**CONTRACT TO OBTAIN SERVICES/EQUIPMENT**

**FROM**

**MISSISSIPPI STATE UNIVERSITY**

**[May 2010 edition Part A]**

 This Agreement is between , hereinafter referred to as “Payer”, a corporation organized and existing under the laws of the State of with its corporate address being , , , , and Mississippi State University, a governmental entity of the State of Mississippi, hereinafter referred to as “MSU”, with its address at P. O. Box , Mississippi State, Mississippi 39762 for and on behalf of its  (hereinafter ). Payer and MSU are collectively referred to as the “parties.”

WHEREAS, MSU desires to provide certain, specific services/equipment to Payer.

WHEREAS, Payer is willing to pay for those services/equipment.

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, 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.

Therefore, the parties hereby agree as follows:

1. Both parties agree to all terms and conditions set forth in Part B, Mississippi State University Standard Terms and Conditions, July 2007 with the exception of any exceptions, additions, alterations or revisions set forth in Part C, Exceptions to Mississippi State University Standard Terms and Conditions, July 2007, which must be signed by both parties to be in force.

# Payer will refrain from using MSU’s name, work mark, or other university identifier. Refrain from using the name or title of any MSU official. Refrain from projecting their product, or the work entailed therewith, as being approved by or otherwise endorsed by MSU, its entities or officials.

1. MSU shall:

Provide the following services/Equipment:

1. *(the scope of services/equipment should be clearly defined).*
2. .
3. .

# For the services/equipment set forth herein, Payer will pay MSU as follows (*the amount of payment shall be clearly defined)*

a.

# 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 Payer:**

**For MSU:**

Don Buffum, CPPO

Director of Procurement and Contracts

Office of Procurement and Contracts

P. O. Box 5307

Mississippi State, MS 39762

MSU Contract for Services Part B

Mississippi State University Standard Terms and Conditions, July 2007

# 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

Payer thru agreement 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, Payer 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

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

# Assignment Prohibition

Payer 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

Payer 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.

# Payer - Independent Payer

Payer shall at all times be regarded as and shall be legally considered an independent Payer and neither Payer 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 Payer, 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 Payer or any of its partners, principals, officers, agents, employees or representatives. MSU shall not provide to Payer, 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. Payer’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 venturers, or any similar relationship between MSU and Payer. At no time shall Payer be authorized to do so and at no time shall Payer act as an agent for or of MSU.

# Indemnification

Payer and its officers shall indemnify, defend, save and 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 Payer and its’ partners, principals, officers, agents, employees and representatives related to actions or inactions of Payer, its partners, principals, officers, agents, employees and representatives. In MSU’s sole discretion, Payer may be allowed to control the defense of any such claim, suit, etc., but in such an event, Payer shall use legal counsel acceptable to MSU. Payer shall be solely responsible for all costs and/or expenses associated with such defense and MSU shall be entitled to participate in said defense. Payer shall not settle any claim, suits, etc., without MSU’s written concurrence, which concurrence MSU shall not unreasonably withhold.

# Attorneys’ Fees and Expenses

Payer agrees that in the event Payer defaults in any obligations under this agreement that Payer 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

Payer covenants to save, defend, keep 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

Payer agrees that any and all disputes between the parties to this agreement must be submitted to the MSU Vice President for Finance and Administration for consideration and a final decision. If Payer 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 Payer 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 Payer 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 Payer at reasonable times and places. Such books and records shall be retained and maintained by Payer 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, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of this state. Payer shall comply with applicable federal, state, and local laws and regulations.

1. Payer

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

Part C

Exceptions to Mississippi State University Standard Terms and Conditions, July 2007

Any exceptions, additions, alterations or revisions to the Mississippi State University Standard Terms and Conditions, July 2007, shall be listed herein 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, July 2007 will be considered to be in force.

A.

B.

C.

D.

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

Payer name:

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

 Payer Signature DATE

MISSISSIPPI STATE UNIVERSITY

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

 Don Buffum, CPPO DATE

 Director

Procurement & Contracts