



CONTRACT TERMS AND CONDITIONS ADDENDUM

This Addendum (“Addendum”) between Delta State University (“DSU”), a governmental entity, and _____, NAME _____, _____, ADDRESS _____ (“Contractor”), entered into and effective as of the latest date of the signatures below, constitutes an amendment or supplement to and shall be deemed incorporated into any contract, quotation, voucher, or purchase order that this Addendum accompanies or to which it is attached (collectively referred to as “the Agreement”). DSU does not waive any rights, benefits or prohibitions that may be provided under any law, statute, regulation, or policy. Notwithstanding anything to the contrary contained in any agreement by and between Contractor and DSU, and in the event of any conflict between the terms of the Agreement, including any other attachments or exhibits thereto, and this Addendum, the terms of this Addendum shall control. The terms of this Addendum may only be amended in writing and signed by both parties.

1. **Governing Law and Venue.** The Agreement is governed by and interpreted under the laws of the State of Mississippi. All suits, claims, cases, controversies, actions, disputes, complaints and/or orders related to, arising from, in connection with, or to construe or enforce the contract shall be governed by the laws of the State of Mississippi, without regard to conflicts of law principles. The courts of Bolivar County, Mississippi shall be the sole and exclusive jurisdiction and venue for any civil action related to this Agreement, and the Contractor irrevocably consents to jurisdiction in said courts and waives any argument that such courts are not convenient forum for such litigation. See Miss. Const. Art 4 § 100. See also Miss. Op. Att’y Gen., Nowak (November 18, 2005).

2. **Time for Payment.** DSU will make payments for all amounts owed to Contractor no later than forty-five (45) days after receipt of an invoice and receipt, inspection and approval of goods or services. Any provision that requires DSU to pay Contractor any late charges, fees or penalties is governed by Miss. Code Ann. § 31-7-305. Any provision that requires DSU to pay a deposit is deleted.

3. **Insurance.** DSU is self-insured and will not be required to purchase casualty and liability insurance. DSU may furnish a certificate of self-insurance pursuant to the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-17. Any provision of the Agreement which requires DSU to purchase insurance or name a non-DSU party as an additional insured is deleted.

Contractor shall maintain appropriate insurance for the term of the Agreement. DSU shall be named as an additional insured on all liability insurance policies for the full limit of such policies. Contractor’s insurance shall be primary and noncontributory with respect to any insurance or self-insurance maintained by DSU. Contractor agrees to waive any rights of subrogation against DSU or IHL. If the Contractor will have IHL confidential information in its custody or control, the Contractor will maintain a reasonable amount of cyber liability and incident response insurance.

4. **Limitations on Liability and Damages.** Any reference to DSU waiving any cause of action it may have against Contractor or any other party as a result of Contractor’s breach of the Agreement, or Contractor’s own negligence or willful misconduct or the negligence or willful misconduct of Contractor’s employees or agents are deleted. Any reference to DSU limiting damages, remedies or waiving any claim are deleted. See Miss. Const. Art. 4 § 100; Miss. Op. Att’y Gen., Clark (June 7, 2002).

5. **Limitations on Actions/Jury Trial.** Any language in the Agreement waiving or in any way limiting DSU’s right to file any appropriate action or waiving its right to a trial by jury is hereby deleted. Miss. Const. Art. 4 § 100; Miss. Op. Att’y Gen., Clark (June 7, 2002); Miss. Op. Att’y Gen., Chamberlin (Oct. 18, 2002).

6. **Availability of Funds.** Continuance of any DSU Agreement is based on availability of funds. Should there be no funds available for any succeeding funding period, the Agreement will be cancelled as of the end of the funding period with no further obligation on the part of DSU. Any property covered by a lease shall be returned to the Contractor.

7. **Term.** The term of the Agreement shall be for the term stated in the Agreement. In the event no term is stated in the Agreement, the Agreement shall expire five (5) years from the date of the Agreement. Any reference to an automatic renewal of the term of the Agreement is deleted. All renewals shall be in writing and agreed to by the parties.

8. **Termination.** DSU may terminate the Agreement, with or without cause, upon thirty (30) days’ prior written notice to Contractor. Upon termination, DSU shall be responsible only for payment of goods delivered and services properly performed and

accepted by DSU prior to the effective date of termination. In no event shall DSU be liable for any unearned fees, anticipated profits, consequential damages, cancellation charges, or other amounts relating to goods or services not yet provided as of the termination date, unless expressly agreed to in writing by DSU.

9. **Arbitration.** DSU does not agree to submit to binding arbitration or mediation. See Miss. Op. Att’y Gen., Clark (June 7, 2002).

10. **Unauthorized Payments.** Any language requiring DSU to pay any penalties is deleted in its entirety. DSU does not agree to pay extra compensation, fees, or allowances after services are rendered or contract made, or for any payment not authorized by law, including liquidated damages. DSU does not agree to expend public funds for goods and/or services not received.

11. **Waiver.** DSU does not waive its sovereign immunity or its Constitutional Eleventh (11th) Amendment immunity. No failure on the part of any party hereto to exercise, and no delay in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy hereunder preclude any further or other exercise thereof or the exercise of any other right, power or remedy. Miss. Code Ann. § 11-46-1, *et seq.*; U.S. Const. Amend. XI.

12. **Attorneys’ Fees and Collection Costs.** Any provisions of the Agreement which require the prevailing party, and/or require DSU to pay Contractor any attorneys’ fees and/or collection costs are hereby deleted in their entirety. See Miss. Op. Att’y Gen., Stringer (January 25, 2006).

13. **Control of Litigation.** Any provision giving the Contractor exclusive control over litigation is deleted. As a governmental entity, any litigation wherein DSU is a party must be coordinated through Mississippi Attorney General’s Office.

14. **Waiver of Subrogation.** Any language requiring DSU to waive any cause of action it may have against Contractor or any other party on account of any loss/damage insured by an insurance policy is hereby deleted in its entirety.

15. **Warranty.** Contractor warrants that the goods and/or services provided hereunder shall be free from defects, and performed in a first class, workmanlike fashion. Any limitations of warranties, including warranties of merchantability and fitness for a particular use, contained in the Agreement are deleted in their entirety. See Miss. Op. Att’y Gen., Davis (March 3, 1993).

16. **Indemnification.** Contractor shall indemnify, defend and hold DSU and the Board of Trustees of Institutions of Higher Learning harmless from any and all claims, actions, lawsuits, proceedings, costs, expenses, damages and liabilities, including attorney’s fees, resulting from or arising out of Contractor’s breach of the Agreement and/or the negligence or willful misconduct of Contractor or its employees or agents. Any provisions of the Agreement which require DSU to indemnify Contractor or any other third parties in any way are deleted in their entirety. See Miss. Op. Att’y Gen., Stringer (January 25, 2006). DSU shall only be responsible for liability resulting from the actions/inactions of its officers, agents, and employees acting within the course and scope of their official duties with DSU to the degree and within the parameters required under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1, *et seq.* DSU is an entity of the State of Mississippi and is afforded the protection of limited sovereign immunity pursuant to Miss. Code Ann. § 11-46-1, *et seq.*, and any action against DSU shall be filed in accordance with and subject to the limitations contained therein.

17. **Confidentiality.** DSU is subject to the Mississippi Public Records Act, Miss. Code Ann. § 25-61-1, *et seq.* If a public records request is made for any information provided to DSU pursuant to the Agreement, DSU shall promptly notify the disclosing party of such request. The disclosing party shall promptly institute appropriate legal proceedings to protect its information. No party to the Agreement shall be liable to the other party for disclosures of information required by court order or required by law.

It is also recognized that DSU is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008, Miss. Code Ann. § 27-104-151, *et seq.*, and is required to provide public access to its financial information and expenditures through the Institutions of Higher Learning Accountability and Transparency website.

18. **Independent Contractor.** It is understood by the parties that Contractor, including its employees, is an independent contractor and not an employee or agent of DSU. Contractor understands and agrees that neither it nor its employees performing services hereunder shall be entitled to any of the rights, fringe benefits, or privileges established for DSU employees. Contractor retains sole and absolute discretion, control and judgment in the manner and means of carrying out its assignments. Contractor and its employees shall always be acting as and deemed to be independent contractors. Nothing contained in the Contract shall be construed to create a partnership, joint venture, agency, or employment relationship between the Contractor and DSU. DSU shall have no responsibility for any of Contractor’s debts, liabilities or other obligations or for the intentional, reckless, negligent or unlawful acts or omissions of Contractor or Contractor’s employees or agents. In addition, Contractor may not bind DSU in any way whatsoever with respect to third parties.

19. **Tax-Exempt Governmental Entity.** Pursuant to Miss. Code Ann. § 27-65-1, *et seq.*, and 27-67-1, *et seq.*, DSU and other state institutions are exempt from state sales and use taxes. Likewise, DSU will not pay excise or personal property taxes. If the Contractor is liable for such taxes, Contractor shall take such into consideration in pricing. It is Contractor’s responsibility to contact

local taxing authorities in the state and county where equipment will be located to determine possible tax liabilities in connection therewith.

20. **No Assignment; No Third-Party Beneficiaries.** Neither party may assign any of its rights or delegate its duties under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld. Any purported assignment of rights in violation of this provision is void. This Agreement binds and benefits the parties and their respective permitted successors and assigns. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the Parties.

21. **Policies.** Provisions of the Agreement that provide for actions or results that are inconsistent with or in violation of the policies of DSU or the Mississippi Board of Trustees of State Institutions of Higher Learning are deleted.

22. **DSU Employment.** Any provision penalizing DSU for hiring an employee of Contractor is deleted.

23. **Equal Opportunity Employer.** DSU is an equal opportunity employer. DSU does business with organizations that are in compliance with Title VII of the 1964 Civil Rights Act (as amended). During the performance of any contract with DSU, Contractor agrees to be bound by provisions of Civil Rights Act of 1964 (as amended), the Rehabilitation Act of 1973 (as amended), and the Veterans Readjustment Act of 1972 (as amended).

24. **E-Verify.** If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Miss. Code Ann. § 71-11-1, *et seq.*, 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.

25. **Force Majeure.** Neither party shall be deemed in breach of the Agreement if such party is unable to perform its obligations due to events beyond its reasonable control, including but not limited to acts of God, war, terrorism, riots, civil unrest, strikes, governmental orders, public health emergencies, epidemics, pandemics, travel restrictions, natural disasters, or other similar events (“Force Majeure Event”). The affected party shall provide prompt written notice to the other party upon becoming aware of a Force Majeure Event and shall use reasonable efforts to resume performance as soon as practicable. To the extent any prepaid or advance payments have been made for goods or services not yet provided due to a Force Majeure Event, such unearned amounts shall be promptly refunded to the paying party. Nothing in this section shall require DSU to make any deposit or advance payment unless expressly agreed to in writing.

26. **Publicity and Trademarks.** Contractor may not publicize the fact of the Contract, publicize DSU’s relationship with the Contractor as its customer, include DSU on a customer list, or use DSU as a referral source without DSU’s prior written consent. Contractor shall submit, for DSU’s review and approval, all press releases or any other publicity materials mentioning DSU by name, and Contractor shall not publish such without DSU’s prior written approval, which may be withheld at DSU’s sole discretion. Contractor shall not use DSU’s trademarks, service marks, logos, symbols, designs, or other marks without prior written approval of DSU.

27. **FERPA.** To the extent applicable, the Contractor shall protect and maintain all records, information and data collected pursuant to the Contract in accordance with applicable state and federal laws and regulation, including without limitation, the Family Education Rights and Privacy Act, 20 U.S.C. § 1232g (“FERPA”). Specifically, and without limiting the generality of the foregoing, the Contractor shall protect and maintain any and all “Education Records” of DSU students consistent with applicable FERPA regulations and shall fully cooperate with DSU in any request for such information. Any provision of the Contract that conflicts with this paragraph is deleted.

28. **Data Migration.** If applicable, upon expiration or earlier termination of the contract, Contractor agrees that DSU may elect to have Contractor migrate any stored DSU data to DSU computer at no cost to DSU, or for Contractor to provide the data to DSU in another form which is acceptable to DSU at no cost to DSU.

29. **Data Security.** To the extent applicable, Contractor shall be responsible for establishing and maintaining an information security program that is designed to (i) ensure the security and confidentiality of data transmitted by DSU to Contractor or data

otherwise obtained by Contractor from or about DSU (“DSU Data”), (ii) protect against any anticipated threats or hazards to the security or integrity of DSU Data, and (iii) protect against unauthorized access to or use of DSU Data that could result in substantial harm or inconvenience to DSU or any of its stakeholders. Contractor shall establish, employ and at all times maintain physical, technical and administrative security safeguards and procedures sufficient to prevent any unauthorized processing of and/or use, access, alteration, disclosure, erasure, copying, exhibition, transmission, or destruction of DSU Data while such information is in Contractor’s possession or control and will ensure that such information is not processed in other ways contradictory to privacy and/or data protection laws. Contractor will maintain sufficient procedures to detect and respond to security breaches involving DSU Data and will inform DSU immediately when it suspects or learns of malicious activity involving DSU Data, including an estimate of the activity’s effect on DSU and the corrective action taken. Such procedures shall include, but not be limited to, logging of all access to confidential or sensitive data, use of firewalls for all external data connections, and timely implementation of updates and patches.

At a minimum, Contractor’s safeguards for the protection of DSU Data shall include: (i) limiting access to DSU Data to authorized personnel of Contractor and utilizing policies that promote the least internal access; (ii) securing business facilities, data centers, paper files, servers, back-up systems (at a strategically located off-site location) and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (iii) implementing network, device application, database and platform security; (iv) securing information transmission, storage and disposal; (v) implementing authentication (two-factor or more secure method) and access controls within media, applications, operating systems and equipment; (vi) encrypting (with AES-256 bit or better encryption) DSU data stored on any mobile media; (vii) encrypting DSU Data transmitted over public or wireless networks; (viii) strictly segregating DSU Data from information of Contractor or its other customers so that DSU Data is not commingled with any other types of information; (ix) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law; and (x) providing appropriate privacy and information security training to Contractor’s employees.

Contractor must obtain the written approval of DSU before subcontracting any portion of this Agreement. All subcontracts shall incorporate the terms of this Agreement to require subcontractors to meet or exceed the Contractor’s security obligations, including all data security requirements.

30. **Audit.** Contractor shall maintain complete and accurate records sufficient to substantiate all amounts billed to and services performed for the University, including supporting documentation, and shall retain such records for at least three (3) years after final payment and resolution of all related matters, or longer if required by law, provided that if any audit, claim, or litigation arises within that period, records shall be retained until final resolution. Upon reasonable notice, Contractor shall provide the University and its authorized representatives access to such records for audit, inspection, and copying during the term of the Agreement and the retention period, including providing records in a usable format and cooperating with audit activities. Contractor shall ensure that all subcontractors comply with these requirements and maintain records in accordance with generally accepted accounting principles and consistent, auditable practices, and the University will use reasonable care to protect any proprietary information except as required by law.

31. **Severability.** If any provision of this Addendum shall be determined by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of the Addendum is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

32. **Contracting Authority.** Contractor acknowledges that the individual executing the Contract on behalf of DSU is doing so in his/her official capacity only. To the extent any provision contained in the Contract exceeds such authority, Contractor agrees that it will not look to the individual in his/her personal capacity or otherwise seek to hold the individual personally liable for exceeding such authority.

33. **Notice.** Any notices under the Contract shall be sent to Contractor’s address in the Contract and as to DSU: Delta State University Office of Procurement and Auxiliary Services, 1003 W. Sunflower Road, Kent Wyatt Hall, Cleveland, MS 39733, with a copy to Office of General Counsel, 1003 W. Sunflower Road, Kent Wyatt Hall, Cleveland, MS 39733.

34. **Governmental Entity.** Contractor recognizes and acknowledges that DSU, as a political subdivision of the State of Mississippi, is entering this Agreement, including the provisions thereof, only to the extent authorized by Mississippi law, including the opinions of the Mississippi Attorney General. Any provision of the Agreement that is in any respect not authorized by or is inconsistent with Mississippi law, including the opinions of the Mississippi Attorney General, is invalid.

35. **Entire Agreement.** The parties acknowledge that the Agreement, including this Addendum, sets forth the entire agreement and understanding of the parties as to the subject matter included herein. The Agreement may only be modified by a written amendment authorized and executed by all parties to the Agreement. No oral statements shall modify or otherwise affect the terms, conditions, or specifications of the Agreement.

Accepted and agreed to on behalf of Contractor:

_____ Date: _____
(Signature)

Name: _____

Title: _____