

**CONTRACT BETWEEN**  
**THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA**  
**AND**  
**NMS Management Services, Inc.**

This contract entered into this 24<sup>TH</sup> day of April, 2007, between THE SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA, a political subdivision of the state of Florida (hereinafter referred to as the "School Board"), and NMS Management Services, Inc., located at 2901 South Congress Ave., Palm Springs, FL 33461, (hereinafter referred to as the "Contractor") to provide Drug and Alcohol Testing.

**SECTION I - Term of Contract**

This contract shall be for the period beginning April 24, 2007 through April 23, 2010. The contract may be renewed for two additional one-year periods at the annual anniversary date. The contract will not extend beyond the fifth year.

**SECTION II - Services**

The Contractor shall provide DRUG & ALCOHOL TESTING per specifications in RFP No. and the corresponding proposal submitted by the Contractor, which by reference herein becomes part of this contract. All addenda issued to RFP, if any, are also made a part of this contract.

**SECTION III - Cost of Services**

The Contractor shall be paid for services as listed in the RFP (Items 1, 8, 9, 13-16 and Additional Information items as bid) and awarded for DRUG & ALCOHOL TESTING for the School Board.

**SECTION IV - Terms and Conditions**

The Contractor shall have the option to terminate the contract upon written notice to the Director of Purchasing. Such notice must be received at least 90 days prior to the

effective date of termination. The School Board shall have the option to terminate the contract without cause upon written notice to the Contractor. Such notice must be provided to the Contractor at least 30 days prior to the effective date of termination, and the Contractor shall only be entitled to compensation up to the date of termination. The Contractor shall not be entitled to lost profits.

Early termination of the contract by the Contractor may prohibit the Contractor from submitting proposals for a period of three years from the date of termination of the contract. The School Board shall establish the termination date of the contract for use thereof.

There shall be no assignment of the contract in whole or in part, or compensation to be derived therefrom by the Contractor.

Included in this contract are the terms and conditions as described in the Request for Proposal, RFP 07C-005B, which are incorporated by reference herein and made a part hereof.

#### SECTION V – Indemnification/ Hold Harmless Agreement

Contractor shall, in addition to any other obligation to indemnify the School Board, and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the School Board, its agents, officers, elected officials and employees from and against all claims, actions, liabilities, losses (including economic losses), costs arising out of any actual or alleged;

- A. bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting therefrom, or any other damage or loss arising out of, or claimed to have resulted in whole or in part from any actual or alleged act or omission of the Contractor, subcontractor, anyone directly or indirectly employed by any of them, of anyone for whose acts any of them may be liable in the performance of the work; or

- B. violation of law, statute, ordinance, governmental administration order, rule or regulation by Contractor in the performance of the work; or
- C. liens, claims or actions made by the Contractor or any subcontractor or other party performing the work.

The indemnification obligations hereunder shall not be limited to any limitation on the amount, type of damages, compensation or benefits payable by or for the Contractor of any subcontractor under workers' compensation acts, disability benefit acts, other employee benefit acts or any statutory bar.

This article will survive the expiration and/or termination of this contract.

#### SECTION VI - Insurance

Insurance will be required as stated in RFP. The School Board of Palm Beach County, Florida shall be named as an additional insured.

#### SECTION VII – Cancellation of Award/Termination

In the event any of the provisions of this contract are violated by the Contractor, the Superintendent or designee will give written notice to the Contractor stating the deficiencies, and unless the deficiencies are corrected within ten (10) days of such notice, recommendation will be made to the School Board for immediate cancellation. Upon cancellation hereunder, the School Board may pursue any and all legal remedies as provided herein and by law. In the event that it is subsequently determined that a cancellation under this paragraph was incorrect, the termination shall be converted to a termination for convenience.

If said contract should be terminated for convenience as provided herein, the School Board will be relieved of all obligations under said contract. The School Board will only be required to pay to the Contractor that amount of the contract actually performed to the date of termination.

## SECTION VIII - Funding Out, Termination, Cancellation

Florida School Laws prohibit School Board from creating obligations on anticipation of budgeted revenues from one fiscal year to another without year-to-year extension provisions in the contracts.

It is necessary that fiscal funding out provisions be included in all contracts in which the terms are for periods of longer than one year.

Therefore, the following funding out provisions are an integral part of this contract:

The School Board may, during the contract period, terminate or discontinue the services covered in this contract for lack of appropriated funds upon the same terms and conditions as set forth in Section IV Terms and Conditions.

Such prior written notice will state:

- A. That the lack of appropriated funds is the reason for termination, and
- B. Agreement not to replace the services being terminated with services similar to those covered in this contract from another vendor in the succeeding funding period.
- C. This written notification will thereafter release the School Board of all further obligations in any way related to such services covered herein.

## SECTION IX – Jessica Lundsford Act

All contract personnel (vendors, individuals, or entities) under contract with the School Board who are permitted access on school grounds when students are present, who may have direct contact with any student of the School District, or who may have access to or control of school funds must be fingerprinted and background checked. The Contractor agrees to undergo a background check and fingerprinting if he/she is an individual who meets any of the above conditions and to require that all individuals in the organization who meet any of the conditions to submit to a background check, including fingerprinting

by the School District's Police Department, at the sole cost of the Contractor. Contractor shall not begin providing services contemplated by this Agreement until Contractor receives notice of clearance by the School District. The School Board, nor its members, officers, employees, or agents, shall not be liable under any legal theory for any kind of claim whatsoever for the rejection of Contractor (or discontinuation of Contractor's services) on the basis of these compliance obligations. Contractor agrees that neither the Contractor, nor any employee, agent or representative of the Contractor who has been convicted or who is currently under investigation for a crime delineated in section 435.04, Florida Statutes, will be employed in the performance of this contract.

#### SECTION X - Default

In the event that the Contractor should breach this contract the School Board reserves the right to seek remedies in law and/or in equity.

#### SECTION XI - Debarment

The School Board shall have the authority to debar a person / corporation for cause for consideration or award of future contracts. The debarment shall be for a period commensurate with the seriousness of the causes, generally not to exceed three (3) years. When the offense is willful or blatant, a longer term of debarment may be imposed, up to an indefinite period.

#### SECTION XII – Federal and State Tax

The District is exempt from federal and state taxes for tangible personal property. The Purchasing Department Coordinator will sign an exemption certificate submitted by the Contractor. Contractors doing business with the School Board will not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations with the School Board, nor will any responder be authorized to use the District's Tax Exemption Number in securing such materials.

SECTION XIII - Amendment

This contract shall only be amended or modified in writing executed by both parties.

SECTION XIV - Strict Performance

The failure of either party to insist on strict performance of any covenant or conditions herein shall not be construed as a waiver of such covenants or conditions for any instance.

This contract shall be construed in accordance with the laws of the State of Florida. If any litigation shall result from this contract, venue shall lie in Palm Beach County, Florida.

This contract shall not be construed against the party who drafted the same as both parties have had experts of their choosing review same.

This contract is binding on the parties hereto, their heirs and successor.

In witness whereof, this contract is effective on the day and year first above written.

NMS Management Services, Inc.

THE SCHOOL BOARD OF PALM BEACH COUNTY,  
FLORIDA

BY: Clairie Lauce

BY: \_\_\_\_\_  
William G. Graham, Chairman

WITNESS: [Signature]

\_\_\_\_\_  
Date

WITNESS: [Signature]

Attest: \_\_\_\_\_  
Arthur C. Johnson, Ph.D., Superintendent

Reviewed and Approved for Form and Legal Sufficiency:

DATE: 3-28-07

BY: [Signature]  
Attorney