**PROFESSIONAL SERVICES AGREEMENT**

This **PROFESSIONAL SERVICES AGREEMENT** (“Agreement”) is entered into on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Effective Date”) by and between The Trustees of Indiana University on behalf of [insert appropriate IU unit/department], located at [address](“IU”) and [insert client name and address] (“Client”).

**WHEREAS**, Client desires that IU [insert a summary of services to be performed];

**WHEREAS**, IU desired to provide such services to Client in exchange for the consideration set forth below;

**NOW, THEREFORE**, the parties, intending to be legally bound, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, do agree as follows

**1. SERVICES**

IU will provide the following services (“Services”) to Client:

[insert description of services; the services must be described in detail and must be described in a manner that gives a reader of this agreement a reasonable sense of the scope/amount of services that will be performed]

**2. PAYMENT**

Client shall pay IU for performance of the Services as follows: [include or omit as applicable]

 (a) Client shall pay IU [insert amount] within [insert number of days] calendar days of the Effective Date; and

 (b) Client shall pay IU [insert amount] within [insert number of days] calendar days of receiving an invoice from IU [after the Services have been performed].

**3. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY**

IU IS PROVIDING THE SERVICES “AS IS,” “WITH ALL FAULTS,” AND “AS AVAILABLE.” TO THE MAXIMUM EXTENT PERMITTED BY LAW, IU MAKES NO, AND SPECIFICALLY DISCLAIMS ALL, REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT THE SERVICES WILL BE ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING, USAGE OF TRADE, NON-INFRINGEMENT, OR QUIET ENJOYMENT.

In no event will IU’s liability to Client arising out of or in connection with this Agreement or the Services exceed, in the aggregate, the total fees paid by Client to IU.

**4. INDEMNIFICATION**

Client will indemnify, defend, and hold harmless IU, its Trustees, officers, employees, and agents from any suit, action, claim, demand, judgment, or related expense (including reasonable attorneys’ fees)arising out of the performance of this Agreement or the Services; however, Client will have no such obligation if it is shown that such suit, action, claim, demand, judgment or related expense (including reasonable attorneys’ fees) is based solely on the negligence of IU, it’s Trustees, officers, employees, or agents.

**5. GOVERNING LAW AND DISPUTE RESOLUTION**

This Agreement shall be construed in accordance with and pursuant to the internal laws of the State of Indiana, without regard to choice of law rules. Further, the Parties:

(i) Agree that litigation initiated by either party concerning the interpretation or implementation of this Agreement shall exclusively be brought and litigated in a state court of competent jurisdiction in Monroe County, Indiana, or in federal court of competent jurisdiction in the Southern District of Indiana;

(ii) Consent to the personal jurisdiction of such courts; and

(iii) Waive any defense of *forum non conveniens*.

**6. IU PROPERTY**

As part of performing the Services, IU personnel may utilize copyrighted or copyrightable material, proprietary software, methodologies, tools, specifications, ideas, knowledge ordata that has been developed by IU and/or its personnel (collectively, "IU Property"). Client acknowledges that IU Property is and shall remain the exclusive property of IU and its personnel. Client shall not do any act, or assist any other party to do any act, which would infringe IU’s or its personnel’s rights in any of the IU Property, and shall not contest the rights of IU or its personnel in any of the IU Property. Client shall notify IU immediately if Client becomes aware of any suspected infringement of IU Property rights and take such action as IU shall direct in relation to the infringement.

**7. MISCELLANEOUS**

 **a.** Neither party may assign this Agreement or any portion thereof without the express written consent of the other.

 **b.** If the performance of any part of this Agreement is prevented or delayed by reasons of an act of God, act of war, act of terrorism, fire, governmental action, or any other cause beyond the performing party’s reasonable control, then that party will be excused from performance for the length of the prevention or delay.

 **c.** The parties enter this agreement as independent contractors, and nothing herein shall be interpreted to create any agency, partnership, or joint venture between them.

 **d.** If any term or condition of this Agreement is adjudged to be illegal, invalid, or inoperable, that illegality, invalidity, or inoperability shall not affect the remainder of this Agreement, its validity or enforceability.

 **e.** The failure of either party to enforce a breach of this Agreement will not constitute a waiver of any future breach, whether similar or dissimilar in nature.

 **f.** The parties agree that the terms and conditions of this Agreement are controlling and constitute the entire understanding and agreement between the parties regarding the subject matter hereof. The parties agree that any terms presented by Client in a separate document, such as a purchase order, are not binding and are expressly excluded from this Agreement. This Agreement may not be modified or amended except by a written instrument executed by both parties.

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

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

**The Trustees of Indiana University on behalf [Client]**

**of [insert IU unit/department]**

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

Donald S. Lukes [Name]

University Treasurer [Title]