
APPENDIX F**Clauses Available for Use in Service Contracts**

Appendix F includes alphabetically by title various service contracting clauses which are available for use. Many clauses require the inclusion of additional information. A word or phrase in square brackets indicates that the information identified is to be inserted (e.g., *[time]*, *[date]*). Clarifications of clauses are in parentheses at the end of the clause. These are discretionary and the agency is neither required to use them nor prohibited from using others which are not included in this appendix.

ALTERNATIVE BIDS

Bidders offering service delivery methods other than those permitted by the scope of work may submit a separate envelope clearly marked "Alternative Bid." Alternative bids will be deemed non-responsive and will not be considered for award. All such responses will, however, be examined prior to award. Such examination may result in cancellation of all bids received to permit rewriting the scope of work to include the alternative method, or the alternative method may be considered for future requirements of the *[agency]*.

ANTI-ASSIGNMENT/SUBCONTRACTING

The Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon the Contractor's special skills and expertise. The 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.

ANTITRUST

By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the *[agency]* all rights, titles, and interest it may now have or hereafter acquire under the antitrust laws of the United States and the State that relate to the particular goods or services purchased or acquired by the *[agency]* under said contract.

APPROVAL

It is understood that the Contract is void and no payment shall be made in the event that the Personal Service Contract Review Board does not approve this contract.

ATTORNEYS' FEES AND EXPENSES

Subject to other terms and conditions of this agreement, in the event the Contractor defaults in any obligations under this agreement, the Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees, court costs, and attorneys' 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 attorneys' fees or costs of legal action to the Contractor.

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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.

CHANGE IN SCOPE OF WORK

The [agency] may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by the Contractor that the scope of the project or of the Contractor's services has been changed, requiring changes to the amount of compensation to the Contractor or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the [agency] and the Contractor.

If the Contractor believes that any particular work is not within the scope of the project, is a material change, or will otherwise require more compensation to the Contractor, the Contractor must immediately notify the [agency] in writing of this belief. If the [agency] believes that the particular work is within the scope of the contract as written, the Contractor will be ordered to and shall continue with the work as changed and at the cost Stated for the work within the scope.

CLAIMS BASED ON A PROCUREMENT OFFICER'S ACTIONS OR OMISSIONS CLAUSE**"Claims Based on a Procurement Officer's Actions or Omissions**

- (1) *Notice of Claim.* If any action or omission on the part of a Procurement Officer or designee of such officer requiring performance changes within the scope of the contract constitutes the basis for a claim by the Contractor for additional compensation, damages, or an extension of time for completion, the Contractor shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
- (a) the Contractor shall have given written notice to the Procurement Officer or designee of such officer:
 - (i) prior to the commencement of the work involved, if at that time the Contractor knows of the occurrence of such action or omission;
 - (ii) within 30 days after the Contractor knows of the occurrence of such action or omission, if the Contractor did not have such knowledge prior to the commencement of the work or;
 - (iii) within such further time as may be allowed by the Procurement Officer in writing.

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This notice shall State that the Contractor regards the act or omission as a reason which may entitle the Contractor to additional compensation, damages, or an extension of time. The Procurement Officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Procurement Officer or designee of such officer;

- (b) the notice required by Subparagraph (a) of this Paragraph describes as clearly as practicable at the time the reasons why the Contractor believes that additional compensation, damages, or an extension of time may be remedies to which the Contractor is entitled; and
 - (c) the Contractor maintains and, upon request, makes available to the Procurement Officer within a reasonable time, detailed records to the extend practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.
- (2) *Limitation of Clause.* Nothing herein contained, however, shall excuse the Contractor from compliance with any rules of law precluding any State officers and any Contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.
- (3) *Adjustment of Price.* Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.”

CONFIDENTIAL INFORMATION

“Confidential Information” shall mean (a) those materials, documents, data, and other information which the Contractor has designated in writing as proprietary and confidential, and (b) all data and information which the Contractor acquires as a result of its contact with and efforts on behalf of the customer and any other information designated in writing as confidential by the State. Each party to this agreement agrees to protect all confidential information provided by one party to the other; to treat all such confidential information as confidential to the extent that confidential treatment is allowed under State and/or federal law, and, except as otherwise required by law, not to publish or disclose such information to any third party without the other party’s written permission, and to do so by using those methods and procedures normally used to protect the party’s own confidential information. Any liability resulting from the wrongful disclosure of confidential information on the part of the Contractor or its Subcontractor shall rest with Contractor. Disclosure of any confidential information by the Contractor or its Subcontractor without the express written approval of the customer shall result in the immediate termination of this agreement.

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, Sections 25-61-1, et seq., Mississippi Code Annotated 1972. If a public records request is made for any information provided to [Agency] pursuant to the agreement, [Agency] shall promptly notify the disclosing party of such request and will respond to the request only in accordance with the procedures and limitations set forth in applicable law. The disclosing party shall promptly institute appropriate legal proceedings to protect its information. No party to the agreement shall be liable to the other party for disclosures of information required by court order or required by law.

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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 the Contractor. If the [agency] reasonably rejects staff or Subcontractors, the 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 the Contractor's employees and Subcontractors is the sole responsibility of the Contractor.

COPYRIGHTS

Contractor (i) agrees that [Agency] shall determine the disposition of the title to and the rights under any copyright by Contractor or employees on copyrightable material first produced or composed under this agreement, and (ii) hereby grants to [Agency] a royalty free, nonexclusive, irrevocable license to reproduce, translate, publish, use and dispose of, to authorize others to do so, all copyrighted (or copyrightable) work not first produced or composed by Contractor in the performance of this agreement, but which is incorporated in the material furnished under the agreement, provided that such license shall be only to the extent contractor now has, or prior to the completion of full final settlements of agreement may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

DEBARMENT AND SUSPENSION

The 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; 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;
- (3) 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 paragraph two (2) of this certification; and
- (4) 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.

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 State 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 Ann. Section 25-61-1, et.seq. Regarding Public Access to Public Records.

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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 ("the Disclosing Party") which (a) is rightfully known to the recipient prior to negotiations leading to this agreement, other than information obtained in confidence under prior engagements; (b) is generally known or easily ascertainable by non-parties of ordinary skill in the business of the customer; (c) is released by the Disclosing Party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction; (d) is independently developed by the recipient without any reliance on Confidential Information; (e) is or later becomes part of the public domain or may be lawfully obtained by the State or the Contractor from any non-party, or (f) is disclosed with the Disclosing Party's prior written consent.

ERRORS IN EXTENSION

If the unit price and the extension price are at variance, the unit price shall prevail.

FAILURE TO DELIVER

In the event of failure of the 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 the 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.

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.

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, the 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 the 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 the Contractor under this contract.

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 (the "Force Majeure Events"). When such a cause arises, the 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

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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.

HIPAA COMPLIANCE

Contractor agrees to comply with the Administrative Simplifications 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.

INDEMNIFICATION

To the fullest extent allowed by law, the 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 attorneys' fees, arising out of or caused by the 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, the Contractor may be allowed to control the defense of any such claim, suit, etc. In the event the Contractor defends said claim, suit, etc., the Contractor shall use legal counsel acceptable to the State; the 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. The Contractor shall not settle any claim, suit, etc. without the State's concurrence, which the State shall not unreasonably withhold.

INDEMNIFICATION (for contracts between two state agencies or entities)

The Contractor's tort liability, as an entity of the State of Mississippi, is determined and controlled in accordance with Sections 11-46-1, et seq., Mississippi Code Annotated, 1972, including all defenses and exceptions contained therein. Nothing in this agreement shall have the effect of changing or altering this liability or of eliminating any defense available to the State under statute.

INDEPENDENT CONTRACTOR STATUS

The 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, the 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 the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or the Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and the 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 the 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 the Contractor, its servants, agents, or employees. The [agency] shall not withhold from the contract payments to the Contractor any federal or State unemployment taxes, federal or State income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the [agency] shall not provide to the Contractor any insurance

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coverage or other benefits, including Workers' Compensation, normally provided by the State for its employees.

INFRINGEMENT INDEMNIFICATION

The Contractor warrants that the materials and deliverables provided to the customer under this agreement, and their use by the customer, will not infringe or constitute an infringement of any copyright, patent, trademark, or other proprietary right. Should any such items become the subject of an infringement claim or suit, the Contractor shall defend the infringement action and/or obtain for the customer the right to continue using such items. Should Contractor fail to obtain for the customer the right to use such items, Contractor shall suitably modify them to make them non-infringing or substitute equivalent software or other items at Contractor's expense. In the event the above remedial measures cannot possibly be accomplished, and only in that event, the Contractor may require the customer to discontinue using such items, in which case the Contractor will refund to the customer the fees previously paid by the customer for the items the customer may no longer use, and shall compensate the customer for the lost value of the infringing part to the Phase in which it was used, up to and including the contract price for said Phase. Said refund shall be paid within ten (10) working days of notice to the customer to discontinue said use. In addition to the foregoing, the Contractor shall indemnify the customer in accordance with the provisions of Section 19 herein.

Scope of Indemnification: Provided that the State promptly notifies Contractor in writing of any alleged infringement claim of which it has knowledge, Contractor shall defend, at its own expense, the State against, and pay all costs, damages and attorney fees that a court finally awards for infringement based on the Programs and Deliverable provided under this agreement.

INSURANCE

Contractor represents that it will maintain workers' compensation insurance which shall inure to the benefit of all Contractor's personnel provided hereunder, comprehensive general liability or professional liability insurance, with minimum limits of \$_____ per occurrence and fidelity bond insurance with minimum limits of \$_____. All general liability, professional liability and fidelity bond insurance will provide coverage to the [Agency] as an additional insured. The [Agency] 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.

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 the Contractor. The 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 the Contractor on the basis of draftsmanship or preparation hereof.

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LIQUIDATED DAMAGES CLAUSE

With Termination for Default Clause: The following clause is authorized for use in service contracts when it is difficult to determine with reasonable accuracy the amount of damage to the State due to delays caused by late Contractor performance or nonperformance and the contract contains the termination for default clause set forth in Section 5-101.08.

Liquidated Damages

"When the Contractor is given notice of delay or nonperformance as specified in Paragraph (1) (Default) of the Termination for Default Clause of this contract and fails to cure in the time specified, the Contractor shall be liable for damages for delay in the amount of \$_____ per calendar day from date set for cure until either the State reasonably obtains similar services if the Contractor is terminated for default, or until the Contractor provides the services if the Contractor is not terminated for default. To the extent that the Contractor's delay or nonperformance is excused under Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of the Termination for Default Clause of this contract, liquidated damages shall not be due the State. The Contractor remains liable for damages caused other than by delay."

In Other Situations: If the contract will not have a Termination for Default Clause or the liquidated damages are to be assessed for reasons other than delay, the head of a purchasing agency may approve the use of any appropriate liquidated damages clause.

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.

NO LIMITATION OF LIABILITY

Nothing in this Agreement shall be interpreted as excluding or limiting any tort liability of the Contractor for harm caused by the intentional or reckless conduct of the Contractor or for damages incurred through the negligent performance of duties by the Contractor or the delivery of products that are defective due to negligent construction.

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 Contractor: *name, title, contractor, address*

For the Customer: *name, title, agency, address*

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NON-SOLICITATION OF EMPLOYEES

Each party to this Agreement agrees not to employ or to solicit for employment, directly or indirectly, and 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 the Contractor.

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].

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 the Contractor's internal administrative and quality assurance files and internal Project correspondence. The Contractor shall deliver such documents and work papers to [agency] upon termination or completion of the Agreement. The foregoing notwithstanding, the 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.

PATENTS AND ROYALTIES

The Contractor covenants to save, defend, keep harmless, and indemnify the [agency] and all of its officers, departments, agencies, agents, and employees from and against all claims, loss, damage, injury, fines, penalties, and cost - including court costs and attorney's fees, charges, liability, and exposure, however caused - for or on account of any copyright or patented or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by the [agency]. If the Contractor uses any design, device, or material covered by patent or copyright, it is mutually agreed and understood without exception that the contract price includes all royalties or costs arising from the use of such design, device, or materials in any way in the work.

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," Section 31-7-301, et seq. Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by [The Agency] within forty-five (45) days of receipt of invoice.

PRICE ADJUSTMENT CLAUSE**"PRICE ADJUSTMENT**

- (1) *Price Adjustment Methods.* Any adjustment in contract price pursuant to a clause in this contract shall be made in one or more of the following ways:
 - (a) by agreement on a fixed price adjustment before commencement of the additional performance;
 - (b) by unit prices specified in the contract;

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- (c) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract; or
 - (d) price escalation clause.
- (2) *Submission of Cost or Pricing Data.* The Contractor shall provide cost or pricing data for any price adjustments subject to the provisions of Section 3-403 (Cost or Pricing Data) of the Mississippi Personal Service Contract Procurement Regulations.”

PRIORITY

The Contract consists of this Agreement, the Request for Proposal [*number*] (hereinafter referred to as “RFP” and attached as Schedule [“_____”]), and the Response Proposal by [*Contractor*] dated [*date*] (hereinafter referred to as “Proposal” and attached as Schedule “_____”). Any ambiguities, conflicts or questions of interpretation of this Contract shall be resolved by first reference to this Agreement 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 [_] or [_____] shall not be deemed an omission from this Contract if such term or obligation is provided for elsewhere in this Contract.

QUALITY CONTROL

The 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 the 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*].

RECORD RETENTION AND ACCESS TO RECORDS

Provided the Contractor is given reasonable advance written notice and such inspection is made during normal business hours of the Contractor, the State or any duly authorized representatives, shall have unimpeded, prompt access to any of the 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 the 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 (3) 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 (3) year period, whichever is later.

RECOVERY OF MONEY

Whenever, under the contract, any sum of money shall be recoverable from or payable by the Contractor to the [*agency*], the same amount may be deducted from any sum due to the Contractor under the contract or under any other contract between the 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 the Contractor.

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RENEWAL OF CONTRACT

*(Use this clause when the Contractor **cannot** decline a renewal.)*

The contract may be renewed at the discretion of the agency upon written notice to the Contractor at least [number] days prior to each contract anniversary date for a period of [number] successive one-year periods under the same prices, terms, and conditions as in the original contract. The total number of renewal years permitted shall not exceed [number].

*(Use this clause when the Contractor **has** the right to decline the renewal.)*

Upon written agreement of both parties at least [number] days prior to each contract anniversary date, the contract may be renewed by the [agency] for a period of [number] successive one-year period(s) under the same prices, terms, and conditions as in the original contract. The total number of renewal years permitted shall not exceed [number].

REQUIREMENTS CONTRACT

During the period of the contract, the Contractor shall provide all the service described in the contract. The Contractor understands and agrees that this is a requirements contract and that the [agency] shall have no obligation to the 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 the Contractor understands and agrees that the [agency] is under no obligation to the 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. The 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.

RIGHT TO AUDIT

The 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. The 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.

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.

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.

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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.

TERMINATION FOR CONVENIENCE CLAUSE

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

TERMINATION FOR DEFAULT CLAUSE

- (1) *Default.* If the 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 otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Procurement Officer may notify the Contractor in writing of the delay or nonperformance and if not cured in ten days or any longer time specified in writing by the Procurement Officer, such officer may terminate the 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 Procurement Officer may procure similar supplies or services in a manner and upon terms deemed appropriate by the Procurement Officer. The 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.
- (2) *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the Procurement Officer, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the State has an interest.
- (3) *Compensation.* Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due the Contractor such sums as the Procurement Officer 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.
- (4) *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of Subcontractors, the 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 the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if

APPENDIX F**Clauses Available for Use in Service Contracts**

the Contractor has notified the Procurement Officer 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, the 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 the Contractor to meet the contract requirements. Upon request of the Contractor, the Procurement Officer 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, the 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).

- (5) *Erroneous Termination for Default.* If, after notice of termination of the 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.
- (6) *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.

TERMINATION UPON BANKRUPTCY

This contract may be terminated in whole or in part by [Agency] upon written notice to the Contractor, if the Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by the Contractor of an assignment for the benefit of its creditors. In the event of such termination, the 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.

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.

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UNSATISFACTORY WORK

If, at any time during the contract term, the service performed or work done by the 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, the Contractor shall, on being notified by the [agency], immediately correct such deficient service or work. In the event the 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 the Contractor.

VARIATIONS IN ESTIMATED QUANTITIES*Definite Quantity Contracts*

The following clause is authorized for use in definite quantity service contracts:

“VARIATION IN QUANTITY

Upon the agreement of the parties, the quantity of services specified in this contract may be increased by a maximum of ten percent provided:

- (1) the unit prices will remain the same (except for any price adjustments otherwise applicable); and
- (2) the Procurement Officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.”

Indefinite Quantity Contracts: No clause is provided here because, in indefinite quantity contracts, the flexibility as to the State's obligation to order and the Contractor's obligation to deliver should be designed to meet using agency needs while making the contract as attractive as possible to potential Contractors, thereby attempting to obtain maximum practicable competition in order to assure the best economy for the State of Mississippi. However, in each case, the contract should State:

- (1) “the minimum quantity, if any, the State is obligated to order and the Contractor to provide;
- (2) whether there is a quantity the State expects to order and how this quantity relates to any minimum and maximum quantities that may be ordered under the contract;
- (3) any maximum quantity the State may order and the Contractor must provide; and
- (4) whether the State is obligated to order its actual requirements under the contract, or in the case of a multiple award as defined in Section 3-504 (Multiple Source Contracting), that the State will order its actual requirements from the Contractors under the multiple award subject to any minimum or maximum quantity Stated.”

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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.