

## **CONTRACT FOR BANKING SERVICES**

**STATE OF LOUISIANA**

**PARISH OF NATCHITOCHES**

### **CONTRACT**

Be it known that on the 5 day of April, 2022 NORTHWESTERN STATE UNIVERSITY (hereinafter sometimes referred to as "State") and Bank of Montgomery (hereinafter sometimes referred to as "Contractor") do hereby enter into contract under the following terms and conditions.

### **SCOPE OF SERVICE**

Contractor hereby agrees to furnish the following services:

All mandatory terms and conditions of RFP 22-0001 "BANKING SERVICES" which is included herein by reference. If any conflicts existing between the Mandatory conditions of the RFP and the Proposal, the mandatory terms of the RFP shall prevail.

### **CONTRACT MODIFICATIONS**

No amendment or variation of the terms of this Agreement, or any contract entered into as a result of this Agreement shall be valid unless made in writing, signed by the parties and approved as required by law. No oral understanding or agreement not incorporated in the contract is binding on any of the parties.

Changes to the contract include any change in a) compensation; b) beginning/ending date of the contract; c) scope of work; and/or d) Contractor change through the assignment of contract process. Any such changes, once approved, will result in the issuance of an amendment to the contract.

### **FUND USE**

Contractor agrees not to use contract proceeds to urge any elector to vote for or against any candidate or proposition on an election ballot nor shall such funds be used to lobby for or against any proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority. This provision shall not prevent the normal dissemination of factual information relative to a proposition on any election ballot or a proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority.

### **HEADINGS**

Descriptive headings in this Agreement are for convenience only and shall not affect the construction or meaning of contractual language.

### **PAYMENT TERMS**

The Contractor shall receive payment in accordance with the terms and conditions of the RFP.



## **DELIVERABLES**

Contractor shall deliver the services proposed in accordance with the mandatory conditions of the RFP and the Contractor's proposal.

## **TAXES**

Contractor is responsible for payment of all applicable taxes from the funds to be received under this contract. Contractor's federal tax identification number is \_\_\_\_\_

## **TERMINATION OF THIS AGREEMENT**

**TERMINATION OF THIS AGREEMENT FOR CAUSE** – NSU may terminate this agreement for cause based upon the failure of Contractor to comply with the terms and/or conditions of the Agreement, or failure to fulfill its performance obligations pursuant to this agreement, provided that NSU shall give the Contractor written notice specifying the Contractor's failure. If within thirty (30) days after receipt of such notice, the Contractor shall not have corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct such failure and thereafter proceeded diligently to complete such correction, then NSU may, at its option, place the Contractor in default and the Agreement shall terminate on the date specified in such notice. The Contractor may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of NSU to comply with the terms and conditions of this agreement, provided that the Contractor shall give NSU written notice specifying NSU's failure and a reasonable opportunity for NSU to cure the defect.

**TERMINATION OF THIS AGREEMENT FOR CONVENIENCE** – NSU may terminate this Agreement at any time by giving sixty (60) days written notice to contractor of such termination or negotiating with the Contractor an effective date. The Contractor shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily.

The continuance of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act or Title 39 of the Louisiana Revised Statutes of 1950 to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated

## **OWNERSHIP**

All records, reports, documents, or other material related to this contract and/or obtained or prepared by Contractor in connection with the performance of the services contracted for herein shall become the property of the State, and shall, upon request, be returned by Contractor to State, at Contractor's expense, at termination or expiration of this contract.

## **USE OF AGENCY'S FACILITIES**



**Any property of the State furnished to the Contractor awarded a contract as a result of this RFP shall, unless otherwise provided herein, or approved by the State and/or Agency, be used only for the performance of this Agreement or any contract entered into as a result of this agreement.**

**The Contractor shall be responsible for any loss or damage to property of the State and /or Agency which results from the willful misconduct or lack of good faith on the part of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices, to ensure that the property will be returned to the State and/or Agency in like condition, except for normal wear and tear, to that in which it was furnished to the Contractor.**

**Upon the happening of loss, or destruction of, or damage to property of the State, the Contractor shall notify the State thereof and shall take all reasonable steps to protect that property from further damage.**

**The Contractor shall surrender to the State and/or Agency all property of the State and/or Agency prior to settlement upon completion, termination or cancellation of this Agreement. All reference to the Contractor under this section shall include any of its employees, agents, or subcontractors.**

#### **WAIVER**

**Waiver of any breach of any term or conditions of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified or deleted except by the written consent of both parties.**

#### **WARRANTIES**

**Contractor warrants that all services shall be performed in a workmanlike manner, and according to its current description (including any completion criteria) contained in the scope of work.**

#### **INDEMNIFICATION AND LIMITATIONS OF LIABILITY**

**Neither party shall be liable for any delay or failure of performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under this Agreement.**

**Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold NSU harmless from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by Contractor, its agents, employees, partners or subcontractors in the performance of this contract, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of NSU.**

**Contractor will indemnify, defend and hold NSU harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs which may be finally assessed against NSU in action for infringement of a United States Letter Patent with respect to the Services furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that NSU shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action claim or suit at Contractor's sole expense, and (iii) assistance in the defense of**



any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, NSU may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as NSU may require.

The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: i) NSU's unauthorized modification or alteration of a Service; ii) NSU's use of the Service in combination with other services not furnished by the Contractor, iii) NSU's use in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined, Contractor shall have the right, at its own expense and sole discretion as NSU's exclusive remedy to take action in the following order of precedence: i) to procure for NSU the right to continue using such item(s) or part(s) thereof, as applicable; ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or iii) to replace said item(s) or part(s) thereof as applicable with non-infringing components of at least equal quality and performance, or iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to NSU up to the dollar amount of the Contract.

For all other claims against the Contractor where liability is not otherwise set forth in this Agreement, and regardless of the basis on which the claim is made, Contractor's liability for direct damages, shall be the greater of \$ 100,000, the dollar amount of the Contract, or two times the charges for service rendered by the Contractor under the Contract. Unless otherwise specifically enumerated herein and mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damage, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

NSU may in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

## **INSURANCE**

Contractor will be required to provide NSU with Certificates of adequate insurance indicating coverage required herein for any contract entered into as a result of this Agreement. Mandatory coverages are provided for within the RFP.

## **LICENSES AND PERMITS**

Contractor shall secure and maintain all licenses and permits, and pay inspection fees to do the work required to complete this contract, if applicable.

## **SEVERABILITY**

If any term or condition of this Agreement, or any contract entered into as a result of this Agreement, or the application thereof is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application; to this end the terms and conditions of this Agreement are declared severable.



## **SUBCONTRACTORS**

**The Contractor may not enter into subcontracts with third parties for performance of any part of the Contractor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the State and /or Agency for any breach in the performance of the Contractor's duties. The Contractor will be the single point of contract for all work.**

## **ASSIGNMENT**

**No contractor shall assign any interest in this agreement by assignment, transfer, or novation, without prior written consent of the State. This provision shall not be construed to prohibit the contractor from assigning his bank, trust company or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the state.**

## **CODE OF ETHICS**

**The contractor acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (R.S. 42:1101 et. Seq., Code of Governmental Ethics) applies to the Contracting Party in the performance of services called for in this agreement. The Contractor agrees to immediately notify the state if potential violations of the Code of Governmental Ethics arise at any time during the term of this agreement.**

## **CONFIDENTIALITY**

**All financial, statistical, personal, technical and other data and information relating to the State's operations which are designated confidential by the State and made available to the Contractor in order to carry out this Agreement, or any contract entered into as a result of this Agreement, or which becomes available to the Contractor in carrying out of this Agreement, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of the contract, or is rightfully obtained from third parties.**

## **CONTRACT CONTROVERSIES**

**Any claim or controversy arising out of this agreement shall be resolved by the provisions of Louisiana Revised Statutes 39:1524-26 or 39:1673 as applicable.**

## **RIGHT TO AUDIT**



**The State Legislative Auditor, federal auditors and internal auditors of the State, or others so designated by the State, shall have the option to audit all accounts directly pertaining to the contract for a period of five (5) years after project terminates or as required by applicable State and Federal Law. Records shall be made available during normal working hours for this purpose.**

#### **SECURITY**

**Contractor's personnel will comply with all security regulations in effect at the State's premises, and externally for materials and property belonging to the State or to the project. Where special security precautions are warranted (e.g. correctional facilities), the State shall provide such procedures to the Contractor, accordingly. Contractor is responsible for promptly reporting to the NSU any known breach of security.**

#### **TERM OF CONTRACT**

**This Agreement is effective upon approval September 1, 2022 for a period of three (3) years and renewable in two, one year increments and will end no later than sixty (60) months from effective date unless otherwise terminated in accordance with the Termination provision of this Agreement.**

#### **COMMENCEMENT OF WORK**

**No work shall be performed by Contractor and the NSU shall not be bound until such time as a Contract is fully executed between the NSU and the Contractor and all required approvals are obtained.**

#### **FISCAL FUNDING**

**The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of this contract or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act or Title 39 of the Louisiana Revised Statutes of 1950 to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first year for which funds are not appropriated.**



## **COMPLIANCE WITH CIVIL RIGHTS LAWS**

**The Contractor agrees to abide by the requirements of the following as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, The Federal Rehabilitation Act of 1973, as amended, The Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, The Age Act of 1975 and Contractor agrees to abide by the requirement of the Americans with Disabilities Act of 1990. Contractor agrees not to discriminate in its employment practices , and will render service under this Agreement and any contract entered into as a result of this Agreement, without regard to race, color, religion, sex, national origin, veteran status , political affiliation, or disabilities. Any act of discrimination committed by Contractor, or failure to comply with these statutory obligations, when applicable, shall be grounds for termination of this Agreement and any contract entered into as a result of this Agreement. All contractors must comply with Governors executive order KBB 2004-54 which is made a part hereof.**

## **GOVERNING LAW**

**This Agreement shall be governed by and interpreted in accordance with the laws of the State of Louisiana, Venue of any action with regard to the Agreement shall be in the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana.**

## **EFFECTIVE DATE**

**This contract shall begin September 1, 2022.**

## **COMPLETE AGREEMENT**

**This is the complete Agreement between the parties with respect to the subject matter and all prior discussions and negotiations are merged into this contract. This Agreement is entered into with neither party relying on any statement or representation made by the other party not embodied in this Agreement and there are no other agreements or understandings changing or modifying the terms. This Agreement shall become effective upon final statutory approval.**

## **ORDER OF PRECEDENCE**

**The Request for Proposals (RFP) dated January 20, 2022, and the Contractor's Proposal dated February 24, 2022, are attached hereto and incorporated into this Agreement as though fully set forth herein. In the event of an inconsistency between this Agreement, the RFP and/or the Contractor's Proposal, unless otherwise provided herein , the inconsistency shall be resolved by giving precedence first to this Agreement, then to the RFP and finally, the Contractor's Proposal.**



THUS DONE AND SIGNED AT Natchitoches, Louisiana on the day, month and year first written above.

In witness whereof, the parties have executed this agreement of this 5 day of April, 2022.

WITNESSES SIGNATURES:

Wheeler Grayson  
Shree Jone

NORTHWESTERN STATE UNIVERSITY:

BY: [Signature]  
TITLE: Director of Purchasing

BANK OF MONTGOMERY

Mary Bullock  
Jenny Hendrickson

BY: [Signature]  
TITLE: President & CEO

PHONE NO: (318) 238-2330