

**UNIVERSITY OF PENNSYLVANIA
CONTRACT FOR PERSONAL SERVICES RENDERED BY A
CONSULTANT**

THIS AGREEMENT made as of the
(" E f f e c t i v e D a t e ") by and between The Trustees of
the University of Pennsylvania, a Pennsylvania non-profit corporation
and institution of higher education organized under the laws
of the Commonwealth of Pennsylvania, having a business
address at 3451 Walnut Street, Philadelphia, Pennsylvania 19104
(hereafter referred to as the "University"), and

(hereafter referred to as the "**Service Provider**").

WITNESSETH

WHEREAS, the University desires to contract with the Service Provider
for the provision of certain services as hereinafter set forth; and

WHEREAS, Service Provider hereby represents to the University that
he, she or it has the skill, experience and all requisite occupational licenses
to provide the Services (defined below) called for under this Agreement in a
first class and professional manner;

NOW, THEREFORE, the parties, intending to be legally bound, agree as
follows:

1. Description of Services. On or before the date or dates specified in
the attached Scope of Services, the Service Provider shall perform,
complete and provide to the University, manner as approved by the
University, the Services described in the Scope of Services attached
hereto as Exhibit A (collectively, the "Services").

2. Fee.
 - a. Base Fee. The University agrees to pay the Service Provider the
sum specified in the Scope of Services as full consideration for
the performance of the Services. Payment of such sum shall be
in accordance with the schedule of payments set forth in the

Scope of Services. All payments shall be due on the later to occur of:

- i. completion of the Services or agreed upon portion of the Services (if partial payments are provided for in the Scope of Services) for which payment is sought; and
 - ii. 30 days after invoicing.
- b. Additional Services. The University may require Service Provider to perform services in excess of those contemplated by the Scope of Services. Such services shall be provided at the rates specified in Exhibit A or, if Exhibit A does not set compensation for additional services, then at a mutually agreed upon cost. No Services performed by the Service Provider which is beyond the Scope of the Services described in Exhibit A shall be deemed additional services for which compensation shall be payable unless the amount of such additional fees and the scope of such additional services shall have been agreed to in writing, in advance, by the University.

3. Principal Contact Person

- a. The University's Principal Contact Person under this Agreement shall be _____ and all correspondence, reports and inquiries regarding this Agreement shall be directed to that person. Any additional services under this Agreement may be authorized only by the Principal Contact Person.
- b. The Principal Contact Person of the Service Provider for all purposes under this Agreement shall be _____ and all correspondence and inquiries regarding their Agreement shall be directed to that person.

4. Standard of Performance; Remedy.

- a. Supplier expressly warrants that the Services Agreement will (i) be of superior quality when measured against similar services performed by individuals or organizations rendering at the same general time as Service Provider, and (ii) conform to all plans, specifications and other data incorporated as part of this

Agreement. These express warranties shall not be waived by reason of acceptance or payment by the University.

- b. In addition to other remedies provided by law, University reserves the right to revoke any previous acceptance and to cancel all or any part of the Agreement if Supplier fails to perform any of the Services in accordance with the terms and conditions of this Agreement. Acceptance of any part of the Services shall not bind the University to accept any future Service.
 - c. If University notifies Service Provider of any non-compliance with the foregoing warranty, Service Provider shall re-perform or correct, at its cost, the non-conforming Services to the reasonable satisfaction of the University requests for additional support will be billed on a time-and-materials basis at the "additional time" rate specified under "Fees" above.
5. Insurance. The Service Provider, at its own cost and expense, shall obtain and maintain in force during the term of this Agreement, a policy of professional liability insurance affording protection of not less than \$1,000,000 per incident and \$1,000,000 in the aggregate. This insurance policy shall be issued by an insurance company reasonably acceptable to the University, licensed to conduct business in the Commonwealth of Pennsylvania, and shall be written as primary coverage and not contributing with or in excess of any coverage that the University may carry.

The Service Provider shall furnish to the University's Office of Risk Management, FMC Tower, 2929 Walnut Street, Suite 400, Philadelphia, PA 19104, upon execution of this Agreement and at least 30 days before the expiration of any certificate previously furnished, a certificate of insurance for the above-mentioned policy, together with evidence of payment of all applicable premiums. The insurance policy required to be carried hereunder by the Service Provider shall provide (and any certificate evidencing the existence of such insurance policy shall certify) that such insurance policy shall not be canceled unless the University shall have received 20 days' prior written notice of cancellation. The Service Provider shall provide immediate notice to the University's Office of Risk Management of any

significant change in the aforementioned coverage or limits. Neither the issuance of any insurance policy required under this Agreement, nor the minimum limits specified herein with respect to the Service Provider's insurance coverage, shall be deemed to limit or restrict in any way the Service Provider's liability arising under or out of this Agreement.

6. Indemnification. To the maximum extent permitted by law the Service Provider agrees to indemnify and hold harmless the University, its successors, assigns, trustees, officers, employees, agents and students from and against any and all actions, causes of action, losses, damages, claims and demands whatsoever (including attorneys' fees), whether known or unknown, present or future, that arise from or are connected with the provision of the Services and the negotiation, execution and performance of this Agreement, except as to those acts, errors and omissions that are due to the sole negligence of the University.
7. Assignment. The Service Provider may not assign this Agreement or subcontract any portion of the Services without the prior written consent of the University, which consent may be withheld for any reason whatsoever or for no reason.
8. Performance of Services. In providing the Services, the Service Provider and its agents, employees, contractors and subcontractors shall comply with all reasonable procedures prescribed by the University for coordination of the Services with the functions, activities and operations of the University.
9. Independent Contractor Relationship. Nothing contained in this Agreement shall be deemed to constitute the Service Provider or the University as an agent, partner, joint venturer, servant or employee of the other, any such intent being expressly disclaimed by this Agreement. Therefore, in performing any and all of the Services, Service Provider shall at all times and for all purposes be and remain an independent contractor. In no case shall Service Provider or any of its employees be considered employees or agents of the University for any purpose whatsoever. Accordingly, neither Service Provider nor any of its employees or agents shall be or become entitled to any of the compensation or employment-related benefits which employees

of the University receive, or have the authority to enter into any contract for or on behalf of the University or otherwise bind the University in any manner.

10. Schedule. If completion dates cannot be met, Supplier shall inform University immediately. Such notice shall not, however, constitute a change to the completion terms of this Agreement unless University modifies this Agreement in writing. If any element of the Services is not completed by the date specified, the University, at University's option and without prior notice to Supplier, may either approve a revised date or may cancel this Agreement and may obtain the Services elsewhere and in either event the Supplier shall be liable to the University for any resulting loss incurred by the University. Supplier's sole remedy for a delay caused by University shall be an extension in the time for Supplier's performance equal to the duration of University's delay. Supplier shall not be liable for damages resulting from Supplier's failure to deliver or complete, or for delays in delivery or completion, caused solely by fires, war or acts of God.
11. Default. In the event that the Service Provider neglects or fails to perform or observe any of the terms, covenants or conditions of this Agreement (and such neglect or failure is not remedied within ten days after the Service Provider has received written notice from the University specifying such neglect or failure), such neglect or failure shall constitute a breach of this Agreement and the University shall be entitled to exercise, without further notice to the Service Provider, any and all legal and equitable rights and remedies (including the remedy of termination or specific performance) which it may have against the Service Provider.
12. Termination. Notwithstanding any other provision of this Agreement to the contrary, the University shall have the right to terminate this Agreement at any time without incurring any liability to the Service Provider for lost profits, or any other costs or damages. Upon such termination, the Service Provider shall be paid for all Services performed in accordance with this Agreement through the date of termination but shall not be entitled to any additional payments whether on account of lost profit or otherwise. Supplier's warranties, and Supplier's liability for

defective or non-conforming Services shall survive termination and remain in full force and effect.

13. Compliance with Laws. The Service Provider shall comply, at its own cost and expense, with the provisions of all federal, state, county and municipal laws, ordinances, regulations and orders pertaining to the performance of the Services. With regard to Article 15, Confidentiality, the foregoing requirement shall include the Family Education Rights and Privacy Act, the Gramm-Leach-Bliley Act and the Health Insurance Portability and Accountability Act. 2. The Service Provider shall take all measures necessary to promptly remedy any violations of such laws, ordinances, rules, regulations and orders.

14. Non-Discrimination in Employment

a. The Service Provider will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, national origin, disability, or because he or she is a disabled veteran or veteran of the Vietnam Era. The Service Provider will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, national origin, disability, or because he or she is a disabled veteran or veteran of the Vietnam Era. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Service Provider agrees to post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. In the event of the Service Provider's noncompliance with the nondiscrimination clauses of this Agreement, this Agreement may be canceled, terminated or suspended, in whole or in part and the Service Provider may be declared ineligible for U.S. Government contracts in accordance with procedures authorized in Executive Order 11246, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order

11246, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- c. The Service Provider shall submit to the jurisdiction of one of the following concerning alleged violations of the terms of this Agreement relating to discrimination or of the President's Executive Order No. 11246, as amended:
 - i. Philadelphia Human Relations Commission
34 S. 11th Street
Philadelphia, PA 19107
 - ii. Pennsylvania Human Relations Commission
Pennsylvania State Office Building
Broad and Spring Garden Streets
Philadelphia, PA 19130
 - iii. Equal Employment Opportunity Commission
Philadelphia District Office
21 S. 5th Street
Philadelphia, PA 19106

15. If University so elects in its sole discretion with regard to any particular matter, any dispute arising in connection with this Agreement shall be resolved by arbitration in Philadelphia, Penna., in accordance with the rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

16. Notices. All notices or other communications required or permitted under this Agreement shall be deemed duly given if in writing and delivered personally or sent by registered or certified mail, return receipt requested, first-class postage prepaid, (A) if to the University, at University of Pennsylvania, Director of Purchasing Services (with a copy to General Counsel, Office of the General Counsel, University of Pennsylvania, FMC Tower, 2929 Walnut Street, Suite 400, Philadelphia, PA 19104), and (B) if to the Service Provider, at:

Notices will be deemed given on the date of delivery (in the case of personal delivery) or at the time of mailing (in the case of mail delivery). Either party may change its notice address by giving the other party notice of such change in writing.

17. Confidential Information.

a. Definitions.

- i. Confidential Information comprises "University Proprietary Information" and "Sensitive Personally Identifiable Information.
- ii. Proprietary Information:" data, information, or intellectual property in which the University has an exclusive legal interest or ownership right which, if compromised could cause harm to the University, including that which is acquired or developed by Service Provider pursuant to the performance of the Services. Examples may include, but are not limited to, business planning, financial information, trade secret, copyrighted material, and software together with comparable material from a third party when the University has agreed to keep such information confidential.
- iii. "Sensitive Personally Identifiable Information:" Data relating to an individual that reasonably identifies the individual and, if compromised, could cause harm to that individual or to University. Examples may include, but are not limited to: Social Security Numbers, credit card numbers, bank account information, student grades or disciplinary information, salary or employee performance information, donations, patient health information, information University has promised to keep confidential, and account passwords or encryption keys used to protect access to such information. It excludes information that cannot reasonably be used to identify the individual to whom it pertains.

- b. Use and Disclosure Limitations. Service Provider agrees to maintain strict confidentiality concerning in accordance with the requirements and conditions set forth herein. It shall not use, provide, trade, give away, barter, lend, sell, or otherwise disclose Confidential Information, and shall not make any copies of such data or any type whatsoever, in readable or encrypted form, or in individually identifiable or aggregate form, except (i) as necessary for the Services to be performed; or (ii) as expressly permitted by University in a separate writing. It shall not disclosed Confidential

Information to any person or entity whatsoever without the prior written consent of the University.

- c. **Restricted Access:** Service Provider shall only permit access to Confidential Information acquired by Service Provider in connection with this Agreement, and only to employees, agents or contractors of Service Provider (1) who are directly involved in performing the Services for the University and have a specific need to know such information, and (2) who have entered into written confidentiality agreements which impose, or are otherwise bound by, restrictions on the Confidential Information at least equivalent to those imposed under this Agreement.
- d. **Security Safeguards.** Service Provider shall maintain adequate administrative, technical and physical safeguards against unauthorized access, use, or disclosure of Confidential Information, including storing it only on electronic computing devices that are current in their anti-virus software and security patches and that are protected by a firewall, employing a unique user ID and unique password that is not shared with others to prohibit and restrict access, not downloading it to a portable device, such as laptop computers, PDAs and USB drives, unless such data is protected with strong encryption, not transmitting it electronically unless it is encrypted, not acquiring or not removing it from the Service Provider's work site unless such removal is authorized by the University as necessary for Agreement-related purposes, securely destroying such Confidential Information whenever such destruction is practicable, when Service Provider is no longer required to perform services required under this Agreement, and Confidential Information is no longer required to be maintained by applicable law or the terms of this Agreement, maintaining backups, if any, in conformity with these safeguards.
- e. **Remediation and Mitigation:** When Service Provider learns of any unauthorized access, use, disclosure, modification, or destruction of University's Confidential Information or interference with system operations in it shall (1) determine the scope and nature of the incident and (3) restore the reasonable integrity of the data system which hosts the University's Confidential Information without compromise to forensic investigation.

- f. Exclusions. This article shall not apply to any information or data which: (a) Service Provider shall have lawfully possessed before entering into this Agreement; (b) shall be lawfully acquired by Service Provider in circumstances not resulting from this Agreement or the performance of the Services; (c) becomes part of the public domain in any manner other than the publication thereof in violation of this Agreement or otherwise unlawfully; or (d) is otherwise required by applicable law to be disclosed by Service Provider (but then only to the extent that, and only to the recipient or recipients to whom or which such disclosure is required; and only after Service Provider has given the University at least ten days' advance written notice of such disclosure.
- g. Return of Confidential Information: Upon the expiration or earlier termination of the Agreement or at the request of University, Service Provider will either (1) at its own expense, immediately return to University all Confidential Information embodied in tangible form, whether or not reduced to such form by Service Provider including all copies thereof, or (2) at the University's option, certify in writing to University that all such Confidential Information has been destroyed, except that Service Provider may retain Confidential Information to the extent that retention is required by law or is needed to document performance under this Agreement.
- h. Indemnification: Service Provider agrees to indemnify, defend and hold harmless University, its trustees, officers and employees (individually, an "Indemnified Party", and collectively, the "Indemnified Parties"), from and against any and all liability, loss, damage, action, claim or expense ("Claims") suffered or incurred by the Indemnified Parties (including reasonable attorney's fees and expenses) that result from or arise out of any unauthorized access allowed, or use or disclosure of, University's Confidential Information by Service Provider. Service Provider shall not settle or compromise any claim or action giving rise to Claims in a manner that imposes any restrictions or obligations on University without University's prior written consent. Service Provider agrees that if it is named as a party in an action that results from or arises out of any unauthorized access, use or disclosure of

University's Confidential Information, and University is not named as a party to such action, Service Provider shall, immediately upon receiving notice of such action, notify University of the action. The indemnification rights of the Indemnified Parties contained herein are in addition to all other rights which such Indemnified Party may have at law or in equity or otherwise.

18. Background Checks. Service Provider shall ensure that pre-employment or pre-contracting reference and criminal background checks, to include federal, state and county of residence, are conducted on all personnel directly performing Services under this Agreement or a subcontract thereunder (including all persons who shall come on to the premises of the University in the performance of their duties or tasks). Service Provider shall exclude from any direct participation in the performance of the Services any dishonest, unreasonably dangerous or otherwise unqualified persons.

19. General

- a. Binding Effect. The covenants, conditions, terms and provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and, subject to the provisions of paragraph 7, each of their personal representatives, successors and assigns.
- b. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania but excluding that body of law applicable to conflicts of law.
- c. Waiver of Default. No failure by the University to insist upon the strict performance of any term, covenant, agreement or provision of this Agreement or to exercise any right or remedy consequent upon a breach thereof, and no acceptance by the University of Services during the continuance of any such breach, shall constitute a waiver of any such breach or of any such term, covenant, agreement or provision. No term, covenant, agreement or provision of this Agreement and no breach thereof shall be waived, altered or modified except by a written instrument executed by the parties. No waiver of any breach shall affect this Agreement, but each and every term,

covenant, agreement and provision of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof.

- d. Final Agreement. This Agreement contains the final and entire agreement between the parties and is intended to be an integration of all prior agreements between them regarding the Services. The parties hereto shall not be bound by any agreements, conditions, representations or warranties relating to the provision of the Services, oral or written, express or implied, not contained herein.
- e. Severability. In the event that, for any reason whatsoever, any clause or provision of this Agreement (or the application of such clause or provision to a particular set of circumstances) is held or declared to be invalid, illegal or unenforceable, such holding or declaration shall not in any way affect the validity or enforceability of any other clause or provision of this Agreement (or the application of such clause or provision to a different set of circumstances).
- f. Service Agreement Governs. If any provisions of this Service Agreement are inconsistent with or contradict the Scope of Services document attached hereto as Exhibit A, this Service Agreement shall govern.

IN WITNESS WHEREOF, the undersigned parties have caused this Agreement to be executed as of the Effective Date.

THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA

Signature: _____ Date: _____

Name: _____ Title: _____

[NAME OF SERVICE PROVIDER]

Signature: _____ Date: _____

Title: _____

Attachment A:
Scope of Services

Type of Service Provided: _____

On or before the dates specified below, the service provider shall perform, complete and provide to the University the services described below and in accordance with the schedule indicated.

Summary of services to be performed:

Fees:

Fee for the Service is \$ _____ . Fee shall be inclusive of all approved reimbursable at actual cost, no mark up. Approved additional time incurred on this agreement shall be billed at a rate of \$ _____ per _____ .

Schedule:

Service will be provided by: _____ (date)

Timeline for deliverables: