

SOURCEWELL PROGRAM AGREEMENT

This Sourcewell Program Agreement ("Program Agreement") by and between **State of Mississippi** ("Buyer") and **United Rentals (North America), Inc.** is made effective as of October 20, 2020 (the "Program Agreement Effective Date") and is attached to and governed by the Sourcewell Agreement(s) specifically marked and identified in Section 2.2 below ("Sourcewell Agreement(s)") between United Rentals (North America), Inc. and Sourcewell. Buyer and United Rentals (North America), Inc. are collectively referred to herein as the "**Parties**". All capitalized terms used herein shall have the meaning assigned to them in the Sourcewell Agreement unless otherwise defined herein.

WHEREAS, Buyer, a member of Sourcewell (as defined below), and United Rentals (North America), Inc. desire to enter into this Program Agreement pursuant to which Buyer may participate in the Sourcewell Program to purchase Products (as defined below).

NOW, THEREFORE, in consideration of the foregoing mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1.0 Term. The term of this Program Agreement with respect to Buyer shall commence on the Program Agreement Effective Date and shall terminate upon the earlier of (i) termination or expiration of the Agreement, or (ii) the date at which Buyer ceases to be a Member of the Program. In the event that the Program Agreement terminates or expires pursuant to (i) or (ii) above, United Rentals (North America), Inc. agrees to offer Buyer the option to enter into a separate agreement with United Rentals (North America), Inc. only, provided, however, United Rentals (North America), Inc. and Buyer mutually agree upon the terms and conditions of such separate agreement.

2.0 Definitions.

2.1 Sourcewell. Sourcewell is a public agency serving as a national government/education contracting agency. Sourcewell was created and organized under the "Service Cooperative" section of the Minnesota Statute, M.S. 123A.21. Sourcewell is governed by publicly elected officials while cooperatively serving all municipal and educational agencies nationally under the authority of the Minnesota Joint Exercise of Powers laws M.S. 471.59.

2.2 Sourcewell Program. The specific program(s) checked below:

- ☒ **Equipment Rental.** Equipment offered for rental by United Rentals (North America), Inc. to Sourcewell members that are included in the Sourcewell purchasing program for facility, maintenance, repair and operations, janitorial pursuant to RFP award #062320-URI as amended from time to time or any future equivalent IFB/RFP for equipment rental awarded to United Rentals (North America), Inc.

3.0 Buyer Representations. Buyer hereby represents that:

- 3.1** it is a governmental entity or it is a nonpublic school administrative unit or non-profit eligible to participate in the Sourcewell Program;
- 3.2** it is an Sourcewell member and will maintain its Sourcewell membership during the Program Agreement Term;
- 3.3** it has the local legal ability to recognize and participate in joint exercise of powers activities under the applicable state and federal procurement laws; and

IN WITNESS WHEREOF, the Parties have executed this Program Agreement under seal as of the Program Agreement Effective Date.

STATE OF MISSISSIPPI

By its authorized agent:


(Signature)

Name: Ross Campbell

Title: Director – DFA OPTFM


Date: 10/23/20

Address for Notices:

State of Mississippi
Department of Finance and Administration
Office of Purchasing, Travel and Fleet
Management
701 Woolfolk Building Suite A
501 North West Street
Jackson, Mississippi 39201
ATTN: Aubrey Leigh Goodwin
Telephone: 601-359-6603
Facsimile: 601-359-3910
Email: aubreyleigh.goodwin@dfa.ms.gov

United Rentals (North America), Inc.

By its authorized agent:


(Signature)

Name: Craig Schmidt

Title: Vice President, National Accounts

Date: 10/20/2020

Address for Notices:

Exhibit A
STATE OF MISSISSIPPI TERMS AND CONDITIONS

A. PRECEDENCE

These STATE OF MISSISSIPPI TERMS AND CONDITIONS shall take precedence over the CONTRACTOR'S Proposal, and should ambiguities, conflicts, or questions of interpretation of these documents arise, they shall be resolved first by reference to the STATE OF MISSISSIPPI TERMS AND CONDITIONS.

B. E-PAYMENT

Contractor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The State of Mississippi (the "State") agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the State within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 *et seq.*

C. AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of the State to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the State, the State shall have the right upon ten (10) working days written notice to Contractor, to terminate this agreement without damage, penalty, cost or expenses to the State of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

D. RECORD RETENTION AND ACCESS TO RECORDS

Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this agreement shall be retained by Contractor for three (3) years after final payment is made under this agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the three (3) year period, whichever is later.

E. APPLICABLE LAW

The contract shall be governed by and construed in accordance with the laws of the State, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations.

F. ANTI-ASSIGNMENT/SUBCONTRACTING

Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Contractor's special skills and expertise. Contractor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may

Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the State and the State shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. The State shall not withhold from the contract payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, the State shall not provide to Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the State for its employees.

K. MODIFICATION OR RENEGOTIATION

This agreement may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or state revisions of any applicable laws or regulations make changes in this agreement necessary.

L. TERMINATION FOR CONVENIENCE

(1) *Termination.* The Agency Head or designee may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Agency Head or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.

(2) *Contractor's Obligations.* Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency Head or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

M. TERMINATION FOR DEFAULT

(1) *Default.* If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Agency Head or designee may notify Contractor in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

(2) *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the Chief Procurement Officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.

(3) *Compensation.* Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.

(4) *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the Agency Head or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes

O. ORAL STATEMENTS

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the State and agreed to by Contractor.

P. OWNERSHIP OF DOCUMENTS AND WORK PAPERS

The State shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the project which is the subject of this agreement, except for Contractor's internal administrative and quality assurance files and internal project correspondence. Contractor shall deliver such documents and work papers to the State upon termination or completion of the agreement. The foregoing notwithstanding, Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from the State and subject to any copyright protections.

Q. INDEMNIFICATION

To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the State, its commissioners, board members, officers, employees, agents, and representatives, and the State 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/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement. In the State's sole discretion, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the State. Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc. without the State's concurrence, which the State shall not unreasonably withhold.

R. THIRD PARTY ACTION NOTIFICATION

Contractor shall give the customer prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this agreement.

S. RECOVERY OF MONEY

Whenever, under the contract, any sum of money shall be recoverable from or payable by Contractor to the State, the same amount may be deducted from any sum due to Contractor under the contract or under any other contract between Contractor and the State. The rights of the State are in addition and without prejudice to any other right the State may have to claim the amount of any loss or damage suffered by the State on account of the acts or omissions of Contractor.

T. FAILURE TO ENFORCE

Failure by the State at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the State to enforce any provision at any time in accordance with its terms.

U. PROCUREMENT REGULATIONS

This Agreement shall be governed by the applicable provisions of the *Mississippi Procurement Manual*, a copy of which is available online at www.dfa.ms.gov

V. REPRESENTATION REGARDING CONTINGENT FEES