

## Consulting Services Agreement

**THIS CONSULTING SERVICES AGREEMENT** ("Agreement") is entered into as of the 30<sup>th</sup> day of June, 2022 (the "Effective Date"), between Two Five Eight, LLC ("Two Five Eight"), a Delaware limited liability corporation with an address at 18780 Ridgeback Court, Lansdowne, VA 20176, and Office of the State Auditor ("Customer"), with an address at 501 N. West Street, Suite 801, Jackson, Mississippi 39201. In consideration of the promises, mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

### 1. SERVICES.

1.1. Customer hereby engages Two Five Eight to render the services (the "Services") and provide certain deliverables in connection with the Services (the "Deliverables"), if any, as specifically described in the Statement of Work attached to and made a part of this Agreement (the "Statement of Work," or "SOW"). Changes to the scope of the Services may be made only in a writing referencing this Agreement and signed by authorized representatives of both parties.

1.2. In connection with Two Five Eight's provision of the Services, and as may be further described in the Statement of Work, Customer shall: (i) provide sufficient, qualified personnel who are capable of performing Customer's duties, tasks, and obligations under this Agreement and any SOWs in a timely, competent, professional, and work-person like manner; (ii) provide Two Five Eight with access to and use of such technical equipment and support services (including, but not limited to, Customer's computers, printers, network connections, network IDs and passwords, email, and assistance in configuring such equipment and services) as Two Five Eight may reasonably request; and (iii) perform such other duties and tasks as may be reasonably required to enable Two Five Eight to perform its duties, tasks, and obligations under any SOW. To the extent that Customer is providing equipment, information, and/or site and system access and facilities, Customer shall be responsible for procuring all consents, licenses, approvals and/or permissions as may be necessary with respect to Two Five Eight's use of same.

Customer acknowledges and agrees that (i) Two Five Eight's performance described in any SOW hereto is dependent upon and subject to Two Five Eight's timely, complete, and accurate receipt of the information and access described above, and (ii) that its failure to perform or to timely perform any of its obligations under this Agreement and any SOWs may affect the timing and cost of Services to be provided by Two Five Eight under this Agreement and any SOWs. Two Five Eight shall not be liable for any deviations from any schedules or workplans agreed to by the parties under a SOW due to any such failure(s) by Customer. Two Five Eight shall be entitled to rely on, and Customer shall be responsible for, all decisions, instructions and approvals provided by Customer's project, administrative and/or other personnel in connection with the Services. Further, Two Five Eight shall not be liable for any delay or failure in performance in connection with (i) any instructions of Customer or any information provided by Customer to Two Five Eight, (ii) any failure of Customer to timely grant to Two Five Eight any necessary approvals in connection with the performance of the Services, (iii) any act or omission of Customer or any third party supplier of Customer, or (iv) the inaccuracy or non-occurrence of any assumption stated in the SOW.

1.3 The terms of this Section 1.3 shall only apply if Two Five Eight is performing an initial assessment or other complimentary services for Customer other than pursuant to an agreed upon Statement of Work ("Scoping Services"). Scoping Services are performed by Two Five Eight for no fee, at Two Five Eight's discretion. Section 5.1 of this Agreement shall not apply to any Scoping Services provided by Two

Five Eight to Customer in connection herewith. Two Five Eight and Customer may enter into a mutually agreed upon Statement of Work in connection with Scoping Services, but are not obligated to do so.

### 2. PAYMENT.

2.1. Customer shall pay Two Five Eight for the Services in the amounts and on the schedule specified in the SOW. In addition, Customer shall pay any and all applicable sales, use, and other related taxes, incurred in connection with this Agreement, excluding taxes based upon the net income of Two Five Eight. Customer shall pay the amounts due to Two Five Eight hereunder within thirty (30) days after the date of Two Five Eight's invoice for such Services.

### 3. PROPRIETARY RIGHTS.

Two Five Eight's provision of Services and Deliverables under an SOW shall not be interpreted to include any intellectual property rights of Two Five Eight or anything not developed by Two Five Eight exclusively in the performance of the Services, including, but not limited to, anything developed by Two Five Eight prior to or independently of this Agreement or any ideas, designs, concepts, know-how, expertise, methods, methodologies, materials, products, functional and technical architectures, algorithms, techniques, tools, or skills (including all copies, enhancements, modifications, revisions, and derivative works of any of the foregoing) of Two Five Eight and its employees and contractors (collectively, the "Two Five Eight IP"). As between Two Five Eight and Customer, Two Five Eight shall at all times be and remain the sole and exclusive owner of the Two Five Eight IP and all rights therein. Nothing in this Agreement shall preclude Two Five Eight from developing for it, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, irrespective of their similarity to items which may be delivered to Customer pursuant to this Agreement.

### 4. CONFIDENTIAL INFORMATION.

4.1. As used in this Agreement, "Confidential Information" means all information whether of a technical, business, financial or other nature (including, without limitation, trade secrets, know-how and information relating to the technology, customers, business plan, copyrights, trademarks, patents, promotional and marketing activities, finances and other business affairs) that is or may be disclosed or imparted by one Party to the other. Confidential Information also includes any other document provided by a Party that is clearly marked or otherwise identified as "Confidential". Confidential Information also includes both the existence and content of discussions between the Parties with respect to a potential business transaction or relationship. Confidential Information may be in any written format, including an email transmission via electronic media and oral information.

During the term hereof and indefinitely following the term of this agreement all Confidential Information furnished or disclosed to the other pursuant to this Agreement, but not limited to, this Agreement, any SOWs hereunder, and information received from

others that a party is required to keep confidential, shall be held in strict confidence by the parties, and shall not be used, made available or disclosed to any third party without the other party's prior written consent.

Thirty nine (39) months after the termination of this agreement the Two Five Eight shall return or destroy any Confidential information to the customer. Confidential Information of Two Five Eight includes, but is not limited to, the Two Five Eight IP. Each party agrees it shall not use or disclose the Confidential Information of the other except (a) in connection with such party's performance under this Agreement; or (b) as required by law or governmental order. Each party agrees not to disclose Confidential Information to any person other than its employees, agents or independent contractors who have a need to know the same in connection with this Agreement, and who are under obligations of confidentiality. Each party agrees it shall protect the confidentiality of the Confidential Information of the other in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than a reasonable degree of care). Notwithstanding anything to the contrary contained herein, Customer agrees that Two Five Eight may disclose the fact and general nature of Customer's relationship with Two Five Eight.

4.2. Notwithstanding the above restrictions, neither party shall have any obligation for any nonuse or nondisclosure of Confidential Information which (i) is now in, or subsequently enters, the public domain through means other than disclosure of a party hereto in breach of the terms of this Agreement; (ii) is lawfully obtained from a third party without an obligation of secrecy; (iii) is independently developed by such party or is already lawfully in the possession of the receiving party free of any obligation of confidence to the other party; or (iv) is required to be disclosed by law, by court order or by order of any government or administrative tribunal having jurisdiction over the recipient. Two Five Eight shall inform the customer of any court order requiring disclosure of documents within twenty four (24) hours of receipt of such order so that customer may respond to such court order in its sole discretion.

## **5. WARRANTY TERMS.**

5.1. Two Five Eight warrants that (a) the Services will be performed in a workmanlike manner, and (b) the Deliverables will substantially conform to the specifications contained in the SOW for a period of thirty (30) days after the date of Customer's receipt of such Deliverables. Two Five Eight shall, as Customer's sole and exclusive remedy and Two Five Eight's sole and exclusive liability hereunder, (i) re-perform the part of the Services not in compliance with the foregoing warranties brought to its attention in writing in reasonable detail promptly after that part of the Services was performed, (ii) use commercially reasonable efforts to cause any non-conforming Deliverables to substantially conform to the specifications or replace such non-conforming Deliverables with substantially conforming Deliverables, or (iii) if Two Five Eight reasonably and in good faith determines that it is unable to comply with such warranty as to a portion of the Services or Deliverable, then Two Five Eight shall refund the fees paid by Customer for that portion of the nonconforming Services or Deliverable. No claim with respect to any part of the Services or Deliverable may be made more than thirty (30) days after such part was performed or received by Customer.

5.2. EXCEPT AS PROVIDED IN THIS SECTION 5, TWO FIVE EIGHT MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND CONCERNING THE SERVICES AND ANY DELIVERABLE OR TWO FIVE

EIGHT IP, WHETHER EXPRESS OR IMPLIED. THERE ARE NO REPRESENTATIONS OR WARRANTIES REGARDING TITLE, RESULTS, AGAINST INTERFERENCE WITH CUSTOMER'S ENJOYMENT OF ANY INFORMATION (INCLUDING DATA AND COMPUTER PROGRAMS), OR AGAINST INFRINGEMENT. TWO FIVE EIGHT MAKES NO GUARANTEES WITH RESPECT TO THE RESULTS OBTAINED FROM THE OPERATION OR USE OF THE TWO FIVE EIGHT IP BY CUSTOMER.

## **6. LIMITATION ON LIABILITY.**

6.1. TWO FIVE EIGHT'S CUMULATIVE, AGGREGATE LIABILITY (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) TO CUSTOMER OR TO ANY THIRD PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY CLAIM FOR LOSS OF GOODWILL, DATA, COVER, USE OF MONEY, USE OF DELIVERABLES, INTERRUPTION OR UNAVAILABILITY OF DATA, FOR ANY AND ALL CLAIMS SHALL NOT EXCEED IN THE AGGREGATE THE FEES PAID BY CUSTOMER TO TWO FIVE EIGHT PURSUANT TO THE STATEMENT OF WORK UNDER WHICH THE FIRST CLAIM HEREUNDER AROSE.

6.2. IN NO EVENT SHALL TWO FIVE EIGHT BE LIABLE FOR ANY LOST PROFITS OR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE OR OTHER LOSS, DAMAGE OR EXPENSES ARISING OUT OF OR BASED UPON THIS AGREEMENT OR ANY STATEMENT OF WORK HEREUNDER, OR RESULTING FROM OR IN CONNECTION WITH THE SERVICES RENDERED HEREUNDER OR THE USE OF OR INABILITY TO USE OR PERFORMANCE OR NON-PERFORMANCE OF ANY DELIVERABLES PROVIDED HEREUNDER, OR ANY COMPONENT THEREOF, EVEN IF IT HAS BEEN ADVISED OF THEIR POSSIBLE EXISTENCE OR IF THEY ARE FORESEEABLE. Any action by either party in connection with this Agreement must be brought within one year after the cause of action accrued.

6.3 Customer assumes sole responsibility for all decisions, reports or other results ("Results") derived from use of the Services or Deliverables provided hereunder by Customer or any of its officers, employees, agents or contractors and the entire risk as to the Results is with the Customer.

## **7. TERMINATION.**

7.1. The term of this Agreement shall commence on the Effective Date set forth above and shall continue until terminated by either party on thirty (30) days' prior written notice to the other party. Notwithstanding the foregoing, Either party may terminate this Agreement immediately upon notice to Customer if Customer commits an incurable breach of any of the terms or conditions of the Agreement or any Statement of Work. Termination of any Statement of Work or this Agreement shall not waive any other rights or remedies such Party may have hereunder or at law or equity. Upon termination of this Agreement, Customer shall immediately pay all amounts due to Two Five Eight through the date of termination as described above.

7.2. Notwithstanding the foregoing, the terms of Sections 3, 4, 5, 6, 7, and 8 and any payment obligations shall survive termination of this Agreement.

## **8. MISCELLANEOUS.**

8.1. In the event that any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions and portions thereof of this Agreement shall

not be affected. Neither party shall be deemed to have waived or forfeited any right under this Agreement unless such waiver is made in writing by an authorized representative of the respective party. Neither party's waiver of any provision, or any breach of any provision, of this Agreement in one instance shall constitute a waiver as to any other instance.

8.2. In connection with this Agreement each party is an independent contractor and as such does not have any authority to bind or commit the other. Nothing herein shall create a joint venture, partnership or agency relationship between the parties for any purpose.

8.3. Any notice hereunder must be submitted in writing and delivered by certified U.S. mail, return receipt requested, or reputable overnight courier service, to the address of the receiving party as set forth herein or such other address as such party may indicate. Notices shall be deemed delivered when received by the party being notified.

8.4. Except for payment obligations, neither party shall be liable for any default in its obligations under this Agreement resulting from any cause beyond the reasonable control of such party including, but not limited to, the act or omission of any governmental authority, fire, flood, failures of third-party suppliers, acts or omissions of carriers, transmitters, providers of telecommunications or internet services, vandals, hackers, or natural disaster. If Two Five Eight's

performance is delayed due to such an event, the time for its performance shall be extended.


8.5. This Agreement, together with any and all SOWs, constitutes the entire and exclusive agreement and understanding between the parties hereto and supersedes all prior agreements, arrangements and communications between the parties, whether oral or written, with respect to the subject matter hereof. No amendment of this Agreement shall be binding unless executed in writing by both parties.

8.6. Customer agrees that this Agreement shall be interpreted and enforced according to the laws of the State of Mississippi, without any regard to conflicts of law rules. All disputes arising out of or related to this Agreement shall be filed in a state or federal court located in Hinds County, Mississippi.


8.7. This Agreement may be executed in one or more counterparts and all executed counterparts shall constitute one and the same agreement. Signatures delivered by facsimile or other electronic means will legally bind the parties to the same extent as original documents.

IN WITNESS WHEREOF, the parties have caused this Consulting Services Agreement to be executed and delivered by their duly authorized representatives as of the date first written above.

TWO FIVE EIGHT, LLC

By:   
Name: Jeffrey Chapman  
Title:  
Date: June 30, 2022

OFFICE OF THE STATE AUDITOR

By:   
Name: Charles Scott Woods III  
Title: Chief of Staff  
Date: 6/30/2022