

## SERVICE AGREEMENT

This **SERVICE AGREEMENT** ("Agreement") is effective as of July 1 2023 and is entered into by and between **ZARTICO INC**, a Delaware Corporation, with offices located at 26 S. Rio Grande Street, Suite 2072, Salt Lake City, Utah, 84101 ("Zartico") and **Jackson County NC TDA** with a principal place of business located at 98 Cope Creek Rd Suite D, Sylva, NC 28779 ("Client").

**WHEREAS**, Client desires to engage Zartico to provide to Client certain technology Services as defined in this Agreement and as more fully described in the Statement of Work ("SOW") attached to this Agreement as Exhibit A; and

**WHEREAS**, Zartico is willing to provide such technology Services to Client under the terms and conditions of this Agreement and the SOW.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree to the following terms and conditions:

1. **Term and Termination.** This Agreement is effective as of the Effective Date hereof, and shall continue in effect for a period of one (1) year from such Effective Date, unless earlier terminated in accordance with the terms of this Agreement. Thereafter, this Agreement will automatically renew for additional one (1) year term(s), unless either party hereto provides the other party hereto with written notice of non-renewal of this Agreement at least thirty (30) days prior to the expiration of the then-current one (1) year term of this Agreement, unless earlier terminated in accordance with the terms of this Agreement. Either party hereto may terminate this Agreement and the SOW upon written notice of such termination to the other party if the other party commits a material breach of this Agreement or SOW and fails to cure such breach within thirty (30) days of written notice of such breach from the non-breaching party hereto. In the event of any termination of this Agreement: (a) Client shall promptly pay to Zartico all fees and expenses owing to Zartico under this Agreement up to the effective date of such termination; and (b) Client shall cease all access to and use of the Services.

2. **Services.** Subject to Client's compliance with the terms and conditions of this Agreement, including Client's payment of all fees and expenses owing by Client to Zartico under this Agreement, Zartico grants to Client a non-exclusive, non-transferable, and limited right during the term of this Agreement to access and use the services set forth and described in the SOW ("Services") under the terms and conditions of this Agreement. In order for Zartico to provide to Client the Services as set forth in this Agreement and SOW, Client shall provide and ensure its timely cooperation with Zartico, including Client making available or providing to Zartico all relevant data, information and personnel, performing any tasks or responsibilities assigned to Client, and notifying Zartico of any issues or concerns Client may have, relating to the Services.

3. **Restrictions.** Client shall not: (a) access or use the Services in violation of applicable law or in any manner that could damage, disable, burden, or impair the Services; (b) alter, modify, reproduce, or create derivative works of the Services; (c) reverse engineer, disassemble, decompile, or otherwise attempt to derive the source code or method of operation of the Services; (d) attempt to circumvent or overcome any technological protection measures included in the Services intended to restrict access to any portion of the Services; or (e) interfere in any manner with the operation or hosting of the Services.

4. **Compensation.** In consideration of Zartico providing the Services to Client under this Agreement, Client shall pay to Zartico the fees and expenses as set forth in the SOW. Zartico will invoice Client for such fees and expenses as set forth in the SOW. Except as otherwise set-forth in the SOW, all invoices are due and payable in full by Client to Zartico within thirty (30) days of the date of such invoice. Should any portion of any invoice remain unpaid by Client to Zartico after the applicable due date, then interest will accrue and be payable by Client to Zartico on the outstanding unpaid amount of such invoice at the rate of 1% per month, or the maximum applicable legal interest rate, whichever is lower, until the date of payment in full of such invoice by Client to Zartico. All sales and use taxes, if any, due under the laws of any state, any local government authority, or the federal government of the United States, in connection with this Agreement and Services provided hereunder shall be paid by Client. Notwithstanding the foregoing, Client shall be obligated to pay such sales and use taxes to the extent that the Client has provided valid exemption certificates or other applicable documentation that would eliminate or reduce the obligation to collect or pay.

5. **Confidentiality.**

a. **Confidential Information.** Under this Agreement, either party hereto may be provided or receive the Confidential Information (as defined below) of the other party hereto. The party hereto disclosing or providing Confidential Information to the other party is referred to herein as the "Discloser", and the party hereto receiving Confidential Information from the other party is referred to herein as the "Receiver". Except as otherwise expressly provided for in this Agreement, Receiver will hold in confidence and refrain from disclosing to any third party, without Discloser's prior written consent, any Confidential Information of Discloser. Receiver will not use any Confidential Information of Discloser for any purpose except as permitted under this Agreement and otherwise to meet its obligations under this Agreement. As used in this Agreement "Confidential Information" may include any information of Discloser relating to its business, financial affairs, customers, products, services, processes, technology and any other confidential or proprietary information that Discloser may disclose to Receiver under or in connection with this Agreement. In order to be considered "Confidential Information" under this Agreement such information shall have been disclosed hereunder by Discloser to Receiver: (a) in tangible form (e.g. in writing or documents) and marked or labeled by Discloser as "Confidential", "Proprietary" or with a similar legend; (b) in intangible form (e.g. orally or visually) and formally identified by Discloser to Receiver as confidential at the time of disclosure; or (c) in such manner that given the nature of the information disclosed and the circumstances of disclosure such information should reasonably be



understood and considered to be the confidential or proprietary information of Discloser. Notwithstanding the foregoing, all Services are deemed to be the Confidential Information of Zartico. Receiver's obligations of confidentiality and non-use under this Section will remain in effect during the term of this Agreement and following termination of this Agreement until such information is no longer to be considered Confidential Information as provided for in this Section. Confidential Information of Discloser shall not include any information to the extent such information: (i) at the time of its disclosure by Discloser to Receiver was already known to Receiver as evidenced by competent written records of Receiver; (ii) at the time of disclosure by Discloser to Receiver was generally available to the public; (iii) subsequent to disclosure by Discloser to Receiver became generally available to the public through no breach of this Agreement or any fault of Receiver; (iv) becomes known to Receiver on a non-confidential basis from a third party not bound by any confidentiality agreement with, or duty of non-disclosure to, Discloser; (v) was independently developed by Receiver without any reference to or use of Confidential Information of Discloser as evidenced by competent written records of Receiver; or (vi) was approved by Discloser for disclosure by Receiver as evidenced by express approval in writing from Discloser to Receiver. In the event Receiver is legally compelled by order of a court of competent jurisdiction to disclose any Confidential Information of Discloser, then Receiver shall give Discloser prompt written notice thereof (to the extent not legally prohibited), together with a copy of such order, so that Discloser may seek an appropriate protective order or other restricting remedy. If Discloser is unable to obtain such protective order or restricting remedy regarding such Confidential Information of Discloser, then Receiver may disclose such Confidential Information of Discloser to the extent so required by such court order; provided however, that Receiver shall reasonably cooperate with Discloser, at Discloser's sole cost and expense, in Discloser's efforts to secure confidential treatment of such Confidential Information of Discloser by such court. Upon any termination or expiration of this Agreement, Receiver shall promptly return to Discloser (or destroy if so directed by Discloser) any and all Confidential Information of Discloser.

b. **Permitted Use of Confidential Information.** Zartico may disclose Confidential Information of Client to Zartico's employees, agents and contractors who have a need to know such information and are bound to keep it confidential for purposes of performing the Services. Notwithstanding the foregoing or anything in this Agreement or SOW to the contrary, but subject to Zartico's confidentiality obligations herein, Client acknowledges and agrees that Zartico may use, modify and incorporate in the Services and/or other products or services of Zartico, Confidential Information of Client and any documentation, materials, data or information provided by Client to Zartico under or in connection with this Agreement, provided that such Confidential Information of Client and such documentation, materials, data or information of Client has been anonymized and de-identified of Client by Zartico. Without limiting the foregoing, such use by Zartico may include use in Zartico databases and records to provide the Services and/or other products or services of Zartico to its customers, and to improve or enhance the Services and/or other products or services of Zartico for Zartico customers, including for marketing, reporting, or aggregating trends and metrics. Such use by Zartico shall be without identification of or attribution to Client. In providing and performing the Services, Zartico will use and rely primarily on information

available from various public sources and on the Confidential Information of Client and documentation, materials, data or information provided by Client to Zartico under or in connection with this Agreement, and Client represents and warrants that Client is authorized and has the full legal right to provide Zartico with all such Confidential Information of Client and documentation, materials, data or information provided by Client to Zartico under or in connection with this Agreement for Zartico's use in connection with the Services and as otherwise provided for or permitted in this Agreement. Client acknowledges and agrees that Zartico will have no obligation or responsibility to independently verify or confirm the accuracy or veracity of any such Confidential Information of Client or any information documentation, materials, data or information provided by Client to Zartico under or in connection with this Agreement.

6. **Ownership.** All Confidential Information of Zartico shall remain the exclusive property of and be owned by Zartico. All Confidential Information of Client shall remain the exclusive property of and be owned by Client. The Services shall remain the exclusive property of and be owed by Zartico, including any and all intellectual and proprietary rights therein or thereto. Subject to the foregoing, Client will own all reports or analysis generated by Client through its use of the Service, or such reports prepared for and furnished to the Client by Zartico in connection with the Services.

7. **Disclaimer of Warranties.** THE SERVICES ARE PROVIDED OR MADE ACCESSIBLE BY ZARTICO TO CLIENT STRICTLY ON AN "AS IS" BASIS WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, AND ZARTICO HEREBY EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES IN CONNECTION WITH THE SERVICES OR OTHERWISE UNDER THIS AGREEMENT OR SOW, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND THOSE ARISING UNDER OR BY STATUTE OR FROM A COURSE OF DEALING, USAGE, TRADE PRACTICE OR CUSTOM.

8. **Limitation of Liability.** ZARTICO SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES WHATSOEVER ARISING FROM, UNDER OR IN CONNECTION WITH THE SERVICES, THIS AGREEMENT OR SOW, OR FOR ANY LOST PROFITS OR DATA, HOWEVER CAUSED. ANY AND ALL LIABILITY OF ZARTICO ARISING FROM, UNDER OR IN CONNECTION WITH THE SERVICES, THIS AGREEMENT OR SOW SHALL BE LIMITED IN ALL CASES TO DIRECT DAMAGES ONLY WHICH IN THE AGGREGATE SHALL NOT EXCEED THE AMOUNT OF FEES ACTUALLY PAID TO ZARTICO BY CLIENT UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE ACCRUAL OF SUCH CLAIM FOR DAMAGES. THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY: (a) REGARDLESS WHETHER ANY SUCH CLAIM, DAMAGE OR HARM IS BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE; (b) EVEN IF ZARTICO WAS ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH CLAIM, DAMAGE OR HARM; AND (c) TO ZARTICO SUPPLIERS, LICENSORS AND CONTRACTORS.



9. **Miscellaneous.**

a. **Entire Agreement.** This Agreement and the SOW constitutes the entire agreement and understanding between the parties hereto relating to the subject matter of this Agreement, and there are no prior or contemporaneous oral or written representations, understandings or agreements between the parties hereto relating to the subject matter of this Agreement that are not fully expressed in this Agreement or SOW.

b. **Waiver.** Any waiver by a party hereto of a breach by the other party of this Agreement or SOW shall be effective only to the extent such waiver is expressly set forth in writing and signed by the waiving party, and shall not operate or be construed as a waiver by such waiving party of any subsequent or other breach of this Agreement or SOW by the other party hereto. Any delay or omission by a party hereto in exercising any right, power, or remedy pursuant to a breach by the other party of this Agreement or SOW shall not impair any right, power, or remedy which such non-breaching party may have with respect to such breach by the other party hereto or any future breach by the other party hereto of this Agreement or SOW.

c. **Conflict.** In the event of any conflict or inconsistency between the terms of this Agreement and those of the SOW, the terms of this Agreement shall govern to the extent of such conflict or inconsistency.

d. **Governing Law and Jurisdiction.** This Agreement and the SOW are and shall be governed by and construed in accordance with the laws of the State of Delaware, and applicable U.S. Federal law, without regard to conflicts of law or choice of law rules or principles. The parties hereto hereby consent to the exclusive jurisdiction and venue of the State and Federal courts of the State of Delaware for any dispute or legal matter involving this Agreement or SOW, and the parties hereto agree not to plead or claim in any such courts that any such dispute or legal matter involving this Agreement or SOW has been brought in an inconvenient forum.

e. **Survival.** The following Sections of this Agreement shall survive any termination of this Agreement: 1 (Term and Termination), 3 (Restrictions), 4 (Compensation), 5 (Confidentiality), 6 (Ownership), 7 (Disclaimer of Warranties), 8 (Limitation of Liability), and 9 (Miscellaneous).

f. **Assignment.** Neither party hereto may assign or transfer this Agreement to any third party without the express prior written consent of the other party hereto, such consent not to be unreasonably withheld or delayed, provided, however, that Zartico may assign this Agreement or any of its rights or obligations under this Agreement to any of its affiliates or subsidiaries without the written consent of Client. Subject to the foregoing, this Agreement shall insure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

- g. **Independent Contractor.** Zartico is an independent contractor and not Client's agent, employee, franchisee/franchisor or fiduciary.
- h. **Non-Exclusive Remedies.** The rights and remedies of the parties hereto provided for in this Agreement are cumulative and not exclusive of any right or remedy available to the parties hereto under this Agreement, at law or in equity.
- i. **Notice.** Any notice required by this Agreement to be given or made to a party hereto shall be in writing and delivered in person, or sent by certified first class mail, return receipt required, or equivalent, or by express courier, to the address of the other party first set forth above in this Agreement. A party hereto may change its address for notice hereunder by notifying the other party, in writing, of the new address in accordance with the foregoing in this Section. Any such notice shall be deemed delivered to the other party when received by the other party.
- j. **Invalidity.** If any provision(s) set forth in this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction, then this Agreement shall be construed as if not containing such provision(s), and the rights and obligations of the parties hereto under this Agreement shall be construed and enforced accordingly.
- k. **Case Study and Use of Services.** Client agrees to allow Zartico to list Client name and logo on promotional and sales material during term of Service Agreement. Upon Client's prior written consent in each instance, Zartico may develop and create a case-study of Client's use of and experience with the Services, and Zartico may use and provide such case-study for marketing and promotion of the Services.
- l. **Force Majeure.** In the event Zartico is delayed in performing, or fails to perform, any of its obligations under this Agreement or SOW due to any cause beyond its reasonable control, including acts of government, war, insurrection, sabotage, armed conflict, pandemic, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications services, or inability to obtain materials, supplies, equipment, products or power, then such delay or failure shall not be held to be a breach of this Agreement nor shall Zartico be liable for any such delay or failure.
- m. **Counterparts.** This Agreement may be executed by the parties hereto in counterpart originals, both of which shall be deemed an original instrument for all purposes, but all of which shall together comprise one and the same instrument. An executed copy of this Agreement may be delivered by facsimile or email by one party hereto to the other party, and such facsimile or scanned copy of such executed Agreement shall be binding as an original.
- n. **CSV Uploader.** The csv uploader is a powerful addition, which allows you to harness all the functionality of the Analytic Designer. You can now upload your own data to create robust insights using



the Analyze Designer. Note, Zartico's Privacy Policy prohibits the use of the .csv uploader for any Personally Identifiable Information (PII).

**IN WITNESS WHEREOF**, the duly authorized representative of each party hereto has executed this Agreement below as of the Effective Date.

**ZARTICO INC**

By:    
 (Signature)

Name: Sarah Lehman

Title: CEO

Date: 4/24/2023

**Jackson County NC TDA**


By: \_\_\_\_\_  
 (Signature)

Name: Daniel Fletcher

Title: Executive Director

Date:

This instrument has been preaudited in the  
Manner required by The Local Government  
Budget and Fiscal Control Act.

  
Finance Officer  
Jackson County, North Carolina

**EXHIBIT A TO SERVICES AGREEMENT****STATEMENT OF WORK**

This Statement of Work ("SOW") is governed by the Service Agreement entered into by and between Zartico and Client ("Agreement"). Under this SOW and the Agreement, Zartico will provide the following Services to the Client:

**DESCRIPTION OF SERVICES/DELIVERABLES:****ZDOS 3.0 - Standard 1**

<b>Jackson County NC TDA</b>	<b>3.0 Standard</b>
<b>Package</b>	<b>1</b>
Visitor + Resident Population	3M+
Base Package Amount	\$65,000
Includes: Geo, Event & Credit card expanded view	✓
Includes: Set up, Warehousing and Maintenance	✓
Website Contribution	\$15,000
<b>3.0 Enhancements</b>	
<b>Zartico Benchmarks</b>	✓
<b>Zartico Indices</b>	✓
<b>Destination Performance (census, jobs, taxes, weather)</b>	
Director Brief / CEO Module	✓
Employment	✓
Weather	✓
Tax	✓
<b>Normalized Geolocation Data</b>	
Geolocation data provided by Zartico with 24 hour refresh	✓
- High-definition visibility into origin market, visitor and resident flow and cross visitation to essential destination places/points of interest	✓
- Length of stay segmentation	✓
Short Trip	✓
Day Trip	✓
Long Day Trip	✓
Overnight Stay	✓
Historical Look Back: January 1, 2019 thru Present	Included in all packages (2021 and later in daily application)
Primary Places of Impact (Drivers, Attractions)	Zartico Place- Based Strategy (within funding boundary)
Contextual Places of Impact (Hotels, Restaurants, Retail)	Zartico Place- Based Strategy (within funding boundary)
Regions	✓
Out of Boundary POIs (Outside of geographic boundary)	5



Dynamic Visualizations & Analysis (Annually; additional \$5000)	6
<b>Visitor Value (Credit + Debit card data provided through Zartico)</b>	
Visitor Spend: January 1, 2019 thru Present	Included in all packages (2021 and later in daily application)
<b>Events, Convention &amp; Sales Performance (Event data provided through Zartico)</b>	
Events View	Included in all packages (2021 and later in daily application)
CRM: (Simpleview or iDSS)	✓
<b>Education &amp; Advisor Support</b>	
Playbooks	✓
Certification Curriculum	✓
Weekly Zarticoach Sessions (Friday)	✓
Weekly Advisement Office Hours (Wednesday)	✓
Remote Training	✓
Strategic Advising Sessions	Monthly/ Dedicated
Analytic Designer Function	✓
<b>Destination Occupancy, Hotel and Short Term Rentals (Data provided by DMO: STR, AirDNA, Key Data, Transparent)</b>	
Data before 2019 available at \$5000/year	Data includes January 2019 to present
<b>Marketing Performance (data provided by DMO: Google Analytics, Google Campaign Manager, Facebook, Twitter, Instagram)</b>	
Website + Content Performance	✓
Organic Social Performance	✓
Strategic Planning	✓
Paid Social Facebook & Paid Google Search	✓
Paid Media (ad server required and fees additional)	✓
<b>Additional Features</b>	
CSV Uploader	\$5,000

**PROJECT DATES/TIMEFRAME:**

This SOW and the Services under this SOW are effective and shall commence on the Effective Date of the Agreement and shall continue in effect for a period of one (1) year from such Effective Date, unless earlier terminated in accordance with the terms of this SOW or the Agreement. Thereafter, this SOW and such Services under this SOW will automatically renew for additional one (1) year term(s), unless either party hereto provides the other party hereto with written notice of non-renewal of this SOW at least thirty (30) days prior to the expiration of the then-current one (1) year term of this SOW, unless earlier terminated in accordance with the terms of this SOW or the Agreement.

**COMPENSATION**

In consideration of Zartico providing the Services to Client under this SOW, Client will pay to Zartico \$55,000 which fee shall be due in the following amounts on the following dates:

● Cost Breakdown	
○ Standard 1 Operating System	\$65,000
○ Website Contribution	\$15,000
○ CSV Uploader	\$5,000
	\$85,000
○ Loyalty/Brand Ambassador Discount	\$30,000
<b><u>Total</u></b>	<b><u>\$55,000</u></b>

Compensation for year 1 - \$55,000 – Due July 31<sup>th</sup> 2023

Compensation for year 2 - \$60,000 – Due July 31<sup>th</sup> 2024

Plus any applicable federal, state, or local sales and use taxes as noted in section 4 unless valid exemption certificates or other applicable documentation are provided.

#### CONTACT PERSON:

Contact person at Zartico for the Services to be provided under this SOW will be:

Sarah Lehman, CEO  
(917) 714-2889  
sarah.lehman@zartico.com

#### SIGNATURES

**IN WITNESS WHEREOF**, the duly authorized representative of each party hereto has executed this SOW below as of the Effective Date.

**ZARTICO INC**

By:  \_\_\_\_\_  
(Signature)

Name: Sarah Lehman  
Title: CEO  
Date: 4/24/2023

**Jackson County NC TDA**

By: \_\_\_\_\_  
(Signature)

Name: Daniel Fletcher  
Title: Executive Director  
Date:



**JACKSON COUNTY TOURISM DEVELOPMENT AUTHORITY**  
**LOCAL GOVERNMENT RIDER**  
**May 17, 2023**

THIS LOCAL GOVERNMENT RIDER, (the "LGR") is hereby made and entered into by and between JACKSON COUNTY TOURISM DEVELOPMENT AUTHORITY (the "TDA/CLIENT") and the undersigned parties in connection with, and as a material condition of entering into the following instrument(s):

1. **ZARTICO SERVICE AGREEMENT (made and entered into May 17, 2023)**

The foregoing instrument(s) together with any and all exhibits, addenda, riders (including this LGR) and/or any other instruments attached to, or incorporated by reference therein, shall be collectively referred to hereinafter as the "Contract".

**WITNESSETH:**

WHEREAS, TDA/CLIENT is a body politic of the State of North Carolina, subject by operation of law to certain additional rules, regulations, and laws applicable to public and/or governmental bodies including without limitation certain operational and contractual requirements; and

WHEREAS, the risk of financial default under a contract entered into by such a governmental body is substantially lower than the ordinary risk of financial default attributable to private or commercial entities; and

WHEREAS, TDA/CLIENT has established this LGR for the non-exclusive purposes of expediting its contract review and approval process, to document notice of its governmental status, and to protect its citizens and the public at large from illegal or unfair obligations otherwise imposed under certain adhesion contracts; and

WHEREAS, TDA/CLIENT is prohibited by applicable law from executing the foregoing instrument(s) without modification by this LGR, or has otherwise determined it is not in the best interests of its citizens and the public at large to do so without the additional terms and conditions of this LGR being made a part thereof.

NOW THEREFORE, in exchange of the mutual covenants made herein, and for other good and valuable consideration exchanged between the parties, the receipt and sufficiency of which is hereby acknowledged, including but not limited to the inducement of TDA/CLIENT to enter into the Contract as modified by this LGR, the parties agree as follows:

**PART A: STANDARD GOVERNMENTAL PROVISIONS:**

1. **Public Records & Confidentiality:** TDA/CLIENT is required to comply with certain applicable statutes of the State of North Carolina regarding open meetings and/or open records. Notwithstanding anything to the contrary within the Contract, TDA/CLIENT shall not be liable to any party for disclosing the Contract, or any documents or communications made or received in relation thereto, to any third party or the public at large, if such disclosure is made by TDA/CLIENT in a good faith effort within its sole discretion, to comply with any public records request or other applicable laws.
2. **Limitation on Contractual Authority:** Only the TDA/CLIENT Board of Directors, the TDA/CLIENT Executive Director, or another agent specifically designated in writing by either to exercise their respective authority related to the Contract shall be authorized to enter into, modify, or otherwise bind the TDA/CLIENT to the Contract in any way. Any such action shall be taken only by the signed written consent thereof, and no party shall rely upon any verbal communications, or otherwise upon the authority of any other agent of the TDA/CLIENT in lieu thereof. This provision shall apply to prevent any inadvertent or passive modifications to the terms of the Contract through communications between the parties as may otherwise be allowed by law, including but not limited to any such provisions of the North Carolina Uniform Commercial Code, if applicable.

3. Limitation Upon Partial/Progress Payments for Goods/Materials to be Delivered: Payment (partial or otherwise) for any physical goods or materials to be provided to the TDA/CLIENT pursuant to the Contract, shall not be due or owed by the TDA/CLIENT until after actual delivery and acceptance of any such physical items.
4. E-Verify Certification: At all times during performance of the Contract, all parties shall fully comply with Article 2 of Chapter 64 of the General Statutes, and shall ensure compliance by any subcontractors utilized. All parties shall execute an affidavit verifying such compliance upon request by TDA/CLIENT.
5. Iran Divestment Act Certification: All parties executing this Contract thereby affirm they are not listed on the Final Divestment List created by the State Treasurer pursuant to NCGS 143-6A-4, nor shall they utilize any subcontractor in the performance of the Contract that is identified upon said list.
6. Constitutional Limitation on TDA/CLIENT Indemnification: The parties acknowledge and understand that an unlimited indemnification by TDA/CLIENT constitutes a violation of the North Carolina Constitution, and is void and unenforceable by operation of law. Any indemnifications given by TDA/CLIENT to any party under the Contract shall be deemed to be given only to the fullest extent allowed by law.
7. Contingent Funding/Non-Appropriations Clause: Notwithstanding anything to the contrary within the Contract or this LGR, all financial obligations of the TDA/CLIENT under the Contract are dependent upon, and subject to, the continuing allocation of funds by the TDA/CLIENT Board of Directors for such purpose. The Contract shall automatically terminate if such funds cease to be allocated or available for any reason.

**PART B: OTHER GENERAL PROVISIONS**

Notwithstanding anything within the Contract to the contrary:

1. Conditional Acceptance of Contract: The execution of this LGR by all parties to the Contract shall be a **MATERIAL CONDITION PRECEDENT** to TDA/CLIENT's acceptance of the Contract and to the enforceability of said Contract against TDA/CLIENT by any party thereto.
2. Contract Incorporation & Conflicts: The terms and provisions of the Contract are incorporated into this LGR by reference, provided however, **NOTWITHSTANDING ANY STATEMENT OR PROVISION TO THE CONTRARY THEREIN**, the terms and conditions of this LGR shall be deemed to supersede, control over, and prevail in the event of any conflict with any contrary terms or conditions of the Contract. Except to the extent they are inconsistent with or modified by this LGR, the terms and conditions of the Contract shall remain in full force and effect following the execution of this LGR.
3. Choice of Law and Forum: This Contract is made and entered into in Jackson County, North Carolina and shall be governed by and construed in accordance with North Carolina law. Any claim for breach or enforcement of this Contract shall be filed in the appropriate court located in the jurisdiction of Jackson County, North Carolina.
4. Construction & Headings: No rule of construction shall apply against any party as the drafter of the Contract which is the result of an arms-length negotiation between the parties. The titles/captions/headings of any and all portions of the Contract are intended for reference purposes only, and shall not be deemed to affect the meaning or interpretation of the Contract terms and conditions.
5. Merger: The Contract is the entire agreement between the parties with respect to the foregoing matter and there are no other verbal or written agreements with respect thereto between the parties which have not been reduced to writing and specifically incorporated into the Contract.
6. Modification: No modifications of the Contract shall be valid unless reduced to writing signed by all parties hereto.
7. Severability: The provisions of this Contract are intended to be severable. Any and all provisions of this Contract that are prohibited, unenforceable, or otherwise not authorized in any jurisdiction shall, as to such portion and/or jurisdiction only, be deemed ineffective to the extent of such prohibition, unenforceability, or non-authorization, without invalidating the remaining provision(s) hereof in such jurisdiction, or affecting the continuing validity, enforceability, or legality hereof in any other jurisdiction.



8. Signature Warranty: Any party executing the Contract as a corporate or other legal entity represents to the other parties hereto that such entity is duly organized, validly existing, and in good standing under the laws of the State of North Carolina or otherwise of DELAWARE, and is qualified to transact the business contemplated herein within the state of North Carolina, and further that any such party executing the Contract on behalf thereof, has the full power and authority to do so without any further authorization being required from any party, and thereby legally binds said entity to the terms and conditions of this Contract.
9. Limitation of Scope of TDA/CLIENT Indemnification: If applicable, any indemnification given by TDA/CLIENT shall be deemed and further limited to indemnify against claims or actions arising from the action or inaction of TDA/CLIENT's own officers, officials, employees or agents only; and shall not be deemed to indemnify any party against claims or actions arising from any action or inaction of any other parties.
10. Waiver of Consequential/Punitive Damages: Under no circumstances whatsoever, shall any party be entitled to recover, and all parties hereby waive their right to seek, any indirect, punitive, special or consequential damages of any kind whatsoever, incurred in connection with any breach of the Contract. Notwithstanding the foregoing, the reasonable costs incurred in connection with successfully enforcing the Contract against another party, including court costs, fees, and reasonable attorneys' fees associated therewith shall be recoverable by such a prevailing party.
11. Savings Provision: TDA/CLIENT shall not be held in default of the Contract or otherwise deemed in breach thereof, unless it has failed to cure any condition causing such default within thirty days (30) days written notice thereof by the party alleging such default. If TDA/CLIENT cures such default within such curative period, no breach of the Contract shall be deemed to have occurred.
12. Execution: The Contract may be executed in multiple counterparts in which event each executed copy hereof shall be deemed an original document as between the parties. A facsimile or electronic copy shall have the same force and affect as the original.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have set their hands and SEALS, or have otherwise caused this LGR to be duly executed by their respective legal entities, intending to be bound by the terms and conditions of this LGR effective as of the earliest of: (i) any effective date specifically provided for herein if applicable, and otherwise the first date set forth above, or (ii) the effective date of the Contract to which this LGR is attached and modifies.

## JACKSON COUNTY TOURISM DEVELOPMENT AUTHORITY

\_\_\_\_\_(SEAL)  
Daniel Fletcher, Chairman

The Contract (as modified by this LGR)  
has been pre-audited in the manner required  
by the Local Government Budget and Fiscal Control Act

  
\_\_\_\_\_(SEAL)  
Darlene Fox, Finance Officer

ZARTICO INC., A DELAWARE CORPORATION

DocuSigned by:  
  
41 14DC4685A034B  
\_\_\_\_\_(SEAL)  
BY: Sarah Lehman, CEO