



NORTH CAROLINA CENTRAL UNIVERSITY

PROFESSIONAL SERVICES AGREEMENT

Between

North Carolina Central University

1801 Fayetteville Street
Durham, North Carolina 27707

And

THIS AGREEMENT made and entered into this _____ day of _____, 20_____, by and between _____, hereinafter referred to as "**Contractor**", and **North Carolina Central University**, hereinafter referred to as "**University**".

WITNESSETH

WHEREAS, the Contractor has submitted to the University a proposal for the performance of certain services (attached hereto as Attachment _____ and incorporated by reference); and

WHEREAS, the University wishes to avail itself of those services and the parties hereto desire to reduce the terms of their agreement to writing;

NOW, THEREFORE, for and in consideration of the mutual promises to each other, as hereinafter set forth, the parties hereto do mutually agree as follows:

The Contractor hereby agrees to perform in a manner satisfactory to the University, the following services:

Scope of Work

The University will issue a purchase order in the amount of \$ _____ to the Contractor whereby all contractual activities and fees due for services deemed satisfactory to the University hereunder are authorized.

The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with the University.

The Contractor shall not substitute key personnel assigned to the performance of this contract without prior approval by the Contract Administrator although it is agreed and understood that the assignment of staff will be dependent upon the complexity of the assignment(s) and the experience of the staff required. The individuals designated as key person for purposes of this contract are: _____ (Name), and _____ (Title).

Work proposed to be performed under this contract by the Contractor or its employees shall not be subcontracted without prior written approval of the Contract Administrator.

The services of the Contractor are to commence on or about the _____ day of _____, and shall continue until all projects are completed to the satisfaction of the University but no later than _____. Contractor shall make every effort to perform the services required by the University in as expeditious a manner as possible, consistent with the requirements of each assignment.

If, through any cause, the Contractor shall fail to fulfill in timely and proper manner the obligations under this agreement, the University shall there upon have the right to terminate this contract by giving written notice to the Contractor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items under this contract prepared by the Contractor shall, at the option of the University, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials. Notwithstanding, the Contractor shall not be relieved of liability to the University for damages sustained by the University by virtue of any breach of this agreement, and the University may withhold any payment due the Contractor for the purpose of setoff until such time as the exact amount of damages due the University from such breach can be determined.

The University may terminate this agreement at any time by giving **30 days** notice in writing to the Contractor. In that event, all finished or unfinished materials as described in the paragraph above shall, at the option of the University, become its property. If the contract is

terminated by the University as provided herein, the Contractor will be paid in an amount which bears in the same ratio to the total compensation as the services actually performed bear to the total services of the Contractor covered by this agreement; or for each full day of services performed, less payment of compensation previously made.

It is understood and agreed between the Contractor and the University that payment of compensation specified in this agreement, its continuation or any renewal thereof, is dependent upon and subject to the allocation or appropriation of funds to the University for the purpose set forth in this agreement.

Any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Contractor under this agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the University.

Upon the entering of a judgment of bankruptcy or insolvency by or against the Contractor, the University may terminate this contract for cause.

The Contractor shall not assign or transfer any interest in this agreement.

No deliverable items produced in whole or in part under this agreement shall be the subject of an application for copyright by or on behalf of the Contractor.

It is agreed between the parties hereto that the place of this contract, its situs and forum, shall be Durham County, North Carolina, and in said County and State shall matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of this agreement, be determined.

The Contractor agrees that the State will have the right to audit the records of the Contractor pertinent to this contract both during performance and after completion. The Contractor will retain all records for a period of three years following completion of the contract.

_____ (Name), and _____ (Title), North Carolina Central University, is designated as the Contract Administrator for the University.

The non-discrimination clause contained in Section 202 Executive Order 11246, as amended by Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex, or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor, are incorporated herein.

Program for Employment of the Handicapped (Affirmative Action): Regulations issued by the Secretary of Labor of the United States in Title 20, part 741, Chapter VI, subchapter "C" of the Code of Federal Regulations, pursuant to the provisions of Executive Order 11758 and Section 503 of the Federal Rehabilitation Act of 1973 are incorporated herein.

Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

The Contractor shall be required to comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of Federal, State, and local agencies having jurisdiction and/or authority. North Carolina General Contract Terms and Conditions are applicable to this agreement and are attached hereto.

The Contractor shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees.

This contract and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements.

This contract may be amended only by written amendments duly executed by the University and the Contractor.

Any notice under this contract to the University shall be sufficient if mailed to the University as indicated below:

Director of Purchasing
North Carolina Central University
P.O. Box 19707
Durham, NC 27707

Any notice under this contract to the Contractor shall be sufficient if mailed to the Contractor as indicated below:

All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

Payment will be made as follows:

Contractor shall bill the University (referencing the appropriate Purchase Order number). The University's terms of payment are net 30 days after receipt of invoice.

Contractor will identify the billing rate of each individual assigned to each aspect of the University's assignments, the hours actually performed by those individuals, and the total costs associated with each assignment. Contractor shall discuss the status of progress made under this contract with the Contract Administrator and such other persons as he designates on a regular basis and/or as required by the University.

If Contractor is not a resident of North Carolina and is not otherwise exempt from federal income taxation or exempt under N.C. General Statute 105-163.3, UNIVERSITY shall withhold a 4% nonresident income tax from payment(s) greater than \$1,500 to Contractor during any one calendar year for personal services in the form of a performance, an entertainment or athletic event, a speech (including an academic lecture), or the creation of a film, radio, or television program, in accordance with N.C. General Statutes 105-163.1 and 105-163.3. If Contractor is exempt from federal income taxation, Contractor must provide to UNIVERSITY a copy of its determination letter from the IRS, which indicates that Contractor has been granted tax exempt status, which must accompany this Agreement when Contractor signs and returns this Agreement to UNIVERSITY.

IN WITNESS THEREOF, the parties have executed this agreement, a copy of which is retained by each of the parties, effective the day and year first written above.

North Carolina Central University

By: _____
Chancellor (or authorized designee)

Date: _____

_____ (Company Name)

BY: _____
Name
Title

Date: _____

NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS

1. **PERFORMANCE AND DEFAULT:** If, through any cause, Vendor shall fail to fulfill in timely and proper manner the obligations under this contract, the State shall have the right to terminate this contract by giving written notice to the Vendor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items under this contract prepared by the Vendor shall, at the option of the State, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any acceptable work completed on such materials. Notwithstanding, Vendor shall not be relieved of liability to the State for damages sustained by the State by virtue of any breach of this contract, and the State may withhold any payment due the Vendor for the purpose of setoff until such time as the exact amount of damages due the State from such breach can be determined. The State reserves the right to require at any time a performance bond or other acceptable alternative guarantees from a successful Vendor without expense to the State.

In case of default by the Vendor, the State may procure the services necessary to complete performance hereunder from other sources and hold the Vendor responsible for any excess cost occasioned thereby. In addition, in the event of default by the Contractor under this contract, or upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, the State may immediately cease doing business with the Contractor, immediately terminate this contract for cause, and may act to debar the Contractor from doing future business with the State

2. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the Vendor to notify, in writing, the issuing purchasing office at once, indicating the specific regulation which required such alterations. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.
3. **AVAILABILITY OF FUNDS:** Any and all payments to the Vendor are dependent upon and subject to the availability of funds to the agency for the purpose set forth in this contract.
4. **TAXES:** Any applicable taxes shall be invoiced as a separate item.
 - a. G.S. §143-59.1 bars the Secretary of Administration from entering into Contracts with Vendors if the Vendor or its affiliates meet one of the conditions of G. S. §105-164.8(b) and refuses to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G. S. §105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the Vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document the Vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.
 - b. All agencies participating in this Contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the Vendor will be executed and returned by the using agency.
 - c. Prices offered are not to include any personal property taxes, nor any sales or use tax (or

fees) unless required by the North Carolina Department of Revenue.

5. **SITUS:** The place of this Contract, its situs and forum, shall be North Carolina, where all matters, whether sounding in Contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.
6. **GOVERNING LAWS:** This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules.
7. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of correct invoice or acceptance of goods, whichever is later. The using agency is responsible for all payments to the Vendor under the Contract. Payment by some agencies may be made by procurement card, if the Vendor accepts that card (Visa, MasterCard, etc.) from other customers, and it shall be accepted by the Vendor for payment under the same terms and conditions as any other method of payment accepted by the Vendor. If payment is made by procurement card, then payment may be processed immediately by the Vendor.
8. **AFFIRMATIVE ACTION:** The Vendor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.
9. **INTELLECTUAL PROPERTY INDEMNITY:** Vendor shall hold and save the State, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, resulting from infringement of the rights of any third party in any copyrighted material, patented or unpatented invention, articles, device or appliance delivered in connection with this contract.
10. **ADVERTISING:** Vendor agrees not to use the existence of this Contract or the name of the State of North Carolina as part of any commercial advertising or marketing of products or services. A Vendor may inquire whether the State is willing to act as a reference by providing factual information directly to other prospective customers.
11. **ACCESS TO PERSONS AND RECORDS:** During and after the term hereof, the State Auditor and any using agency's internal auditors shall have access to persons and records related to this Contract to verify accounts and data affecting fees or performance under the Contract, as provided in G.S. §143-49(9).
12. **ASSIGNMENT:** No assignment of the Vendor's obligations nor the Vendor's right to receive payment hereunder shall be permitted.

However, upon written request approved by the issuing purchasing authority and solely as a convenience to the Vendor, the State may:

- a. Forward the Vendor's payment check directly to any person or entity designated by the Vendor, and
- b. Include any person or entity designated by Vendor as a joint payee on the Vendor's payment check.

In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations. Upon advance

written request, the State may, in its unfettered discretion, approve an assignment to the surviving entity of a merger, acquisition or corporate reorganization, if made as part of the transfer of all or substantially all of the Vendor's assets. Any purported assignment made in violation of this provision shall be void and a material breach of this Contract.

13. INSURANCE:

COVERAGE - During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the Vendor shall provide and maintain the following coverage and limits:

a. **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$500,000.00, covering all of Vendor's employees who are engaged in any work under the Contract. If any work is sub-contracted, the Vendor shall require the sub-Contractor to provide the same coverage for any of his employees engaged in any work under the Contract.

b. **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)

c. **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Contract. The minimum combined single limit shall be \$250,000.00 bodily injury and property damage; \$250,000.00 uninsured/under insured motorist; and \$2,500.00 medical payment.

REQUIREMENTS - Providing and maintaining adequate insurance coverage is a material obligation of the Vendor and is of the essence of this Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Contract.

14. GENERAL INDEMNITY: The Vendor shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of this Contract and that are attributable to the negligence or intentionally tortious acts of the Vendor provided that the Vendor is notified in writing within 30 days that the State has knowledge of such claims. The Vendor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of Vendor goods to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of this Contract.

15. INDEPENDENT CONTRACTOR: Vendor shall be considered to be an independent contractor

and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. Vendor represents that it has, or will secure at its own expense, all personnel required in performing the services under this contract. Such employees shall not be employees of, or have any individual contractual relationship with the Agency.

16. **KEY PERSONNEL**: Vendor shall not substitute key personnel assigned to the performance of this contract without prior written approval by the State's assigned Contract Lead. The individuals designated as key personnel for purposes of this contract are those specified in the RFP or Vendor's proposal.
17. **SUBCONTRACTING**: Work proposed to be performed under this contract by the Vendor or its employees shall not be subcontracted without prior written approval of the State's assigned Contract Administrator. Acceptance of a Vendor's proposal shall include approval to use the subcontractor(s) specified therein in accordance with paragraph 21 of Attachment A: Instructions to Vendor.
18. **TERMINATION FOR CONVENIENCE**: The State may terminate this contract at any time by providing thirty (30) days' notice in writing from the State to the Vendor. In that event, all finished or unfinished deliverable items prepared by the Vendor under this contract shall, at the option of the State, become its property. If the contract is terminated by the State as provided in this section, the State shall pay for services satisfactorily completed by the Vendor, less payment or compensation previously made.
19. **CONFIDENTIALITY**: Any State information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the Vendor under this contract shall be kept as confidential, used only for the purpose(s) required to perform this contract and not divulged or made available to any individual or organization without the prior written approval of the State.
20. **CARE OF PROPERTY**: The Vendor agrees that it shall be responsible for the proper custody and care of any property furnished it by the State for use in connection with the performance of this contract or purchased by or for the State for this contract, and Vendor will reimburse the State for loss or damage of such property while in Vendor's custody.
21. **PROPERTY RIGHTS**: All deliverable items produced for or as a result of this contract shall be an become the property of the State, and Vendor hereby assigns all ownership rights in such deliverables, including all intellectual property rights, to the State; provided, however, that as to any preexisting works imbedded in such deliverables, Vendor hereby grants the State a fully-paid, perpetual license to copy, distribute and adapt the preexisting works.
22. **OUTSOURCING**: Any Vendor or subcontractor providing call or contact center services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center services are being provided.

If, after award of a contract, the contractor wishes to relocate or outsource any portion of the work to a location outside the United States, or to contract with a subcontractor for the performance of any work, which subcontractor and nature of the work has not previously been disclosed to the State in writing, prior written approval must be obtained from the State agency responsible for the contract.

Vendor shall give notice to the using agency of any relocation of the Vendor, employees of the

Vendor, subcontractors of the Vendor, or other persons performing services under a state contract to a location outside of the United States.

23. COMPLIANCE WITH LAWS: Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

24. ENTIRE AGREEMENT: This contract and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This Agreement, any addenda thereto, and the Vendor's proposal are incorporated herein by reference as though set forth verbatim.

All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

25. AMENDMENTS: This contract may be amended only by written amendments duly executed by the State and the Vendor. The NC Division of Purchase and Contract shall give prior approval to any amendment to a contract awarded through that office.

26. WAIVER: The failure to enforce or the waiver by the State of any right or of breach or default on one occasion or instance shall not constitute the waiver of such right, breach or default on any subsequent occasion or instance.

27. FORCE MAJEURE: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

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