



Consultant Agreement

September 2013

This Consulting Agreement (the "Agreement") dated as of the _____ day of _____, 20____ (the "Effective Date"), is by and between Saint Anselm College, a New Hampshire nonprofit educational corporation, with a principal place of business at *100 Saint Anselm Drive Manchester New Hampshire*, and _____ ("Consultant") with an address of: _____.

Saint Anselm College and Consultant agree as follows:

1. Consultant's Services.

1.1 Consultant shall provide the services and deliverables (collectively, the "Work") described in the Statement of Work attached as Exhibit A (the "SOW"). In no event shall Saint Anselm be obligated to pay for services or deliverables which are not set forth in a duly executed SOW.

1.2 Any change to the Work or the SOW must be approved in advance in writing by both parties.

1.3 In the event of a conflict between the terms of this Agreement and the terms of the SOW, the terms of this Agreement shall prevail.

2 Payment to Consultant.

2.1 As compensation in full for the Work and for all rights granted or assigned by Consultant to Saint Anselm College under this Agreement, Saint Anselm College shall pay Consultant the fees set forth in the SOW.

Such fees shall also compensate Consultant for all expenses incurred by Consultant in connection with the Work.

2.2 Consultant shall submit itemized invoices to Saint Anselm College in accordance with the payment schedule and conditions set forth in the SOW. All invoices shall specifically refer to the SOW and shall contain such information and supporting documentation as Saint Anselm College shall reasonably request.

2.3 Provided that the Work has been performed in accordance with the SOW, Saint Anselm College shall pay each invoice within 30 days of receipt unless the SOW states other payment terms.

3 Term and Termination.

3.1 The term of this Agreement shall begin as of the Effective Date and shall continue until completion of the Work in accordance with the SOW, unless sooner terminated under this Term and Termination Section or extended by written agreement of the parties.

3.2 Saint Anselm College shall have the right to terminate this Agreement for any reason in its sole discretion upon 30 days' written notice to Consultant.

3.3 In addition to any other rights and remedies it may have, Saint Anselm College may terminate this Agreement if Consultant fails to perform or breaches any of Consultant's obligations, warranties or representations in this Agreement and such failure or breach continues uncured for 5 days after written notice thereof is given by Saint Anselm College to Consultant .

3.4 Within 10 days of any termination or expiration of this Agreement, (i) Consultant shall deliver to Saint Anselm College all work product and materials related to Work completed or in progress as of the date of termination or expiration; and (ii) Saint Anselm College shall pay Consultant undisputed amounts owing for Work performed in accordance with this Agreement Consultant shall use reasonable efforts to promptly wind up Work and cancel expenses upon receiving notice of termination.

3.5 The provisions of this Agreement which by their explicit terms or their manifest intent are to survive, including without limitation those which relate to confidentiality, rights in work product, use of Saint Anselm College Names, and indemnification [*if applicable* and limitation of liability], shall survive expiration or termination of this Agreement.

4 Status and Authority of Consultant; Benefits and Taxes.

Consultant shall be an independent contractor, free from Saint Anselm College's direction and control of the means and methods of performing the Work, and not an agent or employee of Saint Anselm College. Consultant shall have no authority to incur any obligations or expenses on behalf of Saint Anselm College or to act in any other manner on behalf of Saint Anselm College or in its name. Consultant shall be solely responsible under all applicable laws for all (i) compensation and expenses of Consultant's employees and contractors, (ii) taxes on Consultant's income, (iii) tax withholdings and welfare and benefits payments and contributions required with respect to Consultant and Consultant's employees and contractors, and (iv) Consultant's professional and other licensing fees. Neither Consultant nor any of Consultant's employees or contractors shall be entitled to receive any employee benefits from Saint Anselm College.

5 Purchases.

Consultant and Saint Anselm College shall cooperate in the purchase or rental of any supplies, materials or equipment which may be required for the Work so as to utilize any exemption from sales or other taxes available to Saint Anselm College. Saint Anselm College shall provide Consultant, upon request, with such certificates or other documentation of an exemption from taxation as may be required.

6 Confidentiality.

During the course of the Work, Saint Anselm College may provide Consultant with or Consultant may obtain access to “Confidential Information,” which shall mean any and all (a) non-public information about Saint Anselm College, a Saint Anselm College department, or other unit, or Saint Anselm College property (tangible or intangible), or about third parties, that is specifically identified as confidential or that Consultant knows or in the circumstances should know is regarded as confidential, and (b) personally identifiable information about current or former Saint Anselm College faculty members, employees, students, other persons associated with Saint Anselm College and other individuals (“Personal Data”). Consultant (i) will use reasonable care to protect the security of Confidential Information; (ii) will not use Confidential Information except as necessary for the performance of the Work; (iii) will limit access to Confidential Information to those of Consultant’s employees who have a specific need for such access in order to perform the Work (each, a “Permitted Employee”) and Consultant will enforce compliance with this Confidentiality Section by all of Consultant’s employees; (iv) will not at any time during or after the term of this Agreement disclose Confidential Information to any person other than Permitted Employees except with Saint Anselm College’s prior written consent (except as otherwise required by law in which case Consultant shall, unless otherwise prohibited by law, notify Saint Anselm College prior to such disclosure); (v) will comply with such additional protections as Saint Anselm College shall reasonably require from time to time; and (vi) will immediately notify Saint Anselm College upon learning of any breach in the security of Confidential Information. All Confidential Information will remain the property of Saint Anselm College. At any time on Saint Anselm College’s request and in any case upon termination or expiration of this Agreement, Consultant will unless otherwise instructed by Saint Anselm College return all documents containing Confidential Information to Saint Anselm College, delete all electronic files and records containing Confidential Information, and retain no copies of Confidential Information in any medium; provided, that Consultant shall be entitled to retain such records as are reasonably necessary solely for reference and archive purposes, on the condition that such records shall continue to be subject to the provisions of this Confidentiality Section and any Personal Data in such records shall be deleted or redacted.

7 Warranties of Consultant.

7.1 Consultant warrants to Saint Anselm College as follows:

7.1.1 Consultant has the necessary qualifications, expertise, licenses, time, materials, and equipment to perform the Statement of Work in a timely and professional manner.

7.1.2 The Work shall be performed with reasonable care, consistent with applicable professional and industry standards and in compliance with all applicable laws. This Agreement and Consultant’s performance of the Work will not breach any obligations of Consultant to any other party.

7.1.3 The Work and all work product shall substantially conform to the requirements and specifications set forth in the SOW.

7.1.4 Consultant owns all the rights that Consultant is granting or assigning to Saint Anselm College under this Agreement (see Rights in Work Product). Neither the Work nor any work product created, developed or delivered by Consultant will infringe any patents, copyrights,

trademarks, trade secrets or other rights of any third party, except that Consultant makes no warranties regarding any information or materials supplied by Saint Anselm College and reproduced accurately in any work product.

7.2 Consultant shall use commercially reasonable efforts to remedy any breach of the warranties contained in this Warranties Section promptly at Consultant's expense, including re-performance of Work and correction or replacement of work product, provided that Saint Anselm College gives Consultant notice specifying the breach within a commercially reasonable period of time after discovering the breach. If Consultant is unable to remedy the breach in a commercially reasonable amount of time, Consultant shall, in addition to any other remedies available to Saint Anselm College, refund the fees Saint Anselm College paid for the non-conforming Work and work product.

8 Rights in Work Product.

Saint Anselm College shall own, and Consultant hereby assigns to Saint Anselm College, all right, title and interest in and to all Work and all work product created, prepared or developed by Consultant in the course of performing the Work and any patents, copyrights and other intellectual property embodied in the Work and work product, free of all liens, claims, encumbrances and licenses; provided that all Work and work product subject to copyright shall be considered work made for hire by Consultant for Saint Anselm College to the extent permitted by law. Without limiting the foregoing, Saint Anselm College will have the irrevocable, worldwide right to use and exploit the Work and work product in any manner and to authorize third parties to exercise any of its rights. Consultant hereby waives all "moral rights" to the extent permitted by law.

Consultant shall execute and deliver to Saint Anselm College all documentation that Saint Anselm College reasonably requires to evidence Saint Anselm College's rights in and to Work and work product and shall comply at Saint Anselm College's expense with all reasonable requests for assistance in connection with (i) applications for registration of any patents, copyrights or other similar ownership rights in Work and work product and (ii) any action or proceeding with respect to Saint Anselm College's protection or defense of its ownership rights.

This Rights in Work Product Section shall not apply to any product that has been created by a third party, provided that Consultant shall not include any such third party product in the Work or any work product unless Consultant has obtained Saint Anselm College's written consent to such inclusion on terms and conditions (including licenses from the third party) approved by Saint Anselm College.

9 Use of Saint Anselm College Names.

Consultant shall not use the name "Saint Anselm College" (alone or as part of another name) or any logos, seals, insignia or other words, names, symbols or devices that identify Saint Anselm College or any Saint Anselm College unit, division or affiliate ("Saint Anselm College Names") for any purpose in connection with the Work or this Agreement except with the prior written approval of, and in accordance with restrictions required by, Saint Anselm College. Without limiting the foregoing, Consultant shall cease all use of Saint Anselm College Names authorized under this Agreement on the termination or expiration of this Agreement.

10 Indemnification.

Consultant agrees to indemnify and hold Saint Anselm College and its affiliates, employees, faculty members, students, members of its governing boards and agents harmless from and against any claims, losses, liabilities, damages, costs and expenses including reasonable attorneys' fees arising out of or relating to Consultant's breach or alleged breach of any warranty or other provision of this Agreement, or any other negligent or wrongful act or omission of Consultant. Consultant shall not be obliged to pay or indemnify any settlement amount unless it has consented to the settlement, such consent not to be unreasonably withheld.

11 Remedies.

Consultant acknowledges that any remedy at law for any violation of the provisions of this Agreement regarding Confidential Information, Saint Anselm College's rights in work product, and the use of Saint Anselm College Names, may be inadequate and that Saint Anselm College may suffer irreparable damage through any such violation and that therefore, in addition to any other remedies it may have, Saint Anselm College may seek and obtain injunctive relief against a breach or threatened breach of such obligations of Consultant.

Consultant further acknowledges that Saint Anselm College will under no circumstances be liable to Consultant for any amount greater than that stated in the Statement of Work (as amended in writing in accordance with this Consulting Agreement), regardless of the nature or basis for any such claim by Consultant, and that Saint Anselm College shall not be liable to Consultant for consequential, punitive, enhanced, exemplary, or other such damages under any circumstances.

12 Waiver.

Any waiver by either party of a breach of any provision of this Agreement must be in writing and shall not be deemed a waiver of any subsequent breach. No delay or omission in the exercise or enforcement of any right or remedy provided in this Agreement or by law by either party shall be construed as a waiver of such right or remedy.

13 Severability.

In the event that any provision or section of this Agreement shall be held to be invalid by any court, such holding shall not affect in any respect whatsoever the validity of the remainder of the Agreement.

14 Assignment; Subcontracting.

This Agreement may not be assigned by either party, nor transferred by operation of law, without the prior written consent of the other. Any assignment or transfer without such consent shall be void. Consultant shall not engage any third party to perform any portion of the Work without Saint Anselm College's prior written consent.

15 Governing Law.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of New Hampshire (excluding conflict of laws rules).

16 Notices.

Any notice under this Agreement may be delivered in person, or sent by fax (with the original sent promptly by ordinary mail), by electronic mail, by registered or certified mail, postage prepaid, or by recognized delivery service, using the most recent contact information provided by the recipient (by means of notice complying with this paragraph), and such notice shall be deemed to have been given when so delivered, sent by fax or electronic mail, or mailed.

17 Entire Agreement; Amendment.

This Agreement together with the SOW contains and constitutes the entire agreement between the parties hereto with respect to the transactions which are the subject of this Agreement and supersedes and cancels all previous negotiations, agreements, commitments, and writings relating to said transactions. It may be amended only by an agreement in writing that refers explicitly to this Agreement, signed by each of the parties hereto.

The parties have executed this Agreement under seal as of the date first above written.

SAINT ANSELM COLLEGE acting through:

Department head or hiring authority:

Name: _____

Title: _____

Approved By:

VP of Finance or representative:

Name: _____

Title: _____

[CONSULTANT]

Name: _____

Title: _____

Exhibit A

STATEMENT OF WORK

[Include as much specificity as possible of: Tasks to be performed, Deliverables, Schedule for performance, Payment milestones and schedule]. Separate sheet may be attached.

SAINT ANSELM COLLEGE (Hiring Authority)

CONSULTANT

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____