one-year period(s) under the dame prices, terms, and conditions as in the original contract subject to approval by PSCRB. The total number of renewal years permitted shall not exceed 4.

2.3.1 Multi-Term Contracts

Unless otherwise provided by law, a contract for services may be entered into for a period of time not to exceed four (4) years with an option to renew for one (1) year, provided the term of the contract and conditions of renewal or extensions, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.

2.3.1.1 Requirements

a) Day services for the proposed contract period will be provided for 20 people with intellectual and developmental disabilities for up to five days weekly excluding State proclaimed holidays. The preferred unit price proposal will be stated as 'per person/per day';
b) A unit price shall be given for each service, and that unit price shall be the same throughout the contract.
c) A multi-term contract will be canceled if funds are not appropriated or otherwise made available to support the continuation of performance in any fiscal period succeeding the first; however, this does not affect either the State's right or the contractor's rights under any termination clause in the contract.
d) The Procurement Officer must notify the contractor on a timely basis that the funds are or are not available for the continuation of the contract for each succeeding fiscal period.
e) A multi-term contract may be awarded to the winning respondent of this request for solicitation whose proposal is deemed to be the most advantageous to the State after considering all evaluation factors including, but not limited to, price.

SECTION 3

3.1 Insurance

The successful vendor shall maintain at least the minimum level of comprehensive general liability or professional liability insurance, with minimum limits of $1,000,000.00 per occurrence. All comprehensive general liability and professional liability insurance will provide coverage to the South Mississippi Regional Center as an additional insured. The facility reserves the right to request from carriers, certificates of insurance

regarding the required coverage. Insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance. The vendor shall be prepared to provide evidence of required insurance upon request by the South Mississippi Regional Center at any point during the contract period and should consult with legal counsel regarding its obligations.

(Insurance is not a PSCRB requirement. The agency has discretion when determining whether to require insurance in the procurement and should consult with its agency legal counsel regarding its obligations.)

SECTION 4

4.1 Written Proposals Shall Contain the Following Minimum Information

1) The name of the respondent, the location of the respondent's principal place of business and, if different, the place of performance of the proposed contract;
2) The age of the respondent's business and average number of employees over a previous period of time, as specified in the Request for Proposal; *except when respondent is a contract worker as defined in accordance with Section 3-101.04*
3) The qualifications, including licenses, certifications, education, skills, and experience of all persons who would be assigned to provide the required services; and,
4) A listing of other contracts under which services similar in scope, size, or discipline to the required services were performed or undertaken within a previous period of time, as specified in the Request for Proposal; and,
5) A plan giving as many details as is practical explaining how the services will be performed.

4.2 Evaluation Procedure

4.2.1 Step One:

Proposals will be reviewed to assure compliance with the minimum specifications. Proposals that do not comply with the minimum specifications will be rejected immediately, receiving no further consideration.

4.2.1.1 Responsive Respondent

Respondent must submit a proposal which conforms in all material respects to this Request for Proposals, RFP 3120000970 , as determined by South Mississippi Regional Center.

4.2.1.2 Responsible Respondent

Respondent must have capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure

good faith performance, as determined by South Mississippi Regional Center.

4.2.2 Step Two:

Proposals that satisfactorily complete Step One will be reviewed and analyzed to determine if the proposal adequately meets the needs of South Mississippi Regional Center. Factors to be considered are as follows:

1) The plan for performing the required services; 25%
2) Ability to perform the services as reflected by technical training and education, general experience, specific experience in providing the required services, and the qualifications and abilities of personnel proposed to be assigned to perform the services; 25%
3) The personnel, equipment, and facilities to perform the services currently available or demonstrated to be made available at the time of contracting; 10%
4) A record of past performance of similar work; ~~and~~ 15%
5) Price; 25%

4.2.3 Step Three:

The South Mississippi Regional Center Executive Director or his/her designee will contact the respondent with the proposal which best meets South Mississippi Regional Center's needs (based on factors evaluated in Step Two) and attempt to negotiate an agreement that is deemed acceptable to both parties.

4.3 The Following Response Format Shall Be Used for All Submitted Proposals:

1) **Management Summary:** Provide a cover letter indicating the underlying philosophy of the firm in providing the service.
2) **Proposal:** Describe in detail how the service will be provided. Include a description of major tasks and subtasks.
3) **Corporate experience and capacity:** Describe the experience of the firm in providing the service, give number of years that the service has been delivered, and provide a statement on the extent of any corporate expansion required to handle the service.
4) **Personnel:** Attach resumes' of all those who will be involved in the delivery of service (from principals to field technicians) that include their experience in this area of service delivery. Indicate the level of involvement by principals of the firm in the day-to-day operation of the contract.
5) **References:** Give at least three (3) references for contracts of similar size and scope, including at least two (2) references for current contracts or those awarded during the past three (3) years. Include the name of the organization, the length of the contract, a brief summary of the work, and the name and telephone number of a responsible contact person.

6) **Acceptance of conditions:** Indicate any exceptions to the general terms and conditions of the proposal document and to insurance, bonding, and any other requirements listed.

7) **Additional data:** Provide any additional information that will aid in evaluation of the response.

8) **Cost data:** Estimate the annual cost of the service. Cost data submitted at this stage is not binding and is subject to negotiation if your firm is chosen as a finalist. Include the number of personnel proposed to be assigned to the contract and the total estimated cost of the labor portion of the contract (include a sample staffing chart). Identify all non-labor costs and their estimated totals.

4.4 Nonconforming Terms and Conditions

A proposal response that includes terms and conditions that do not conform to the terms and conditions in the proposal document is subject to rejection as non-responsive. The South Mississippi Regional Center reserves the right to permit the respondent to withdraw nonconforming terms and conditions from its proposal response prior to a determination by the South Mississippi Regional Center of non-responsiveness based on the submission of nonconforming terms and conditions.

4.5 Conditioning Proposal Upon Other Awards

Any proposal which is conditioned upon receiving award of both the particular contract being solicited and another Mississippi contract shall be deemed non-responsive and not acceptable.

4.6 Award

Award shall be made to the responsible respondent whose proposal is determined in Writing, within one (1) of days, to be the most advantageous to the State taking into consideration price and the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation.

4.6.1 Notification

All participating vendors will be notified of the South Mississippi Regional Center's intent to award a contract. In addition, the South Mississippi Regional Center will identify the selected vendor. Notice of award is also made available to the public.

SECTION 5

5.1 Post-Award Vendor Debriefing

A respondent, successful or unsuccessful, may request a post-award debriefing, in writing, by U.S. mail or electronic submission. The written request must be received by the Director of the South Mississippi Regional Center within three (3) business days of notification of the contract award. A post-award debriefing is a meeting and not a hearing; therefore, legal representation is not required. A debriefing typically occurs within five (5) business days of receipt of the request. If a respondent prefers to have legal representation present, the respondent must notify the Director of the South

Mississippi Regional Center in writing and identify its attorney by name, address, and telephone number. The South Mississippi Regional Center will schedule and/or suspend and reschedule the meeting at a time when a Representative of the Office of the Mississippi Attorney General can be present.

For additional information regarding Post-Award Debriefing, as well as the information that may be provided and excluded, please see Section 7-114 through 7-114.07, Post-Award Vendor Debriefing, of the *Personal Service Contract Review Board's Rules and Regulations.*

5.2 Protest of Award

Any actual or prospective respondent or contractor who is aggrieved in connection with this solicitation or the outcome of the Request for Proposals may file a protest with the Proposal Coordinator, Jackie Barraco, Business Services Branch Director. The protest shall be submitted on or before 10:00 a.m, Monday, December 19, 2016, in writing after such aggrieved person or entity knows or should have known of the facts giving rise thereto. All protests must be in writing, dated, signed by the respondent or an individual authorized to sign contracts on behalf of the protesting respondent, and contain a statement of the reason(s) for protest, citing the law(s), rule(s) or regulation(s), and/or procedure(s) on which the protest is based. The written protest letter shall contain an explanation of the specific basis for the protest. The protesting respondent must provide facts and evidence to support the protest. A protest is considered filed when received by the Proposal Coordinator, Jackie Barraco, Business Services Branch Director, via either U.S. mail, postage prepaid, or personal delivery. Protests filed after 10:00 a.m., Monday, December 19, 2016, will not be considered.

5.3 Required Contract Terms and Conditions

Any contract entered into between a Contracting Agency and a vendor/respondent shall include the required clauses found in **Attachment B** and those required by the *Personal Service Contract Review Board's Rules and Regulations* as updated.

5.4 Optional Contract Terms and Conditions

Any contract entered into between a Contracting Agency and a vendor/respondent may have, at the discretion of the Contracting Agency, the optional clauses found in **Attachment C** and those within the *Personal Service Contract Review Board's Rules and Regulations* as updated.

5.5 Mississippi Contract/Procurement Opportunity Search Portal

This Request for Proposals, and the questions and answers concerning this Request for Proposals, are posted on the Contract/Procurement Opportunity Search Portal.

5.6 Attachments

The attachments to this Request for Proposals are made a part of this Request for Proposals as if copied herein in words and figures.

By signing below, the Company Representative certifies that he/she has authority to bind the company, and further acknowledges on behalf of the company:

1. That he/she has thoroughly read and understands this Request for Proposals, RFP 3120000970 , and the attachments herein;

2. That the company meets all requirements and acknowledges all certifications contained in this Request for Proposals, RFP 3120000970 , and the attachments herein;

3. That the company agrees to all provisions of this Request for Proposals, RFP 3120000970 , and the attachments herein;

4. That the company has, or will secure, at its own expense, applicable personnel who shall be qualified to perform the duties required to be performed under this Request for Proposals.

Printed Name: _____

Signature/Date: _____

ATTACHMENT A

Certifications and Assurances

I/We make the following certifications and assurances as a required element of the offer to which it is attached, of the understanding that the truthfulness of the facts affirmed here and the continued compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):

1. **REPRESENTATION REGARDING CONTINGENT FEES**
   Contractor represents that it **has/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 proposal.

2. **REPRESENTATION REGARDING GRATUITIES**
   The Respondent or Contractor represents that it **has/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 Personal Service Contract Review Board Rules and Regulations.

3. **CERTIFICATION OF INDEPENDENT PRICE DETERMINATION**
   The respondent certifies that the prices submitted in response to the solicitation **have/have not** been arrived at independently and without, for the purpose of restricting competition, any consultation, communication, or agreement with any other respondent or competitor relating to those prices, the intention to submit a proposal, or the methods or factors used to calculate price.

4. **PROSPECTIVE CONTRACTOR'S REPRESENTATION REGARDING CONTINGENT FEES**
   The prospective Contractor represents as a part of such Contractor's proposal that such Contractor **has/has not** retained any person or agency on a percentage, commission, or other contingent arrangement to secure this contract.

   Name/Title: _____

   Signature/Date: _____

   *Note: Please be sure to **circle the applicable word or words** provided above. Failure to circle the applicable word or words and/or to sign the proposal form may result in the proposal being rejected as nonresponsive. **Modifications or additions to any portion of this proposal document may be cause for rejection of the proposal.***

ATTACHMENT B

Required Clauses for Service Contracts Resulting from this Request for Proposals

1. Applicable Law. The contract shall be 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 shall comply with applicable federal, state, and local laws and regulations.

2. Availability of Funds. It is expressly understood and agreed that the obligation of the Agency to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. 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 of 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 Agency, the Agency shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to the Agency of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

3. Compliance with Laws. Contractor understands that the Agency is an equal opportunity employer and therefore, maintains 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 agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor 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.

4. E-Payment. Contractor 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 § 31-7-305.

5. E-Verification. If applicable, Contractor 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. 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 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; or
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,
c. both.

In the event of such cancellation/termination, Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

6. 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.

7. Procurement Regulations. The contract shall be governed by the applicable provisions of the *Mississippi Personal Service Contract Review Board Rules and Regulations*, a copy of which is available at 210 East Capitol, Suite 800, Jackson, Mississippi 39201 for inspection, or downloadable at http://www.mspb.ms.gov.

8. Representation Regarding Contingent Fees. 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 proposal.

9. Representation Regarding Gratuities. 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 Personal Service Contract Review Board Rules and Regulations*.

10. Stop Work Order.

a. *Order to Stop Work:* The Procurement Officer, may, by written order to Contractor at any time, and without notice to any surety, require Contractor 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, 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 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 Procurement Officer 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 thereof expires, Contractor shall have the right to resume 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 Contractor's cost properly allocable to, the performance of any part of this contract; and,
ii. Contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the 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.

11. Termination for Convenience.

a. *Termination.* The Agency Head or designee may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Agency Head or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.
b. *Contractor's Obligations.* Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency Head 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.

12. Termination for Default.

a. *Default.* If Contractor 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 Agency Head or designee may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate Contractor'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 Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. Contractor 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 procurement officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor 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 Agency Head 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 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 to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the Agency Head 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 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 Agency Head 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". (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 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.

13. Termination Upon Bankruptcy. This contract may be terminated in whole or in part by Agency upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor 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.

14. 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.

15. 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.

ATTACHMENT C

Optional Clauses for Use in Service Contracts Resulting from this Request for Proposals

[redacted]

1. Anti-assignment/Subcontracting. Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Contractor's special skills and expertise. Contractor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the State, which the State 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 State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State 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 State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

2. Approval. It is understood that this contract requires approval by the Personal Service Contract Review Board. If this contract is not approved, it is void and no payment shall be made hereunder.

3. 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 State 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.

4. Authority to Contract. Contractor warrants: (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and, (d) notwithstanding any other provision of this agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

5. Information Designated by Contractor as Confidential. Any disclosure of those materials, documents, data, and other information which Contractor has designated in writing as proprietary and confidential shall be subject to the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1. As provided in the contract, the personal or professional services to be 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.

Any liability resulting from the wrongful disclosure of confidential information on the part of Contractor or its subcontractor shall rest with Contractor. Disclosure of any confidential information by Contractor or its subcontractor without the express written approval of the Agency shall result in the immediate termination of this agreement.

6. Confidentiality. Notwithstanding any provision to the contrary contained herein, it is recognized that Agency is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Mississippi Code Annotated §§ 25-61-1 *et seq*. If a public records request is made for any information provided to Agency pursuant to the agreement and designated by the Contractor in writing as trade secrets or other proprietary confidential information, Agency shall follow the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1 before disclosing such information. The Agency shall not be liable to the Contractor for disclosure of information required by court order or required by law.

7. Contractor Personnel. The Agency shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by Contractor. If the Agency reasonably rejects staff or subcontractors, Contractor must provide replacement staff or subcontractors satisfactory to the Agency in a timely manner and at no additional cost to the Agency. The day-to-day supervision and control of Contractor's employees and subcontractors is the sole responsibility of Contractor.

8. Debarment and Suspension. Contractor certifies to the best of its knowledge and belief, that it:

   (1) is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
   (2) has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it 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;
   (3) has not, within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
   (4) is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (2) and (3) of this certification; and,
   (5) has not, within a three-year period preceding this proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.

9. Disclosure of Confidential Information. In the event that either party to this agreement 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 confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this agreement. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq.*

10. Exceptions to Confidential Information. Contractor and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("disclosing party") which:

    (1) is rightfully known to the recipient prior to negotiations leading to this agreement, other than information obtained in confidence under prior engagements;
    (2) is generally known or easily ascertainable by nonparties of ordinary skill in the business of the customer;
    (3) is released by the disclosing party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
    (4) is independently developed by the recipient without any reliance on confidential information;
    (5) is or later becomes part of the public domain or may be lawfully obtained by the State or Contractor from any nonparty; or,
    (6) is disclosed with the disclosing party's prior written consent

11. Errors in Extension. If the unit price and the extension price are at variance, the unit price shall prevail.

12. Failure to Deliver. In the event of failure of Contractor to deliver services in accordance with the contract terms and conditions, the Agency, after due oral or written notice, may procure the services from other sources and hold Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the Agency may have.

13. Failure to Enforce. Failure by the Agency 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 Agency to enforce any provision at any time in accordance with its terms.

14. 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 Agency a release of all claims against the State 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 State's claims against Contractor under this contract.

15. Force Majeure. Each party 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, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters ("force majeure events"). When such a cause arises, Contractor shall notify the State 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 State determines it to be in its best interest to terminate the agreement.

16. HIPAA Compliance. Contractor agrees to comply with the "Administrative Simplification" provisions of the Health Insurance Portability and Accountability Act of 1996, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the services under this contract.

17. 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.

18. Independent Contractor Status. Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the State and Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the Agency, and the Agency shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. The Agency shall not withhold from the contract payments to Contractor any federal or

state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, the Agency shall not provide to Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

19. 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 State 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 State or Contractor on the basis of draftsmanship or preparation hereof.

20. [Contract Modification means any written alteration in contract requirements, deliverables, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract. Modifications must be approved by the PSCRB pursuant to Section 7-111 (Modifications) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*. Modifications shall not grant extra compensation, fee, or allowance to any Contractor after service is rendered or contract is made unless contemplated within the contract itself or unless the scope of services is increased.] 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.

21. 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.

22. 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.

For the Agency:	For Contractor:
[Name, Title]	[Name, Title]
[Agency Name]	[Contractor Name]
[Address]	[Address]
[City, State, Zip]	[City, State, Zip]

23. Non-solicitation of Employees. Each party to this agreement agrees not to employ or to solicit for employment, directly or indirectly, any persons in the full-time or part-time

employment of the other party until at least six (6) months after this agreement terminates unless mutually agreed to in writing by the State and Contractor.

24. Oral Statements. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the Agency and agreed to by Contractor.

25. Ownership of Documents and Work Papers. Agency shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the project which is the subject of this agreement, except for Contractor's internal administrative and quality assurance files and internal project correspondence. Contractor shall deliver such documents and work papers to Agency upon termination or completion of the agreement. The foregoing notwithstanding, Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from Agency and subject to any copyright protections.

26. [redacted] Priority. The contract consists of this agreement with exhibits, the procurement Request for Proposals [redacted] (hereinafter referred to as RFP and attached as Schedule [redacted], and the response dated [redacted] by [redacted] (hereinafter referred to as Proposal and attached as Schedule [redacted]). Any ambiguities, conflicts or questions of interpretation of this contract shall be resolved by first, reference to this agreement with exhibits and, if still unresolved, by reference to the RFP and, if still unresolved, by reference to the Proposal. Omission of any term or obligation from this agreement or attached Schedules [redacted] or [redacted] shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract.

27. Quality Control. Contractor shall institute and maintain throughout the contract period a properly documented quality control program designed to ensure that the services are provided at all times and in all respects in accordance with the contract. The program shall include providing daily supervision and conducting frequent inspections of Contractor's staff and ensuring that accurate records are maintained describing the disposition of all complaints. The records so created shall be open to inspection by the Agency.

28. Record Retention and Access to Records. Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this agreement shall be retained by Contractor for three (3) years after final payment is made under this agreement and all pending matters are

closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three-year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three-year period, whichever is later.

29. Recovery of Money. Whenever, under the contract, any sum of money shall be recoverable from or payable by Contractor to the Agency, the same amount may be deducted from any sum due to Contractor under the contract or under any other contract between Contractor and the Agency. The rights of the Agency are in addition and without prejudice to any other right the Agency may have to claim the amount of any loss or damage suffered by the Agency on account of the acts or omissions of Contractor.

30. Right to Audit. Contractor shall maintain such financial records and other records as may be prescribed by the Agency or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of three (3) years after final payment, or until they are audited by the Agency, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.

31. Right to Inspect Facility. The State may, at reasonable times, inspect the place of business of a Contractor or any subcontractor which is related to the performance of any contract awarded by the State.

32. Severability. If any part of this agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

33. State Property. Contractor will be responsible for the proper custody and care of any state-owned property furnished for Contractor's use in connection with the performance of this agreement. Contractor will reimburse the State for any loss or damage, normal wear and tear excepted.

34. Third Party Action Notification. Contractor shall give the customer prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this agreement.

35. Unsatisfactory Work. If, at any time during the contract term, the service performed or work done by Contractor is considered by the Agency to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, Contractor shall, on being notified by the Agency, immediately correct such deficient service or work. In the event Contractor fails, after notice, to correct the deficient service

or work immediately, the Agency shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of Contractor.

36. Waiver. No delay or omission by either party to this agreement in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this agreement shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this agreement will void, waive, or change any other term or condition. No waiver by one party to this agreement of a default by the other party will imply, be construed as or require waiver of future or other defaults.

37. Requirements Contract. During the period of the contract, Contractor shall provide all the service described in the contract. Contractor understands and agrees that this is a requirements contract and that the Agency shall have no obligation to Contractor if no services are required. Any quantities that are included in the scope of work reflect the current expectations of the Agency for the period of the contract. The amount is only an estimate and Contractor understands and agrees that the Agency is under no obligation to Contractor to buy any amount of the services as a result of having provided this estimate or of having any typical or measurable requirement in the past. Contractor further understands and agrees that the Agency may require services in an amount less than or in excess of the estimated annual contract amount and that the quantity actually used, whether in excess of the estimate or less than the estimate, shall not give rise to any claim for compensation other than the total of the unit prices in the contract for the quantity actually used.