



## CONTRACT TERMS AND CONDITIONS ADDENDUM

This Addendum ("Addendum") between Delta State University ("DSU"), a governmental entity, and \_\_\_\_\_ ("Contractor"), entered into on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, constitutes an amendment or supplement to the \_\_\_\_\_ (including any other agreements incorporated therein) and is hereby incorporated into said Agreement. 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 and this Addendum, the terms of this Addendum shall control. The terms of this Addendum may only be amended by a writing which specifically references this Addendum, and is signed by both parties.

1. **Conflict.** Any terms in the Agreement which purport to modify or are in conflict with the terms of this Addendum are hereby deleted, and replaced with the terms in this Addendum.
2. **Time for Payment.** DSU will make payments for all amounts owed under the Agreement no later than forty-five (45) days after receipt of the invoice and receipt, inspection and approval of the goods or services in accordance with Miss. Code Ann. § 31-7-305. No invoice shall be considered past due or late until the 45<sup>th</sup> day after receipt in accord with Miss. Code Ann. § 31-7-305(3). DSU makes no prepayments for services or products. See Miss. Op. Att'y Gen., Meadows (August 18, 2008).
3. **Assignment.** Neither party may assign its rights under the Agreement or delegate its duties under the Agreement without the prior written consent of the other party, such consent to not be unreasonably withheld.
4. **Insurance.** Any references to DSU's requirement to buy insurance are deleted. 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.
5. **Limitations on Liability.** Pursuant to Miss. Code Ann. § 11-7-18 and notwithstanding anything contained in the Agreement to the contrary, no limitations on liability on the part of Contractor shall apply to any claims for compensatory damages to real or tangible personal property or to third party claims for death or bodily injury asserted against Contractor directly or by way of contribution to the extent such property damage, death or bodily injury was proximately caused by the negligence or willful misconduct of Contractor or its employees or agents. Notwithstanding anything contained in the Agreement to the contrary, nothing in the Agreement shall limit Contractor's liability to DSU or any third parties as a result of Contractor's breach of the Agreement, or Contractor's own negligence or willful misconduct. See Miss. Op. Att'y Gen., Long (February 27, 2009).
6. **Governing Law.** DSU Agreements are governed by and interpreted under the laws of the State of Mississippi without reference to conflicts of law provisions of the Mississippi Code of 1972. If in the opinion of any court of competent jurisdiction such Agreement and provisions are not authorized, or are inconsistent in any respect with Federal and/or Mississippi law, such court shall have the authority, if possible, to read the provisions or modify the Agreement, provision or provisions to be consistent with Federal and Mississippi law, and to enforce the remainder of these covenants as so amended. See Miss. Const. Art 4 § 100. See also Miss. Op. Att'y Gen., Nowak (November 18, 2005).
7. **Limitations on Actions/Jury Trial.** Notwithstanding anything contained in the Agreement to the contrary, the statute of limitations under applicable law shall solely govern the time for the commencement of all lawsuits. See Miss. Op. Att'y Gen., Davis (March 3, 1993). Any language in the Agreement waiving or in any way limiting DSU's right to file any appropriate action is hereby deleted.
8. **Limitations on Remedies.** Notwithstanding anything contained in the Agreement to the contrary, nothing in the Agreement shall limit DSU's remedies. Any limitations of remedies contained in the Agreement are deleted in their entirety.

9. **No Named Insureds.** Any provisions of the Agreement which require DSU to name Contractor as an additional named insured are hereby deleted in their entirety.
10. **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.
11. **Arbitration.** Any provisions of the Agreement which refer to, require, or contain the words “arbitration” and/or “mediation” are hereby deleted in their entirety. See Miss. Op. Att’y Gen., Conerly (February 5, 1999).
12. **Late Charges.** Any provisions of the Agreement which require DSU to pay Contractor any late charges are governed by Miss. Code Ann. § 31-7-305. See also Miss. Op. Att’y Gen., Pearson (November 22, 1993).
13. **Waiver.** 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.
14. **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).
15. **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.
16. **Penalties.** Any language requiring DSU to pay any penalties is deleted in its entirety. DSU does not agree to pay any extra compensation, fees or allowances after services rendered or contract made, or to make any payment not authorized by law.
17. **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.
18. **Warranty.** Contractor warrants that the goods and/or services provided hereunder shall be 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).
19. **Indemnification.** Contractor shall indemnify, defend and hold DSU 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.
20. **Confidentiality.** Notwithstanding any provision to the contrary contained herein, it is recognized that DSU is a public agency of the State of Mississippi and 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.

21. **Independent Contractor.** It is understood by the parties that Contractor is an independent contractor and not an employee or agent of DSU. Contractor retains sole and absolute discretion, control and judgment in the manner and means of carrying out its assignments. Contractor shall comply with DSU's Human Resource Department's applicable policies and procedures including pre-employment screening. Contractor understands and agrees that neither it nor its employees performing services hereunder shall be entitled to any of the rights, fringe benefits and privileges established for DSU's employees, if any, including, but not limited to, the following: retirement benefits, medical insurance coverage, life insurance coverage, health insurance, disability insurance coverage, severance pay benefits, PTO, overtime pay, etc. Contractor understands and agrees that DSU will not pay or withhold from the compensation paid to Contractor pursuant to the Agreement any sums customarily paid or withheld for or on behalf of employees for income tax, unemployment insurance, social security, or payment pursuant to any law or governmental requirement, and all such payments as may be required by law are the sole responsibility of Contractor. Contractor agrees to indemnify and hold DSU harmless from and against any such payments or liabilities for which Contractor may become liable with respect to such matters.

22. **Entire Agreement.** This Addendum; any other documents or writings which it accompanies, or to which it is attached (as amended by this Addendum); and any other documents which may be incorporated therein by reference, constitute the entire agreement of the parties with respect to the subject matter herein. Any other agreements or understandings, whether written or oral, are hereby superseded. The terms of this Addendum; any other documents or writings which it accompanies or to which it is attached (as amended by this Addendum), shall solely govern the rights and obligations of the parties with respect to the subject matter herein. Any modification to the Agreement shall only be effective if it is in writing and signed by both parties.

23. **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.

24. **No Assignment; No Third-Party Beneficiaries.** Except as provided in paragraph three above, no party may assign any of its rights under this Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or another manner. Any purported assignment of rights in violation of this Section 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.

25. **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).

26. **E-Verify.** 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.

27. **Force Majeure.** “Force Majeure Event” means any act or event, whether foreseen or unforeseen, that meets all three of the following tests: (a) The act or event prevents a party in whole or in part from performing its obligations under this Agreement; or satisfying any conditions to the performing party’s obligations under this Agreement; (b) The act or event is beyond the reasonable control of and not the fault of the non-performing party; and (c) The non-performing party has been unable to avoid or overcome the act or event by the exercise of due diligence. Notwithstanding anything to the contrary in the Agreement or otherwise, a Force Majeure Event excludes economic hardship, changes in market conditions, or insufficiency of funds. If a Force Majeure Event occurs, the non-performing party is excused from whatever performance is prevented by the Force Majeure Event to the extent prevented and satisfying whatever conditions precedent that cannot be satisfied. When the non-performing party is able to resume performance of its obligations under this Agreement or satisfy the conditions precedent to the performing party’s obligations, it shall immediately give the performing party written notice to that effect and shall resume performance under this Agreement no later than five (5) working days after the notice is delivered. This provision is the exclusive remedy available to the non-performing party with respect to a Force Majeure Event. See Miss. Code Ann. § 75-2-617.

28. **Governmental Entity.** Contractor recognizes and acknowledges that University, 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.

Accepted and agreed to on behalf of Contractor:

\_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Accepted and agreed to on behalf of Delta State University:

\_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

Name: James E. Rutledge

Title: Vice President for Finance & Administration