

**AGREEMENT FOR DELTA STATE UNIVERSITY  
TO OBTAIN SERVICES**

This Agreement (“Agreement”) is entered into by and between Delta State University, a Mississippi institution of higher learning (“DSU”), and \_\_\_\_\_ (“Contractor”), with its principal business located at \_\_\_\_\_,

effective date of the last signature of a party below, unless otherwise specified in the Agreement (“Effective Date”). Contractor and DSU may be referred to individually as a “Party” or collectively as “the Parties” throughout the Agreement. In consideration of the mutual promises and agreements contained herein, the undersigned Parties hereby agree as follows:

**1. STATEMENT OF WORK**

Contractor will provide in a timely, satisfactory, and lawful manner, the services described in the attached and incorporated Exhibit A (hereafter, “Services”).

**2. TERM**

The term of this Agreement shall commence on \_\_\_\_\_ and shall continue until \_\_\_\_\_ (the “Term”) unless sooner terminated pursuant to the terms and conditions of the Agreement. Upon mutual written agreement of both parties, if a renewal agreement is executed by both parties prior to the termination of this agreement, this agreement may be renewed under these same terms. However, any renewal shall not extend the agreement more than a total of five (5) years. Any revisions to original terms shall be stated via written amendment.

**3. CONSIDERATION**

DSU agrees to pay the specified rate for the Services rendered under this Agreement, as described in the attached and incorporated Exhibit B.

**4. PAYMENT**

Contractor shall submit monthly invoices to DSU for Services provided during the preceding month. Payment is due within forty-five (45) days of receipt of an invoice detailing Contractor’s Services and upon review and confirmation by DSU that such payments and all portions thereof are due based on services rendered. No late payment fees or penalties shall apply in excess of those prescribed by law. Contractor acknowledges and agrees that DSU is exempt from the payment of taxes. Payment shall be made to Contractor at the address provided in Section 5 below.

**5. NOTICES**

Any notices under this Agreement shall be sent to:

**To Contractor:**

**To DSU:**

Delta State University  
(name) \_\_\_\_\_  
1003 W. Sunflower Road  
Cleveland, MS 38733

**With a copy to:**

Delta State University  
Office of General Counsel  
1003 W. Sunflower Road  
Cleveland, MS 38733  
klusk@deltastate.edu

## **6. STATUS OF PARTIES**

It is the intention of the Parties that in carrying out its obligations under this Agreement, the Contractor and its employees shall at all times be acting as and deemed to be independent contractors. Nothing contained in this Agreement shall be construed to create a partnership, joint venture, agency or employment relationship between Contractor and DSU. DSU shall have no responsibility for any of Contractor's debts, liabilities, or other obligations or for the intentional, reckless, negligent or unlawful acts or omissions of Contractor or Contractor's employees or agents. In addition, Contractor may not bind DSU in any way whatsoever with respect to third parties.

The day-to-day supervision and control of Contractor's employees, agents, and subcontractors, if any, is the sole responsibility of Contractor. Contractor retains sole and absolute discretion, control, and judgment in the manner and means of performing the Services.

## **7. CONTRACTOR PERSONNEL**

DSU shall have the right of reasonable rejection and approval of individuals assigned by Contractor to perform Services hereunder. If DSU exercises its right of reasonable rejection, Contractor must provide replacement(s) satisfactory to DSU in a timely manner and at no additional cost to DSU. Contractor shall comply with DSU's applicable facilities and network

access policies and procedures for any persons performing Services on-site at DSU or utilizing DSU information technology resources.

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 regulation and executive orders enacted pursuant to such laws.

## **8. RISK MANAGEMENT**

Contractor agrees to cooperate with DSU's reasonable risk management and quality assurance activities. Should Contractor become aware of an incident or allegation that may give rise to a claim against DSU or IHL, Contractor agrees to promptly notify DSU of the nature of the claim and report all necessary information related to the claim. The obligations of this Section shall survive any expiration or earlier termination of this Agreement.

## **9. CONFIDENTIALITY**

Contractor shall treat all DSU 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 DSU. 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 DSU 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.

To the extent applicable, Contractor shall protect and maintain all records, information, and data collected under the Agreement 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 DSU students consistent with applicable FERPA regulations and shall fully cooperate with DSU in any request for such information.

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

## **10. EMPLOYMENT VERIFICATION**

Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, Section 71-11-1, et seq. of the Mississippi Code Annotated.

## **11. ASSIGNMENT**

Contractor shall not assign this Agreement or any rights herein, in whole or in part, or delegate its duties under this Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or another manner, without the prior written consent of DSU. Any purported assignment of rights in violation of this Section is void. This Agreement does not and is not intended to confer any rights or remedies upon any persons other than the parties hereto.

## **12. TERMINATION**

**Termination for Convenience.** DSU may terminate this Agreement, in whole or in part, with or without cause upon thirty (30) days' written notice to Contractor. No early termination charges, fees, or penalties may be assessed against DSU for terminating the Agreement prior to expiration.

**Termination for Cause.** If either Party ("Non-Breaching Party") refuses or fails to perform any of the provisions of this Agreement or otherwise fails to timely satisfy the provisions hereof, or commits any other substantial breach of this Agreement, the Non-Breaching Party may notify the other Party in writing of the nonperformance and if not cured in ten (10) days or any longer time specified in writing, the Non-Breach Party may terminate this Agreement. Contractor shall continue performance of the Services to the extent the Agreement is not otherwise terminated and shall be liable for excess costs incurred by DSU in procuring similar services. The rights and remedies provided herein are in addition to any other rights and remedies provided by law or under this Agreement.

## **13. INSURANCE**

Contractor shall maintain throughout the Term of the Agreement the following insurance coverage:

- A. Workers' compensation insurance as required by applicable law. Employer's Liability shall be included with a limit not less than \$1,000,000 per accident/per disease/per employee. If Contractor is exempt from workers' compensation covered under Mississippi law or fails to provide appropriate coverage, the Contractor shall be solely liable for and agrees to hold harmless the University for the injuries of any owners, agents, volunteers, or employees of Contractor during the course of the Agreement.
- B. Commercial general liability insurance on an "occurrence" basis with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury, completed operations, and property damage.
- C. Cyber liability insurance if data and confidential information is accessed, stored and/or transmitted. Insurance shall include coverage for liability, data breach investigation, notification and response, and regulatory defense with limits not less than \$1,000,000.
- D. Automobile liability insurance covering all vehicles (owned or otherwise) used in connection with the Services provided under this Agreement with a combined single limit per accident of not less than \$1,000,000.

E. Umbrella or Excess insurance may be used to meet the limit requirements for liability insurance on a “following form” basis.

DSU and the Mississippi Board of Trustees of State Institutions of Higher Learning (“IHL”) shall be named as additional insureds (Commercial General Liability insurance must use additional insured endorsement at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37) on all liability policies for the full limits of such policies. Contractor’s insurance shall be primary and noncontributory with respect to any insurance maintained by DSU or IHL. Contractor agrees to waive any rights of subrogation against DSU or IHL. Certificates of insurance evidencing the required coverage, including amendatory endorsements, shall be provided to DSU and upon request, by mail to IHL at Risk Management, Mississippi Institutions of Higher Learning, 3825 Ridgewood Road, Suite 427, Jackson, MS 39211. Contractor must provide sixty (60) days’ advance notice of any cancellations, material changes, or non-renewal of insurances required by this Agreement. All policies of insurance required by this Agreement shall be with insurers rated by A M Best as A VIII or greater unless otherwise approved by the University and which are licensed or hold a Certificate of Authority to provide insurance in the State of Mississippi.

Subcontractors of the Contractor shall be subject to all of the requirements stated within this section. DSU reserves the right to receive from the Contractor copies of subcontractors’ certificates.

DSU reserves the right to consider alternate coverage or limits and to modify these requirements, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

#### **14. USE OF TRADEMARKS AND PUBLICITY**

Contractor shall not use any DSU trademark, service mark, logo, symbol, design, device, name or other mark without the express written consent of DSU’s Trademark and Licensing Office. Contractor may not publicize the fact of this Agreement, DSU’s relationship with Contractor as its customer/client, include DSU on any customer lists, or use DSU as a referral source without the prior written consent of an authorized DSU official. Contractor shall submit, for DSU’s review and approval, all press releases or any other publicity materials mentioning DSU by name, and Contractor shall not publish such without DSU’s written approval, which may be withheld in DSU’s sole discretion.

#### **15. INDEMNIFICATION**

Contractor and its principals shall indemnify, defend, and hold harmless the State of Mississippi, IHL, DSU, and each of their officers, agents, employees, trustees, and representatives, both in their official and in their individual capacities, from and against any and all claims, demands, actions, suits, proceedings, costs (including without limitation court costs, investigate fees), expenses, losses, damages and liabilities, and attorneys’ fees, resulting from or arising out of Contractor’s breach of this Agreement and/or the negligence or willful misconduct of Contractor or its partners, principals, officers, representatives, employees or agents. In DSU’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 DSU. Contractor shall be solely responsible for all costs and/or expenses associated with such defense and DSU shall be entitled to participate in said defense. Contractor shall not settle any claim, suits, etc., without DSU's written concurrence, which concurrence DSU shall not unreasonably withhold. Any defense of indemnities must be coordinated through the Office of the Mississippi Attorney General.

Contractor shall provide DSU prompt written notice of any action or suit filed, and prompt notice of any claim made against Contractor by any individual or entity that may result in litigation or other government proceedings (e.g., administrative proceedings) related in any way to this Agreement.

#### **16. ATTORNEYS' FEES AND EXPENSES**

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

#### **17. FORCE MAJEURE**

Neither Party will be liable for any failure or unavoidable delay in its performance under this Agreement in the event either Party is unable, despite the exercise of reasonable diligence and not as a result of negligence or the fault of the Party, to perform its obligation(s) under the 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. If Contractor is unable to provide Services as a result of a Force Majeure Event, DSU may terminate this Agreement in whole or in part upon written notice to Contractor.

#### **18. AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of DSU under this Agreement is conditioned upon the availability of funds. If the funds anticipated for the continued funding of this Agreement are, at any time, not forthcoming or insufficient, either through failure of the federal government to provide funds, of the State of Mississippi to appropriate funds, the discontinuance or material alteration of the program under which funds were provided, or if funds are not otherwise available to DSU, then DSU shall have the right upon thirty (30) days' written notice to Contractor, to terminate this Agreement in whole or in part without damage, penalty, cost, or expenses to DSU of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

## **19. WAIVER**

No failure on the part of any Party hereto to exercise, and no delay in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy hereunder preclude any further or other exercise thereof or the exercise of any other right, power, or remedy.

## **20. DISPUTES**

Contractor agrees that any and all disputes between the Parties must be submitted to the **DSU Vice President for Administration and Chief Financial Officer** for consideration and a final decision. If Contractor is dissatisfied with that final decision, the dispute may, at the option of DSU, be subjected to resolution by mediation prior to any action being taken by Contractor toward litigation.

## **21. APPLICABLE LAW**

This Agreement 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 Agreement shall be governed by the laws of the State of Mississippi, without regard to its conflicts of law principles. The courts of Bolivar 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.

## **22. RECORD RETENTION, ACCESS TO RECORDS, AND RIGHT TO AUDIT**

Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, DSU or any duly authorized representative thereof shall have unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the Services for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this Agreement shall be retained by Contractor for at least four (4) years after final payment is made under this Agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the four (4) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the four (4) year period, whichever is later.

## **23. 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 DSU to Contractor or data otherwise obtained by Contractor from or about DSU ("DSU Data"), (ii) protect against any anticipated threats or hazards to the security or integrity of DSU Data, and (iii) protect against unauthorized access to or use of DSU Data that could result in substantial harm or inconvenience to DSU 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 DSU 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 DSU Data and will inform DSU immediately when it suspects or learns of malicious activity involving DSU Data, including an estimate of the activity's effect on DSU 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 DSU Data shall include: (i) limiting access to DSU 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) DSU data stored on any mobile media; (vii) encrypting DSU Data transmitted over public or wireless networks; (viii) strictly segregating DSU Data from information of Contractor or its other customers so that DSU 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 DSU 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.

#### **24. GOVERNMENTAL ENTITY**

Contractor recognizes and acknowledges that DSU, as a governmental entity of the State of Mississippi, is entering this Agreement, including the provisions thereof, only to the extent authorized by Mississippi law, including the opinions of the Mississippi Attorney General. Any provision of this Agreement that is in any respect not authorized by or is inconsistent with Mississippi law, including the opinions of the Mississippi Attorney General, is invalid.

#### **25. 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 DSU will be posted on a public website. 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 obligation shall be subordinate to this obligation.

## **26. REPRESENTATIONS AND WARRANTIES**

Contractor represents and warrants: (a) Contractor is a validly organized business with authority to enter into this Agreement; (b) the individual executing this Agreement on behalf of Contractor is duly authorized to do so; (c) Contractor is qualified to do business and is in good standing in the State of Mississippi; (d) entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; (e) Contractor will comply with all applicable federal, state, and local laws, regulations, rules and ordinances during the Term, and (f) notwithstanding any other provision of this Agreement to the contrary, there are no existing legal or regulatory proceedings or prospective proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

## **27. SEVERABILITY**

If any provision of this Agreement shall be deemed to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

## **28. PRIORITY**

This Agreement consists of and precedence is hereby established by the order of the following:

- A. This Agreement signed by all Parties;
- B. Exhibit A (Scope of Work) and Exhibit B (Rate of Pay); and
- B. Any other exhibits referenced in and attached to this Agreement.

A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency.

## **29. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement of the parties with respect to the subject matter herein and supersedes and replaces all prior negotiations, understandings, and agreements, written or oral, between the parties relating hereto. Any modification to this Agreement shall only be effective if it is in writing and signed by a duly authorized representative of Contractor and an authorized signatory of DSU. Contractor acknowledges that it has thoroughly read this Agreement and all contract documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations contained herein. Accordingly, this Agreement shall not be construed or interpreted in favor of or against

DSU or Contractor on the basis of draftsmanship or preparation hereof. This Agreement may be executed in counterparts, each of which shall be deemed an original, but together shall constitute one and the same instrument.

**WITNESS OUR SIGNATURES** on the dates written below.

**CONTRACTOR**

Name: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

**DELTA STATE UNIVERSITY**

\_\_\_\_\_

Date: \_\_\_\_\_

Dr. Edwin Craft,

Vice President for Administration and Chief Financial Officer

**EXHIBIT A**  
**STATEMENT OF WORK**

[[ Summary ]]

[[ Contract Number ]]

**EXHIBIT B**

**RATE FOR SERVICES**

[[ Please add rate for services below or attach to the Attachments tab ]]

[[ Contract Number ]]