

CONTRACT FOR ARMED SECURITY SERVICES

To customize this template for agency use, go to all fields highlighted in green, supply the requested information in place of the green field, and save the customized document to your computer. Please note that Exhibits “B” and “C” have instructional paragraphs specific to these exhibits which should be deleted from your final customized document. This template is provided exclusively for use by agencies and entities under the purview of the Personal Service Contract Review Board (hereinafter “PSCRB”). For agency-specific provisions, please consult with your legal counsel. If you have any questions, please contact Teselyn Funches, Director, PSCRB, at teselyn.funches@mspb.ms.gov.

1. Parties. The parties to this contract are the [AGENCY NAME], (hereinafter “Agency”) and [CONTRACTOR NAME], (hereinafter “Contractor”).
2. Purpose. The purpose of this contract is for the Agency to engage Contractor to provide armed security services for the Agency.
3. Scope of Services. Contractor will perform and complete in a timely and satisfactory manner the services described in Exhibit “A”, captioned “Scope of Services”, which is attached hereto and made a part hereof by reference. The scope of services is from Personal Service Contract Review Board (hereinafter “PSCRB”) IFB 05-2012 (Preapproved List of Vendors for Armed Security Services) which was issued by the PSCRB and incorporated herein by reference. Contractor is one of the preapproved vendors selected through the above referenced IFB for the [REGION NAME] Region.
4. General Terms and Conditions. This contract is hereby made subject to the terms and conditions included in Exhibit “B”, captioned “Additional Terms and Conditions”, which is attached hereto and made a part hereof by reference.
5. Consideration. As consideration for the performance of the services referenced in Exhibit “A”, the Agency agrees to compensate Contractor as provided in Exhibit “C”, captioned “Compensation”, which is attached hereto and made a part hereof by reference.
6. Period of Performance. This contract will become effective for the period beginning [add date] and ending on [add date], upon the approval and signature of the parties hereto. The Agency has the option to renew the contract as long as the period of performance is within Contractor’s preapproved term (ending March 14, 2014) as set by PSCRB IFB 05-2012. Renewals must be approved by the PSCRB pursuant to Section 7-108 (Renewals) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*.
7. Method of Payment. Contractor agrees to accept payments referenced in Paragraph 5, “Consideration”, to be paid as billed by Contractor. Contractor agrees to submit invoices to the Agency that contain a detailed account of each billing. The final invoice is to be submitted no later than [add date]. Contractor is classified as an independent contractor and not a contractual employee of the Agency. As such, any compensation due and payable to Contractor will be paid as gross amounts.
8. Applicable Law. The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws, provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws

and regulations.

9. Availability of Funds. It is expressly understood and agreed that the obligation of the Agency to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the Agency, the Agency shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to the Agency of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
10. Representation Regarding Contingent Fees. Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or proposal.
11. Representation Regarding Gratuities. Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Personal Service Contract Review Board Rules and Regulations*.
12. Compliance with Laws. Contractor understands that the [AGENCY NAME] is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.
13. Insurance. Contractor represents that it will maintain workers' compensation insurance as required by the State of Mississippi which shall inure to the benefit of all the Contractor's personnel provided hereunder; comprehensive general liability or professional liability insurance, with minimum limits of \$1,000,000 per occurrence for bodily injury, personal injury, accidental death, and property damage; and employee dishonesty insurance or fidelity bond insurance with minimum limits of \$1,000,000 with third party coverage. Contractor represents that it may be required to maintain automobile liability insurance covering all vehicles, owned or otherwise, used in the contract work with limits of \$1,000,000 for injuries including accidental death to any person and subject to the same limit for each person for any one accident involving two or more person; and automobile property damage insurance covering all property damage by automobile with limits of \$1,000,000 for all property damage by automobile. All general liability, professional liability, employee dishonesty, fidelity bond, automobile liability, and automobile property damage insurance will provide coverage to the *State of Mississippi* as an additional insured. The [AGENCY NAME] 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.

14. Stop Work Order.

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

15. Termination for Convenience.

- a. *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 Contractor specifying the part of the contract terminated and when termination becomes effective.
- b. *Contractor's Obligations.* Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The procurement officer may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the

State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

16. Termination for Default.

- a. *Default.* If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the procurement officer may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the procurement officer, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the procurement officer may procure similar supplies or services in a manner and upon terms deemed appropriate by the procurement officer. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the procurement officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.
- c. *Compensation.* Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the 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.
- d. *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the 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, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the 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, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

- e. *Erroneous Termination for Default.* If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.
 - f. *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.
17. E-Payment. Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The Agency agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the Agency within forty-five (45) days of receipt of invoice. Miss. Code Ann. § 31-7-305 (1972, as amended).
18. E-Verification. If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Miss. Code Ann. §§ 71-11-1 *et seq.* (1972, as amended). The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:
- a. termination of this contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
 - b. the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or,
 - c. both.
- In the event of such cancellation/termination, Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.
19. Transparency. This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Miss. Code Ann. §§ 25-61-1 *et seq.* (1972, as amended) and Miss. Code Ann. § 79-23-1 (1972, as amended). In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151 *et seq.* (1972, as amended). Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department

of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

20. Paymode. Payments by state agencies using the Statewide Automated Accounting System (SAAS) shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of Contractor's choice. The State may, at its sole discretion, require Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.
21. Procurement Regulations. The contract shall be governed by the applicable provisions of the *Mississippi Personal Service Contract Review Board Rules and Regulations*, a copy of which is available at 210 East Capitol, Suite 800, Jackson, Mississippi 39201 for inspection, or downloadable at <http://www.mspb.ms.gov>.
22. Requirements contract. During the period of the contract, Contractor shall provide all the service described in the contract. Contractor understands and agrees that this is a requirements contract and that the [AGENCY NAME] shall have no obligation to Contractor if no services are required. Any quantities that are included in the scope of work reflect the current expectations of the [AGENCY NAME] for the period of the contract. The amount is only an estimate and Contractor understands and agrees that the [AGENCY NAME] is under no obligation to Contractor to buy any amount of the services as a result of having provided this estimate or of having any typical or measurable requirement in the past. Contractor further understands and agrees that the [AGENCY NAME] 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.

In witness whereof, the parties hereto have affixed, on duplicate originals, their signatures on the date indicated below, after first being authorized so to do.

DATE

By: _____

[Contractor's Name (person signing)]
[Contractor (name of company)]

DATE

By: _____

[Director's Name]
[Director's Title]
[Agency Name]

EXHIBIT “A”

SCOPE OF SERVICES

The Contractor will perform the following services upon request of the Agency in fulfillment of the purposes of this contract.

The Contractor will coordinate all communications with the Agency through [Agency Contact Name].

The Contractor shall provide security guards as requested by the Agency. Uniformed, armed security may be provided in two separate formats: foot patrols and vehicular patrols depending on the Agency’s requirements. Foot patrol services may include the use of motorized and non-motorized means of transportation as provided by the Agency (such as golf-cart, Segway, etc. or bicycle). Vehicular patrols will be conducted in a vehicle provided by the Contractor. Guard services are to be provided in three categories: (1) one guard during regular business hours (generally 7:00 AM to 7:00 PM) with option for additional guard or guards; (2) one guard during after business hours (generally 7:00 PM to 7:00 AM) with option for additional guard or guards; and, (3) one guard twenty-four hours a day with option for additional guard or guards. Services are generally to be provided Monday through Friday (except State recognized holidays). The Agency may negotiate a different beginning and ending time with the Contractor, as well as Saturday, Sunday and holiday service.

Services to be provided include safeguarding the Agency employees and a large range of facilities (some facilities could be potential terrorist targets). Examples of Agency facilities include, but are not limited to, the following: office buildings, hospitals, schools, warehouses, water reservoirs, communications networks, etc. The Agency may have more than one location and in different regions of the state. The Agency requires 24/7 on-site security presence, coverage only during regular business hours; and/or security services on weekends or during unique short-term events (i.e. specific threat, job fairs, art exhibits, etc.). Services to be provided include, but are not limited to, the following: allowing only authorized persons access to the building(s); maintaining an activity log (electronic or paper) in accordance with Agency requirements (accepting UPS, FedEx, or other package deliveries); monitoring and investigating of all internal alarm systems (fire, etc.); escorting Agency employees to conduct Agency banking business; checking to ensure all entrances and exits are secure at the end of the day; deterring acts of vandalism, graffiti, burglary, trespassing, and other hazardous, criminal, or unauthorized activities; conducting security patrols in accordance with the routes and schedules established in the post orders; responding to calls regarding fires, bomb threats, or any other emergency situations; roving patrol of property to detect and prevent criminal or unauthorized activities; and monitoring the employee parking area which may require a guard to be stationed outside. The Contractor must have a field supervisor on-call twenty-four hours a day to deal with any security issues which arise. Additional services may be required by the Agency.

Any guard provided must have a minimum of two years’ experience as a security officer, or two years’ experience in a branch of law enforcement or other type of protective service;

The guards must be trained and capable of handling any and all incidents in a lawful and professional manner.

Any provided guard must have undergone a thorough criminal background investigation which reveals no criminal history. A criminal investigation includes, but is not limited to, fingerprint check, criminal records check, sex offender registration records check, and drug test at the Contractor’s expense;

Any guard provided must be authorized to carry weapons in the State of Mississippi with a copy of the weapon permit provided to the hiring Agency. All weapon permits should be current and maintained in accordance with the contract. Additional weapon qualification requirements may be required by the Agency.

Additional minimum requirements, including specific certifications, licenses, designations, and/or trainings pertinent to Agency operations may also be required by the Agency. Examples include, but are not limited to, the following: valid Mississippi driver's license; successful drug test passage; completion of specialized training (i.e. weapons, reporting, canine, terrorism, FEMA, First Aide, Automated External Defibrillator (AED), School Resource Officer, etc.). If required, the Contractor must provide copies to the Agency. All certifications and licenses should be current and maintained in accordance with the contract.

The Contractor shall also provide with respect to all armed security employee provided to the Agency:

- Fulfill Agency requests for guard(s) within twenty-four (24) hours of request;
- Ensure that the guard(s) are in complete uniform and well-groomed at all times;
- Provide all materials, serviceable firearms, ammunition, nightsticks, serviceable flashlights, rain gear, uniforms which are clean, in good repair, easily recognizable, and identify the guard as an employee of the Contractor, and any other miscellaneous equipment which may be needed;
- Administer and maintain all employment and payroll records, payroll processing, and payment of payroll checks and taxes, including the deductions required by state, federal and local laws such as social security and withholding taxes;
- Abide by all ordinances and laws pertaining to the Agency's operation and secure all required licenses, permits, certifications, trainings, background investigations, fingerprint checks, and drug tests;
- Make all unemployment compensation contributions as required by federal and state laws and process claims as required;
- Ensure the armed security employee reports to work at the time and place specified by the Agency;
- Ensure that guard(s) do not engage in personal activities (texting, personal phone calls, reading magazines, etc.) while on the job, and that guards comply with the Agency's restrictions regarding visitation with friends, family members or acquaintances while on the job;
- Ensure that guard(s) do not vacate their post during or at the end of their shift unless relieved by appropriate duty personnel, and arrange for replacement personnel for shift changes, breaks and for unanticipated events (i.e. illness, family emergency, etc.);
- Replace, at no additional expense to the Agency, any security guard not performing satisfactorily within two hours; and,

- Ensure that guards working in prisons, courts and similar environments comply with any Agency restrictions regarding contact with any inmate, any member of the inmate's family or any of the inmate's friends, on-site or off, except in a manner that supports the contract;
- Perform all services provided in the contract in accordance with customary and reasonable industry standards;
- Provide vehicle(s) and display "Security" on the driver and front passenger door if providing the optional patrol vehicle(s);
- Operate and maintain vehicle(s) in accordance with all applicable laws and regulation of the State of Mississippi and those established by the Agency at the Contractor's expense; and,
- Ensure that no security guard or supervisor work more than twelve (12) hours including any and all breaks, in a twenty-four (24) hour period; the Agency, in an emergency situation, can waive this requirement when the circumstances are beyond the control of the Contractor.

The Contractor shall also:

- Maintain a sufficient pool of qualified guards large enough that if, for any reason, the scheduled guard does not report for duty or must be replaced, the security company can provide a replacement guard within two hours after notification;
- Arrange for the Agency to interview up to three potential new armed security guards, at the Contractor's expense, for a period of up to one hour;
- Ensure that all security personnel receive and pass a drug test prior to hire and provide copies of all personnel drug test as required by the Agency (test must show that employees are drug free);
- Conduct periodic drug testing of security personnel at the Contractor's expense throughout the year at a minimum of twice per year and provide copies of the results as required by the Agency;
- Provide CPR certified guards and a copy of the appropriate certification as required by the Agency; and,
- Employ only qualified personnel who are proficient in performing assigned tasks, are drug-free and proficient in the English language.

EXHIBIT “B”

ADDITIONAL TERMS AND CONDITIONS

Exhibit “B” includes (alphabetically by title) various service contracting clauses which are available for use and were included in the IFB. 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 within or at the end of the clause. These clauses are discretionary and the Agency is neither required to use them nor prohibited from using others which are not included in this exhibit.

Please delete this paragraph and the above paragraph before issuing the final contract. Also, please verify the total number of pages in the contract (as noted in the footer section). Any modifications will change the number of pages included.

1. Anti-assignment/subcontracting. Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Contractor’s special skills and expertise. Contractor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.
2. Approval. It is understood that this contract requires approval by the Personal Service Contract Review Board. If this contract is not approved, it is void and no payment shall be made hereunder.
3. Attorneys’ fees and expenses. Subject to other terms and conditions of this agreement, in the event Contractor defaults in any obligations under this agreement, Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees, court costs, and attorney’s fees) incurred by the State in enforcing this agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the customer be obligated to pay any attorney’s fees or costs of legal action to Contractor.
4. Authority to contract. Contractor warrants: (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and, (d) notwithstanding any other provision of this agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.
5. Confidential information. “Confidential Information” shall mean: (a) those materials, documents, data, and other information which Contractor has designated in writing as proprietary and confidential; and, (b) all data and information which 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 the following:

- i. to protect all confidential information provided by one party to the other;
- ii. to treat all such confidential information as confidential to the extent that confidential treatment is allowed under state and/or federal law;
- iii. 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,
- iv. 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 Contractor or its subcontractor shall rest with Contractor. Disclosure of any confidential information by Contractor or its subcontractor without the express written approval of the customer shall result in the immediate termination of this agreement.

6. Confidentiality. Notwithstanding any provision to the contrary contained herein, it is recognized that Agency is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Miss. Code Ann. §§ 25-61-1 *et seq.* (1972, as amended). 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.
7. Contractor personnel. The Agency shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by Contractor. If the Agency reasonably rejects staff or subcontractors, Contractor must provide replacement staff or subcontractors satisfactory to the Agency in a timely manner and at no additional cost to the Agency. The day-to-day supervision and control of Contractor's employees and subcontractors is the sole responsibility of Contractor.
8. Debarment and suspension. Contractor certifies to the best of its knowledge and belief, that it:
 - a. 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;
 - b. 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;

- c. has not, within a three year period preceding this proposal, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - d. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (2) and (3) of this certification; and,
 - e. has not, within a three year period preceding this proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.
9. Disclosure of confidential information. In the event that either party to this agreement receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this agreement. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq.* (1972, as amended).
10. Exceptions to confidential information. Contractor and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party (“disclosing party”) which:
- 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 nonparties 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 Contractor from any nonparty; or,
 - f. is disclosed with the disclosing party’s prior written consent.
11. Errors in extension. If the unit price and the extension price are at variance, the unit price shall prevail.
12. Failure to deliver. In the event of failure of Contractor to deliver services in accordance with the contract terms and conditions, the Agency, after due oral or written notice, may procure the services from other sources and hold Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the Agency may have.

13. Failure to enforce. Failure by the Agency at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the Agency to enforce any provision at any time in accordance with its terms.
14. Final payment. Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract, or as a termination settlement under this contract, Contractor shall execute and deliver to the Agency a release of all claims against the State arising under, or by virtue of, the contract, except claims which are specifically exempted by Contractor to be set forth therein. Unless otherwise provided in this contract, by state law, or otherwise expressly agreed to by the parties in this contract, final payment under the contract or settlement upon termination of this contract shall not constitute waiver of the State's claims against Contractor under this contract.
15. Force majeure. Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters ("force majeure events"). When such a cause arises, Contractor shall notify the State immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate the agreement.
16. HIPAA compliance. Contractor agrees to comply with the "Administrative Simplification" provisions of the Health Insurance Portability and Accountability Act of 1996, including electronic data interchange, code sets, identifiers, security, and privacy provisions, as may be applicable to the services under this contract.
17. Indemnification. To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the Agency, its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorney's fees, arising out of or caused by Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement. In the State's sole discretion, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the State. Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc. without the State's concurrence, which the State shall not unreasonably withhold.
18. Independent contractor status. Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the State and Contractor. Neither the method of computation of fees or other

charges, nor any other provision contained herein, nor any acts of the State or Contractor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the State and Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the [AGENCY NAME], and the [AGENCY NAME] shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. The [AGENCY NAME] shall not withhold from the contract payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, the [AGENCY NAME] shall not provide to Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

19. Integrated agreement/merger. This agreement, including all contract documents, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This agreement may be altered, amended, or modified only by a written document executed by the State and Contractor. Contractor acknowledges that it has thoroughly read all contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein. Accordingly, this agreement shall not be construed or interpreted in favor of or against the State or Contractor on the basis of draftsmanship or preparation hereof.
20. Modification or renegotiation. This agreement may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or state revisions of any applicable laws or regulations make changes in this agreement necessary.
21. No limitation of liability. Nothing in this agreement shall be interpreted as excluding or limiting any tort liability of Contractor for harm caused by the intentional or reckless conduct of Contractor or for damages incurred through the negligent performance of duties by Contractor or the delivery of products that are defective due to negligent construction.
22. Notices. All notices required or permitted to be given under this agreement must be in writing and personally delivered or sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

For the Contractor: [name, title, contractor, address]

For the Agency: [name, title, agency, address]

23. Non-solicitation of employees. Each party to this agreement agrees not to employ or to solicit for employment, directly or indirectly, any persons in the full-time or part-time employment of the other party until at least six (6) months after this agreement terminates unless mutually agreed to in writing by the State and Contractor.
24. Oral statements. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the Agency and agreed to by Contractor.

25. Ownership of documents and work papers. Agency shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the project which is the subject of this agreement, except for Contractor's internal administrative and quality assurance files and internal project correspondence. Contractor shall deliver such documents and work papers to Agency upon termination or completion of the agreement. The foregoing notwithstanding, Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from Agency and subject to any copyright protections.
26. Priority. The contract consists of this agreement with exhibits, the PSCRB Invitation for Bids 05-2012 (hereinafter referred to as IFB), and the bid by [CONTRACTOR NAME] dated [add date] (hereinafter referred to as Bid). Any ambiguities, conflicts or questions of interpretation of this contract shall be resolved by first, reference to this agreement with exhibits and, if still unresolved, by reference to the IFB and, if still unresolved, by reference to the bid. Omission of any term or obligation from this agreement shall not be deemed an omission from this contract if such term or obligation is provided for elsewhere in this contract.
27. Quality control. Contractor shall institute and maintain throughout the contract period a properly documented quality control program designed to ensure that the services are provided at all times and in all respects in accordance with the contract. The program shall include providing daily supervision and conducting frequent inspections of Contractor's staff and ensuring that accurate records are maintained describing the disposition of all complaints. The records so created shall be open to inspection by the Agency.
28. Record retention and access to records. Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this agreement shall be retained by Contractor for three (3) years after final payment is made under this agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (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.
29. Renewal of contract: The contract may be renewed at the discretion of the Agency upon written notice to 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 and/or subsequent contracts. The total number of renewal years permitted shall not exceed [NUMBER], or extend past March 14, 2014.
30. Recovery of money. Whenever, under the contract, any sum of money shall be recoverable from or payable by Contractor to the Agency, the same amount may be deducted from any sum due to Contractor under the contract or under any other contract between Contractor and the Agency. The rights of the Agency are in addition and without prejudice to any other right the Agency may have to claim the amount of any loss or damage suffered by the Agency on account of the acts or omissions of Contractor.

31. Right to audit. Contractor shall maintain such financial records and other records as may be prescribed by the Agency or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of three 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.
32. 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.
33. 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.
34. 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.
35. Termination upon bankruptcy. This contract may be terminated in whole or in part by [AGENCY NAME] upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.
36. 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.
37. Unsatisfactory work. If, at any time during the contract term, the service performed or work done by Contractor is considered by the Agency to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, Contractor shall, on being notified by the Agency, immediately correct such deficient service or work. In the event Contractor fails, after notice, to correct the deficient service or work immediately, the Agency shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of Contractor.
38. 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.

EXHIBIT “C”

COMPENSATION

The Contractor will charge the hourly rates listed below (as submitted in response to PSCRB IFB 05-2012, Preapproved List of Vendors for Armed Security Services, issued by the Personal Service Contract Review Board):

[CONTRACTOR'S NAME]	Hourly Rate for one guard for [REGION NAME] Region	Hourly Rate for each additional guard for [REGION NAME] Region
Business Hours Security Guard(s)		
After Hours Security Guard(s)		
Twenty-Four Hours Security Guard(s)		

(Rates are available on the MSPB website (www.mspb.ms.gov). They should be added to the above chart. Be sure to use pricing for the correct region. Please remove these sentences highlighted in green.)

The State of Mississippi requires the Contractor to submit invoices electronically throughout the term of this contract. Vendor invoices shall be submitted to the state agency using the processes and procedures identified by the State. Payments by state agencies using the Statewide Automated Accounting System (SAAS) shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Contractor's choice. The Contractor understands and agrees that the State of Mississippi is exempt from the payment of taxes. All payments shall be in United States currency.