

# **THE UNIVERSITY OF SOUTHERN MISSISSIPPI SERVICES CONTRACT**

This Agreement is between SeaAhead, Inc., hereinafter referred to as “Contractor”, a corporation organized and existing under the laws of the State of Delaware, with its corporate address being 50 Milk Street, Boston, Massachusetts, 02109, the University of Southern Mississippi, a governmental entity of the State of Mississippi, hereinafter referred to as “USM”, with its address at 118 College Drive, Box #5191, Hattiesburg, Mississippi 39406 for and on behalf of its Trent Lott National Center (hereinafter “TLNC”), and the City of Gulfport, a municipal corporation created under the laws of the State of Mississippi, hereinafter referred to as “City”, with its address at 2309 15th Street, Gulfport, Mississippi 39501. Contractor, USM and City are collectively referred to as the “parties.”

WHEREAS, Contractor desires to provide certain, specific services to USM.

WHEREAS, USM is willing to pay for those services.

WHEREAS, this Agreement was negotiated, made, and entered into by the parties hereto pursuant to a request for proposals procedure conducted by University in accordance with relevant Mississippi state law, all as more fully described in University’s RFP #19-26 dated April 6, 2019 for a Blue Economy Innovation District (BEID) in Gulfport, MS.

This agreement shall become effective upon final signature below. The term of this agreement shall be for approximately 18 weeks from the effective date of this agreement at which time this agreement shall automatically expire. However, upon mutual written agreement of both parties, if an extension is executed by both parties at least 10 days prior to the termination of this agreement, then this agreement may be renewed under these same terms. Any revisions to original terms shall be stated via written amendment.

Therefore, the parties hereby agree as follows:

- A. Both parties agree to all terms and conditions set forth in Standard Terms and Conditions below, with the exception of any exceptions, additions, alterations, or revisions set forth in Exceptions to the University of Southern Mississippi Standard Terms and Conditions below.
- B. Contractor shall provide the following services summarized here, but described in greater detail in Appendix A:
  - 1. Develop an overarching narrative vision for the BEID
  - 2. BEID Design Concepts
  - 3. Develop an overarching understanding of how the region’s blue economy ecosystem sets the context for the BEID and may benefit from it

4. Refrain from using USM's name, work mark, or other university identifier.
  5. Refrain from using the name or title of any USM official.
  6. Refrain from projecting their product, or the work entailed therewith, as being approved by or otherwise endorsed by USM, its entities or officials.
- C. For the services set forth herein, USM will pay Contractor as follows:
1. The cost for the professional services shall be \$100,000. This will be payable within 30 days of completion of the following milestones:
    - a) Conclusion of the Initial Gulfport BEID Visit and Draft Report from Visit: \$20,000
    - b) Reconnaissance and Narrative Discussion: \$20,000
    - c) Concept Design: \$30,000
    - d) Implementation and Next Steps: \$30,000
    - e) Cost of travel not to exceed \$25,000, to be billed at direct cost. This will include the total cost of round trip travel from origin of the trip from the home base of team members, and hotel and meals, and any regional travel not provided for by the USM team.
  2. The timing of payment is set forth in Standard Terms and Conditions, Section A. Any payment not made within 45 days is subject to late fees and/or interest not to exceed 18% per annually.
- D. Notices  
 All notices required or permitted to be given under this agreement must be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified U.S. Mail, postage prepaid, return receipt requested, to the persons at the address shown below. The parties agree to notify the other in writing of any change of address.

For Contractor:  
 Mark Huang  
 Co-Founder & Managing Director  
 SeaAhead, Inc.  
 50 Milk Street  
 Boston, MA 02109

For USM:  
 Andy Kilgore  
 Trent Lott National Center  
 118 College Dr, #5191  
 Hattiesburg, MS 39406

For City:  
 Billy Hewes  
 Mayor  
 City of Gulfport  
 2309 15th Street  
 Gulfport, MS 39502

## **STANDARD TERMS AND CONDITIONS**

- A. Payment  
USM shall pay Contractor within 45 days of receipt of each invoice received from Contractor upon review and confirmation by USM that such payments and all portions thereof are due, justified and warranted based on services received by USM in accordance with §31-7-305(2), Mississippi Code of 1972.
- B. Availability of Funds  
It is expressly understood and agreed that the obligation of USM to proceed under this agreement is conditioned upon the availability and receipt of funds by USM to specifically perform the obligations set forth for USM under this agreement.
- C. Representation Regarding Contingent Fees and Gratuities  
Contractor 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, Contractor 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.
- D. Equal Employment Opportunity  
Contractor represents and understands that USM is an equal opportunity employer and therefore maintains a policy that prohibits unlawful discrimination. Contractor agrees that during the term of this agreement that Contractor will strictly adhere to this policy in its employment practices and the provisions of its services.
- E. Assignment Prohibition  
Contractor 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.
- F. Authority to Contract  
Contractor 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 provisions 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.
- G. Failure to Enforce  
The failure by USM 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 for USM to enforce the provisions at any time in accordance with the terms.
- H. Contractor-Independent Contractor  
Contractor shall at all times be regarded as and shall be legally considered an independent contractor and neither Contractor nor its employees shall, under any circumstances, be considered servants, agents or employees of USM, and USM shall at no time be legally responsible for any negligence or other

wrongdoing by Contractor, its partners, principals, officers, agents, employees or representatives. USM shall not be responsible for any federal and state unemployment tax, federal or state income taxes, Social Security taxes, or any other amounts for the benefit of Contractor or any of its partners, principals, officers, agents, employees or representatives. USM shall not provide to Contractor, its partners, principals, officers, agents, employees or representatives any insurance coverage or other benefits, including, but not limited to, Worker's Compensation, which are normally provided by USM to its employees. Contractor's personnel shall not be deemed in any way, directly, indirectly, expressly or by implication, to be employees of USM. Nothing contained in this agreement or otherwise shall be deemed or construed as creating the relationship of principal and agent, partners, co-venturers, or any similar relationship between USM and the Contractor. At no time shall Contractor be authorized to do so and at no time shall Contractor act as an agent for or of USM.

I. Indemnification and Insurance

Contractor 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, USM, 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 and attorney's fees, arising out of or caused by Contractor and its' partners, principals, officers, agents, employees or representatives related to actions or inactions of Contractor, its partners, principals, officers, agents, employees and representatives. In USM's sole discretion, Contractor may be allowed to control the defense of any such claim, suit, etc., but in such event, Contractor shall use legal counsel acceptable to USM. Contractor shall be solely responsible for all costs and/or expenses associated with such defense and USM shall be entitled to participate in said defense. Contractor shall not settle any claim, suits, etc., without USM's written concurrence, which concurrence USM shall not unreasonably withhold.

Contractor, at its expense, agrees to procure and maintain insurance during the term as follows:

Worker's Compensation and Employer's Liability: Standard limits as required by applicable Worker's Compensation Laws.

Comprehensive General Liability:

- General Aggregate - \$1,000,000
- Personal & Adv Injury - \$1,000,000
- Each Occurrence - \$500,000
- Fire Damage (any one fire) - \$1,000,000
- Medical Expense (any one person) - \$5,000

- Automobile Bodily Injury and Property Damage Liability - \$1,000,000 Combined Single Limit

Errors and Omissions Liability: If required, Contractor shall maintain Errors and Omissions Liability Insurance in an amount of not less than \$1,000,000 per claim covering claims or damages because of injury or damages arising out of any act, error, or omission of Contractor in the rendering of professional services.

The Contractor shall provide a Certificate of Coverage to the Board of Trustees of State Institutions of Higher Learning, Office of Insurance & Risk Management, 3825 Ridgewood Road, Suite 429, Jackson, MS, 39211 and USM, Steve Ballew, 118 College Dr., #5003, Hattiesburg, MS 39406 prior to the start of services. The Certificate of Coverage should, at a minimum, contain the name of the carrier, effective and expiration dates of coverage, a description of the covered perils, amount of coverage by peril, the name and mailing address of the insurance company, and the name and mailing address of the insurance agent. **The Certificate of Coverage must name the Board of Trustees of State Institutions of Higher Learning and USM as an additional insured.**

J. Attorney's Fees and Expenses

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

K. Patents and Copyrights

Contractor covenants to save, defend, keep harmless, and indemnify the State of Mississippi, the Board of Trustees of State Institutions of Higher Learning, USM, 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 attorney's fees, charges, and other liability and exposure however caused for or on account of any copyright or patent infringement that may result from activities related to this agreement and the actions/inactions hereunder 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.

L. Disputes

Contractor agrees that any and all disputes between the parties to this agreement must be submitted to the USM Vice President for Finance and Administration for consideration and a final decision. If Contractor is dissatisfied with that final decision, the dispute may, at the option of USM, be subjected to resolution by mediation prior to any action being taken by Contractor toward litigation.

- M. Modifications to Agreement  
This Agreement represents the entire understanding between the parties with respect to the subject matter hereof, and this Agreement supersedes all previous representations, understandings or agreements, oral or written, between the parties with respect to the subject matter and cannot be modified except by a written instrument signed by the parties. All attached schedules and exhibits are hereby incorporated by reference to this Agreement.
- N. Ownership of Documents and Work Papers  
USM shall own all documents, files, reports, work papers and working documents, electronic or otherwise, created by Contractor in connection with this agreement.
- O. 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 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.
- P. Termination for Convenience  
USM may, when the interests of USM so require, terminate this agreement in whole or in part for convenience of USM. Written notice of the same is required to be provided by USM and shall allow no less than ten (10) days' notice prior to the effective date of termination.
- Q. 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.
- R. Inspection of Books and Records  
USM shall have the right to inspect and audit the books and records of Contractor at reasonable times and places. Such books and records shall be retained and maintained by Contractor for a minimum of three years following the termination or the expiration of this agreement.
- S. Applicable Law  
This contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of law provisions, and any litigation with respect thereto shall be brought in the courts of this state. Contractor shall comply with applicable federal, state, and local laws and regulations. If a court determines that any provision of this contract is not enforceable against USM, the Contractor agrees that the individual signing this agreement on behalf of USM is not personally responsible or liable for any of the obligations and duties contained herein.
- T. Venue  
Each of the parties hereto hereby irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the state courts of Forrest County,

Mississippi, with respect to any litigation arising out of, or related to, this agreement and the transactions contemplated hereby (and agrees not to commence any litigation relating thereto except in such courts). Each of the parties hereto irrevocably and unconditionally waives any objection to the laying of venue of any litigation arising out of this agreement of the transactions contemplated hereby, in the state courts of Forrest County, Mississippi, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such litigation brought in any such court has been brought in an inconvenient forum.

U. E-Verify

Contractor 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, 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. Contractor 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. Contractor 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. Contractor understands and agrees that any breach of these warranties may subject Contractor 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 Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Contractor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of License or Permit. The foregoing is applicable only if Contractor has employees physically in Mississippi.

V. Force Majeure

Neither Party shall be deemed in default or otherwise liable hereunder due to its inability to perform by reason of any fire, earthquake, flood, epidemic, accident, explosion, casualty, strike, lockout, labor controversy, riot, civil disturbance, act of public enemy, embargo, war, act of God, or similar causes beyond the party's control. Any delay in performance shall be no greater than the event of force majeure causing the delay. If an event of force majeure continues uninterrupted for a period exceeding six (6) calendar months, either party may elect to terminate this Agreement upon notice to the other, but such

right of termination, if not exercised, shall expire immediately upon the discontinuance of the event of force majeure.

**Exceptions to University of Southern Mississippi Standard Terms and Conditions**

Any exceptions, additions, alterations or revisions to the University of Southern Mississippi Standard Terms and Conditions 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." Failure to add "NO EXCEPTIONS" will render it not applicable and the entire University of Southern Mississippi Standard Terms and Conditions 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.

SEAAHEAD, INC.

UNIVERSITY OF SOUTHERN MISSISSIPPI

\_\_\_\_\_  
Mark Huang / Date  
Co-Founder & Managing Director

\_\_\_\_\_  
Steve Ballew / Date  
Director of Procurement & Contract Services

CITY OF GULFPORT, MISSISSIPPI

\_\_\_\_\_  
Billy Hewes / Date  
Mayor