



AGREEMENT Resulting from XXXXX

THIS AGREEMENT is made this day between Jackson State University, a Mississippi Institution of Higher Learning (hereinafter referred to as "JSU") and XXX (hereinafter referred to as "CONTRACTOR"), located at XXX.

In consideration of the mutual benefits and advantages to each other, JSU desires to engage CONTRACTOR for the purposes and for the time period set forth below; and CONTRACTOR agrees to perform the services and deliver the products in accordance with the terms and conditions of this Agreement.

1. SCOPE OF SERVICES

CONTRACTOR shall provide JSU with the products and services set forth in RFX/RFP XXX and CONTRACTOR's proposal, as accepted by JSU in response thereto. RFX/RFP XXX project components and CONTRACTOR's proposal are incorporated herein and attached hereto as Exhibits B and C respectively.

CONTRACTOR represents and warrants the services performed shall be of professional quality consistent with and in accordance with generally accepted industry standards for the performance of such services.

2. PERIOD OF PERFORMANCE

Unless this Agreement is extended by mutual written agreement of the parties or terminated as prescribed elsewhere herein, this Agreement shall begin on the date signed by all parties and end no later than XXXX XX, XXXX.

3. CONSIDERATION AND PAYMENT

As consideration for the satisfactory performance of those services contemplated by this Agreement, JSU agrees to pay, and CONTRACTOR agrees to accept total compensation for all services rendered pursuant to this Agreement NOT TO EXCEED XXXXX DOLLARS (\$XXXXX), and shall be payable when XXXXX.

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 JSU, and JSU shall at no time be legally responsible for any negligence or other wrongdoing by CONTRACTOR, its partners, principals, officers, agents, employees, or representatives. Nothing contained in this Agreement shall be deemed or construed as creating the relationship of principal and agent, partners, joint ventures, or any similar relationship between JSU and CONTRACTOR. At no time shall CONTRACTOR be authorized to do so and at no time shall CONTRACTOR act as an agent for JSU.

4. E-PAYMENT

CONTRACTOR agrees to accept all payments in United States currency via the Jackson State University's electronic payment and remittance vehicle. Payments on behalf of JSU to CONTRACTOR for services and products will be rendered in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," Miss. Code Ann. §§ 31-7-301, *et seq.*, which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. The CONTRACTOR's invoices shall be submitted to JSU using the processes and procedures identified JSU. No payment, including final payment, shall be construed as acceptance of defective or incomplete work, and shall remain responsible and liable for full performance after the invoice date. The CONTRACTOR understands and agrees that the State and JSU are exempt from the payment of taxes.

JSU does not agree to pay extra compensation, fees, or allowances after service has been rendered or a contract has been made, or for any payment not authorized by law.

5. **E-VERIFICATION**

CONTRACTOR represents and warrants 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 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 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 and/or 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 both
- (c) in the event of such termination/cancellation, CONTRACTOR would also be liable for any additional costs incurred by MSOS due to contract cancellation or loss of license or permit to do business in the State.

6. **AVAILABILITY OF FUNDS**

It is expressly understood and agreed the obligation of JSU 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 of Mississippi 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 JSU, JSU shall have the right upon ten (10) working days written notice to CONTRACTOR, to terminate this Agreement without damage, penalty, cost or expenses to JSU of any kind whatsoever. The effective date of termination shall be specified in the notice of termination.

7. **APPLICABLE LAW**

The parties recognize and agree that JSU is a Mississippi Institution of Higher Learning and that this Agreement is governed and controlled by the laws of the State of Mississippi, including Opinions of the Mississippi Attorney General. Any provision contained in this Agreement and any policy, agreement or term referenced herein, which is contrary to Mississippi law is void and unenforceable. CONTRACTOR shall comply with applicable federal, state, and local laws and regulations.

The Parties acknowledge and agree that JSU's contacts are governed by the laws of the State of Mississippi and therefore, any provision that purports to set venue outside of the State of Mississippi is deleted. Venue shall be proper in the Federal or State court in Hinds County, Mississippi. U.S. Const. Amend XI; Miss. Code Ann. § 11-11-3; Miss. Code Ann. § 11-45-1; City of Jackson v. Wallace, 196 So. 223 (1940); Miss. AG Op., Clark (June 2, 2002); Miss. AG Op., Nowak (November 19, 2005).

8. **ASSIGNABILITY AND SUBCONTRACTING**

CONTRACTOR shall not assign any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of JSU thereto. None of the work or services covered by this Agreement shall be subcontracted without prior written approval by JSU.

9. **ATTORNEY'S FEES AND EXPENSES**

Subject to other terms and conditions of this Agreement, in the event CONTRACTOR defaults in any obligations under this Agreement, CONTRACTOR shall pay to JSU all costs and expenses (including, without limitation, investigative fees, court costs, and attorney's fees) incurred by JSU in enforcing this Agreement or otherwise reasonably related thereto. CONTRACTOR agrees that under no circumstances shall JSU be obligated to pay any attorney's fees or costs of legal action to CONTRACTOR.

10. **AUTHORITY TO CONTRACT**

CONTRACTOR warrants

- (a) it is a validly organized business with valid authority to enter into this Agreement;
- (b) it is qualified to do business and is in good standing with the State of Mississippi, if required;
- (c) 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 provision of this Agreement to the contrary, 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.

11. **CHANGES.**

JSU may, from time to time, require and request changes in the scope of services of CONTRACTOR to be performed hereunder. Such changes, including any increase or decrease in the amount of CONTRACTOR'S compensation which are mutually agreed upon by and between the parties, shall be included in written amendments to this Agreement. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Agreement. All modifications to this Agreement must be made in writing and agreed upon by both parties.

12. **COMPLIANCE WITH LAWS.**

CONTRACTOR understands JSU is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful, and CONTRACTOR agrees during the term of the Agreement to strictly adhere to this policy in its employment practices and provision of services. CONTRACTOR shall comply with, and all activities under this Agreement shall be subject to, all applicable federal, state, and local laws and regulations, as now existing and as may be amended or modified.

13. **CONFIDENTIALITY.**

Any writings, reports, forms, information, ideas, data, electronic or otherwise given to, prepared by, or in any way generated, accomplished or accessed by CONTRACTOR in carrying out the terms of this Agreement shall be kept confidential by CONTRACTOR and no such information shall be made available to any individual, organization, or otherwise by CONTRACTOR without the prior written approval of JSU, and in accordance with the Confidentiality and Non-Disclosure Addendum attached as Attachment A.

14. **FAILURE TO ENFORCE.**

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

15. **INSURANCE.**

CONTRACTOR shall maintain, at its own expense, the following insurance coverage in the amounts specified, insuring CONTRACTOR, its employees, agents, designees, subcontractors, and any indemnities as required herein:

- a) Professional Liability insurance in an amount not less than One Million Dollars (\$1,000,000.00), including personal injury, bodily injury (including both disease and death), property damages and blanket contractual liability; and
- b) Comprehensive general liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) for each occurrence with the State of Mississippi added as an additional insured; and
- c) Workers' compensation insurance in the amounts required pursuant to the laws of the State of Mississippi.

CONTRACTOR shall furnish JSU with a certificate of conformity providing the aforesaid coverage within ten (10) days of execution of Agreement. It is understood by the parties in the event CONTRACTOR fails to secure such insurance and providing the certificate evidencing same, JSU, at its sole option, may terminate this Agreement immediately without further notice to CONTRACTOR.

All insurance policies required herein shall be issued by an insurance company or companies licensed to do business in the State of Mississippi and acceptable to JSU. No policy of insurance may be cancelled or reduced during this Agreement. Modification to the policy of insurance must have written notification to JSU prior to modification.

16. **ITEMIZED SERVICES AND INSPECTION OF BOOKS AND RECORDS.**

CONTRACTOR shall submit to JSU at such times and in such form and manner as JSU may direct, an itemized invoice for services rendered in an amount compatible with the consideration fixed herein. JSU shall have the right to request additional information pertaining to each itemized invoice. JSU shall have the right to inspect and audit the books and records of CONTRACTOR. Such books and records shall be retained and maintained by CONTRACTOR for a minimum of three (3) years following the termination of or the expiration of this Agreement.

17. **NOTICES**

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their business listed herein. Notice shall be deemed given when actually received or when refused. JSU and CONTRACTOR agree to promptly notify each other in writing of any change of address.

For CONTRACTOR

XXXXXXXXXXXXXXXXX
Attn: XXXXX
XXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXX

For JSU

Jackson State University
Attention: Kimberly R. Harris
1400 John R. Lynch Street
Jackson, Mississippi 39217

18. **REPRESENTATION REGARDING CONTINGENT FEES**

CONTRACTOR represents it has not retained a person to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in CONTRACTOR's bid or proposal.

19. **STATE'S IMMUNITY**

By entering into this Agreement with CONTRACTOR, the State of Mississippi does in no way waive its sovereign immunities or defenses as provided by law. As such, as a state entity, JSU does not waive its sovereign immunity. JSU shall only be responsible for liability resulting from the negligent actions of its officers, agents, and employees

acting within the course and scope of their official duties. Miss. Code Ann. § 11-46-1, et seq. JSU does not waive its Constitutional Eleventh (11th) Amendment immunity. U.S. Const. Amend. XI.

20. STOP WORK ORDER

- A. Order to Stop Work: JSU may, by written order to CONTRACTOR at any time, and without notice to any surety, require CONTRACTOR to stop all or any part of the work called for by this Agreement. This order shall be for a specified period not exceeding ninety (90) days after the order is delivered to CONTRACTOR unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, CONTRACTOR shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, JSU shall either:
 - (a) Cancel the stop work order; or,
 - (b) Terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this contract.

- B. Cancellation or Expiration of the Order: If a stop work order issued under this clause is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, CONTRACTOR shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contractor price, or both, and the Agreement shall be modified in writing accordingly, if:
 - (a) the stop work order results in an increase in the time required for, or in CONTRACTOR'S cost properly allocable to, the performance of any part of this Agreement; and,
 - (b) CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided, if JSU decides the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this agreement.

- C. Termination of Stopped Work: If a stop work order is not cancelled and the work covered by such order is terminated, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

- D. Adjustments of Price: Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this Agreement, if any.

21. TERMINATION FOR CONVENIENCE

- A. Termination: JSU may, when the interests of the State so require, terminate this Agreement in whole or in part, for the convenience of the State. JSU shall give written notice of the termination to CONTRACTOR specifying the part of this Agreement terminated and when termination becomes effective.

- B. 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. JSU may direct CONTRACTOR to assign CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to MSOS. CONTRACTOR must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

22. TERMINATION FOR DEFAULT

- A. Default: If CONTRACTOR refuses or fails to perform any of the provisions of this Agreement 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 Agreement's provisions, or commits any other substantial breach of this Agreement, JSU 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 JSU, such officer may terminate CONTRACTOR'S right to proceed with this Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, JSU may procure similar supplies or services in a manner and upon terms deemed appropriate by JSU. CONTRACTOR shall continue performance of this Agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- B. Contractor's Duties: Notwithstanding termination of this Agreement and subject to any directions from the 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.
- C. Compensation: Payment for completed services and products delivered and accepted by JSU shall be at the contract price. JSU may withhold from amounts due CONTRACTOR such sums as JSU deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse JSU for the excess costs incurred in procuring similar goods and services.
- D. 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 Agreement 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 JSU within fifteen (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 or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, CONTRACTOR shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit CONTRACTOR to meet the requirements of this Agreement. Upon request of CONTRACTOR, JSU shall ascertain the facts and extent of such failure, and, if such officer determines any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, CONTRACTOR'S progress and performance would have met the terms of this Agreement, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled in fixed-price contracts, "Termination for Convenience." (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).
- E. Erroneous Termination for Default: If, after notice of termination of CONTRACTOR'S right to proceed under the provisions of this clause, it is determined for any reason this Agreement was not in default under the provisions of this clause, or the delay was excusable under the provisions of Paragraph (D) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the Agreement contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.
- F. Additional Rights and Remedies: The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

23. TERMINATION UPON BANKRUPTCY

This Agreement may be terminated in whole or in part by JSU upon written notice to CONTRACTOR, if CONTRACTOR should become the subject of bankruptcy or receivership proceedings, whether voluntary or

involuntary, or upon the execution by CONTRACTOR of an assignment for the benefit of its creditors. In the event of such termination, CONTRACTOR shall be entitled to recover just and equitable compensation for satisfactory work performed under this Agreement, but in no case shall said compensation exceed the total contract price.

24. SEVERABILITY

If any term or provision of this Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law provided that the State's purpose for entering into this Agreement can be fully achieved by the remaining portions of the Agreement that have not been severed.

25. TRANSPARENCY

This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 et seq. and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 et seq. Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

26. TRADE SECRETS, COMMERCIAL AND FINANCIAL INFORMATION

It is expressly understood between JSU and CONTRACTOR that Mississippi law requires the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

27. ENTIRE AGREEMENT

This Agreement, including any exhibits (which are specifically incorporated herein by this reference), contains the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces any and all other prior or contemporaneous discussions, negotiations, agreements, or understandings between the parties, whether written or oral, regarding the subject matter thereof.

This Agreement made by and between the parties hereto shall consist of and precedence is hereby established by the order of the following:

- (a) This Agreement signed by the parties, and;
- (b) Exhibit A- Confidentiality and Non-Disclosure Addendum.

For the faithful performance of the terms of this Agreement, the parties hereto have caused this Agreement to be executed by their undersigned authorized representatives.

Marcus L. Thompson
President, Jackson State University

XXXXXXXXXX
Printed Name: _____

Date: _____

Title: _____
Date: _____