



**THIS INDEPENDENT CONTRACTOR AGREEMENT** (this “Agreement”), is dated as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between **FISK UNIVERSITY**, a Tennessee nonprofit institution of higher education (“Fisk” or the “University”), and \_\_\_\_\_, an individual or business<sup>1</sup> whose mailing \_\_\_\_\_ address \_\_\_\_\_ is \_\_\_\_\_

\_\_\_\_\_ (if formal business entity, its state of organization/incorporation is \_\_\_\_\_) (“Independent Contractor”). This Agreement is for a limited duration for Independent Contractor’s services as set forth on Attachment A (the “Services”). Fisk and Independent Contractor referred to sometimes hereafter individually as a “P/party” or collectively as the “P/parties”.

In consideration of the mutual promises set forth herein, the parties agree to the following terms and conditions.

1. Intent: This Agreement creates an independent contractor relationship between Fisk and Independent Contractor. This Agreement contemplates that Independent Contractor is a trained, experienced professional, who will provide services under this Agreement. This Agreement does not constitute an employment contract and under no circumstances is Independent Contractor to be considered an employee of Fisk. During the term of this Agreement, Independent Contractor retains the right to perform the same or other services as provided to Fisk for other companies or institutions provided that engaging in said services does not interfere with Independent Contractor’s duties for the University hereunder.

2. Term of Agreement and Termination: This Agreement shall begin on \_\_\_\_\_ (the “Effective Date”) and expire on \_\_\_\_\_ (the “Term”). The Parties may extend the Term of this Agreement by executing a written amendment to this Agreement evidencing the extended term and any additional amendments agreed upon. This Agreement may be terminated upon thirty (30) days advance written notice at any time by either party. Fisk may terminate this Agreement immediately should Independent Contractor fail to provide the Services, without prior authorization from the Responsible Fisk Manager (defined below) for more than three (3) consecutive business days, or should the Independent Contractor violate Paragraphs 3, 7 or 8 of this Agreement.

<sup>1</sup> If the business entity is not formally organized or incorporated, the Independent Contractor should be listed as: “John Doe d/b/a Consulting First.”

3. Scope of Services/Agreement to Comply with University Policies/Deliverables:

- a) *Scope of Services.* In addition to the Services set forth in Attachment A, Independent Contractor shall perform such other duties as may be assigned from time to time by the Fisk employee, representative or agent set forth in Attachment A (the “Responsible Fisk Manager”) who shall be responsible for directing and controlling the results of Independent Contractor’s Services. In addition to the Responsible Fisk Manager, the University’s President, Chief of Staff and Legal Counsel have authority to administer the terms and conditions of this Agreement. Independent Contractor and Fisk expressly agree that Independent Contractor will determine the manner and means by which the Services are accomplished.
- b) *Services to Comply with Professional Standards.* Independent Contractor agrees to perform the Services in accordance with applicable professional standards currently recognized by such person’s profession and shall be responsible for the professional quality, technical accuracy and completeness of all Services furnished under this Agreement.
- c) *Agreement to Comply with Fisk Policies.* Independent Contractor agrees to strictly abide by all of Fisk’s applicable policies, procedures and protocols relating to the Services. Independent Contractor also agrees to strictly abide by the University’s Bylaws. While not an employee, Independent Contractor agrees to abide by the University’s employment policies including, without limitation, its policies on non-discrimination and harassment, a tobacco-free campus and alcohol and drug use while working.
- d) *Deliverables.* Fisk is, and shall be, the sole and exclusive owner of all right, title and interest in and to any work product created in connection with the Services (the “Deliverables”), including all intellectual property rights therein. Independent Contractor agrees, that with respect to any Deliverables that may qualify as "work made for hire" as defined in 17 U.S.C. §101, such Deliverables shall be deemed a "work made for hire" for the University. To the extent that any of the Deliverables do not constitute a "work made for hire," Independent Contractor hereby irrevocably assigns to Fisk, in each case without additional consideration, all right, title and interest throughout the world in and to the Deliverables, including all intellectual property rights therein. Independent Contractor also agrees to cause any personnel it utilizes in connection with this Agreement to irrevocably waive any and all claims such personnel may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of droit moral with respect to the Deliverables. Further, upon the request of Fisk, Independent Contractor shall, and shall cause its personnel to, promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist the University to prosecute, register, perfect or record its rights in or to any Deliverables. The University and its licensors are, and shall remain, the sole and exclusive owners of all right, title and interest in and to any material pre-existing the Services, including all intellectual property rights therein. Nothing herein grants Independent Contractor a right or license to use any of Fisk’s intellectual property outside of the scope of the Services.

4. Payment: During the Term of this Agreement, Fisk agrees to pay the Independent Contractor \$ \_\_\_\_\_ per month for the Services (the "Fee"). The Fee shall be payable in \_\_\_\_\_ payments commencing on \_\_\_\_\_, 20 \_\_\_\_\_. Independent Contractor shall report all payments to the Internal Revenue Service on Form 1099-MISC.

5. Benefits: Independent Contractor shall not be entitled to receive any benefits under this Agreement, including without limitation, benefits which employees of the University are entitled to receive, including but not limited to worker's compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, participation in 403(b) plans, bonus plans or any other plan, or Social Security, on account of the Services provided under this Agreement.

6. Taxes: Independent Contractor shall be solely responsible for all federal, state, and local income and related taxes, including but not limited to withholding tax obligations or contributions imposed by Social Security, unemployment insurance, or worker's compensation insurance based on the Services. In the event of any tax liability which may be incurred as a result of Independent Contractor's failure to comply with this Paragraph 6, Independent Contractor agrees to indemnify and hold harmless Fisk.

7. Communications. Independent Contractor does not have, and shall make representations to third parties as having, any authority to make proposals or contracts in the name of the University without the express, prior written approval of the University's Legal Counsel and President in each instance, nor shall Independent Contractor have the authority to bind the University in any manner. Independent Contractor's authority is specifically limited to the Services to be rendered under this Agreement.

8. Confidentiality: During the term of this Agreement and thereafter, Independent Contractor shall maintain in confidence and not disclose, use, or communicate to any other person, firm or corporation, any confidential information or any other information concerning, without limitation, Fisk's business and operations, reports, records, financial data, technical data, trade secrets, methods of operation, student information, vendor/contractor information or lists, employee information or lists, all information relating to the particular professional services performed by Independent Contractor under this Agreement, HIPAA nonpublic and related personal information, and any other information learned during the course of Independent Contractor's Services. This information is confidential whether identified as such or not and whether expressed on paper, disk, diskette, magnetic or optical media, monitor screen, or any other media. Confidential information shall not include information that is (i) publicly available other than through the fault or negligence of the Independent Contractor, or (ii) is received from a third party not under an obligation to keep such information confidential and without breach of this Agreement.

Further, Independent Contractor agrees that at any time upon the request of Fisk and upon the discontinuation of the Services, Independent Contractor shall immediately provide or return to Fisk all records, reports and file notes and other work product that contains or is derived from

{01798020.2 }

Independent Contractor's Initials

files, records and reports, documents, papers and other material in the possession or control of Independent Contractor that are the result of, or relate to or were obtained in the course of providing the Services.

9. Injunctive Relief: Independent Contractor understands, acknowledges and agrees that in the event of a breach or threatened breach of any of the covenants, promises and agreements in Paragraphs 3(d) and 8 of this Agreement, the University may suffer irreparable injury from which there is no adequate remedy at law, and Fisk will be entitled to injunctive relief from the courts enjoining said breach or threatened breach. Independent Contractor further acknowledges that Fisk also shall have the right to seek a remedy at law as well as or in lieu of equitable relief in the event of any such breach.

10. Regulatory Requirement: Independent Contractor will at all times materially comply with federal, state and local laws, and applicable standards of any accrediting body applicable to the University or any and all generally-accepted methods of practice of Independent Contractor's profession and warrants that Independent Contractor has complied and will continue to comply in all material aspects with any licensing requirements of any jurisdiction in which Independent Contractor performs its Services under this Agreement.

11. Conflicts: Except as disclosed by Independent Contractor in Attachment B, Independent Contractor represents, warrants and agrees that Independent Contractor does not maintain any financial interests, business activities or personal associations relating to personnel, services, businesses, or products with which or whom Independent Contractor may come into contact during the course of the Services, and in the event that Independent Contractor becomes aware of such interests, activities or associations, Independent Contractor shall immediately notify the University and await further written instructions before proceeding with the Services.

12. Indemnification: Independent Contractor shall defend, indemnify and hold the University harmless from and against all claims asserted by a third party (or parties) and related damages, losses and expenses, including reasonable attorneys' fees, arising out of or resulting from (1) the performance or omission of Services performed by Independent Contractor under this Agreement, (2) breach of any of the obligations, representations or warranties under this Agreement by Independent Contractor; provided, however, the parties agree that Independent Contractor shall not be obligated to indemnify or hold Fisk harmless from any claim or liability which arises out of Fisk's acts or omissions.

13. General:

a) This Agreement shall be binding on and inure to the benefit of the parties and their respective successors, personal representatives, and assigns.

b) No waiver by any party of any breach or series of breaches or defaults in performance by the other party, and no refusal, failure, or neglect to exercise any right, power or option given to any party hereunder or to insist upon strict compliance with the performance of the obligations under this Agreement, shall constitute a waiver of the

{01798020.2 }

Independent Contractor's Initials

provisions of this Agreement with respect to any subsequent breach thereof or a waiver by such party of its right at any time thereafter to require exact and strict compliance with the provisions hereof.

c) This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee without regard to the choice-of-law or conflict-of-laws principles thereof. Any legal action arising out of this Agreement shall be brought exclusively in a federal or state court, as applicable, located in Nashville, Davidson County, Tennessee.

d) No amendments or other modification of this Agreement shall be valid or binding on either party hereto, unless reduced to writing and executed by the parties hereto. This Agreement constitutes the entire Agreement and understanding between the parties with respect to the subject matter hereof, and all prior negotiations, commitments, representations, and undertakings of the parties are merged herein. There are no other oral or written understandings or agreement between the parties relating to the subject matter hereof.

e) It is the desire and intent of the parties that the provisions of this Agreement shall be enforced to the fullest extent permitted under law. Accordingly, if any particular portion of this Agreement shall be adjudicated to be invalid or unenforceable, such portion shall be modified to the minimum extent necessary to make such portion enforceable and valid, and all other portions shall continue in full force and effect. If not so modified, any determination that any provision in this Agreement is in violation of any law, rule or regulation or otherwise unenforceable shall not affect the validity of any other provision of this Agreement, but such other provisions shall remain in full force and effect. Each provision, paragraph and subparagraph of this Agreement, including those pertaining to non-competition, is severable from every other provision, paragraph and subparagraph and constitutes a separate and distinct covenant.

f) This Agreement may be executed in two or more counterparts, any one of which shall be deemed the original without reference to the others.

g) All pronouns or any variations thereof contained in this Agreement refer to the identity of the person as appropriate in context.

h) All headings of paragraphs and subparagraphs are for the convenience of the parties and shall not be used in interpreting any of the terms of this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement on the date first above mentioned.

**INDEPENDENT CONTRACTOR:**

\_\_\_\_\_  
Signature  
Printed Name: \_\_\_\_\_  
Title (if applicable): \_\_\_\_\_

**FISK UNIVERSITY**

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

**SCHEDULE A**

*Services*

Description

Fisk Responsible Party

{01798020.2 }

Independent Contractor's Initials

**SCHEDULE B**

*Conflicts of Interest*