

**OFFICE OF CHIEF OF TECHNOLOGY AND DISTRICT TRANSFORMATION**  
**Summary of State Board of Education Agenda Items**  
**Consent Agenda**  
**April 20, 2017**

**OFFICE OF TECHNOLOGY AND STRATEGIC SERVICES**

- S. Contract with CDW Government for the acquisition of softwares, services, and technical support necessary for the implementation of data visualization software

Awarded Vendor:                      CDW Government, LLC  
Vernon Hills, IL

Scope of Project: CDW Government LLC, pursuant to Letter of Configuration Number 42605 will provide for the acquisition of software, services, and technical support necessary for the implementation of data visualization software as described in the LOC. CDW Government agrees to provide the products and services listed in Exhibit A and at the price set forth therein, but in no event, will the total compensation to be paid exceed the specified sum of \$387,686.94

Personnel associated with this contract are not former Department employees or related to any Department employees.

Scope of Contract:

- Term of Contract:                      April 1, 2017 – June 30, 2018
- Total amount to be awarded:                      \$387,686.94
- Method of Award:                      Letter of Configuration (LOC)

Funding Source:                      State funds

Recommendation: Approval

Back-up material attached

**PROJECT NUMBER 42605  
PURCHASE AGREEMENT  
BETWEEN  
CDW GOVERNMENT LLC  
AND  
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES  
AS CONTRACTING AGENT FOR  
MISSISSIPPI DEPARTMENT OF EDUCATION**

This Purchase Agreement (hereinafter referred to as "Agreement") is entered into by and between CDW Government LLC, an Illinois corporation having its principal place of business at 230 North Milwaukee Avenue, Vernon Hills, Illinois 60061 (hereinafter referred to as "Seller"), and 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 Mississippi Department of Education located at 359 North West Street, Jackson, Mississippi 39201 (hereinafter referred to as "Purchaser"). ITS and Purchaser are sometimes collectively referred to herein as "State".

WHEREAS, Purchaser, pursuant to Letter of Configuration Number 42605 dated December 1, 2016 (hereinafter referred to as "LOC"), based on General Request for Proposals ("RFP") No. 3849, requested proposals for the acquisition of software, services, and technical support necessary for the implementation of data visualization software as described in the LOC (hereinafter referred to as "Products") and listed in Exhibit A which is attached hereto and incorporated herein; and

WHEREAS, Seller was the successful proposer in an open, fair and competitive procurement process;

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**

1.1 This Agreement will become effective on the date it is signed by all parties and will continue in effect until all tasks required herein, including any post warranty maintenance/support specified in Exhibit A, have been completed.

1.2 This Agreement will become a binding obligation on the State only upon the issuance of a valid purchase order by the Purchaser following contract execution and the issuance by ITS of the CP-1 Acquisition Approval Document.

**ARTICLE 2 FURNISHING OF SOFTWARE AND SERVICES**

2.1 Subject to the terms and conditions set forth herein, Seller agrees to provide and Purchaser agrees to buy as needed, the Products and services listed in the attached Exhibit A and at the price set forth therein, but in no event will the total compensation to be paid hereunder exceed the specified sum of \$387,686.94 unless prior written authorization from ITS has been obtained. Purchaser shall submit a purchase order signed by a representative of Purchaser itemizing the Products to be purchased. The purchase order shall be subject to the terms and conditions of this Agreement. The parties agree that Purchaser reserves the right to adjust the quantities of purchases based upon the availability of funding or as determined necessary by Purchaser. Seller guarantees pricing for a period of ninety (90) days from the effective date of this Agreement. In the event there

is a national price decrease of the Products bid during this time. Seller agrees to extend the new, lower pricing to Purchaser.

**2.2 The Products and services provided by Seller shall meet or exceed the minimum specifications set forth in the LOC, General RFP No. 3849 and the Seller's Proposals in response thereto.**

**2.3 The parties understand and agree that Customer reserves the right to add other software to be maintained or to cancel maintenance on all or part of the software, as Customer deems necessary. Maintenance contracts are agreed to annually for the full year. Should the Purchaser choose to cancel maintenance at the beginning of a new period of performance or to add other software to be maintained, the parties shall agree to the respective pricing adjustments to be made for the respective period of performance and such payment shall be revised accordingly.**

### **ARTICLE 3 DELIVERY, RISK OF LOSS, INSTALLATION AND ACCEPTANCE**

**3.1 Seller shall deliver the Products to the location specified by Purchaser and pursuant to the delivery schedule mutually agreed to by the parties.**

**3.2 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.**

**3.3 If installation by Seller is required, Seller acknowledges that installation shall be accomplished with minimal interruption of Purchaser's normal day to day operations.**

**3.4 Purchaser shall have thirty (30) calendar days after installation of the software by Seller to evaluate and test the software to confirm that it performs without any defects and in accordance with the LOC, General RFP No. 3849, Seller's Proposals in response thereto, and its user documentation. Purchaser shall immediately thereafter notify Seller in writing of any defects in the software, which must be corrected prior to payment being made. Thereafter, Seller shall have ten (10) working days in which to either repair or replace the defective software, all at Seller's expense. In the event Seller is unable to repair or replace the software, Purchaser may terminate this Agreement pursuant to the Termination Article herein.**

### **ARTICLE 4 TITLE TO SOFTWARE**

**Title to any software provided under this Agreement shall at all times remain with the applicable software manufacturer.**

### **ARTICLE 5 CONSIDERATION AND METHOD OF PAYMENT**

**The cost of the software and services to be provided by Seller is specified in the attached Exhibit A, which is incorporated herein by reference. In no event will the total compensation to be paid hereunder exceed the specified sum of \$387,686.94, unless prior written authorization from ITS has been obtained. Upon acceptance of the Software by Purchaser, Seller shall invoice Purchaser for the Software, and the services will be invoiced as they are rendered. Seller shall submit invoices and supporting documentation to Purchaser electronically at any time during the term of this Agreement using the processes and procedures identified by the State. Purchaser shall make payment hereunder in accordance with Mississippi law on "Timely Payment for Purchases by Public Bodies," Section 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by Purchaser within forty-five (45) days of receipt of the invoice. Seller understands and agrees that Purchaser is exempt from the payment of taxes. All payments should 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. No payment, including final payment, shall be construed as acceptance of defective Products or incomplete work, and the Seller shall remain responsible for full performance in strict compliance with the contract documents specified in the article herein titled "Entire Agreement."

## **ARTICLE 6 WARRANTIES**

**6.1 Seller represents and warrants that Seller has the right to sell the Products and services provided under this Agreement.**

**6.2 Seller represents and warrants that the Products and services provided by Seller shall meet or exceed the minimum specifications set forth in the LOC, General RFP No. 3849 and Seller's Proposals in response thereto.**

**6.3 Seller represents and warrants that its services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of this Agreement. For any breach of this warranty, the Seller shall, for a period of ninety (90) days from performance of the service, perform the services again, at no cost to Purchaser, or if Seller is unable to perform the services as warranted, Seller shall reimburse Purchaser the fees paid to Seller for the unsatisfactory services.**

**6.4 Seller represents and warrants, to the best of its knowledge, that neither the Software nor Enhancements shall contain disabling code or a lockup program or device. Seller further agrees that it will not under any circumstances, including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Purchaser's licensed use of the Software or Enhancements and/or which would restrict Purchaser from accessing its data files or in any way interfere with the transactions 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 or a lockup program or device.**

**6.5 In addition, Seller represents and warrants, to the best of its knowledge, that neither the Software nor Enhancements delivered to Purchaser contain a computer virus. For purposes of this provision, a computer virus shall be defined as code intentionally inserted in the Software or Enhancements that will damage or destroy Purchaser's applications or data. 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.**

**6.6 Seller represents and warrants that the Software will operate free from defects for a period of six (6) months after acceptance and will provide Purchaser complete functionality necessary for the operation of the system as stated in the LOC, General RFP No. 3849 and the Seller's Proposals in response thereto. 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 fees paid and shall have the right to terminate this Agreement in whole or in part. Purchaser's rights hereunder are in addition to any**

other rights Purchaser may have.

**6.7 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 (Supp 2008), 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 this 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.**

**6.8 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 this Agreement. The Seller warrants that it has removed any material conflict of interest prior to the signing of this Agreement, and that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its responsibilities under this Agreement. The Seller also warrants that in the performance of this Agreement no person having any such known interests shall be employed.**

**6.9 Seller represents and warrants, to the best of its knowledge, that neither the software provided to Purchaser under this Agreement nor its use by Purchaser will violate, infringe, or constitute an infringement of any patent, copyright, trademark, servicemark, trade secret, or other proprietary right of any person or entity.**

**6.10 Seller represents and warrants that it has and will obtain and pass through to Purchaser any and all warranties obtained or available from any manufacturer of the replacement parts supplied to Seller for use by Purchaser.**

**6.11 Seller understands and agrees that pursuant to Section 11-7-18, Section 75-2-315.1, and Section 75-2-719 of the Mississippi Code Annotated, there is no disclaimer of the implied warranties of merchantability and fitness for a particular purpose.**

**6.12 The parties understand and agree that pursuant to Section 100 of the Mississippi Constitution, the State can't agree to indemnify Seller or any third party.**

## **ARTICLE 7 EMPLOYMENT STATUS**

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

**7.2 Seller represents that it is qualified to perform the duties to be performed under this 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 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.**

**7.3 Any person assigned by Seller to perform the services hereunder shall be the employee of Seller, who shall have the sole right to hire and discharge its employee. Purchaser may, however, direct Seller to replace any of its employees under this Agreement. If Seller is notified within the first eight (8) hours of assignment that the person is unsatisfactory, Seller will not charge Purchaser for those hours.**

**7.4 It is further understood that the consideration expressed herein constitutes full and complete compensation for all services and performances hereunder, and that any sum due and payable to Seller shall be paid as a gross sum with no withholdings or deductions being made by Purchaser for any purpose from said contract sum.**

#### **ARTICLE 8 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS**

**Seller will be responsible for the behavior of all its employees and subcontractors while on the premises of any Purchaser location. Any employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive, or offensive to any of the staff will be asked to leave the premises and may be suspended from further work on the premises. All Seller employees and subcontractors who will be working at such locations shall be covered by Seller's comprehensive general liability insurance policy.**

#### **ARTICLE 9 MODIFICATION OR RENEGOTIATION**

**This Agreement 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 Agreement if federal and/or state revisions of any applicable laws or regulations make changes in this Agreement necessary.**

#### **ARTICLE 10 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS**

**10.1 In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that Seller represents all contractors, third parties, and/or subcontractors Seller has assembled for this project. The Purchaser is required to negotiate only with Seller, as Seller's commitments are binding on all proposed contractors, third parties, and subcontractors.**

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

**10.3** Seller must obtain the written approval of Purchaser before subcontracting any portion of this Agreement. No such approval by Purchaser of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of Purchaser in addition to the total fixed price agreed upon in this Agreement. All subcontracts shall incorporate the terms of this Agreement and shall be subject to the terms and conditions of this Agreement and to any conditions of approval that Purchaser may deem necessary.

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

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

#### **ARTICLE 11 AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of Purchaser to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds for the performances required under this Agreement. If the funds anticipated for the fulfillment of this 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 Agreement, Purchaser shall have the right to immediately terminate this Agreement, 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 Agreement.

#### **ARTICLE 12 TERMINATION**

Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be terminated in whole or in part as follows: (a) upon the mutual, written agreement of the parties; (b) by Purchaser upon thirty (30) days written notice to Seller without the assessment of any penalties if Seller becomes the subject of bankruptcy, reorganization, liquidation, or receivership proceedings, whether voluntary or involuntary; (c) by Purchaser upon thirty (30) days written notice to Seller without the assessment of any penalties in the event Purchaser determines it is in the best interest of the State of Mississippi to terminate this Agreement; or (d) by either party in the event of a breach of a material term or provision of this Agreement where such breach continues for thirty (30) days after the breaching party receives written notice from the other party. Upon termination, Purchaser will be entitled to a refund of applicable unexpended prorated annual Software maintenance fees/charges, if any. In the event of termination, Seller shall be entitled to receive just and equitable compensation for satisfactory work completed or services rendered by Seller in connection with this Agreement as of the date of receipt of notification of termination. In no case shall said compensation

exceed the total contract price. The provisions of this article do not limit either party's right to pursue any other remedy available at law or in equity

#### **ARTICLE 13 GOVERNING LAW**

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

#### **ARTICLE 14 WAIVER**

Failure of either party hereto 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 Agreement. A waiver by the State, 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 the State.

#### **ARTICLE 15 SEVERABILITY**

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

#### **ARTICLE 16 CAPTIONS**

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

#### **ARTICLE 17 HOLD HARMLESS**

To the fullest extent allowed by law, Seller shall indemnify, defend, save and hold harmless, protect and exonerate Purchaser, and the State, its Board Members, officers, employees, agents and representatives from and against any and all third party 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 the negligence or intentional misconduct of Seller and/or its partners, principals, agents, employees, or subcontractors in the performance of or failure to perform this 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 18 THIRD PARTY ACTION NOTIFICATION**

Seller shall notify 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 this Agreement and/or which may affect the Seller's performance under this Agreement. Failure of the Seller to provide such written notice to Purchaser shall be considered a material breach of this Agreement and the Purchaser 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 19 AUTHORITY TO CONTRACT**

Seller warrants that it is a validly organized business with valid authority to enter into this Agreement; that entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual or other agreement of any kind, and notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

#### **ARTICLE 20 NOTICE**

Any notice required or permitted to be given under this 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 business address listed herein. ITS' address for notice is: Craig P. Orgeron, Ph.D., Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. The Purchaser's address for notice is: Ms. Debra Hines, Bureau Director, Mississippi Department of Education, 359 North West Street, Jackson, Mississippi 39201. Seller's address for notice is: Mr. Adam Prather, Account Manager, CDW Government LLC, 230 North Milwaukee Avenue, Vernon, Illinois 60081. 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 21 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 Agreement. The Purchaser, ITS, any state or federal agency authorized to audit Purchaser, and/or any of their duly authorized representatives, shall have unimpeded, prompt access to this Agreement and to any of the Seller's proposals, books, documents, papers and/or records that are pertinent to this Agreement to make audits, copies, 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 Agreement shall be retained by the Seller for three (3) years from the date of receipt of final payment under this Agreement. 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.

#### **ARTICLE 22 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 fidelity bond or crime insurance. Seller will, upon request, furnish Purchaser with a certificate of conformity providing the aforesaid coverage.

#### **ARTICLE 23 DISPUTES**

Any dispute concerning a question of fact under this 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 Agreement. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.

#### **ARTICLE 24 COMPLIANCE WITH LAWS**

**24.1** Seller shall comply with, and all activities under this Agreement shall be subject to, all Purchaser policies and procedures, and all applicable federal, state and local laws, regulations, 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.

**24.2** Seller represents and warrants that it will comply with the state's data breach notification laws codified at Section 75-24-29 of the Mississippi Code Annotated (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 CFR 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").

#### **ARTICLE 25 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 terminate this Agreement.

#### **ARTICLE 26 SOVEREIGN IMMUNITY**

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

#### **ARTICLE 27 CONFIDENTIAL INFORMATION**

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

**27.2** With the exception of any attached exhibits which are labeled as "confidential", the parties understand and agree that this Agreement, including any amendments and/or change orders thereto, does not constitute confidential information, and may be reproduced and distributed by the State without notification to Seller. ITS will provide third party notice to Seller of any requests

received by ITS for any such confidential exhibits so as to allow Seller the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

27.3 The parties understand and agree 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 Agreement shall not be deemed confidential information.

#### **ARTICLE 28 EFFECT OF SIGNATURE**

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

#### **ARTICLE 29 NON-SOLICITATION OF EMPLOYEES**

Seller and Purchaser agree not to employ or to solicit for employment, directly or indirectly, each other's employees until at least one (1) year after the expiration/termination of this Agreement unless mutually agreed to the contrary in writing by the Purchaser and the Seller and provided that such an agreement between these two entities is not a violation of the laws of the State of Mississippi or the federal government. This prohibition will not apply where such officer or employee responds to a blind ad for employment with Seller.

#### **ARTICLE 30 ENTIRE AGREEMENT**

30.1 This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating hereto, including all terms of any unsigned or "shrink-wrap" license included in any package, media or electronic version of Seller-furnished software, or any "click-wrap" or "browse-wrap" license presented in connection with a purchase via the internet. The LOC, General RFP No. 3849 and Seller's Proposals in response thereto are hereby incorporated into and made a part of this Agreement.

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

- A. This Agreement signed by both parties;
- B. Any exhibits attached to this Agreement;
- C. LOC;
- D. General RFP No. 3849 and written addenda, and
- E. Seller's Proposals, as accepted by Purchaser, in response to the LOC and General RFP No. 3849.

30.3 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 Agreement") and the lowest document is listed last ("E. Seller's Proposals").

#### **ARTICLE 31 SURVIVAL**

Articles 6, 13, 21, 26, 27, 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 Agreement.

#### **ARTICLE 32 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 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 Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

#### **ARTICLE 33 COMPLIANCE WITH ENTERPRISE SECURITY POLICY**

Seller and Purchaser understand and agree that all products and services provided by Seller under this 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 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 34 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 parties understand and agree that ITS as contracting agent is not responsible or liable for the performance or non-performance of any of Purchaser's or Seller's contractual obligations, financial or otherwise, contained within this Agreement.

#### **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 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 ITS posting the 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 Agreement shall not be deemed a trade secret or confidential commercial or financial information and shall thus not be redacted.

#### **ARTICLE 36 LIABILITY ISSUES**

Unless jointly agreed otherwise in writing, Seller's liability shall not exceed the total amount paid by Purchaser to Seller under this Agreement, including any amounts paid pursuant to amendments and change orders. In no event will Seller be liable to 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 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 Agreement, the parties have caused this Agreement to be executed by their undersigned representatives.

State of Mississippi, Department of Information Technology Services, on behalf of Mississippi Department of Education

CDW Government LLC

By:   
Authorized Signature

By:   
Authorized Signature

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

Printed Name: Tara K. Barbieri  
Director, Program Sales

Title: Executive Director

Title: \_\_\_\_\_

Date: 3/20/17

Date: 23 March 2017

Mississippi Department of Education

By:   
Authorized Signature

Printed Name: John Q. Porter, Ph.D.

Title: Chief Information Officer

Date: 3/27/17

**EXHIBIT A**

<b>Description</b>	<b>Qty</b>	<b>Unit Cost</b>	<b>Year 1</b>	<b>Year 2</b>
Tableau Server-Multi Machine Core License	8	\$31,183.75	\$249,470.00	\$0.00
Tableau Server-Multi Machine Core Maintenance	8	\$7,795.84	\$62,366.72	\$62,366.72
Tableau Desktop-Professional Licenses	2	\$4,848.00	\$9,696.00	\$0.00
Tableau Desktop-Professional Maintenance	2	\$1,262.50	\$2,525.00	\$1,262.50
<b>Total:</b>			\$324,057.72	\$63,629.22
<b>Grand Total:</b>			<b>\$387,686.94</b>	