

**FLORIDA ATLANTIC UNIVERSITY
CONSULTING SERVICES AGREEMENT
(Company)
AGREEMENT No.:**

This Consulting Services Agreement (the "Agreement") is made on _____, between FLORIDA ATLANTIC UNIVERISTY Board of Trustees ("FAU") and _____ (the "Consultant"). FAU and Consultant may be collectively referred to as the "Parties" or individually as a "Party".

Whereas FAU has been awarded a project by _____ under award no. _____, relating to _____, and desires to retain Consultant to perform certain services under said Agreement, and

Whereas the Consultant has extensive experience and capabilities regarding the above referenced project, and

Whereas FAU seeks to benefit from the Consultant's expertise by retaining the Consultant to provide the services described herein and the Consultant desires to perform these services for FAU.

Now therefore, FAU and the Consultant agree as follows:

1. Consulting Services

FAU retains Consultant to perform the consulting services (the "Services") described in Exhibit A. Consultant shall assign the individual(s) described on Exhibit B (the "Project Personnel") to perform the Services.

2. Compensation

In consideration of the Services to be provided by the Consultant to FAU hereunder, FAU shall pay to Consultant a cost reimbursable fee not to exceed \$ _____ dollars which is based on an hourly rate of \$ _____ and a maximum number of _____ hours.

To obtain reimbursement the Consultant shall submit invoices to accountspayable@fau.edu no more frequently than monthly. Each invoice shall be signed and dated and include the name and address of the Consultant, the dates of service the invoice covers, the invoice total, and an itemization of services by date including hours worked and the cost. A final invoice must be received within thirty (30) days after the end date of the agreement. FAU shall initiate payment via Automated Clearing House (ACH) direct deposit batch processing within forty (40) days after receipt of an acceptable invoice. Failure to initiate or mail the payment within forty (40) days may subject the University to accrue interest at a rate of .5% per month on the unpaid balance from the expiration of such forty (40) day period.

FAU shall reimburse Consultant for reasonable travel and other expenses that the Consultant incurs in connection with performing the Services based on prior approval from FAU Principal Investigator and not to exceed \$ _____. All requests for reimbursement of travel expenses shall be in accordance with Section 112.061 of the Florida Statutes. The consultant will comply with applicable FAU travel policy requirements, restrictions and procedures.

3. Term

The term of this agreement is from _____ through _____. The term may be modified or extended by mutual written agreement of the Parties.

4. Termination

This Agreement may be terminated by either Party without cause, upon thirty (30) days prior written notice to the other; provided that if Consultant terminates this Agreement, Consultant shall, upon the written request of FAU and in accordance with the terms and conditions hereof, nevertheless complete any pending assignments in an orderly fashion. This Agreement may be terminated by FAU for cause upon five (5) days prior written notice stating the cause of termination.

5. Intellectual Property and Proprietary Rights

The term Proprietary Rights used in this Agreement shall mean all trade secret, patent, copyright, mask work and other forms of intellectual property rights throughout the world.

The Consultant hereby assigns and agrees to assign in the future (when any such Proprietary Rights are first reduced to practice or first fixed in a tangible media within the meaning of U.S. Copyright law) to FAU in perpetuity all his or her right, title and interest in and to any and all inventions or works of authorship (and all Proprietary Rights with respect thereto) whether or not patentable or registered under copyright or similar laws or statutes, made or conceived or reduced to practice or learned by Consultant either alone or jointly with others, in the performance of the Services for FAU. Inventions assigned to FAU or to a third party at FAU's direction pursuant to this section are hereinafter referred to as FAU Inventions.

The Consultant agrees and acknowledges that all original works of authorship which are made by him/her (solely or jointly with others) in the performance of Services for FAU and which are protected or protectable by copyright are "works made for hire" and are the property of FAU pursuant to copyright law.

The Consultant shall assist FAU in every proper way to obtain, and from time to time enforce, any Proprietary Rights relating to FAU Inventions in any and all countries. The Consultant shall execute, verify and deliver such proper documents and perform such other actions as FAU may reasonably request for use in applying for, obtaining, perfecting, evidencing, sustaining, maintaining and enforcing such Proprietary Rights and assignment thereof.

Any Proprietary Rights of FAU and Consultant existing prior to the execution of this Agreement are their separate property, respectively, and are not affected by this Agreement. Neither Party shall acquire any claims to or rights in any Proprietary Rights that were in existence prior to the execution date of this Agreement.

6. Warranty

Consultant 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 FAU 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 Consultant 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, Consultant shall, in addition to any other remedies which may be available to FAU, supply services to correct such defect at no cost to FAU.

7. Independent Contractors

The relationship created by this Agreement shall be that of independent contractor. The Consultant is not an employee of FAU and shall not be entitled to FAU benefits. The Consultant shall have no authority to bind or act as agent for FAU or its employees for any purpose. Nothing contained in this Agreement shall be construed to create a joint venture, partnership, or other like relationship between the Parties. Any income taxes levied on payments to be made to Consultant hereunder shall be exclusively borne by Consultant. Consultant agrees to indemnify and hold harmless the FAU Board of Trustees, its agents, officers and employees, against and in respect of any taxes or other fees which FAU may be required to pay to government authorities on behalf of Consultant for activities or services related to this Agreement. This indemnity obligation shall survive the expiration or earlier termination of this Agreement.

8. No Assignment

Neither Party may assign, delegate or transfer this Agreement or any interest herein, or assign, delegate or transfer any of its duties hereunder, to any third party without the other Party's prior written consent. Any attempted assignment, delegation or transfer without such consent shall be null and void. Consultant shall not change the Project Personnel without the written consent of FAU. If any Project Personnel discontinues service for any reason whatsoever, Consultant shall promptly replace such Project Personnel with an individual approved by FAU, in writing, which approval will not be unreasonably withheld.

9. No Use of FAU Name

The Consultant will not use FAU's name in any commercial advertisement, press release, publication or similar material used to promote or sell products or services, unless the Consultant obtains the written consent of FAU in advance of such use.

10. Liability and Indemnity

Consultant assumes any and all risks of personal injury and property damage with respect to the negligent acts or omissions of Consultant, its officers, employees, servants, and agents, or other persons acting or engaged to act by Consultant in furtherance of Services under this Agreement. The Consultant agrees, at its sole expense, to defend, indemnify and hold harmless the FAU Board of Trustees, its agents, officers and employees from any claims or suits by a third party against the Consultant or FAU or the FAU Board of Trustees, its agents, officers or employees or any liabilities or judgments based thereon, arising from or relating to the Consultant's performance of Services under this Agreement. This indemnity obligation shall survive the expiration or earlier termination of the Agreement. As of the start date of the Agreement, Consultant must have general liability coverage insurance in the minimum amount of \$500,000/\$500,000 and shall provide proof of coverage upon request by FAU.

11. Records

Consultant agrees to keep and maintain, separate and independent records, in accordance with generally accepted accounting principles, devoted exclusively to its activities pursuant to this

contract. Such records (including books, ledgers, journals, and accounts) shall contain all entries reflecting the business operations under this Agreement. FAU or its authorized agent shall have the right to audit and inspect such records from time to time during the Term, upon reasonable notice to Consultant and during Consultant's ordinary business hours.

FAU may terminate this Agreement at any time for refusal by Consultant to allow public access, that may be mandated by law, including without limitation Florida's public records law, to all documents, papers, letters, or other non-exempt materials made or received by Consultant or FAU in conjunction with this Agreement.

12. No Conflicting Obligations

Consultant represents that its performance of this Agreement does not and will not breach or conflict with an agreement with any current or previous customer, employer or third party.

The Consultant shall not hire any officer or employee of the University to perform any service covered by this Agreement. Of the work to be performed in connection with a federal contract or grant, the Consultant shall not hire any employee of the U.S. government to perform any services covered by this Agreement.

13. No Discrimination

Consultant agrees not to discriminate and will require that any subcontractor not discriminate against any employee or applicant for employment for work under this Agreement because of race, religion, color, sex, disability, national origin, ancestry, physical handicap, or age.

14. Force Majeure

Except as otherwise provided herein, neither Party shall be obligated to perform, and neither Party shall be deemed to be in default of its performance, if prevented by: (a) fire, earthquake, hurricane, wind, flood, act of God, riot, or civil commotion (b) any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities, war, or governmental law and regulation, or (c) labor dispute which results in a strike or work stoppage affecting the performance under this Agreement.

15. Notices

All notices, invoices, payments, and other communication shall be in writing and shall be deemed to have been delivered, if delivered personally, three (3) days after mailed, if sent by registered or certified mail, or the next business day, or if sent by generally recognized, prepaid, overnight air courier services.

If to FAU Technical:

Name:
Title:
Address:

Phone:
E-mail:

If to Consultant:

Name:
Title:
Address:

Phone:
Email:

Contractual: FAU

Name:
Title:
Address:
Phone:
E-mail:

The designation of the individuals to be so notified and the addresses of such Parties set forth above may be changed from time to time by written notice to the other Party in the manner set forth above.

16. Waiver and Remedies

No failure or delay by a Party hereto to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent to a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. No waiver of any breach hereunder shall affect or alter the remaining terms of this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other existing or subsequent breach thereof. The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or in equity.

17. Entire Agreement

This agreement replaces all previous agreements and the discussions relating to the subject matters hereof and constitutes the entire Agreement between FAU and the Consultant with respect to the subject matters of this Agreement. All exhibits attached to this Agreement are incorporated by reference herein.

18. Modification

This Agreement may not be modified in any respect by any verbal statement, representation, or agreement made by any employee, officer, or representative of FAU, or by any written documents unless it is signed by an officer of FAU and by the Consultant.

19. Governing Law

This Agreement shall be governed by the laws of the State of Florida without regard to its conflict of law principles.

20. Jurisdiction and Venue

Jurisdiction and venue for any action to construe or enforce the terms of this Agreement shall be in a court of competent jurisdiction located in Palm Beach County, Florida.

21. Compliance with Laws

Consultant agrees to abide by all applicable federal, state and local laws, ordinances and regulations and all FAU regulations and policies, specifically including without limitation FAU's sexual harassment regulations and policies and those pertaining to the privacy of student records. FAU shall consider the employment by any vendor of unauthorized aliens a violation of section 274(a) of the Immigration and Naturalization Act.

22. No Conflict of Interest

In accordance with Section 112.3185, Florida Statutes, the Consultant 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 FAU who was directly or indirectly involved in the procurement of said Services.

23. Severability

This Agreement is severable such that should any provision of this Agreement be or become invalid or unenforceable, the remaining provisions shall continue to be fully enforceable.

24. Signatures/Counterparts

This Agreement is not binding on the Parties until it has been signed by the authorized representatives of each Party.

25. Captions and Heading

The captions and headings used herein are not a part of this Agreement but are merely guides or labels to assist in locating and reading the articles and paragraphs herein.

26. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which, when taken together, shall be deemed to be one and the same agreement or document. A signed copy transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy for all purposes.

27. E-Verify

Consultant represents and warrant to FAU that Consultant is registered with and using the E-Verify system to verify the work authorization status of all newly hired employees (as defined in F.S. 448.095) and covenants to continue to do so throughout the term of this Agreement. Consultant further covenants that, throughout the term of this Agreement, Consultant will (i) require Consultant’s subcontractors, if any, to register with and use the E-Verify system; (ii) obtain the statutorily required affidavits from such subcontractors throughout the term of this Agreement; and (iii) immediately following FAU’s request, provide FAU with evidence of compliance with these requirements, including providing copies of subcontractor affidavits, if applicable. FAU may be required to terminate this Agreement or require Consultant to terminate a subcontract, if applicable, if FAU determines Consultant or the subcontractor, as applicable, has knowingly violated Section 448.095(1). Consultant further covenants that it will comply with the requirements of Section 448.095 throughout the term of this Agreement. Section 448.095, Florida Statutes, shall be interpreted consistently with applicable federal laws or regulations. If there are new regulatory pronouncements or guidances or statutory requirements regarding, or judicial interpretations of Section 448.095, Florida Statutes, during the term of this Agreement, the parties agree to update this clause so that it complies with such pronouncements, requirements and interpretations.

Florida Atlantic University Board of Trustees

Consultant

By: _____

By: _____

Print Name:

Print Name:

Title:

Title:

Date:

Date:

FEIN:

The Project Director, although not a party to this Agreement, confirms that he/she has read, understands, and will adhere to the terms and conditions in this Agreement.

Project Director

By: _____

Print Name:

Title:

Date:

Exhibit A
Consulting Services Agreement

Description of work

Schedule of work, if applicable

Reporting requirements, if applicable

Exhibit B
(Attach Resume for Project Personnel)