

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (this "Agreement") is made and entered as of the ___ day of _____, 20___ (the "Effective Date") by and between Babson College (the "College"), on behalf of its _____ located at 231 Forest Street, Babson Park, MA 02457 and _____ ("Consultant") located at _____.

RECITALS:

WHEREAS, Consultant has certain professional skills, knowledge, experience and/or has access to personnel having same which are highly desirable to the College;

WHEREAS, the College desires to retain Consultant to provide the Services (defined below) to the College; and

WHEREAS, Consultant is willing to provide the Services in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Scope of Services.** Consultant shall provide the professional services described on **Exhibit A**, attached hereto and incorporated herein (the "Services") to the College from time to time during the term of this Agreement as directed by the College. Consultant shall be available to consult with the College and others as directed by the College concerning the Services. The College shall establish the goals to be achieved by the Services but not the details nor means by which such goals are accomplished. From time to time during the term of this Agreement, the College may request Consultant perform certain additional services or provide materials that are not set forth in an SOW, but are related to the Services ("Additional Services"). Consultant shall secure from College an amendment in writing for the Additional Services, via an amendment to this Agreement, and any additional payment to Consultant for such Additional Services shall be set forth therein. In the event Consultant fails to secure a written amendment for the Additional Services, Consultant shall not be entitled to any additional compensation for the Additional Services performed. All Additional Services performed by Consultant shall be governed by the terms of this Agreement.

2. **Compensation.** Assuming satisfactory performance, as compensation for the Services provided pursuant to this Agreement, the College shall pay Consultant the amount(s) set forth in **Exhibit B**, attached hereto and incorporated herein, by check or in such other form as the College may require. Consultant shall submit to the College by the 10th day of month following the month in which Services were rendered, a statement, in reasonable detail, of the Services performed during such month. Such statement or invoice shall be submitted as the College shall direct. Within thirty-five (35) days after receipt of such documentation, the College shall pay to Consultant the fees for the Services reflected thereon subject to the terms and conditions set forth herein. The College shall have no obligation to make any payment or reimbursement for any expenses or fees incurred in connection with the performance of Services pursuant to this Agreement except as provided in **Exhibit B**.

3. **Term and Termination.** This term of this Agreement shall begin as of the date hereof and shall terminate on _____. This Agreement may be renewed for no more than ninety (90) days by mutual written agreement. Either party may terminate this Agreement at any time by providing no less than thirty (30) days written notice to the other party. Upon such notice of termination by either party, Consultant shall complete all Services in progress as if such notice of termination had not been given. The College shall have no liability to Consultant beyond payment pursuant to this Agreement for the Services rendered to and accepted by the College prior to the effective date of such termination and no early termination by Consultant shall relieve Consultant of any Claim (defined below) or other damage or loss.

4. **Relationship of the Parties.** The status of Consultant shall be that of an independent contractor and not that of any employee, agent or other partner of the College. Consultant shall have no power or authority to act on behalf of the College or in its name or to bind the College, either directly or indirectly, in any manner nor shall Consultant make any representation otherwise to any person. Consultant is retained solely for the purpose of providing the Services to the College. Consultant expressly assumes all tax liabilities associated with the compensation paid pursuant to this Agreement.

In accordance with the terms of this Agreement, Consultant shall be free to accomplish the Services for which Consultant has been retained in such manner as Consultant may determine. Consultant may engage third parties (collectively, "Subcontractors") solely by written agreement to assist Consultant in the performance of the Services. The written agreement between Consultant and Subcontractor shall contain only provisions that are consistent with the obligations and performance of Consultant under this Agreement. Notwithstanding any provision in this Agreement to the contrary, Consultant shall at all times remain fully responsible to College for the acts and omissions of all Subcontractors, including without limitation, the performance in accordance with the terms and conditions of this Agreement of the Services by any and all Subcontractors.

Nothing in this Agreement shall be understood or construed to create or imply any relationship between the parties in the nature of any joint venture, employer/employee, principal/agent or partnership. Consultant shall not be considered as having an employee status or as being entitled to any benefits available to the College employees, including but not limited to any pension or benefit plan, worker's compensation or unemployment compensation. Consultant acknowledges that Consultant is not engaged by the College in any other capacity and that Consultant shall not hold any other position with the College during the term of this Agreement nor shall Consultant file or apply for any unemployment benefit or similar payment with any federal, state or local agency.

In the event that this independent contractor relationship is determined by tax authorities to constitute an employment relationship, Consultant hereby waives, for the period prior to the date such determination becomes final, any and all claims to coverage under all College retirement, profit-sharing, pension, health, dental, welfare, or similar type plans.

5. Representations and Warranties of Consultant. Consultant represents, warrants and covenants to the College that: (i) Consultant possesses the requisite training, knowledge, skills, experience and expertise to provide the Services and shall provide the Services in accordance with the standards of care, skill and diligence consistent with recognized and prudent industry practices, all applicable laws and regulations, each SOW, Exhibits, documents, and procedures applicable to the Services; (ii) Consultant has the right, power and capacity and is duly authorized and empowered to execute, deliver and perform this Agreement; (iii) this Agreement, upon execution thereof by the person representing Consultant below, will be the legal, valid and binding agreement of Consultant, enforceable against Consultant in accordance with its terms and applicable law; (iv) to the extent the Work Product involves web content, the Work Product shall comply with Web Content Accessibility Guidelines (WCAG) Version 2.1 Level AA, and Consultant shall reasonably provide written documentation verifying accessibility thereof and cooperate to resolve accessibility complaints received by the College; and (v) Consultant's performance of its obligations under this Agreement does not violate any existing agreement or obligation between Consultant and a third party.

6. Confidential Information.

a. Consultant acknowledges that in connection with this Agreement and the Services provided by Consultant under this Agreement, the College may provide, and Consultant may acquire and make use of, certain Confidential Information of the College relating to the provision of the Services. For purposes of this Agreement, (i) "Confidential Information" shall include, without limitation, Work Product (defined below), Personal Data (defined below), College Content, this Agreement, student and student-related information, faculty lists, reports, methods of operation, trade secrets, training materials, policies, protocols, and procedures (administrative, research, and clinical), budgeting, staffing needs, databases, marketing research, equipment capabilities, fee schedules, and other proprietary, business, financial and other information connected with or related to the College that is not generally known to the public; (ii) the term "College Content" shall mean any and all materials, information, content and other data and derivatives thereof which College and/or any member of the College Community shall provide, transmit and/or permit access to Consultant and (iii) the term "College Community" shall mean the current and/or former trustees, officers, faculty, staff, students, prospective students, alumni, participants in a program supported and/or administered in whole in part by College, contractors, representatives and agents of College.

b. The provisions of Section 6(b), Section 6(c), and Section 6(d) shall apply only to the extent Consultant acquires, makes use of or is otherwise provided Personal Data. For purposes of this Agreement, "Personal Data" shall mean any and all personally identifiable information, in any form or media, about current or former College trustees, faculty members, employees, students, prospective students, and other persons associated with College. Personal Data includes, without limitation, (i) an individual's social security number, bank or other financial account numbers, credit or debit card numbers, driver's license number, passport number, other government-issued identification numbers, biometric data, health and medical information, and data about the individual obtained through a research project; (ii) financial information, employee benefits information, education records, College identification numbers, and any information about an individual that has been marked as private or confidential; and (iii) any additional categories of information about individuals that College from time to time designates in writing as Personal Data.

c. In addition to complying with other provisions of the Agreement requiring the protection of Confidential Information, if applicable, Consultant shall undertake the following:

- (i) implement and maintain appropriate security measures for Personal Data which shall be at least as protective of the confidentiality of such information as the safeguards for personal information set forth under applicable international, federal, state and local law;
- (ii) limit access, use and disclosure to Personal Data to Consultant personnel who have a specific need for such access to provide the Services to College (each, a "Permitted Person");

(iii) not at any time during or after the Term, disclose Personal Data to any person, other than Permitted Persons under subclause (ii) and College personnel in connection with this Agreement, except with College's prior written consent (or except as required by law, in which case Consultant shall, unless prohibited by law, notify College prior to such disclosure pursuant to Section 6.5(v));

(iv) obtain written approval from College prior to implementation by Consultant of any Internet access to Personal Data by anyone not a Permitted Person;

(v) cause all Personal Data to be encrypted when transmitted by Consultant or Permitted Persons via the Internet or any other public network, or wirelessly;

(vi) segregate server computers hosting any Personal Data from Consultant's internal data network, and require such server segregation by any Permitted Person who receives Personal Data from Consultant;

(vii) ensure that Consultant and Permitted Persons do not store Personal Data (a) on any unencrypted portable device (for example, laptops, PDAs, smartphones or similar devices or (b) in any unencrypted portable medium (for example, DVDs or backup tapes);

(viii) use measures to protect the security of paper records containing Personal Data and ensure Personal Data is stored in securely locked facilities;

(ix) notify College within twenty-four (24) hours of learning of any event that creates a substantial risk of unauthorized acquisition or use of Personal Data or of other harm to any person whose Personal Data is involved in the event; and

(x) comply with such additional protections as College shall reasonably request from time to time.

d. Any provisions of this Agreement that exclude from confidentiality treatment any information that is available to Consultant from third parties, previously known to Consultant, independently developed by Consultant, or not specifically designated as confidential by College, shall be inapplicable to Personal Data.

e. The obligations with respect to Confidential Information shall not apply to Confidential Information that: (a) Consultant already knows at the time it is disclosed as shown by Consultant's written records; (b) is publicly known without breach of the Agreement; (c) Consultant received from a third party authorized to disclose it without restriction; (d) Consultant, its agents, or subcontractors developed independently without the use of the Confidential Information or (e) based on advice of legal counsel, Consultant is required by law, regulation, or valid court or governmental agency order to disclose; provided, however, that Consultant first notifies College of its intent to make such a disclosure, so that College may seek a protective order.

f. Consultant shall not use or access such Confidential Information except solely in connection with the performance of the Services, nor divulge the Confidential Information to any third party unless the College consents in writing to such use or divulgence, or such disclosure is required by law or required to perform the Services of this Agreement. In the event Consultant receives a request or demand from a third party for the disclosure of Confidential Information, Consultant shall promptly (within two (2) business days after receipt of such request or demand) provide written notice to the College of such request or demand, including a copy of any written document of such request or demand.

g. (i) Consultant agrees to protect and safeguard from and against unauthorized access, use or disclosure the Confidential Information of College in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care). Consultant shall notify College promptly upon discovery of any unauthorized access, use or disclosure of Confidential Information of College and cooperate reasonably with College to prevent any future unauthorized access, use or disclosure of Confidential Information as reasonably requested by College. Notwithstanding any provision in this Agreement, nothing in this Agreement shall entitle, permit nor authorize Consultant or any third Parties to access, use or disclose any College Content to provide or make available any service or product whatsoever to any member of the College Community.

(ii) Confidential Information provided or made available to Consultant for purposes of providing the Services includes information protected by and/or subject to restrictions under the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 C.F.R. Part 99) ("FERPA"). To the extent any of College, its employees, faculty, staff and/or students provides any Confidential Information to Consultant, its officers, directors, employees, agents and/or representatives, if any, which is protected by and/or subject to restrictions under FERPA and does not constitute "directory information" under FERPA, Consultant acknowledges all receipt, access, use and/or disclosure of such information by Consultant, its officers, directors, employees, agents and/or representatives, if any, is only as a "school official" under FERPA solely for the purpose of providing the Service to or on behalf of College and, in

such cases, Consultant shall ensure all such receipt, access, use and/or disclosure by Consultant, its officers, directors, employees, agents and/or representatives complies with the applicable provisions of FERPA. The terms and conditions of any agreement between any Community Member and the Consultant shall not contain any provision inconsistent with the terms and conditions of this Agreement or with respect to such FERPA-covered information.

h. Upon expiration or termination of this Agreement, Consultant shall not take nor retain, without prior written consent from the College in each case, any Confidential Information or copies thereof in any form or medium of any kind except that Consultant may retain a copy of such Confidential Information solely for archival purposes and to demonstrate compliance with this Agreement provided, however, Consultant shall continue to comply with the obligations of this Section 6 to the extent and for so long as Consultant shall retain and/or not return any Confidential Information to College. Upon the expiration or termination of this Agreement or otherwise upon the request of the College, all Confidential Information received by Consultant shall be promptly returned to the College at the sole cost and expense of Consultant or, upon request of the College, destroyed with such destruction confirmed by Consultant in a form reasonably satisfactory to College. Without limiting other possible remedies for the breach of these covenants relating to Confidential Information, the Parties agree that injunctive or other equitable relief shall be available to enforce any and all of these covenants, such relief to be without the necessity of posting a bond, cash or otherwise.

i. To the extent applicable, Consultant shall comply with all laws, rules and regulations relative to the protection of the nonpublic personal information of residents of Massachusetts. Consultant shall not use the name or any trademark or logo of the College nor advertise the existence of this Agreement in any manner without the prior express consent of the College in each case.

7. Intellectual Property. Consultant shall provide the Services for the exclusive benefit of the College. Except as provided below, all items created or developed in, or resulting from, the course of performance by Consultant of its various obligations under this Agreement, including, without limitation all (i) plans; (ii) materials; (iii) reports and results; (iv) documents; (v) graphic elements; aesthetic qualities, "look and feel" of any deliverable and all other unique, novel and/or customized parts and aspects of any and all deliverables not generally used or applied to similar products; (vi) computer software, in source code, object code and/or script form, and all related user, programmer and technical documentation, as well as all modifications, and enhancements of any of the foregoing; (vii) text, photos, recordings or other materials of any kind or nature; and (viii) the Deliverables and all elements of the Deliverables created or developed by or on behalf of Consultant (collectively, "Work Product") have been or will have been specially ordered or commissioned by the College and, accordingly each is and will be a "work made for hire" (as that term is defined in the Copyright Act of 1976) for the College, effective as of the moment each such item is fixed in a tangible medium, whether such item is complete. In addition, Consultant hereby transfers and assigns to the College all of its rights, titles and interests in the Work Product, including, without limitation, all patents, trade secrets, copyrights, moral rights and other property rights of Consultant. Notwithstanding any other provision of the law that may cause rights to such Work Product to vest initially in Consultant, all right, title and interest, including, without limitation, all copyrights in and to any and all copyrightable works, resulting from or developed in connection with any such Services shall be, or shall become owned by the College and the same are hereby transferred in their entirety to College. Consultant shall have no right, title, or interest in any Work Product and shall not use, license or otherwise transfer or distribute any such Work Product without the prior written consent of the College. Upon expiration or termination of this Agreement, Consultant shall not take or retain, without prior written consent of the College, any Work Product or copies thereof in any form or medium of any kind.

Notwithstanding the foregoing, the term "Work Product" shall not include any verifiably pre-existing materials, information or products of Consultant including, but not limited to software, schematics, designs, portfolios, prototypes, artwork, literature, signage, photography, videography, documentation, displays, and exhibits (collectively, "Consultant Materials"). Consultant Materials shall be owned by and shall remain the sole and exclusive property of Consultant (or Consultant's suppliers, as applicable) at all times. Consultant has the power to and hereby grants to College a non-revocable, non-transferable, fully-paid up license without conflict with rights of any third party to use such Consultant Materials in connection with the Work Product and transactions contemplated by this Agreement and for no other purpose whatsoever and the parties acknowledge that the fee(s) and compensation set forth in this Agreement have been priced accordingly.

Consultant will (a) execute any and all such documents as the College may reasonably request from time to time to vest in the College all of the rights granted or transferred by Consultant under this Agreement and (b) take all reasonable steps to have each of those persons who has or will have participated in the development of the deliverables for, or on behalf of, Consultant execute any and all such agreements, applications, assignments, instruments and/or other documents required by the College for such purposes and, further, perform or cause to be performed such other lawful acts, as the College may deem necessary or desirable to evidence full and exclusive title to any and all Work Product. Furthermore, Consultant shall assist and cooperate with the College and its representatives in any controversy or legal proceedings relating to such Work Product.

Consultant shall not acquire any rights of any kind whatsoever including, but not limited to, publication rights, patent, copyright, trademark, or service mark rights, ownership rights, or promotional rights with respect to any inventions, discoveries, technology, or scientific or medical findings, whether patentable or non-patentable, in the Work Product and/or resulting from the Services provided by

Consultant. Consultant shall promptly disclose only to the College or its designee any invention, discovery, technology, or scientific or medical findings, whether patentable or non-patentable, in the Work Product and/or resulting from the Services provided by Consultant.

Consultant shall not use the name, trademarks, logos, copyrights or service marks of the College without the prior written consent of the College. The performance by Consultant of the Services pursuant to this Agreement will not infringe any copyright, patent, trade secret, or other proprietary right held by any third party.

Consultant will create or develop the Work Product only through the services of employees and/or independent contractors of Consultant who have executed written agreements that (a) contain appropriate confidentiality and ownership provisions consistent with the terms of this Agreement and (b) assign to Consultant all rights, titles and interests of such personnel in the Work Product, including without limitation, patents, trade secrets, copyrights and other propriety rights of such personnel.

8. Conflict of Interest. During the term of this Agreement Consultant shall avoid any conflict of interest, including but not limited to any situations in which financial or other personal considerations directly or significantly affect, or have the appearance of directly or significantly affecting the professional duties of Consultant in performance of this Agreement.

9. Compliance with Laws; Indemnification. Consultant shall comply with all applicable international, federal, state and local laws in connection with the performance by Consultant of obligations of Consultant under this Agreement. Consultant agrees to release the College from any claims, other than breach of this Agreement, arising under or relating to this Agreement.

Consultant hereby agrees to defend, indemnify and hold harmless the College and its trustees, directors, officers, employees and agents (each a "College Indemnified Party") from and against any and all threatened and/or actual claims, demands, suits, settlements, damages, losses, liabilities, fines, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees) (each a "Claim") paid or incurred by, imposed on or asserted against any College Indemnified Party relating to or arising out of or in connection with (i) the Services provided or offered by Consultant under this Agreement; (ii) the breach of any of this Agreement by Consultant; and/or (iii) the negligence or willful misconduct of Consultant or any of its officers, directors, trustees, employees, representatives and/or agents except to the extent such Claim relates to, arises out of or in connection with the gross negligence of the College.

10. Notices. All notices, demands and other communications required or permitted hereunder or in connection herewith shall be in writing and delivered in person or sent electronically, by facsimile, nationally recognized overnight courier or registered or certified mail, return receipt requested and postage prepaid to the applicable party at its address or facsimile number set forth below or at such other address or facsimile number as any party hereto may designate as its address or facsimile number for communications under this Agreement by notice so given. Such communications shall be deemed effective on the (i) day on which delivered or sent if delivered in person, electronically (with confirmatory response electronically sent), or by facsimile (with answered back confirmation received); (ii) first (1st) business day after the day on which sent, if sent by a nationally recognized overnight courier; or (iii) third (3rd) business day after the day on which mailed, if sent by registered or certified mail to:

If to Babson College:

Babson College
Attn: _____
231 Forest St: _____
Babson Park, MA 02457
Email: _____

If to Consultant:

Attn: _____

_(email)

11. Captions; Entire Agreement; Amendments. The caption headings are furnished for the convenience and reference of the parties and do not define, limit, extend or describe the scope of this Agreement or any provision in this Agreement. This Agreement, exhibits and other documents incorporated by reference in this Agreement set forth the entire understanding between the parties

hereto regarding the subject matter hereof and supersede all prior and contemporaneous negotiations, agreement and undertakings between the parties with respect to the subject matter. All exhibits, including without limitation, **Exhibit A** and **Exhibit B**, addenda, attachments and riders to this Agreement are attached hereto and made a part hereof by this reference. In the event of any inconsistency or conflict between the terms hereof and any exhibit or other document incorporated by reference into this Agreement, the terms hereof shall govern and control. This Agreement may not be amended or modified except by an instrument in writing signed by both parties.

12. No Waiver. Neither the failure nor delay by either party to exercise any right, remedy, power or privilege under the Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege, nor shall any waiver with respect to any occurrence be construed as a waiver with respect to any other occurrence. No waiver of any right, remedy, power or privilege under this Agreement will be effective unless in writing signed by the party to be charged thereby.

13. Assignment; Binding Effect. Consultant shall not assign or transfer any rights or obligations of Consultant under this Agreement without the prior written consent of the College. This Agreement shall be binding on heirs, successors in interest and permitted assigns of the parties. This Agreement is being entered solely for the benefit of the parties hereto and nothing in this Agreement shall confer nor be interpreted as having conferred any benefit to any third party.

14. Governing Law. The validity, construction, interpretation and all other matters relating to this Agreement and/or any other disputes between the parties shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflict of law principles. In the event of any action or proceeding to enforce any term of this Agreement and/or other matter between the parties, the parties shall submit to the exclusive venue of any court located in Norfolk County, Massachusetts. Notwithstanding any provision in this Agreement, nothing in this Agreement shall expand the liability of College beyond the limitations and exclusions otherwise applicable to Babson College under the charitable immunity statutes of Massachusetts.

15. Counterparts. This Agreement may be signed in two or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same Agreement.

16. Insurance/Authorization. Consultant shall carry adequate liability, property, workers' compensation, umbrella and other insurance of a kind and in an amount generally carried by persons engaged in the same or a similar kind of business similarly situated, unless, in any case, other types of insurance or higher amounts are required by the College as may be identified on an exhibit hereto or otherwise communicated to Consultant, in all cases naming the College as an additional insured where required by the College. Upon request, Consultant shall supply to the College a certificate(s) of insurance evidencing the same, where required. Consultant hereby represents, warrants and covenants to College that it has and/or will have and maintain all necessary permits, license, approvals and other authorizations applicable to the performance of its obligations contemplated under this Agreement. Consultant shall observe all policies, rules, regulations and instructions that College may promulgate or deliver to Consultant from time to time, all of which shall form a part of this Agreement upon delivery thereto.

17. Survival; Severability. The provisions of Sections 4, 6, 7, 9, 11, 14 and 17 shall survive any expiration or termination of this Agreement. If any provision of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, then such provision shall be deemed stricken herefrom and the remainder of this Agreement shall remain at all times in full force and effect and such invalid or enforceable provision shall, to the extent legally permitted, be replaced by the valid and enforceable provision that seems closest to the parties' intent underlying the invalid or unenforceable provision.

[The remainder of this page is blank. The following page is the signature page.]

IN WITNESS WHEREOF, the parties hereto have caused this Professional Services Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

[NAME OF OTHER PARTY]

BABSON COLLEGE

By: _____

By: _____

Title: _____

Title: _____

Name: _____

Name: _____

EXHIBIT A
Description of the Services

EXHIBIT B
Compensation Schedule

Check below whether the amount to be paid is (i) an hourly, weekly or flat rate and (ii) the maximum amount payable under the Agreement by choosing one (1) of the examples below. Check the correct compensation box.

- a. The College agrees to pay to Consultant the sum of \$_____ per hour, not to exceed a total amount of \$_____, subject to the terms and conditions of this Agreement.
- b. The College agrees to pay to Consultant a weekly rate of \$_____, not to exceed a total amount of \$_____, subject to the terms and conditions of this Agreement.
- c. The College agrees to pay to Consultant a total amount not to exceed \$_____ subject to the terms and conditions of this Agreement.

If there are any other payment terms or details regarding payment(s) to be made under this Agreement, state them here.