**CONTRACT FOR MISSISSIPPI STATE UNIVERSITY**

**TO OBTAIN SERVICES**

[June 2020edition]

**Part I**

 This Agreement is between  (“Contractor”), whose principal place of business and address is , , , , and Mississippi State University, a governmental entity of the State of Mississippi, (“MSU”), with its address at P. O. Box , Mississippi State, Mississippi 39762 for and on behalf of its  (hereinafter ). Contractor and MSU are collectively referred to as the “parties.”

WHEREAS, Contractor desires to provide certain, specific services to MSU.

WHEREAS, MSU is willing to pay for those services.

Therefore, the parties hereby agree as follows:

# This agreement shall not be effective unless and until both parties have executed this agreement and the effective date of this agreement shall be the date it is executed by whichever party executes the agreement last. This agreement shall commence on the effective date and shall continue until (date). At which time, this agreement shall automatically expire. However, prior to expiration and upon mutual agreement of both parties, in writing, it may be renewed under mutually agreeable terms for a period of  , not to exceed a total agreement life of five (5) years.

# Both parties agree to all terms and conditions set forth in Part II, Mississippi State University Standard Terms and Conditions, with the exception of any exceptions, additions, alterations or revisions set forth in Part III, Exceptions Standard Terms and Conditions, which must be signed by both parties to be in force.

# Contractor shall provide the following services (*the scope of services should be clearly defined).*:

1. .

# For the services set forth herein, MSU will pay Contractor as follows (the amount of payment shall be clearly defined) The timing of payment is set forth in Part II Section A.

a.      .

# Contractor shall not use MSU’s name, word mark, or other university identifier, or the name or title of any MSU official. Contractor shall also not state or imply its product and/or work as being approved by or otherwise endorsed by MSU, its officers, employees or affiliates.

# Notices

All notices required or permitted to be given under this agreement must be in writing and personally delivered or sent by certified U.S. Mail, postage prepaid, return receipt requested, to the persons at the addresses shown below. The parties agree to notify the other in writing of any change of address.

 **For Contractor:**

**For MSU:**

Don Buffum, CPPO

Director of Procurement and Contracts

Office of Procurement and Contracts

P. O. Box 5307

Mississippi State, MS 39762

**With a copy to:**

Joan Lucas

General Counsel

Office of General Counsel

P.O. Box 6171

Mississippi State, Mississippi 39762

**Part II**

Mississippi State University Standard Terms and Conditions

1. Payment

MSU shall pay Contractor within 45 days of receipt of each invoice received from Contractor upon review and confirmation by MSU that such payments and all portions thereof are due, justified and warranted based on services received by MSU in accordance with § 31-7-305(2), Mississippi Code of 1972.

# Availability of Funds

It is expressly understood and agreed that the obligation of MSU to proceed under this agreement is conditioned upon the availability and receipt of funds by MSU to specifically perform the obligations set forth for MSU under this agreement.

# Representation Regarding Contingent Fees and Gratuities

Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. Further, Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in state law.

# Equal Employment Opportunity

 Contractor represents and understands that MSU is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination. Contractor agrees that during the term of this agreement that Contractor will strictly adhere to this policy in its employment practices and the provision of its services.

# Assignment Prohibition

 Contractor agrees that it shall not attempt to nor shall it assign this agreement to any party and that any attempt to do so shall be void.

# Authority to Contract

 Contractor warrants (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and is in good standing in the State of Mississippi; (c) 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 (d) 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.

# Failure to Enforce

 The failure by MSU at any time to enforce the provisions of this agreement shall not be construed as a waiver of any such provision. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of MSU to enforce the provision at any time in accordance with its terms.

# Contractor - Independent Contractor

 Contractor shall at all times be regarded as and shall be legally considered an independent contractor and neither Contractor nor its employees shall, under any circumstances, be considered servants, agents or employees of MSU, and MSU shall at no time be legally responsible for any negligence or other wrongdoing by Contractor, its partners, principals, officers, agents, employees or representatives. MSU shall not be responsible for any federal or state unemployment tax, federal or state income taxes, Social Security taxes, or any other amounts for the benefit of Contractor or any of its partners, principals, officers, agents, employees or representatives. MSU shall not provide to Contractor, its partners, principals, officers, agents, employees or representatives any insurance coverage or other benefits, including, but not limited to, Workers’ Compensation, which are normally provided by MSU to its employees. Contractor’s personnel shall not be deemed in any way, directly, indirectly, expressly or by implication, to be employees of MSU. Nothing contained in this agreement or otherwise shall be deemed or construed as creating the relationship of principal and agent, partners, joint ventures, or any similar relationship between MSU and Contractor. At no time shall Contractor be authorized to do so and at no time shall Contractor act as an agent for or of MSU.

# Indemnification

 Contractor and its officers shall indemnify, defend, hold harmless, protect, and exonerate the State of Mississippi, the Board of Trustees of State Institutions of Higher Learning, MSU, and each of their officers, agents, employees, and representatives, both in their official and in their individual capacities from and against all claims, demands, liabilities, suits, actions, damages, losses and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, attorneys’ fees, arising out of or caused by Contractor and its’ partners, principals, officers, agents, employees and representatives related to actions or inactions of Contractor, its partners, principals, officers, agents, employees and representatives. In MSU’s sole discretion, Contractor may be allowed to control the defense of any such claim, suit, etc., but in such an event, Contractor shall use legal counsel acceptable to MSU. Contractor shall be solely responsible for all costs and/or expenses associated with such defense and MSU shall be entitled to participate in said defense. Contractor shall not settle any claim, suits, etc., without MSU’s written concurrence, which concurrence MSU shall not unreasonably withhold.

# Attorneys’ Fees and Expenses

 Contractor agrees that in the event Contractor defaults in any obligations under this agreement that Contractor shall pay to MSU all costs and expenses, including, but not limited to, attorneys’ fees incurred by MSU in enforcing this agreement.

# Patents and Copyrights

 Contractor covenants to defend, hold harmless, and indemnify the State of Mississippi, the Board of Trustees of State Institutions of Higher Learning, MSU, and each of their officers, agents, employees, and representatives, both in their official and in their individual capacities, from and against all claims, losses, damages, injury, fines, penalties, and costs, including court costs and attorneys’ fees, charges, and any other liability and exposure however caused for or on account of any copyright or patent infringement that may result from the activities related to this agreement and the actions/inactions thereunder by the parties. This indemnification is not separate from that set forth elsewhere in this agreement and is not a limitation thereon, but instead is in conjunction therewith and is recited to ensure that the full breadth of the indemnification provisions contained elsewhere in this agreement are understood by the parties.

# Disputes

 Contractor agrees that any and all disputes between the parties to this agreement must be submitted to the MSU Vice President for Budget and Planning for consideration and a final decision. If Contractor is dissatisfied with that final decision, the dispute may, at the option of MSU, be subjected to resolution by mediation prior to any action being taken by Contractor toward litigation.

# Modifications to Agreement

 This agreement may be modified only by a written amendment authorized by and executed by the parties. No oral statements of any person shall modify or otherwise affect the terms, conditions or specifications stated in this agreement.

# Ownership of Documents and Work Papers

 MSU shall own all documents, files, reports, work papers and working documents, electronic or otherwise, created by Contractor in connection with this agreement.

# Severability

 If any part of this agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement, and to that end the provisions hereof are severable. In such an event, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

# Termination for Convenience

 MSU may, when the interests of MSU so require, terminate this agreement in whole or in part for the convenience of MSU. Written notice of the same is required to be provided by MSU and shall allow no less than ten (10) days’ notice prior to the effective date of the termination.

# Termination for Cause

 Either party may terminate this agreement immediately upon issuance of written notice if the other party fails to perform the obligations to the other party under this agreement. The party issuing such a termination notice may allow 30 days within which the other party may attempt to cure the failure to fulfill its obligations, but such 30 day cure time is not required.

# Inspection of Books and Records

 MSU shall have the right to inspect and audit the books and records of Contractor at reasonable times and places. Such books and records shall be retained and maintained by Contractor for a minimum of three years following the termination of or the expiration of this agreement.

# Applicable Law

 This contract shall be governed by and construed in accordance with the laws of the State of Mississippi, without giving consideration to its conflicts of laws, provisions, and any litigation with respect thereto shall be brought in the courts of Mississippi state. Contractor shall comply with applicable federal, state, and local laws and regulations.

1. Transparency

 In compliance with the Mississippi Transparency and Accountability Act, Section 27-104-151 et seq. of the Mississippi Code Annotated, all payments made by MSU will be posted on a public website beginning on July 1, 2012.  The information posted will include the date of payment, vendor name, vendor's city and state, and the payment amount.  Contractor agrees that the release of this information is allowed under this contract and that any non-disclosure or confidentiality clause shall be subordinate to this clause.

1. Contractor/Seller

 Contractor/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. Contractor/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. Contractor/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. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/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 Contractor/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, Contractor/Seller would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

# Entire Agreement

# This contract represents the entire agreement of the parties and shall not become effective until executed by both parties. No change in, or additions to, or waiver of the terms and provisions hereof shall be binding upon MSU or Contractor unless approved in writing by their authorized representative.

# State Institution

# Contractor expressly understands and agrees that MSU is a state institution of higher learning and is subject to the laws of the State of Mississippi governing actions of state agencies. Contractor further acknowledges that MSU does not relinquish or forfeit any of the rights, protections or guaranties afforded it as a state agency under the laws of Mississippi, notwithstanding anything to the contrary contained herein or in any other agreement between the parties.

# Insurance

# Contractor/Seller shall maintain general liability insurance and workers’ compensation insurance to the extent required by applicable law.  The general liability insurance shall be for an amount not less than $500,000 per occurrence.  These coverages shall be primary and noncontributory with respect to any insurance maintained by or on behalf of MSU.  Certificates of insurance, which list all applicable endorsements, shall be provided to MSU upon request. No material change in coverages may occur for MSU without 90 days advanced notice.  All policies of insurance required by this Agreement shall be with insurers rated by A M Best as A VIII or greater.

1. Confidential Information

Contractor shall treat all MSU 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 MSU. In the event that Contractor receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a validly issued judicial order requiring divulgence of such information, Contractor shall promptly inform MSU and thereafter respond in conformity with such court order to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive the termination or completion of this Agreement and shall continue in full force and effect and shall be binding upon the Contractor 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 Contractor following any termination or completion of this Agreement.

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 MSU without notification to Contractor.

1. Information Security. To the extent applicable, Contractor shall be responsible for establishing and maintaining an information security program that is designed to (i) ensure the security and confidentiality of data transmitted by MSU to the Contractor or data otherwise obtained by Contractor from or about MSU (“MSU Data”), (ii) protect against any anticipated threats or hazards to the security or integrity of MSU Data, and (iii) protect against unauthorized access to or use of MSU Data that could result in substantial harm or inconvenience to MSU or any of its stakeholders.   Contractor shall establish, employ and at all times maintain physical, technical and administrative security safeguards and procedures sufficient to prevent any unauthorized processing of and/or use, access, alteration, disclosure, erasure, copying, exhibition, transmission, or destruction of MSU Data while such information is in Contractor’s possession or control and will ensure that such information is not processed in other ways contradictory to privacy and/or data protection laws.  Contractor will maintain sufficient procedures to detect and respond to security breaches involving MSU Data and will inform MSU immediately when it suspects or learns of malicious activity involving MSU Data, including an estimate of the activity’s effect on MSU and the corrective action taken. Such procedures shall include, but not be limited to, logging of all access to confidential or sensitive data, use of firewalls for all external data connections, and timely implementation of updates and patches.

At a minimum, Contractor’s safeguards for the protection of MSU Data shall include: (i) limiting access to MSU Data to authorized personnel of Contractor and utilizing policies that promote the least internal access; (ii) securing business facilities, data centers, paper files, servers, back-up systems (at a strategically located off-site location) and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (iii) implementing network, device application, database and platform security; (iv) securing information transmission, storage and disposal; (v) implementing authentication (two-factor or more secure method) and access controls within media, applications, operating systems and equipment; (vi) encrypting (with AES-256 bit or better encryption) MSU data stored on any mobile media; (vii) encrypting MSU Data transmitted over public or wireless networks; (viii) strictly segregating MSU Data from information of Contractor or its other customers so that MSU Data is not commingled with any other types of information; (ix)  implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law; and (x) providing appropriate privacy and information security training to Contractor’s employees.

Contractor must obtain the written approval of MSU before subcontracting any portion of this Agreement. All subcontracts shall incorporate the terms of this Agreement so as to require subcontractors to meet or exceed the Contractor’s security obligations, including all data security requirements.

1. Force Majeure. Neither party shall be considered to have breached this Agreement and both parties shall be fully relieved of their obligations under this Agreement (except for those obligation under this paragraph) in the event either party is unable, despite the exercise of reasonable diligence and not as a result of negligence or fault of the party, to perform its obligation under this Agreement due to the following: an Act of God, war, invasion, terrorism, strike, riot, civil unrest, a national, state or local emergency, a U.S. Department of State Travel Warning, epidemic or pandemic, flood, fire, tornado, earthquake, hurricane, tropical storm, tsunami, snow or ice storm, any other natural disaster or threat of natural disaster that reasonably and detrimentally impacts the safety of a party or its representatives, or any other events beyond the reasonable control of the parties making it impossible to perform under this Agreement (“Force Majeure Occurrence”). Notice of a Force Majeure Occurrence shall be given to the other party immediately upon a reasonable, diligent and good faith determination by either party that it is unable to perform due to a Force Majeure Event. To the extent any deposit has been made by a party, such deposit shall be returned in full within 30 days of notice of a Force Majeure Occurrence. Without limiting the generality of the foregoing, if either party makes a reasonable, diligent and good faith determination that it is unsafe for the party or its representatives to perform the party’s obligations under this Agreement due to the COVID-19 pandemic, the party may give notice of such Force Majeure Event to the other party in accordance with this Force Majeure paragraph.

**Part III**

Exceptions to Standard Terms and Conditions

Any exceptions, additions, alterations or revisions to Part II, Mississippi State University Standard Terms and Conditions, , shall be listed below and shall become a binding part of the contract upon approval and signature by both parties. If there are no exceptions, “No exceptions” should be typed after “A”. If there are no exceptions, the entire Mississippi State University Standard Terms and Conditions, (Part II above), will be in full force and effect.

1.

2.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT ON THE DATES SHOWN BELOW.

Contractor name:

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/\_\_\_\_\_\_\_\_\_\_

 Contractor Signature DATE

MISSISSIPPI STATE UNIVERSITY

BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/\_\_\_\_\_\_\_\_\_\_

 Don Buffum, CPPO DATE

 Director

Procurement & Contracts