**PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (the “**PSA**” and collectively with the Additional Terms and Conditions and the SOW (each as defined below), the “**Agreement**”) is entered into by and between the Trustees of the College of the Holy Cross (“**College**”) and [CONTRACTOR] (“**Contractor**”).

WHEREAS, College desires to engage Contractor as an independent contractor to provide the services described in the Statement of Work attached hereto as Exhibit A (“**SOW**”) and Contractor desires to provide such services on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual promises set forth herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. **STATEMENT OF WORK.** College hereby engages Contractor to provide the services described in the SOW (“**Services**”), subject to the Additional Terms and Conditions attached hereto as Exhibit B (“**Additional Terms and Conditions**”) which are incorporated herein by reference, for the compensation set forth in Section 3 below.
2. **TERM.** The term of this Agreement will commence on [ ] and will expire on [ ], subject, however, to earlier termination as set forth herein. If the SOW contains a project schedule that is in effect at the time of such expiration, the term of this Agreement will extend until the later of (a) the last day of such project schedule or (b) the day of actual completion of the project described in the SOW.
3. **COMPENSATION.**
   1. As full compensation for all Services to be performed and materials to be delivered hereunder by Contractor, College shall pay Contractor **[DESCRIBE COMPENSATION – hourly rate? daily rate? project?/IF PRICE IS AN ESTIMATE (NOT RECOMMENDED), ADD THE FOLLOWING LANGUAGE:** Contractor shall notify College and obtain prior written authorization from College prior to performing any Services or providing any materials that would exceed the costs set forth in the SOW.**]**. No increase in compensation is authorized without formal amendment to this Agreement.
   2. College will not be required to make any payment for any services or materials provided by the Contractor unless such services or materials are identified in the SOW and have been provided in accordance with the Agreement.
   3. Contractor will provide College with detailed written invoices which accurately account for all Services and materials provided to College [upon completion of 100% of the Services and acceptance of the final product by College]/[upon satisfactory completion of each milestone listed in the SOW]/[no more frequently than monthly]. College will pay for all amounts properly billed within thirty (30) days of receipt of a conforming invoice accompanied by appropriate documentation.
   4. Contractor will be responsible for the payment of all expenses related to Contractor’s performance hereunder except as may be specifically set forth in Section 3(e).
   5. [There are no expenses subject to reimbursement by College.]/[College will reimburse Contractor for [LIST OUT ANY REIMBURSABLE EXPENSES] following the submission by Contractor of a written request for reimbursement accompanied by reasonable supporting documentation, including written receipts, for each such item. Reimbursement is subject to any reimbursement limitations [CITE].]
4. **NOTICES.** Addressees for notices shall be as follows:

If to College, to it at: One College Street, Worcester, MA 01610, Attention: [ ]

If to Contractor, to: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

IN WITNESS WHEREOF,College and Contractor have executed this Agreement as of the date written below. The Agreement shall not be valid until signed by a duly authorized representative of each party.

|  |  |
| --- | --- |
| **THE TRUSTEES OF THE COLLEGE OF THE HOLY CROSS**  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **[CONTRACTOR]**  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**EXHIBIT A**

**Statement of Work**

**[DESCRIBE]**

**EXHIBIT B**

**ADDITIONAL TERMS AND CONDITIONS**

1. RELATIONSHIP OF THE PARTIES. The parties agree that Contractor is an independent contractor. The Agreement is not intended and shall not be construed to create any partnership, joint venture, agency, association, fiduciary relationship, employment, or other such relationship between the parties. Contractor, any subcontractor or sub-processor, and all employees, personnel, representatives, and agents of Contractor and/or any subcontractor (collectively, “**Contractor Personnel**”) shall at all times remain employees or subcontractors of Contractor and will not be employees or subcontractors of College. Contractor assumes full responsibility for the actions of all Contractor Personnel and for the payment of their compensation (including, if applicable, the payment and withholding of social security and taxes), workers' compensation, disability benefits and the like to the extent applicable. Contractor understands and agrees that College has not agreed to use Contractor exclusively.
2. REPRESENTATIONS AND WARRANTIES. Contractor represents, warrants, and agrees that (a) Contractor will perform the Services to the best of Contractor’s ability, in a good and workmanlike manner, and in accordance with all applicable laws, regulations, rules, and ordinances and any applicable industry standards; (b) all Contractor Personnel will, when located on any property owned or leased by College, comply with all College rules and policies, including without limitation, its sexual harassment and nondiscrimination policies; (c) all necessary licenses and permissions have been secured by Contractor for its performance hereunder; and (d) the Agreement will not violate the terms of any contract that Contractor has with, or obligation to, any third party. Contractor shall inform College of any deviation from the SOW or if Contractor is unable to perform the Services or furnish required materials. Contractor has completed criminal and sex offender background checks of all Contractor Personnel who will work on College owned or leased property.
3. TERMINATION. Either party may terminate the Agreement at any time should the other party violate any of the provisions of the Agreement upon written notice to the breaching party. Additionally, College may terminate the Agreement on thirty (30) days’ prior written notice to Contractor without reason. In the event of termination for whatever reason, Contractor shall be entitled only to compensation for work completed or otherwise properly performed up to the date of termination and College shall be relieved of any further obligation or liabilities to Contractor, financial or otherwise.
4. ASSIGNMENT. The Agreement may not be assigned nor work subcontracted or delegated by Contractor to any other party without the prior written consent of College following written notice of the proposed subcontract or delegation from Contractor to the College describing the role such party will perform. Notwithstanding anything set forth in this Agreement, all Services shall be provided only by qualified employees of Contractor, and by subcontractors of Contractor approved in writing in advance by College. All approved subcontractors shall be subject to all obligations of Contractor hereunder, and Contractor shall obtain from each approved subcontractor its written agreement to comply with such obligations prior to subcontractor commencing any work. Contractor shall be responsible for any breach by any subcontractor of this Agreement.
5. CONFIDENTIALITY. “**Confidential Information**” includes, but is not limited to, the following information that is disclosed to, or obtained or discovered by, any Contractor Personnel in connection with this Agreement: (a) information about College’s systems, operations, methods, plans, and other information customarily considered to be of a sensitive and/or private nature by institutions of higher learning or businesses operating in a similar manner as College; (b) personally identifiable information about any of College’s trustees, employees, applicants, students, alumni, donors, families and affiliates of applicants, students, alumni, and donors and research subjects; (c) confidential information disclosed to College by third parties; (d) all other information, ideas, curricula, techniques, know-how, processes, formulas, costs, developments, experimental works, works-in-progress, materials, plans, or proposals relating to any matters which are confidential or non-public; (e) information designated as confidential by the College; and (f) all documents, things, and record-bearing media containing any of the foregoing information, including any materials prepared by Contractor that contain or relate to such information. Contractor agrees that all Confidential Information (i) shall be received in confidence by Contractor and shall be used only for the proper performance of the Services, (ii) is the property of College, (iii) shall be maintained and protected by Contractor as strictly confidential in accordance with generally accepted commercial standards and no less rigorously than it protects its own confidential information, (iv) shall not be reproduced, transmitted, or disclosed to any person or organization without prior written consent of College; provided, however, that Confidential Information may be disclosed (A) to Contractor Personnel with a need to know such Confidential Information for the proper performance of the Services hereunder and who agree in writing to be bound by this Section, and (B) to the extent required by law; provided that Contractor shall notify College of such requirement promptly in writing (unless prohibited by law) and shall cooperate reasonably with College, at College’s expense, to obtain a protective or similar order. Upon termination or expiration of the Agreement, Contractor shall return to College all Confidential Information in its possession without maintaining any originals or copies thereof in any format or media. Contractor shall immediately notify College of any breach of its obligations set forth in this Section. Contractor agrees that any breach of its obligations set forth in this Section will cause immediate and irreparable injury and that College shall be entitled to injunctive relief, without the necessity of posting a bond, in addition to any other available remedies.
6. WORK PRODUCT. All materials developed, prepared, and/or delivered by Contractor and/or Contractor Personnel hereunder shall belong exclusively to College, including all copyrights and other proprietary rights (both tangible and intangible), title, and interest therein. Contractor represents and warrants that (a) the work product delivered by Contractor hereunder (excluding, any elements of the work product provided by College) and College’s ownership, use, reproduction, display, and/or performance of such work product in accordance with this Agreement, shall not infringe any intellectual property right of any third party, including any misappropriation of a trade secret, and (b) Contractor owns all necessary proprietary rights, or has all necessary license rights from the legitimate third party owner(s), to enable it to deliver such work product.
7. INSURANCE. At a minimum, Contractor at its own expense shall maintain throughout the term of this Agreement (a) commercial general liability insurance including bodily injury, property damage, personal and advertising injury liability and products liability or completed operations coverage, with a minimum limit of $1,000,000 per occurrence, $2,000,000 aggregate, (b) if Contractor Personnel will bring any vehicle to or on any owned or leased property of College, comprehensive automobile liability, $1,000,000 combined single limit, including the operation of owned, non-owned and hired automobiles, covering bodily injury; (c) if Contractor Personnel will be present on any owned or leased property of College, workers’ compensation insurance coverage, statutory limits, as required by law and employer’s liability insurance $500,000 per occurrence, $1,000,000 aggregate, (d) if available generally to members of the Contractor’s Personnel’s profession(s), professional liability (errors and omissions) insurance (which shall always include Technology E&O/Technology Products E&O if the “Information Technology” section is applicable), on a claims-made basis with limits of not less than $1,000,000 (which coverage must remain for a period of at least three years after the completion or termination of this Agreement); (e) if the Section “Information Security” is applicable, liability insurance on an occurrence basis, covering any and all claims, liabilities, demands, damages, losses, costs and expenses arising from a breach of the security, privacy, or confidentiality obligations and cyber risk liability with a policy limit of at least $1,000,000 single limit and $2,000,000 in the aggregate during any policy year, inclusive of defense costs (and breach response sublimits of at least 50% of the stated liability limits) which shall include, without limitation, computer or network systems attacks, denial or loss of service, introduction, implantation, or spread of malicious software code, unauthorized access and use of computer systems, privacy liability and breach response coverage; and (f) third party crime/employee dishonesty insurance on an occurrence basis covering all Contractor Personnel with a policy limit of at least $1,000,000 single limit and $2,000,000 in the aggregate during any policy year. “The College of the Holy Cross, including its trustees, officers, employees, agents and assigns” shall be named as an additional insured on Contractor’s commercial general liability policy/ies and such policy/ies shall include a waiver of subrogation in favor of College. Insurance carriers shall be rated by AM Best Rating Services with at least an A-, Class VIII rating. Contractor will provide to College prior to performing any Services (and thereafter upon renewal of any insurance contracts and upon College’s request) with proof of insurance required hereunder. The certificate of insurance shall contain a clause requiring written notice to the College at least thirty (30) days in advance of the cancellation, non-renewal, or material modification of said insurance. If conveyance of additional insured status is provided only through an endorsement to the insured’s policy, the Contractor shall be responsible for providing a copy of the endorsement with the certificate. This insurance clause shall not be construed to limit the extent to which the Contractor may be held responsible for the payment of damages to any other persons resulting from its operations or the activities of any Contractor Personnel.
8. COMPLIANCE WITH DISABILITY LAWS AND POLICIES.  Contractor acknowledges and warrants that its programs, services, products and/or goods, including the Services, currently are in compliance with and shall remain in compliance throughout the term of this Agreement with all applicable federal and state disabilities laws and regulations. Contractor warrants that its programs, services, products and/or goods, including the Services, to be provided under this Agreement conform to WCAG 2.1 AA guidelines or such other of College’s accessibility requirements as may be set forth in College’s policies, as amended from time to time. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services in a timely manner and provide an updated version to College at no cost. Failure to comply with the requirements of this Section shall constitute a material breach of this Agreement and shall be grounds for termination of this Agreement by College in its sole discretion.
9. INDEMNIFICATION. Contractor will indemnify and hold College, and each of its trustees, employees, representatives, and agents harmless from any and all costs, damages, liabilities, injuries, claims, demands, suits, proceedings, actions, and investigations, including all losses, liabilities, expenses (including reasonable attorneys’ fees), caused by, arising out of or which relate in any way to any negligent or wrongful act(s), omission(s), or fault of, or violation of this Agreement by, Contractor or any Contractor Personnel. Contractor shall defend College against any and all such claims, demands, suits, proceedings, actions, and investigations, at Contractor’s expense should College so request and shall defend using counsel approved by College.
10. APPLICABLE LAW. The Agreement shall be construed in accordance with and governed by the laws of Massachusetts as though made and fully performed in Massachusetts (without giving effect to any conflicts or choice of laws provisions thereof). Each of the parties irrevocably consents to the exclusive jurisdiction of the courts of the Commonwealth of Massachusetts with respect to all matters relating to this Agreement. Each party waives any objection that it may now or hereafter have to the determination of the venue for any proceeding relating to this Agreement that such court(s) is an inconvenient forum.
11. ENTIRE AGREEMENT; CONFLICTS; AMENDMENTS; WAIVERS. In the event of a conflict between the PSA, the Additional Terms and Conditions, the SOW, and/or any other exhibit or attachment to the Agreement, the terms of the PSA and the Additional Terms and Conditions shall control for all purposes. College does not accept any prior offers from Contractor relating to the Services and/or materials to be provided hereunder which may be contained in Contractor’s quotations, correspondence, specifications, or discussions. College does not accept any terms purporting to limit the liability of Contractor or Contractor Personnel (other than in connection with a Force Majeure Event as set forth in the Section entitled “Miscellaneous”) or require College to indemnify Contractor or Contractor Personnel. The Agreement encompasses the entire agreement of the parties with respect to its subject matter and there are no other agreements or understandings, either written or oral, with respect thereto. The Agreement may not be modified, amended, or waived unless in a written instrument signed by both parties. No modification of or addition to the Agreement shall be effected by any failure of any party to reject any form of acknowledgement or other communications containing different or additional provisions. The failure of either party hereto to enforce any right under the Agreement shall not be construed to be a waiver of that right, or of damages caused thereby, or of any other rights under the Agreement.
12. MISCELLANEOUS. In case any provision of the Agreement shall be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together constitute one instrument. Counterparts of the Agreement that are manually signed and delivered by facsimile or electronic transmission shall be deemed to constitute signed original counterparts hereof and shall bind the parties signing and delivering in such manner. The original of this document, including the signature page (bearing original signatures or facsimiles or electronic transmissions thereof), may be scanned and stored in a computer database or similar device, and any printout or other output readable by sight, the reproduction of which is shown to accurately reproduce the original of this document, may be used for any purpose just as if it were the original, including proof of the content of the original writing. Contractor shall not make any reference to College in promotional statements or marketing without College’s prior written consent. If the furnishing of any labor or materials hereunder could give rise to any liens or lien rights against any premises of College, Contractor agrees to furnish to College lien waivers in form and substance satisfactory to College and in compliance with applicable statutes. A party shall not be liable to the other for any failure to perform or delayed performance of its obligations described herein if, such failure or delay is caused by an act of God (including, but not limited to, weather, fire, or flood), an act of war, an act or threat of terrorism, a riot, pandemic, or any similar event outside the reasonable control of such party (each, a “**Force Majeure Event**”). The obligations set forth in the sections entitled “Work Product”, “Confidentiality”, “Termination”, “Indemnification”, “Applicable Law”, “Miscellaneous”, “FERPA”, “Information Security”, and “Goods and Services Procured with Federally Sourced Funds” shall survive any termination or expiration of this Agreement.
13. NOTICES.All notices, consents, and other communications hereunder shall be in writing and personally delivered or sent by reputable commercial overnight delivery service or deposited with the U.S. Postal Service mailed first class, registered or certified mail, postage prepaid, to the addressees set forth in Section 4 of the PSA. Notices shall be deemed given upon the earliest to occur of (a) receipt by the party to whom such notice is directed; (b) on the first business day following the day the same is deposited with the courier if sent by commercial overnight delivery service; or (c) the fifth business day following deposit thereof with the U.S. Postal Service. Each party, by notice duly given, may specify a different notice address.
14. SUPPLIES. This Section is applicable if the Contractor will provide College supplies or materials: In addition to and without prejudice to all other warranties, both express and implied, Contractor warrants that all materials and supplies furnished by Contractor hereunder will be (a) free from defects in workmanship and materials; (b) to the extent such materials and supplies are not furnished pursuant to detailed designs provided by College, free from defects in design; (c) suitable for the purposes intended; and (d) in compliance with all requirements hereunder, all applicable laws, and all applicable drawings, specifications, samples, representations, or other descriptions. All warranties, both express and implied, including the above, shall constitute conditions, shall survive inspection, acceptance, and payment and shall inure to College. All such materials and/or supplies shall be subject to inspection by College at such times and places as College may require. Contractor shall provide reasonable assistance with such inspections. Without limitation of other rights, in case any supplies or materials are not as warranted, College shall have the right to (i) reject same and rescind the Agreement as to the rejected supplies or materials, (ii) reject same and require the correction thereof by Contractor, or (iii) accept some and deduct from the amount due Contractor the cost of remedying such defects. If College elects the foregoing clause (ii), Contractor shall at no expense to College promptly replace same with supplies or materials acceptable to College in accordance with College’s instructions. If Contractor fails to replace or correct promptly such supplies or materials, College may (A) by contract or otherwise, replace or correct such supplies or materials and charge Contractor the cost occasioned College thereby or (B) terminate this Agreement. No inspection, approval (including design approval), or acceptance by College shall relieve Contractor from responsibility for defects or other failure to meet the requirements of this Agreement or from any warranties. Rights hereunder are cumulative and in addition to any other rights or remedies provided in this Agreement or in law or equity.
15. FERPA. Contractor has been engaged to perform an institutional service for which the College would otherwise use College employees. This Section is applicable (and is in addition to the Section entitled “Confidentiality” above) if, during the term of this Agreement, Contractor (or any Contractor Personnel) receives from College, is deemed to maintain on behalf of College, or has been provided any access by College to, personally identifiable information of any College current or former student. Contractor shall, and shall cause all Contractor Personnel to, comply with the Family Educational Rights and Privacy Act and the regulations promulgated thereunder (together, “**FERPA**”) to the same extent as College. Contractor shall, and shall cause all Contractor Personnel to, only share such information internally or with College for legitimate educational purposes and comply with all applicable FERPA requirements governing the use and re-disclosure of Education Records, including, without limitation, those set forth in 34 CFR §99.33(a). College shall have direct control over Contractor’s maintenance and use of all of such student information and Education Records (as defined in FERPA). College appoints Contractor as its agent for the sole purpose of receiving such student information in connection with providing services to College. Contractor shall have no authority to act as College’s agent in any other context and shall not be authorized to bind College to act on behalf of, or execute, acknowledge, or deliver in the name or on behalf of College any contract, agreement, certificate or any other document whatsoever.
16. INFORMATION SECURITY. This Section is applicable (in addition to the Sections entitled “Confidentiality” and “FERPA”) if Contractor receives from College, is deemed to maintain on behalf of College, or has been provided access to any PII (as defined below).
17. For the purpose of this Section the following terms will have the following meanings:
18. “**PII**” includes any and all personally identifiable information of, concerning, or relating to any current or former applicant, student, employee, alumni, customer, donor, research subject or other individual or person associated with the College which is subject to any of the Security and Privacy Laws and Standards, including, without limitation, Cardholder Data (as defined by the PCI Security Counsel), which Contractor or any Contractor Personnel creates, obtains, receives, learns, stores, maintains, transmits or has access to in connection with the Services provided to College.
19. “**Security and Privacy Laws and Standards**” includes all applicable federal, state and other laws, regulations, and rules and industry standards applicable to PII, including, without limitation, to the same extent applicable to College with respect to the PII, FERPA, the Health Insurance Portability and Accountability Act and the regulations and rules promulgated thereunder, the Gramm-Leach-Bliley Act and the regulations and rules promulgated thereunder, the Fair and Accurate Credit Transactions Act of 2003, and the regulations, rules, and guidelines thereunder, including without limitation, the Identity Theft Red Flags Final Joint Rules and Guidelines, the General Data Protection Regulations (**GDPR**), all other applicable federal and state information security, confidentiality, privacy, and integrity laws, regulations, and rules, including, without limitation, those of Massachusetts, and the Payment Card Industry Security Standards (**PCI Security Standards**), including without limitation, the Data Security Standard, the Payment Application Data Security Standard and the PIN Transaction Security requirements, in each case as the same may be amended, revised, supplemented or replaced from time to time following the date hereof.
20. Contractor shall comply with all Security and Privacy Laws and Standards to at least the same extent that College is or would be required to comply with such Security and Privacy Laws and Standards.
21. Contractor shall not use, disclose, provide access to, maintain or transfer PII for any purpose whatsoever other than as necessary for the proper performance of its Services hereunder in accordance with applicable Security and Privacy Laws and Standards, except (i) with the prior written consent of College, or (ii) to the extent required by law; provided that Contractor shall notify College of such requirement promptly in writing (unless prohibited by law) and shall cooperate reasonably with College, at College’s expense, to obtain a protective or similar order. Contractor shall not assign, sell, or resell PII in any manner without College’s express prior written approval. PII may only be accessed or used by, or shared with, Contractor Personnel who have a specific need for access to the PII for the purpose of the proper performance of the Services to the College.
22. Contractor shall maintain a formal documented data security, data processing and privacy program in compliance with all Security and Privacy Laws and Standards, designed to ensure the security, integrity, and privacy of PII, to protect against threats or hazards to PII and to prevent unauthorized access to or disclosure of PII. This program shall include administrative, physical, and technical standards that are no less rigorous than the standards by which Contractor protects its own confidential information or, if greater, as are required by law, including but not limited to GDPR and 201 CMR 17.00. Without limiting the foregoing, Contractor shall:
    1. Store and process all PII within the United States;
    2. Encrypt all PII at rest or when transmitted or processed via the Internet or any other public network or wirelessly;
    3. Ensure that to the extent that PII resides on systems and other storage locations, it does so only for the express purpose of providing Services to College;
    4. Ensure that access to server computers hosting or processing any PII shall not be publicly available and controls are in place to ensure the security, confidentiality, privacy and integrity of PII and that such PII is physically or logically segregated within Contractor’s or Contractor Personnel’s internal data network;
    5. Ensure that no PII is stored or processed in any (A) unencrypted portable computing device; and (B) external unencrypted portable storage media (e.g., flash drives, DVDs, or backup tapes);
    6. Use measures to protect the privacy, confidentiality, security and integrity of paper or other physical records containing PII while such records are being stored, used or transmitted including, but not limited to, securely locked storage; and
    7. Maintain adequate security and control of any and all IDs, passwords, or any other codes.
23. Contractor agrees that Contractor is fully responsible for the privacy, confidentiality, security, and integrity of PII accessed in any manner by Contractor or any Contractor Personnel. Contractor shall require Contractor Personnel to comply with the provisions of this Section, including, without limitation, obtaining a written agreement of any subcontractor or sub-processor as required under “Assignment” above. Contractor represents, warrants, and covenants that it is and shall remain, and it shall cause all Contractor Personnel to remain, in compliance with all Security and Privacy Laws and Standards applicable to PII, including without limitation, implementing, maintaining, and regularly testing administrative, technical, and physical safeguards for the protection of the confidentiality, security, integrity and privacy of PII and providing appropriate training.
24. Incidents. Contractor shall promptly notify College in writing, but in no event more than two (2) calendar days (or any shorter time frame required by applicable law or Contractor’s internal policies), after Contractor becomes aware of any security breach or incident that creates a substantial risk of unauthorized access to, or acquisition, use or other compromise of PII or Confidential Information or other harm to College or any person whose PII or Confidential Information was involved in such incident. Contractor shall be deemed to be aware of any such event as of the first day on which such security breach, security incident, compromise or unauthorized access of PII or Confidential Information is known or reasonably should have been known by Contractor or any Contractor Personnel. Contractor shall identify each individual whose unencrypted PII or Confidential Information has been, or is reasonably believed to have been, accessed, acquired, or disclosed during such event. Contractor shall at its own expense take (i) prompt corrective action to remedy any such security breach, security incident, or compromise or unauthorized access, (ii) mitigate and remediate, to the extent practicable, any harmful effect thereof and provide College written notice of such actions, (iii) provide reasonable assistance to the College, or as the College may request, for the College’s steps to mitigate or remediate such event, (iv) consult in good faith with the College regarding the root cause analysis and any mitigation and remediation efforts, and (v) notify the College whether such incident creates a substantial risk of unauthorized acquisition or use of PII or Confidential Information or other harm to any person whose PII or Confidential Information is involved in the incident. Notwithstanding any other provision of this Agreement, Contractor agrees that Contractor shall have responsibility for all reasonable and documented costs and expenses incurred by College in connection with any response to any such security breach, security incident or compromise or unauthorized access, including, without limitation, (A) costs of any required forensic investigation to determine the cause of the breach, (B) if and as required by applicable Security and Privacy Laws and Standards, providing notification of the security breach to applicable government agencies, relevant industry self-regulatory agencies, the media, and individuals whose PII may have been accessed or acquired, (C) providing credit monitoring service to individuals whose PII may have been accessed or acquired for a period of one year after the date on which such individuals were notified of the unauthorized access or acquisition for such individuals who elected such credit monitoring service, and (D) operating a call center to respond to questions from individuals whose PII may have been accessed or acquired for a period of one year after the date on which such individuals were notified of the unauthorized access or acquisition.
25. Reporting and Auditing. Contractor shall provide to the College annually (i) an executive summary of Contractor’s penetration test of Contractor’s services, (ii) the results of a SSAE 18 or SOC 1 (Type I or Type II) or SOC 2 (Type I or Type II), HECVAT, or other third party security audit reasonably acceptable to College, of its systems and facilities, and (iii) the results of a vulnerability assessment of Contractor’s service, which shall cover all areas regarding the privacy, confidentiality, security, and integrity of stored PII including, but not limited to, policies and procedures, electronic and physical security, separation of duties, and employee training as required by applicable Security and Privacy Laws and Standards. If any such test or audit reveals any material vulnerability, Contractor will take reasonable and prompt action at its own expense to address such vulnerability. In addition, if College believes that a security breach or compromise of PII has occurred, College may require Contractor to have a third party auditor that is approved by College conduct a security audit of Contractor’s systems and facilities and provide College a report. In the event that Contractor fails to initiate an audit within ten (10) business days of such request, College may obtain such an audit at Contractor’s expense. Contractor agrees to promptly provide College with documentation evidencing compliance with PCI Security Standards when requested by College from time to time.
26. Within ten (10) calendar days of the termination, expiration or conclusion of the Agreement for any reason, or such earlier time (i) upon the College’s request or (ii) that the PII is no longer needed for the performance of Services to the College, Contractor shall return or, at the option of College, destroy all PII received from College, or created and received by Contractor in any manner on behalf of College in connection with the Agreement, that Contractor or Contractor Personnel still maintains in any form, and shall retain no copies whatsoever of such PII except as required by law. Contractor shall sanitize all PII from its servers using at least the National Institute of Standards and Technology (NIST) standard for data sanitization or other methodology by which the media on which the PII is stored or recorded has been shredded, destroyed, cleared, or purged, as appropriate, such that it cannot be read, retrieved, or otherwise reconstructed. Contractor shall certify in writing to College that Contractor has been completed such return and/or destruction in accordance with the terms hereof within thirty (30) calendar days after the termination, expiration or conclusion of the Agreement or College request.
27. GOODS AND SERVICES PROCURED WITH FEDERALLY SOURCED FUNDS. The Contractor represents, warrants, and agrees as follows:
28. All goods and services provided by Contractor hereunder shall be produced, sold, delivered and furnished in compliance with all laws and regulations applicable to procurement under loans, grants, or other financial support of the United States government agency or agencies which have provided that support ("**Funding Agency**"). This includes, but is not limited to, the Procurement Standards set forth in Subpart C of OMB Circular A-110 and the applicable provisions of the Federal Acquisition Regulation, together with any additions or supplements thereto promulgated by the Funding Agency ("**FAR**").
29. Contractor shall provide access to records regarding all goods and services hereunder to the Funding Agency, the Controller General of the United States, and any duly-authorized representatives thereof.
30. Contractor shall comply with E.O. 11246, "Equal Employment Opportunity", as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity, and as supplemented by regulations at 41 CFR, part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
31. All rights of the federal or state government and College to any resulting inventions are reserved to them in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements" and any applicable implementing regulations.
32. Contractor, if engaged hereby for an amount in excess of $100,000, shall comply with all applicable standards, orders and regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations must be reported to College and/or federal agencies as required under OMB Circular A-110.
33. Contractor, if engaged hereby for an amount in excess of $100,000, shall comply with the requirements of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), by providing to College all certifications required thereunder regarding the disclosure of the use of funds for lobbying.
34. Contractor will assure that any subcontract hereunder includes clauses (b) through (g) of this Section, where such inclusion is required under OMB Circular A-110.
35. Contractor certifies that pursuant to Executive Order 12549 and implementing rule, Contractor presently is not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.