

PROFESSIONAL SERVICES CONSULTING AGREEMENT

THIS AGREEMENT, effective as of the date of the last signatory hereto (the "Effective Date"), is by and between **New Jersey Institute of Technology** ("NJIT"), a public research university, located at University Heights, Newark, New Jersey 07102, and _____ ("Consultant"), located at _____.

WHEREAS, NJIT requires consulting services in the area of _____, and Consultant represents that it has the education, training, and experience required by NJIT for this effort;

WHEREAS, this Agreement is of mutual interest and benefit to NJIT and Consultant and will further the objectives of NJIT in a manner consistent with its status as a non-profit, tax-exempt public research university;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties hereto agree to the following:

1. Services: During the term of this Agreement, Consultant will provide consultation, guidance and technical assistance to NJIT as outlined in the Scope of Work/Proposal attached hereto as **Exhibit A** ("Scope of Work"), which is incorporated by reference as if set forth at length herein. At the sole discretion of NJIT, this Scope of Work may be reasonably modified, reduced or expanded. Consultant may be requested to work on other matters, programs and/or projects. All requests by NJIT for additional professional services shall be subject to the review and written approval of NJIT. The terms of any proposal prepared/submitted by Consultant and attached hereto as the Scope of Work shall not be binding on NJIT to the extent that any of its terms or conditions conflict with this Agreement. In such event, this Agreement shall control. To the extent applicable, the terms and conditions of any grant agreement funding NJIT's payments to Consultant hereunder are incorporated herein by reference and made binding on Consultant.

2. Term of Agreement/Termination: The term of this Agreement shall be for _____ (_____) months beginning from the Effective Date, unless terminated earlier as provided herein. NJIT may terminate this Agreement for any reason or no reason, upon twenty (20) days advance written notice to Consultant. Consultant may terminate this Agreement in the event that NJIT commits a breach of its material obligations hereunder, upon twenty (20) days advance written notice and where NJIT does not cure the breach. If termination by NJIT is not for Consultant's breach, Consultant shall be paid a reasonable value for that portion of the Scope of Work successfully completed prior to the notice of termination in accordance with the fees and/or rates stated in this Agreement (not to exceed the total price of this Agreement). Any provisions of this Agreement, which by their nature extend beyond termination, e.g., without limitation, Articles 1, 3, 7, 8, 12, 13 and 16, shall survive such termination.

3. Compliance With All Laws: Consultant agrees to perform all services required under this Agreement at the highest standard of quality, and in accordance with NJIT policy and all applicable local, state and federal requirements and executive orders applicable to the Work, as these requirements may be amended from time to time, including but not limited to: (a) Non-Discrimination In Employment and Equal Employment Opportunity (N.J.S.A. 10:2-1 through 10:2-4 and N.J.S.A. 10:5-31 et seq. including the Mandatory Equal Employment Opportunity Language contained in **Exhibit B** attached hereto; Titles VI and VII of the Civil Rights Act of 1964; Executive Orders 11246 and 11375 as implemented by 41 CFR Part 60; Rehabilitation Act of 1973, Section 504; Age Discrimination Act of 1976; and Title IX of Higher Education Act of 1972); (b) Drug-Free Workplace Act of 1988 (34 CFR Part 85); (c) Byrd Anti-Lobbying Amendment (31 USC 1352); (d) Protection of Human Subjects (45 CFR Part 46); (e) Clean Air Act (42 USC 7401 et seq.); (f) Water Pollution Control Act (33 USC 1251 et seq.); (g) Fair Labor Standards Act of 1938 (29 CFR Part 5); (h) US Export Control (Arms Export Control Act, 22 USC 2751-2794; International Traffic and Arms Regulation, 22 CFR Part 120; Arms Administration Act, 50 USC 2401-2420; and Export Administration Regulations 15 CFR 730-774); (i) Notification of Employee Rights Under Federal Labor Laws (Executive Order 13496); and (j) N.J. Public Law 2012, c. 25, Disclosure of Investment Activities In Iran. This provision shall be included in any sub-award documents related to this Agreement at all tiers.

4. **Payment:** NJIT will pay Consultant the following fee _____ for Consultant's successful performance of this Agreement. Consultant shall be permitted to invoice NJIT in accordance with the following schedule/phases: _____. In addition to the fees stated above, NJIT shall reimburse Consultant for reasonable out-of-pocket costs incurred by Consultant as a direct and exclusive result of its performance of this Agreement related to travel and transportation (airfares, taxi fares, parking, mileage, etc.). Such reimbursement shall be in accordance with NJIT standard reimbursement policies, billed at Consultant's actual cost, supported by original receipts and pre-approved by NJIT. The aforementioned describe the entire financial obligation of NJIT under this Agreement or otherwise. Consultant shall maintain accounting records and other evidence pertaining to costs incurred with respect to its performance of this Agreement on the Program and agrees to make such records available to NJIT upon request at all reasonable times during the term of this Agreement and for three (3) years from the date of final invoice payment. Consultant agrees to fully cooperate with any monitoring, reporting, evaluation, and/or audit that may be conducted by NJIT and/or required by any third party funding supporting this Agreement.

5. **Invoices/Reporting:** NJIT shall pay all approved invoices within thirty (30) days of receipt. All invoices submitted by Consultant shall include: (a) a description of the services rendered; (b) dates performed; (c) hourly rate (if applicable); (d) out-of-pocket expenses (if applicable) with supporting documentation (e.g., invoices, bills, etc.); and (e) Consultant's Federal Tax ID number. Submission of appropriate invoices is a condition precedent for payment by NJIT. Upon NJIT's request, Consultant shall certify in writing that each such invoice is complete and accurate. Payment is contingent on provision of such proper invoices. Consultant shall provide any required technical reports in accordance with the Scope of Work attached as **Exhibit A**.

6. **Independent Contractor/No Agent:** Consultant is and shall be an independent contractor and not an employee of NJIT. As such, Consultant shall not be entitled to any right or benefit applicable to NJIT employees including, without limitation, vacation, sick, or administrative days; medical, dental, or life insurance or benefits; or pension benefits. Consultant understands and agrees that because it is an independent contractor, NJIT will make no deduction from payment hereunder on account of federal or state income tax, social security, disability or unemployment insurance, or the like. Consultant is solely responsible for payment of all governmental obligations arising in connection with this Agreement. Neither party nor any of their respective employees or independent contractors is authorized or empowered to act as agent for the other for any purpose and shall not on behalf of the other enter into any contract, warranty, or representation as to any matter, except as specifically allowed herein and limited to the narrowest construction thereof. Neither shall be bound by the acts or conduct of the other. Consultant covenants that it will not at any time represent itself, either directly or by implication, as an agent of NJIT or as having authority to bind NJIT.

7. **Intellectual Property:** All deliverables, data, improvements, discoveries, reports, drawings, blueprints, diagrams, specifications, calculations, reports, designs, text, graphics, print-outs, mock-ups, slides, schematics, etc., or other copyrightable material and other intellectual property conceived, compiled, organized, created, improved, or reduced to practice by Consultant as a result of its performance of this Agreement shall be the sole and exclusive property of NJIT, without royalty or payment obligation of any kind. Consultant agrees that each such work or deliverable shall constitute a "work made for hire" pursuant to the U.S. copyright law. The Consultant may not publish the results of its findings or participation in the performance of this Agreement without the prior written approval of NJIT. Consultant hereby grants to NJIT a nonexclusive, perpetual, transferable, irrevocable and royalty free license to utilize any relevant Consultant preexisting intellectual property to the extent the same is incorporated, in whole or in part, into the deliverables of this Agreement. Consultant shall not incorporate any third party materials into any of the deliverables under this Agreement without the prior written approval of NJIT.

8. **Confidentiality:** Consultant understands that, in the course of providing professional services hereunder, NJIT may disclose to Consultant certain sensitive, confidential personnel and financial information. All such information received, disclosed to, developed or created by Consultant in the course of providing services to NJIT shall be confidential and proprietary as to NJIT. Consultant shall not disclose confidential and proprietary information to any third party in a manner not directly related to the provision of services hereunder, except with the prior written consent of NJIT or where compelled by law. Consultant's confidentiality obligations described herein shall continue for the term of this Agreement and any renewal thereof, and for a period of three (3) years thereafter. With respect to trade secrets, the obligation shall last for so long as the information is treated as a secret by NJIT.

9. **Non-Discrimination**: Consultant promises that he will perform the Work without regard to the race, sex, sexual orientation, age, religion, ethnic or national origin, disability or veteran's status of any employee, student or representative of NJIT or any entity (and its employees) contracting with NJIT. Consultant promptly will report to NJIT any instance of such discrimination of which he becomes or reasonably should have become aware.

10. **Assignment**: NJIT has retained Consultant based, in part, upon its representation of personal skill and qualification to perform the Work. Consultant shall not assign its rights or obligations hereunder without the prior written consent of NJIT. Consultant shall not subcontract, either directly or indirectly, any of its responsibilities hereunder without the prior written consent of NJIT.

11. **Conflicts Of Interest**: Consultant represents that there are no known conflicts of interest between the services to be rendered under this Agreement and Consultant's services and employment with other third parties. If, during the course of this Agreement, Consultant becomes aware of facts which constitute or may give rise to a conflict of interest, Consultant shall immediately advise NJIT, so that it may determine appropriate procedures for managing the same.

12. **Indemnification/Hold-Harmless**: Consultant shall at all times defend, indemnify and hold harmless NJIT, from and against any and all third party claims, damages, liabilities, costs and expenses, whether in contract or tort, arising out of personal injury, including death, property damage or infringement, sustained in whole or in part as a result of or arising out of any negligent and/or intentional act or omission of Consultant with respect to its performance of this Agreement.

13. **Insurance**: Consultant shall procure and maintain during the entire term of this agreement, primary commercial general and/or professional liability insurance with NJIT named as an additional insured thereon with a limit of not less than \$1,000,000 per occurrence for bodily injury and property damage/\$2,000,000 aggregate. Consultant shall also procure and maintain during the term of this Agreement workers compensation and employers liability insurance at statutory limits for workers' compensation and no less than \$1,000,000 for employers' liability. Upon request, Consultant shall provide a certificate of insurance evidencing such coverages.

14. **New Jersey Business Registration Requirement**: Consultant is hereby given notice that a business organization or individual that fails to provide a copy of a business registration as required by the New Jersey Business Registration Act (C.52:32-44 et al.), or that provides false business registration information, may be liable for a penalty for each day of violation for each business registration copy not properly provided under a contract with a contracting agency such as NJIT. No payment shall be made by NJIT under this Agreement until all provisions herein are satisfied and Consultant provides an acceptable New Jersey Business Registration Certificate.

15. **Limitation Of Liability**: NJIT SHALL HAVE NO LIABILITY FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES EVEN IF NJIT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND OPPORTUNITY OR CLAIMS FOR SUCH DAMAGES BY CONSULTANT. IN ANY EVENT, THE LIABILITY OF NJIT FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE TOTAL AMOUNT OF THIS AGREEMENT.

16. **General Provisions**:

(a) The failure by either party to enforce any provision of this Agreement or to timely insist on performance shall not constitute or be construed as a waiver of any right to strictly enforce a contractual provision.

(b) Except as set forth in the Scope of Work attached as **Exhibit A**, Consultant warrants that its performance of this Agreement does not depend on the acquisition of rights from any third party and the conveyance of the deliverables described in the Scope of Work attached as **Exhibit A** will not knowingly infringe on the intellectual property rights of any third party.

(c) Any notice provided for in this Agreement shall be in writing and deemed to have been received if sent by United States certified mail or recognized national courier, postage pre-paid.

(d) The provisions of this Agreement shall be governed by the laws of the State of New Jersey, and the parties agree that the exclusive forum for any dispute concerning this Agreement shall be the Superior Court of New Jersey, Essex County.

(e) This Agreement constitutes the entire understanding between the parties regarding this matter and merges any and all prior discussions, representations, promises, and warranties within its scope. There are no representations, warranties or promises not expressly set forth in this Agreement. Except as expressly set forth herein, this Agreement may not be modified, renewed, or extended, except in writing, signed by both parties.

AGREED TO AND ACCEPTED BY:

NEW JERSEY INSTITUTE OF TECHNOLOGY

Signature: _____

Dated: _____

CONSULTANT

By (signature): _____

Name: _____

Title: _____

Dated: _____

EXHIBIT A

Scope Of Work/Proposal

Exhibit B

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq., N.J.A.C. 17:27

GOODS, PROFESSIONAL SERVICES AND GENERAL SERVICE CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor where applicable agrees to comply with any regulations promulgated by the Treasurer pursuant to **N.J.S.A. 10:5-31 et seq.** as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to employ minority and women workers consistent with the applicable county employment goals established in accordance with **N.J.A.C. 17:27-5.2**, or a binding determination of the applicable county employment goals determined by the Division, pursuant to **N.J.A.C. 17:27-5.2**.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personal testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the applicable employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New

Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval
Certificate of Employee Information Report
Employee Information Report Form AA302

The contractor and its subcontractor shall furnish such reports or other documents to the Division of Contract Compliance & EEO as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Contract Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C.17:27.