

## DELAWARE STATE UNIVERSITY SERVICE PROVIDER AGREEMENT

This Service Provider Agreement (the “Agreement”) is entered into on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (“Effective Date”), by and between the **Delaware State University** (the “University”), an educational corporation of the State of Delaware with its principal place of business at 1200 N, Dupont Highway, Dover, DE 19901, and \_\_\_\_\_ (the “Service Provider”), an independent contractor, having a principal place of business at \_\_\_\_\_. The University and Service Provider are each a Party to this Agreement (“Party”) and shall collectively be known as the “Parties.”

The University and Service Provider agree as follows:

1. **Statement of Work.** Service Provider shall perform all of the services (the “Services”) and manufacture, create, and deliver to the University each of the deliverables (the “Deliverables”) set forth in the Statement of Work attached hereto as Exhibit A (the “Statement of Work”). Such Statement of Work is incorporated herein by reference and shall be subject to the terms of this Agreement. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of Exhibit A, the terms and conditions of Exhibit A shall apply. Any officer, employee, agent, or consultant of Service Provider performing work hereunder shall be bound by the applicable terms and conditions of this Agreement.

2. **Term of Agreement.** This Agreement shall remain in effect as set forth in the Statement of Work is in effect or as otherwise agreed to in writing by the Parties or until the Agreement has been terminated, whichever occurs first. Notwithstanding the foregoing, Paragraphs 4 (Confidentiality), 5 (Use of Name), 6 (Media Contact), 8 (University Property), 9 (Ownership/License of Intellectual Property), 11 (Warranty), 14 (Breach of Agreement; Termination), 15 (Indemnification), and 27 (Miscellaneous) of this Agreement shall survive any termination.

3. **Consideration and Terms of Payment.** The consideration for all Services performed by Service Provider under this Agreement and all Deliverables under this Agreement shall be paid by the University as follows:

3.1. **Fees.** See Exhibit A.

3.2. **Expenses.** Unless otherwise specified in Exhibit A, Service Provider is responsible for all out-of-pocket travel and living expenses. If expenses are reimbursable, each request for reimbursement must be itemized, accompanied by original receipts and must be pre-approved by the University.

3.3. **Frequency of Invoicing; Payment Terms.** Service Provider shall submit invoices as set forth in Exhibit A. Payment is due net forty-five (45) calendar days from the University’s receipt of Service Provider’s undisputed invoice.

3.4. **Appropriations.** The initial term and any renewal term of this Agreement are contingent upon the University’s receipt of sufficient annual appropriations and requisite authorization by the Board of Trustees. If in any year sufficient annual

appropriations and authorization are not provided, this Agreement will terminate upon delivery or written notice by the University to Service Provider. The decision of the Board of Trustees of the University as to whether sufficient appropriations are available shall be made in their discretion and shall be final and binding on Service Provider. In the event of termination due to insufficient appropriations and authorization, the University will pay Service Provider for the Services and the Deliverables ordered and accepted by the University through the date of termination and the University will have no further liability to Service Provider thereafter, provided that in no event, shall the University be obligated to pay for such Services or Deliverables in excess of the fees set forth in this Agreement or any Statement of Work.

3.5. **Changes.** The University reserves the right, by notice to Service Provider as provided herein, to make reasonable changes in the scope of Services and Deliverables required, in which event a mutually acceptable adjustment will be made to the price, time of performance, and/or other relevant provisions of the Statement of Work required to be changed thereby.

#### 4. **Confidentiality.**

4.1. Confidential Information means information marked or otherwise identified in writing by the University as proprietary or confidential or information that should in good faith be treated as proprietary or confidential given the context of the disclosure. It includes, without limitation, non-public information regarding the University's financials, investments, intellectual property, trade secrets, products, courses, courseware, features, information related to trustees, officers, faculty, employees, customers, alumni, donors, students, applicants, patients, customers, clients, contractors, agents, systems, marketing plans, promotions, business practices, and other information shared by third parties with the University or its trustees, officers, employees, students, or agents in confidence. Confidential Information does not include (i) information the recipient developed independently without use of or any reference to Confidential Information; (ii) information which the recipient knew before receiving it under the relevant agreement; or (iii) information which is or subsequently becomes publicly available or is received from another source, in both cases other than by a breach of an obligation of confidentiality or by a breach of applicable law.

4.2. Service Provider agrees to hold the University's Confidential Information in confidence. Service Provider will exercise commercially reasonable efforts to safeguard the University's Confidential Information. Such precautions will be at least as great as those that Service Provider takes to protect its own Confidential Information, but in no event less than a reasonable degree of protection. Service Provider will disclose the University's Confidential Information to its directors, officers, employees, agents, consultants, and other representatives only on a need-to-know basis and subject to the confidentiality obligations imposed herein. Use or disclosure of the University's Confidential Information shall be limited to the minimum extent necessary to achieve the specified goal. When the University's Confidential Information is no longer necessary to perform any obligation under any part of the Agreement or upon the termination of this Agreement, it will be, at the option of the University, returned to its owner or destroyed or

permanently deleted.

4.3. Service Provider shall not use the University's Confidential Information except in furtherance of this business relationship or disclose the University's Confidential Information except: (i) to obtain advice from legal advisors or financial consultants, or (ii) if such disclosure is directly required pursuant to a valid and existing order of a court or other governmental body or agency, in which case Service Provider will give the University prompt notice of the requirement so that the disclosure can be contested or limited.

4.4. Without limiting the foregoing, Service Provider acknowledges that the University, as an educational institution, is subject to legal obligations with respect to the privacy of student information. Notwithstanding the provisions set forth in Paragraph 5.1, personally identifiable student educational records ("Educational Records"), as such term is defined under the Family Educational Rights and Privacy Act ("FERPA"), shall be treated as Confidential Information. Service Provider agrees that it and its representatives shall comply fully with and be bound by FERPA, the Federal regulations promulgated thereunder, and the University's FERPA policies, to the same extent as if Service Provider and its policies. Service Provider shall take all steps reasonably necessary to protect the privacy and confidentiality of all Educational Records. Service Provider shall also take any action requested by the University to adhere to its legal obligations or otherwise protect the privacy and confidentiality of Educational Records.

4.5. Without limiting the foregoing, to the extent that any the University's Confidential Information includes "customer data", as such term is defined under the Gramm-Leach-Bliley Act ("GLB") and the regulations promulgated thereunder, Service Provider shall implement and maintain appropriate safeguards to protect such data as required under GLB and related regulations.

4.6. Unless otherwise required herein, in the Confidentiality Agreement or by law, Service Provider, as soon as practicable, and in any event no later than ten (10) business days after becoming aware of any known or suspected unauthorized use or disclosure of the University's Confidential Information. Service Provider's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the University's Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Service Provider has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Service Provider has taken or shall take to prevent similar unauthorized use or disclosure of Confidential Information in the future. Service Provider shall comply with all applicable laws in its reporting, mitigation, notification, response and corrective action in connection with any security or privacy breach, provided that Service Provider agrees to coordinate with the University in making any reports or notifications.

5. **Use of Name.** Service Provider shall not use the name "Delaware State University", or the name of any school or division thereof, or any logo or insignia of the University or of any school or division thereof, or otherwise identify the University or any school or division thereof, in any form of publicity or disclosure (other than including the University's name in a list

of clients) without the prior written consent of the University, which consent may be withheld or granted by the University in its complete and uncontrolled discretion at any time or times. Any request for any such name use shall be directed to the University's Office of General Counsel.

6. **Media Contact.** Service Provider shall not communicate with members of the media or otherwise make any public announcement regarding the Services performed or the Deliverables created or delivered by Service Provider pursuant to this Agreement, or the terms of this Agreement, without the prior written consent of the University's Vice President of Legal Affairs or Associate Vice President Marketing and Communications. Any inquiries from the media shall be referred to the University's Associate Vice President Marketing and Communications.

7. **Compliance with Law.**

7.1. Service Provider agrees to comply with all applicable federal, state, and local laws and regulations applicable to this Agreement and to the performance of Services and the creation or the manufacturing of the Deliverables hereunder. Unless otherwise specified in Exhibit A, Service Provider shall be responsible for obtaining all licenses and permits required for the performance of Services and the creation or the manufacturing of the Deliverables hereunder. Service Provider represents, warrants, and covenants to the University that (i) it has and will continue to have full legal right, power, and authority to enter into this Agreement and to perform hereunder, and (ii) it has and will secure all licenses and permits required to deliver Services and the Deliverables covered by this Agreement.

7.2 Without limiting the foregoing, Service Provider hereby represents and warrants and covenants that Service Provider, its directors, officers, employees, or agents have not offered, promised, given, authorized, solicited, or accepted and will not offer, promise, give, authorize, solicit, or accept any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with this Agreement or with Services or the Deliverables to be provided hereunder or on behalf of the University in violation of the Foreign Practices Act or any other similar laws of the United States or of other countries and that it has taken reasonable measures to prevent subcontractors, agents or any other third parties, subject to its control or determining influence, from doing so.

7.3 Service Provider shall comply with the Americans with Disabilities Act (ADA) designing its Deliverables in a manner that supports assistive software or devices such as large print interfaces, text-to-speech output, voice-activated input, refreshable braille displays, alternate keyboard or pointer interfaces, and by other means to ensure that end users with disability-related impairments enjoy an equal opportunity to the use and enjoyment of the Deliverables.

7.4 If the University receives a contract or grant from any department or agency of the United States government or any state government ("Government Contract") or is hired as a subcontractor under a Government Contract, and Service Provider shall be paid out of funds from such Government Contract, then Service Provider agrees to comply with

all applicable flow down provisions of the Government Contract. In accordance with Executive Order 12549, Service Provider certifies by entering into this transaction that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal or state department or agency and Service Provider covenants that it will promptly notify the University in writing if it or its principals are debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or state department or agency during the term of this Agreement.

8. **University Property.** All materials, equipment, and similar intellectual property supplied by the University to Service Provider or purchased or fabricated by Service Provider for the University (hereinafter sometimes referred to as “University Property”) shall be and remain the sole property of the University and no title or interest shall pass from the University to Service Provider hereunder. All University Property shall be used only in providing services to the University under this Agreement and shall be kept free of any liens or encumbrances. All University Property shall be subject to recovery by the University at any time. Upon the University’s request, or cancellation or termination of this Agreement, Service Provider shall deliver all University Property not previously delivered hereunder in good repair, normal wear and tear excepted.

9. **Ownership/License of Intellectual Property.** To the extent Service Provider generates any unique drawings, designs, processes, inventions, specifications, or other technical information in any form (herein called “Intellectual Property”) for the University in the course of performing the Services or providing the Deliverables under this Agreement, such Intellectual Property shall be deemed to be works made for hire, shall be the sole property of the University, and Service Provider shall not use, duplicate, or disclose such data for any purpose, other than the performance of the Services and the delivery of the Deliverables required hereunder, without the prior written consent of the University. At no extra cost or fee, Service Provider hereby assigns to the University any interest Service Provider may have in such Intellectual Property and Service Provider will, upon request by the University, promptly execute all applications, assignments, or other instruments that the University shall deem necessary or useful in order to apply for and obtain intellectual property protection in the United States and any foreign countries for such Intellectual Property. Notwithstanding anything to the contrary elsewhere in this Agreement, to the extent that any Deliverable or any other work product of Service Provider created pursuant to this Agreement incorporates or requires the use of pre-existing processes, inventions, or other intellectual property owned by Service Provider prior to this engagement, Service Provider hereby grants to the University an irrevocable, perpetual, worldwide, non-exclusive license for the University and its officers, employees, students, agents, and representatives to use such pre-existing intellectual property as required solely for the University’s business.

10. **Inspection and Approval; Conformance with Specifications.** Service Provider represents, warrants, and covenants to the University that all labor, products, Deliverables, materials, and Services furnished pursuant to this Agreement shall perform substantially in conformance with all specifications and warranties contained in any written proposal made by Service Provider to the University, and with those contained in any request for proposals delivered by the University to Service Provider. All materials shall be new and of first quality. All Services, Deliverables, materials, and work furnished by Service Provider shall be subject to final inspection

and approval by the University after delivery (“Acceptance”), and the University reserves the right to reject non-conforming Deliverables and Services. Notwithstanding prior payment, the Parties expressly agree that payment will not constitute final Acceptance. Service Provider agrees, at its own expense, to diligently correct any work and replace any materials deemed unsatisfactory by the University in a timely manner.

11. **Warranty.** Service Provider represents and warrants to and agrees with the University that the Services shall be performed and the Deliverables shall be created or manufactured by appropriately qualified and trained resources, (i) with due care and diligence and to a high and professional standard of quality as is customary in the industry; (ii) in compliance with Exhibit A, all applicable specifications and the terms and conditions of this Agreement; (iii) in accordance with all applicable professional standards for Service Provider’s field of expertise; and (iv) in accordance with all applicable laws and regulations. Service Provider shall devote such time, energy, attention, and efforts to the Services provided hereunder in order to promptly, efficiently and satisfactorily complete such Services. Service Provider further represents and warrants to and covenants with the University that (i) it has all the authority and power to enter into this Agreement; (ii) this Agreement is enforceable against Service Provider, (iii) this Agreement has been duly authorized on behalf of or for Service Provider; (iv) it has and will have the power to convey good title to any Intellectual Property transferred to the University pursuant to Paragraph 10; (v) it owns and will own any processes, software, inventions, or similar intellectual property which are licensed to the University pursuant to Paragraph 10; and (vi) neither entering into this Agreement, performing the Services to be performed hereunder, nor manufacturing, creating, or delivering any Deliverables or other work product to be provided hereunder will violate or infringe the rights of any other person, including any contract right or any patent, copyright, trade secret, or other property right. Unless a product warranty is specifically addressed in a separately executed agreement or unless Service Provider provides the University with a manufacturer’s product warranty upon product delivery, Service Provider warrants that any products purchased by the University hereunder or any Deliverable delivered hereunder shall have been manufactured and shall operate in accordance with the specifications as agreed to by the University.

12. **Taxes.** Unless otherwise agreed by the University, the prices for any Services and any Deliverables to be provided under this Agreement do not include any state or local sales, use or other taxes. Upon request, the University will provide Service Provider with a copy of its tax exemption certificate.

13. **Independent Contractor.** In all matters relating to this Agreement and the performance of Services hereunder and the delivery of the Deliverables, the status of Service Provider shall be that of an independent contractor and not that of an employee, co-venturer, agent or partner of the University. Service Provider’s employees and agents shall not be treated as employees of the University and shall not be entitled to any of the benefits provided to the University’s employees. Service Provider shall take all actions reasonably necessary to support such determination. Service Provider shall have no power or authority to act on behalf of the University or in its name or to bind the University, either directly or indirectly, in any manner.

14. **Breach of Agreement, Termination.**

14.1. **Termination.** The University may terminate this Agreement at any time, in whole or in part and at the convenience of the University, upon not less than thirty (30) days' written notice to Service Provider. Upon any termination of this Agreement, Service Provider shall stop work promptly and shall deliver to the University all of the University's proprietary information, University Property, and such work in process or completed items as the University may request. The University shall have no liability to Service Provider beyond payment for Services and the Deliverables properly performed and rendered to and accepted by the University prior to the effective date of any notice of termination and for such additional items specifically requested by and delivered to the University.

14.2. **Notice to Cure.** In any case where Service Provider has failed to deliver or has delivered non-conforming Services or Deliverables (with time being deemed of the essence with respect to adherence to any timetable agreed to in writing by Service Provider in the Agreement or in any specifications issued by Service Provider), the University may deliver a "Notice to Cure" to Service Provider, citing the instances of noncompliance. Service Provider shall have ten (10) days to reply to the Notice to Cure and indicate why the Agreement should not be terminated and recommend remedies to be taken.

a. If Service Provider and the University reach an agreed upon solution, Service Provider shall then have thirty (30) days after such agreement (the "Cure Agreement") is reached to cure the noncompliance cited in the Notice to Cure.

b. If a mutually agreed-upon solution cannot be reached within ten (10) days after receipt of Notice to Cure by Service Provider, the University reserves the right to terminate this Agreement.

c. If the mutually agreed upon solution is not implemented to the University's reasonable satisfaction within thirty (30) days from the date of the Cure Agreement, the University reserves the right to terminate the Agreement.

14.3 **Breach.** The occurrence of any of the following events, unless consented to by the University in writing, shall be deemed a breach of the Agreement by Service Provider, without the University being required to give Service Provider an opportunity to cure as set forth in Paragraph 14.2: (i) Service Provider becomes insolvent or makes an assignment for the benefit of creditors; or a receiver or similar officer is appointed to take charge of all or part of Service Provider's assets and such condition(s) is not cured within thirty (30) days; or (ii) Service Provider violates the provisions of Paragraphs 5, 8, 12 or 27.1 of this Agreement.

14.4 **Refunds; Reimbursements.** Any cancellation or termination by the University whether for default or otherwise, shall be without prejudice to any claims or damages or other rights of the University against Service Provider. To the extent any fees or expenses have been prepaid by the University, Service Provider shall refund a pro rata portion of such fees or expenses. In any action by either Party for any default hereunder, the prevailing Party shall be entitled to reimbursement of its attorney's fees.

14.5 **Removal.** Without limiting the foregoing, in the event that the University believes, in its sole discretion, that the continued presence of Service Provider (or any personnel provided by Service Provider) on the University campus or at a site at which Service Provider (or such person) is performing his/her services threatens the safety or security of members of the university community or persons at such remote site, the University reserves the right to immediately suspend Service Provider (or such person) from further work, remove Service Provider (or such person) from the University's campus or such remote site, and, if Service Provider is an individual, immediately terminate this Agreement.

## 15. **Indemnification.**

15.1. **Claims.** Service Provider shall indemnify, defend and hold the University harmless from and against any and all costs, expenses (including reasonable attorneys' fees and disbursements), interest, losses, obligations, liabilities, and damages paid or liability (collectively, "Losses") incurred by the University or any of its affiliates, trustees, officers, employees, and agents (each an "Indemnified Party"), and any and all third-party claims, demands, or actions made ("Claims") against any of the Indemnified Parties, to the extent arising, directly or indirectly, out of (i) the negligent act or omission of Service Provider or its directors, managers, officers, employees, subcontractors, or agents in connection with its or their performance of Services or while on the University premises, (ii) any willful or intentional misconduct or fraud of Service Provider or its directors, managers, officers, employees, subcontractors or agents; or (iii) any inaccuracy in or breach of any representations or warranties of Service Provider contained in this Agreement or any breach of Service Provider's covenant, agreement, obligation or warranty under this Agreement.

University shall indemnify, defend and hold the Service Provider harmless from and against any and all costs, expenses (including reasonable attorneys' fees and disbursements), interest, losses, obligations, liabilities, and damages paid or liability (collectively, "Losses") incurred by the Service Provider or any of its affiliates, trustees, officers, employees, and agents (each an "Indemnified Party"), and any and all third-party claims, demands, or actions made ("Claims") against any of the Indemnified Parties, to the extent arising, directly or indirectly, out of (i) the negligent act or omission of University or its directors, managers, officers, employees, subcontractors, or agents in connection with its or their performance related to Service Provider's services under this agreement, (ii) any willful or intentional misconduct or fraud of University or its directors, managers, officers, employees, subcontractors or agents; or (iii) any inaccuracy in or breach of any representations of University or any breach of its covenant, agreement, obligation or warranty under this Agreement.

15.2. **Notice.** If the University receives notice of the assertion or commencement of any Claim against the University with respect to Service Provider's obligation to provide indemnification under this Agreement, the University shall give such Service Provider prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve Service Provider of its indemnification obligations. The University shall

have the right, at its own cost and expense, to participate in the defense of any Claim with counsel subject to Service Provider's right to control the defense thereof. If Service Provider elects not to defend such Claim or fails to defend diligently, the University may defend such Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Claim. Notwithstanding any other provision of this Agreement, Service Provider shall not enter into settlement of any Claim without the prior written consent of the University.

16. **Consequential Damages.** EXCEPT WITH RESPECT TO SERVICE PROVIDER'S OBLIGATION TO INDEMNIFY HEREUNDER, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY PUNITIVE, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR INDIRECT DAMAGES, INCLUDING LOSS OF FUTURE REVENUE OR INCOME, LOSS OF BUSINESS REPUTATION OR OPPORTUNITY RELATING TO THE BREACH OR ALLEGED BREACH OF THIS AGREEMENT, OR DIMINUTION OF VALUE.

18. **Conflict of Interest.** Service Provider acknowledges that the University's and Federal policies prohibit University employees from accepting gifts or gratuities from suppliers, subcontractors, and contractors. This includes the use of property or facilities, gift certificates, entertainment, or other favors of value extended to employees or their families. The University's Conflict of Interest policy can be found at [https://www.desu.edu/sites/flagship/files/document/31/04-12\\_conflicts\\_of\\_interest.pdf](https://www.desu.edu/sites/flagship/files/document/31/04-12_conflicts_of_interest.pdf). Service Provider agrees to use all reasonable efforts and diligence to ensure that its officers, employees and subcontractors comply with the University's policy.

19. **Title; Risk of Loss; Release of Liens and Claims.** Title to all products, Deliverables (other than software products) and Services will vest in the University upon the delivery to the University. Risk of loss for products and Deliverables purchased will pass to the University upon the University's receipt and acceptance at the University's premises. Service Provider will furnish the University with a complete "Release of Liens and Claims" at intervals requested by the University and before final payment is made. If any lien is filed or remains unsatisfied after final payment, Service Provider will indemnify the University for all costs incurred in discharging such lien.

20. **Force Majeure.** Any delay or failure of either Party (the "Affected Party") in the performance of its required obligations hereunder shall be excused if and to the extent delays by or acts or orders of any governmental body or changes in laws or government regulations, or any other similar cause or causes beyond the reasonable control of such Party, provided that (i) written notice of such delay or suspension is given by such Party to the other Party within 72 hours of such event, which notice shall set forth in detail the nature of each delay; (ii) such Party shall use all commercially reasonable efforts to minimize the extent of such force majeure delay and (iii) additional expense or other adverse financial conditions shall not be deemed force majeure. Upon receipt of a notice of force majeure, the time for the Affected Party's performance shall be extended for a period of time reasonably necessary to overcome the effect of such delays and such Party's sole remedy shall be reimbursement for the additional cost of such delays; provided, further, that the other Party may terminate this Agreement by written notice to the Affected Party within ten (10) business days of receiving the Affected Party's notice of force majeure, in which

event the other Party shall receive a refund of all monies paid hereunder for services which the Affected Party has failed to deliver, which are non-conforming or which have failed to achieve Acceptance.

21. **Suspension of Work.** The University may order Service Provider in writing to suspend, delay, or interrupt all or any part of the work hereunder for a period not to exceed ninety (90) consecutive days. An adjustment shall be made for any increase in the cost of performance of this Agreement (excluding profit) necessarily caused thereby. An adjustment shall also be made in the delivery or performance dates and any other contractual provisions affected thereby. However, no adjustment shall be made for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of Service Provider. Also, to adjustment shall be made under this clause for any suspension, delay or interruption for which an equitable adjustment is provided for or excluded under any other provision of this Agreement. No claim under this clause shall be allowed unless the claim, in an amount stated, is asserted in writing within fifteen (15) days after the termination of such suspension, delay or interruption.

22. **Prohibiting Discrimination.** Service Provider and its subcontractors shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a), as applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status.

24. **Notice of Employee Rights.** The University incorporates into this Agreement, as applicable, the obligations regarding the notice of employee rights under federal labor laws found at 29 CFR Part 471, Appendix A to Subpart A, and Service Provider will likewise incorporate those obligations into all applicable subcontracts as required by 29 CFR Part 471.

25. **VETS-4212.** For purchases of or contracts for \$100,000 or above, in a single purchase order and not aggregated, which purchase is necessary for the performance of the University's direct federal contracts, Service Provider may be obligated to complete a VETS-4212 in accordance with 41 CFR Part 61-300.

26. **Payroll Transparency.** Service Provider and its subcontractors will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

27. **Miscellaneous**

27.1. Insurance Coverage, See Exhibit B.

27.2. Assignment and Subcontracting. No Party shall assign or delegate this Agreement or any rights, duties or obligations hereunder to any other person or entity without the prior express written approval of the other Party; provided, that either Party may assign this Agreement or its rights and obligations under this Agreement in connection with a merger, acquisition reorganization, initial public offering or other similar transfer of control. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors, legal representatives and assignees of the Parties hereto. Notwithstanding the foregoing, the University may assign this Agreement to a subsidiary or any entity owned or controlled by the University upon written notice to Service Provider. Any assignment or delegation by either Party shall be conditioned upon the assignee or delegate representing to the other Party that it has agreed to assume all its rights and obligations under this Agreement, and demonstrating to such other Party's reasonable satisfaction that it has the ability to fulfill its obligations specified in this Agreement.

27.3. Controlling Law. This Agreement and the performance of the Parties hereunder shall be governed and construed in accordance with the laws of Delaware, excluding that State's choice-of-law principles, and all claims relating to or arising out of this Agreement shall likewise be governed by the laws of Delaware, excluding that State's choice-of-law principles. The rights and obligations of the Parties hereunder shall not be governed by the provisions of the U.N. Convention on Contracts for the International Sale of Goods, which do not apply to this Agreement. The Parties agree that the state and federal courts located in Delaware shall have exclusive jurisdiction over any dispute under this Agreement.

27.4. Waiver of Jury Trial. Each Party waives the right to a jury trial in connection with any dispute arising out of the Agreement.

27.5. Notices. Any notices required or permitted to be given or made under this Agreement shall be in writing and shall be deemed given when delivered personally or via reputable national overnight carrier, or shall be deemed received after three (3) days of mailing by certified mail, return receipt requested to the relevant party's address specified in Exhibit A.

27.6. Amendment. No revision or waiver of this Agreement shall be valid unless made in writing and signed by duly authorized representatives of the Parties.

27.7. Counterparts. This Agreement may be executed in any number of counterparts, including facsimile, PDF and other electronic copies, each of which shall be deemed an original, but all of which taken together shall constitute one single agreement between the Parties.

27.8. Severability. If any provision of this Agreement shall be declared void, illegal, or unenforceable, the remaining provisions of this Agreement shall be valid and

enforceable to the extent permitted by applicable law.

27.9. No Waiver. The failure of the University in any one or more instances to enforce one or more of the terms or conditions of this Agreement or to exercise any right in this Agreement shall not be construed as a waiver of such term, condition or right.

27.10. Entire Agreement. This Agreement along with Exhibit A by and between the Parties constitute the entire agreement between the University and Service Provider. Except as expressly provided in a related Confidentiality Agreement or herein, this Agreement supersedes all prior communications, oral or written, between the University and Service Provider. Notwithstanding anything to the contrary in this Agreement, this Agreement shall not amend, modify or restate the provisions set forth in the Confidentiality Agreement or the Business Associate Agreement. Notwithstanding anything to the contrary in this Agreement, emails sent or received shall not create a binding contract in the absence of a fully signed written Agreement.

DELAWARE STATE UNIVERSITY

SERVICE PROVIDER

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**EXHIBIT A**

**A. Description of Services:**

**B. Deliverables/Statement of Work:**

**C. Period of Performance/Term:**

**D. Fees, Invoicing and Payment Terms:**

**E. Notice Addresses**

**Delaware State University**

**Attn:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Service Provider:**

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

**Address:** \_\_\_\_\_

## **EXHIBIT B**

### **INSURANCE REQUIRMENTS**

The University is insured for liability protection. Such protection applies to the University and its employees. Service Provider, and all other individuals and organizations working with, acting as agents for, or otherwise on the University's premises on behalf of the Service Provider are responsible for obtaining their own insurance coverage, as follows:

All policies must be issued by insurers currently rated by A.M. Best as "A-" or better with a financial size of seven (7) or higher.

The University shall be provided with a copy of Service Provider's insurance policy or a certificate showing the existence of the required coverage prior to the Term of service. Service Provider shall supply an insurer's Certificate of Insurance (COI) on an Acord 25 form stating that there is insurance in effect with the minimum limits stated above. Each COI shall specify that without thirty (30) days prior written notice to the University (or ten days' notice for non-payment of the premium) the policy shall not be canceled, non-renewed, or coverage and/or limits reduced or materially altered. Failure to provide proof of insurance prior to the contract term shall, at the University's election, constitute a material breach of this Agreement and entitle the University to cancel the Agreement without penalty or further notice to the Service Provider.

A. Commercial General Liability insurance all on an occurrence basis in an amount not less than one million dollars (\$1,000,000) per occurrence limit per project/jobsite for bodily injury, property damage, personal and advertising injury and products/completed operations. Coverage is to include full contractual liability coverage.

B. Worker's Compensation insurance in amounts required by law, and Employer's Liability insurance in the minimum of five hundred thousand dollars (\$500,000).

C. Business Automobile Liability insurance including comprehensive third-party coverage for bodily injury (including death) or property damage with a minimum combined single limit of one million dollars (\$1,000,000) per occurrence including coverage for owned, non-owned and hired vehicles.

D. Professional Liability Insurance including errors and omissions in an amount not less than two million dollars (\$2,000,000) per claim and in the aggregate covering said services of this contract and shall be maintained for a minimum of two years following completion of all services under this agreement.