

Union College Contract

Independent Contractor Contract

This Independent Contractor Contract (the “**Contract**”) is made effective this ____ day of _____ 20____ (the “Effective Date”) between The Trustees of Union College in the Town of Schenectady in the State of New York a/k/a Union College, located at 807 Union Street, Schenectady, NY 12308 (“**Union College**”) and, _____, located at _____ herein referred to as the “**Service Provider**”.

It is mutually agreed between Union College and Service Provider as follows:

1. **Type Of Service Provided:** Subject to the terms hereof, the Union College hereby engages Service Provider to perform the services described in Exhibit A (the “**Services**”), and Service Provider hereby accepts such engagement and agrees to perform the Services.

2. **Place Of Engagement:** All Services will be performed at the specified location described in Exhibit A.

3. **Term of Engagement:**

The engagement of Service Provider by Union College shall begin as of the Effective Date and shall continue until the date specified in Exhibit A (“**Term**”). This Contract may be extended upon mutual written agreement of the parties.

4. **Total Compensation To Service Provider:**

a. **Compensation and Payment.** Service Provider shall receive compensation for the Services as specified in Exhibit A (the “**Fees**”). Payment for such Fees will be made as set forth in Exhibit A.

b. **Expenses.** Union College will reimburse Service Provider for all reasonable out-of-pocket expenses actually and necessarily incurred by Service Provider in connection with the business of Union College and in performance of Service Provider’s duties under this Agreement. Notwithstanding the foregoing, the Service Provider shall not incur, and Union College shall not reimburse, any additional expense or cost without the prior written approval of Union College.

5. **IP Ownership.** Service Provider hereby agrees that Union College shall own all rights, title and interest to all intellectual property rights in any and all Work Product created pursuant to this Contract and shall deliver Work Product in Service Provider’s possession to Union College promptly upon request. Service Provider hereby agrees that such Work Product is being developed as a “work made for hire.” As such, copyright and all other intellectual property rights vest with Union College when the Work Product is fixed in a tangible medium of expression/ Service Provider hereby (i) irrevocably assigns to Union College all rights, title and interest to Work Product; (ii) agrees to execute all documents necessary to implement and confirm the letter and intent of this section; and (iii) irrevocably appoints Union College as its attorney-in-fact to execute ownership documents to perfect such ownership interest of Union College, such right being

coupled in with an interest. The Work Product shall not be used or disclosed by Service Provider without Union College's express written approval. Service Provider shall not use or disclose any Work Product for any purpose not expressly authorized by this Contract or by Union College in writing. Service Provider shall obtain Union College's prior written consent before incorporating any third-party materials into any Work Product. If the Work Product contains materials Service Provider or others previously developed, patented, or copyrighted and which were not developed as a result of providing Services under this Contract, Service Provider hereby grants Union College and Union College hereby accepts, an irrevocable, perpetual, world-wide, royalty-free license to use, copy, modify, distribute, display, perform, import, manufacture, have made, and sublicense such materials for the purpose of exercising Union College's rights, title and interest in the Work Product. For the purposes of this Contract, "**Work Product**" shall mean all work and materials, created, produced, and/or developed by Service Provider, regardless of the state of development, as a result of any Services engagement pursuant to this Contract.

6. Service Provider's Representations and Warranties. Service Provider represents and warrants that:

(a) neither the Services nor Service Provider's obligations hereunder do or will conflict with or constitute a breach of any agreement to which Service Provider is a party or any obligation by which Service Provider is bound;

(b) the Services will be performed diligently, in a good and workmanlike manner, in accordance with the standard of skill and care normally provided by a professional person in the applicable field;

(c) if applicable, Work Product will meet any specifications therefore set forth will be free of defects in materials and workmanship, and will be suitable for the purposes intended; and

(d) neither the Work Product, nor any Services, infringe, violate or misappropriate any patent, copyright, trademark, trade secret, mask work or other proprietary right of any third party.

7. Termination. Union College may, without prejudice to any right or remedy it may have hereunder, terminate this Contract upon thirty (30) days' prior written notice to Service Provider. In the event of such termination for Union College's convenience, Service Provider shall be entitled to payment, in accordance with the terms of this Contract, for a pro-rata amount of Fees for Services provided in accordance with this Contract up to the effective date of termination. If Union College reasonably determines in good faith that Service Provider has materially breached any of its obligations under this Contract, Union shall, in its sole discretion and including but not limited to the obligations contained in Section 7, have the right to require Service Provider to submit to a plan of monitoring and reporting; provide Service Provider with a fifteen (15) day period to cure the breach; or terminate the Contract immediately if cure is not possible. Before exercising any of these options, Union College shall provide written notice to Service Provider describing the violation and the action it intends to take.

8. COVID-19/Infectious Disease. Service Provider acknowledges that it and its employees, contractors and agents ("**Personnel**") are assuming risks involving potential exposure to contagious viruses, including the COVID-19 virus. Service Provider agrees to release Union

College, its Trustees, agents, and employees from any and all damages, liabilities, claims, expenses, or loss resulting from or arising out of providing the Services at Union College related to potential exposure to the COVID-19 virus or other infectious diseases. Service Provider agrees to comply with any Union College testing or access policies relating to COVID-19 or other infectious diseases.

9. On-Site Services. Any time Service Provider, Service Provider's employees, agents, or subcontractors are physically on a Union College site or accessing or interacting with Union College's systems, employees, or staff or students, Service Provider will comply at all times with the use, security and access policies for the facilities and systems of Union College, as posted or made available to Service Provider upon request, and as amended by Union College from time to time. Service Provider is fully responsible for the actions and omissions of its employees, agents, or subcontractors while on Union College premises and/or accessing or interacting with Union College systems, employees, staff or students. Service Provider shall require its employees, agents, and subcontractors to follow all Union College rules, guidelines, policies and instructs, as well as any applicable laws.

10. Union College Title IX And Anti-Discrimination Policies. Union College has in place a Title IX Policy and a Policy Prohibiting Bias Acts, and a Policy Prohibiting Discrimination, Harassment, and Retaliation (found at <https://www.union.edu/titleix/staff-policies-and-procedures>), based upon an individual's protected status, which prohibits discrimination and harassment directed against persons because of their race, religion, creed, ethnicity, color, national origin, gender, pregnancy, age, sexual orientation, genetic information, gender identity, marital status, veteran status, domestic violence victim status, disability or other basis identified in federal or state law. In providing Services under this Contract, Service Provider agrees to be bound by all applicable anti-discrimination federal, state, and local laws, rules, regulations, orders, instructions, other directives, New York State legal mandates requiring employers to adopt prevention of sexual harassment policies containing minimum standards to which all employees must acknowledge receipt and publication of flyers directing employees where to file complaints, and the Union College Policies stated above. These Policies are intended to require, among other things, that contractors, subcontractor(s), service providers, and their agents and employees take affirmative steps to promptly respond to, and effectively address, an informal or formal complaint, or any reported information that may result in a complaint, by one of their employees of harassment and/or discrimination upon gaining knowledge of such complaint and to promptly notify Union College that the complaint has been appropriately addressed.

11. *[Optional - use if service provider requires access to FERPA protected student education records. Intentionally Omit this Section if not.]* **FERPA.** Union and Service Provider agree to incorporate in this Contract the following provisions in order to comply with requirements of The Family Educational Rights and Privacy Act ("FERPA") and other relevant federal privacy laws.

a. **Covered Data and Information ("CDI"):** includes paper and electronic student education record information supplied by Union College, as well as any data provided by Union College students to the Service Provider.

b. **Acknowledgment of Access to CDI:** Service Provider acknowledges that the Contract allows the Service Provider access to CDI.

c. **Prohibition on Unauthorized Use or Disclosure of CDI:** Service Provider agrees to hold CDI in strict confidence. Service Provider shall not use or disclose CDI received from or on behalf of Union College except as permitted or required by the Contract, as required by law, or as otherwise authorized in writing by Union College. Service Provider agrees that it will protect the CDI it receives from or on behalf of Union College according to commercially acceptable standards and no less rigorously than it protects its own confidential information.

d. **Return or Destruction of CDI:** Upon termination, cancellation, expiration or other conclusion of the Contract, which may be terminated at will by Union College, Service Provider shall return all CDI to Union College or, if return is not feasible, destroy any and all CDI.

a. **Maintenance of the Security of Electronic Information:** Service Provider shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted CDI received from, or on behalf of Union College or its students. These measures will be extended by contract to all subcontractors used by Service Provider.

b. **Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information:** Service Provider, within one (1) day of discovery, shall report to Union College any use or disclosure of CDI not authorized by the Contract or in writing by Union. Service Provider's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the CDI 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 future similar unauthorized use or disclosure. Service Provider shall provide such other information, including a written report, as reasonably requested by Union.

12. *[Optional - use if service provider has regular, direct interaction with student(s) on campus / place of engagement. If not, this section can be intentionally omitted.]* **Criminal Background Check:** Service Provider shall be solely responsible for supervising and controlling its employees, contractors, and agents ("Personnel"). Service Provider warrants that it has performed a criminal background check on all Personnel assigned to be on campus. Service Provider will provide Union College with the results of the criminal background checks all Personnel assigned to be on campus. Union College reserves the right to reject the assignment of any Personnel by Service Provider based upon the results of the criminal background check.

13. **Insurance.** During the Term, Service Provider shall purchase and maintain such insurance as will protect him/her/it from claims set forth below which may arise out of the Services to be performed while on Union College's premises or otherwise, or of anyone directly employed by Service Provider, or of anyone for whose acts any of them may be liable under any other coverage required by law.

a. **Workers' Compensation and Employers' Liability Insurance.** Except as otherwise provided by law, Service Provider shall, at all times, maintain and keep in force such insurance as will protect him/her/it from claims under the Workers' Compensation Act and maintain and keep in force coverage B--Employers' Liability Insurance--at a limit of not less than **Five Hundred Thousand Dollars (\$500,000).**

b. **General Liability Insurance.** Service Provider shall purchase and maintain during the life of this Contract Comprehensive General Liability Insurance at limits of not less than **One Million / Three Million Dollars (\$1,000,000 / \$2,000,000).**

c. **Certificate of Insurance.** A Certificate of Insurance issued to Union College and naming **“The Trustees of Union College in the Town of Schenectady in the State of New York a/k/a Union College”** as Certificate Holder which must be forwarded to Union College prior to the commencement of the Services. The Certificate of Insurance shall be directed to **Procurement, McKean Hall, Union College, Schenectady, New York 12308.** If proof of insurance has not been furnished as required hereunder, Union College reserves the right to cancel this Contract without penalty.

14. Indemnification. Service Provider shall indemnify, protect, hold harmless, and defend Union College, its Trustees, officers, and employees (collectively the **“Indemnified Parties”**) from and against any and all claims, losses, liabilities, costs, and other expenses resulting from, or relating to, the performance, acts, or omissions of Service Provider in connection with the representations, duties, and obligations of Service Provider under this Contract, including, but not limited to, a claim that the Services or Work Product violate or infringe a third party’s intellectual property or a claim arising from Service Provider’s breach of this Contract. Union College shall give Service Provider prompt written notice of said claim, demand, action loss, cost, damage or expense; provided that the failure of Union College to provide timely notice shall not relieve Service Provider of any indemnification obligations hereunder except to the extent that such delay results in material prejudice to Service Provider. Further, Union College shall fully cooperate with Service Provider in the defense of such claim, at Service Provider’s expense. Union College shall not enter into any settlement without the written consent of Service Provider, said consent not to be unreasonably withheld.

15. Independent Contractor. It is understood that the Service Provider agrees to perform the Services under this Contract in the capacity of an “independent contractor” and not as an employee or agent of Union College. Nothing in this Contract is meant, or shall be construed in any way or manner, to create between the Service Provider and Union College a relationship of employer and employee, principal and agent, partners, joint employers or any other relationship other than that of independent parties contracting with each other solely for the purposes of carrying out the provisions of this Contract. Service Provider expressly acknowledges and agrees that Service Provider is obligated to pay all taxes arising from Service Provider’s receipt of payments for the provision of the Services hereunder and that Service Provider will not be eligible for any employee benefits and expressly waives entitlement to such benefits. Further, Service Provider agrees to assume all liabilities normally accruing in relation to its position as an independent contractor.

16. Service Provider Controls Services. Except for the contractual obligations set forth herein, Union College nor its employees or representatives accepts any responsibility for the supervision, direction, nor control of the Services of the Service Provider under this Contract or the manner, means, and/or details by which said Service Provider carries out the terms of this Contract.

17. Dispute Resolution. This Contract shall be construed and enforced according to the laws of the State of New York. In the event of any controversy, claim, or dispute between the parties

hereto arising out of or relating to this Contract, such controversy, claim, or dispute shall be tried exclusively in the courts of the State of New York in the County of Schenectady. Each party hereby waives any defense of lack of *in personam* jurisdiction, improper venue, and *forum non conveniens*, and agrees that service of process of such court may be made upon each of them by personal delivery or by mailing certified or registered mail, return receipt requested, to the other party. Both parties hereby submit to the jurisdiction of the court so selected to the exclusion of any other court that may have had jurisdiction.

18. Assignability: All rights and obligations of the parties hereunder are personal to the parties and neither party may assign its interest herein without the written consent of the other party. Any attempted assignment or transfer without the written consent of the non-assigning party shall constitute a material breach of this Contract.

19. Entire Agreement. This Contract and any documents incorporated specifically by reference represent the entire agreement between the parties and suspend all prior oral or written statements or agreements. This Contract may be amended only by written amendments duly executed by Union College and the Service Provider.

20. Severability. The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of the Contract. Each provision of this Contract shall be enforced to the maximum extent permitted by applicable law.

21. Notices. All notices or other communications hereunder shall be given in writing and shall be deemed given if served personally or mailed by registered or certified mail, return receipt requested, to the parties at their respective addresses indicated in the first paragraph of this Contract, or at such other address or addresses as they may hereafter designate in writing.

In Witness Whereof, the parties hereto caused this Contract to be executed on the date set forth below their signatures.

The Trustees of Union College in the Town of Schenectady in the State of New York a/k/a Union College	Service Provider
<i>Union College</i>	
<i>by</i> _____	<i>by</i> _____
<i>name</i> _____	<i>name</i> _____
<i>its</i> _____	<i>its</i> _____
<i>date</i> _____	<i>date</i> _____

Scope of Work

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