

**EXHIBIT C
PROJECT NUMBER 32162
PURCHASE AGREEMENT
BETWEEN**

**AND
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES
AS CONTRACTING AGENT FOR
THE GOVERNOR'S TASK FORCE FOR CLASSROOM TECHNOLOGY**

This Purchase Agreement (hereinafter referred to as "Agreement") is entered into by and between Name of Awarded Vendor , a State of Incorporation corporation having its principal place of business at Business Address of Awarded Vendor (hereinafter referred to as "Seller"), and Mississippi Department of Information Technology Services having its principal place of business at 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201 (hereinafter referred to as "ITS"), as contracting agent for The Governor's Task Force for Classroom Technology located at the Office of the Governor, 550 High Street, Suite 550, Jackson, MS 39201 or Office of the Governor, P.O. Box 139, Jackson, MS 39205 (hereinafter referred to as "Purchaser"). ITS and Purchaser are sometimes collectively referred to herein as "State".

WHEREAS, Purchaser, pursuant to Request for Proposals ("RFP") No.3162 , requested proposals for the acquisition of certain equipment and software (hereinafter referred to as "Products") as listed in Exhibit A which is attached hereto and incorporated herein; and,

WHEREAS, Seller was the successful proposer in an open, fair and competitive procurement process;

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

ARTICLE 1 TERM OF AGREEMENT

This Agreement will become effective on the date it is signed by all parties and will continue in effect until all tasks required herein have been completed. Seller agrees to complete all tasks required under this Agreement, with the exception of warranty service, on or before the close of business on June 30, 2001, or within such other period as may be agreed to by the parties.

ARTICLE 2 FURNISHING OF EQUIPMENT

2.1 Subject to the terms and conditions set forth herein, Seller agrees to provide and Purchaser agrees to buy as needed, the Products listed in the attached Exhibit A and at the purchase price set forth therein. Purchaser shall submit a purchase order signed by a representative of Purchaser itemizing the Products to be purchased. The purchase order shall be subject to the terms and conditions of this Agreement. The parties agree that Purchaser reserves the right to adjust the quantities of purchases based upon the availability of funding or as determined necessary by Purchaser. Seller guarantees pricing through June 30, 2001. In the event there is a national price decrease of the Products bid during this time, Seller agrees to extend the new, lower pricing to Purchaser.

2.2 The Products provided by Seller shall meet or exceed the minimum specifications set forth in RFP No. 3162 and the Seller's Proposal in response thereto.

ARTICLE 3 DELIVERY, RISK OF LOSS, INSTALLATION AND ACCEPTANCE

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

3.2 Seller shall assume and shall bear the entire risk of loss and damage to the Products from any cause whatsoever while in transit and at all times throughout its possession thereof and until title passes as described in ARTICLE 4.

3.3 Seller shall complete installation of the Products pursuant to the requirements set forth in RFP No. 3162. Seller acknowledges that installation shall be accomplished with minimal interruption of Purchaser's normal day to day operations.

3.4 Seller shall be responsible for replacing, restoring or bringing to at least original condition any damage to the purchaser's premises, including but not limited to, floors, ceilings, walls, furniture, grounds, pavements, and sidewalks, etc. caused by its personnel and operations during the installation, ~~subject to final approval of ITS. The repairs will be done only by technicians skilled in the various trades involved, using materials and workmanship to match those of the original construction in type and quality.~~ All planned repair work and proposed technicians must be approved by ITS and the Purchaser before work is done. All completed work must be review for acceptance by ITS and the Purchaser.

3.5 Seller shall be responsible for installing all equipment, cable and materials in accordance with all State, Federal and industry standards for such items.

3.6 Purchaser, or authorized agent, shall have ten (10) days to accept the product or notify the Seller in writing that the product does not meet specifications as set out in ITS RFP No. 3162 and this contract Purchaser shall accept the Products provided by Seller after a 10 day testing period utilizing testing criteria developed by Purchaser. During the acceptance period, Purchaser shall have the opportunity to evaluate and test the Products to confirm that it performs without any defects and performs pursuant to the specifications set forth in RFP No. 3162. Purchaser shall notify Seller in writing of its acceptance of the Products.

3.7 In the event the Product fails to perform as stated above, Purchaser shall notify Seller in writing. Seller shall, within 10 working days, correct the defects identified by Purchaser or replace the defective Product. Purchaser reserves the right to return the defective Product to Seller at the Seller's expense ~~and to cancel this Agreement.~~

ARTICLE 4 TITLE TO EQUIPMENT

Title to the equipment provided under this Agreement shall pass to Purchaser upon its acceptance of the equipment as referenced in ARTICLE 3.6.

ARTICLE 5 CONSIDERATION AND METHOD OF PAYMENT

5.1 Once the Products have been accepted by Purchaser as prescribed in Article 3 herein, Seller shall submit an invoice according to a negotiated invoice schedule for the cost and shall certify that the billing is true and correct. Services will be invoiced as they are rendered. Purchaser agrees to pay Seller in accordance with Mississippi law on "Timely Payments for

Purchases by Public Bodies”, Sections 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment by the State within forty-five (45) days of receipt of the invoice. Seller understands and agrees that Purchaser is exempt from the payment of taxes. All payments shall be in United States currency. No payment, including final payment, shall be construed as acceptance of defective Products or incomplete work, and the Seller shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the article herein titled “Entire Agreement.”

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

ARTICLE 6 WARRANTIES

6.1 Seller represents and warrants that Seller has the right to sell the equipment and license the software provided under this Agreement.

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

6.3 Seller represents and warrants that each unit of equipment delivered shall be delivered new and shall not be as “used, substituted, rebuilt, refurbished or reinstalled” equipment.

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

6.5 Seller represents and warrants that all equipment provided pursuant to this Agreement shall, for a period of _____ [warranty period to be determined] from the date of acceptance of each item of equipment, be free from defects in material, manufacture, design and workmanship. Seller's obligation pursuant to this warranty shall include, but is not limited to, the repair or replacement of the equipment at no cost to Purchaser. In the event Seller can not repair or replace an item of equipment during the warranty period, Seller shall refund the purchase price of the equipment.

6.6 Seller represents and warrants that the Products provided by Seller shall meet or exceed the minimum specifications set forth in RFP No. 3162 and Seller’s Proposal in response thereto.

6.7 Seller represents and warrants that all software furnished shall be free from material defects for a period of _____ [warranty period to be determined] after acceptance and will function in accordance with the specifications as stated in RFP No. 3162 and the Seller’s Proposal in response thereto. If the software does not function accordingly, Seller shall, at no cost to Purchaser, replace the software or refund the fees paid for same.

6.8 Seller represents and warrants that there is no disabling code or lockup program or device embedded in the software provided to Purchaser. Seller further agrees that it will not, under any circumstances including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Purchaser’s use of the software and/or which would restrict Purchaser from accessing its data files or in any way interfere with the transaction of Purchaser’s business. For any breach of this warranty, Seller

at its expense shall, within five (5) working days after receipt of notification of the breach, deliver Products to Purchaser that are free of such disabling code, lockup program or device.

6.9 Seller represents and warrants that the software, as delivered to Purchaser, does not contain a computer virus. For any breach of this warranty, Seller at its expense shall, within five (5) working days after receipt of notification of the breach, deliver Products to Purchaser that are free of any virus.

6.10 Seller represents and warrants, for a period of ninety (90) days from performance of the service, that all work hereunder, including but not limited to, consulting, training and technical support, has been performed in a good and workmanlike manner and consistent with generally accepted industry standards. For any breach of this warranty, Seller shall perform the services again, at no cost to Purchaser, or if Seller is unable to perform the services as warranted, Seller shall reimburse Purchaser the fees paid to Seller for the unsatisfactory services.

ARTICLE 7 YEAR 2000 WARRANTIES

7.1 Seller represents and warrants that the Products delivered pursuant to this Agreement are designed to be used during and after the calendar year 2000 A.D., and that they shall operate during each such time period without error relating to date data, (including, but not limited to, calculating, comparing and sequencing) specifically including any error relating to, or the product of, date data which represents or references different centuries or more than one century.

7.2 If there is a breach of this warranty by Seller, Seller shall within thirty (30) days after receipt of notice of the breach, at its expense and option, either modify/repair the Products to make them Year 2000 Compliant, including date century recognition, calculations which accommodate same century and multi-century formulas and date values and date data interface values that reflect the century or replace the Products with Products that are compliant with this warranty. As used in this Agreement, "Year 2000 Compliant" shall mean the ability of the system to provide the following functions:

- A.** It will consistently handle date information during and after January 1, 2000, including but not limited to accepting date input, providing date output, and performing calculations on dates or portions of dates;
- B.** It will function accurately in accordance with the specifications and without interruption during and after January 1, 2000, without any change in operations associated with the advent of the new century;
- C.** It will respond to two-digit date input in a way that resolves any ambiguity as to century in a disclosed, defined and predetermined manner, and
- D.** It will store and provide output of date information in ways that are unambiguous as to century.

7.3 Seller further represents and warrants that the Products delivered are and will continue to be Year 2000 Compliant. All date processing by the Products will include Four Digit Year Format and recognize and correctly process dates for Leap Year. Additionally, all date sorting by the Products that includes a "year category" shall be done based on the Four Digit Year Format code.

**???Why do we specify a two and four year date (7.2.C and 7.3)?
Are these counter to each other?**

7.4 The foregoing is in addition to the other representations and warranties set forth in this Agreement.

ARTICLE 8 INFRINGEMENT INDEMNIFICATION

Seller represents and warrants that neither the hardware, replacement parts, nor software, their elements or the use thereof, violates or infringes on any copyright, patent, trade secret or other proprietary right of any person or entity. Seller, at its own expense, shall defend or settle any and all infringement actions filed against Seller or Purchaser which involve the hardware or software provided under this Agreement and shall pay all costs, attorney fees, damages and judgment finally awarded against Purchaser. If, in any such suit arising from such claim, the continued use of the Products for the purpose intended is enjoined or threatened to be enjoined by any court of competent jurisdiction, Seller shall, at its expense: (a) first procure for Purchaser the right to continue using such Products; or, upon failing to procure such right; (b) modify or replace them with non-infringing Products; or, upon failing to secure either such right, (c) refund to Purchaser the purchase price or software license fees previously paid by Purchaser for the Products Purchaser may no longer use. Said refund shall be paid within ten (10) working days of notice to Purchaser to discontinue said use.

ARTICLE 9 EMPLOYMENT STATUS

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

9.2 Seller represents that it is qualified to perform the duties to be performed under this Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the duties required under this Agreement. Such personnel shall not be deemed in any way directly or indirectly, expressly or by implication, to be employees of Purchaser. Seller shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Seller nor employees of Seller are entitled to ant state benefits, including but not limited to, state retirement or leave benefits.

9.3 Any person assigned by Seller to perform the services hereunder shall be the employee of Seller, who shall have the sole right to hire and discharge its employee. Purchaser may, however, direct Seller to replace any of its employees under this Agreement. ~~If Seller is notified within the first eight (8) hours of assignment that the person is unsatisfactory, Seller will not charge Purchaser for those hours.~~

9.4 It is further understood that the consideration expressed herein constitutes full and complete compensation for all services and performances hereunder, and that any sum due and payable to Seller shall be paid as a gross sum with no withholdings or deductions being made by Purchaser for any purpose from said contract sum.

ARTICLE 10 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS

Seller will be responsible for the behavior of all its employees and subcontractors while on the premises of any Purchaser location. Any employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive or offensive to any of

the staff, ~~public, and~~ or student body, will be asked to leave the premises and may be suspended from further work on the premises. All Seller employees and subcontractors who will be working at such locations to install or repair Products shall be covered by Seller's comprehensive general liability insurance policy.

ARTICLE 11 MODIFICATION OR RENEGOTIATION

This Agreement may be modified only by written agreement signed by the parties hereto, and any attempt at oral modification shall be void and of no effect. The parties agree to renegotiate the Agreement if federal and/or state revisions of any applicable laws or regulations make changes in this Agreement necessary.

ARTICLE 12 ASSIGNMENT AND SUBCONTRACTS

12.1 ~~Neither party~~ Seller may not assign or otherwise transfer this Agreement or its obligations hereunder without the prior written consent of the Purchaser. ~~other party, which consent shall not be unreasonably withheld.~~ Any attempted assignment or transfer of its obligations without such consent shall be null and void. This Agreement shall be binding upon the parties' respective successors and assigns.

12.2 Seller must obtain the written approval of Purchaser before subcontracting any portion of this Agreement. No such approval by Purchaser of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of Purchaser in addition to the total fixed price agreed upon in this Agreement. All subcontracts shall incorporate the terms of this Agreement and shall be subject to the terms and conditions of this Agreement and to any conditions of approval that Purchaser may deem necessary.

12.3 Seller represents and warrants that any subcontract agreement Seller enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Purchaser, and that the subcontractor acknowledges that no privity of contract exists between the Purchaser and the subcontractor and that the Seller is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with the Seller. The Seller shall indemnify and hold harmless the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Seller's failure to pay any and all amounts due by Seller to any subcontractor, materialman, laborer or the like.

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

ARTICLE 13 AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of Purchaser 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 for the performances required under this Agreement. If the funds anticipated for the fulfillment of this Agreement are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to Purchaser for the payments or performance due under this Agreement, Purchaser shall have the right to immediately terminate this Agreement, without damage, penalty, cost or expense to Purchaser of any kind whatsoever. The effective

date of termination shall be as specified in the notice of termination. Purchaser shall have the sole right to determine whether funds are available for the payments or performances due under this Agreement.

ARTICLE 14 TERMINATION

Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be terminated, in whole or in part, as follows: (a) The parties may terminate this agreement upon the mutual, written agreement of the parties; (b) If either party fails to comply with the terms of this Agreement, the non-defaulting party may terminate the Agreement upon the giving of thirty (30) days written notice unless the breach is cured within said ~~thirty (30)~~ fifteen (15) day period; (c) Purchaser may terminate the Agreement in whole or in part upon ~~thirty (30)~~ fifteen (15) days written notice to Seller if Seller becomes the subject of bankruptcy, reorganization, liquidation or receivership proceedings, whether voluntary or involuntary, or (d) Purchaser may terminate the Agreement for any reason after giving ~~thirty (30)~~ fifteen (15) days written notice specifying the effective date thereof to Seller. The provisions of this Article do not limit either party's right to pursue any other remedy available at law or in equity.

ARTICLE 15 GOVERNING LAW

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

ARTICLE 16 WAIVER

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Agreement.

ARTICLE 17 SEVERABILITY

If any term or provision of this Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE 18 CAPTIONS

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

ARTICLE 19 HOLD HARMLESS

To the fullest extent allowed by law, Seller shall indemnify, defend, save and hold harmless, protect and exonerate Purchaser, ITS and the State, its Board Members, officers, employees, agents and representatives from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever, including without limitation, court costs, investigative fees and expenses, attorney fees and claims for damages arising out of or caused by Seller and/or its partners, principals, agents, employees or subcontractors in the performance of or failure to perform this Agreement.

ARTICLE 20 THIRD PARTY ACTION NOTIFICATION

Seller shall give Purchaser ~~prompt~~-notice in writing of any action or suit filed, and ~~prompt~~-notice of any claim made against Seller by any entity that may result in litigation related in any way to this Agreement, ~~and/or~~ which may affect the Seller's performance under this Agreement. Seller shall notify the Purchaser within seven (7) calendar day of the Seller being served with legal process or within seven (7) calendar days of the Seller being otherwise aware of any action , suit, or claim made or to be made.

ARTICLE 21 AUTHORITY TO CONTRACT

Seller warrants that it is a validly organized business with valid authority to enter into this Agreement and that Seller is qualified to do business in Mississippi; 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 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.

ARTICLE 22 NOTICE

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by facsimile provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at their business address listed herein. ITS's address for notice is: Mr. David L. Litchliter, Executive Director, Mississippi Department of Information Technology Services, 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201. Purchaser's address for notice is: SPECIFY NAME, TITLE, AGENCY NAME & ADDRESS FOR PURCHASER. The Seller's address for notice is: SPECIFY NAME, TITLE, COMPANY NAME & ADDRESS . Notice shall be deemed given when actually received, ~~or when~~ refused, or returned unclaimed. The parties agree to promptly notify each other in writing of any change of address.

ARTICLE 23 RECORD RETENTION AND ACCESS TO RECORDS

Seller shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Agreement. The Purchaser, ITS, any state or federal agency authorized to audit Purchaser, and/or any of their duly authorized representatives, shall have unimpeded, prompt access to any of the Seller's books, documents, papers and/or records that are pertinent to this Agreement to make audits, examinations, excerpts and transcriptions at the Seller's office where such records are kept during Seller's normal business hours. All records relating to this Agreement shall be retained by the Seller for ~~three (3)~~ five (5) years from the date of receipt of final payment under this Agreement. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the ~~three (3)~~ five (5) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the ~~three (3)~~ five (5) year period, the records shall be retained until resolution.

ARTICLE 24 INSURANCE

Seller represents that it will maintain workers' compensation insurance as prescribed by law which shall inure to the benefit of Seller's personnel, as well as comprehensive general liability and employee fidelity bond insurance. Seller will, upon request, furnish Purchaser with a certificate of conformity providing the aforesaid coverage.

ARTICLE 25 DISPUTES

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

ARTICLE 26 COMPLIANCE WITH LAWS

Seller shall comply with, and all activities under this Agreement shall be subject to, all Purchaser policies and procedures, and all applicable federal, state and local laws, regulations, policies and procedures as now existing and as may be amended or modified. Specifically, but not limited to, Seller shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of this Agreement because of race, creed, color, sex, age, national origin or disability.

ARTICLE 27 CONFLICT OF INTEREST

Seller shall notify Purchaser of any potential conflict of interest resulting from the representation of or service to other clients. If such conflict cannot be resolved to Purchaser's satisfaction, Purchaser reserves the right to terminate this Agreement.

ARTICLE 28 SOVEREIGN IMMUNITY

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

ARTICLE 29 CONFIDENTIAL INFORMATION

Seller shall treat all Purchaser data and information to which it has access by its performance under this Agreement as confidential to the extent that confidential treatment of same is required under federal and/or state law and shall not disclose such data or information to a third party without specific written consent of Purchaser. In the event that Seller receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, Seller shall promptly inform Purchaser and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive the termination or completion of this Agreement and shall continue in full force and effect and shall be binding upon the Seller and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in this Agreement on behalf of, or under the rights of the Seller following any termination or completion of this Agreement.

ARTICLE 30 EFFECT OF SIGNATURE

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

ARTICLE 31 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS

All data, electronic or otherwise, collected by Seller and all documents, notes, programs, data bases (and all applications thereof), files, reports, studies, and/or other material collected and

prepared by Seller in connection with this Agreement, whether completed or in progress, shall be the property of Purchaser upon completion of this Agreement or upon termination of this Agreement. Purchaser hereby reserves all rights to the databases and all applications thereof and to any and all information and/or materials prepared in connection with this Agreement. Seller is prohibited from use of the above described information and/or materials without the express written approval of Purchaser.

ARTICLE 32 NON-SOLICITATION OF EMPLOYEES

Seller agrees not to employ or to solicit for employment, directly or indirectly, any of the Purchaser's employees until at least one (1) year after the expiration/termination of this Agreement unless mutually agreed to the contrary in writing by the Purchaser and the Seller and provided that such an agreement between these two entities is not a violation of the laws of the State of Mississippi or the federal government.

ARTICLE 33 ENTIRE AGREEMENT

33.1 This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating hereto, including all terms of any unsigned or "shrink-wrap" license included in any package, media or electronic version of Seller-furnished software. The ITS Contract Addendum, RFP No. 3162 and Seller's Proposal in response to RFP No. 3162 are hereby incorporated into and made a part of this Agreement.

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

- A. The ITS Contract Addendum;
- B. This Agreement signed by both parties, and all attachments;
- C. RFP No. 3162 and written addenda, and
- D. Seller's Proposal, as accepted by Purchaser, in response to RFP No. 3162.

33.3 The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by the Seller. The documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof; provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority, that is, the highest document begins with the first listed document ("A. The ITS Contract Addendum") and the lowest document is listed last ("D. Seller's Proposal").

ARTICLE 34 SURVIVAL

Articles {list the article numbers which pertain to "warranties"; "yr.2000 warranties"; "infringement indemnification"; "governing laws"; "hold harmless"; "record retention"; "sovereign immunity"; "confidential information"; "ownership of documents", and "non-solicitation of employees"} and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this Agreement.

ARTICLE 35 DEBARMENT AND SUSPENSION CERTIFICATION

Seller certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

ARTICLE 36 STATUTORY AUTHORITY

By virtue of Section 25-53-21 of the Mississippi Code Annotated, as amended, the executive director of ITS is the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of information technology equipment, software and services. The parties understand and agree that ITS as contracting agent is not responsible or liable for the performance or non-performance of any of Purchaser's or Seller's contractual obligations, financial or otherwise, contained within this Agreement.

ARTICLE 37 LIQUIDATED DAMAGES

It is agreed by the parties hereto that time is of the essence, and that in the event of a delay in the delivery and installation deadlines or delay in the satisfactory completion and acceptance of the services provided for herein, damage shall be sustained by Purchaser. In the event of a delay as described herein, Seller shall pay Purchaser, within five (5) calendar days from the date of receipt of notice, fixed and liquidated damages of SPECIFY DOLLAR AMOUNT dollars (INSERT #) per day for each calendar day of delay caused by Seller. Purchaser may offset amounts due it as liquidated damages against any monies due Seller under this Agreement. Purchaser will notify Seller in writing of any claim for liquidated damages pursuant hereto on or before the date Purchaser deducts such sums from money payable to Seller. Any liquidated damages assessed are in addition to and not in limitation of any other rights or remedies of Purchaser.

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

**State of Mississippi, Department of
Information Technology Services, on
behalf of The Governor's Task Force
For Classroom Technology**

Name of Awarded Vendor

By: _____
Authorized Signature

Authorized Signature

Printed Name: Ronnie Musgrove

Printed Name:

Title: Governor

Title:

Date: _____

Date:

By: _____
Authorized Signature

Printed Name: David L. Litchliter

Title: Executive Director

Date: