**FLORIDA ATLANTIC UNIVERSITY**

**PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement("Agreement") is entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Effective Date”), by and between the Florida Atlantic University Board of Trustees, a public body corporate of the State of Florida, with an address of 777 Glades Road, Boca Raton, FL 33431 (“University”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with a business address of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, ("Contractor").

In consideration of the mutual covenants and stipulations set forth herein, the parties hereby agree as follows:

1. Contractor Services.

 A. Contractor agrees to provide and University agrees to accept the services set forth on Exhibit A attached hereto (the "Services") in accordance with the terms of this Agreement. Contractor shall control the manner in which the Services are provided, giving due consideration to the requests of University. Contractor agrees to use its best efforts in the performance of the Services. Unless otherwise mutually agreed, the Services shall be performed at University's facilities.

 B. Nothing herein shall be deemed to preclude University from retaining the services of other persons or entities undertaking the same or similar functions as those undertaken by Contractor hereunder or from independently developing or acquiring materials or programs that are similar to, or competitive with, the Services.

2. Term and Termination. This Agreement is legally binding as of the Effective Date, and, unless terminated as provided herein or extended by mutual written agreement of the parties, shall continue until completion of the Services as set forth on Exhibit A. University may terminate this Agreement at any time for any reason upon written notice to Contractor.

 3. Selection of Employees. Contractor shall designate the individual employee(s) who shall perform the Services, but University may request specific employees of Contractor. The employees initially designated by Contractor to perform the Services are set forth on Exhibit A attached hereto. In the event that University, at any time and in its sole discretion, deems any employee designated by Contractor unsuitable for the performance of the Services, University shall advise Contractor of such determination, and Contractor shall immediately remove such employee and provide a replacement employee acceptable to University to perform the Services.

 4. Billing Procedures and Compensation. University agrees to pay Contractor for the Services during the term hereof in accordance with the rates, terms, and procedures set forth on Exhibit A attached hereto.

5. Rights to Work Product.

A. University and Contractor each acknowledge that performance of this Agreement may result in the discovery, creation or development of inventions, combinations, machines, methods, formulae, techniques, processes, improvements, software designs, computer programs, strategies, specific computer-related know-how, data and original works of authorship (collectively, the "Work Product"). Contractor agrees that it will promptly and fully disclose to University any and all Work Product generated, conceived, reduced to practice or learned by Contractor or any of its employees, either solely or jointly with others, during the term of this Agreement, which in any way relates to the business of University. Contractor further agrees that neither Contractor or Contractor's employees, nor any party claiming through Contractor or Contractor's employees, will, other than in the performance of this Agreement, make use of or disclose to others any proprietary information relating to the Work Product.

B. Contractor agrees that, whether or not the Services are considered works made for hire or an employment to invent, all Work Product discovered, created or developed under this Agreement shall be and remain the sole property of University. Except as specifically set forth in writing and signed by both University and Contractor, Contractor agrees that University shall have all copyright and patent rights with respect to any Work Product discovered, created or developed under this Agreement without regard to the origin of the Work Product.

C. If and to the extent that Contractor may, under applicable law, be entitled to claim any ownership interest in the Work Product, Contractor hereby transfers, grants, conveys, assigns and relinquishes exclusively to University any and all right, title and interest it now has or may hereafter acquire in and to the Work Product under patent, copyright, trade secret and trademark law in perpetuity or for the longest period otherwise permitted by law. If any moral rights are created, Contractor waives such rights in the Work Product. Contractor further agrees as to the Work Product to assist University in every reasonable way to obtain and, from time to time, enforce patents, copyrights, trade secrets and other rights and protection relating to said Work Product, and to that end, Contractor and its employees will execute all documents for use in applying for and obtaining such patents, copyrights, trade secrets and other rights and protection with respect to such Work Product, as University may desire, together with any assignments thereof to University or persons designated by it. Contractor's and its employees' obligations to assist University in obtaining and enforcing patents, copyrights, trade secrets and other rights and protection relating to the Work Product shall continue beyond the termination of this Agreement.

D. If and to the extent that any preexisting rights are embodied or reflected in the Work Product, Contractor hereby grants to University the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (a) use, execute, reproduce, display, perform, distribute copies of and prepare derivative works based upon such preexisting rights and any derivative works thereof and (b) authorize others to do any or all of the foregoing.

6. Warranty. Contractor hereby represents and warrants the following: (a) that it is possessed of superior knowledge with respect to the Services; (b) that it knows the particular purpose for which the Services are required; (c) that it is aware that University is relying upon its skill and judgment in providing the Services; (d) that the Services shall be provided with the highest professional degree of care and skill; and (e) that the Services and any other work performed by Contractor hereunder shall be its own work, and shall not infringe upon any United States or foreign copyright, patent, trade secret or other proprietary right, or misappropriate any trade secret, of any third party, and that it has neither assigned nor otherwise entered into an agreement by which it purports to assign or transfer any right, title or interest to any technology or intellectual property right that would conflict with its obligations under this Agreement. In the event of a breach of any of the foregoing warranties, Contractor shall, in addition to any other remedies which may be available to University, supply services to correct such defect at no cost to University.

7. General Terms.

A. The University shall initiate all Contractor payment via Automated Clearing House (ACH) direct deposit batch processing within forty (40) days after receipt of an acceptable invoice and receipt, and after inspection and acceptance of the goods, services or both, as provided in accordance with the terms and conditions of the Services. Failure to initiate or mail the payment within 40 days may subject the University to accrue interest at a rate established pursuant to §55.03(1), Florida Statutes from the expiration of such 40 day period. Invoices shall cite the Agreement and shall be submitted in detail sufficient for a proper preaudit and postaudit. Each bill or invoice must clearly identify the services, portion of services, and expenses for which compensation is sought. Payment will be tendered only for services or the portion of services completed prior to the submission of the bill or invoice, or for expenses incurred prior to such submission. The University has established a “Contractor Ombudsman” for vendors who may be experiencing problems in obtaining timely payment(s). The University’s ombudsman may be contacted at (561) 297-3693. Invoices which have been returned because of vendor preparation errors will result in delay in payment. The invoice payment requirements do not commence until a properly completed invoice is provided to the University.

B. The performance of the University of its obligations under this Agreement shall be subject to and contingent upon the availability of funds appropriated by the state legislature or the prime funding agency, or otherwise lawfully expendable for the purpose of this Agreement for the current and future periods. The University shall give notice to Contractor of the non-availability of such funds when University has knowledge. Upon receipt of such notice by Contractor, Contractor shall be entitled to payment only for those services performed prior to the date notice is received.

C. The Contractor shall allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Contractor in conjunction with the Contract. Refusal by the Contractor to allow such public access shall be grounds for cancellation of the Contract by the University. If the Contract is for services and the Contractor is acting on behalf of the University, the Contractor further agrees to: (i) keep and maintain public records required by the University to perform the service, (ii) upon request from the University’s custodian of public records, provide the University with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law, (iii) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the records to the University, and (iv) upon completion of the Contract, transfer, at no cost, to the University all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the University upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the University, upon request from the University’s custodian of public records, in a format that is compatible with the information technology systems of the University.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 561.297.2452, publicrecords@fau.edu, Division of Public Affairs, Florida Atlantic University, 777 Glades Road, ADM, Boca Raton, FL 33431.**

D. This Agreement shall be subject to cancellation by University upon written notice to Contractor. A termination penalty may not be charged to the University. The University shall be liable only for payment for service rendered prior to the effective date of termination.

E. The validity, construction and effect of the Agreement shall be governed by the law of the State of Florida. The University, as a public entity of the State of Florida, is entitled to the benefits of sovereign immunity coextensive therewith, including immunities from taxation. If this Agreement includes reimbursement for travel expenses, such reimbursement must comply with Sections 112.061, Florida Statutes and will be processed in accordance with University travel policies.

F. In accordance with Section 112.3185, Florida Statutes, the Contractor certifies that to the best of his knowledge and belief no individual employed by him or subcontracted by him has an immediate relation to any employee of the University who was directly or indirectly involved in the procurement of said services. Violation of this section by Contractor shall be grounds for cancellation of this Agreement by the University.

G. Contractor agrees to indemnify and hold free and harmless, and defend the State of Florida, the Board of Trustees, Florida Atlantic University and their officers, employees and agents, from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses, including attorneys fees, which in any manner directly or indirectly may arise or be alleged to have arisen, or resulted or alleged to have resulted from the presence, activities, and promotions of every kind and nature of Contractor or its officers, employees, agents and contractors, in connection with this Agreement, specifically including claims for infringement or misappropriation of a copyright, patent, trade secret or other third party proprietary right.

H. Each term and condition of this Agreement is material and any breach or default by Contractor in the performance of each such term and condition shall be a material breach of the entire Agreement for which University shall have the right to terminate this Agreement immediately upon notice to Contractor and without termination penalty to University. Contractor may not, without the advance written approval of University, assign any right or delegate any duties under this Agreement, nor may it transfer, pledge, surrender or otherwise encumber or dispose of its interest in any portion of this Agreement.

I. The Contractor is an independent contractor pursuant to Florida law. It is understood and agreed that nothing contained is intended, or should be construed, as creating or establishing the relationship of partners between the parties, or as constituting Contractor as the agent or representative of University for any purpose in any manner whatsoever. Contractor is not authorized to bind University to any contracts or other obligations. Use of the University’s name, logo or any other symbolic or written reference and/or presentation, including without limitation any public display or advertising, requires advance written approval by the University.

J. Failure to exercise or delay in exercising any right, power or remedy accruing to University on any breach or default of Contractor shall not impair any such right, power or remedy, or be construed as a waiver of any such breach or default or of any similar breach or default occurring; nor shall any waiver of any single breach or default be construed as a waiver of any other breach or default occurring.

K. This Agreement embodies the entire agreement of the parties, and there are no other representations, promises, agreements, conditions or understandings, either oral or written, between University and Contractor other than are set forth. No subsequent alterations, amendment, change or addition to this Agreement shall be binding upon either University or Contractor unless reduced to writing and signed by them and by direct reference made part hereof.

1. Contractor agrees abide by all applicable federal, state and local laws, ordinances and regulations and all University regulations and policies, specifically including without limitation the University’s sexual harassment regulations and policies and those pertaining to the privacy and use of student records, health information, and other University data. To the extent Contractor has access to University information, including without limitation financial, business, strategic, health or student records, Contractor agrees to maintain the confidentiality of such information and shall not disclose, discuss, or divulge any such information other than as directly and expressly required to fulfill Contractor’s obligations under the Contract or as other required by law. The University shall consider the employment by any vendor of unauthorized aliens a violation of section 274(a) of the Immigration and Naturalization Act.
2. No default, delay or failure to perform shall be considered a default, delay or failure to perform otherwise chargeable, hereunder, if such default, delay or failure to perform is due to causes beyond either party's reasonable control including, but not limited to, strikes, lockouts or inactions of governmental authorities; epidemics; war; embargoes, fire; earthquake; acts of God; default of common carrier. In the event of such default, delay or failure to perform, any date or times by which either party is otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the time lost by reason of the excused default, delay or failure to perform.
3. All notices required to be given under the Agreement shall be sent by certified mail to: Florida Atlantic University, Attn: Purchasing, ADM 121, 777 Glades Road, Boca Raton, FL 33431-0991.
4. Contractor acknowledges and agrees that former or current student data disclosed or shared in connection with this Agreement constitutes education records of the University. Contractor agrees to abide by the limitations on re-disclosure of personally identifiable information from education records set forth in The Family Educational Rights and Privacy Act (34 CFR § 99.33 (a)(2)), Florida Statutes §§1002.22, 1002.221, FAU Regulation 4.008, and with the terms set forth herein:
5. Covered data and information (CDI) includes paper and electronic student education record information supplied by the University, as well as any data provided by University students to Contractor. Contractor agrees to hold CDI in strict confidence.
6. Contractor shall not use or disclose CDI received from or on behalf of the University or its students except as permitted or required by the Agreement, as required by law, or as otherwise authorized in writing by University or the student. Contractor agrees not to use CDI for any purpose other than the purpose for which the disclosure was made.
7. Contractor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted CDI received from, or on behalf of the University or its students. These measures will be extended by contract to all subcontractors used by Contractor.
8. Contractor shall, within one day of discovery, report to the University any use or disclosure of CDI not authorized by this Agreement or in writing by the University or the applicable student(s). Contractor’s report shall identify:  (i) the nature of the unauthorized use or disclosure, (ii) the CDI used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the University.
9. Contractor shall defend and hold the University harmless from all claims, liabilities, damages, or judgments involving a third party, including University’s costs and attorney fees, which arise as a result of Contractor’s failure to meet any of its obligations hereunder.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ FLORIDA ATLANTIC UNIVERSITY

 BOARD OF TRUSTEES

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Signature Signature

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Date Date

Exhibit A

Statement of Work/Description of Services