

## CONSULTING SERVICES AGREEMENT

This Consulting Services Agreement (this “Agreement”) is made and entered into as of the effective date set forth in *Exhibit A* attached to this Agreement (the “Effective Date”) by and between Loyola University of Chicago (“Loyola”) and the consultant identified in *Exhibit A* (the “Consultant”). Loyola and Consultant agree as follows, and to the terms and conditions set forth herein:

**1. Services.** Consultant will provide Loyola with the services set forth in *Exhibit A*. Consultant’s services set forth in *Exhibit A* and Consultant’s services described elsewhere in this Agreement are collectively referred to in this Agreement and as the “Services”. Consultant will furnish all work product of the Services.

**2. Charges and Payments.** Loyola will pay Consultant for properly performed Services in accordance with the charges set forth in *Exhibit A* (the “Charges”). Consultant will bear its own expenses, unless otherwise agreed by Loyola in writing. Following performance of the Services, Consultant will submit invoices to Loyola for Charges, and include such itemization, detail and substantiation as Loyola may require. Invoices must be received by Loyola at least 30 days prior to any due date. Consultant will not include Sales and Use Taxes in Charges (contact Loyola for current exemption number). Payments by Loyola pursuant to this Agreement may be made via check, wire transfer or ACH, as determined by Loyola in its sole discretion. For any wire transfer or ACH, upon Loyola’s request, Consultant will provide Loyola with complete and accurate wire transfer or ACH instructions. As of the Effective Date, Consultant has provided to Loyola a complete and accurate Internal Revenue Service Form W-9. Consultant’s acceptance of payment will release all of Consultant’s claims against Loyola and all liability of Loyola to Consultant for every act, error and omission of Loyola and its affiliates and each of their respective employees, officers, trustees or agents relating to or arising out of this Agreement.

**3. Relationship of the Parties.** Consultant is an independent contractor, and fully and solely responsible for (a) the performance and supervision of the Services; (b) its employees, officers, directors, suppliers, agents, subcontractors, affiliates, parents and subsidiaries and any other person or entity for whose acts, errors or omissions Consultant may be liable (who together with the Consultant are collectively referred to as “Consultant Personnel”); (c) acts, errors and omissions of Consultant Personnel; (d) compliance by Consultant Personnel with this Agreement and applicable laws, rules, regulations, legal requirements, policies, protocols, procedures and standards governing or relating to this Agreement or the Services or the duties, obligations or business practices of Consultant (collectively, “Applicable Laws”) and with all applicable policies, rules, regulations, systems, processes and programs of Loyola that Loyola requires non-employee contractors, guests and visitors to any Loyola campuses, properties, locations, facilities and premises to comply with, including without limitation Loyola’s relevant information technology policies, alcohol and other drugs policy, non-smoking policy and parking services policy; and (e) payment of all Consultant Personnel compensation, wages, fees, benefits, contributions, unemployment or workers’ compensation insurance, employment or other federal, state, and local taxes. Nothing herein will be construed to create a relationship of employer-employee, principal-agent, partners, joint employers or joint venturers between Loyola and any Consultant Personnel. No Consultant Personnel is an employee, joint employee or agent or otherwise under the control or direction of Loyola. Consultant will in no way indicate, suggest, state or otherwise imply that any Consultant Personnel is an employee, joint employee or agent or otherwise under the control or direction of Loyola. Loyola has no authority and will not participate in hiring, firing, promotion, demotion or disciplinary or other employment decisions with respect to any Consultant Personnel. The parties have no authority or right whatsoever to represent or act for the other, and will not attempt to enter into any contract, agreement, or other commitment, or incur any debt or obligation, of any nature, in the name of or on behalf of the other. Consultant and Loyola will each designate a representative who will have sufficient authority to grant or communicate the granting of all necessary approvals. Consultant will identify in writing the persons who will perform the Services. In the event Consultant reassigns, removes or terminates such persons, Consultant will use all necessary resources to provide a qualified replacement as soon as possible, at no additional cost to Loyola. Charges will be equitably adjusted so that the total cost to Loyola is no greater than it would have been had there been no change in personnel. Consultant, at Consultant’s expense, agrees to conduct effective and comprehensive background checks on any Consultant Personnel employed in, providing services in connection with or otherwise involved with the Services. All Consultant Personnel employed in, providing services in connection with or otherwise involved with the Services are strictly prohibited from fraternizing, dating, becoming romantically involved with, having sexual relations with or otherwise entering into social relationships, whether in person, via social media, by cell phone or in any other medium or method of communication or interaction, with Loyola students.

**4. Representations and Warranties.** Consultant represents and warrants to Loyola, intending that Loyola rely thereon in entering into this Agreement, that: (a) Consultant is authorized to enter into this Agreement; (b) all Consultant Personnel have the training, knowledge, qualifications, capability and experience, and possesses any applicable licenses, registrations, permits or other approvals needed to perform the Services and have executed present assignments to Consultant to effectuate the intent of Section 5.1; (c) Services will be performed in a professional manner, be of good quality, free from defects or faults, accurate and conform to the requirements of the project, this Agreement, all Applicable Laws and all applicable license agreements; (d) all Services will be performed using only sound, professional practices and the highest degree of care; (e) Consultant will promptly re-perform, without charge, any Services that are not to Loyola's satisfaction; and (f) all obligations owed to Consultant Personnel or other third parties with respect to the Services are or will be fully satisfied by Consultant, so that Loyola will not have any obligations with respect thereto. Notwithstanding anything to the contrary herein, Loyola is not obligated to use the Services of Consultant, makes no promise of any demand therefor, EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, STATUTORY, IMPLIED OR OTHERWISE, INCLUDING WITHOUT LIMITATION, INCLUDING AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED TO CONSULTANT.

## **5. Intellectual Property.**

**5.1. Background and Foreground Rights.** All of Consultant's techniques, know-how, methods, inventions, processes, analytical methods, procedures and techniques, and all intellectual property rights related thereto, which are not in the public domain or licensed from any third party, which existed and were owned by Consultant prior to the Effective Date, and which are created by Consultant outside the scope of this Agreement are and will remain the property of Consultant (collectively the "Consultant Materials"). Consultant will not use confidential information of third parties in performing the Services unless Loyola agrees otherwise in writing. For good and valuable consideration the receipt and sufficiency of which are hereby agreed, Consultant agrees to assign and hereby does assign to Loyola and its successors and assigns (collectively, "Assignee") all right, title and interest in law and equity, worldwide, in Deliverables conceived, created or made in the performance of this Agreement or arising out of the knowledge of or relating to Loyola's Confidential Information (as defined below), and all intellectual and tangible property rights corresponding thereto, to claim priority benefit of any or all applications and registrations and/or any other work product based on or derived therefrom, and to recover all damages and other remedies and relief therefrom, including without limitation resulting from any past, present or future infringement or misappropriation thereof (collectively, "IP"). IP are "works made for hire" and Assignee is entitled to the longer term of protection offered thereon or provided by the assignment herein. Consultant Personnel will execute and/or provide such additional documentation, as Loyola may request, and give assistance to perfect, evidence and enforce Loyola's rights and to preserve, file, prosecute, register, enforce, maintain, extend, renew and/or defend the IP. To the extent any Consultant Materials are incorporated in the Deliverables when provided to Loyola, Consultant hereby grants to Loyola a perpetual, fully paid-up and royalty free, nonexclusive, enterprise wide license, to make, have made, import, use, modify, copy, update and maintain any such Consultant Materials solely in connection with exercising Loyola's rights regarding the Deliverables. Such licenses are deemed to be licenses of rights to intellectual property as defined in United States Bankruptcy Code §365(n). The licenses set forth in this Section 5.1 will continue after expiration or termination of this Agreement. Other than the Charges, Consultant will have no right to any royalties or other fees. Consultant will not represent that either the Services or Consultant has been approved or endorsed by Loyola, or publicly refer to this Agreement, without prior written consent in each instance of Loyola. Consultant will not practice the IP except as provided for hereunder and will maintain it at all times as Loyola's Confidential Information. Consultant acquires no right, title, or interest in or to any tangible or intangible property rights of Loyola, including without limitation any information, documents or materials provided to Consultant ("Loyola Materials"), nothing to the contrary shall be implied, and all such rights, titles and interests are expressly reserved by Loyola. In accordance with 18 U.S.C. § 1833(b), if Consultant is an individual person: (a) Consultant shall not be held criminally or civilly liable under any Federal or State Applicable Law relating to trade secrets for the disclosure of a trade secret that: (1) is made: (A) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (B) solely for the purpose of reporting or investigating a suspected violation of Applicable Law; or (2) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (b) if Consultant files a lawsuit for retaliation by Loyola for reporting a suspected violation of Applicable Law, Consultant may disclose the trade secret to Consultant's attorney and use the trade secret information in the court proceeding, so long as Consultant files any document containing the trade secret under seal and does not disclose the trade secret, except pursuant to court order.

**5.2. Loyola Marks.** Consultant recognizes Loyola's ownership and title to Loyola's names, logos, trademarks, service marks and trade names whether or not registered (collectively, the "Loyola Marks"). Consultant agrees to not act to impair the rights of Loyola in and to the Loyola Marks. Consultant has no license or other rights to print, display or

otherwise use, and will not acquire any rights in, the Loyola Marks. Any unauthorized use or modification to the Loyola Marks is expressly prohibited. Nothing in this Agreement will confer upon Consultant any right of ownership in the Loyola Marks, and Consultant agrees to not represent or use the Loyola Marks in a manner that suggests that such rights are conferred. Consultant agrees that it will not refer to Loyola or any Loyola Marks in any press release, advertisements, promotional materials or other materials distributed to prospective customers without the prior written consent of Loyola. This Section 5.2 will survive the expiration or termination of this Agreement.

**6. Insurance.** Consultant will purchase and maintain at all times during the term of this Agreement at its own expense, all insurance required by Loyola to protect Loyola and Consultant from claims that are related to or arise out of or result from the actual or alleged acts, errors or omissions of Consultant or any Consultant Personnel, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Consultant's insurance will include the following: (a) worker's compensation insurance in accordance with Applicable Laws and limits, and employer's liability coverage of at least \$1,000,000 per each accident for bodily injury by accident, \$1,000,000 per employee for bodily injury by disease and \$1,000,000 in the aggregate, and including a waiver of subrogation in favor of Loyola; (b) commercial general liability insurance, including coverage for bodily injury and property damage, contractual liability, personal and advertising injury and products/completed operations, with a combined single limit of not less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate, or up to the policy limit, whichever is greater; Loyola and each of its trustees, directors, officers, employees, agents, subsidiaries and affiliates will be named as additional insureds on a primary and non-contributory basis; (c) automobile liability insurance covering all vehicles used in connection with this Agreement, whether owned, non-owned or hired, with a minimum combined single limit of not less than \$1,000,000 per occurrence for bodily injury and property damage, and including a waiver of subrogation in favor of Loyola; (d) errors and omissions professional liability insurance with a minimum limit of \$3,000,000 per claim for any and all claims arising out of acts, errors or omissions committed or attempted in the performance of or failure to perform professional services by a person or entity for whose acts Consultant Personnel is legally liable; (e) umbrella/excess liability insurance in the minimum amount of \$5,000,000 per occurrence and \$5,000,000 in the aggregate in excess of primary general liability, auto liability and employer's liability insurance policies, on a following-form basis, including as to additional insureds; and (f) network liability, third-party security and privacy liability insurance with minimum limits of \$5,000,000 per each claim and \$5,000,000 in the aggregate, or up to the policy limit, whichever is greater, and including but not limited to coverage for breach of duty, acts, errors or omissions resulting in failure to prevent or hinder unauthorized access to or unauthorized use of a computer network controlled by Consultant Personnel or by anyone for whose acts Consultant Personnel may be liable, unauthorized dissemination or use of data, loss of personally identifiable information belonging to Loyola or its employees, privacy regulatory actions and privacy expenses including notification and credit monitoring expenses. All insurance will (y) be written with licensed insurers having a current minimum Best rating of A-/VII and (z) be primary with respect to any other insurance or self-insurance afforded to Loyola. The insurance policies required under this section shall require the insurer to give Loyola at least thirty days' prior written notice of cancellation, material change, or non-renewal of the required policy. Consultant will renew or maintain claims-made coverages for a minimum period of five years after completion of Services or provide an extended reporting endorsement (tail coverage). All coverages will be provided on an occurrence basis except for statutory workers' compensation and professional liability insurance, which may be provided on a claims-made basis. As of the Effective Date, Consultant has provided Loyola with current certificates of insurance, including copies of notice and cancellation and additional insured endorsements, evidencing the foregoing insurance coverages, and Consultant will provide Loyola with evidence of renewal of such insurance promptly upon such renewals. The issuance or maintenance of insurance of any type by Consultant will not be deemed or construed to release, limit, waive or discharge Consultant from any of the indemnities, obligations, liabilities or risks imposed by this Agreement or Applicable Laws. Consultant will require its contracted third-party vendors to also maintain adequate levels of insurance commensurate with the products or services such third-party vendors will be providing. Consultant will maintain a file of any such third-party vendors insurance certificates, evidencing compliance with these requirements.

**7. Indemnification.** Consultant hereby releases and agrees to indemnify, defend and hold harmless Loyola and Loyola's subsidiaries and affiliates and each of their respective employees, officers, directors, agents, representatives, volunteers, contractors and trustees and each of their respective successors and assigns from and against any and all claims, liabilities, obligations, damages, costs, expenses, fines, actions, suits, demands and causes of action (including without limitation attorneys' fees) of every kind and character (collectively the "Claims"), related to or arising out of: (a) the Services, including any claim of infringement, misappropriation or violation of any patent, copyright or other intellectual property or proprietary right; (b) the performance of this Agreement by Consultant Personnel; or (c) any alleged or actual act, error or omission of Consultant Personnel. In the event of (a) described above, Consultant will also, at its expense, obtain for Loyola

the right to continue using the Services, or take all necessary actions so that they and their use becomes lawful while preserving the same functionality and features. This Section 7 will survive the expiration or termination of this Agreement.

**8. Term and Termination.** This Agreement will remain in effect through (a) Consultant's completion of the Services in a manner satisfactory to Loyola or (b) the termination of this Agreement as provided below (the "Term"). At the end of the Term, Consultant will provide all Deliverables, return all Loyola Materials and Confidential Information and not use either of the foregoing or the IP. Loyola may terminate this Agreement with or without cause at any time by providing Consultant with written notice. Consultant may terminate this Agreement in the event of a substantive breach of any material obligation by Loyola which has not been remedied or cured within 30 days of Loyola's receipt of written notice from Consultant of such condition. If this Agreement is terminated due to Consultant's breach, Loyola will have no further obligation to Consultant and will not pay Charges outstanding at the time of the termination, and Loyola may also seek such remedies as are available at law or in equity.

**9. Assignment.** This Agreement will be binding upon the parties and their respective successors and assigns and inures to the benefit of the parties and their respective representatives permitted successors and assigns. This Agreement may not be assigned, transferred, delegated or subcontracted, in whole or in part, by Consultant without Loyola's prior written consent. Anything in contravention of this Section 9 (including without limitation any attempt by Consultant to assign, transfer, delegate or subcontract this Agreement, in whole or in part, without Loyola's prior written consent) is null and void

**10. Waiver.** Any waiver, consent, delay or failure to enforce any provision of this Agreement is effective only if it is signed and in writing, and only in the specific instance and for the specific purpose for which it is given, and it will not constitute a precedent or bind either party to waive, consent, delay, or forego enforcement of any subsequent breach of the same or any other provision of this Agreement.

**11. Confidentiality, Records and Audit.** Any information or documents from, concerning or by Loyola students are "Educational Records". Any Educational Records, Loyola Materials, personally identifiable information about any person, information protected by any Applicable Laws, rules, regulations or industry standards, or any other information or documents concerning Loyola, its operations, finances, students, employees or supporters which Consultant receives, has access to, or possesses by virtue of performance of this Agreement, are "Confidential Information." On behalf of itself and Consultant Personnel, Consultant agrees, warrants and represents to Loyola that: (a) they will comply with, and will not disclose, redisclose, make available, distribute, or otherwise allow access to any Educational Records in violation of, the Family Educational Rights and Privacy Act of 1974, as amended from time to time, or any Confidential Information in violation of any Applicable Laws, rules, regulations or industry standards (including without limitation the Health Insurance Portability and Accountability Act of 1996, as amended from time to time); (b) any Confidential Information will be maintained in strict confidence and be used only in connection with this Agreement, and subject to further obligations required by any third party, and not for any other purpose, nor will it be disclosed, transmitted, distributed, reverse engineered or otherwise be made accessible or available to any third party, without prior written consent of Loyola; (c) they will maintain records of any access, use or disclosures of Confidential Information and provide a copy of such record to Loyola upon request; (d) they will promptly notify and allow Loyola a reasonable amount of time to take action before responding to a subpoena or court order for Educational Records or any other Confidential Information; (e) they will promptly report to Loyola any access, use or disclosure of Confidential Information not permitted under this Agreement; (f) upon termination or expiration of this Agreement, or upon request of Loyola, they will each cease using and return to Loyola (or at Loyola's request, destroy) all Confidential Information in their control or possession, and any other property belonging to and/or received from Loyola, and certify that all such copies and property have been returned or destroyed; (g) they will follow Loyola policies concerning Confidential Information, will secure and use appropriate safeguards to prevent any unauthorized access to, use or disclosure of Confidential Information and will correct any feature or vulnerability in their systems that has or could contribute to or allow any unauthorized access to or use of their systems, or disclosure of any data or information accessible from or contained therein; and (h) Consultant will be responsible for providing, at its expense, credit report monitoring or other reasonable protections for individuals affected by unauthorized access to, use or disclosure of their personal information attributable to an act, error or omission of Consultant Personnel. Consultant will maintain books, records and other data (whether paper, electronic or otherwise) in accordance with generally accepted accounting principles, and concerning use and disclosure of Confidential Information, to demonstrate compliance with this Agreement (the "Books"). Consultant will preserve and make Books available for audit, inspection or reproduction by Loyola, any governmental agency or other investigative body, in such format as may be reasonably requested, during the Term and for four years thereafter, or until all questions or exceptions (including Charges, Services, disclosures, litigation or claims) have been resolved to the satisfaction of Loyola, or as required by Applicable Laws, whichever is longer. If such

audit discloses misstated or miscalculated Charges, Consultant will immediately refund any excess payment it has received and will reimburse reasonable expenses incurred by Loyola in conducting the audit. Consultant would not be able to fully compensate Loyola on a monetary basis for damages if Consultant's Personnel breached or threatened to breach this Agreement. Accordingly, Consultant agrees that Loyola shall be entitled, in addition to all other remedies, to obtain injunctive relief to enforce this Agreement and that such relief may be granted without the necessity of proving actual monetary damages in connection therewith. This Section 11 will survive the expiration or termination of the Agreement.

**12. Severability.** If any provision of this Agreement is determined to be void, invalid or unenforceable by a court of competent jurisdiction, such provision will be severed and will be deemed null and void, but will in no way affect the remaining terms and conditions of this Agreement. The invalid provision will be construed and deemed modified to the least degree necessary to remedy the invalidity; provided however, if Section 5 is determined to be invalid or unenforceable, then Section 5 will be construed, to the extent legally permissible, to grant Loyola an exclusive perpetual license of the broadest scope consistent with Section 5.1.

**13. Nondiscrimination.** Consultant will not, in connection with any aspect of its performance of this Agreement, discriminate against any person by reason of race, color, religion, national or ethnic origin, ancestry, sex, age, disability, marital status, parental status, sexual orientation, gender identity, military/veteran status or any other factor protected by any Applicable Law.

**14. Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Illinois, without regard to any choice of law rules thereunder. The parties submit to the jurisdiction of any court (state or federal) sitting in the County of Cook, State of Illinois for the purpose of any lawsuit concerning the construction or enforcement of this Agreement and further agree that they will not seek to have the lawsuit removed or transferred to any other forum.

**15. Notice.** Any related to this Agreement will be in writing and will be delivered by messenger or overnight courier service, sent by email or sent by certified mail, return receipt requested, to the respective party as set forth in ***Exhibit A***, or at such other address as either party may designate from time to time by written notice to the other party. All notices will be deemed effective upon delivery.

**16. Miscellaneous.** This Agreement and its attachments constitute the entire agreement between the parties with respect to the subject matter hereof, and supersede all prior or contemporaneous oral or written agreements, negotiations, offers, proposals or other communications or representations relating to the term or subject matter hereof. Loyola will not be bound by any other terms and conditions set forth in any Consultant website or document, and any other such terms and conditions will be null, void and without effect. No change, supplement or amendment to this Agreement will be effective, unless it is in writing and signed by both parties. In the event of any inconsistency between the terms of this Agreement and any attachment, the terms in this Agreement will control. The section headings are used in this Agreement solely for convenience and do not constitute substantive matter to be considered in construing its terms. All performance undertaken and payments made prior to the Effective Date will be deemed to have been undertaken or made in anticipation of, and subject to, the provisions of this Agreement. Any provisions that by their nature would require performance after termination of this Agreement, including without limitation any confidentiality, indemnity, assignment, further assurances or perpetual license terms, will survive the termination, expiration or completion of this Agreement.

*[Remainder of page intentionally left blank; signature page follows.]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

LOYOLA UNIVERSITY OF CHICAGO

CONSULTANT

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

*[Signature page of Consulting Services Agreement.]*

**Exhibit A**

**Effective Date:** \_\_\_\_\_

**Consultant:**

Name: \_\_\_\_\_ Address: \_\_\_\_\_  
Attn: \_\_\_\_\_ Title: \_\_\_\_\_ Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

**Services:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Deliverables:**

(the "Deliverables"). As used in this Agreement, the term "Services" includes any Deliverables. The Deliverables will include and will conform to any specifications attached to this Agreement and any other specifications developed by Consultant and Loyola (collectively, the "Specifications").

**Additional Attachments:**

- Information Technology Services Consulting Attachment
- Specifications
- Other (please list): \_\_\_\_\_

**Services Location(s):**

- Location provided by Consultant
- Lake Shore Campus ("LSC"), 1032 W. Sheridan Road, Chicago, Illinois 60626
- Water Tower Campus ("WTC"), 820 N. Michigan Ave., Chicago, Illinois 60611
- Health Sciences Campus ("HSC"), 2160 S. First Ave., Maywood, Illinois 60153
- Other (please specify): \_\_\_\_\_

**Time Schedule/Term of Agreement:**

Consultant will perform the Services:

- As needed (this means Services to be provided upon request of and as authorized by Loyola)
- Other (please describe): \_\_\_\_\_

Consultant will complete Services by (list items such as milestone dates, acceptance testing, deadlines, required completion date, turnaround time, response time, etc.): \_\_\_\_\_

**Charges:**

Loyola will pay Consultant for the Services as follows (check only those that apply):

- Lump Sum Charges of \$ \_\_\_\_\_
- Charges of \$ \_\_\_\_\_ per \_\_\_\_\_
- Charges of \$ \_\_\_\_\_

Charges will not exceed \$ \_\_\_\_\_ without Loyola's prior written consent.

Payment due date(s): \_\_\_\_\_

**Loyola's Project Representative:**

Name: \_\_\_\_\_ Title & Dept.: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

LSC, 1032 W. Sheridan Road, Chicago, IL 60626 Building: \_\_\_\_\_ Room #: \_\_\_\_\_

WTC, 820 N. Michigan Ave., Chicago, IL 60611 Building: \_\_\_\_\_ Room #: \_\_\_\_\_

HSC, 2160 S. First Ave., Maywood, IL 60153 Building: \_\_\_\_\_ Room #: \_\_\_\_\_