PROJECT NUMBER 49741
EXPRESS PROCUREMENT OPTION PURCHASE AGREEMENT
CYBERSECURITY EPO RFP NUMBER 5026
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 at 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 and/or provider of certain cybersecurity information technology equipment, software, and/or professional and managed services; 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 cybersecurity information technology equipment and software ("Products") and/or professional and managed services from Seller that were listed in the published EPO as a result of Request for Proposals ("RFP") Number 5026;

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. Any supplemental agreement or purchase order made under this EPO Agreement between a Purchaser and the Seller may be modified only by written amendment signed by the Seller and the applicable Purchaser, and any attempt at oral modification shall be void and of no effect. The Seller and the applicable Purchaser agree to renegotiate the pertinent supplemental agreement, if applicable, if federal and/or state revisions of any applicable laws or regulations make changes to the pertinent supplemental agreement 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.

ARTICLE 4 ADDITIONAL TERMS AND CONDITIONS
All provisions in this EPO Agreement are in addition to the requirements of RFP No. 5026 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 Agreement. 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. No retroactive price adjustments shall be allowed.

5.4 Seller shall not begin work, ship Products, or provide services without a valid supplement and/or purchase order executed by Purchaser. The ITS project number for this EPO Agreement and the applicable purchase order number shall be clearly shown on all acknowledgments, packing slips, invoices, and correspondence relating to an order.

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 equipment and software ("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 Purchaser's acceptance of the Products as prescribed in this Article 7, except as to latent defects, fraud, and Seller's warranty obligations.

7.3 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.

7.4 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.

7.5 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.

7.6 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. 5026 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.

7.7 In the event the Product fails to perform as stated in Article 7.6 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.

7.8 Upon receipt of a corrected or replaced Product, Purchaser shall have another acceptance period as set forth in Article 7.6 herein, in which to reevaluate/retest such Product.

7.9 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.

7.10 If applicable, the State shall have ownership, right, title, and interest in all goods (hardware and software) provided by Seller under the Purchaser's acceptance of the Products as prescribed in this Article 7, except as to latent defects, fraud, and Seller's warranty obligations. including full rights to use the goods and transfer title in the goods to any third parties.

ARTICLE 8 PROFESSIONAL AND MANAGED SERVICES

8.1 Unless otherwise agreed by Purchaser, each supplement and/or purchase order for professional and/or managed services shall include, or incorporate by reference, a statement of work developed by Purchaser in collaboration with Seller ("Statement of Work").

8.2 If services are to be performed on-site, travel expenses shall be reimbursed only if expressly set forth in the applicable supplement and/or purchase order and only in accordance with Purchaser's travel policy and applicable Mississippi law. Otherwise, all travel expenses shall be deemed included in Seller's pricing.

8.3 For incident responses services, unless specified otherwise by the purchaser in the applicable supplement and/or purchase order, the following additional requirements apply:

8.3.4 Contractor shall maintain a dedicated, monitored incident response email address and toll-free telephone number available twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year (24x7x365), for reporting cybersecurity incidents and requesting assistance.

8.3.5 Contractor shall provide initial acknowledgment of Purchaser's incident notification and establish contact with Purchaser's designated representative within the following maximum response times:

- **Priority 1 – Critical:** Thirty (30) minutes.
- **Priority 2 – High:** One (1) hour.
- **Priority 3 – Normal:** Four (4) hours.

8.3.6 Contractor shall make qualified incident response personnel available to remotely engage with Purchaser and begin incident response activities within the following maximum response times:

- **Priority 1 – Critical:** One (1) hour.
- **Priority 2 – High:** Four (4) hours.
- **Priority 3 – Normal:** One (1) business day.

8.3.7 When Purchaser determines that on-site incident response assistance is required, Contractor shall provide qualified incident response personnel at Purchaser's designated location within the following maximum response times:

- **Priority 1 – Critical:** Twenty-four (24) hours.
- **Priority 2 – High:** Forty-eight (48) hours.
- **Priority 3 – Normal:** As mutually agreed.

8.3.8 Purchaser shall determine incident priority and may elevate or modify the priority based on incident conditions, operational impact, or emerging threats. Priority 1 incidents include active ransomware, widespread compromise, significant disruption of critical services, or other incidents presenting an immediate and significant threat to state operations. Priority 2 incidents involve confirmed or reasonably suspected compromises requiring urgent investigation or response. Priority 3 incidents involve events requiring investigation or assistance that do not present an immediate or significant operational threat.

8.3.9 Response times shall be measured in elapsed hours from receipt of Purchaser's incident notification through an authorized incident reporting channel, shall apply 24x7x365, and shall not be limited to normal business hours unless expressly specified. Initial acknowledgment shall require communication with Purchaser's designated representative by a Contractor representative and shall not be satisfied by automated notification. Remote engagement shall require qualified incident response personnel to actively begin incident response activities. Contractor shall initiate remote response activities without delay while on-site personnel are being mobilized.

8.4 For managed services and any ongoing support or subscription services, Seller may provide Purchaser with a service level agreement that meets, at a minimum, generally accepted industry standards for the applicable services, including defined availability, response, and resolution times and the remedies, such as service credits, available to Purchaser for failure to meet such service levels. Service level agreements negotiated and/or agreed to by Purchaser and Seller shall be incorporated into the applicable supplement and/or purchase order and shall not contain terms that are inconsistent with this EPO Agreement.

ARTICLE 9 WARRANTIES

9.1 Despite any clause to the contrary, the Seller represents and warrants that its services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of this EPO Agreement. For any breach of this warranty, the Seller shall, for a period of ninety (90) days from performance of the service, perform the services again, at no cost to Purchaser, or if Seller is unable to perform the services as warranted, Seller shall reimburse Purchaser all fees paid to Seller for the unsatisfactory services. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

9.2 Unless a longer warranty period is specified in the published EPO or the applicable supplement and/or purchase order, Seller represents and warrants for a period of one (1) year from the date of Purchaser's acceptance that: (a) the Product performs according to all specific claims that Seller made in its Proposal in response to RFP No. 5026; (b) the Product is suitable for the ordinary purposes for which such Product is used; (c) the Product is suitable for any special purposes identified in RFP No. 5026, the published EPO, or the applicable supplement and/or purchase order, or for which Purchaser has relied on Seller's skill or judgment; (d) the Product is designed and manufactured in a commercially reasonable manner; (e) the Product is new and not used, refurbished, or reconditioned, unless otherwise specified in the applicable supplement and/or purchase order; and (f) the Product is free of defects. The warranty period shall begin upon Purchaser's acceptance of the Product as prescribed in Article 7 herein.

9.3 Upon breach of the warranty set forth in subsection 9.2 herein, Seller shall repair or replace, at no charge to Purchaser, the Product whose nonconformance is discovered and made known to Seller. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, Seller shall refund the full amount of any payments that have been made for such Product, and Purchaser may terminate the applicable supplement and/or purchase order as to such Product without the assessment of any penalties.

9.4 Seller represents and warrants that it is an authorized reseller, partner, or provider of the manufacturer or publisher of each Product it provides under this EPO Agreement, and that it has obtained and will pass through to Purchaser any and all warranties, support entitlements, and security updates obtained or available from such manufacturer or publisher.

9.5 Seller represents and warrants that the Products, and any updates, patches, or upgrades provided by Seller, do not contain any virus, malware, ransomware, trojan horse, worm, backdoor, time bomb, disabling code, lockup program or device, or other malicious or undisclosed code designed to permit unauthorized access to, or to disable, erase, or otherwise harm, Purchaser's systems or Data ("Malicious Code"), and that Seller will not, under any circumstances, take any step that would interfere with Purchaser's use of the Products or restrict Purchaser from accessing its Data. For any breach of this warranty, Seller shall, at its expense and within five (5) working days after receipt of notification of the breach, deliver Products to Purchaser that are free of such Malicious Code, and shall be responsible for repairing, at Seller's expense, any and all damage to Purchaser's systems and Data caused by such Malicious Code. This subsection shall not prohibit license keys or subscription controls that are disclosed in writing to Purchaser in the applicable supplement and/or purchase order.

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 software license fees, or subscription or service 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 AUTHORITY ASSIGNMENT AND SUBCONTRACTS

11.1 In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that Seller represents all contractors, third parties, and/or subcontractors Seller has assembled for this Contract. The Purchaser is required to negotiate only with Seller, as Seller's commitments are binding on all proposed contractors, third parties, and subcontractors. To reiterate for the purposes of this EPO Agreement, the term "subcontractor" means any organization, whether designated as a subcontractor, fulfillment partner, reseller, etc., that will assist a Seller to provide Products and/or services under this EPO Agreement.

11.2 Professional services do not require pre-approval from the State, which may be performed using subcontractors or software publisher resources. Notwithstanding the foregoing, Seller shall remain responsible for compliance with all terms and conditions of this EPO Agreement. Professional Services include but are not limited to consulting, extended warranty service by manufacturers, or other services as described generally in this EPO Agreement as more particularly described in a supplement or purchase order performed by the Seller or its subcontractor or sold by the Seller as a distributor or sales agent or its subcontractors.

11.3 Neither party may assign 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 EPO Agreement shall be binding upon the parties' respective successors and assigns.

11.4 Seller must obtain the written approval of Purchaser before subcontracting any portion of this EPO Agreement. No such approval by Purchaser of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of Purchaser in addition to the price set forth in the applicable supplement and/or purchase order. All subcontracts shall incorporate the terms of this Participating Addendum and shall be subject to the terms and conditions of this EPO Agreement and to any conditions of approval that Purchaser may deem necessary.

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

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

11.7 Seller shall, during the entire term of this EPO Agreement, be construed to be an independent contractor. Nothing in this Contract is intended to nor shall it be construed to create an employer-employee relationship or a joint venture relationship between the Parties or to allow Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.

ARTICLE 12 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 13 TERMINATION

13.1 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.

13.2 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.

13.3 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.

13.4 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. Notwithstanding the foregoing, Purchaser shall not be required to provide advance written notice or a cure period and may immediately terminate a supplement and/or purchase order, in whole or in part, if Purchaser, in its sole discretion, determines that such action is reasonably necessary to preserve public safety, prevent an immediate public crisis, or protect the security of Purchaser's systems or Data.

13.5 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.

13.6 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.

13.7 Eligibility for Partial Refund: If Purchaser has prepaid for equipment or services under a supplement and/or purchase order for the term and decides to discontinue use of the associated equipment or services prior to the full term of the supplement and/or purchase order, Purchaser shall be entitled to 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. Purchaser must notify Seller in writing of the discontinuation, which must include the services or other identifying information. Notification should occur within thirty (30) days of the decision to discontinue use. If a Purchaser 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 Purchaser has notified Seller of discontinuation and a refund calculation has been made, the refund will be processed within thirty (30) days. Refunds will be issued via the same payment method used for the initial transaction unless otherwise agreed to in writing.

13.8 Any termination of any supplement and/or purchase order under this EPO Agreement shall not be construed as termination of this EPO Agreement.

13.9 The termination provisions provided herein are in addition to any other articles addressing termination in this EPO Agreement (e.g. Article re: Availability of Funds, etc.).

ARTICLE 14 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 15 STRICT PERFORMANCE
Failure by any Party to this EPO Agreement to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this EPO Agreement shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this EPO Agreement shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.

ARTICLE 16 SEVERABILITY
If any terms and conditions of this EPO Agreement are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this EPO Agreement shall not be affected and shall remain in full force and effect. The terms and conditions of this EPO Agreement are severable.

ARTICLE 17 HEADINGS
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 18 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 19 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 20 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 21 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 provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their usual business address. Notice shall be deemed given when received or when refused. The Seller and ITS agree to promptly notify each other in writing of any change of address.

ARTICLE 22 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 23 INSURANCE

If applicable, 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 24 COMPLIANCE WITH LAWS

24.1 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.

24.2 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.

24.3 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"), and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this EPO Agreement.

24.4 Seller shall not provide or propose to provide any prohibited technology as defined under the National Security on State Devices and Networks Act, Miss. Code Ann. § 25-53-193.

ARTICLE 25 CONFLICT OF INTEREST

Seller represents and warrants that no official or employee of the State of Mississippi, of ITS, or any 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 this EPO Agreement. The Seller warrants that it has removed any material conflict of interest prior to the signing of this EPO Agreement, and that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its responsibilities under this EPO Agreement. The Seller also warrants that in the performance of the EPO Agreement no person having any such known interests shall be employed. Further, 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 the 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 the EPO Agreement, or any supplement or purchase order issued under the 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 the 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 26 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 27 CONFIDENTIAL INFORMATION

27.1 Strict standards of confidentiality of records and information shall be maintained by Seller in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Seller by the State or acquired by the Seller on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "non-public data" or "Confidential Information." Nothing in this Section shall permit Seller to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Seller due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Seller shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law. Seller shall treat all Purchaser data and information to which it has access by its performance under 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 this EPO Agreement, shall continue in full force and effect, and shall be binding upon the Seller and its agents, employees, successors, assigns, subcontractors, or any party or entity claiming an interest in this EPO Agreement on behalf of or under the rights of the Seller following any termination or completion of this EPO Agreement.

27.2 The Seller understands and agrees that pursuant to §25-61-9(7) of the Mississippi Code of 1972, as amended, the contract provisions specifying the commodities purchased or the services provided; the price to be paid; and the term of this EPO Agreement, and any supplemental agreement or purchase order, shall not be deemed confidential information.

ARTICLE 28 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 29 SURVIVAL

All 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 30 ENTIRE AGREEMENT

30.1 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. 5026, 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. 5026, and
G. Supplemental agreements/orders, or additional contract terms between Purchaser and Seller, if required.

30.2 The intent of the above listed documents (hereinafter collectively referred to as the "Agreement") is to include all items necessary for the identification of all obligations of the parties under this EPO Agreement. 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. EPO Agreement") and the lowest document is listed last ("G. Supplemental agreements/orders"). However, despite the any provision to the contrary, in the event of a conflict between the documents comprising the Agreement and any federal or state laws, regulations, specially required funding terms and conditions by a Purchaser, including any required business associate agreement, the applicable federal or state laws, regulations, specially required funding terms and conditions by a Purchaser, including any required business associate agreement, shall control over the terms comprising the Agreement. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this EPO Agreement shall contain any terms or conditions other than as set forth in this Agreement, as listed in this Entire Agreement clause. Any such extraneous terms and conditions shall be void, invalid, and unenforceable against the State, including, but not limited to any, terms and conditions provided as a link, embedded link, "click-wrap", or "browse-wrap". Any refusal by Seller to supply any goods or services under this Agreement conditioned upon the Purchaser and/or the Purchaser submitting to any extraneous terms and conditions shall be a material breach of the contract and constitute an act of bad faith by Seller. Any order placed by a Purchaser for a product and/or service available from this Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the EPO Agreement.

ARTICLE 31 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 32 COMPLIANCE WITH ENTERPRISE SECURITY POLICY

As applicable, Seller and Purchaser understand and agree that all products and/or services provided by the Seller under this EPO 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 expressly incorporated herein by reference. The State reserves the right to update existing policies and/or introduce a new policy during the term of this EPO Agreement. The Parties agree to work in faith to resolve any compliance gaps identified with any new or revised policies applicable after the execution of this EPO Agreement. If, at any time during the term of the EPO Agreement, the products and/or services provided under this EPO Agreement do not allow the 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 EPO 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 33 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 34 EPO ADMINISTRATIVE FEES

Seller shall pay to ITS an administrative fee of one percent (1%) on the purchase price for all net sales to the State ("Administrative Fee"). The Administrative Fee must be rolled into Seller's current pricing and not be shown as a separate line item on any invoice. ITS will invoice Seller quarterly based on Seller's sales to the State reported by Seller per Article 35 herein and Seller shall remit payment within thirty (30) days. Seller's failure to accurately and timely report total net sales, to submit usage reports, or remit payment of the Administrative Fee may be cause for suspension or termination of the EPO Agreement or the exercise of any other remedies as provided by law.

ARTICLE 35 MANDATORY REPORTS.

Seller agrees to provide detailed quarterly utilization reports reflecting net sales to the State during the term of the EPO Agreement. The reports will show the quantities and dollar volume of purchases by Purchaser(s). Seller shall submit to ITS the following quarterly reports:

Reports shall contain at a minimum the following information:

i Department/Agency Name
ii Customer type (State Agency, Local Government, Education K-12, Public University, etc.)
iii Date Service Begins
iv Product/Service Description
v Utilization
vi Unit of Measure
vii MSRP List Price
viii Discount Applied

ix Quantity
x Total Price

Report modifications: Seller agrees that ITS reserves the right to modify the format and information in the quarterly reports by providing Seller thirty (30) calendar days written notice.

Reports should be submitted electronically to Epl.Team@its.ms.gov no later than fifteen (15) calendar days following the end of each calendar quarter. If Seller has no reportable sales for a quarter, Seller shall submit a zero-sales report.

ARTICLE 36 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 37 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. The parties understand and agree that ITS as contracting agent is not responsible or liable for the performance or non-performance of any of Purchaser's or Seller's contractual obligations, financial or otherwise, contained within this Agreement. The parties further acknowledge that ITS is not responsible for ensuring compliance with any guidelines, conditions, or requirements mandated by Purchaser's funding source. Notwithstanding the above, the parties understand and agree that where ITS itself acts as a Purchaser it is responsible for its actions or inactions under this Agreement. Seller acknowledges that the individual executing the contract on behalf of ITS is doing so only in his/her official capacity, and to the extent that any provision contained in the contract exceeds his/her authority, Seller agrees that it will not look to that individual in his/her personal capacity or otherwise seek to hold him/her individually liable for exceeding such authority.

ARTICLE 38 FEDERAL TERMS AND CONDITIONS

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.

ARTICLE 39 RELEASE OF INFORMATION AND PUBLICITY

Seller shall not, without the prior written approval of ITS and the applicable Purchaser, release any information, publicity, advertising, case study, or public statement pertaining to this EPO Agreement, any supplement and/or purchase order, or the potential work or activities covered

hereunder, including any information regarding Purchaser's systems, vulnerabilities, or Security Incidents. Seller shall not make any representations of ITS's, Purchaser's, or the State's opinion or position as to the quality or effectiveness of the Products or services provided under this EPO Agreement without prior written consent. This Article does not preclude Seller from disclosing the existence of this EPO Agreement as a matter of public record.

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:** _____