



AXI BRAND NAME MICROCOMPUTER & PERIPHERALS

LA State Contract- 4400016340

Attachment A- Special Terms and Conditions

SCOPE

STATEWIDE CONTRACT FOR AXI BRAND NAME MICROCOMPUTER AND PERIPHERALS.

All items to be furnished must be the manufacturer's current state-of-the-art and must be certified to be in current new production. All items delivered under the contract must be new. Refurbished items are not acceptable for new purchases.

All items furnished, including hardware components within any system configuration, must be the brand specified.

This is an open-ended requirements contract. Discount(s) are stated on the appropriate line(s) as provided for on the price sheet herein.

If not authorized to service the products in the contract, but utilizing a third party to provide the services, the contractor should list the name, address and phone number of the third party contractor below, who will be performing the services needed and should provide documentation of the third party's authorization to service the products by the manufacturer. The contractor will be responsible for the work of the third party contractor. The Office of State Procurement reserves the right to verify these authorizations.

It is the contractor's responsibility to assure that all items meet the following criteria. Items delivered to an agency not in accordance with these criteria will be subject to return at the Contractor's expense and possibly other legal action.

Any microcomputer and/or peripheral devices such as printers, scanners, and other items of significant cost must be legally labeled as the brand name specified in the contract. In certain cases, this would require that there be a legal agreement between the original equipment manufacturer and the private label distributor on file with the Office of State Procurement, allowing the private label distributor to label and market the product as the brand specified.*

- Example: On a contract for ABC Brand Name Microcomputer and Peripherals, a system could not include a monitor labeled "DEF" or a printer labeled "GHI". An agreement would have to exist which would allow ABC Company to market these products and label them as ABC Brand.

***In the case where items require being legally relabeled as the brand name specified in the contract, the discounted price offered for those items cannot exceed the original equipment manufacturer's published price.**

Items that are legally relabeled as the brand specified in the contract, should identify those items with the original manufacturer's name on the price list that is submitted.

During the course of a contract where the items are legally relabeled as the brand name specified in the contract, the contractor shall not be allowed to substitute a different OEM product under an existing contract product number.

- Example: On a contract for ABC Brand Name Microcomputer and Peripherals, if an ABC #123 is presented to the Office of State Procurement as a legally relabeled product, for which the OEM product is XYZ #456, then the contractor shall not substitute a different OEM product for ABC #123.



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LA State Contract prices may not exceed the current national advertised and available General Services Administration (GSA) Governmental price list, if one exists. The State does not intend to maintain any item in any group that is offered at a price equal to or above the Manufacturer's List Price.

CONFIGURATION DOLLAR LIMITS

The following configuration limits will apply to the contract.

- Servers and Storage (SANs, etc.) per unit/configuration costs should not exceed \$500,000 each
- Desktop per unit/configuration costs should not exceed \$100,000 each
- Printers, of all types, and Monitors per unit/configuration costs should not exceed \$50,000 each
- Peripherals per unit cost should not exceed \$50,000 each

For the purpose of the contract, "Configuration" is defined as "a total system configuration. This may include more than one model or part number (or SKU), or a combination of hardware, software, and configuring of the system to make the system work."

Total purchase order amount shall not exceed \$1,000,000. Procurements shall not be artificially divided to circumvent the \$1,000,000 threshold. (NOTE: The \$1,000,000 is a per purchase order limit and is not a limit on the annual amount that can be purchased from the contract.

NON-EXCLUSIVE CONTRACT

This contract is non-exclusive and shall not in any way preclude the State from entering into similar contracts and/or arrangements with other vendors or from acquiring similar, equal or like goods and/or services from other entities or sources.

PACKAGING AND LABELING

Vendors are encouraged to consider delivery methods that utilize recyclable or reusable packaging material and containers, or those with recycled content.

COOPERATIVE PURCHASE

As described below, Political Subdivisions of the State, Quasi State Agencies, External Procurement Units, and Agencies of the United States Government are to be authorized (potential) users of the contract subject to the pricing and terms set forth in the contract.

- Political Subdivisions of the State include, but are not limited to, parish governments, municipal governments, school districts, human service districts, local governments and public utilities.
- Quasi State Agencies include, but are not limited to, non-profit or for-profit organizations created by the State of Louisiana or any political subdivision or agency thereof, or any special district or authority, or unit of local government, to perform a public purpose.



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- External Procurement Units include, but are not limited to, buying organizations not located in the State of Louisiana, which, if located in the State, would qualify as a public procurement unit.

The current list of approved cooperating purchasing entities (including political subdivisions, quasi state agencies and external procurement units) is maintained and regularly updated on the OSP website at:

<http://www.doa.la.gov/pages/osp/contacts/approvedquasiunits.aspx> and may be used as a reference.

Contractors may prospectively choose to partially or entirely 'opt-out' of accommodating cooperative purchasing for such contract by sending formal written notification of same to the Office of State Procurement. This notification should clearly specify which individual type(s) of cooperative purchasing entities the contractor is choosing to not allow to participate in contract cooperative purchasing. Any purchase orders received by the contract-holder from cooperative purchasing entities prior to the contract-holder's opt-out notification to OSP must be honored in accordance with the contract.

F.O.B.

Destination: All prices and terms shall be net.

DELIVERY

Deliver to any agency of the State government eligible by State statute and/or authorized to purchase from the contract. Delivery is to be made upon the issuance of a purchase order.

Contractors will have access to an adequate supply of all items in order to meet deliveries of not more than thirty (30) business days.

RISK OF LOSS/PASSAGE OF TITLE

Title to the equipment purchased under the Contract shall pass from Contractor to State on the date of installation for Contractor-installed equipment or on the date of delivery for State-installed equipment. Prior to the passage of title all risk of loss or damage shall be on the Contractor.

TERMS AND CONDITIONS

This contract contains all terms and conditions with respect to the commodities herein. Any vendor contracts, forms or other materials submitted with bid may cause bid to be rejected.

The purchase order is the only binding document to be issued against the contract. Signing of Contractor's pre-printed forms is not allowed.

ORDERS

All State Agencies are directed to issue contract purchase orders for a supply of the items required, as and when needed. Political Subdivisions of the State and Quasi Agencies who have been authorized to purchase from contracts made by the Office of State Procurement, are directed to issue their regular purchase orders directly to the supplier, making reference to the contract and line item numbers.



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INVOICE

Invoices will be submitted by the Contractor to the using agency as indicated on the purchase order and the invoice should refer to the delivery ticket number, delivery date, purchase order number, quantity, unit price, net discount and delivery point. A separate invoice for each order delivered and accepted should be submitted by the Contractor in duplicate directly to the accounting department of the using Agency. Invoices shall show the amount of any cash discount and shall be submitted on the Contractor's own invoice form.

Using Agencies are directed to pay the Contractor upon presentation of a properly executed invoice after goods have been received, inspected and accepted. Invoices will be paid within thirty (30) days of receipt of a properly executed invoice, or receipt of goods, whichever is later. Payment will be made on the basis of unit price net discount as listed in the contract or the invoiced price, whichever is lower. Such price and payment will constitute full compensation for furnishing and delivering the requested contract commodities. In no case will the Using Agency refuse to make partial payments to the Contractor although all items have not been delivered. This payment in no way relieves the Contractor of his responsibility to effect shipment of the balance of the order.

PAYMENTS WILL BE MADE TO THE VENDOR AND TO THE ADDRESS AS SHOWN ON THE PURCHASE ORDER. ADVANCED PAYMENTS WILL NOT BE ALLOWED IN THE CONTRACT.

LATE PAYMENTS

Interest due by a State Agency for late payments shall be in accordance with La. R.S. 39:1695 at the rates established in La. R.S. 13:4202.

CONTRACT PERIOD

The Contract will be effective upon the approval of the Office of State Procurement for an initial period of twelve (12) months, for a period of delivery beginning January 30, 2021 and ending January 29, 2022, unless otherwise terminated in accordance with the termination provisions of the contract.

USAGE/REPORTING REQUIREMENTS

Brand Name Contracts for Microcomputer and Peripherals are expected to have \$50,000.00 usage annually. This usage amount may be waived in whole or in part due to extenuating circumstances, in the State's best interest. The Office of State Procurement will consider contract purchases from both State Agencies and Political Subdivisions.

The Contractor shall submit detailed contract usage reports quarterly to the Office of State Procurement Contracts Manager for the contract in accordance with the below schedule. Initiation and submission of the quarterly reports to the Office of State Procurement is the responsibility of the Contractor without prompting or notification by the Office of State Procurement Contracts Manager. If these reports are not submitted in a timely manner, the Office of State Procurement shall have the right to terminate the contract.



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The specific usage report content, scope, and format requirements is available on the Office of State Procurement website under Purchasing/Vendor Center/Vendor Forms:

<http://www.doa.la.gov/pages/osp/vendorcenter/forms/index.aspx>.

In addition, the person's name who compiled the report and their contact information shall be provided. The Office of State Procurement reserves the right to request copies of any purchase orders issued against the contract.

The usage reports shall be submitted utilizing this format or an equivalent format that has been pre-approved by the Office of State Procurement. Schedule for submittal of usage reports:

<u>Quarter</u>	<u>Reporting Period</u>	<u>Due Date</u>
First Quarter	July 1 through September 30	October 31
Second Quarter	October 1 through December 31	January 31
Third Quarter	January 1 through March 31	April 30
Fourth Quarter	April 1 through June 30	July 31

The holder of the contract must also comply with all the requirements stipulated in the "Procedures for the Establishment and Continuance of a Brand Name Microcomputer Contract" (Most current issue at time of bid opening) where applicable. These procedures may be obtained at our website, <http://www.doa.la.gov/Pages/osp/Index.aspx>.

ADMINISTRATIVE FEE OR REBATE

Contractor shall pay a 2% administrative fee or rebate to be payable to the State of Louisiana, Office of State Procurement. The administrative fee or rebate shall be submitted quarterly and shall be based on the total net (gross sales minus returns, credits and deductions) sales made to entities located in the State of Louisiana under the contract. Initiation and submission of the administrative fee or rebate to OSP is the responsibility of the Contractor without prompting or notification by the State Procurement Analyst (SPA). If these administrative fees or rebates are not submitted in a timely manner, OSP shall have the right to terminate the contract.

The check is to be made payable to: Louisiana DOA - Office of State Procurement. The check is to be mailed to the Office of State Procurement, Attn: OSP Receivables Specialist, either through the U. S. Postal Service to OSP's box at: P. O. Box 94095, Baton Rouge, LA 70804-9095, or through a courier service to OSP's physical location at: 1201 North 3rd Street, Suite 2- 160, Baton Rouge, LA 70802. Payment shall be made in accordance with the following schedule:

<u>Quarter</u>	<u>Payment Period</u>	<u>Payment Due Date</u>
First Quarter	July 1 through September 30	October 31
Second Quarter	October 1 through December 31	January 31
Third Quarter	January 1 through March 31	April 30
Fourth Quarter	April 1 through June 30	July 31

NOTE: CONTRACTOR SHALL INDICATE STATE CONTRACT NUMBER 4400016340 ON THE REMITTANCE. WHEN SUBMITTING ONE (1) REMITTANCE FOR MORE THAN ONE (1) CONTRACT, CONTRACTOR SHALL INDICATE ALL STATE CONTRACT NUMBERS AND THE AMOUNT FOR EACH.



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CATALOG CONTRACTS

To participate in catalog contracts the successful Contractor must maintain a web presence of their catalog through a universal locator (URL) linked to the Office of State Procurement Web page, satisfy various reporting requirements, and satisfy any other requirements of the State's program, including third party audit.

Information and guidelines for these catalog contracts can be obtained from our website, <http://www.doa.la.gov/Pages/osp/Index.aspx>.

The Contractor will be given an option to participate in the catalog contract program with the State or continue with the manual process for updating contracts once established.

Definition: La. R.S. 1556(22) Defines "Established Catalog Price" as the Price included in a catalog, price list, schedule, or other form that:

- a. Is regularly maintained by a manufacturer or contractor.
- b. Is either published or otherwise available for inspection by customers, and
- c. States prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for the supplies or services involved.

INSTALLATION

On-site installation should be available from the contractor should an Agency desire it, at the hourly fee quoted below.

Installation is limited to the initial set-up and initial diagnostics of equipment and peripherals purchased from the contract. Installation is to be used only at the time of the purchase of the component(s) from the state contract. Installation is not to be used for configuration or reconfiguration of network equipment, installation or rearrangement of in-building or outside wiring/cabling nor any other fashion.

On-Site Installation **\$195.00** per hour

The per hour charge will be the total charge allowed. Contractor may not charge a separate, additional amount for travel nor include it in calculating total installation time.

Contractor agrees to provide customer with at least one copy of all instructive material necessary for the effective operation of the purchased equipment, at no additional cost to all subsequent updates and corrections.

SERVICE/HOT LINE

Contractor shall be available for consultation service through use of a "Hot Line" telephone number. List the telephone number for users to call when technical assistance is needed:

888-493-0608
(Area Code)

It is mandatory for the contractor to render prompt service to Agencies throughout the State. Services of the contractor shall include calling on Agencies, examining their needs and advising them as to the proper types and



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selection of equipment best suited to their particular application and/or furnishing technical information at the user site when needed. Accordingly, the contractor must have at least one (1) representative located in the State of Louisiana to fulfill these needs, excluding the support from the manufacturer. If not provided below, the name of the representative must be submitted upon request. In the event one (1) representative is found insufficient to meet the needs of the State of Louisiana, the contractor will be required to assign additional personnel or face cancellation of the contract.

REPRESENTATIVE AND LOCATION:

Debbie Harmeyer Debbie@axiedu.com 888-493-0608 Mandeville, LA

Marcus Stein Marcus@axiedu.com 985-773-0879 New Orleans, LA

Kelli Deranger kelli@axiedu.com 985-7730250 Lafayette, LA

Lisa Dick lisa@axiedu.com 985-400-8013 Shreveport, LA

Meagan Merkerson megan@axiedu.com 985-502-0285 Baton Rouge, LA

Brandon Hairrell brandon@axiedu.com 985-773-0852 Baton Rouge, LA

Bre Casteix bre@axiedu.com 985-773-0862 New Orleans, LA

Lauren Zeringue lauren@axiedu.com 985-773-0121 Mandeville, LA

WARRANTY

The following warranty provisions shall apply to contract. If the Contractor's standard warranty is other than described below, then the cost to provide warranties as specified below shall be included in the prices offered. There will be no separate charges for providing or extending warranties to meet the required provisions described below.

Contractor shall have available a three (3) year warranty for all components, with the first year of service to be provided at the Agency site, for the following systems: **Desktops, Workstations and Servers.**

The Contractor shall disclose if said warranty is included in the cost of the system as standard warranty at no additional charge. If standard warranty is other than that described above, the Contractor shall disclose complete details of standard warranty and the specific cost to upgrade to the warranty coverage described above. The Contractor should also have available warranty upgrades to three (3) years on-site services should it be desired.

Contractor shall provide the standard warranty offered by the Manufacturer on peripherals and options purchased separate from a system, portables, handheld products, and video displays except, that the warranty at a minimum shall be for a term of at least one (1) year commencing on the date of satisfactory installation for Contractor-installed equipment, or on the date of delivery for State-installed equipment, and that the warranty include all repairs and replacement at no cost to the State. In addition, if a unit fails within seven (7) days of satisfactory installation (if vendor-installed) or within seven (7) days of delivery (if State-installed), the entire unit will be replaced by the Contractor unless the standard manufacturer's warranty provides for repair of the unit, in which case, the Contractor may provide on-site repair service at no additional cost, to the extent that the standard manufacturer's warranty differs from the foregoing minimum requirements for the State required warranty, the State's minimum requirements shall prevail. The state will accept any warranty that exceeds these minimum requirements.



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The above stated warranties shall be voided and shall terminate if the equipment system components are modified or altered by anyone other than the authorized Contractor personnel.

Any damages to the original equipment caused by State added components shall void the warranty, and repair of said unit becomes the responsibility of the State. These additions and upgrades may include, but are not limited to random access memory (RAM), video memory (VRAM), cache memory, disk or tape drive, models, I/O adapters, (SCSI, serial, parallel, etc.), and other common components specifically manufactured for personal computer systems.

Re-certification of warranty shall then be negotiated between the State and the Contractor. The warranty does not cover defects or damage not caused or occasioned by the Contractor.

State/Contractor may verify machine condition or warranty through removal of any or all of the components added following initial procurement of the system.

Examples of "unit" are a keyboard, a monitor, a printer, a system unit as delivered.

The successful Contractor must be able to offer on-site warranty service within a twenty-four (24) or forty-eight (48) hour response time, as an option, should an agency desire it.

TECHNICAL SUPPORT EXPERIENCE

In order for the State of Louisiana to ensure quality or service for any Brand Name Microcomputer and Peripheral, the Contractor must meet the following:

1. The Contractor of a brand name state contract may use a third party warranty service provider when demand for support or repair is greater than that which the Contractor's "in-house" support team can provide. At no time does this relieve the contract vendor of his responsibility to any and all requirements that the Office of State Procurement has in place for Brand Name Microcomputer and Peripheral Contracts. Although third party warranty service providers are acceptable, this is not the preferred method of warranty repair and support. However, if a third party warranty provider(s) is utilized, it is incumbent on the contract vendor to provide evidence of the designated service provider's compliance to number two (2) below.
2. The Contractor or the designated third party service provider(s) shall utilize A+ certified service technicians as recognized by the Computing Technology Industry Association or equivalent certification, or manufacturer's trained service technicians to fulfill the warranty and service needs of contract equipment. It is preferred that the Contractor or the designated third party service provider's be recognized as an A+ Authorized Service Center by the Computing Technology Industry Association or have equivalent certification. Manufacturer's training must be for the brand name equipment as specified. The Contractor is required to furnish the Office of State Procurement proof of all training. All support personnel must have a minimum of one (1) year of hands-on technical experience on the same type of equipment.

CONTRACTOR'S RESPONSIBILITY

Price Reductions:

During the course of the contract, any price reduction in the Manufacturer's Published Prices must be immediately extended to the State by the Contractor. Failure to offer the benefit of these price reductions to the State within two (2) weeks after general announcement may result in the cancellation of the contract. These price reductions



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must be granted on any order not shipped. Contractor must maintain a list of equipment on order and be able to provide a list to the Office of State Procurement within forty-eight (48) hours of the request.

Regulatory Approvals:

- A. Computers and Peripherals delivered under the Brand Name State Contract shall be FCC Compliant as follows:

Each computer monitor, keyboard and other applicable peripheral shall have either a FCC ID or statement of FCC compliance affixed to the outside case. Computer systems that are custom configured will be assembled using components that have either a FCC ID or a supply and case, as a unit shall be UL Listed.

- B. Computer systems delivered under the Brand Name State Contract shall be Novell compliant as follows:

Each system board and CPU will be Novell Certified. As and where required by Novell Certified components will be used in build-out of the Basic System.

- C. Computer Systems delivered under the Brand Name State Contract shall be Microsoft Compliant as follows:

Each system board and CPU will be Microsoft Certified. As and where required by Microsoft, Microsoft Compliant components will be used in build-out of the Basic System.

Required Burn-in:

Prior to delivery, each computer system and all components integrated with such system shall be burned in (turned on and powered) for a period of no less than twelve (12) hours and shall be subjected to a program stress test for a minimum of three (3) hours during the twelve (12) hour burn-in.

Prior to approval of a newly established brand name contract, at renewal or rebid of an existing contract, or at any time deemed necessary, the State reserves the right to request the Manufacturer's testing/burn-in plan for review and approval.

Consistent Component Supply:

Contractor must agree and commit to component consistency within a product line. Specifically, but not limited to, the computer case, system board, power supply, video card, hard drive, network card, monitor and keyboard should be of consistent quality from order to order. Upgrades to each will be a normal part of the process.

Product/Model Consistency and Availability:

Computer Systems delivered under the Brand Name State Contract shall be available and shall maintain consistency within that model for a minimum of three (3) months from the date of addition or upgrade on state contract. Model upgrades will be a normal part of the process.

Substitutes:

Only brand names and numbers stated in the Contract are approved for delivery under the contract and any substitution must receive prior written approval of the Office of State Procurement.



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CONTRACT REVISIONS

Requests for revisions to the contract shall be addressed to the Office of State Procurement and shall refer to the contract item number (with brief explanation of request). Distributor vendor changes, price reductions and item deletions may be requested at any time during the contract period.

Contractor must immediately notify the Office of State Procurement when any dealer on the contract is terminated, relocated, or added. All orders placed with dealers prior to receipt of such notification to the Office of State Procurement must be honored.

Request for new item additions shall be made in accordance with the "Procedures for the Establishment and Continuance of a Brand Name Microcomputer Contract", most current edition at time of bid opening. The procedures may be obtained from our website, <http://www.doa.la.gov/Pages/osp/Index.aspx>. Any new items added during the contract shall be offered at a discount equal to or greater than the minimum discount(s) awarded. **For any items added to a contract that require being legally relabeled as the brand name specified in the contract, Contractor may be required to submit the original manufacturer's published price for those items, in addition to providing the published price list or type notarized listing of prices for the brand specified in the contract. The contract price for these items cannot exceed the original equipment manufacturer's published price.**

Revisions will become effective upon approval by the Office of State Procurement.

CONTRACT UTILIZATION

The contract has been designated as a Louisiana Pricing Schedule ("LaPS"). The state intends to use the following process before placing orders under the contract, and the contractor explicitly understands and agrees to the use of this process before accepting orders under the contract. Where multiple LaPS contracts exist for functionally equivalent products and/or services and the procurement is above \$25,000.00, all eligible users of these contracts will utilize the following procedures:

- 1) Prepare a Request for Responses (an informal process used to make a best value determination) that includes, if applicable:
 - A) Performance-based statement of work that includes such things as:
 - The work to be performed
 - Location of work
 - Period of Performance
 - Deliverable schedule
 - Applicable performance standards
 - Acceptance criteria
 - Any special requirements (e.g., security clearances, special knowledge, etc.)
 - The products required (using a generic description of products and functions whenever possible).
 - B) If necessary or applicable, a request for submittal of a project plan for performing the task and information on the contractor's experience and/or past performance performing similar tasks.
 - C) A best value determination is one that considers, in addition to underlying contract pricing, such factors as:
 - Probable life of the item selected
 - Environmental and energy efficiency considerations
 - Technical qualifications
 - Delivery terms
 - Warranty



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- Maintenance availability
- Administrative costs
- Compatibility of an item within the user's environment
- User's familiarity with the item or service

- D) A request for submittal of a firm-fixed total price for labor and/or products which are no higher than prices in the LaPS contract.
- 2) Submit the Request for Response to at least three (3) LaPS contract holders, whenever available, offering functionally equivalent products and/or services that will meet the agency's needs.
- 3) Evaluate responses and select the contractor to receive the order:
- A) After responses have been evaluated, the order shall be placed with the contractor that represents the best value that meets the agency's needs. The ordering agency should give preference to small entrepreneurship or small and emerging businesses when two or more contractors can provide the services and/or products at the same firm-fixed price.
- B) The ordering agency shall document in the procurement file the evaluation of the contractors' responses that formed the basis for selection. The documentation shall identify the contractor from which the services and/or products were purchased, the services and/or products purchased, and the cost of the resulting purchase order.
- C) Purchases shall not be artificially divided to avoid the requirements of this section when recurring requirements for same products are known.

INDEMNIFICATION AND LIMITATION OF LIABILITY

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under this contract.

Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless the State from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by Contractor, its agents, employees, partners or subcontractors in the performance of this contract, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State.

Contractor will indemnify, defend and hold the State harmless, **without limitation**, from and against any and all damages, expenses (including reasonable attorneys' fees), claims judgments, liabilities and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent with respect to the Products, Materials, or Services furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the State shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner of Administration shall require.

The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: (i) State's unauthorized modification or alteration of a Product, Material, or Service; (ii) State's use of the Product, Material,



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or Service in combination with other products, materials, or services not furnished by Contractor; (iii) State's use in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion as the State's exclusive remedy to take action no later than six (6) months after the issuance of an injunction in the following order of precedence: (i) to procure for the State the right to continue using such item(s) or part (s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the State up to the dollar amount of this Contract. Any injunction that is issued against the State which prevents the State from utilizing the Contractor's product in excess of six (6) months and for which the Contractor has not obtained for the State or provided to the State one of the alternatives set forth in the foregoing sentence is cause for the State to terminate this Contract. In the event of such termination, the State will not be obligated to compensate the Contractor for any costs incurred by the Contractor.

For all other claims against the Contractor where liability is not otherwise set forth in this contract as being "without limitation", and regardless of the basis on which the claim is made, Contractor's liability **for direct damages, shall be the greater of \$100,000, the dollar amount of this Contract, or two (2) times the charges for services rendered by the Contractor under this Contract.** Unless otherwise specifically enumerated herein mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

The State may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

INSURANCE TYPES AND AMOUNTS

Contractor agrees to provide the State of Louisiana with Certificates of adequate insurance indicating coverage of required herein.

Insurance shall be placed with insurers with an A.M. Best's rating of no less than A-:VI. This rating requirement shall be waived for Worker's Compensation coverage only.

Contractor's Insurance: The Contractor shall not commence work under this contract until he has obtained all insurance required herein. Certificates of Insurance, fully executed by officers of the Insurance Company written or countersigned by an authorized Louisiana agency, shall be filed with the State of Louisiana for approval. The Contractor shall not allow any sub-Contractor to commence work on his subcontract until all similar insurance required for the subcontractor has been obtained and approved. If so requested, the Contractor shall also submit copies of insurance policies for inspection and approval of the State of Louisiana before work is commenced. Said policies shall not hereafter be canceled, permitted to expire, or be changed without thirty (30) days notice in advance to the State of Louisiana and consented to by the State of Louisiana in writing and the policies shall so provide.

Compensation Insurance: Before any work is commenced, the Contractor shall take out and maintain during the life of the contract, Workers' Compensation Insurance for all of the Contractor's employees employed at the site of the project. In case any work is sublet, the Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance for all of the latter's employees, unless such employees are covered by the protection



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afforded by the Contractor. In case any class of employees engaged in work under the contract at the site of the project is not protected under the Workers' Compensation Statute, the Contractor shall provide for any such employees, and shall further provide or cause any and all subcontractors to provide Employer's Liability Insurance for the protection of such employees not protected by the Workers' Compensation Statute.

Commercial General Liability Insurance: The Contractor shall take out and maintain during the life of the contract such Commercial General Liability Insurance which shall protect him, the State, and any subcontractor during the performance of work covered by the contract from claims or damages for personal injury, including accidental death, as well as for claims for property damages, which may arise from operations under the contract, whether such operations be by himself or by a subcontractor, or by anyone directly or indirectly employed by either of them, or in such a manner as to impose liability on the State. Such insurance shall name the State as additional insured for claims arising from or as the result of the operations of the Contractor or his subcontractors. In the absence of specific regulations, the amount of coverage shall be as follows: Commercial General Liability Insurance, including bodily injury, property damage and contractual liability, with combined single limits of \$1,000,000.

Insurance Covering Special Hazards: Special hazards as determined by the State shall be covered by rider or riders in the Commercial General Liability Insurance Policy or policies herein elsewhere required to be furnished by the Contractor, or by separate policies of insurance in the amounts as defined in any Special Conditions of the contract included therewith.

Licensed and Non-Licensed Motor Vehicles: The Contractor shall take out and Maintain during the life of the contract, Automobile Liability Insurance in an amount not less than combined single limits of \$1,000,000 per occurrence for bodily injury/property damage. Such insurance shall also cover the use of any non-licensed motor vehicles engaged in operations within the terms of the contract on the site of the work to be performed thereunder, unless such coverage is included in insurance elsewhere specified.

Subcontractor's Insurance: The Contractor shall require that any and all subcontractors, which are not protected under the Contractor's own insurance policies, take and maintain insurance of the same nature and in the same amounts as required of the Contractor.

ASSIGNMENT

The Contractor shall not assign any interest in the contract by assignment, transfer or novation without prior written consent of the State. This provision shall not be construed to prohibit the Contractor from assigning his bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the State.

RIGHT TO AUDIT

The State Legislative auditor, federal auditors and internal auditors of the Division of Administration, or others so designated by the DOA, shall have the option to audit all accounts directly pertaining to the contract for a period of five (5) years from the date of final payment or as required by applicable State and Federal Law. Records shall be made available during normal working hours for this purpose.

TERMINATION FOR NON-APPROPRIATION OF FUNDS

The continuation of the contract is contingent upon the continuation of an appropriation of funds by the Legislature to fulfill the requirements of the contract. If the Legislature fails to appropriate sufficient monies to provide for the continuation of a contract or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act to prevent the total appropriations for the year from exceeding revenues for that



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year or for any other lawful purpose and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which funds were appropriated.

WAIVER CLAUSE

Waiver of any breach of any term or condition of the contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of the contract shall be held to be waived, modified, or deleted except by the written consent of both parties.

SEVERABILITY

If any term or condition of the contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application; to this end, the terms and conditions of the contract are declared severable.

CODE OF ETHICS

The Contractor acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (R.S. 42:1101 et. seq., Code of Governmental Ethics) applies to the Contracting Party in the performance of products/services called for in the Contract. The Contractor agrees to immediately notify the State if potential violations of the Code of Governmental Ethics arise at any time during the term of the Contract.

APPLICABLE LAW

The contract shall be governed by and interpreted in accordance with the laws of the State of Louisiana. Venue of any action brought with regard to the contract shall be in the Nineteenth Judicial District Court, parish of East Baton Rouge, State of Louisiana.

CONTRACT CONTROVERSIES

Any claim or controversy arising out of the contract shall be resolved by the provisions of Louisiana Revised Statutes 39:1673.