**ATTACHMENT F**

**Confidentiality and Non-Disclosure Addendum**

**To the Contract for Services between SECRETARY and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and Contract Number \_\_\_\_\_\_\_\_;**

**As used herein, the term Contract for Services**

**Includes said agreement**

**Thereto**

**This Confidentiality and Non-Disclosure Addendum dated this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2012 (herein referred to as a “Confidentiality Addendum”)**

**BETWEEN:**

Mississippi Secretary of State’s Office (“MSOS”) of

401 Mississippi Street, Jackson, Mississippi, 39201

OF THE FIRST PART

**-AND-**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Contractor”) of

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

OF THE SECOND PART

**BACKGROUND:**

1. Pursuant to the Contract for Services, the Contractor has been retained as an independent contractor with the MSOS to provide the services outlined in the Contract for Services. Pursuant to the Contract for Services, the contractor is or will be responsible for performing services listed.
2. The Contractor will have access to proprietary software codes and techniques and confidential data maintained by the MSOS.

**IN CONSIDERATION OF** and as a condition of the MSOS retaining the Contractor and the MSOS providing access to applications and confidential information to the Contractor in addition to other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, the parties to this Confidentiality Addendum agree as follows:

**Confidential Information**

1. The Contractor acknowledges that pursuant to the Contract for Services, the Contractor will, or may, be making use of, acquiring or adding to the information about certain matters and things which are confidential to the MSOS and which information is the exclusive property of the MSOS, including, without limitation:
   1. “Confidential information” means all data and information relating to the business and management of the MSOS, including proprietary and trade secret technology and accounting records to which access is obtained by Proprietary Data, Business Operations, Computer Software, Computer Technology, Marketing and Development Operations, and Customers. Confidential information will also include any information which has been disclosed by a third party to the MSOS and which is subject to a non-disclosure agreement between said third party and the MSOS; in such cases the MSOS must advise Contractor of said non-disclosure agreement and that the MSOS considers information provided to Contractor in accord with the Contract for Services to be Confidential Information as defined here. Confidential information will not include information that:
      1. Is generally known in the industry of the MSOS;
      2. Is now or subsequently becomes generally available to the public through no wrongful act of the Contractor;
      3. The Contractor had in its possession prior to any disclosure by the MSOS to Contractor pursuant to the Contract for Services;
      4. Is independently created by the Contractor without direct or indirect use of the Confidential Information; or
      5. The Contractor rightfully obtains from a third party who has the right to transfer or disclose it.
   2. “Work Product” means work product resulting from or related to work or projects performed for the MSOS or for clients of the MSOS pursuant to the Contract for Services, of any type or form in any stage of actual research and development;
   3. “Production Processes” means processes used in the creation, production and manufacturing of the Work Product, including but not limited to formulas, patterns, molds, models, methods, techniques, specifications, processes, procedures, equipment, devices, programs, and designs;
   4. “Other Proprietary Data” means information relating to the MSOS’s proprietary rights prior to any public disclosure of such information, including but not limited to the nature of the proprietary rights, production, data, technical and engineering data, technical concepts, test data and test results, simulation results, the status and details of research and development of products and services, and information regarding acquiring, protecting, enforcing and licensing proprietary rights (including patents, copyrights and trade secrets);
   5. “Business Operations” means internal personnel and financial information, vendor names and other vendor information (including vendor characteristics, services and agreements), purchasing and internal cost information, internal services and operational manuals, and the manner and methods of conducting the MSOS’s business;
   6. “Computer Software” means all sets of statements, instructions or programs whether in human readable or machine readable form, that are expressed, fixed, embodied or stored in any manner and that can be used directly or indirectly in a computer (“Computer Programs”; any report format, design or drawing created or produced by such Computer Programs; and all documentation, design specifications and charts, and operating procedures which support the Computer Programs;
   7. “Computer Technology” means all scientific and technical information or material pertaining to any machine, appliance or process, including specifications, proposals, models, designs, formulas, test results and reports, analyses, simulation results, tables of operating conditions, materials, components, industrial skills, operating and testing procedures, shop practices, know-how and show-how; and,
   8. “Customers” means names of customers and their representatives, contracts and their contents and parties, customer services, data provided by customers and the type, quantity and specifications of products and services purchased, leased, licensed or received by clients of the MSOS.

**Confidential Obligations**

1. Except as otherwise provided in this Confidentiality Addendum, the Confidential Information will remain the exclusive property of the MSOS; and will only be used by the Contractor for the Permitted Purpose. The contractor will not use the Confidential Information for any purpose other than for the services provided pursuant to the Contract for Services.
2. The obligations to ensure and protect the confidentiality of the Confidential Information imposed on the Contractor in this Confidentiality Addendum and any obligations to provide notice under this the Contract for Services will survive the expiration or termination, of the Contract for Services, and said obligations will continue for a period of two (2) years from the date of such expiration or termination.
3. The Contractor may disclose any of the Confidential Information:
   1. To such of its employees, agents, representatives and advisors that have a need to know for the Permitted Purpose provided that:
      1. The Contractor has informed such personnel of the confidential nature of the Confidential Information;
      2. Such personnel agree to provide the same level confidentiality, non-use and non-disclosure as the Contractor has agreed to provide in this Confidentiality Addendum; and
      3. The Contractor agrees to take all necessary steps to ensure that the terms of this Agreement are not violated by such personnel.
   2. To a third party where the MSOS has consented in writing to such disclosure; and
   3. To the extent required by law or by the request or requirement of any judicial, legislative, administrative or other governmental body.
4. Contractor agrees to indemnify and defend the MSOS from claims that arise from the Contractor’s unauthorized disclosure or dissemination of Confidential Information in violation of this Confidential Addendum

**Employee Non-Solicitation**

1. Both parties agree not to engage in any attempt to hire, or to engage as independent contractors, the other’s employees during the term of the Contract for Services and for the period ending two (2) years after termination of the Contract for Services, except as may be otherwise agreed to in writing by both Parties.

**Ownership and Title**

1. The Contractor acknowledges and agrees that all rights, title and interest, including any copyright rights, in any Confidential Information will remain the exclusive property of the MSOS.
2. This Confidential Addendum will not apply in respect of any intellectual property, process, design, development, creation, research, invention, know-how, trade names, trade-marks or copyrights for which:
   1. No equipment, supplies, facility or Confidential Information of the MSOS was used,
   2. Was developed entirely on the Contractor’s own time, and not derived from Confidential Information provided to the Contractor by the MSOS.
3. Subject always to payment by MSOS in full of all fees and expenses in accordance with the terms hereof; the Contractor shall, if requested by the MSOS, assign to the MSOS at the sole cost of the MSOS, all rights, title and interest it may have in the Developed Work Product, including, without limitation, any intellectual property rights inherent therein or relating thereto. Provided that, since the development of the Work Product will require the experience and skills of the Contractor as a software Contractor, irrespective that the Work Product will be developed in accordance with the MSOS’s Specifications, the Contractor shall retain the rights to use the algorithms, know-how, ideas, techniques and concepts used by it in developing the Work Product.
4. If a court of competent jurisdiction finds any of the provisions of this Confidential Addendum to be unenforceable, it is the parties’ intent that such provision be reduced in scope by the Court only to the extent deemed necessary the provision reasonable and enforceable.
5. No failure or delay by the MSOS in exercising any power, right or privilege provided in this Agreement will operate as a waiver, nor will any single or partial exercise of such rights, powers or privileges preclude any further exercise of them or the exercise of any other right, power or privilege provided in this Agreement.
6. This Confidentiality Addendum will inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns, as the case may be, of the MSOS and the Contractor.
7. This Confidentiality Addendum may be executed in counterparts.
8. Time is of the essence in this Confidentiality Addendum.

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Diane Hawks Company Name

For C. Delbert Hosemann, Jr. Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Mississippi Secretary of State

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_