



**Master Service Agreement  
(Professional Services)**

This Master Service Agreement (this “**Agreement**”), entered into as of \_\_\_\_\_ (“**Effective Date**”), is made by and between Michigan State University, with offices located at 426 Auditorium Rd, East Lansing, MI 48824 (“**MSU**” or “**University**”) and \_\_\_\_\_, with offices at \_\_\_\_\_ (“**Supplier**”). MSU and Supplier are sometimes referred to in this Agreement individually as a “party” and collectively as the “parties.”

**1. SERVICES**

- 1.1 MSU hereby engages Supplier, and Supplier hereby accepts such engagement, as an independent contractor to provide certain services to MSU on the terms and conditions set forth in this Agreement.
- 1.2 Supplier shall provide to MSU the services set forth in the Statement of Work (collectively, the “**Services**”), attached as Schedule A to this Agreement (the “**Statement of Work**”).
- 1.3 MSU shall not control the manner or means by which Supplier performs the Services.
- 1.4 Unless otherwise set forth in Statement of Work, Supplier shall furnish, at its own expense, the equipment, supplies and other materials used to perform the Services. MSU shall provide Supplier with access to its premises and equipment to the extent necessary for the performance of the Services.
- 1.5 Supplier shall comply with all applicable policies of MSU relating to business and office conduct, health and safety and use of MSU’s facilities, supplies, information technology, equipment, networks and other resources.

**2. TERM**

The term of this Agreement shall commence on the Effective Date and shall continue for a period of three (3) years, unless earlier terminated in accordance with paragraph 14 (the “**Term**”). Any extension of the Term will be subject to mutual written agreement between the parties.

**3. PAYMENT**

- 3.1 MSU will pay the fees set forth in the Statement of Work (the “**Fees**”) in accordance with this Section 3 and any payment milestones set forth in the Statement of Work.
- 3.2 Supplier’s invoices must conform to the requirements set forth in the Statement of Work. Invoices are due and payable by the University, in accordance with the University’s standard



payment procedures, which are 2.75% 10 days, net 30 days after receipt, provided the University determines that the invoice was properly rendered. Supplier may only charge for Services performed as specified in the Statement of Work. Invoices must include an itemized statement of all charges. MSU is exempt from state sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for MSU's exclusive use.

- 3.3 MSU has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. MSU will notify Supplier of any dispute within a reasonable time. Payment by MSU will not constitute a waiver of any rights as to Supplier's continuing obligations, including claims for deficiencies or substandard Services.
- 3.4 Without prejudice to any other right or remedy it may have, MSU reserves the right to set off at any time any amount then due and owing to it by Supplier against any amount payable by MSU to Supplier.
- 3.5 Unless otherwise set forth in the Statement of Work, Supplier is solely responsible for any travel or other costs or expenses incurred by Supplier in connection with the performance of the Services, and in no event shall MSU reimburse Supplier for any such costs or expenses. If the Statement of Work allows for reimbursement of travel costs, such reimbursement is subject to MSU's Travel Reimbursement Policy set forth at <https://ctrl.msu.edu/COTTravelNew/ReimbursementChart.aspx>.

#### **4. RELATIONSHIP OF THE PARTIES**

- 4.1 Supplier is an independent contractor of MSU, and this Agreement shall not be construed to create any association, partnership, joint venture, employee or agency relationship between Supplier and MSU for any purpose. Supplier has no authority (and shall not hold itself out as having authority) to bind MSU and Supplier shall not make any agreements or representations on MSU's behalf without MSU's prior written consent.
- 4.2 Without limiting paragraph 4.1, Supplier will not be eligible under this Agreement to participate in any vacation, group medical or life insurance, disability, profit sharing or retirement benefits or any other fringe benefits or benefit plans offered by MSU to its employees, and MSU will not be responsible for withholding or paying any income, payroll, Social Security or other federal, state or local taxes, making any insurance contributions, including unemployment or disability, or obtaining worker's compensation insurance on Supplier's behalf. Supplier shall be responsible for, and shall indemnify MSU against, all such taxes or contributions, including penalties and interest. Any persons employed by Supplier in connection with the performance of the Services shall be Supplier's employees and Supplier shall be fully responsible for them.



**5. SUBCONTRACTORS**

- 5.1 Supplier will not, without the prior written approval of MSU, which consent may be given or withheld in MSU's sole discretion, engage any third party to perform Services. MSU's approval of any such third party (each approved third party, a "**Subcontractor**") does not relieve Supplier of its representations, warranties or obligations under this Agreement. Without limiting the foregoing, Supplier will:
- (a) be responsible and liable for the acts and omissions of each such Subcontractor (including such Subcontractor's employees who, to the extent providing Services, shall be deemed Supplier personnel) to the same extent as if such acts or omissions were by Supplier or its employees; and
  - (b) be responsible for all fees and expenses payable to, by or on behalf of each Subcontractor in connection with this Agreement, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits.

**6. INTELLECTUAL PROPERTY RIGHTS**

- 6.1 MSU is and shall be, the sole and exclusive owner of all right, title and interest throughout the world in and to all the results and proceeds of the Services performed under this Agreement, including but not limited to the deliverables set forth in the Statement of Work (collectively, the "**Deliverables**"), including all patents, copyrights, trademarks, trade secrets and other intellectual property rights (collectively "**Intellectual Property Rights**") therein. Supplier agrees that the Deliverables are hereby deemed a "work made for hire" as defined in 17 U.S.C. § 101 for MSU. If, for any reason, any of the Deliverables do not constitute a "work made for hire," Supplier hereby irrevocably assigns to MSU, in each case without additional consideration, all right, title and interest throughout the world in and to the Deliverables, including all Intellectual Property Rights therein.
- 6.2 Any assignment of copyrights under this Agreement includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as "moral rights" (collectively, "**Moral Rights**"). Supplier hereby irrevocably waives, to the extent permitted by applicable law, any and all claims it may now or hereafter have in any jurisdiction to any Moral Rights with respect to the Deliverables.
- 6.3 Upon the reasonable request of MSU, Supplier shall promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist MSU to prosecute, register, perfect, record or enforce its rights in any Deliverables. In the event MSU is unable, after reasonable effort, to obtain Supplier's signature on any such documents, Supplier hereby irrevocably designates and appoints MSU as its agent and attorney-in-fact, to act for and on Supplier's behalf solely to execute and file any such application or other document and do all other lawfully permitted acts to further the prosecution and issuance of patents, copyrights or other intellectual property protected



related to the Deliverables with the same legal force and effect as if Supplier had executed them. Supplier agrees that this power of attorney is coupled with an interest.

6.4 Notwithstanding paragraph 6.1, to the extent that any of Supplier's pre-existing materials, are contained in the Deliverables, Supplier retains ownership of such pre-existing materials and hereby grants to MSU an irrevocable, worldwide, unlimited, royalty-free license to use, publish, reproduce, display, distribute copies of, and prepare derivative works based upon, such pre-existing materials and derivative works thereof. MSU may assign, transfer and sublicense such rights to others without Supplier's approval.

6.5 Except for such pre-existing materials and Supplier's obligations under the Statement of Work, Supplier has no right or license to use, publish, reproduce, prepare derivative works based upon, distribute, perform, or display any Deliverables. Supplier has no right or license to use MSU's trademarks, service marks, trade names, trade names, logos, symbols or brand names without prior written consent of MSU.

## 7. UNIVERSITY DATA.

7.1 Ownership. The University's data includes any and all data collected, used, processed, stored, or generated in connection with the Services that originates from the University (collectively, "**University Data**"). University Data is and will remain the sole and exclusive property of the University and all right, title, and interest in the same is reserved by the University. This **Section 7.1** survives termination or expiration of this Agreement.

7.2 Supplier Use of University Data. At all times, University Data will be treated as Confidential Information. Supplier is provided a limited license to University Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display University Data only to the extent necessary in the provision of the Services. Supplier must: (a) keep and maintain University Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose University Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Agreement, the Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available University Data for Supplier's own purposes or for the benefit of anyone other than the University without the University's prior written consent. This **Section 7.2** survives termination or expiration of this Agreement.

7.3 Loss or Compromise of Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Supplier that compromises or is suspected to compromise the security or confidentiality of University Data, Supplier must, as applicable: (a) notify the University as soon as practicable but no later than forty-eight (48) hours of becoming aware of such occurrence; (b) cooperate with the University in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and



other materials required to comply with applicable law or as otherwise required by the University; (c) in the case of personally identifiable information (“PII”), at the University’s sole election, (i) with approval and assistance from the University, notify the affected individuals who comprise the PII as soon as practicable but no later than is required to comply with applicable law; or (ii) reimburse the University for any costs in notifying the affected individuals; (d) in the case of PII, and if required by law, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) pay for any costs associated with the occurrence, including but not limited to any costs incurred by the University in investigating and resolving the occurrence, including reasonable attorney’s fees associated with such investigation and resolution; (g) without limiting Supplier’s obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless the University for any and all claims, including reasonable attorneys’ fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the University in connection with the occurrence; and (i) provide to the University a detailed plan within ten (10) calendar days of the occurrence describing the measures Supplier will undertake to prevent a future occurrence. The University will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification to any other party, including but not limited to public media outlets, must be reviewed and approved by the University in writing prior to its dissemination. This **Section 7.3** survives termination or expiration of this Agreement.

## 8. CONFIDENTIALITY

8.1 Meaning of Confidential Information. The term “Confidential Information” means all information and documentation of a party that: (a) has been marked “confidential” or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked “confidential” or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked “confidential” or with words of similar meaning; or, (c) should reasonably be recognized as confidential information of the disclosing party. The term “Confidential Information” does not include any information or documentation that was or is: (a) in the possession of the University and subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party’s proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). Notwithstanding the above, in all cases and for all matters, University Data is deemed to be Confidential Information.

8.2 Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or



subcontractors of a party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to the Supplier's Subcontractor is permissible where (a) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's responsibilities; and (b) Supplier obligates the Subcontractor in a written contract to maintain the University's Confidential Information in confidence.

- 8.3 Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement. Each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- 8.4 Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the University, at the sole election of the University, the immediate termination, without liability to the University, of this Agreement.
- 8.5 Surrender of Confidential Information upon Termination. Upon termination or expiration of this Agreement, each party must, within five (5) Business Days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control. If Supplier or the University determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and certify the same in writing within five (5) Business Days from the date of termination to the other party.



**9. FERPA COMPLIANCE.** University is a qualifying educational agency or institution under the U.S. Family Educational Rights and Privacy Act (“FERPA”). To the extent Supplier or its personnel have access to data protected by FERPA, Supplier acknowledges that for the purposes of this Agreement it is designated as a “school official” with “legitimate educational interests” in such data and associated metadata, as defined under FERPA and its implementing regulations, and agrees to abide by the limitations and requirements imposed on school officials under those regulations. Supplier agrees to use such data only for the purpose of fulfilling its duties under this Agreement, and will not monitor, share, or disclose any such data to any third party except as provided for in this Agreement, as required by law, or as authorized in writing by University. Supplier specifically agrees not to use any data for purposes of targeted advertising.

**10. RECORDS MAINTENANCE, INSPECTION, EXAMINATION AND AUDIT**

University shall have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of Supplier involving transactions related to this Agreement until the expiration of three (3) years after final payment hereunder. Supplier further agrees to promptly furnish, when requested by University, such books, documents, and records of Supplier as are necessary to verify the accuracy of the amounts invoiced to University against any past or current goods and services provided by Supplier. If any audit discloses an overpayment by University or a discrepancy in the amount invoiced by Supplier against the goods and services actually provided by Supplier, Supplier will promptly reimburse University within thirty (30) days of University’s notification to Supplier of any such overpayment, rectify such discrepancy, or both, and further pay University a fee equal to 25% of the amount of any overpayment.

**11. REPRESENTATIONS AND WARRANTIES**

11.1 Supplier represents and warrants to MSU that:

- (a) Supplier has the right to enter into this Agreement, to grant the rights granted herein and to perform fully all of its obligations in this Agreement;
- (b) Supplier’s entering into this Agreement with MSU and its performance of the Services do not and will not conflict with or result in any breach or default under any other agreement to which it is subject;
- (c) Supplier has the required skill, experience and qualifications to perform the Services, Supplier shall perform the Services in a professional and workmanlike manner in accordance with best industry standards for similar services and Supplier shall devote sufficient resources to ensure that the Services are performed in a timely and reliable manner;
- (d) Supplier shall perform the Services in compliance with all applicable federal, state and local laws and regulations;
- (e) MSU will receive good and valid title to all Deliverables, free and clear of all encumbrances and liens of any kind;



- (f) all Deliverables are and shall be Supplier's original work (except for material in the public domain or provided by MSU) and, to the best of Supplier's knowledge, do not and will not violate or infringe upon the Intellectual Property Rights or any other right whatsoever of any person, firm, corporation or other entity.

11.2 MSU hereby represents and warrants to Supplier that:

- (a) it has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder; and
- (b) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary organizational action.

## **12. INDEMNIFICATION**

12.1 Supplier shall defend, indemnify and hold harmless MSU and its affiliates and their trustees, officers, directors, employees, agents, successors and permitted assigns from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind (including reasonable attorneys' fees) arising out of or resulting from:

- (a) bodily injury, death of any person or damage to real or tangible, personal property resulting from Supplier's acts or omissions;
- (b) Supplier's breach of any representation, warranty or obligation under this Agreement; and
- (c) any claim that the Services or Deliverables infringes any other person's or entities' Intellectual Property Rights.

12.2 MSU may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to Supplier.

## **13. INSURANCE**

13.1 While performing services under this Agreement, Supplier shall purchase and maintain the following insurance:

- (a) Workers Compensation insurance, Coverage A, with limits statutorily required by any applicable Federal or state law and Employers Liability insurance, Coverage B, with minimum limit of \$500,000 per accident.
- (b) Commercial General Liability insurance with a minimum limit of \$1,000,000 each occurrence/\$2,000,000 general aggregate. Coverage shall include bodily injury and property damage liability, personal and advertising injury liability, products/completed operations, and liability assumed under an insured contract.
- (c) Professional liability/errors and omissions insurance with limits no less than \$1 million





13.2 Insurance policies shall be issued by companies licensed or approved to do business within the State of Michigan. Insurers shall possess a minimum A.M. Best rating of A. The insurance policies, where allowable, shall be endorsed to name Michigan State University, its Board of Trustees, agents, officers, and employees as "Additional Insureds." In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend for three years past completion and acceptance of Supplier's Services and must be evidenced by annual certificates of insurance. All policies of insurance must be on a primary basis, non-contributory with any other insurance and/or self-insurance carried by MSU. Supplier shall provide a minimum 30 days written notice to MSU via certified mail of cancellation or non-renewal of policies required under this Agreement and a renewal certificate at least 15 days prior to expiration.

#### **14. TERMINATION**

14.1 MSU may terminate this Agreement without cause upon thirty (30) days' written notice to Supplier. In the event of termination pursuant to this paragraph 14.1, MSU shall pay Supplier any Fees due and payable for any Services completed up to and including the date of such termination.

14.2 MSU may terminate this Agreement, effective upon written notice to Supplier, in the event that Supplier materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, Supplier does not cure such breach within ten (10) days after receipt of written notice of such breach. MSU shall pay Supplier any Fees due and payable for any Services completed up to and including the date of such termination, subject to MSU's right of offset for reasonable costs incurred by MSU as a result terminating the Agreement.

14.3 Upon expiration or termination of this Agreement for any reason, or at any other time upon MSU's written request, Supplier shall within fifteen (15) days after such expiration or termination:

- (a) deliver to MSU all Deliverables (whether complete or incomplete) and all hardware, software, tools, equipment or other materials provided for Supplier's use by MSU;
- (b) deliver to MSU all tangible documents and materials (and any copies) containing, reflecting, incorporating or based on the Confidential Information;
- (c) take all reasonable and necessary measures to transition performance of the Services, reports and other documentation, to MSU or MSU's designee;
- (d) prepare an accurate accounting from which MSU and Supplier may reconcile all outstanding accounts;
- (e) permanently erase all of the Confidential Information from Supplier's computer systems; and
- (f) certify in writing to MSU that Supplier has complied with the requirements of this paragraph.



14.4 The terms and conditions of this paragraph 14.4 and paragraph 4, paragraph 5, paragraph 7, paragraph 12, and paragraph 14.3 shall survive the expiration or termination of this Agreement.

**15. LIMITATION OF LIABILITY**

NEITHER PARTY WILL BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES. OTHER THAN ITS PAYMENT OBLIGATIONS, IN NO EVENT WILL MSU'S AGGREGATE LIABILITY TO SUPPLIER UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT, EXCEED THE TOTAL AMOUNT OF PAYMENTS PAID BY MSU TO SUPPLIER DURING THE TWELVE (12) MONTHS PRECEDING THE APPLICABLE CLAIM.

**16. MISCELLANEOUS**

16.1 Criminal Background Checks. Supplier may be required to perform criminal background checks of its personnel pursuant to the MSU Contractor Criminal Background Check Requirements Policy ("CBC Policy"), available at <https://upl.msu.edu/common/documents/criminal-back-ground-check.pdf>. If Supplier is subject to the CBC Policy, Supplier must sign and deliver the Contractor Certification for Criminal Background Checks to University prior to the provision of any services or delivery of any goods. University reserves the right to audit compliance with the CBC Policy requirements and may require further documentation of compliance from Supplier. Non-compliance with the Policy is considered a material breach of this Agreement, which may result in a termination for cause.

16.2 Further Assurances. Each party will, upon the reasonable request of the other party, execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

16.3 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement is to be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party has authority to contract for or bind the other party in any manner whatsoever.

16.4 Use of the University Name, Logo and Marks. The University acknowledges that Supplier may make public statements regarding the existence of this Agreement, its terms and conditions and an accurate description of the products or services being supplied without the consent of the University. However, other than as permitted by the previous sentence, Supplier will not use the name, logo, or any other marks (including, but not limited to, colors



and music) owned by or associated with the University, or the name of any representative of the University without the prior written permission of the University in each instance.

- 16.5 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder, other than routine communications having no legal effect, must be in writing and addressed to the parties as follows (or as otherwise specified by a party in a notice given in accordance with this Section):

If to Supplier:

[SUPPLIER ADDRESS]

E-mail: [E-MAIL ADDRESS]

Attention: [NAME OF INDIVIDUAL TO RECEIVE NOTICES]

Title: [TITLE OF INDIVIDUAL TO RECEIVE NOTICES]

If to the University:

[UNIVERSITY ADDRESS]

E-mail: [E-MAIL ADDRESS]

Attention: [NAME OF INDIVIDUAL TO RECEIVE NOTICES]

Title: [TITLE OF INDIVIDUAL TO RECEIVE NOTICES]

Notices sent in accordance with this Section 23.4 will be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail (with confirmation of transmission), if sent during normal business hours of the recipient, and on the next business day, if sent after normal business hours of the recipient; or (d) on the fifth (5th) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

- 16.6 Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

- 16.7 Assignment. Supplier may not assign this Agreement, nor any money due or to become due without the prior written consent of the University. Any assignment made without such consent shall be deemed void.

- 16.8 No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties and nothing herein, express or implied, is intended to or will confer on any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

- 16.9 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party's authorized Representative. No waiver by any party of any of the provisions hereof is effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or



privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

- 16.10 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto will negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- 16.11 Governing Law. This Agreement is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Agreement are governed by Michigan law, excluding choice-of-law principles.
- 16.12 Equitable Relief. Each party to this Agreement acknowledges and agrees that (a) a breach or threatened breach by such party of any of its obligations under this Agreement would give rise to irreparable harm to the other party for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by such party of any such obligations, the other party hereto is, in addition to any and all other rights and remedies that may be available to such party at law, at equity or otherwise in respect of such breach, entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy. Each party to this Agreement agrees that such party will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this Section 23.11.
- 16.13 Compliance with Laws. Supplier shall comply with all applicable laws, regulations and ordinances and the University's policies and rules, found at <https://upl.msu.edu/for-suppliers/policies-requirements/index.html>. Supplier has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.
- 16.14 Non-discrimination under Michigan Law. Pursuant to Section 209 of the Michigan Elliot-Larsen Civil Rights Act and Section 209 of the Michigan Persons with Disabilities Civil Rights Act, in providing services, the Supplier and its contractor(s) agree not to discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment,



because of age, color, familial status, height, marital status, national origin, race, religion, sex, weight, or a disability that is unrelated to the individual's ability to perform the duties of a particular job or position.

16.15 Exclusion And Debarment. Supplier certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded or otherwise ineligible for state or Federal program participation. In the event that Supplier becomes debarred, suspended or ineligible from state or Federal program participation, Supplier shall notify MSU in writing within three (3) business days of such event. To the extent that Supplier will provide services to any MSU medical entity, Supplier hereby represents and warrants that Supplier is not currently, and at no time has been sanctioned, debarred, suspended, or excluded by any state or federally funded healthcare program, including without limitation, Medicare and Medicaid. Supplier agrees to immediately notify MSU of any threatened, proposed, or actual sanctions, debarment action, suspension, or exclusion by or from any state or federally funded health care program during the term of this Agreement.

16.16 Federal Contract Compliance.

(a) **University is an equal opportunity employer and a federal contractor or subcontractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.**

(b) In accordance with Public Law 115-91 and FAR 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities, and Public Law 115-232 and FAR 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, Supplier is prohibited from delivering covered telecommunications equipment as defined in FAR 52.204-25 or covered articles as defined in FAR 52.204-23. Supplier hereby represents and warrants that it will abide by the prohibitions contained in this Section.

16.17 Conflict of Interest. Supplier warrants that to the best of Supplier's knowledge, there exists no actual or potential conflict between Supplier and the University, and its Services under this Agreement, and in the event of change in either Supplier's private interests or Services



under this Agreement, Supplier will inform the University regarding possible conflict of interest which may arise as a result of the change. Supplier also affirms that, to the best of Supplier’s knowledge, there exists no actual or potential conflict between a University employee and Supplier.

16.18 Schedules. All Schedules and Exhibits that are referenced herein and attached hereto are hereby incorporated by reference.

16.19 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together are deemed to be one and the same agreement and will become effective and binding upon the parties as of the Effective Date at such time as all the signatories hereto have signed a counterpart of this Agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission (to which a signed copy is attached) is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

16.20 Entire Agreement. This Agreement, including the Statement of Work and other Schedules and Exhibits attached hereto, constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms of this Agreement and those of any Schedule, Exhibit or other document, the following order of precedence governs: (a) first, this Agreement, excluding its Exhibits and Schedules; and (b) second, the Exhibits and Schedules to this Agreement as of the Effective Date. NO TERMS ON SUPPLIER’S INVOICES, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE SERVICES, OR DOCUMENTATION HEREUNDER WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE UNIVERSITY FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE UNIVERSITY, EVEN IF ACCESS TO OR USE OF SUCH SERVICE OR DOCUMENTATION REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**MSU**

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Supplier**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



**SCHEDULE A**  
**Statement of Work**  
(attached)

TBD