**FLORIDA ATLANTIC UNIVERSITY**

**SERVICES AGREEMENT**

This **Services Agreement** (the "Agreement") is entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “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” or “FAU”), 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**. Contractor agrees to provide and University agrees to accept the goods and/or services set forth on Exhibit A attached hereto (collectively, the "Services") in accordance with the terms of this Agreement.
   1. The Services shall be provided to the University pursuant to the terms of this Agreement.
   2. 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 its provision of the Services.
   3. 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**. 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, and shall continue until/for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Initial Term”). The Agreement may be renewed \_\_\_\_\_\_\_\_\_\_\_\_\_\_ times for a period of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ each (each, a “Renewal Term”). The Initial Term and any Renewal Term(s) shall be known, collectively, as the “Term.”
3. **Compensation**. University agrees to pay Contractor for the Services during the Term in accordance with the rates, terms, and procedures set forth on Exhibit A attached hereto. 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 Agreement. 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 post-audit. 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 “Vendor 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. 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. Contractor will supply the University with a complete vendor application and accurate W-9 or W8-BC (Foreign Vendor); if Vendor fails to supply University with a complete and accurate W-9 or W8-BC, the invoice will be deemed insufficient for payment until such information has been provided.
4. **Insurance**. The University, as a public body corporate entity, warrants and represents that it is self-funded for liability insurance, with said protection being applicable to officers, employees, servants, and agents while acting within the scope of their employment by the University. Contractor shall have and maintain the types and amounts of insurance that, at minimum, will cover Contractor’s (or subcontractor’s) exposure in performing the Agreement and name FAU as additional insured and be primary and non-contributory on Contractor’s policies (except for workers’ compensation & professional liability). All policies shall be in a form and with deductible limits reasonably satisfactory to FAU, with insurance companies authorized to do business in the State of Florida. Certificates of all insurance shall be deposited with FAU prior to the date of the Agreement. All insurance policies and certificates shall contain a provision that it will not be cancelled without giving FAU thirty (30) days’ written notice prior to the effective date of cancellation. Timely renewal certificates will be provided to FAU as coverage renews. Contractor, for and on behalf of itself and each of its insurers, hereby waives any and all rights of subrogation against FAU for any loss or damage arising from any cause covered by any insurance required to be carried under the Agreement by any other insurance actually carried by Contractor. If the professional liability coverage is provided on a claims-made basis, then such insurance shall continue for three (3) years following the expiration or termination of the Agreement. The insurance shall have a retroactive date of placement by the effective date of the Agreement. If the coverage is canceled or non-renewed and not replaced with another similar claims-made policy form, the Contractor must purchase Extended Reporting (“Tail”) coverage for a minimum of three (3) years following the expiration or termination of the Agreement.
5. **Relationship of the Parties**. Each of the parties is an independent contractor and nothing in the Agreement shall designate any of the employees or agents of one party as employees or agents of the other. Contractor represents and warrants that it is not on the Convicted Vendor List (see § 287.133, F.S.). Contractor is not authorized to bind FAU to any contracts or other obligations.
6. **Notices**. 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, and to Contractor at the address provided above.
7. **Travel Expenses**. Contractor shall not charge the University for any travel expenses, meals, and lodging unless otherwise provided in this Agreement and FAU's prior written approval of the expenses has been obtained. Under such circumstances, Contractor is authorized to incur the agreed to travel expenses which will be payable by FAU, but only to the extent permitted in Florida Statutes § 112.061.  Contractor is responsible for any expenses in excess of these prescribed amounts.
8. **Compliance**. 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. Contractor shall have all applicable governmental permits, licenses, consents, and approvals necessary to perform its obligations under the Agreement. This obligation shall specifically include, but is not limited to, Contractor’s compliance with applicable export control laws, including the International Traffic in Arms Regulations (ITAR), the Export Administration Regulations (EAR), and the Office of Foreign Assets Control Regulations (OFAC). 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.
9. **Public Records**. 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 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.**

1. **Confidentiality**. The Contractor acknowledges and agrees that (a) all documents, studies, materials and information furnished to the Contractor by the University or its affiliates in connection with this Agreement and (b) all reports, studies, plans, deliverables, strategies, materials and other documents and information developed or prepared for the University in connection with this Agreement or which reflect any of the documents, studies, materials or information furnished to the Contractor by the University (the materials described in (a) and (b) are collectively referred to as the “Information”) are and shall remain at all times confidential, proprietary, and the sole property of the University. The Contractor agrees that it shall not use the Information and will not share the Information with its employees, except as necessary to the Contractor’s performance under this Agreement. The Contractor shall not disclose Information to third parties unless it obtains the University’s written consent to such disclosure or is required to pursuant to applicable law or court order.
2. **Records**. Contractor agrees to keep and maintain, separate and independent records, in accordance with generally accepted accounting principles, devoted exclusively to its obligations and activities under the Agreement. Such records (including books, ledgers, journals, and accounts) shall contain all entries reflecting the business operations under the 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 Contractor.
3. **Assumption of Risk**. Each party hereby assumes any and all risk of personal injury and property damage attributable to the willful or negligent acts or omissions of that party and the officers, employees, and agents thereof. The Contractor also assumes such risk with respect to the willful or negligent acts or omissions of the Contractor’s subcontractors or persons otherwise acting or engaged to act at the instance of the Contractor in furtherance of the Contractor fulfilling the Contractor’s obligations under this Agreement.
4. **Indemnity**. 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.
5. **Third Parties**. The University is not liable for the acts of third parties or the consequences of the acts of third parties. The Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties to the Agreement.
6. **Federal Funds**. If the University has entered into an agreement with the United States of America, or any Department thereof, and this Agreement is entered into with Contractor to further the performance of the work required in such federal agreement, Contractor shall comply with the terms required to be in all such contracts.
7. **Termination**. Each term and condition of the Agreement is material and any breach or default by Contractor shall be a material breach of the entire Agreement for which the University shall have the right to terminate the Agreement upon notice to Contractor and without termination penalty. FAU may terminate this Agreement by giving Contractor at least ninety (90) days prior written notice of termination. FAU shall only be liable for payment of goods received and/or services rendered and accepted by FAU prior to the effective date of termination.
8. **Information Technology**. If Contractor has access to the University’s information technology infrastructure, or will be providing such infrastructure to the University, Contractor agrees at all times to maintain network security that, at a minimum, includes: network firewall provisioning, intrusion detection, and regular third-party penetration testing. Contractor further agrees: (a) that any websites hosted by Contractor on behalf of FAU shall be on an encrypted domain in compliance with the minimum security standards; (b) that all data exchanged shall be used expressly and solely for the purpose enumerated in the Agreement and shall not be distributed, repurposed or shaped across other applications, environments, or business units of Contractor, and that no FAU data of any kind shall be transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by FAU; and (c) that it shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification in accordance therewith, and in the event of a data breach of any Contractor’s security obligations or other event requiring notification under applicable law, Contractor shall assume responsibility for informing all such individuals in accordance with applicable laws and to indemnify, hold harmless and defend FAU against any claims, damages, or other harm related to such notification event.
9. **PCI DSS**. If Contractor’s Services involves the acceptance of funds on behalf of the University or involve credit card services, Contractor shall be responsible for the security of all cardholder data in its possession. Contractor represents and warrants that for the life of the Agreement and/or while Contractor has involvement with cardholder data, the software and services used for processing transactions shall be compliant with standards established by the Payment Card Industry Security Standards Council (<https://www.pcisecuritystandards.org/>). Contractor shall, upon written request, furnish proof of compliance with the Payment Card Industry Data Security Standard (PCI DSS) within 10 business days of the request. Contractor agrees to provide to FAUa current and complete copy of their Attestation of Compliance (AOC). Further, Contractor agrees to provide to FAUa proof of a recent (no more than 3 months old) passing quarterly external vulnerability scan as submitted by an Approved Scanning Vendor (ASV).
10. **Student Records**. 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:
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. **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.
17. **Force Majeure**. No default, delay or failure to perform on the part of the either party 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, without limitation, strikes; accidents; labor disputes; riots; governmental action; epidemics; pandemics; acts of terrorism or war; civil or military disturbances; sabotage; embargoes; fire; earthquakes; hurricanes; floods; acts of God; acts of civil or military authority power failure; or 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.
18. **Conflicts**. 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.
19. **Publicity**. Contractor shall not make any announcements relating to the Agreement, nor shall Contractor use FAU’s name, trademarks, logos or marks, without the prior written approval from FAU’s Office of Trademark Licensing and Marketing in each instance.
20. **Governing Law & Venue**. 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 full benefits of sovereign immunity coextensive therewith, including immunities from taxation.
21. **Security Interests/Liens; Permitting**. The parties acknowledge that the State of Florida does not permit vendors to retain security interests in state property or liens on state lands.In the event Contractor is providing any on-site service that requires local permitting, FAU shall be the permitting authority. Contractor agrees to comply with all applicable project guidelines, policies and protocols, including without limitation FAU’s Facilities Project Manual and the standards and cost containment guidelines set forth therein.
22. **Assignment/Modification**. 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. 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.
23. **Entire Agreement**. 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.
24. **Signatures**. The parties represent and warrant that any person signing the Agreement has the authority to do so and that such signature shall be sufficient to bind Contractor. The Agreement may be signed electronically and shall be considered signed if/when a party’s signature is delivered by facsimile or e-mail transmission of a “.pdf” format date file, including via DocuSign. Such signature shall be treated in all respects as having the same force and effect as an original.

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**

Description of Services and Rates