Req. No. _____

INDEPENDENT CONTRACTOR AGREEMENT
(for Services <$75,000)

THIS **INDEPENDENT CONTRACTOR AGREEMENT** (the "Agreement") is made and entered into on the date fully executed below (the "Effective Date") by and between _____ ("Contractor") whose principal business address is _____ and **THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES**, on behalf of its _____ ("FIU"), whose principal address is _____.

RECITALS

WHEREAS, Contractor has proposed to provide certain services for FIU; and

WHEREAS, the parties hereto desire to reduce the terms of their agreement to a writing, as provided below.

NOW THEREFORE, in consideration of the mutual covenants provided herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties do agree as follows:

1. **Recitals.** The above recitals are true and correct and are incorporated herein by this reference.

2. **Term.** The term of this Agreement shall commence as of the Effective Date and continue, unless otherwise terminated pursuant to the terms hereof, through _____, or until Services are fully rendered, whichever is later.

3. **Services.** Contractor agrees to perform and provide to FIU the services (the "Services") described in the scope of work, attached hereto and made a part hereof as **Exhibit "A"** to this Agreement, (the "Scope of Work").

4. **Fee for Services.** As full compensation, inclusive of any and all expenses, for the Services to be provided by Contractor hereunder, FIU agrees to pay Contractor a fee of _____ dollars ($_____) (the "Fee"). Contractor shall submit to FIU invoices for the Fee for those Services rendered, in arrears. FIU will designate a representative to serve as FIU's point of contact for the Contractor's submission of invoices and questions concerning payment status.

5. **Payment**. Contractor shall submit invoices for compensation for pre-approved expenses incurred by Contractor, and Services rendered, in arrears, in sufficient detail for a pre and post-audit; invoice requirements are available at http://finance.fiu.edu. Contractor is responsible for any taxes due under this Agreement, including, but not limited to, sales tax and any taxes due in connection with payments made by FIU to Contractor. FIU will make payments to Contractor in accordance with FIU Regulation FIU-2202 entitled "Prompt Payment." If FIU does not issue payment within forty (40) days of receipt of a proper invoice, FIU shall pay an interest penalty at the rate established pursuant to §55.03(1), Florida Statutes, provided that the interest penalty is in excess of one dollar ($1.00). The foregoing provisions apply only to undisputed amounts for which payment has been authorized by FIU. Invoices returned to the Contractor due to preparation errors will result in a payment delay. Invoice payment requirements do not start until a properly completed invoice is provided to FIU. If Contractor experiences problems with payment, Contractor may contact the FIU Vendor Ombudsman at (305) 348-2101. FIU may make

payment to Contractor via FIU's EFT/ACH payment process. Contractor shall provide FIU the necessary information for payment upon request. FIU will designate a representative to serve as FIU's point of contact for the Contractor's submission of invoices and questions concerning payment status. If Contractor is making payment to FIU, Contractor shall pay timely and not offset any amounts or be cause for termination. Unless non-state funds are being used to pay, FIU cannot make deposits or prepay any amounts. Any deposits made by FIU are refundable.

6. Key Personnel. Contractor's individual(s) designated as key personnel for the purposes of this Agreement is/are _____ ("Key Personnel"). Contractor may reassign or substitute Key Personnel upon consent by FIU, not to be unreasonably withheld, or upon the unavailability of assigned Key Personnel due to illness or other factors beyond Contractor's control, provided that prior notice of such reassignment or substitution is delivered to FIU. Additionally, Contractor shall substitute Key Personnel upon FIU's reasonable request.

7. Confidentiality of Information. Contractor acknowledges and agrees that any and all documents, materials and information furnished to the Contractor by FIU or its affiliates in connection with the Agreement (the "Information") are and shall remain at all times proprietary, and the sole property of FIU. Contractor shall not disclose Information to third parties unless it obtains FIU's prior written consent to such disclosure. Contractor shall at all times comply with any and all applicable state and federal laws governing the use and/or safe-keeping of confidential and/or personally identifiable information (as the term may be defined by state or federal law), including, but not limited to, Public Records laws, The Family Educational Rights and Privacy Act ("FERPA"), the Gramm-Leach Bliley Act, and the Federal Trade Commission's Red Flags Rule (which implements Section 114 of the Fair and Accurate Credit Transactions Act of 2003), and shall obtain (in advance) all necessary permission and consent, as applicable, in regards to its collection/receipt of any such information. In the event that FIU will share with or provide access to Contractor of any protected health information ("PHI"), as that term is or may be defined by state or federal law, in order to perform the Agreement, FIU and Contractor shall enter into a separate business associate agreement which will govern the use of the PHI (in lieu of this provision). This provision shall survive the expiration or earlier termination of the Agreement.

8. Public Records. FIU is subject to Chapter 119 of Florida Statutes, commonly known as the Florida Public Records Law. The Agreement and any related documents and correspondence Contractor submits to FIU shall also become a public record subject to the Public Records Law. FIU will respond to public records requests without providing Contractor any notice. Additionally, if Contractor is a "contractor" as defined under s. 119.0701, Florida Statutes, it shall comply with all applicable public records laws. Specifically, Contractor shall: (1) keep and maintain public records required by FIU to perform the service; (2) Upon request from FIU's custodian of public records, provide FIU 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 that section or as otherwise provide by law; (3) 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 Contractor does not transfer the records to FIU; (4) upon completion of the contract, transfer, at no cost, to FIU all public records in possession of Contractor or keep and maintain public records required by FIU to perform the Service. If Contractor transfers all public records to FIU upon completion of the contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of the contract, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to FIU, upon request by FIU's public records custodian, in a format that is compatible with FIU's information technology systems. If FIU receives a request for public records, and FIU does not possess such records, FIU shall immediately notify Contractor of such request, and Contractor must provide them to FIU or allow the records to be inspected or copied within a reasonable

time. If Contractor does not comply with the request for records, FIU shall enforce the terms of the contract, and Contractor may be subject to civil action under s. 119.0701, F.S., and the penalties outlined under s. 119.10, F.S. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICABLE 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 (305) 348-1377, BY EMAIL rose.nicholson@fiu.edu, OR BY MAIL AT at 11200 SW 8th ST., GL 460, MIAMI, FLORIDA 33199.**

9. Sovereign Immunity. Nothing in this Agreement shall be construed as an indemnification of the Contractor by FIU nor as a waiver of sovereign immunity beyond that provided in Florida Statutes §768.28. This provision shall survive the termination of this Agreement.

10. Representations. Contractor represents and warrants that it is not on the Convicted Vendor List (see Florida Statutes §287.133(2)(a)). If Contractor is acting as a consultant to FIU and is representing FIU's interests in dealings with other third parties, Contractor shall not accept employment with or act as an independent contractor for such third parties for a period of one (1) year after this Agreement is terminated**.** This provision shall survive termination of the Agreement.

11. Risk. Each party hereby assumes any and all risk of personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees, and agents thereof. Contractor also assumes such risk with respect to the willful or negligent acts or omissions of Contractor's subcontractors or persons otherwise acting or engaged to act at the instance of Contractor in furtherance of Contractor fulfilling Contractor's obligations under the Agreement. This provision shall survive termination of the Agreement.

12. Third Party Beneficiaries. Except as specifically set forth herein, this Agreement does not and is not intended to confer any rights or remedies upon any person other than FIU and Contractor.

13. Termination. This Agreement may be terminated by FIU by written notice to Contractor of such intent to terminate at least ten (10) days prior to the effective date of such termination. Additionally, FIU may, upon five (5) days' written notice to Contractor setting forth with specificity the basis for the termination, terminate this Agreement for Cause (as hereinafter defined). For purposes of this Agreement, "Cause" is defined as Contractor's failure to perform the Services within the time specified herein or any extension thereof or Contractor's failure to adhere to any terms of this Agreement. If this Agreement is terminated, FIU shall only be liable for payment of goods received and services rendered prior to the date of termination and accepted by FIU.

14. Insurance. Contractor will have and maintain types and amounts of insurance that cover the Contractor's (and subcontractor's, if applicable) exposure in performing this Agreement. The Contractor's insurance certificate shall indicate that the policy carries an endorsement which names "Florida International University, The State of Florida, The Florida International University Board of Trustees, The Florida Board of Governors and their respective trustees, directors, officers, agents, and employees" as additional insureds. The Contractor's policy shall be issued in a form acceptable to FIU. Prior to performing any of the Services contemplated herein, Contractor shall deliver Contractor's insurance policy to FIU for FIU's review and approval. The Contractor's certificate of insurance shall contain a statement that the policy shall not be allowed to lapse or be canceled without notification to FIU at least thirty (30) days prior to the effective date of cancellation. The absence of a demand for any type of insurance certificates or policy shall not be construed as a waiver of the Contractor's obligations to carry and maintain the appropriate insurances at limits that are appropriate to the liability exposure associated with this Agreement, and to ensure that its agents/subcontractors maintain appropriate insurance at all times. FIU is

self-insured and will provide its Certificate of Insurance upon request. FIU is not required to obtain additional insurance for this Agreement.

15. Force Majeure. Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, hostile foreign action, labor strike, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

16. Compliance. In the performance of this Agreement, Contractor shall, at its own expense, at all times during the term hereof, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances and all other governmental requirements. Contractor shall also comply with all applicable FIU policies and regulations applicable to this Agreement. To the extent Contractor has access to any student educational records, Contractor agrees that he/she will comply with all federal and state information security and confidentiality laws, including but not limited to FERPA. Contractor acknowledges and agrees that Contractor has and will maintain, at all times during the term of this Agreement, all governmental permits, licenses, consents, and approvals necessary to perform its obligations under this Agreement. This provision shall survive termination of this Agreement.

17. Independent Contractor. Contractor is retained by FIU only for those purposes and to the extent set forth in this Agreement, and Contractor's relation to FIU shall, during the term of this Agreement, be that of independent contractor. Contractor is not and shall not be considered as having an employee status. As provided above, Contractor is responsible for the payment of any taxes on any monies received by Contractor.

18. Prohibitions. Unless expressly and specifically authorized in writing by FIU in advance, Contractor is prohibited from (a) using FIU's name, trademarks, logos, or other marks (collectively herein known as the "Marks") without FIU's prior written approval; (b) incurring any debt or obligation on behalf of FIU; (c) entering into any contract, arrangement, or transaction which binds FIU to any extent or creates any obligation on FIU; and/or (d) utilizing FIU's name, credit, reputation, good-will, resources, and/or assets for any purpose without the prior and explicit written approval of FIU.

19. Indemnification. Contractor is responsible for its performance under this Agreement. Contractor agrees to release, indemnify, defend and hold harmless Florida International University, The Florida International University Board of Trustees, the Florida Board of Governors, the State of Florida and their respective trustees, officers, employees and agents of and from any and all liability, fines, royalties, fees, taxes, suits, claims, demands and actions, costs, attorney's fees and expenses of any kind or nature whatsoever for any loss of life, personal, bodily or economic injury or damage or loss to property arising out of the negligent acts, errors or omissions of Contractor, its officers, agents, employees and contractors, and from and against any orders, judgments or decrees which may be entered pursuant thereto. This provision shall survive the termination of this Agreement.

20. Copyright and Intellectual Property. If Contractor uses copyrighted materials or documents not owned by FIU ("Copyrighted Materials") in Contractor's performance of the Agreement, Contractor represents and warrants that it owns, or is licensed to use and to authorize others to use, the Copyrighted Materials. Contractor will, at its expense, defend any suit brought against FIU and will indemnify FIU against an award of damages and costs made against FIU by a settlement or final judgment that is based on a claim that FIU's use of the Copyrighted Materials infringes a trademark or copyright of a third party. This provision shall survive termination of the Agreement.

21. Ownership of Work Product: All right, title and interest in and to any invention, work product, idea or creation conceived, developed or produced during the performance of services under this Agreement

(including but not limited to creative, copy, scripts, story boards, writing, copyrights, trademarks, art, music, software and documentation, business systems or ideas, and research projects) shall be property of FIU whether created individually by the Contractor or jointly with FIU, on or off premises. If Contractor is providing software, FIU may create and retain a copy of the software and related documentation for back up and disaster recovery purposes, and for archival purposes for use after this Agreement is terminated. This provision shall survive termination of the Agreement.

22. University's Right to Inspect. Although the Contractor has the authority to control and direct the performance of the details of the work, the work contemplated herein must meet FIU's standards and approval and shall be subject to FIU's general right of inspection to secure the satisfactory completion thereof.

23. Travel. If FIU is specifically responsible for reimbursing Contractor for travel expenses pursuant to the Agreement, such expenses shall only be paid to the extent permitted by Fla. Stat. §112.061 and FIU policy 1110.060 Travel: University Travel Expense.

24. Notices. Any notice to either party hereunder must be in writing and signed by the party giving it, and served: 1) by hand; 2) through the United States Mail, postage prepaid, registered or certified, return receipt requested; or 3) through expedited mail or package service, if a receipt showing the delivery has been retained, and addressed to the addresses above. Notice is effective upon receipt.

25. Federal Funds. If FIU has entered into an agreement with the United States of America, or any Department thereof, and the Agreement is entered into with the Contractor to further the performance of the work required in such federal agreement, Contractor shall comply with the terms contained in FIU's Federally Funded Projects Addendum found at https://generalcounsel.fiu.edu/contract-forms herein incorporated by reference.

26. Miscellaneous.

a. Assignment/Binding Effect. This Agreement may not be assigned by Contractor without the express written consent of FIU. This Agreement shall be binding upon and inure to the benefit of the parties hereto.

b. Governing Law/Venue. This Agreement is governed by the laws of the State of Florida and venue of any actions arising out of this Agreement shall be in the state courts in Miami-Dade County, Florida.

c. Survival. Any provision of this Agreement providing for performance by either party after termination of this Agreement shall survive such termination and continue to be effective and enforceable.

d. Entire Agreement/Amendments. This Agreement and any documents incorporated specifically by reference represent the entire agreement between the parties and supersedes all prior oral or written statements or agreements. This Agreement may only be amended by written amendments duly executed by the parties hereto.

e. Severability. If any provision or application thereto to any circumstance is held to be invalid or unenforceable, such provision shall be ineffective and the remainder of this Agreement shall remain valid and enforceable.

f. Counterparts & facsimile signatures allowed. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one

and the same instrument. To the extent permissible under Florida law, a facsimile signature shall be deemed to constitute an original signature for the purposes of this Agreement.

SERVICES SHALL NOT BEGIN UNTIL THE AGREEMENT IS FULLY AND PROPERLY EXECUTED BY BOTH PARTIES.

The parties execute this Agreement as of the date written below each signature block and each party executing this Agreement warrants and represents that it is authorized by its respective entity to execute a binding Agreement.

THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES:

By: _____
Name: _____
Title: _____

Date: _____

CONTRACTOR:

_____

By: _____
Name: _____
Title: _____

Date: _____

Req. No. _____

EXHIBIT "A"

SCOPE OF WORK ("SOW")

[Enter Scope of Work- specify work to be completed, deliverables and due dates, etc. If more than one page or on separate pages, please attach such documents to the Agreement and write "see attached."]