

**PROJECT NUMBER 47957
EXPRESS PRODUCTS LIST PURCHASE AGREEMENT
PUBLIC SAFETY VIDEO & COMMUNICATION EPL
RFP NUMBER 4599
BETWEEN
VENDOR NAME
AND
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES
AS CONTRACTING AGENT FOR THE
AGENCIES, INSTITUTIONS, AND GOVERNING AUTHORITIES
OF THE STATE OF MISSISSIPPI**

This Express Products List Purchase Agreement (hereinafter referred to as "EPL Agreement") is entered into by and between VENDOR NAME, a STATE OF INCORPORATION corporation 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 Products List (hereinafter referred to as "EPL") (hereinafter referred to as "Purchaser"). ITS and Purchaser are sometimes collectively referred to herein as "State".

WHEREAS, ITS published Express Products List Request for Proposals Number 4599 (hereinafter referred to as the "RFP") to establish a vendor pool for the acquisition of various categories of public safety video & communication (hereinafter referred to as "PSVC") equipment, software, and related support services for use by governmental agencies, educational institutions, and governing authorities of the State of Mississippi;

WHEREAS, Seller is an authorized dealer and provider of certain information technology products, specifically, public safety video & communication equipment, software, and related support services;

WHEREAS, Seller submitted a response to be listed on the qualified vendor pool for the RFP; and

WHEREAS, ITS desires to execute an EPL Agreement with Seller containing the terms and conditions which will govern any orders placed by the Purchaser during the term of this EPL Agreement for information technology hardware/equipment and software (including any enhancements) (hereinafter referred to collectively as "Product" or "Products") and installation and related support services ("Services") from Seller that were listed in the published EPL as a result of the RFP .

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 EPL Agreement will become effective on the date it is signed by all parties (the "Effective Date") and will continue in effect until this EPL

Agreement is terminated, or until all warranties provided by Seller to Purchaser have expired, whichever occurs last.

ARTICLE 2 MODIFICATION OR RENEGOTIATION

This EPL Agreement may be modified only by written agreement signed by Seller and ITS, and any attempt at oral modification shall be void and of no effect. The Seller and ITS agree to renegotiate the EPL Agreement if federal and/or state revisions of any applicable laws or regulations make changes in this EPL Agreement necessary. Any supplemental agreement to this EPL Agreement between Purchaser and 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 EPL Agreement to any governmental agency, governing authority or educational institution of the State of Mississippi that is authorized to use the published EPL, in line with ITS policies and procedures, including, but not limited to, ITS's published Instructions for Use.

ARTICLE 4 ADDITIONAL TERMS AND CONDITIONS

All provisions in this EPL Agreement are in addition to the requirements of RFP No. 4599 and the published EPL, which are both incorporated into and made a part of this EPL Agreement.

ARTICLE 5 ORDERS

5.1 Orders under this EPL Agreement must be made in accordance with ITS's published Instructions for Use, the RFP, the published EPL, and this EPL Agreement.

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

5.3 When a Purchaser decides to procure any Products and/or Services from Seller, the Purchaser shall either execute a supplemental agreement, containing any additional terms for the order, as necessary, to be signed by an authorized representative of the Seller and an authorized representative of the Purchaser and/ or issue a purchase order. The supplemental agreement and/or the purchase order shall set forth the Products and/or 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 procurements and supplemental agreements and/or purchase orders made pursuant to this EPL Agreement and the RFP shall be governed by, and must incorporate by reference, the terms and conditions of the RFP, the published EPL, and this EPL agreement. The terms and conditions of this EPL Agreement shall supersede any conflicting terms and conditions set forth in any document provided by Seller or its subcontractors and supplemental agreements and/or purchase orders between the Seller and Purchaser. Any additional terms and conditions provided in a supplemental agreement and/or purchase order shall only apply as between the Seller and the applicable Purchaser. 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.

5.4 Seller guarantees pricing for the term of this EPL. 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 Once the Products have been accepted by Purchaser as prescribed in Article 7 herein, 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 EPL 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", Sections 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 Acceptance by the Seller of the last payment from the Purchaser under a supplemental agreement and/or 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 supplemental agreement and/or 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. 4599.

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.

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 supplemental agreement and/or 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. 4599 and the published EPL.

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 supplemental agreement and/or purchase order, Seller shall, within four (4) working days, correct the defects identified by Purchaser or replace the defective Product. In the event Seller is unable to correct the defect or replace the defective Product, Purchaser reserves the right to return the Product to Seller at the Seller's expense; to cancel/terminate the supplemental agreement and/or purchase order.

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 Upon receipt of a corrected or replaced Product, if 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 supplemental agreement and/or purchase order. Purchaser may also pursue any remedy available to it in law or in equity.

ARTICLE 8 TITLE TO HARDWARE/EQUIPMENT AND SOFTWARE

Title to the hardware/equipment provided under this EPL Agreement shall pass to Purchaser upon its acceptance of the hardware/equipment. Title to the software provided under this EPL Agreement shall at all times remain with the applicable software manufacturer.

ARTICLE 9 SOFTWARE

For all software provided by Seller under the EPL Agreement and supplement/purchase order, Seller hereby grants to Purchaser a non-exclusive, non-transferable, and perpetual license to use the software for Purchaser's business operations subject to the terms of this EPL Agreement and the pertinent supplement/purchase order.

ARTICLE 10 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.

ARTICLE 11 WARRANTIES

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

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

11.3 Seller represents and warrants that unless otherwise specified in RFP No. 4599 and/or the published EPL, each Product delivered shall be delivered new and not as a “used, substituted, rebuilt, refurbished or reinstalled” Product.

11.4 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.

11.5 Unless a longer warranty period is specified in the RFP, the supplemental agreement and/or purchase order, or the published EPL, Seller represents and warrants that all hardware/equipment provided pursuant to this EPL 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/equipment, or the redoing of the faulty installation, at no cost to Purchaser. In the event Seller cannot repair or replace the hardware/equipment 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/equipment and refund any fees paid for services that directly relate to the defective hardware/equipment, and Purchaser shall have the right to cancel/terminate the supplemental agreement and/or purchase order. Purchaser’s rights hereunder are in addition to any other rights Purchaser may have.

11.6 Seller represents and warrants that all Products and Services provided by Seller shall meet or exceed the minimum specifications set forth in RFP No. 4599 and the published EPL.

11.7 Unless a longer warranty period is specified in the purchase order, Seller represents and warrants that all software provided pursuant to this EPL Agreement shall be free from material defects and provide Purchaser complete functionality necessary for the operation of the system for a period of ninety (90) days after acceptance. Seller’s obligations pursuant to this warranty shall include, but are not limited to, the repair of all defects or the replacement of the software at the expense of Seller. In the event Seller is unable to repair or replace the software within ten (10) working days after receipt of notice of the defect, Purchaser shall be entitled to a full refund of the fees paid and shall have the right to cancel/terminate the supplemental agreement and/or purchase order. Purchaser’s rights hereunder are in addition to any other rights Purchaser may have.

11.8 Unless a different warranty period is specified in the published EPL, Seller represents and warrants, for a period of ninety (90) days from performance of Services, 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.

11.9 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.

11.10 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.

11.11 Seller represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, *et seq.* of the Mississippi Code Annotated (Supp2008) and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Seller agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security where required, to provide a copy of each such verification to the State. Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Seller understands and agrees that any breach of these warranties may subject Seller to the following: (a) termination/cancellation of the supplemental agreement and/or purchase order and this EPL Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Seller by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Seller would also be liable for any additional costs incurred by the State due to the supplement/purchase order(s) and this EPL Agreement's cancellation/termination or loss of license or permit.

11.12 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.

11.13 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 EPL Agreement. No individual employed by the State of Mississippi shall be admitted to any share or part of the EPL 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 EPL 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 EPL 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 EPL 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 12 INFRINGEMENT INDEMNIFICATION

12.1 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 EPL Agreement and shall pay all settlements, as well as all costs, legal fees, damages and judgment finally awarded against Purchaser.

12.2 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.

12.3 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 Products with other items not provided by Seller; (ii) infringement resulting from material modification of the Products 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 Products 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 13 EMPLOYMENT STATUS

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

13.2 Seller represents that it is qualified to perform the duties to be performed under this EPL 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 EPL 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 14 ASSIGNMENT AND SUBCONTRACTS

Neither ITS nor Seller may assign, subcontract, or otherwise transfer this EPL Agreement or its obligations hereunder without the prior written consent of the other party via written amendment to this EPL Agreement. Further, neither Seller nor Purchaser may assign, subcontract, or otherwise transfer a supplemental agreement and/or purchase order or its obligations thereunder without the prior written consent of the other party via written amendment to supplemental agreement and/or purchase order. 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 15 AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of Purchaser to proceed under this EPL 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 EPL 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 EPL 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 EPL Agreement, Purchaser shall have the right to immediately terminate this EPL 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 EPL Agreement.

ARTICLE 16 TERMINATION

16.1 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.

16.2 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 without the assessment of any penalties.

16.3 Termination Other Than For Cause: A Purchaser may terminate a supplement and/or purchase order, 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.

16.4 Termination For Cause: Either Purchaser or Seller may terminate a supplement and/or purchase order 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.

16.5 Termination of EPL Agreement: ITS may terminate this EPL 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 EPL Agreement shall survive the termination of the EPL Agreement. The terms of this EPL Agreement shall survive its termination/expiration with respect to any un-expired supplements and/or purchase orders.

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

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

16.8 The termination provisions provided herein are in addition to any other articles addressing termination in this EPL Agreement (e.g. Article 15, Availability of Funds, etc.).

ARTICLE 17 GOVERNING LAW

This EPL Agreement and each supplemental agreement and/or 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 attorney's fee, prejudgment interest or the cost of legal action to Seller. Further, nothing in this EPL Agreement shall affect any statutory rights Seller and Purchaser may have that cannot be waived or limited by contract. Further, nothing in this EPL Agreement or any supplemental agreement and/or order shall be construed as the State's agreement to provisions that are prohibited under or not in conformance with the laws and Constitution of Mississippi, including, but not limited to, Article 4, Section 100 of the Mississippi Constitution, and any such provisions shall be null and void.

ARTICLE 18 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 EPL 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 19 SEVERABILITY

If any term or provision of a supplemental agreement and/or purchase order or this EPL 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 agreement and/or purchase order and this EPL Agreement shall be valid and enforceable to the fullest extent permitted by law provided that the State's purpose for entering into the supplement and/or purchase order and this EPL Agreement can be fully achieved by the remaining portions of the supplement and/or purchase order and EPL Agreement that have not been severed.

ARTICLE 20 CAPTIONS

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

ARTICLE 21 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 supplemental agreement and/or purchase order and this EPL 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 22 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 supplemental agreement and/or purchase order or this EPL Agreement and/or which may affect the Seller's performance under the supplemental agreement and/or purchase order or this EPL Agreement. Failure of the Seller to provide such written notice to ITS and Purchaser shall be considered a material breach of the supplemental agreement and/or purchase order and this EPL 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 23 AUTHORITY TO CONTRACT

Seller warrants that it is a validly organized business with valid authority to enter into this EPL Agreement; that entry into and performance under this EPL 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 EPL 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 supplemental agreement and/or purchase order and this EPL Agreement.

ARTICLE 24 NOTICE

Any notice required or permitted to be given under this EPL 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 actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

ARTICLE 25 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 EPL Agreement and the supplemental agreements and/or purchase orders. 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 EPL Agreement, supplemental agreements and/or purchase orders, and to any of Seller's proposals, books, documents, papers and/or records that are pertinent to the supplemental agreements and/or purchase orders and this EPL 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 EPL Agreement and the supplemental agreement and/or purchase order shall be retained by Seller for three (3) years from the date of receipt of final payment under this EPL Agreement and the supplemental agreement 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 26 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 27 COMPLIANCE WITH LAWS

27.1 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.

27.2 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").

27.3 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 EPL Agreement.

ARTICLE 28 FEDERAL TERMS AND CONDITIONS

The Seller understands and agrees that any supplemental agreement and/or purchase order made through this EPL 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.

28.1 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."

28.2 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.

28.3 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.

28.4 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.

28.5 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).

28.6 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 EPL Agreement or purchase order/supplement, to any party that is debarred in accordance with this provision.

28.7 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.

28.8 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.

28.9 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 EPL 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.

28.10 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.

28.11 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 29 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 EPL Agreement as to itself only.

ARTICLE 30 SOVEREIGN IMMUNITY

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

ARTICLE 31 CONFIDENTIAL INFORMATION

31.1 Seller shall treat all Purchaser data and information to which it has access by its performance under the supplemental agreement and/or purchase order and this EPL 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 supplemental agreement and/or purchase order or this EPL 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 supplemental agreement and/or purchase order or this EPL Agreement on behalf of, or under the rights of the Seller following any termination or completion of the supplement and/or purchase order or this EPL Agreement.

31.2 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.

31.3 The parties understand and agree that this EPL Agreement, subject to the Mississippi Public Records Act, Miss. Code Ann. Section 25-61-1 *et seq.*, does not constitute confidential information, and will be reproduced and distributed by the State without notification to Seller.

ARTICLE 32 EFFECT OF SIGNATURE

Each person signing a supplement and/or purchase order or this EPL Agreement represents that he or she has read the supplement and/or purchase order and this EPL Agreement in its entirety, understands its terms, is duly authorized to execute the supplement and/or purchase order or this EPL 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 EPL 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 33 SERVICES

When ordered by Purchaser, Seller agrees to provide support services pursuant to the requirements set forth in RFP No. 4599 and the published EPL.

ARTICLE 34 SURVIVAL

Articles 9, 10, 11, 12, 17, 21, 25, 28, 30, 31, 36, 40, 41, 42, 45 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 EPL Agreement.

ARTICLE 35 DEBARMENT AND SUSPENSION CERTIFICATION

Seller certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal

department or agency; (b) have, within a three (3) year period preceding this EPL 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 EPL Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

ARTICLE 36 ENTIRE AGREEMENT

36.1 This EPL Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes any and all prior 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.

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

- A.** This EPL Agreement signed by Seller and ITS, and all attachments, as may be amended by ITS and Seller;
- B.** The published EPL;
- C.** RFP No. 4599, 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. 4599, and
- G.** The effective supplemental agreement and/or purchase order between Purchaser and Seller if required (incorporated and applicable as between Seller and applicable Purchaser only).

The documents listed in B through G are all hereby expressly incorporated into and made a part of this EPL Agreement by reference.

36.3 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 EPL Agreement signed by Seller and ITS, and all attachments, as may be amended by ITS and Seller”) and the lowest document is listed last (“G. The effective supplement/purchase order between Purchaser and Seller if required”).

ARTICLE 37 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 EPL Agreement and any subsequent amendments and change orders shall be posted to the State of Mississippi's accountability website at: <https://www.transparency.gov>. Prior to ITS posting the EPL Agreement and any subsequent amendments and change orders to the website, any attached exhibits which contain trade secrets or other proprietary information and are labeled as "confidential" will be redacted by ITS. Notwithstanding the preceding, however, it is understood and agreed 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 EPL Agreement shall not be deemed a trade secret or confidential commercial or financial information and shall thus not be redacted.

ARTICLE 38 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 39 EPL ADMINISTRATIVE FEES

Within fifteen (15) calendar days following the completion of each quarter, Seller shall submit its Marketing/Sales Report identifying all Express Products Lists ("EPL") sales to ITS. Upon receipt of same, ITS will review the Marketing/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 EPL 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 Marketing/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 will be immediately suspended from participation in the EPL until such time as the Marketing/Sales Report is received by ITS and all outstanding administrative fees have been paid in full.

ARTICLE 40 LIMITATION OF LIABILITY

Seller's liability shall not exceed the greater of either: 1) One Million Dollars (\$1,000,000.00) or 2) five times (5x) the total purchase price of the applicable supplement/purchase order made pursuant to this Agreement. In no event will Seller be liable to State 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, Seller's negligence, and any claims for harm caused intentionally or recklessly by Seller. The language contained herein tending to limit the liability of the Licensor will apply to Licensee to the extent it is permitted and not prohibited by the laws or constitution of Mississippi, including, but not limited to, the Mississippi Tort Claims Act, codified at Miss. Code Ann. Section 11-46-1, and the Mississippi Constitution Article 4, Section 100. The Parties understand and agree that this or any provision intending to limit the liability of the vendor to the State is only authorized to the extent such limitation of liability provides reasonable protection to the State of Mississippi in accordance with Miss. Code Ann. 25-53-21(e). Any other provision tending to limit the liability of the vendor to the State of Mississippi shall be null and void.

ARTICLE 41 COMPLIANCE WITH ENTERPRISE SECURITY POLICY AND MISS. CODE ANN. 25-53-201

41.1 Seller and Purchaser understand and agree that all Products and Services provided by Seller under this EPL Agreement must be and remain in compliance with the State of Mississippi's Enterprise Security Policy. The parties understand and agree that the State's Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines at the time of contract execution. The State reserves the right to introduce a new policy during the term of this EPL Agreement and require the Seller to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

41.2 To ensure compliance with the State of Mississippi Enterprise Security Program and Miss. Code Ann. § 25-53-201, Seller shall notify ITS and applicable Purchaser(s) no later than the close of the next business day following the discovery of any cybersecurity incidents classified as low, medium, or high involving Purchaser information and/or information systems whether managed by the Purchaser, Seller, or other source on behalf of Seller. Further, the Seller agrees to reasonably cooperate with the State and Purchaser in providing all necessary information related to the cybersecurity incident, which includes, but is not limited to, investigating, at its own cost, the source of the attack and providing the State with a briefing of the details of the occurrence, all steps taken to mitigate damage or breach from the occurrence, if any, and estimates of suspected and/or known damage and/or breach. "Cybersecurity incident" and incident classifications (low, medium, and/or high) that require reporting shall have the same meanings as provided in the ["Enterprise Cybersecurity Incident Reporting Guidelines"](#) which can be found on the ITS website.

ARTICLE 42 COMPLIANCE WITH ENTERPRISE CLOUD AND OFFSITE HOSTING SECURITY

If applicable, Seller and Purchaser understand and agree that all Products and Services provided by the Seller under this Agreement must be and remain in compliance with the State of Mississippi's Enterprise Cloud and Offsite Hosting Security Policy. The parties understand and agree that the State's Enterprise Cloud and Offsite Hosting Security Policy is based on industry-standard best practices, policy, and guidelines at the time of contract execution and augments the Enterprise Security Policy. The State reserves the right to introduce a new policy during the term of this Agreement and require the Seller to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

42.1 Data Owned by the State of Mississippi. The Seller shall comply with the following terms and conditions provided below that are applicable for the State's data regardless of the data's public or non-public categorization unless otherwise specified in the below terms and conditions. Any additional applicable terms and conditions shall be specified in the supplemental agreement and/or purchase order between the Seller and Purchaser(s).

42.1.1 Data Ownership. The State shall own all right, title and interest in all data used by, resulting from, and collected using the services provided. The Seller shall not access State User accounts, or State data, except (i) in the course of data center operation related to this solution, (ii) response to service or technical issues, (iii) as required by the express terms of this service, or (iv) at the State 's written request.

42.1.2 Data Protection. Protection of personal privacy and sensitive data shall be an integral part of the business activities of the Seller to ensure that there is no inappropriate or unauthorized use of the State's information at any time. To this end, the Seller shall safeguard the confidentiality, integrity, and availability of the State's information and comply with the following conditions: (a) At no time shall any data or processes which either belong to or are intended for the use of the State, including its officers, agents, or employees, be copied, disclosed, or retained by the Seller or any party related to the Seller for subsequent use in any transaction that does not include the State. (b) All information obtained by the Seller under this EPL Agreement shall become and remain property of the State.

42.1.3 Data Location. The Seller shall not store or transfer State data outside of the United States. This includes backup data and Disaster Recovery locations. The Seller will permit its personnel and Sellers to access State data remotely only as required to provide technical support.

42.1.4 Notification of Legal Requests. The Seller shall contact the State upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to the data of the State. The Seller shall not respond to subpoenas, service of process, or other legal requests related to the State without first notifying the State unless prohibited by law from providing such notice.

42.1.5 Termination, Suspension, or Expiration of Service: In the event of termination or expiration of the EPL Agreement or any supplemental agreement and/or change order, the Seller shall implement an orderly return of State data in CSV or XML or another mutually agreeable format. The Seller shall guarantee the subsequent secure disposal of State data.

- a) **Suspension of services.** During any period of suspension of this Agreement, for whatever reason, the Seller shall not take any action to intentionally erase any State data.
- b) **Termination or expiration of any services or agreement in entirety.** In the event of termination or expiration of any services or agreement in entirety, the Seller shall maintain the existing level of security as stipulated in the Agreement and shall not take any action to intentionally erase any State data for a period of 90 days after the effective date of the termination. After such 90 day period, the Seller shall have no obligation to maintain or provide any State data and shall thereafter, unless legally prohibited, dispose of all State data in its systems or otherwise in its possession or under its control as specified in

subsection (d) below. Within this 90-day timeframe, Seller will continue to secure and back up State data covered under the contract.

- c) **Post-Termination Assistance.** The State shall be entitled to any post-termination assistance generally made available with respect to the Services unless a unique data retrieval arrangement has been established as part of the Service Level Agreement.
- d) **Secure Data Disposal.** When requested by the State, the Seller shall destroy all requested non-public data in all of its forms, for example: disk, CD/DVD, backup tape, and paper. Data shall be permanently deleted and shall not be recoverable according to National Institute of Standards and Technology (NIST) approved methods. Certificates of destruction shall be provided to the State.

42.1.6 Background Checks. The Seller shall conduct criminal background checks and not utilize any staff, including sub-contractors, to fulfill the obligations of the contract who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or any misdemeanor offense for which incarceration of a minimum of one (1) year is an authorized penalty. The Seller shall promote and maintain an awareness of the importance of securing the State's information among the Contractor's employees and agents.

42.1.7 Security Logs and Reports. The Seller shall allow the State access to system security logs that affect this engagement, its data, and/or processes. This includes the ability to request a report of the activities that a specific user or administrator accessed over a specified period of time as well as the ability for a Purchaser to request reports of activities of a specific user associated with that Purchaser.

42.1.8 Contract Audit. The Seller shall allow the State to audit conformance including contract terms, system security and data centers as appropriate. The State may perform this audit or contract with a third party at its discretion at the State's expense.

42.1.9 Sub-contractor Disclosure. The Seller shall identify all of its strategic business partners related to services provided under this Agreement, including but not limited to, all subcontractors, affiliates, third party(ies), and other entities or individuals performing work on behalf of the Seller pursuant to this Agreement who will be involved in any application development, and/or operations and/or service(s).

42.1.10 Sub-contractor Compliance. Seller must ensure that all subcontractors, affiliates, third party(ies), and other entities or individuals, who are performing work on behalf of the Seller pursuant to this Agreement and to whom the Seller provides access, agrees to the same restrictions and conditions that apply through this Agreement.

42.1.11 Processes and Procedures. The Seller shall disclose its non-proprietary security processes and technical limitations to the State so that the State can determine if and how adequate protection and flexibility can be attained between the State and the Seller. For example: virus checking and port sniffing — the State and the Seller shall understand each other's roles and responsibilities.

42.1.12 Encryption:

- a) The Seller shall encrypt all non-public data in transit regardless of the transit mechanism.

b) For engagements where the Seller stores non-public data, the data shall be **encrypted at rest**. The key location and other key management details will be discussed and negotiated by both parties. Where encryption of data at rest is not possible, the Seller must describe existing security measures that provide a similar level of protection. Additionally, when the Seller cannot offer encryption at rest, it must maintain, for the duration of the contract, cyber security liability insurance coverage for any loss resulting from a data breach. The policy shall comply with the following requirements:

- The policy shall be issued by an insurance company acceptable to the State and valid for the entire term of the contract, inclusive of any term extension(s).
- The Seller and the State shall reach agreement on the level of liability insurance coverage required.
- The policy shall include, but not be limited to, coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, and liability assumed under an insured contract.
- At a minimum, the policy shall include third party coverage for credit monitoring, notification costs to data breach victims; and regulatory penalties and fines.
- The policy shall apply separately to each insured against whom claim is made or suit is brought.
- The policy shall include a provision requiring that the policy cannot be cancelled without thirty (30) days written notice.
- The Seller shall be responsible for any deductible or self-insured retention contained in the insurance policy.
- The coverage under the policy shall be primary and not in excess to any other insurance carried by the Seller.
- In the event the Seller fails to keep in effect at all times the insurance coverage required by this provision, the State may, in addition to any other remedies it may have, terminate the contract upon the occurrence of such event, subject to the provisions of the contract.

42.1.13 Breach Notification and Recovery. Unauthorized access or disclosure of non-public data is considered to be a security breach. The Seller will provide immediate notification and all communication shall be coordinated with the State and Purchaser. When the Seller or the parties listed in 47.2.10 sub- contractors are liable for the loss, the Seller shall bear all costs associated with the investigation, response and recovery from the breach including but not limited to credit monitoring services with a term of at least 3 years, mailing costs, website, and toll-free telephone call center services. The State and Purchaser shall not agree to any limitation on liability that relieves a Seller from its own negligence or to the extent that it creates an obligation on the part of the State or Purchaser to hold a Seller harmless.

42.1.14 Operational Metrics. The Seller and the State shall reach agreement on operational metrics and document said metrics in the Service Level Agreement. Examples include but are not limited to:

- a)** Advance notice and change control for major upgrades and system changes
- b)** System availability/uptime guarantee/agreed-upon maintenance downtime
- c)** Recovery Time Objective/Recovery Point Objective
- d)** Security Vulnerability Scanning

ARTICLE 43 STATE PROPERTY

Seller shall be responsible for the proper custody of any Purchaser-owned property furnished for Seller's use in connection with Services performed pursuant to the EPL Agreement. Seller shall reimburse the Purchaser for any loss or damage, normal wear and tear excepted.

ARTICLE 44 ARTIFICIAL INTELLIGENCE

Seller shall disclose to the State any Products and/or Services that utilize artificial intelligence ("AI") and shall not employ any Products and/or Services that utilize AI without written authorization of the State and applicable safeguards in providing the Products and/or Services under this Agreement.

ARTICLE 45 STATUTORY AUTHORITY

By virtue of Section 25-53-21 of the Mississippi Code Annotated, as amended, the executive director of ITS is the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of information technology equipment, software and services. The Seller and Purchaser understand and agree that ITS, as contracting agent, is not responsible or liable for the performance or non-performance of any of the Licensee's or Seller's contractual obligations, financial or otherwise, contained within this EPL Agreement. The Seller and Purchaser further acknowledge that ITS is not responsible for ensuring compliance with any guidelines, conditions, or requirements mandated by Purchaser's funding source. The forgoing provision does not apply when ITS is purchasing the Products for itself, as a Purchaser, under this EPL Agreement.

For the faithful performance of the terms of this EPL Agreement, the parties have caused this EPL 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 NAME

By: _____
Authorized Signature

By: _____
Authorized Signature

Printed Name: David C. Johnson

Printed Name: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____