

# PROFESSIONAL SERVICES AGREEMENT

*This version 5.24 is approved as to legal form by the Office of General Counsel. Any change, revision, amendment, or modification of this Agreement is subject to the review and approval of the Cleveland State University Office of General Counsel.*

## 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 set forth in the Scope of Work (“**Services**”).

### 3. Definitions:

- (i) **Not to exceed contract fee (“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-Non-Member-Acknowledgment.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.

**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.

**3. Term Renewal.** University may renew this Agreement for up to one (1) additional one (1) year term upon thirty (30) days written notice to Contractor.

**4. Termination.** 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 product and documents that have been prepared by Contractor in the course of performing the Services and all such materials shall be University property. Further, and without limiting University’s ability to terminate this Agreement for convenience, this Agreement is subject to appropriation funds by the University’s Board of Trustees and the Ohio General Assembly. Accordingly, this contract may be terminated by University for insufficient funding at any time following the current State of Ohio biennium, ending June 30 in every odd-numbered year.

**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](mailto:r.howerton@csuohio.edu).

If applicable and as 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 shall indemnify and hold harmless the University, its trustees, officers, employees, and agents, from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees and expenses), claims, suits, actions, damages, liability and expenses, occasioned wholly or in part by Contractor's act or omission or negligence or fault or the act or omission or negligence or fault of Contractor's agents, subcontractors, independent contractors, suppliers, employees or servants in connection with this Agreement, including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, contamination or adverse effects on the environment, intentional acts, failure to pay any subcontractor and supplier, any breach of this Agreement, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret).

## **9. Contractor Representations and Warranties.**

(a) 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.

(b) Contractor represents and confirms that Contractor and all of the entities and individuals acting on Contractor's behalf in connection with the Services, possess and, at all times during the term of this Agreement shall possess, all qualifications and credentials required for performance of the Contract (including, without

limitation, any licenses, certifications, or other credentials required by federal, state and/or local governmental authorities, and shall furnish documentation thereof within five (5) days of written request by University.

(c) Contractor represents, warrants, covenants, and/or agrees (as applicable) that it: (i) is not subject to an “unresolved” finding for recovery under Ohio R.C. 9.24; (ii) does not and will not discriminate on the basis of race, color, religion, gender, sex, sexual orientation, national origin, ancestry, disability, genetic information, age, and military or veteran status; (iii) is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, as set forth in Ohio R.C. 9.76; (iv) that it shall abide by the applicable requirements of Ohio Executive Order 2019-12D; and, (v) Contractor is 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.

**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 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) University hereby objects to any additional or conflicting terms and conditions contained in any quotation, order form, invoice, scope of work, acknowledgment, or other form of documentation from Contractor. 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 ("**Effective Date**").

**SECTION C. SIGNATURES**

The parties hereto, intending to be legally bound by the terms and conditions of this Agreement, have caused the Agreement to be executed by their respective duly authorized officers as of the date of last signature below.

**CONTRACTOR:**

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

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

**CLEVELAND STATE UNIVERSITY:**

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

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

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**EXHIBIT "A"**  
**SCOPE OF WORK**