



## PROFESSIONAL SERVICES AGREEMENT

### SECTION A. PARTIES; BACKGROUND; DEFINITIONS

1. This Professional Services Agreement (this “**Agreement**”) is by and between **CLEVELAND STATE UNIVERSITY**, a State of Ohio institution of higher education located at 2121 Euclid Ave., Cleveland, OH 44115 (“**University**”) and \_\_\_\_\_ with a primary place of business located at \_\_\_\_\_ (“**Contractor**”).

#### 2. Background:

- (i) Contractor’s Scope of Work, which is attached to this Agreement as **Exhibit “A”** is incorporated into this Agreement by reference (“**Scope of Work**”); and
- (ii) University and Contractor desire to enter into this Agreement for Contractor to perform the Services (defined below) set forth in the Scope of Work.

#### 3. Definitions:

- (i) **Not to exceed contract amount (“Fee”):** \_\_\_\_\_ (\$ \_\_\_\_\_.)
  
- (ii) **“Term” of Agreement:** \_\_\_\_\_, 202\_\_ through \_\_\_\_\_, 202\_\_ unless terminated sooner as set forth herein.

### SECTION B. TERMS AND CONDITIONS

**1. Relationship of the Parties; OPERS Independent Contractor Form:** Neither Contractor nor its personnel are public employees for the purpose of Ohio Revised Code § 145.037. Unless Contractor is a “business entity” as that term is defined in Ohio Revised Code § 145.037 (“an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business”), Contractor shall have each and all individual(s) performing services under this Agreement to complete and submit to University the OPERS Independent Contractor Acknowledgment Form available at: <https://www.opers.org/forms-archive/PEDACKN.pdf>. Contractor’s failure to complete and submit the OPERS Independent Contractor Acknowledgment Form at the time Contractor executes this Agreement shall serve as Contractor’s certification that Contractor is a “business entity” as that term is defined in R.C. § 145.037. Neither party shall have the authority to, nor shall either party attempt to, create or assume any obligation by or on behalf of the other party.

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**2. Contractor Responsibilities; Fee Payment.** Contractor shall perform the Services described in the Scope of Work, to the reasonable satisfaction of University (the “**Services**”). Contractor must receive a purchase order from University before performing any Services. After Contractor has performed the Services satisfactory to the University, Contractor shall submit an invoice for the Services performed. Each invoice shall contain an itemization of the Services performed, including dates the Services were performed, total hours worked, and the sum due. All invoices shall contain Contractor’s name and address and shall reference Cleveland State University and list the billing address as 2121 Euclid Avenue, PH 118, Attn.: Accounts Payable, Cleveland, Ohio 44115-2214. After receipt and approval of the invoice by University, a voucher for Fee payment for the Services performed will be processed typically within thirty (30) days. If pre-approved in writing by University, Contractor may be reimbursed for its reasonable, actual, and necessary travel expenses to a specified total not-to-exceed reimbursement amount, incurred in the performance of the Services in accordance with University’s Travel Policy and, to the extent such reimbursement is in the best interest of University.

**4. Renewal; Termination.** University may renew this Agreement for up to one (1) additional one (1) year term upon thirty (30) days written notice to Contractor. University may terminate this Agreement for convenience, with or without cause, by giving written notice to Contractor. If University terminates this Agreement for convenience, Contractor will be paid for Services rendered up to the date Contractor received notice of termination, less any payments previously made, provided Contractor has supported such payments with detailed factual data. Any payments made by University for which Contractor has not rendered Services, shall be refunded to University. If this Agreement is terminated before all Services are rendered, Contractor shall deliver to University all work products and documents that have been prepared by Contractor in the course of performing the Services and all such materials shall remain University property. Notwithstanding the preceding, as the current General Assembly cannot commit a future General Assembly to expenditure, this Agreement and any renewal shall expire no later than June 30, 2023.

**5. No Joint Venture; Taxes.** Nothing in this Agreement creates or implies any joint venture, employer/employee, principal/agent or partnership relationship. Contractor is solely and personally responsible for all federal, state and local taxes, contributions, and other liabilities.

**6. Record Keeping.** Contractor shall maintain auditable records of all charges under this Agreement and shall make such records available to University as University may reasonably require for a period of six years after the term of this Agreement.

**7. Ownership of Work Product.** To the extent that Deliverables are not deemed a “work made for hire” under 17 U.S.C. § 101, Contractor hereby irrevocably assigns, conveys, grants, and transfers to the University all right, title, and interest in any Deliverables to the University.

**8. Liability; Insurance.** Contractor shall procure and maintain during the Term, general liability insurance in the amount of at least \$1,000,000 combined single limit per occurrence/\$2,000,000 aggregate; Workers’ Compensation coverage including employer’s liability, where applicable and in accordance with appropriate federal and state laws; automobile liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 per accident (\$5,000,000 for transportation suppliers for transporting 15 or less passengers), when applicable.

The comprehensive general liability and auto insurance policies shall include Cleveland State University as an Additional Insured party, but solely with respect to liability arising from the performance of this Agreement. A certificate evidencing such coverage shall be provided to the University contact for this Agreement, and copied to Cleveland State University, Risk Management and Insurance Administration Office, 2121 Euclid Avenue, AC 246, Cleveland, Ohio 44115 or emailed as a PDF copy to r.howerton@csuohio.edu.

If required by the University, supplier shall maintain professional liability insurance for claims arising from real or alleged errors, omissions, or negligent acts committed in the performance of professional or technical services associated with this Agreement, with limits of at least \$1,000,000 per claim.

All such insurance shall be written by a company or companies authorized to do business in the State of Ohio, with an A.M. Best rating of at least "A" or be otherwise approved in writing by the University. Shall be endorsed on a primary basis, non-contributory with any other insurance coverages and/or self-insurance carried by the University. Certificate of insurance shall reflect continuing coverage of all applicable policies procured by Contractor, in compliance herewith, and shall be delivered by Contractor, and thereafter at least thirty (30) days prior to the expiration of any policies, as herein stated. All policies evidenced shall bear an endorsement stating that insurer agrees to notify the University not less than thirty (30) days in advance of any proposed modification or cancellation of any such policy.

Contractor agrees to indemnify and to hold University, its trustees, officers, employees and agents and the State of Ohio harmless and immune from all claims for injury or damages arising from this Agreement, which are attributable to Contractor's actions or omissions and those of its trustees, directors, officers, agents, employees, subcontractors, suppliers, third parties, or joint venturers performing the Services under this Agreement. In no event shall either party be liable to the other party for indirect, consequential, incidental, special, or punitive damages, or lost profits. Contractor shall purchase and maintain at all times that this Agreement is in effect, in its name and at its own cost all insurance coverages required by applicable law, and in any event, the minimum types and amounts listed in Exhibit B, which is attached hereto and incorporated herein by this reference and such policy shall name Cleveland State University as an Additional Insured Party for the Services.

**9. Contractor Representations and Warranties.** Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and University Policies and procedures, including but not limited to those regarding drug free workplace, nondiscrimination of employment, Ohio Ethics and Conflict of Interest laws, qualifications to do business in Ohio, campaign contributions, Findings for Recovery under R.C. § 9.24, R.C. § 9.76 regarding Boycotts, R.C. § 125.25 regarding Debarment of vendor from contract awards, and R.C. § 145.38 regarding employment of retirant.

#### **10. Miscellaneous.**

(a) Neither this Agreement nor any rights, duties, or obligations hereunder may be assigned or transferred in whole or in part by the Contractor, without the prior written consent of the University.

(b) This Agreement represents the entire agreement between the parties and supersedes any prior oral or written understandings with respect to the Services. Only a written instrument that refers this Agreement and that is signed by the authorized representatives of both parties may amend this Agreement.

(c) This Agreement and the rights of the parties shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio, without regard for its choice of law principles, and only Ohio courts shall have jurisdiction over any action or proceeding concerning the Agreement.(d) A waiver by a party of any breach or

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default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

(e) All notices and communications shall be given in writing and shall be deemed to have been properly given when: i) hand delivered with delivery acknowledged in writing; ii) sent by U.S. certified mail, return receipt requested, postage prepaid; or iii) sent by overnight delivery service (Fed Ex, UPS, etc.) with receipt. Notices shall be deemed given upon receipt thereof, and shall be sent to the addresses first set forth above. Any party may change its address for receipt of Notices upon notice to the other party. If delivery cannot be made at any address designated for Notices, a Notice shall be deemed given on the date on which delivery at such address is attempted.

(f) In the event of any conflict between the terms of the Agreement and the Scope of Work, the terms of this Agreement shall control notwithstanding anything to the contrary in the Scope of Work.

(g) The headings in this Agreement are for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.

(h) The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.

(i) Contractor understands and agrees that University is a public institution of higher education and an instrumentality of the State of Ohio created pursuant to Ohio Revised Code Chapter 3344, and is prohibited from entering into any agreement that contains the provisions listed in Ohio Revised Code §9.27(B)(1)-(9) (the "Prohibited Provisions"). To the extent that Contractor's proposal, scope of work, offer, acceptance or any other document(s) attached hereto or incorporated by reference, contains one or more Prohibited Provisions, then pursuant to Ohio R.C. 9.27(C)-(D), Contractor hereby agrees that all Prohibited Provisions contained in any such documents are void ab initio, are deemed deleted in their entirety, and shall not be binding on, or enforceable against the University.

(j) This Agreement is not binding upon University unless executed in full and is effective as of the last date of signature by University.

(k) Company confirms that they are not a Russian institution or Russian company and will comply with Executive Order 2022-02D regarding the State of Ohio's Response to Russia's Unjust War of the Country of Ukraine.

## **SECTION C. SIGNATURES**

### **COMPANY:**

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**PRINT NAME/TITLE:** \_\_\_\_\_

### **CLEVELAND STATE UNIVERSITY:**

**BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

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## **EXHIBIT "A"**

### **SCOPE OF WORK**