

MISSISSIPPI STATE UNIVERSITY

STANDARD CONTRACT ADDENDUM

Notwithstanding any term or condition to the contrary contained within any contract wherein Mississippi State University (“MSU”) is a party, or in any quotation, voucher or purchase order which this Addendum accompanies or to which it is attached (“Contract”), MSU does not waive any rights, benefits or prohibitions that may be provided under any law, statute, regulation, or policy. Any and all terms or conditions to the contrary in any Contract to which MSU is a party are hereby null, void and deleted. This Addendum shall be deemed incorporated into the Contract and the following terms and conditions shall take precedence over all other terms and conditions:

1. **Governing Law/Venue.** The contract is governed and controlled by the laws of the State of Mississippi. All suits, claims, cases, controversies, actions, disputes, complaints and/or orders related to, arising from, in connection with, or to construe or enforce the Contract shall be governed by the laws of the State of Mississippi, without regard to its conflicts of law principles. The courts of Oktibbeha County, Mississippi shall be the sole and exclusive jurisdiction and venue for any civil action related to this Contract, and the Contractor irrevocably consents to jurisdiction in said courts and waives any argument that such courts are not a convenient forum for such litigation. Any provision which purports to establish venue outside the State of Mississippi is deleted.
2. **Equal Opportunity.** During the performance of any contract with MSU, the Contractor agrees to comply with and be bound by applicable provisions of the Civil Rights Act of 1964 (as amended), the Rehabilitation Act of 1973 (as amended), the Veterans Readjustment Act of 1972 (as amended) and all applicable Regulations and Executive Orders enacted pursuant to such laws, including without limitation Executive Orders 11246, 11701, 11625, and 11758.
3. **Availability of Funds.** The continuance of the Contract with MSU is based upon the availability of funds. Therefore, this contract can be cancelled by MSU with thirty (30) days’ notice to the Contractor at the end of the fiscal period in the event funds are not appropriated by the funding authority. In such event, any property covered by a lease shall be returned to the lessor.
4. **Tax-Exempt Status.** The Contractor is liable for all taxes arising from, related to, or in connection with the Contract or the performance of the contract. Pursuant to Mississippi law, MSU is exempt from state sales and use tax. Likewise, MSU will not pay excise, personal property, real property, income, value added, or any other similar taxes. If the Contractor is liable for such taxes, the Contractor shall take such into consideration in pricing. It is the Contractor’s responsibility to contact the local taxing authority in the state and county where equipment will be located to determine possible tax liabilities in connection with the Contract.
5. **Attorneys and Collection Fees.** Any references to payment of attorney or collection fees by MSU are deleted.
6. **Indemnification.** Any references to MSU indemnifying, defending or holding harmless the Contractor or any other party are deleted.
7. **Time Limitations.** Any provision limiting the timeframe upon which MSU can bring a claim or suit is deleted.
8. **Disclaimer of Warranties.** MSU does not waive, disclaim or exclude any warranties of any non-MSU party, including without limitation, any non-MSU party’s warranties of merchantability or fitness for a particular use or any common law warranties to which MSU is entitled.
9. **Waiver of Claims, Remedies or Damages.** MSU does not waive any claim or cause of action (present, past or future). MSU does not waive any type or category of remedies or damages.
10. **Limitation of Liability/Damages.** MSU does not limit the liability of a non-MSU party for negligence, or for intentional or reckless torts. MSU does not limit the liability of any non-MSU party to the amount of the contract or to any other set amount.
11. **Liquidated Damages.** Any reference to payment of liquidated damages by MSU are deleted.
12. **Immunities.** MSU does not waive its sovereign immunity or its Constitutional Eleventh Amendment immunity.
13. **MSU Liability.** MSU shall only be responsible for liability resulting from the actions/inactions of its officers, agents, and employees acting within the course and scope of their official duties with Mississippi State University to the degree and within the parameters required under §§ 11-46-1, *et seq.*, Mississippi Code Annotated of 1972.
14. **Policies.** Provisions of the contract that provide for actions or results that are inconsistent with or in violation of the policies of MSU or the Mississippi Board of Trustees of State Institutions of Higher Learning are deleted.
15. **Control of Litigation.** Any provision giving the Contractor exclusive control over litigation is deleted.
16. **Insurance.** MSU is self-insured under the Mississippi Tort Claims Act. Any provision of the Contract which requires MSU to purchase any form of insurance is deleted. Any provision of the Contract which requires MSU to name a non-MSU party as an additional insured is deleted.
17. **Arbitration.** MSU does not agree to submit to arbitration or mediation.
18. **Unauthorized Payments.** MSU does not agree to pay extra compensation, fees, or allowances after service has been rendered or a contract has been made, or for any payment not authorized by law.
19. **Payment by MSU.** MSU will make payments for all amounts owed pursuant to the Contract no later than forty-five (45) days after receipt of an invoice and receipt, inspection and approval of the Contractor’s goods or services. Any provision that requires MSU to pay Contractor any late charges, fees or penalties is governed by Section 31-7-305, Mississippi Code of 1972 (as amended). Any provision that requires MSU to pay a deposit is deleted.
20. **Term.** The term of the Contract shall be for the term stated in the Contract itself. In the event no term is stated in the Contract, the Contract shall expire five (5) years from the date of the Contract. Any reference to an automatic renewal of the term of the Contract is deleted. All renewals shall be in writing and agreed to by the parties.
21. **Breach of Contract.** In the event either party materially breaches the contract, the non-breaching party may terminate the contract upon thirty (30) days written notice to the breaching party. Such termination shall not prejudice the non-breaching party’s right to pursue any and all other legal or equitable remedies available to it.
22. **Assignment/Third Party Beneficiary.** Neither party may assign its rights or delegate its duties under the Contract without the prior written consent of the other party, which shall not be unreasonably withheld. Any purported assignment of rights in violation of this provision is void. The Contract does not and is not intended to confer any rights or remedies upon any persons other than the parties to the Contract.
23. **Public Records/Transparency.** MSU is subject to the Mississippi Public Records Act, Mississippi Code of 1972 (as amended) Section 25-61-1, *et seq.* and the Mississippi Accountability and Transparency Act of 2008,

Mississippi Code of 1972 (as amended) Section 27-104-151, et seq. All payments made by MSU will be posted on a public website. The information posted will include the date of payment, Contractor name, Contractor's city and state, and the payment amount. The release of any such information supersedes any applicable non-disclosure or confidentiality obligation of MSU.

24. **MSU Employment.** Any provision penalizing MSU for hiring an employee of Contractor is deleted.
25. **Publicity/Trademarks.** Contractor may not publicize the fact of the Contract, publicize MSU's relationship with the Contractor as its customer, include MSU on a customer list; or use MSU as a referral source without MSU's prior written consent. Contractor shall submit, for MSU's review and approval, all press releases or any other publicity materials mentioning MSU by name, and Contractor shall not publish such without MSU's prior written approval, which may be withheld at MSU's sole discretion. Contractor shall not use MSU's trademarks, service marks, logos, symbols, designs, or other marks without prior written approval of the MSU Office of Trademark and Licensing.
26. **Governmental Entity.** The Contractor recognizes and acknowledges that MSU, as a political subdivision of the State of Mississippi, enters into this contract only to the extent authorized by Mississippi law, including the opinions of the Attorney General of Mississippi. Any provision to the contract that is not authorized by or is inconsistent with Mississippi law, including the opinions of the Mississippi Attorney General, are invalid and deleted.
27. **Contracting Authority.** Contractor acknowledges that the individual executing the Contract on behalf of MSU is doing so in his/her official capacity only. To the extent any provision contained in the Contract exceeds such authority, Contractor agrees that it will not look to the individual in his/her personal capacity or otherwise seek to hold the individual personally liable for exceeding such authority.
28. **Employment Protection Act.** Contractor represents and warrants that it will ensure compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp. 2008), and shall register and participate in the status verification system for all newly hired employees. The term "employee" as used in this paragraph means any person that is hired to perform work within the State of Mississippi. As used in this paragraph, "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 shall 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. Any person assigned by a Contractor to perform services for MSU shall meet the employment eligibility requirements of all immigration laws of the State of Mississippi. Any breach of these warranties may subject Contractor to the following: (a) termination of this Contract 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 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 may also be liable for any additional costs incurred by MSU or the State due to contract cancellation or loss of license or permit.
29. **FERPA.** To the extent applicable, the Contractor shall protect and maintain all records, information and data collected pursuant to the Contract in accordance with applicable state and federal laws and regulation, including without limitation, the Family Education Rights and Privacy Act, 20 U.S.C. § 1232g ("FERPA"). Specifically and without limiting the generality of the foregoing, the Contractor shall protect and maintain any and all "Education Records" of MSU students consistent with applicable FERPA regulations and shall fully cooperate with MSU in any request for such information. Any provision of the Contract that conflicts with this paragraph is deleted.
30. **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.
31. **Entire Agreement.** The parties acknowledge that the contract, including this Addendum, sets forth the entire agreement and understanding of the parties as to the subject matter(s) including therein.
32. **Modification.** The contract may only be modified by a written amendment authorized and executed by all parties to the contract. No oral statements shall modify or otherwise affect the terms, conditions or specification of the contract.
33. **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.

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SPECIAL TERMS APPLICABLE TO SOFTWARE ONLY:**

34. **Software License.** Notwithstanding anything contained in the Contract to the contrary, Contractor grants to MSU a perpetual, royalty-free, irrevocable license to use for MSU's internal business only any software which may be installed in the equipment and/or other software provided by Contractor and any associated Documentation (as defined below) provided by Contractor to MSU. MSU may permit its employees, agents, affiliates and independent contractors to use the software and any associated Documentation.
35. **Software Warranty.** Notwithstanding anything contained in the Contract to the contrary, Contractor warrants that (i) the licensed software will perform substantially in accordance with the applicable Documentation (as defined herein) or as represented or warranted by the Contractor, (ii) it has not inserted any Disabling Code (as defined herein) into the licensed software and (iii) it will use reasonable commercial efforts consistent with industry standards to scan for and remove any software viruses before installation of the equipment purchase hereunder. The Contractor warrants that it has the right to license or sublicense the Software to MSU for the purposes and subject to the terms and conditions set forth herein. As used in this warranty statement, (i) "Disabling Code" means computer code that is designed to delete, interfere with, or disable the normal operation of the purchased product; provided, however, that code included in the licensed software that prevents use outside of the license scope purchased for the software will not be deemed to be Disabling Code and (ii) "Documentation" means the Contractor user manuals, on-line help functions, technical specifications and user instructions regarding the operation, installation and use of the software as made available by Contractor to MSU.
36. **Infringement.** (A) Contractor represents that it has full right to sell or license to MSU the software, the products or the use thereof, and that all such software or products are delivered free of any liens, encumbrances or rightful claim for any infringement of any United States copyright, patent, trade secret or trademark. The Contractor further warrants that the licensed software or product will not infringe any patent, copyright, trade secret or trademark. The Contractor agrees to indemnify and hold MSU harmless from any and all third party claims or infringement relating to MSU's use of the products sold hereunder, including but not limited to paying all defense costs and attorney's fees, and any judgements. (B) If the use of any element of the licensed software is enjoined as a result of any claim arising out of a breach of the warranty, the Contractor will, at its option and expense, either secure for MSU the right to continue to use the allegedly infringing product, or to replace or modify the product so that it is no longer infringing, provided the product continues to materially perform the same function(s) as originally desired by MSU and otherwise conforms to the warranty hereunder. In the event Contractor fails to do either of the foregoing, the Contractor shall refund to MSU the full purchase price of all products purchase hereunder.
37. **Data Extraction.** Within ninety (90) days of the termination of the Contract, the Contractor agrees to allow MSU to migrate any stored MSU data from Contractor's software. Upon expiration or earlier termination of the Contract, the Contractor agrees that MSU may elect to have the Contractor migrate the data to a MSU computer at no cost to MSU, or for the Contractor to provide the data to MSU in another form which is acceptable to MSU at no cost to MSU.