

**ALCORN STATE UNIVERSITY
EXTERNAL CONSULTANT/CONTRACTOR CONTRACT**

Title of Program/Project: _____

Funding Agency: _____

Program/Project Account Number: _____

Contract Employee: _____

Contract Employee Address: _____

Last 4 digits of Social Security Number or Corporate I.D.: _____

In consideration of the mutual benefits to be derived from this Agreement, the parties hereto agree as follows:

A. COMPLIANCE WITH FEDERAL LAWS

The consultant/contractor agrees to abide by the requirements of the following as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Act of 1972, and contractor agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

B. ELIGIBILITY FOR EMPLOYMENT

The consultant/contractor agrees to provide appropriate documentation certifying eligibility for employment based on the United States Department of Justice-- Immigration and Naturalization Service requirement and compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated. [The appropriate documentation must be provided prior to or at the time the consultant/contractor submits the signed contract.]

C. STATEMENT OF WORK

The specific work to be performed by the consultant/contract is attached to this Agreement as Exhibit "A."

D. PERIOD OF PERFORMANCE

The Agreement shall be in effect from _____, 20____, through _____, 20____, upon execution by both the ASU Administrative Head and the Consultant/Contractor.

E. TOTAL CONSULTANT’S/CONTRACTOR’S FEE

The total consultant’s/contractor’s fee shall be \$_____. All payments made under this Agreement shall represent services rendered in accordance with the specific work to be performed under Exhibit “A.”

F. PAYMENT OF CONSULTANT’S/CONTRACTOR’S FEES

ASU agrees to pay the agreed upon consultant’s/contractor’s fee no later than forty-five (45) days after receiving the report(s) and/or invoice(s) certifying that the work has been performed. The ASU program/project director must certify to the ASU Business Office that the agreed to work/service has been satisfactorily completed.

G. REPORT(S) REQUIRED

The consultant/contractor agrees to submit _____ written report(s) to the project/program director within one month of the performance of the work or service. The university has the right to withhold consultant’s/contractor’s fee(s) until the agreed upon report(s) is/are received by the university.

H. TERMINATION RIGHTS

Either party may terminate this Agreement by giving the other party at least ten (10) days prior written notice of such termination, specifying the intended date of termination; provided that upon request from ASU, the consultant/contractor shall continue performance until ASU can find a replacement consultant/contractor or for an additional thirty (30) days after the specified termination date, whichever is the shorter time period.

Consultant/contractor shall be paid for work performed at the time of termination, if any, and shall deliver to ASU such work performed. It is expressly understood and agreed that the obligation of ASU to proceed under this Agreement is conditioned upon the receipt of appropriated funds. If funding for payment of this Agreement is terminated at any time, this Agreement shall be terminated upon notice by ASU to consultant/contractor. Termination of this Agreement due to lack of funding will be immediate following notice of such termination.

I. GOVERNING LAW

This Agreement shall be 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. Consultant/Contractor shall comply with all applicable federal, state and local laws and regulations. If a court determines that any provision of this Agreement is not enforceable against ASU, the consultant/contractor agrees that the individual signing this Agreement on behalf of ASU is not personally responsible or liable for any of the obligations and duties contained herein.

J. INDEPENDENT CONTRACTOR

Based upon the Internal Revenue Code, the consultant/contractor has been classified as an independent contractor and assumes all responsibility for reporting any earnings to Federal and State authorities where required by law and paying such taxes as may be required thereon. The consultant/contractor shall perform all services as an independent contractor and shall discharge all of its liabilities as such. No act performed or representation made, whether oral or written, by the consultant/contractor with respect to third parties shall be binding on ASU.

K. AUTHORITY TO CONTRACT

The consultant/contractor warrants (a) it is authorized to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that 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, that there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

L. ACCESS TO RECORDS

The consultant/contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices to sufficiently reflect properly all costs of whatever nature claimed to have been incurred in the performance of the consultant/contractor's work for services. ASU, any sponsor, the state of Mississippi, or the Comptroller General of the United States or their authorized representatives shall have access to the books, documents, papers, and records of the consultant/contractor which are directly pertinent to the consultant/contractor for the purpose of making audit, examination, excerpts and transcripts. Such books and records shall be maintained by the consultant/contractor for three years from the date of the completion of work. Consultant/Contractor is responsible for any audit discrepancies involving deviation from the terms of the Agreement and for any commitments or expenditures in excess of amounts authorized by ASU.

M. OWNERSHIP OF WORK PRODUCTS

Any discovery, patent, copyright, invention, work papers, software, software applications, written materials, publications, data, information, by-product or end-product arising as a direct result of the performance of this Agreement shall be the sole property of the ASU.

N. ACKNOWLEDGEMENT OF SPONSORSHIP

The consultant/contractor agrees that, in any publication, acknowledgement shall be made of sponsorship by ASU and/or other sponsor by use of the following statement “This work was performed under the sponsorship of Alcorn State University. This work does not necessarily represent the views of ASU.” If the publication is copyrighted, the statement “Reproduction of this article, with the customary credit to the source, is permitted,” shall be added. With the exception of acknowledging sponsorship of research, the name of the ASU may not be used in publications, news releases, advertising, speeches, technical papers, photographs, and other releases of information regarding this Agreement or data developed under this Agreement without prior written approval of ASU.

O. CONFLICT OF INTEREST

The consultant/contractor affirms that, to the best of his/her knowledge, there exists no actual or potential conflict between consultant/contractor’s family, business, or financial interests and his/her services under this Agreement, and, in the event of change in either his/her private interests or service under this Agreement, he/she will inform ASU regarding possible conflict of interest that may arise as a result of such change.

P. ASSIGNMENT

The consultant/contractor shall not assign, transfer, subcontract, or otherwise give to or impose on any other party any obligation or right of the consultant/contractor under this Agreement, without prior written consent of ASU.

Q. CONFIDENTIALITY

The Contractor shall treat all ASU data and information to which it has access by its performance under this Contract as confidential and shall not disclose such data or information to a third party except as provided for in this Contract without specific written consent of ASU. The Contractor shall protect such personal and confidential information against unauthorized use, disclosure, modification or loss. This provision shall survive the termination or completion of this Contract and shall continue in full force and effect and shall be binding upon the Contractor and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in this Contract on behalf of, or under the rights of the Contractor following any termination or completion of the Contract. Any breach of this provision may result in termination of the Contract and demand for return of all personal and confidential information. The Contractor agrees to indemnify and hold harmless ASU for any damages related to Contractor’s unauthorized use of personal or confidential information.

R. NOTICE

Any notice required or permitted to be given under this Agreement shall be in writing and sent by certified United States mail, postage prepaid, return receipt requested, to:

Alcorn State University:	Contract Employee:
_____	_____
_____	_____
_____	_____

ASU and Consultant/Contractor hereby accept the terms and conditions specified above and acknowledge that this Agreement, including Exhibit "A" and Alcorn State University's Standard Terms and Conditions Addendum, constitute the entire agreement of the parties.

For Alcorn State University:

Budgetary Authority:

Title III: (if applicable)

(1)

Dean or Director **Date**

(2)

Program Director **Date**

University Compliance:

(3)

Chief Compliance Officer **Date**

(4)

Vice President (less/equal to \$24,999) **Date**

Institutional Executive Officer:

President (\$25,000 or more) **Date**

Agreed to and Accepted by Contract Employee:

Signature **Date**

Printed Name

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INSERT Exhibit "A" HERE

**ALCORN STATE UNIVERSITY
STANDARD TERMS AND CONDITIONS ADDENDUM**

This Addendum (“Addendum”) between Alcorn State University (“ASU”), a governmental entity, and _____ (“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 services agreement, contract, quotation, voucher, or purchase order that this Addendum accompanies or to which it is attached (collectively referred to as “the Agreement”). Notwithstanding anything to the contrary contained in any agreement by and between Contractor and ASU, 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 by a writing that 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.** ASU 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 45th day after receipt in accord with Miss. Code Ann. § 31-7-305(3). ASU 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 ASU’s requirement to buy insurance are deleted. ASU is self-insured and will not be required to purchase casualty and liability insurance. ASU may furnish a certificate of self-insurance pursuant to the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-17.
5. **Limitations on Liability.** ASU does not limit the liability of a non-ASU party for breach of the Contract, negligence, or willful misconduct, including any claims for infringement. ASU does not limit the liability of any non-ASU party to the amount of the contract or to any other set amount. See Miss. Op. Att’y Gen., Long (February 27, 2009).
6. **Governing Law.** The Agreement is governed and controlled by 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 Agreement shall be governed by the laws of the State of Mississippi, without regard to its conflicts of law principles. A Mississippi court of competent jurisdiction 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 a convenient forum for such litigation. Any provision that purports to establish venue outside the State of Mississippi is deleted. See Miss. Const. Art 4 § 100. See also Miss. Op. Att’y Gen., Nowak (November 18, 2005).
7. **Control of Litigation.** Any provision giving the Contractor exclusive control over litigation is deleted.
8. **Limitations on Actions.** 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. Any provision limiting the timeframe during which ASU can bring a claim or suit is deleted. See Miss. Op. Att’y Gen., Davis (March 3, 1993). Any language in the Agreement waiving or in any way limiting ASU’s right to file any appropriate action is hereby deleted.
9. **Jury Trial.** Any provision in the Contract requiring University to waive its right to a jury trial is deleted.
10. **Limitations on Remedies.** Notwithstanding anything contained in the Agreement to the contrary, nothing in the Agreement shall limit ASU’s remedies. Any limitations of remedies contained in the Agreement are deleted in their entirety.

11. **No Named Insureds**. Any provisions of the Agreement which require ASU to name Contractor as an additional named insured are hereby deleted in their entirety.
12. **Availability of Funds**. The continuance of the Contract with ASU is based upon the availability of funds. Therefore, this contract can be cancelled by with thirty (30) days' notice to the Contractor at the end of the fiscal period in the event funds are not appropriated by the funding authority. In such event, any property covered by a lease shall be returned to the lessor.
13. **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).
14. **Late Charges**. Any provisions of the Agreement which require ASU 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).
15. **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.
16. **Attorneys' Fees and Collection Costs**. Any provisions of the Agreement which require the prevailing party, and/or require ASU 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).
17. **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.
18. **Penalties**. Any language requiring ASU to pay any penalties is deleted in its entirety. ASU 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.
19. **Waiver of Subrogation**. Any language requiring ASU 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.
20. **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).
21. **Liquidated Damages**. Any reference to payment of liquidated damages by ASU are deleted.
22. **Indemnification**. Contractor shall indemnify, defend and hold ASU 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 ASU 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). ASU 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 ASU to the degree and within the parameters required under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1, *et seq.* ASU 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 ASU shall be filed in accordance with and subject to the limitations contained therein.
23. **Confidentiality**. Notwithstanding any provision to the contrary contained herein, it is recognized that ASU 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 ASU pursuant to the Agreement, ASU 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 ASU 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.

24. **Independent Contractor.** It is understood by the parties that Contractor is an independent contractor and not an employee or agent of ASU. Contractor retains sole and absolute discretion, control and judgment in the manner and means of carrying out its assignments. Contractor shall comply with ASU's Human Resource Department's applicable policies and procedures including pre-employment screening, if requested. 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 ASU'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 ASU 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 ASU harmless from and against any such payments or liabilities for which Contractor may become liable with respect to such matters.

25. **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.

26. **Tax-Exempt Governmental Entity.** Pursuant to Miss. Code Ann. § 27-65-1, *et seq.*, and 27-67-1, *et seq.*, ASU and other state institutions are exempt from state sales and use taxes. Likewise, ASU 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.

27. **No Assignment; No Third-Party Beneficiaries.** Except as provided in Paragraph 3, 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.

28. **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.

29. **Force Majeure.** Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such causes shall include without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics or pandemics (including Covid-19), governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (“force majeure events”).

When such a cause arises, the non-performing party shall notify the other party immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless ASU determines it to be in its best interest to terminate the agreement.

30. **Data Migration.** Upon expiration or earlier termination of the contract, Contractor agrees that University may elect to have Contractor migrate any stored ASU data to ASU computer at no cost to ASU, or for Contractor to provide the data to University in another form which is acceptable to ASU at no cost to ASU.

31. **Information Security.** 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 ASU to Contractor or data otherwise obtained by Contractor from or about ASU (“ASU Data”), (ii) protect against any anticipated threats or hazards to the security or integrity of ASU Data, and (iii) protect against unauthorized access to or use of ASU Data that could result in substantial harm or inconvenience to ASU 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 ASU 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 ASU Data and will inform ASU immediately when it suspects or learns of malicious activity involving ASU Data, including an estimate of the activity’s effect on ASU 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 ASU Data shall include: (i) limiting access to ASU 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) ASU data stored on any mobile media; (vii) encrypting ASU Data transmitted over public or wireless networks; (viii) strictly segregating ASU Data from information of Contractor or its other customers so that ASU 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 ASU before subcontracting any portion of this Agreement. All subcontracts shall incorporate the terms of this Agreement so as to require subcontractors to meet or exceed the Contractor’s security obligations, including all data security requirements.

32. **Governmental Entity.** Contractor recognizes and acknowledges that ASU, 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: _____

Name: _____

Title: _____

Accepted and agreed to on behalf of ASU:

_____ Date: _____

Authorized Official