

**UNIVERSITY OF PENNSYLVANIA
CONTRACT FOR SERVICES RENDERED BY A NON-U.S.
CONSULTANT/INDEPENDENT CONTRACTOR OUTSIDE OF THE U.S.**

THIS AGREEMENT made this _____ by and between The Trustees of the University of Pennsylvania, a Pennsylvania tax-exempt institution of higher education organized under the laws of the Commonwealth of Pennsylvania, having its principal address at 3451 Walnut Street, Philadelphia, Pennsylvania 19104 (hereafter referred to as the "University") and

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

W I T N E S E T H:

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

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

NOW, THEREFORE, as hereinafter set forth and for good and valuable consideration, the parties, intending to be legally bound, agree as follows:

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

All work to be performed by the Service Provider under this Agreement shall be performed by Service Provider unless the University agrees in writing that certain specified portions of the work may be performed by agents, contractors, or subcontractors of Service Provider. This restriction shall not apply to typing, filing and other similar clerical work.

In performing the Services, Service Provider shall coordinate its work with the work of other consultants and other University offices whose activities may have a bearing on the Services to be provided hereunder. The University's Principal Contact Person will identify any consultant or University office whose work will be relevant to the work of Service Provider under this Agreement.

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 work 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. Insurance. The Service Provider, at its own cost and expense, shall obtain and maintain in force during the term of this Agreement, the following insurance coverages:

A. A policy of professional liability insurance affording protection in amounts not less than \$2,000,000 USD, including but not limited to its indemnification obligations, and shall present a certificate of insurance, acceptable to the University, evidencing its insurance coverages, prior to or at the time of execution of this Agreement. If the aforementioned limit requirement contradicts the regional or geographic standards in the location where the service will be provided then the requirement shall default to the regional or geographical standards.

B. A policy of commercial general liability, including contractual liability, in amounts not less than \$2,000,000 USD, including but not limited to its indemnification obligations, and shall present a certificate of insurance, acceptable to the University, evidencing its insurance coverages, prior to or at the time of execution of this Agreement. If the aforementioned limit requirement contradicts the regional or geographic standards in the location where the service will be provided then the requirement shall default to the regional or geographical standards.

5. Indemnification. To the extent permitted by law, the parties agree to indemnify and hold harmless one another, their successors, assigns, trustees, officers, employees, agents and students from and against all action, causes of action, claims and demands whatsoever, and from all costs, damages, expenses, charges, debts and liabilities 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 breach of this agreement by either party or the sole negligence of one of the indemnified parties or the willful acts of one of the indemnified parties' successors, assigns, trustees, officers, employees, agents, or students.

6. Cooperation in the Event of Lawsuits. In the event that any claim, demand, suit or other legal proceeding arising out of any matter relating to this Agreement is made or instituted by any person against the University, the Service Provider shall, at its own cost and expense, provide the University with all reasonable information and assistance in the defense or other disposition thereof.

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.

A. 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. The Service Provider shall not permit any union conflict to arise in connection with the provision of the Services.

B. [Optional] University shall request that project plans, progress reports, activity reports, and similar records be provided by the Service Provider on a regular or periodic basis. These plans and reports shall be in such form and setting forth such information and data as is reasonably requested by University.

9. Independent Contractor Relationship. In performing any and all of the Services to be provided under this Agreement, Service Provider shall at all times and for all purposes be and remain an independent contractor and in no case and under no circumstances shall Service Provider or any of its employees, including but not limited to those of its employees actually performing any of the Services, be considered or otherwise deemed to be 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 their employment-related benefits of any nature whatsoever 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 whatsoever.

10. Taxes. The Service Provider is responsible for any taxes imposed on its gross or net income or revenues as well as on payments to employees, agents, contractors, and subcontractors, including but not limited to income tax or VAT. Additionally, University shall not be responsible for withholding, collection of, or paying any taxes, including, without limitation income and social taxes, for the Service Provider or any Service Provider personnel. In the event withholding of taxes from any amount due hereunder is required under applicable law, University shall deduct, withhold, and remit the appropriate amount. If the Service Provider claims any exemption from or reduction in withholding taxes, then the Service Provider shall provide University with a valid tax exemption certificate or other acceptable evidence that the Service Provider is exempt from tax or qualifies for a reduced rate.

11. Intellectual Property.

A. Service Provider hereby assigns to the University any and all rights, title and interest, including, without limitation, copyrights, trade secrets and proprietary rights to the deliverables developed or prepared specifically for the University hereunder (the "Deliverables"). The Deliverables shall be deemed to be "works made for hire" under the federal copyright laws. Service Provider agrees to give the University reasonable assistance, at the University's expense, to perfect such assignment of such rights, title and interest. To the extent the Deliverables include data, modules, components, designs, utilities, subsets, objects, processes, tools, models and specifications ("Technical Elements") owned or developed by service provider prior to, or independently from, its engagement hereunder, Service Provider shall designate such Technical Elements prior to execution of this Agreement and shall grant to the University a perpetual, worldwide, fully paid-up limited license to use such Technical Elements or other Service Provider proprietary property for University related purposes.

B. Service Provider warrants that neither the products, processes, computer software, software modules, media, documentation or other materials provided to the University under this Agreement, nor their use by the University will infringe or constitute an infringement of any copyright, patent, trademark or other proprietary right of any third party.

C. Neither party to this Agreement shall, without first obtaining the written consent of the other, advertise or publish the fact that the parties have contracted with each other or otherwise use the other party's name, logos, or trademarks in any advertisement, publicity or other publication.

D. No party shall have the right or authority to use the seal, name, trademarks and brand of the other party or imply any endorsement by the other party. Consultant agrees not to use the name of the University or to quote the opinion of any of the University's employees in any advertising without obtaining the prior written consent of University.

E. The University agrees the Service Provider may use copies of reports and work product for case studies, marketing and/or reference materials for other client assignments so long as the University's name or logo are not revealed.

F. The Service Provider represents that the Service Provider is free to enter into this Agreement and that this engagement does not violate the terms of any agreement between the Service Provider and any third party. Further, the Service Provider, in rendering the Service Provider's duties shall not utilize any invention, discovery, development, improvement, innovation, or trade secret in which the Service Provider does not have a proprietary interest.

12. 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 (10) 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.

13. Termination. Notwithstanding any other provision of this Agreement to the contrary, the University shall have the right to terminate this Agreement at any time upon seven (7) days' prior written notice to the Service Provider. Upon such termination, the Service Provider shall be paid for all work 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.

14. Compliance with Laws. The Service Provider shall comply, at its own cost and expense, with the provisions of all county and municipal laws, ordinances, regulations and orders pertaining to the performance and provision of the Services. The Service Provider shall take all measures necessary to promptly remedy any violation(s) of any such law, ordinance, rule, regulation or order.

15. Equal Employment Opportunity. In connection with the performance of the Services under this Agreement, the Service Provider agrees as follows:

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.

B. The Service Provider will, in all solicitations or advertisements for employees placed by or on behalf of the Service Provider, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, national origin, or disability.

C. 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 further contracts.

16. Mechanics' Liens. The Service Provider hereby waives and relinquishes the right to any and all mechanics' and/or material persons' liens that it may acquire or otherwise be entitled to in connection with the provision of the Services. The Service Provider will, from time to time, execute and deliver any instruments or other documents required by the University to effectuate the provisions of this paragraph.

17. Successors and Assigns. All of the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, if any, successors, and assigns.

18. 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, ATTN.: (with a copy to General Counsel, Office of the General Counsel, University of Pennsylvania, 2929 Walnut Street, Suite 400, Philadelphia, PA 19104-5099), and (b) if to the Service Provider, at

ATTN.: 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.

19. Confidential Information. All information and data (including but not limited to all email, phone and contact lists, reports, papers, plans, drawings, specifications, charts and all other forms of graphics, computer programs and all other forms of electronic media, tape recordings and all other forms of audio recordings, photographs [including but not limited to motion pictures], negative images, transparencies, and other documentation, illustrations, and graphic and/or audio presentations of any nature whatsoever) relating to the business or operations of the University acquired or developed by Service Provider pursuant to, or in connection with, the performance of the Services, including but not limited to Service Provider's Work Product (hereinafter referred to collectively as the "Protected Information"), shall be treated by Service Provider as proprietary to the University and held in strict confidence, and shall not be disclosed to any person or entity whatsoever without the prior written consent of the University, except that the University agrees the Service Provider may use copies of reports and work product for case studies, marketing and/or reference materials for other client assignments so long as the University's name or logo are not revealed. This section 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 or in a manner not resulting from, or related to, 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; (d) is disclosed by Service Provider with the prior written approval of the University; or (e) 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 (10) days' advance written notice of such disclosure).

20. OFAC Sanctions. The Service Provider shall not use the University's funds, equipment, technology or any other University-furnished material in any transaction with a U.S. sanctioned country, person or entity listed by the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) at website: <http://www.treas.gov/offices/enforcement/ofac>.

21. Export Controls. The Service Provider and University do not intend to provide to each other any technology, technical data or other information identified on any US export control list, including the Commerce Control List (CCL) at 15 CFR 774 and the US Munitions List at 22 CFR 121. In the event of any noncompliance with this Article or transaction prohibited under OFAC, whether caused by the Service Provider or otherwise, University shall have the right to terminate this Agreement immediately under the Article on "Termination."

22. Anti-corruption Provisions. The Service Provider represents and warrants that the Service Provider is familiar with the provisions of the U.S. Foreign Corrupt Practices Act ("FCPA"), codified at 15 U.S.C. §§ 78m, 78dd, 78ff, and any applicable international and local country anti-bribery and anti-corruption laws, decrees and regulations (hereinafter referred to as "Anti-Corruption Laws"). The Service Provider will notify the University if any personnel, agent, contractor, or subcontractor is a government official, political party official, or candidate for public office and is affiliated with any such official or candidate. The Service Provider shall not violate the Anti-Corruption Laws in connection with its activities under this Agreement, and shall take no actions that could subject the University to liability under such applicable Anti-Corruption Laws. The University reserves the right to withhold payment to the Service Provider under this Agreement and to terminate the Agreement if the University receives information causing the University to believe in good faith that the Service Provider has taken any action that could subject University to liability under the Anti-Corruption Laws.

23. 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 respective 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 of the United States of America

C. **Codes and Regulations.** All services performed under this Agreement shall conform to all applicable laws, codes and regulations of _____ and the United States, and Service Provider will carry out Service Provider's duties in an ethical manner. Unless otherwise provided, the codes and regulations referred to above shall be the latest edition or revision in effect as of the effective date of this Agreement. Nothing in this Agreement shall be construed as requiring or permitting services that are contrary to the above-referenced codes and regulations. It is understood and agreed that all activities, obligations and duties undertaken by Service Provider are to be undertaken subject to and in conformance with all rules, regulations and laws governing University, as applicable, and subject to and in conformance with all University policies, including but not limited to University's research policies including its Openness in Research Policy.

D. **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.

E. **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.

F. **Time of the Essence.** Time is of the essence in the performance of all obligations under this Agreement. In the event that the Service Provider fails for any reason whatsoever other than force majeure to perform and complete the Services in accordance with the schedule, such failure shall constitute a breach of this Agreement.

G. **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).

H. **Captions.** The captions to the paragraphs in this Agreement are included for convenience only and are not intended to and shall not be deemed to modify or explain any of the terms of this Agreement.

I. **Counterparts.** This Agreement has been executed in several counterparts, but all counterparts shall constitute one and the same instrument.

J. **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.

K. **Legal Status.** The Service Provider confirms that the Service Provider is a resident of or a registered entity in _____, and has acquired and satisfied all legal requirements, authorizations, and permits to perform all services under this Agreement in _____.

L. **Original Signatures.** The parties hereby agree that facsimile signatures whether transmitted by telephonic facsimile machine or computer transmitted files will be considered original

signatures for all purposes including, but not limited to, authentication of this document (or any amendment prepared and executed in accordance with the terms of this document) in any legal proceeding.

IN WITNESS WHEREOF, the undersigned parties have caused this Agreement to be executed as of the day and year first above written.

THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA

Signature: _____ Date: _____
Purchasing Representative's Name
Title, Purchasing Services

INDEPENDENT CONTRACTOR

Signature: _____ Date: _____
Service Provider's Name

Check One:

- Individual
- Sole Proprietorship
- Partnership

EXHIBIT A
Scope of Services

OBJECTIVES

COSTS AND FEES

Compensation is a flat fee per deliverable completed by the deadline and the requirements specified for each task. Proposed payment per deliverables identified in the scope are as follows:

The expected duration of the contract will be _____ months or until all deliverables have been completed, whichever comes first.

AVAILABILITY

I will be available to begin this engagement on the week of _____ expected completion,
_____.