

**PROJECT NUMBER 48786
EXPRESS PROCUREMENT OPTION PURCHASE AGREEMENT
CABLING EPO RFP NUMBER 4733
BETWEEN
VENDOR
AND
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES
AS CONTRACTING AGENT FOR THE
AGENCIES, INSTITUTIONS, AND GOVERNING AUTHORITIES
OF THE STATE OF MISSISSIPPI**

This Express Procurement Option Purchase Agreement (hereinafter referred to as "EPO Agreement") is entered into by and between **VENDOR**, a **STATE OF INCORPORATION** having its principal place of business **VENDOR ADDRESS** (hereinafter referred to as "Seller"), and the Mississippi Department of Information Technology Services having its principal place of business at 3771 Eastwood Drive, Jackson, Mississippi 39211 (hereinafter referred to as "ITS"), as contracting agent for the governmental agencies, educational institutions, and governing authorities of the State of Mississippi authorized to use the Express Procurement Option ("EPO") (hereinafter referred to as "Purchaser"). ITS and Purchaser are sometimes collectively referred to herein as "State".

WHEREAS, Seller is an authorized dealer of certain information technology equipment; and

WHEREAS, ITS desires to acquire an EPO Agreement containing the terms and conditions which will govern any orders placed by the Purchaser during the term of this EPO Agreement for information technology equipment and software ("Products") and/or installation and services from Seller that were listed in the published EPO as a result of Request for Proposals ("RFP") Number 4733;

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

ARTICLE 1 TERM OF AGREEMENT

Unless terminated as prescribed elsewhere herein, this EPO Agreement will become effective on the date it is signed by all parties (the "Effective Date") and will continue in effect until terminated by ITS with thirty (30) calendar days prior notice provided to Seller or until all warranties provided by Seller to Purchaser have expired, whichever occurs last.

ARTICLE 2 MODIFICATION OR RENEGOTIATION

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

ARTICLE 3 INCLUDED PARTIES

Seller will accept orders from and furnish the Products and services under this EPO Agreement to any governmental agency, governing authority or educational institution within Mississippi authorized to use the published EPO, in line with ITS policies and procedures, at prices not to exceed those prices specified in the published EPO.

ARTICLE 4 ADDITIONAL TERMS AND CONDITIONS

All provisions in this EPO Agreement are in addition to the requirements of RFP No. 4733 and the published EPO, which are both incorporated into and made a part of this EPO Agreement.

ARTICLE 5 ORDERS

5.1 The State does not guarantee that it will purchase any certain amount under this EPO Agreement.

5.2 When a Purchaser decides to procure any Products and/or services from Seller, the Purchaser shall execute a supplement/purchase order to be signed by Seller and an authorized representative of the Purchaser. The supplement/purchase order shall set forth the Products/services to be procured; the prices for same; any warranty period, the specific details of the transaction, as well as any additional terms and conditions agreed to by the parties. All supplements/purchase orders shall be governed by, and incorporate by reference, the terms and conditions of this EPO Agreement. The terms and conditions of this EPO Agreement shall supersede any conflicting terms and conditions set forth in any document provided by Seller or its subcontractors. The parties agree that the Purchaser has the right to adjust the quantities of purchases based upon the availability of funding or as determined necessary by the Purchaser.

5.3 Seller guarantees pricing for the term of this EPO. In the event there is a national price decrease of the Products proposed during that time, Seller agrees to extend the new, lower pricing to Purchaser.

ARTICLE 6 METHOD OF PAYMENT

6.1 Unless a different payment schedule has been agreed upon by Purchaser and Seller, once the Products have been accepted by Purchaser as prescribed in Article 7 herein, or there has been lack of notice to the contrary, Seller shall submit an invoice for the cost and shall certify that the billing is true and correct. Services will be invoiced as they are rendered. Seller shall submit invoices and supporting documentation electronically to Purchaser during the term of this EPO Agreement using the processes and procedures identified by the State. Purchaser agrees to pay Seller in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", §§31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the Purchaser within forty-five (45) days of receipt of the invoice. All payments shall be made in United States currency. Payments by state agencies using Mississippi's Accountability System for Government Information and Collaboration (MAGIC) shall be made and remittance information provided electronically as directed by the State. The payments by these agencies shall be deposited into the bank account of the Seller's choice. Seller understands and agrees that Purchaser is exempt from the payment of taxes. No payment, including final payment, shall be construed as acceptance of defective Products or incomplete work, and the Seller shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the article herein titled "Entire Agreement".

6.2 If payment of undisputed amounts is not made to Seller within forty-five (45) days of Purchaser's receipt of the invoice, Purchaser shall be liable to Seller for interest at a rate of one and one-half percent (1 1/2 %) per month (or such lesser rate as may be the maximum permissible rate under the law) on the unpaid balance from the expiration of such forty-five (45) day period until such time as payment is made. This provision for late payments shall apply only to undisputed amounts for which payment has been authorized.

6.3 Acceptance by the Seller of the last payment from the Purchaser under a supplement/purchase order shall operate as a release of all claims for payment against the State by the Seller and any subcontractors or other persons supplying labor or materials used in the performance of any work under a supplement/purchase order.

ARTICLE 7 DELIVERY; RISK OF LOSS; INSTALLATION, AND ACCEPTANCE

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

7.2 Seller shall assume and shall bear the entire risk of loss and damage to the Products from any cause whatsoever while in transit and at all times throughout its possession thereof. Risk of loss to the Products will pass to Purchaser upon delivery.

7.3 If installation by Seller is required, Seller shall complete installation of the Products pursuant to the requirements of the Purchaser based on the guidelines specified in RFP No. 4733.

7.4 If installation by Seller is required, Seller shall be responsible for installing all Products and materials in accordance with all state, federal and industry standards for such items. Further, Seller acknowledges that installation shall be accomplished with minimal interruption of Purchaser's normal day to day operations.

7.5 If installation by Seller is required, Seller shall provide Purchaser with an installation schedule identifying the date, time and location within the scheduling deadlines agreed to by the parties. Seller warrants that all Products shall be properly delivered, installed and integrated, if necessary, for acceptance testing within the scheduling deadlines set forth by Purchaser as the site is deemed ready for installation.

7.6 Seller shall be responsible for replacing, restoring or bringing to at least original condition any damage to floors, ceilings, walls, furniture, grounds, pavements, sidewalks, and the like caused by its personnel and operations during the installation, subject to final approval of Purchaser. The repairs will be done only by technicians skilled in the various trades involved, using materials and workmanship to match those of the original construction in type and quality.

7.7 Unless a different acceptance period is agreed upon by the Purchaser and Seller and specified in the supplement/purchase order, Purchaser shall have a ten (10) working day testing period during which time Purchaser shall have the opportunity to evaluate and test the Products to confirm that it performs without any defects and performs pursuant to the specifications set forth in RFP No. 4733 and the published EPO. Purchaser may be deemed to have accepted the Product at the end of the ten (10) working day testing period, unless Purchaser notifies Seller that the product fails to perform as stated herein.

7.8 In the event the Product fails to perform as stated in Article 7.7 herein, Purchaser shall notify Seller. Unless a different period of time is agreed upon by the Seller and Purchaser and specified in the supplement/purchase order, Seller shall, within four (4) working days, correct the defects identified by Purchaser or replace the defective Product. If Seller neither corrects the defect nor replaces the defective product, Purchaser reserves the right to return the Product to Seller at the Seller's expense; to cancel the purchase order, and to cancel this EPO Agreement as to itself only.

7.9 Upon receipt of a corrected or replaced Product, Purchaser shall have another acceptance period as set forth in Article 7.7 herein, in which to reevaluate/retest such Product.

7.10 If, after Seller has tendered to Purchaser Seller's attempt to correct the Product, Purchaser again determines the Product to have a defect, Purchaser may take such actions as it deems appropriate, including but not limited to, either (i) notifying Seller that it has elected to keep the Product despite such defects; (ii) returning the Product to Seller and providing Seller with an opportunity to deliver a substitute Product acceptable to Purchaser within the time period specified by Purchaser, or (iii) returning the Product to Seller at Seller's expense and canceling the purchase order. Purchaser may also pursue any remedy available to it in law or in equity.

ARTICLE 8 TITLE TO HARDWARE/EQUIPMENT

Title to the hardware/equipment provided under this EPO Agreement shall pass to Purchaser upon its acceptance of the hardware/equipment.

ARTICLE 9 WARRANTIES

9.1 Seller represents and warrants that it has the right to sell the hardware/equipment, and, if applicable, authorized to provide the Services, provided under this EPO Agreement.

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

9.3 Seller represents and warrants that unless otherwise specified in RFP No. 4733 and/or the published EPO, each Product delivered shall be delivered new and not as a "used, substituted, rebuilt, refurbished or reinstalled" Product.

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

9.5 Unless a longer warranty period is specified in the RFP, the purchase order or the published EPO, Seller represents and warrants that all hardware Products provided pursuant to this EPO Agreement shall be free from defects in material, manufacture, design and workmanship for a period of one (1) year after acceptance. Seller's obligation pursuant to this warranty shall include, but is not limited to, the repair or replacement of the hardware Product, or the redoing of the faulty installation, at no cost to Purchaser. In the event Seller can not repair or replace the hardware Product during the warranty period within ten (10) working days after receipt of notice of the defect, Seller shall refund the purchase price of the hardware Product and refund any fees paid for services that directly relate to the defective hardware Product, and Purchaser shall have the right to terminate the purchase order and this EPO Agreement in whole or in part, solely as between those two entities. Purchaser's rights hereunder are in addition to any other rights Purchaser may have.

9.6 Seller represents and warrants that all Products provided by Seller shall meet or exceed the minimum specifications set forth in RFP No. 4733 and the published EPO.

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

9.8 Seller represents and warrants that there is no disabling code or lockup program or device embedded in the Products provided to Purchaser. Seller further agrees that it will not, under any circumstances, take any step which would in any manner interfere with Purchaser's use of the Products and/or which would restrict Purchaser from accessing its data files or in any way interfere with the transaction of Purchaser's business. For any breach of this warranty, Seller at its expense shall, within five (5) working days after receipt of notification of the breach, deliver Products to Purchaser that are free of such disabling code, lockup program or device.

9.9 Seller represents and warrants that there are no computer viruses contained in the Products delivered to Purchaser. For any breach of this warranty, Seller at its expense shall, within five (5) working days after receipt of notification of the breach, deliver Products to Purchaser that are free of any virus, and shall be responsible for repairing, at Seller's expense, any and all damage done by the virus to Purchaser's site.

9.10 Seller represents and warrants that, to the extent applicable, it will ensure its compliance with the Mississippi Employment Protection Act, Miss. Code Ann. §71-11-1, et seq. and any breach of Mississippi Employment Protection Act may subject Seller to the consequences set forth under Miss. Code Ann §71-11-3.

9.11 Seller represents and warrants that no official or employee of Purchaser or of ITS, and no other public official of the State of Mississippi who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of said project, voluntarily acquire any personal interest, direct or indirect, in the purchase order.

9.12 The Seller represents and warrants that no elected or appointed officer or other employee of the State of Mississippi, nor any member of or delegate to Congress has or shall benefit financially or materially from this EPO Agreement. No individual employed by the State of Mississippi shall be admitted to any share or part of the EPO Agreement or to any benefit that may arise therefrom. The State of Mississippi may, by written notice to the Seller, terminate the right of the Seller to proceed under this EPO Agreement if it is found, after notice and hearing by the ITS Executive Director or his/her designee, that gratuities in the form of entertainment, gifts, jobs, or otherwise were offered or given by the Seller to any officer or employee of the State of Mississippi with a view toward securing this EPO Agreement or securing favorable treatment with respect to the award, or amending or making of any determinations with respect to the performing of such contract, provided that the existence of the facts upon which the ITS Executive Director makes such findings shall be in issue and may be reviewed in any competent court. In the event this EPO Agreement is terminated under this article, the State of Mississippi shall be entitled to pursue the same remedies against the Seller as it would pursue in the event of a breach of contract by the Seller, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

ARTICLE 10 INFRINGEMENT INDEMNIFICATION

10.1 Seller represents and warrants to the best of its knowledge that neither the Products, replacement parts, their elements nor the use thereof violates or infringes on any copyright, patent, trademark, servicemark, trade secret or other proprietary right of any person or entity. Purchaser shall notify Seller promptly of any infringement claim of which it has knowledge, and shall cooperate with Seller in the defense of such claim by supplying information, all at Seller's expense. Seller shall, to the extent authorized by Mississippi law, have sole control of the defense of such suit and all negotiations for its settlement, and Seller, at its own expense, shall defend or settle any and all infringement actions filed against Seller or Purchaser which involve the Products

provided under this EPO Agreement and shall pay all settlements, as well as all costs, legal fees, damages and judgment finally awarded against Purchaser.

10.2 If the continued use of the Products for the purpose intended is threatened to be enjoined or is enjoined by any court of competent jurisdiction, Seller shall, at its expense: (a) first procure for Purchaser the right to continue using the Products, or upon failing to procure such right; (b) replace or modify the Product so it becomes non-infringing, while maintaining substantially similar functionality, or upon failing to secure either such right, (c) refund to Purchaser the hardware purchase price or software license fees previously paid by Purchaser for the Products Purchaser may no longer use. Said refund shall be paid within ten (10) working days of notice to Purchaser to discontinue said use.

10.3 Seller shall have no indemnification obligations to Purchaser under this Article for any breach of the preceding warranties caused directly by: (i) infringement resulting from the combination or use of the Product with other items not provided by Seller; (ii) infringement resulting from material modification of the Product by someone other than Seller, its agents or subcontractors or Purchaser's employees who were working at Seller's direction; or (iii) infringement resulting from Purchaser's use of an allegedly infringing version of the Product if the alleged infringement would have been avoided by the use of a different version Seller made available to Purchaser at no cost to Purchaser, as long as the new or corrected version did not adversely affect the Purchaser's system's functionality.

ARTICLE 11 EMPLOYMENT STATUS

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

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

ARTICLE 12 ASSIGNMENT AND SUBCONTRACTS

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

ARTICLE 13 AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of Purchaser to proceed under this EPO Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of federal and/or state funds for the performances required under this EPO Agreement. It is understood that Purchaser will not issue a purchase order unless the Purchaser has committed funding for such purchase order. If the funds anticipated for the fulfillment of this EPO Agreement are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a

discontinuance or material alteration of the program under which funds were available to Purchaser for the payments or performance due under this EPO Agreement, Purchaser shall have the right to immediately terminate this EPO Agreement as to itself only, without damage, penalty, cost or expense to Purchaser of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Purchaser shall have the sole right to determine whether funds are available for the payments or performances due under this EPO Agreement. Any payment due Seller for services rendered by Seller prior to the date of receipt of notification of termination and received by Purchaser, shall be paid.

ARTICLE 14 TERMINATION

14.1 Termination Upon Mutual Agreement: A supplement and/or purchase order may be terminated in whole or in part upon the mutual written agreement of Seller and the Purchaser.

14.2 Termination Due To Bankruptcy: Should Seller become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or execute an assignment for the benefit of its creditors, the Purchaser may, upon the giving of thirty (30) days prior written notice, terminate a supplement and/or purchase order and this EPO Agreement without the assessment of any penalties, solely as between those two parties.

14.3 Termination Other Than For Cause: A Purchaser may terminate a supplement and/or purchase order and this EPO Agreement as to itself only, in whole or in part and without the assessment of any penalties, for any reason by giving thirty (30) calendar days written notice specifying the effective date thereof to Seller. Any payment due Seller for services rendered by Seller prior to termination and received by Purchaser shall be paid.

14.4 Termination For Cause: Either Purchaser or Seller may terminate a supplement and/or purchase order and this EPO Agreement solely as between themselves and without the assessment of any penalties upon a material breach by the other party upon thirty (30) calendar days prior written notice unless the defaulting party cures such breach within such thirty (30) calendar-day period. The non-defaulting party may also pursue any remedy available to it in law or in equity.

14.5 Termination of EPO Agreement: ITS may terminate this EPO Agreement for any reason without the assessment of any penalties after giving thirty (30) calendar days written notice specifying the effective date thereof to Seller, but any supplement and/or purchase order entered into prior to the termination date of this EPO Agreement shall survive the termination of the EPO Agreement. The terms of this EPO Agreement shall survive its termination/expiration with respect to any un-expired supplements/purchase orders.

14.6 Refund Of Unexpended Fees: Upon termination of a supplement and/or purchase order, Seller shall refund any and all applicable unexpended pro-rated maintenance/service or other fees previously paid by the Purchaser.

14.7 Eligibility for Partial Refund: If the customer has prepaid for equipment or services under the agreement for the term and decides to discontinue use of the associated equipment or services prior to the full term of the agreement, they may be eligible for a partial refund based on the unused portion of the agreement. The eligibility for a refund will be determined by the number of months remaining on the prepaid term at the time of the discontinuation. The customer must notify the seller in writing of the discontinuation, which must include the services or other identifying information. Notification should occur within 30 days of the decision to discontinue use. If a customer has received any portion of the prepaid services

that cover the discontinued services, a pro-rated deduction will be made from the refund to account for the value of services already rendered up until the point of discontinuation. Once the customer has notified the company of discontinuation and a refund calculation has been made, the refund will be processed within 30 days. Refunds will be issued via the same payment method used for the initial transaction unless otherwise agreed to in writing.

ARTICLE 15 GOVERNING LAW

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

ARTICLE 16 WAIVER

Failure of either party to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this EPO Agreement. A waiver by either party, to be effective, must be in writing, must set out the specifics of what is being waived, and must be signed by an authorized representative of that party.

ARTICLE 17 SEVERABILITY

If any term or provision of a supplement/purchase order or this EPO Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of the supplement/purchase order and this EPO Agreement shall be valid and enforceable to the fullest extent permitted by law provided that the State's purpose for entering into the supplement/purchase order and this EPO Agreement can be fully achieved by the remaining portions of the supplement/purchase order and EPO Agreement that have not been severed.

ARTICLE 18 CAPTIONS

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

ARTICLE 19 HOLD HARMLESS

To the fullest extent allowed by law, Seller shall indemnify, defend, save and hold harmless, protect and exonerate Purchaser, ITS and the State, its Board Members, officers, employees, agents and representatives from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever, including without limitation, court costs, investigative fees and expenses, attorney fees and claims for damages arising out of or caused by Seller and/or its partners, principals, agents, employees or subcontractors in the performance of or failure to perform the supplement and/or purchase order and this EPO Agreement. Seller's obligations as set forth in this Article are expressly conditioned upon the following: (a) that Purchaser shall notify Seller of any claim or suit of which Purchaser has knowledge, (b) that Seller shall, to the extent authorized by Mississippi law, have sole control of the defense or settlement of any claim or suit, and (c) Purchaser shall, at Seller's expense, cooperate with Seller by supplying information, to facilitate the settlement or defense of any such claim or suit.

ARTICLE 20 THIRD PARTY ACTION NOTIFICATION

Seller shall notify ITS and Purchaser in writing within five (5) business days of Seller filing bankruptcy, reorganization, liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Seller or Purchaser by any entity that may result in litigation related in any way to the supplement/purchase order or this EPO Agreement and/or which may affect the Seller's performance under the supplement/purchase order or this EPO Agreement. Failure of the Seller to provide such written notice to ITS and Purchaser shall be considered a material breach of the supplement/purchase order and this EPO Agreement and the State may, at its sole discretion, pursue its rights as set forth in the Termination Article herein and any other rights and remedies it may have at law or in equity.

ARTICLE 21 AUTHORITY TO CONTRACT

Seller warrants that it is a validly organized business with valid authority to enter into this EPO Agreement; that entry into and performance under this EPO Agreement is not restricted or prohibited by any loan, security, financing, contractual or other agreement of any kind, and notwithstanding any other provision of this EPO 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 a supplement/purchase order and this EPO Agreement.

ARTICLE 22 NOTICE

Any notice required or permitted to be given for this EPO Agreement shall be in writing and personally delivered or sent by electronic means to and from the Party's authorized personnel. Vendor's authorized personnel information will be provided to ITS via the Vendor's response to the RFP. ITS's authorized personnel will be: Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. Email: epl.team@its.ms.gov. Notice shall be deemed given when received or when refused. The Contractor and ITS agree to promptly notify each other in writing of any change.

ARTICLE 23 RECORD RETENTION AND ACCESS TO RECORDS

Seller shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this EPO Agreement and the supplement and/or purchase order. The Purchaser, ITS, any state or federal agency authorized to audit Purchaser, and/or any of their duly authorized representatives, shall, at their expense and upon prior reasonable written notice to Seller, have access to this EPO Agreement, supplements/purchase orders, and to any of Seller's proposals, books, documents, papers and/or records that are pertinent to the supplement/purchase order and this EPO Agreement to make copies, audits, examinations, excerpts and transcriptions at the State's or Seller's office as applicable where such records are kept during normal business hours. All records relating to this EPO Agreement and the supplement and/or purchase order shall be retained by Seller for three (3) years from the date of receipt of final payment under this EPO Agreement and the supplement and/or purchase order. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the three (3) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution. Notwithstanding the preceding, in no event will Seller disclose its confidential or proprietary cost and pricing data under this Article.

ARTICLE 24 INSURANCE

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

ARTICLE 25 DISPUTES

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

ARTICLE 26 COMPLIANCE WITH LAWS

26.1 Seller shall comply with, and all activities under this Agreement shall be subject to, all applicable federal, state, and local laws, regulations, and policies and procedures as now existing and as may be amended or modified. Specifically, but not limited to, Seller shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of this Agreement because of race, creed, color, sex, age, national origin or disability. Further, if applicable, Seller shall comply with the provisions of the Davis-Bacon Act including, but not limited to, the wages, recordkeeping, reporting and notice requirements set forth therein.

26.2 Seller represents and warrants that it will comply with the state's data breach notification laws codified at Section 75-24-29 of the Mississippi Code Annotated (Supp. 2012). Further, to the extent applicable, Seller represents and warrants that it will comply with the applicable provisions of the HIPAA Privacy Rule and Security Regulations (45 C.F.R. Parts 160, 162, and 164) ("Privacy Rule" and "Security Regulations", individually; or "Privacy and Security Regulations", collectively); and the provisions of the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (the "HITECH Act"). Further, Seller represents and warrants that it will comply with the applicable laws and regulations governing the handling and safeguarding of Personally Identifiable Information ("PII"), Personal Health Information ("PHI"), and Federal Tax Information ("FTI").

26.3 The Seller shall require its strategic business partners related to and are performing/providing any services under this Agreement, including but not limited to, all subcontractors, affiliates, third party(ies), and other entities or individuals or individuals to enter into written agreements containing obligations of confidentiality, security and privacy that are no less stringent than those contained in this EPO Agreement.

ARTICLE 27 CONFLICT OF INTEREST

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

ARTICLE 28 SOVEREIGN IMMUNITY

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

ARTICLE 29 CONFIDENTIAL INFORMATION

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

29.2 Purchaser shall treat all documents it receives from the Seller that are marked "Confidential" by the Seller as confidential and proprietary and shall not disclose such documents to a third party without Seller's specific written consent. In the event that the Purchaser receives notice that a third party requests divulgence of such confidential information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, the Purchaser shall promptly inform the Seller and thereafter respond in conformity with such subpoena to the extent mandated by state or federal law.

29.3 The parties understand and agree that this EPO Agreement does not constitute confidential information, and will be reproduced and distributed by the State without notification to Seller.

ARTICLE 30 EFFECT OF SIGNATURE

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

ARTICLE 31 SERVICES

When ordered by Purchaser, Seller agrees to provide consulting, training and technical support services pursuant to the requirements set forth in RFP No. 4733 and the published EPO.

ARTICLE 32 SURVIVAL

Articles 9, 10, 15, 19, 23, 28, 29, 34, 36, 43, and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this EPO Agreement.

ARTICLE 33 DEBARMENT AND SUSPENSION CERTIFICATION

Seller certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this EPO Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal,

state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this EPO Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

ARTICLE 34 ENTIRE AGREEMENT

34.1 This EPO Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and, with the exception of the operating system, supersedes any conflicting negotiations, understandings and agreements, written or oral, between the parties relating hereto, including all terms of any unsigned “shrink-wrap” license included in any package, media or electronic version of Seller-furnished software, or “clickwrap” or “browse-wrap” license presented in connection with a purchase via the Internet. The published EPO; the actual purchase order and any mutually agreed upon supplementary terms and conditions; RFP No. 4733, and Seller’s Proposal submitted in response to RFP No. 4733 are hereby incorporated into and made a part of this EPO Agreement as far as the individual Purchaser is concerned.

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

- A.** This EPO Agreement signed by Seller and ITS, and all attachments;
- B.** The published EPO;
- C.** RFP No. 4733, including all addendums;
- D.** Official written correspondence from ITS to Sellers;
- E.** Official written correspondence from Seller to ITS when clarifying Seller’s proposal;
- F.** Seller’s Proposal, as accepted by ITS, in response to RFP No. 4733, and
- G.** The actual supplement/purchase order, or additional contract terms between Purchaser and Seller, if required.

34.3 The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by the Seller. The documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof; provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority, that is, the highest document begins with the first listed document (“A. This EPO Agreement”) and the lowest document is listed last (“G. The actual supplement/purchase order, or additional contract between Purchaser and Seller, if required”).

ARTICLE 35 TRANSPARENCY

In accordance with the Mississippi Accountability and Transparency Act of 2008, §27-104-151, *et seq.*, of the Mississippi Code of 1972, as Amended, the American Accountability and Transparency Act of 2009 (P.L. 111-5), where applicable, and §31-7-13 of the Mississippi Code of 1972, as amended, where applicable, a fully executed copy of this EPO Agreement and any

subsequent amendments and change orders shall be posted to the State of Mississippi's accountability website at: <https://www.transparency.ms.gov>.

ARTICLE 36 COMPLIANCE WITH ENTERPRISE SECURITY POLICY

As applicable, Seller and Purchaser understand and agree that all products and/or services provided under this Agreement must allow Purchaser to be and remain in compliance with the State of Mississippi's Enterprise Policies and Standards, copies of which can be found on the ITS website. Any required contract terms and conditions of these policies are herein expressly incorporated by reference. The State reserves the right to update existing policy and/or introduce a new policy during the term of the Agreement. The Parties agree to work in good faith to resolve any compliance gaps identified with any new or revised policies applicable after the execution of this Agreement. If, at any time during the term of the Agreement, the products and/or services provided under this Agreement do not allow Purchaser to be and remain in compliance with the State of Mississippi's Enterprise Policies and Standards (new, revised, and/or existing), the State shall have the right to terminate the Agreement without assessment of any penalties or fees, and Seller shall be paid for all products and/or services rendered prior to the date of termination, and Seller shall refund any and all applicable unexpended prorated fees previously paid by Purchaser.

ARTICLE 37 FORCE MAJEURE

Seller and Purchaser 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 (excluding lightning), strikes, lockouts, riots, acts of war or terrorism, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"). When such a cause arises, the Seller shall notify the Purchaser 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 Purchaser determines it to be in its best interest to terminate the supplement and/or purchase order.

ARTICLE 38 EPO ADMINISTRATIVE FEES

Within fifteen (15) calendar days following the completion of each quarter, Seller shall submit its Sales Report identifying all Express Procurement Option ("EPO") sales to ITS. Upon receipt of same, ITS will review the Sales Report and assess a one percent (1%) administrative fee based on the total amount of sales that are reported. ITS will thereafter invoice Seller for their administrative fees, with said invoice being mailed to the "bill-to" address provided by Seller. Seller understands and agrees that the EPO administrative fee is the responsibility of the Seller and is not to be charged to the Purchaser in the form of a separate line item. Seller agrees to remit its payment of the administrative fee to ITS each quarter within thirty (30) calendar days of the invoice date (hereinafter referred to as "Due Date"). It is understood and agreed by the parties that in the event Seller fails to submit its Sales Report within fifteen (15) calendar days following completion of a quarter or in the event Seller fails to remit its payment of the quarterly administrative fees by the Due Date, Seller may be immediately suspended from participation in the EPO until such time as the Sales Report is received by ITS and all outstanding administrative fees have been paid in full.

ARTICLE 39 LIABILITY ISSUES

Unless jointly agreed otherwise in writing, Seller's liability for a specific project shall not exceed twice the total amount paid by Purchaser to Seller under the applicable supplement/purchase

order. In no event will Seller be liable to a Purchaser for special, indirect, consequential or incidental damages including lost profits, lost savings or lost revenues of any kind unless Seller was advised of the possibility of such loss or damage or unless such loss or damage could have been reasonably foreseen. Excluded from this or any liability limitation are claims related to fraud; bad faith; infringement issues; bodily injury; death; physical damage to tangible personal property and real property, and the intentional and willful misconduct or gross negligent acts of Seller. The language contained herein tending to limit the liability of the Seller will apply to a Purchaser to the extent it is permitted and not prohibited by the laws or constitution of Mississippi. Further, the parties understand and agree that the Seller is precluded from relying on any contractual damages limitation language within this article where the Seller acts fraudulently or in bad faith.

ARTICLE 40 STATUTORY AUTHORITY

By virtue of §25-53-21 of the Mississippi Code Annotated, as amended, the Executive Director of ITS is the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of information technology equipment, software, and services. Seller understands and agrees that ITS, as contracting agent, is not responsible or liable for the performance or non-performance of any of Purchaser's contractual obligations, financial or otherwise, contained within this Agreement. The parties further acknowledge that ITS is not responsible for ensuring compliance with any guidelines, conditions, or requirements mandated by Purchaser's funding source.

ARTICLE 41 FEDERAL TERMS AND CONDITIONS

The Seller understands and agrees that any supplemental agreement and/or purchase order made through this EPO Agreement may be paid in whole or in part federal funds. Therefore, Seller, including any subcontractor at any tier, must comply with all rules and regulations governing federal awards, including, but not limited to, 2 C.F.R. Part 200, the below terms and conditions of Appendix II to 2 C.F.R. Part 200 (as applicable), and any other additional funding terms and conditions provided by Purchaser in a supplemental agreement and/or purchase order.

41.1 Equal Employment Opportunity.

As applicable, the Seller agrees to abide by the terms provided under 41 C.F.R. Part 60, including, 41 CFR Part §§ 60-1.3 & 1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 C.F.R. Part, §§ 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

41.2 Davis-Bacon Act, as amended (40 U.S.C. §§3141-3148).

As applicable, the Seller agrees to comply with the Davis-Bacon Act (40 U.S.C. §§3141-3144, and §§3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination.

41.3 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).

Where applicable, Seller must include comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

41.4 Rights to Inventions Made Under a Contract or Agreement.

As applicable, the Seller must comply with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

41.5 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.

The Seller agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

41.6 Debarment and Suspension (Executive Orders 12549 and 12689).

A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Seller certifies that it is not currently federally debarred, and further that it will not subcontract any portion of the services under this EPO Agreement or purchase order/supplement, to any party that is debarred in accordance with this provision.

41.7 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

Sellers that apply or bid for an award exceeding \$ 100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

41.8 Procurement of Recovered Materials.

Seller agrees to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R.

Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

41.9 Prohibition On Certain Telecommunications And Video Surveillance Services Or Equipment.

The Seller agrees it will comply with 2 C.F.R. 200.216 and will not obtain, provide or use covered telecommunications equipment or services in the performance of this EPO Agreement or any supplemental agreement and/or purchase order. Covered telecommunications equipment or services has the meaning provided in Public Law 115-232, Section 889.

41.10 Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(c) Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 C.F.R. Part 184.

42.11 Contracting With Small And Minority Businesses, Women's Business Enterprises, And Labor Surplus Area Firms.

(a) The Seller, and, Purchaser (as applicable), must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

ARTICLE 42 SERVICE LEVEL AGREEMENTS

Seller shall provide Purchaser with a service level agreement(s) that meets, at a minimum, generally accepted industry standards for the applicable Products and Services Seller provides to Purchaser under any supplemental agreement and/or purchase order. Applicable services level agreements negotiated and/or agreed to by the Purchaser and Seller shall be incorporated in the supplemental agreement and/or purchase order.

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

State of Mississippi, Department of Information Technology Services, on behalf of the governmental agencies, educational institutions, and governing authorities of the State of Mississippi

VENDOR

By: _____
Authorized Signature

By: _____
Authorized Signature

Printed Name: Craig P. Orgeron, Ph.D.

Printed Name: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____