



REQUEST FOR PROPOSALS ACTUARIAL CONSULTING SERVICES

NOVEMBER 23, 2015

I. INTRODUCTION

The Board of Trustees of State Institutions of Higher Learning (IHL), through the Office of Risk Management (RM), is seeking a vendor to provide actuarial consulting services. RM administers the IHL Self-Insured Workers' Compensation Plan (WC Plan), the IHL Self-Insured Tort Plan (Tort Plan) and the IHL Self-Insured Unemployment Plan (UE Plan). IHL desires to contract with an actuary specializing in providing actuarial consulting services to large self-insured plans and having prior experience directly related to the type of services which IHL requires.

The WC Plan and the UE Plan currently consist of the following members: Alcorn State University, Delta State University, Jackson State University, Mississippi State University, Mississippi University for Women, Mississippi Valley State University, The University of Mississippi, The University of Mississippi Medical Center, The University of Southern Mississippi, IHL, IHL Board Office, and other entities under the authorities of IHL. The WC Plan currently purchases excess insurance for claims above \$1,000,000.

The Tort Plan currently consists of the following members: Alcorn State University, Delta State University, Jackson State University, Mississippi State University, Mississippi University for Women, Mississippi Valley State University, The University of Mississippi (excluding The University of Mississippi Medical Center except for the automobile exposure), The University of Southern Mississippi, IHL, IHL Board Office, and other entities under the authorities of IHL. The Tort Plan currently purchases automobile liability coverage. The auto liability insurance has a \$10,000 deductible with in-state limits of \$500,000 and out-of-state limits of \$5,000,000.

II. PURPOSE

The actuary shall provide actuarial consulting services for IHL on behalf of the WC Plan, the Tort Plan, and the UE Plan. These services include, but are not limited to, preparing an annual actuarial analysis of each plan at the end of IHL's fiscal year and determining annual premium assessments for each member no later than March 15th of each year. IHL requires that the actuary have the capabilities, expertise, and service commitment to excel in all areas of services requested in this RFP.

III. CONTRACT PERIOD

The term of the Agreement will be January 15, 2016, through December 31, 2019 (approximately four years). Thereafter, the Agreement may be extended by written mutual agreement of both parties. The Agreement may be terminated by either party, with or without cause at any time, upon 60 days prior written notice. IHL may terminate the Agreement upon 30 days prior notice by reason of non-appropriation of funds or cessation of its self-insured programs.

IV. SCOPE OF SERVICES

- A. Annual Actuarial Analyses. Perform independent annual actuarial analyses of the WC Plan, the Tort Plan, and the UE Plan following the June 30th close of each fiscal year. The analyses should include but not necessarily be limited to an estimate of the ultimate claims liability as well as recommendations for future funding.
- B. Annual Assessment/Budget Document. Calculate the annual assessments for each member no later than March 15th of each year. The annual assessment report includes all three of IHL's self-insured plans. IHL uses an assessment methodology for its plans which utilizes members' actual expense and loss experience in establishing annual assessments. Current methodology can be observed from reviewing the annual actuarial analyses and the annual assessment document which will be made available to proposers. IHL intends to utilize the same methodology, but IHL will consider other methodology recommended by its actuary as long as such methodology is an acceptable practice within the actuarial discipline and as long as such methodology is equitable for each IHL university. For budgeting purposes, the annual assessment report will include estimated future annual assessments for a three year period for each member institution. This requirement can be observed in the current annual assessment report which will be made available to all proposers.
- C. Quarterly Reserves Report. Provide quarterly reports which reflect reserves, including estimated incurred-but-not-reported claims (IBNR). Results shall be delivered to IHL within 30 days of receipt of all claims data from IHL or the Third Party Administrator (TPA).
- D. Coordination. Work with IHL and IHL's TPA to ensure that data and reports which are provided to the actuary efficiently provide the data needed to accomplish the services sought in this RFP. The actuary will coordinate with any subsequent actuary to reasonably ensure an efficient transition between IHL and a subsequent actuary.
- E. Records. Maintain full and accurate records with respect to work performed. At the request of IHL, provide all spreadsheets, assumptions, and calculations upon completion of any project at the end of the Agreement term in a format acceptable to IHL. Upon termination of this Agreement, the actuary shall fully cooperate with IHL and the new actuary during the transition to any new actuary. The actuary shall provide such explanation of the information provided as to facilitate a smooth transition.

F. Other Services. Perform other services reasonably related to actuarial services for the benefit of the IHL self-insured plans. Historically, other services have rarely been needed, but IHL recognizes that needs other than those addressed above (items A through E) may arise. The following reflects possible other services.

1. Address or present in person to IHL, an individual university, the Mississippi Workers' Compensation Commission, the Mississippi Tort Claims Board, the State Legislature, the Mississippi Department of Employment Security, and/or others as requested.
2. Provide advice and consultative services regarding issues and matters of impact or interest to IHL, for which the actuary has the technical capability to render. Past examples include calculating the recommended deductible level for IHL's auto liability policy and benchmarking the self-insured plans' administrative expenses against similar plans.

V. MISSISSIPPI PUBLIC RECORDS ACT

Any proposal, including accompanying attachments, is subject to the "Mississippi Public Records Act of 1983," codified as Section 25-61-1 et seq., Mississippi Code Annotated (1983) and exceptions found in Section 79-23-1 of the Mississippi Code.

VI. INSTRUCTIONS TO ACTUARIES

Repeat each question followed by your response. Questions and answers must be in the same order as found in the RFP. The information contained in your response to this RFP will be used by IHL in determining whether or not you will be selected. Your proposal will be an integral part of your contract if you are selected. Please provide complete answers and explain all issues in a concise, direct manner. If you have additional information you would like to provide, include it as an appendix to your response.

FAILURE TO PROVIDE ANY OF THE REQUESTED INFORMATION HEREIN
MAY RESULT IN DISQUALIFICATION OF YOUR RESPONSE.

IMPORTANT DATES

November 13 and November 20, 2015	RFP advertised
November 23, 2015	RFP released on IHL website
November 23 through December 17, 2015	Intents to propose due
January 4, 2016	Proposals due by 4:00 p.m. CST
January 4 through January 11, 2016	Best and final offer negotiations, if necessary
January 11, 2016	Proposal selected to recommend to Commissioner
January 15, 2016	Effective date of contract

Proposals are due at the IHL Office of Risk Management on January 4, 2016, by 4:00 p.m. Central Standard Time. Any proposal received after the deadline will not be considered.

Note: IHL reserves the right to adjust this schedule as it deems necessary.

Submissions may be submitted electronically or hard copy. If submitting electronically, the response must be in Word or PDF format. If mailing, address to:

David Buford, Director
IHL Office of Risk Management
3825 Ridgewood Road, Suite 429
Jackson, MS 39211

Please enclose two copies if sending a hard copy. If sending via e-mail, send to:

riskmanagement@mississippi.edu

In order to ensure that the winning proposer has adequate time to transition and meet the deadline for the annual assessment document on March 15th, IHL is not including a question and answer step in this RFP process. Although IHL does not intend to respond to questions, you may submit questions or requests for clarification via email to riskmanagement@mississippi.edu. If IHL believes that a response would be in IHL's best interest, then IHL will respond at substantially the same time in writing to each proposer who has submitted an intent to propose. Written clarifications from the Director of Risk Management will be incorporated as part of this RFP, whereas any verbal communications will not have any effect. Please do not verbally contact RM during this process. All questions should be submitted in writing.

VII. INTENT TO PROPOSE

Proposers are asked to submit an Intent to Propose between November 23, 2015, and December 17, 2015. Failure to submit an Intent to Propose may result in a proposer not having access to supplemental information.

VIII. CORRECTIONS AND CLARIFICATIONS

IHL may request clarifications or corrections to proposals, reject any and all proposals, or cancel the RFP in its entirety at IHL's sole discretion.

IX. RIGHT OF NEGOTIATION

Discussions and negotiations regarding price and other matters may be conducted with proposers. Proposal(s) may be accepted without such discussions. IHL reserves the right to further clarify and/or negotiate with proposers on any matter submitted. IHL also reserves the right to move to the next best proposal if negotiations do not lead to a final Agreement with the best proposer.

X. COST OF PROPOSAL PREPARATION

All costs incurred by proposers in preparing and delivering their proposals and any subsequent time and travel to meet with IHL shall be borne at the proposers' expense.

XI. DURATION OF PROPOSAL

Within the proposal, it shall be stated that the proposal is valid for at least 90 days subsequent to the date of submission. The proposal will become part of the Agreement.

XII. STATEMENT OF COMPLIANCE

Contained as part of this RFP is a Statement of Compliance. Please carefully review the Statement of Compliance and sign it to indicate that you have read and agreed to the information in this RFP. The RFP, your proposal, any written clarifications from the IHL Director of Risk Management prior to contract execution, and IHL's standard form contract will be the entire agreement.

XIII. SAMPLE REPORTS; APPENDIX

Please provide sample reports which reflect the quality of your work product. If possible, provide a sample document or document format for the annual actuarial

report and for the annual assessment report. As part of the Appendix to your proposal, you may also provide sample documents or reports which you would provide to the IHL as part of your fixed-cost quote if selected.

XIV. WEIGHTED EVALUATION AND SCORING CRITERIA

Each category scored will reflect each proposal's relative strength compared to the other proposals received.

A. Ability Based on Experience :: 45 points (two sub-categories)

This scoring reflects the actuary's demonstrated success providing the requested services to entities of similar size and/or complexity to the IHL. This includes both the information in the written proposal as well as information provided from any contacted references. 25 points.

Ability based on narratives and resumes of assigned staff. 20 points.

B. Quality and Professionalism of Proposal :: 5 points

This scoring reflects the professionalism and quality of the proposal and sample reports, both in terms of content and formatting. This includes any information provided in any appendix to the proposal.

C. Fixed Cost :: 45 points

The proposer with the lowest fixed-cost quote for services will receive 45 points. Each other proposer will receive a percentage of the 45 total available points, with such percentage being the same percentage as the cost of the lowest proposal divided by the proposal being evaluated. The fixed-cost amount is the total fee charged for performing services described in Section IV. A., B., C., D., and E. of this RFP.

D. Hourly Fees for Excess Other Services :: 5 points

IHL does not consider it likely that it will need to purchase a significant amount of other services on an hourly basis. Because a proposal may or may not include rates for assistant actuaries or other professional staff, scoring will be based upon one of the following two calculations: 1) 5 hours of clerical time, 5 hours of Professional Staff or Assistant Actuary time, and 10 hours of Senior Actuary time; or 2) 6 hours of clerical time and 14 hours of Senior Actuary time. The proposer with the lowest cost calculation gets 5 points and the other proposals get points in proportion to the competitiveness of their hourly pricing. If the proposal provides all three hourly rates, the proposal will be scored using the method that utilizes all three rates.

QUESTIONNAIRE

In your proposal, please reproduce the question or statements in order followed by your response.

1. Contact Information. Provide the name and contact information for your primary contact for purposes of your proposal. State the entity name and office address of your organization which will service IHL's account. Describe your organizational structure (e.g., publicly held corporation, private non-profit, partnership, or other). If it is incorporated, include the state in which it is incorporated. Contact information must include a mailing address, email address, and telephone number.
2. Conflict of Interest. List the name of those individuals serving on your organization's board of directors, and list the name of any entity or person owning 10% or more of your organization. Please affirm that none of these individuals are employees of IHL or an IHL university, and that no actual or apparent conflict of interest would exist if you are awarded the actuary contract with IHL.
3. Experience. Provide your experience providing actuarial services for each of the three types of self-insured plans which IHL administers. State your experience as an entity and separately for the primary actuary. Only provide information related to personnel who will service IHL's account. In addition to this narrative response, please attach a resume for the primary actuary and each team member who will service the IHL account. Please provide three current client references. For each reference, explain why your work for the particular entity/client demonstrates your superior ability to provide the services sought in this RFP. The explanation should provide enough information about the entity/client so evaluators of your proposal can appreciate the quality of your references as well as the similarity (size and/or complexity, public entity, similarity with applicability of Mississippi laws, or other similar relevant characteristics) of the reference to the IHL. Provide contact information for each reference. If you have no experience with a self-insured plan of the type listed below, you may explain why your other closely-related experience demonstrates that you are capable to provide the services sought despite lacking the specific experience.
 - a) Self-insured workers' compensation plans
 - b) Self-insured tort claims plans
 - c) Self-insured unemployment plans
4. Access and Customer Service. Address in detail how the firm will provide access of the actuary(s) to IHL. It is essential that IHL have prompt and direct access to the actuary throughout the Agreement period.
5. Monitoring Regulatory or Legal Landscape. Describe your ability to monitor regulatory and legislative developments at the state and federal level that may affect the IHL self-insured plans.
6. Ability. In addition to your past experience, please highlight why you would be the best actuary for IHL to select to prepare actuarial analyses and funding recommendations for each of IHL's self-insured plans.

7. Negative History, Litigation. Disclose whether your organization or the primary actuary has been involved in any material civil or criminal litigation during the last five years (after November 23, 2010) which involves any area covered by this RFP. For your response, “material” shall mean any civil case which was settled by you or for which a verdict was awarded against you. For criminal cases, “material” shall mean any case alleging a felony or misdemeanor which resulted in a conviction. If any such cases exist, please provide the details of the litigation as well as the outcome.
8. Negative History, Reference. If you have lost any large clients/contracts during the last two years, please identify the client or entity, provide contact information. For purposes of this response, “large client” shall mean a person or entity for which actuarial fees during a calendar year exceeded \$10,000.
9. Cost. Complete the cost quotation form provided in this RFP.
10. Scope of Services. Please affirm that if selected you will perform the services outlined in the Scope of Services section at or above the standard of care expected of a professional actuary.

COST QUOTATION

ACTUARIAL CONSULTING SERVICES

IHL seeks proposals which offer a fixed annual rate for each of the four years of service. In consideration of the price quoted, the actuary will provide all of the services outlined in Section IV. A. through E. Examples of “other services” are described in Section IV. F. of this RFP. The hourly rates below will apply to other services which IHL may request. “Other services” do not include the annual analyses, the annual assessment report, or the quarterly reserve reports. Historically, hours related to other services have been minimal. Reasonable travel costs associated with “other services” will be reimbursed by IHL upon receipt of reasonable documentation of such expenses.

Our organization’s unit rates and maximum project fees to provide the requested services to IHL are as follows:

FIXED COST QUOTE	Year 1	Year 2	Year 3	Year 4
Total Fixed Fee For Scope of Services IV. A. through E.				

HOURLY RATES BY POSITION	Year 1	Year 2	Year 3	Year 4
Senior Actuary				
Professional Staff and/or Non-Senior Actuary				
Clerical				

Payment for Services. The proposer agrees to submit invoices quarterly. The annual fixed fee will be paid quarterly in equal installments after each quarter during the term of the contract. The invoice should reflect the fixed fee amount as well as any hourly fees and expenses due. Late payments, if any, will be subject to interest at 1.5% per month beginning 45 days after receipt of the invoice per Miss. Code Ann. Section 31-7-305.

If the contract is terminated for any reason, the amount of the annual fixed fee due shall be determined on a pro-rata basis based upon the effective date of termination.

STATEMENT OF COMPLIANCE

Proposer agrees to adhere to all of the conditions and requirements set forth below as well as the other requirements in this RFP:

1. That the attached proposal is valid for at least 90 days subsequent to the due date of submission.
2. That IHL reserves the right to correct and clarify this RFP. Any corrections and clarifications will be sent to all that have provided written notice of intent to propose.
3. That IHL may request clarifications or corrections to proposals. IHL may reject any or all proposals or cancel the RFP in its entirety at IHL's sole discretion.
4. That IHL reserves the right to further clarify and/or negotiate with the "proposer evaluated best" following completion of the evaluation of proposals if such is deemed necessary by IHL. IHL also reserves the right to move to the next best proposer if negotiations do not lead to a final agreement with the best proposer.
5. That all costs incurred in preparing and delivering the proposal, and any subsequent time and travel to meet with IHL regarding the proposal, shall be borne at the submitting party's expense.
6. That the actuary hereby agrees that it shall not make any delegation of its duties (to a third party) unless authorized in writing by RM prior to any such delegation. It is further mutually understood and agreed by both parties that IHL is free to contract with other actuaries to perform similar and like services as those contained in this RFP. Payment for work performed by the actuary shall not be affected by this provision.
7. That all documents submitted to IHL shall become documents of IHL and shall become subject to the Mississippi Public Records Act of 1983. IHL has the right to use any and all ideas or adaptations of the ideas contained in any proposal received in response to the RFP. Selection or rejection of the proposal will not affect this right.

On behalf of the entity indicated below, I agree to the terms in this RFP as well as the obligations represented in our submitted proposal.

Name of Entity/Organization/Firm

Printed/Typed Name of Authorized Signatory

Title

Signature

Date Signed

**Mississippi Board of Trustees State Institutions of Higher Learning (IHL)
Professional Personal Services Contract with Independent Contractor**
(This contract must be attached to a completed Contract Approval/Routing Form prior to work commencing.)
IHL Contract Number: _____

Contractor: _____ **Phone Number:** _____
Address: _____
City: _____ **State:** _____ **Zip Code:** _____

Are you currently receiving a benefit from the Public Employees' Retirement System of Mississippi? Yes No
If the answer is yes, individual must contact the Office of Human Resources (601.432.6134) to discuss eligibility of retirees to earn compensation from the IHL Executive Office prior to completing this form.

U.S. Citizen: Yes No If no, **Country of Citizenship:** _____ and **Residence:** _____
If no, are you a non-resident alien? _____ **Visa Type:** _____ **Resident Alien:** _____
Incorporated: Yes No **Small Business, Minority, Woman-Owned?** (Circle all applicable)

U.S. Social Security Number or U.S. Federal Tax Identification Number: _____

STATEMENT OF WORK:

IHL has determined that these services are essential and could not satisfactorily be performed by IHL Executive Office employees. Therefore, the Contractor noted above will perform the services and/or tasks as follows:

Contractor shall provide the following:

(Please reference attachment if additional space required. Any attachment is incorporated into this contract.)

Contract Begin Date: _____ **Contract Completion Date:** _____

CONSIDERATION AND COMPENSATION: **Account to be Charged:** _____

Rate of Pay: (indicate hourly, daily, scheduled deliverables/tasks, total project, etc.) **Deliverables/tasks**
(If charged to a Corporation for National and Community Service Grant, consultant daily rate cannot exceed \$540.)

Payment Terms:

Signed original invoices referencing the IHL contract number should be submitted to the following address:

Mississippi Board of Trustees State Institutions of Higher Learning
Attention: IHL contact will be designated upon execution of contract.
3825 Ridgewood Road
Jackson, MS 39211-6453

IHL EXECUTIVE OFFICE CONTACT:

Name: David S. Buford **Phone Number:** 601-432-6688

Contractor Certification: I understand I must submit a signed W-9 Form (available at the following link: <http://www.mississippi.edu/finance/downloads/fw9.pdf>). I agree to the terms noted above and to the general terms and conditions referenced in Appendix A. I am an independent Contractor for the IHL; therefore, the IHL is not liable for Social Security Contributions pursuant to Section 418, 42 U.S. Code. Furthermore, IRS Form 1099 will be forwarded at the end of the calendar year if total payments exceed \$600.

Signature of Contractor: _____ **Date:** _____

The Mississippi Board of Trustees Institutions of Higher Learning acceptance of contract:

_____ **Date:** _____

Commissioner (or approved designee)

**Mississippi Board of Trustees State Institutions of Higher Learning
Professional Personal Services Contract with Independent Contractor
Appendix A-General Terms and Conditions**

- 1. INDEPENDENT CONTRACTOR:** The Contractor will act as an independent contractor under this contract, and neither the Contractor nor any employee or agent of the Contractor is an employee of the IHL Executive Office. Nothing contained herein shall be deemed or construed by the IHL Executive Office, the Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the IHL Executive Office and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the IHL Executive Office or the Contractor hereunder, create or shall be deemed to create a relationship other than the independent relationship of the IHL Executive Office and the Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. IHL Executive Office shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. The IHL Executive Office shall not withhold from the contract payments to the Contractor any federal or State unemployment taxes, federal or State income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the IHL Executive Office shall not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the State for its employees.

The Contractor will provide the services and achieve the results specified by the IHL, free from the direction or control of the IHL as to means and methods of performance.

- 2. INSURANCE.** Each Party is responsible for maintaining its own insurance. IHL shall not be responsible for the acts or omissions of the Contractor.
- 3. NONRESIDENT ALIEN.** If the Contractor is a nonresident alien performing services in the United States or its territories, the Contractor agrees that proof of visa status (I-94 Form) documenting authorization to receive payment for work performed will be provided to the IHL prior to payment by the IHL.
- 4. AUTHORITY TO CONTRACT.** The CONTRACTOR warrants (a) 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.
- 5. ACCESS TO RECORDS.** The 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 Contract. The IHL, 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 Contractor which are directly pertinent to the Contract for the purpose of making audit, examination, excerpts and transcripts. Such books and records shall be maintained by the Contractor for three years from the date of the completion of work. Contractor is responsible for any audit discrepancies involving deviation from the terms of the Contract and for any commitments or expenditures in excess of amounts authorized by the IHL.
- 6. 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 Contract shall be the sole property of the IHL.
- 7. TERMINATION.** The termination provisions are stated in the RFP.

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- 8. IHL EXECUTIVE OFFICE EMPLOYEES.** The Contractor will not hire any employee of the IHL Executive Office to perform any services covered by this agreement without prior written approval from IHL Executive Office Human Resources Department.
- 9. CONFIDENTIAL INFORMATION.** In connection with the contract hereunder, the IHL and the Contractor shall be free to exchange such technical information and know-how as may be necessary to carry out the objective of the agreement. Neither party shall be required to disclose to the other party technical information and know-how which it received in confidence from a third party or which is developed for a third party under conditions giving rise to an obligation or confidentiality. Employees of the IHL Executive Office performing services hereunder shall enter into confidentiality agreements should such exchange of information be needed to conduct the project. The IHL shall have the appropriate individuals execute said agreements and provide copies to the Contractor. The Contractor shall have the appropriate individuals execute said agreements and provide copies to the IHL.

Notwithstanding any provision to the contrary contained herein, it is recognized that the IHL is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act, section 25-61-1, et seq., Miss. Code Ann. If a public records request is made for any information provided to the IHL pursuant to this agreement, the IHL 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 this agreement shall be liable to the other party for disclosures of information required by Court order or required by law.

- 10. ACKNOWLEDGEMENT OF SPONSORSHIP.** The Contractor agrees that, in any publication, acknowledgement shall be made of sponsorship by the IHL and/or other sponsor by use of the following statement "This work was performed under the sponsorship of the Mississippi Board of Trustees State Institutions of Higher Learning. This work does not necessarily represent the views of the IHL or the sponsoring agency." 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 IHL may not be used in publications, news releases, advertising, speeches, technical papers, photographs, and other releases of information regarding this Contract or data developed under this Contract without written approval of the IHL.
- 11. APPLICABLE LAW.** The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the state. The CONTRACTOR shall comply with applicable federal, state, and local laws and regulations. If a court determines that any provision of this contract is not enforceable against IHL, the CONTRACTOR agrees that the individual signing this agreement on behalf of IHL is not personally responsible or liable for any of the obligations and duties contained herein.
- 12. INDEMNIFICATION.** To the fullest extent allowed by law, the CONTRACTOR shall indemnify, defend, save and hold harmless, protect, and exonerate IHL, its Commissioner, Board Members, officers, employees, agents and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, attorney's fees, arising out of or caused by the CONTRACTOR and/or its partners, principals, agents, employees and/or Subcontractors in the performance of or failure to perform this agreement. In IHL's sole discretion, the CONTRACTOR may be allowed to control the defense of any such claim, suit, etc. In the event the CONTRACTOR defends said claim, suit, etc., the CONTRACTOR shall use legal counsel acceptable to IHL; the CONTRACTOR shall be solely responsible for all costs and/or expenses associated with such defense, and IHL shall be entitled to participate in said defense. The CONTRACTOR shall not settle any claim, suit, etc., without IHL's concurrence, which IHL shall not unreasonably withhold.

**Mississippi Board of Trustees State Institutions of Higher Learning
Professional Personal Services Contract with Independent Contractor
Appendix A-General Terms and Conditions**

- 13. CONFLICT OF INTEREST.** The Contractor affirms that, to the best of his/her knowledge, there exists no actual or potential conflict between Contractor's family, business, or financial interests and his/her services under this Contract, and, in the event of change in either his/her private interests or service under this Contract, he/she will inform the IHL regarding possible conflict of interest that may arise as a result of such change.
- 14. AVAILABILITY OF FUNDS AND EXPENDITURE APPROVAL.** It is expressly understood and agreed that the obligation of IHL to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the Agreement are at any time not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which the funds were provided or if funds are not otherwise available to IHL, IHL shall have the right upon ten (10) working days written notice to the CONTRACTOR, to terminate this Agreement without damage, penalty cost, or expense to IHL of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.
- 15. SEVERABILITY.** If any term or provision of this contract is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of the contract shall be valid and enforceable to the fullest extent permitted by law.
- 16. TOTAL AGREEMENT.** This Contract contains the entire agreement between the parties, superseding any prior or concurrent agreements as to the services being provided, and no oral or written terms or conditions that are not contained in this Contract shall be binding. This Contract may not be changed except by mutual agreement of the parties. Any such change shall be reduced to writing and signed by both parties.
- 17. CONTRACT CHANGES.** The IHL may, at any time, by written order, make changes within the general scope of the contract or any of its task orders as to the services or work to be performed. If such changes cause an increase or a decrease in the CONTRACTOR's cost or time required to perform any services under this contract or assigned task orders, whether or not changed by an order, the IHL shall make an equitable adjustment and modify this contract, or the appropriate task order, in writing. The CONTRACTOR must assert any claim for adjustment under this clause in writing within thirty (30) days from the date the CONTRACTOR received the IHL's notification of change, unless the IHL grants additional time before the date of final payment. No services for which the CONTRACTOR will charge any additional compensation shall be furnished without the prior written authorization of the IHL.
- 18. ASSIGNMENT/TRANSFER/SUBCONTRACTING.** The Contractor shall not assign, transfer, subcontract, or otherwise give to or impose on any other party any obligation or right of the Contractor under this Contract, without prior written consent of the IHL.
- 19. THIRD PARTY ACTION NOTIFICATION.** The CONTRACTOR shall give the IHL prompt notice in writing of any action or suit filed, and prompt notice of any claim made against the CONTRACTOR by any entity that may result in litigation related in any way to this contract.
- 20. EMPLOYMENT VERIFICATION.** CONTRACTOR represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act (Senate Bill 2988 from the 2008 Regular Legislative Session) 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, to provide a copy of each such verification to the State. CONTRACTOR further represents and

**Mississippi Board of Trustees State Institutions of Higher Learning
Professional Personal Services Contract with Independent Contractor
Appendix A-General Terms and Conditions**

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.

- 21. COUNTERPARTS.** This Agreement may be executed in counterparts, and faxed or scanned copies shall have the force and effect of originals.
- 22. NOTICE.** Any notice required or permitted to be given under this contract shall be in writing and sent by certified United States mail, postage prepaid, return receipt requested, to IHL by writing the Mississippi Institutions of Higher Learning, Attention: Office of Contracts and Grants Compliance, 3825 Ridgewood Road, Suite 417, Jackson, MS 39216 or to the CONTRACTOR by writing _____

The parties agree to promptly notify each other of any change of address.

Contractor signature when form is faxed _____
Signature and Date (I agree to the terms of the contract included in pages 1 through 5)