PROJECT NUMBER 40731
EXPRESS PRODUCTS LIST PURCHASE AGREEMENT
IT HARDWARE EPL RFP NUMBER 3760
BETWEEN
OWENS BUSINESS MACHINES, INC.
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 Owens Business Machines, Inc., a Mississippi corporation having its principal place of business at 2108 Hardy Street, Hattiesburg, Mississippi 39401 (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, governing authorities, and educational institutions of the State of Mississippi authorized to use the Express Products List (EPL) (hereinafter referred to as "Purchaser"). ITS and Purchaser are sometimes collectively referred to herein as "State".

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

WHEREAS, ITS desires to acquire an EPL Agreement containing the terms and conditions which will govern any orders placed by the Purchaser during the term of this EPL Agreement for information technology equipment and software ("Products") and installation and services from Seller that were listed in the published EPL as a result of Request for Proposals ("RFP") Number 3760;

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 through the close of business on June 30, 2017, or until all warranties provided by Seller to Purchaser have expired, whichever occurs last. At the end of the initial term, the EPL Agreement may, upon the written agreement of ITS and Seller, be renewed for additional terms, the length of which will be agreed upon by the parties. Sixty (60) days prior to the expiration of the initial or any renewal term of this EPL Agreement, Seller shall notify ITS in writing of the impending expiration and thereafter ITS shall notify Seller of its intent to either renew or cancel the EPL Agreement.

ARTICLE 2 MODIFICATION OR RENEGOTIATION

This EPL 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 EPL Agreement and pertinent supplement and/or purchase order if federal and/or state revisions of any applicable laws or regulations make changes in this EPL Agreement and any pertinent supplement and/or purchase order necessary.

ARTICLE 3 INCLUDED PARTIES

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

ARTICLE 4 ADDITIONAL TERMS AND CONDITIONS

All provisions in this EPL Agreement are in addition to the requirements of RFP No. 3760 and the published EPL, which are both incorporated into and made a part of this EPL Agreement.

ARTICLE 5 ORDERS

5.1 The State does not guarantee that it will purchase any certain amount under this EPL 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 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. 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 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 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 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 the Statewide Automated Accounting System ("SAAS") shall be made and remittance information provided electronically as directed by the State. These payments by SAAS agencies shall be deposited into the bank account of the Seller's choice. Seller understands and agrees that Purchaser is exempt from the payment of taxes. No payment, including final payment, shall be construed as acceptance of defective Products or incomplete work, and the Seller shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the article herein titled "Entire Agreement".

6.2 If payment of undisputed amounts is not made to Seller within forty-five (45) days of Purchaser's receipt of the invoice, Purchaser shall be liable to Seller for interest at a rate of one and

one-half percent (1 1/2 %) per month (or such lesser rate as may be the maximum permissible rate under the law) on the unpaid balance from the expiration of such forty-five (45) day period until such time as payment is made. This provision for late payments shall apply only to undisputed amounts for which payment has been authorized.

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

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

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

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

7.3 If installation by Seller is required, Seller shall complete installation of the Products pursuant to the requirements of the Purchaser based on the guidelines specified in RFP No. 3760.

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

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

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

7.7 Unless a different acceptance period is agreed upon by the Purchaser and Seller and specified in the supplement/purchase order, Purchaser shall have a ten (10) working day testing period during which time Purchaser shall have the opportunity to evaluate and test the Products to confirm that it performs without any defects and performs pursuant to the specifications set forth in RFP No. 3760 and the published EPL. Purchaser may be deemed to have accepted the Product at the end of the ten (10) working day testing period, unless Purchaser notifies Seller that the product fails to perform as stated herein.

7.8 In the event the Product fails to perform as stated in Article 7.7 herein, Purchaser shall notify Seller. Unless a different period of time is agreed upon by the Seller and Purchaser and specified in the supplement/purchase order, Seller shall, within four (4) working days, correct the defects identified by Purchaser or replace the defective Product. If Seller neither corrects the defect nor

replaces the defective product, Purchaser reserves the right to return the Product to Seller at the Seller's expense; to cancel the purchase order, and to cancel this EPL Agreement as to itself only.

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

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

ARTICLE 8 TITLE TO EQUIPMENT

Title to the hardware Products provided under this EPL Agreement shall pass to Purchaser upon its acceptance of the hardware Product.

ARTICLE 9 WARRANTIES

9.1 Seller represents and warrants that it has the right to sell the hardware and license the software Products provided under this EPL Agreement.

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

9.3 Seller represents and warrants that unless otherwise specified in RFP No. 3760 and/or the published EPL, each Product delivered shall be delivered new and not as a "used, substituted, rebuilt, refurbished or reinstalled" Product.

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

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

9.6 Seller represents and warrants that all Products provided by Seller shall meet or exceed the minimum specifications set forth in RFP No. 3760 and the published EPL.

9.7 Unless a longer warranty period is specified in the purchase order, Seller represents and warrants that all software Products 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 Product at the expense of Seller. In the event Seller is unable to repair or replace the software Product 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 the purchase order and to terminate this EPL Agreement in whole or in part, solely as between those two entities. Purchaser's rights hereunder are in addition to any other rights Purchaser may have.

9.8 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 the service, that all work hereunder, including but not limited to, consulting, training and technical support, has been performed in a good and workmanlike manner and consistent with generally accepted industry standards. For any breach of this warranty, Seller shall perform the services again, at no cost to Purchaser, or if Seller is unable to perform the services as warranted, Seller shall reimburse Purchaser the fees paid to Seller for the unsatisfactory services.

9.9 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.

9.10 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.

9.11 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 of the supplement/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 contract cancellation or loss of license or permit.

9.12 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.

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

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

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

Purchaser, as long as the new or corrected version did not adversely affect the Purchaser's system's functionality.

ARTICLE 11 EMPLOYMENT STATUS

11.1 Seller shall, during the entire term of this 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.

11.2 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 12 ASSIGNMENT AND SUBCONTRACTS

Neither party may assign, subcontract or otherwise transfer this EPL Agreement or its obligations hereunder.

ARTICLE 13 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. Any payment due Seller for services rendered by Seller prior to the date of receipt of notification of termination and received by Purchaser, shall be paid.

ARTICLE 14 TERMINATION

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

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

14.3 **Termination Other Than For Cause:** A Purchaser may terminate a supplement and/or purchase order and this EPL 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.

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

14.5 Termination of 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/purchase orders.

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

ARTICLE 15 GOVERNING LAW

This EPL 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 EPL Agreement shall affect any statutory rights Seller and Purchaser may have that cannot be waived or limited by contract.

ARTICLE 16 WAIVER

Failure of either party to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this 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 17 SEVERABILITY

If any term or provision of a supplement/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/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/purchase order and this EPL Agreement can be fully achieved by the remaining portions of the supplement/purchase order and EPL Agreement that have not been severed.

ARTICLE 18 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 19 HOLD HARMLESS

To the fullest extent allowed by law, Seller shall indemnify, defend, save and hold harmless, protect and exonerate Purchaser, ITS and the State, its Board Members, officers, employees, agents and representatives from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever, including without limitation, court costs, investigative fees and expenses, attorney fees and claims for damages arising out of or caused by Seller and/or its partners, principals, agents, employees or subcontractors in the performance of or failure to perform the supplement and/or purchase order and this 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 20 THIRD PARTY ACTION NOTIFICATION

Seller shall notify ITS and Purchaser in writing within five (5) business days of Seller filing bankruptcy, reorganization, liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Seller or Purchaser by any entity that may result in litigation related in any way to the supplement/purchase order or this EPL Agreement and/or which may affect the Seller's performance under the supplement/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 supplement/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 21 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 supplement/purchase order and this EPL Agreement.

ARTICLE 22 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 23 RECORD RETENTION AND ACCESS TO RECORDS

Seller shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this EPL 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 EPL 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 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 supplement 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 supplement and/or purchase order. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the three (3) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution. Notwithstanding the preceding, in no event will Seller disclose its confidential or proprietary cost and pricing data under this Article.

ARTICLE 24 INSURANCE

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

ARTICLE 25 DISPUTES

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

ARTICLE 26 COMPLIANCE WITH LAWS

Seller shall comply with, and all activities under the supplement/purchase order and this EPL Agreement shall be subject to, all Purchaser policies and procedures of which Seller has knowledge, and all applicable federal, State of Mississippi, and local laws and regulations 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 the supplement/purchase order and this EPL Agreement because of race, creed, color, sex, age, national origin or disability.

ARTICLE 27 CONFLICT OF INTEREST

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

ARTICLE 28 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 29 CONFIDENTIAL INFORMATION

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

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

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

ARTICLE 30 EFFECT OF SIGNATURE

Each person signing a supplement and/or purchase order or this 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 31 SERVICES

When ordered by Purchaser, Seller agrees to provide consulting, training and technical support services pursuant to the requirements set forth in RFP No. 3760 and the published EPL.

ARTICLE 32 SURVIVAL

Articles 9, 10, 15, 19, 23, 28, 29, 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 33 DEBARMENT AND SUSPENSION CERTIFICATION

Seller certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this 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 statues 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 34 ENTIRE AGREEMENT

34.1 This EPL Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and, with the exception of the operating system, supersedes any conflicting negotiations, understandings and agreements, written or oral, between the parties relating hereto, including all terms of any unsigned "shrink-wrap" license included in any package, media or electronic version of Seller-furnished software, or "clickwrap" or "browse-wrap" license presented in connection with a purchase via the Internet. The published EPL; the actual purchase order and any mutually agreed upon supplementary terms and conditions; RFP No. 3760, and Seller's Proposal submitted in response to RFP No. 3760 are hereby incorporated into and made a part of this EPL Agreement as far as the individual Purchaser is concerned.

34.2 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. The Exception Summary as agreed to by ITS and Seller;
B. This EPL Agreement signed by Seller and ITS, and all attachments;
C. The published EPL;
D. RFP No. 3760, including all addendums;
E. Official written correspondence from ITS to Sellers;
F. Official written correspondence from Seller to ITS when clarifying Seller's proposal;
G. Seller's Proposal, as accepted by ITS, in response to RFP No.3760, and
H. The actual supplement/purchase order, or additional contract terms between Purchaser and Seller if required.

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

ARTICLE 35 TRANSPARENCY

In accordance with the Mississippi Accountability and Transparency Act of 2008, §27-104-151, et seq., of the Mississippi Code of 1972, as Amended, the American Accountability and Transparency Act of 2009 (P.L. 111-5), where applicable, and §31-7-13 of the Mississippi Code of 1972, as amended, where applicable, a fully executed copy of this EPL Agreement and any subsequent amendments and change orders shall be posted to the State of Mississippi's accountability website at: https://www.transparency.mississippi.gov. Prior to Purchaser 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 Purchaser.

ARTICLE 36 COMPLIANCE WITH ENTERPRISE SECURITY POLICY

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.

ARTICLE 37 FORCE MAJEURE

Seller and Purchaser shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include, without limitation, acts of God (excluding lightning), strikes, lockouts, riots, acts of war or terrorism, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"). When such a cause arises, the Seller shall notify the Purchaser immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the Purchaser determines it to be in its best interest to terminate the supplement and/or purchase order.

ARTICLE 38 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 39 LIABILITY ISSUES

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

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

By: _____
Authorized Signature

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

Title: Executive Director

Date: 10/2/14

OWENS BUSINESS MACHINES, INC.

By: _____
Authorized Signature

Printed Name: GENE OWENS

Title: OWNER / PRESIDENT

Date: MAY 27, 2014