

**Regents of the University of Minnesota**

**Contract for Professional Services**

**[INSTRUCTIONS (DELETE BEFORE SENDING TO OTHER PARTY):**

●      Please contact GPS Alliance (gpscontracts@umn.edu) first so they can check with the University’s Export Controls and International Projects Officer to ensure the other party does not appear on restricted entity lists, is not located in a sanctioned jurisdiction, and is not otherwise subject to U.S. Government restrictions.

●      Agreements for specific projects must be routed to the appropriate University unit for review, approval, and signature in accordance with the [University Administrative Policy: President’s Delegation of Authority](https://policy.umn.edu/operations/delegations) and [Regents Policy: Legal Review of Contracts](https://regents.umn.edu/sites/regents.umn.edu/files/2019-09/policy_legal_review_of_contracts_and_transactions.pdflefindmkaj/https%3A/regents.umn.edu/sites/regents.umn.edu/files/2019-09/policy_legal_review_of_contracts_and_transactions.pdf).

**This Contract for Professional Services (the “CPS” or “Agreement”) is entered into by and between Regents of the University of Minnesota (the “University”) and \_\_\_\_\_\_ (the “Contractor”) effective \_\_\_\_\_\_\_, 20\_\_.**

**Whereas the University desires to engage the Contractor to perform the Services, and the Contractor is willing to perform such Services, based on the terms and conditions provided herein.**

**Therefore, for and in the consideration of the premises and of the mutual covenants herein contained, the parties hereby agree as follows:**

1. **Acceptance and Term**. Contractor accepts these terms and conditions by starting work after receiving the University’s CPS or by not objecting to these terms and conditions within ten (10) days after receiving the CPS. This Agreement is effective on the date indicated on the CPS and will remain in effect until the date indicated on the CPS, until all obligations set forth in this Agreement have been fulfilled, or the Agreement has been terminated, whichever occurs first. ANY WORK PERFORMED PRIOR TO THE EFFECTIVE DATE WILL BE PERFORMED AT CONTRACTOR’S OWN RISK AND AS A VOLUNTEER.

**2. Scope of Work.** Contractor will perform all of the services and supply goods (if any) set forth in the CPS and scope of work attached thereto (“Services”). Time is of the essence.

**3. Consideration and Terms of Payment.** University will pay for all Services as follows:

**3.1. Total Obligation.** University’s total obligation to Contractor will not exceed the amount indicated on the CPS without University’s prior, express written approval. Reimbursement requests must be itemized and accompanied by copies of receipts.

**3.2. Invoicing and Terms of Payment.** Contractor will submit invoices in accordance with the payment schedule described in the scope of work. University will pay such invoices thirty (30) days after receipt of Contractor’s invoice.

**3.3 Taxes.** As required by U.S. tax law,University will generate a Form 1099-NEC or 1042-S for fees and billed University may be required to withhold state or federal taxes from the compensation. See Section 4.20.

**4. General Terms and Conditions.** This Agreement (including all documents attached or referenced) is intended by the parties as the final and binding expression of their agreement and as the complete and exclusive statement of its terms. This Agreement cancels, supersedes and revokes all prior negotiations, representations and agreements between the parties, whether oral or written, relating to the subject matter of this Agreement, including without limitation, any non-disclosure agreements. The terms and conditions of the scope of work or similar document submitted by Contractor in connection with the services provided shall not supersede the terms of this Agreement.

**4.1. Choice of Law, Forum Selection, Entire Agreement, and Amendment.** This Agreement will be construed under Minnesota law, without regard for choice of law considerations, and the University’s policies and procedures. Any action arising out of this Agreement will be heard by a court in Minnesota. Contractor consents to jurisdiction in Minnesota. This Agreement is the parties’ entire agreement and understanding and replaces any prior or contemporaneous agreement, written or oral. Any Amendment to this Agreement must be documented by University’s Change Order (“Amendment”).

**4.2. Representations.** Contractor represents (i) it is not debarred or suspended from doing business with the federal government, and it will notify University if it becomes debarred or suspended; and (ii) the Services will be of professional standards and quality; comply with Contractor’s representations in any advertisement, correspondence, response to University’s RFP or RFB, or other document provided to University; and comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups). If any warranty is breached, Contractor will correct the breach at its sole expense, and University reserves all rights and remedies. The foregoing warranties will not be deemed waived by reason of University’s acceptance of the Services.

**4.3. Subcontracting.** Contractor will perform the agreed upon services, subcontracting as necessary. Contractor takes responsibility for vetting and selecting the most appropriate subcontractors for the services provided, if any, but not limited to, appropriately bonded, licensed and insured transportation and secure housing. Subcontractors have no direct relationship with the University. Contractor shall at all times be responsible for the acts, defaults and omissions of its subcontractors as if they were Contractors’ own.

**4.4. Assignment.** Neither party may assign any part of this Agreement without the other’s express, prior written consent. In the event of any assignment, the assignor will remain responsible for its performance and that of any assignee. This Agreement will be binding upon each party and its successors and assigns. Any attempted assignment in violation of this Agreement will be void. Notwithstanding any notice of assignment, University’s tender of payment to Contractor or to any person University reasonably believes to be entitled to payment, will satisfy University’s obligation to pay. In no event will University be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

**4.5. Taxes.** University is exempt from paying certain Minnesota sales and use taxes pursuant to Minn. Stat. § 297A.70. Contractor will not charge University for such taxes.

**4.6. Use of Name or Logo**. Neither party will use the name, logo, or other marks (including, but not limited to, colors and music) owned by or associated with the other or the name of any representative of the other in any sales promotion work or advertising, or any form of publicity, without the written permission of the other. Permission from the University must be obtained from University’s Office of University Relations in each instance.

**4.7. Termination.** University may terminate this Agreement in whole or in part for its convenience*.* Upon notice of such termination, Contractor will immediately stop all work, and cause its suppliers and subcontractors to cease work for this Agreement. In the event of such termination, Contractor will be entitled to payment, calculated on a pro rata or other equitable basis, for Services satisfactorily performed. In no event will Contractor be paid for work performed or costs incurred after receipt of notice of termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.

University may terminate this Agreement in whole or in part for causeupon \_\_\_ days written notice if Contractor fails to comply with any material term, condition, or requirement of this Agreement or becomes insolvent or files for bankruptcy protection. In this event, University will not be liable to Contractor; Contractor will be liable to University for all losses, damages, and expenses, including, without limitation, excess cost of re-procuring similar Services. If a determination is made that University improperly terminated this Agreement for cause, such termination will be deemed to have been for University’s convenience.

**4.8. Independent Contractor**. The relationship between the parties is solely that of independent contractors, not partners, joint venturers, employees, agents, or otherwise. Neither shall have any authority to bind the other in any manner, and shall not represent or imply that it has such authority. Each party is solely responsible for the acts of itself, its employees and agents.

**4.9. Non-Waiver**. No waiver by a party of any default or nonperformance will be deemed a waiver of any subsequent default or nonperformance.

**4.10. Audit and Retention of Books and Records.** University may inspect and copy books, records, and documents (in whatever medium they exist) and accounting procedures and practices of Contractor, its agents, and subcontractors solely to verify Contractor’s performance and all expenses submitted pursuant to the terms of this Agreement. Contractor will make such items available for inspection during normal business hours at Contractor’s place of business. All such items will be retained by Contractor during the term of this Agreement and for a period of three (3) years after the delivery of the Services. Any items relating to a claim arising out of the performance of this Agreement will be retained by Contractor, its agents and subcontractors, if any, until the claim has been resolved.

**4.11. Limitation of Liability**. IN NO EVENT WILL A PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, LOST PROFITS OR LIKE EXPECTANCY DAMAGES ARISING OUT OF THE AGREEMENT. UNIVERSITY’S MAXIMUM OBLIGATION UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT SET FORTH IN SECTION 3.

**4.12. University Information.** Contractor agrees that any information it receives which concerns personal, financial, or other affairs of University, its regents, officers, employees or students will be kept confidential and in conformance with all state and federal and any other applicable laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 (“DPA"). Within fifteen (15) days of the completion or earlier termination of this Agreement, or upon earlier request of University, Contractor will return all documents, data and other information provided by University to Contractor. Upon University’s request, Contractor will destroy all copies of data, documents, or information provided by University and provide University with proof of such destruction. Contractor will comply with DPA as it applies to data created, collected, received, stored, used, maintained, or disseminated by Contractor or provided by University under this Agreement. The civil remedies of Minnesota Statutes § 13.08 apply to the release of the data referred to in this Article by either Contractor or University.

**4.13.** I**nsurance**. Unless more specific insurance provisions are attached, the following will apply. At all times during its performance under this Agreement, Contractor will obtain and keep in force:

i. Commercial General Liability insurance including coverage for bodily injury and property damage with limits not less than $1,000,000 each occurrence and $2,000,000 annual aggregate.

ii. Automobile Liability insurance with a minimum limit of not less than $1,000,000 per occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.

iii. Professional Liability/Errors & Omissions insurance (if applicable) with a limit of not less than $1,000,000 per claim/occurrence and $2,000,000 annual aggregate for damages caused by error, omission or negligent acts related to any professional services to be provided under this Agreement. If written on a claims-made basis, the professional liability insurance will be maintained for a period of not less than two (2) years following the expiration or termination of this Agreement.

iv. Workers' Compensation insurance as required by statute and Employers Liability insurance with limits not less than $1,000,000 each accident, $1,000,000 disease – each employee, $1,000,000 disease – policy limit.

With respect to US based Contractors, these insurance policies are to be issued by an insurance company authorized to do business in the State of Minnesota with an A.M. Best rating of A- or better. Regents of the University of Minnesota will be included as an additional insured for General Liability and Automobile Liability. Limit requirements may be met through combination of Primary and Umbrella/Excess insurance. All such policies will provide for thirty (30) days’ written notice to University prior to cancellation or non-renewal. Contractor’s insurance must be primary and non-contributory with regard to any insurance or self-insurance maintained by University. Contractor and its insurers waive all rights of subrogation against University. A Certificate of Insurance evidencing the requirements contained in this clause must be provided prior to the commencement of work.

**4.14. Responsibility**. Subject to applicable law, including, with regard to the University, the Minnesota Tort Claims Act, each party will be solely responsible for all claims, actions, and direct damages caused by the responsible party's negligence, willful wrong-doing or breach of this Agreement.

**4.15. Anti-Kickback Enforcement Act of 1986**. This Agreement is subject to the Anti-Kickback Enforcement Act of 1986, P. L. 99-634 (41 U.S.C. 51-58). Contractor: (i) certifies it has not paid kickbacks directly or indirectly to any University employee for the purpose of obtaining this or any other University Agreement; (ii) will cooperate fully with any investigation involving a possible violation of the Act; and (iii) will report any suspected violations of the Act to University’s Director of Audits at (612) 625-1368. Contractor certifies it has provided no fees, gifts, gratuities, compensation, or anything of value in violation of Minnesota Statute § 15.43.

**4.16. Affirmative Action, Equal Employment Opportunity, and Targeted Group Business.** University is committed to the policy that all persons will have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, age, marital status, disability, public assistance status, veteran status, or sexual orientation, and is committed to transacting business only with firms who follow these practices. Contractor must apply every good faith effort to ensure implementation of this policy in its practices of employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor will maintain non-segregated facilities for its employees and not allow employees to perform services at segregated facilities. If required by applicable law, Contractor will have a written Affirmative Action Plan for each of its establishments. To the extent applicable, Contractor agrees to comply with (i) Executive Orders 11246 and 11375 and the rules and regulations promoting Equal Employment Opportunities (41 CFR Chapter 60); (ii) Public Laws 92-540 and 93-508, Executive Order 11701, and the regulations promoting employment opportunities for disabled and Vietnam veterans (41 CFR Part 60-250); (iii) Section 503 of the Rehabilitation Act of 1973, Public Laws 93-112 and 93-516*,* Executive Order 11758 and the regulations of the Secretary of Labor (41 CFR Part 60-47 1) in promoting affirmative action in Employment of the Handicapped; (iv) Public Law 95-507 in promoting the policy that small business concerns owned and controlled by socially and economically disadvantaged will have maximum practicable opportunity to participate in University’s Bidding process; and (v) Minnesota Statutes, Chapter 363 in promoting the equal rights and non-discrimination of persons based on race, color, creed, religion, sex, age, marital status, disability, public assistance status, veteran status or sexual orientation. University’s Targeted Group Business Policy and Affirmative Action Policy are incorporated into this Agreement by reference and Contractor will comply with such policies. If applicable, Contractor certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan. By accepting this Agreement, Contractor certifies that it complies with all applicable federal and state laws as well as University policies related to non-discrimination, equal employment opportunity, and affirmative action.

**4.17. Notices/Administration**. Notices a party is required or elects to deliver will be in writing and delivered personally, by facsimile or electronic mail (with delivery confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other party at its address set forth in the CPS or to such other address as such party may designate in the scope of work, or by notice given pursuant to this section.

**4.18. Acknowledgement, Taxes and Similar Fees**. Contractor certifies the following, by checking one of the applicable sections below:

 [ ]  **US Taxpayer.** Contractor acknowledges it is a U.S. Taxpayer and agrees to complete Internal Revenue Service Form W-9. Contractor is responsible for complying with all laws in the country where the services are performed. Contractor is responsible for the payment of any and all taxes and similar fees in connection with this CPS, levied or required by any taxing authority or any other body having jurisdiction under any present or future laws. If University is required to pay any of such income taxes, any other taxes for which it is exempt, or any related penalties or interest, such payments shall be deducted from amounts paid to Contractor. If such payments exceed amounts due to Contractor, the remainder shall be reimbursed to University by Contractor.

 [ ]  **Non- US Taxpayer.** Contractor acknowledges it is not a U.S. Taxpayer and agrees to complete the appropriate Internal Revenue Service Form W-8. Contractor is responsible for complying with all laws in the country where services are performed. Contractor is responsible for the payment of any and all taxes and similar fees in connection with this CPS, levied or required by any taxing authority or any other body having jurisdiction under any present or future laws. If University is required to pay any of such income, any other taxes for which it is exempt, or any related penalties or interest, such payments shall be deducted from amounts paid to Contractor. If such payments exceed amounts due to Contractor, the remainder shall be reimbursed to University by Contractor.

Notwithstanding this certification, Contractor acknowledges that University may withhold amounts for federal backup withholding if such withholding is required by written notice from the Internal Revenue Service issued subsequent to the effective date of this Agreement.

**4.19.** “**Most Favored Customer”**. If Contractor has negotiated terms or conditions for Services to another client under reasonably similar circumstances, University may purchase Services on the same terms and conditions.

**4.20. Severability.** If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of the Agreement, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, will not be affected and each provision of the remainder of the Agreement will be valid and be enforceable to the fullest extent permitted by law.

**4.21. Survivability**. The terms and conditions of this Agreement that by their sense and context are intended to survive the performance thereof will so survive the completion of performance and termination of this Agreement, including the making of any and all payments hereunder.

**4.22. Export Controls (International Traffic in Arms Regulations and Export Administration Regulations).** Before furnishing goods, software, services or technical data that are on the U.S. Munitions List (22 C.F.R. pt. 121) or in the 500- or 600-series of the Commerce Control List (15 C.F.R. pt. 774), Contractor will notify University that such items are export controlled. Contractor will ship export-controlled items only after University’s Export Controls Officer has furnished written confirmation that University is prepared to accept delivery of such items. Contractor represents that neither it nor its employees or agents involved in contract performance are named on any restricted parties list maintained by the Bureau of Industry and Security (in the U.S. Department of Commerce) or the Office of Foreign Assets Control (in the U.S. Department of the Treasury). Contractor shall notify UMN immediately if such representation becomes untrue.

4.23. **FERPA**. The following only applies if Contractor will receive or have access to University student records and such student education records are subject to the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. 1232g, et seq. and the regulations promulgated thereunder: To the extent that Contractor has access to “education records” under this Agreement, Contractor acknowledges it will be considered a “school official,” as each of these terms are defined under FERPA, and agrees it will comply with the requirements in FERPA concerning the confidentiality and release of education records. In compliance with FERPA, Contractor agrees that it shall use the education records only for the purpose of fulfilling its duties under this Agreement for University’s benefit and will not share such data with or disclose it to any third party except as provided for in this Agreement, required by law, or authorized in writing by the University.

**5. Student Accommodation and Changes to Program.**  To the extent permitted by law, the University and the Contractor agree to inform each other of any specific issues related to the student (i.e. documented disability unless the student discloses, disciplinary action, etc.) as early in the acceptance process as possible to allow for the appropriate advising and counseling of the student regarding the program selected to facilitate making arrangements on site when possible. To the extent permitted by law, the University and the Contractor agree to inform each other of any crisis or emergency related to the students. Additionally, if the University determines, in good faith and in its reasonable judgment, that a program needs to be cancelled, students need to be evacuated, different program arrangements including delivery of the academic program need to be made, communications to that effect will be sent immediately to the Contractor. In cases where University policy is not consistent with program policy, Contractor agrees to defer to and uphold University policy. Contractor agrees to abide by refund policies defined in the scope of work and shall refund all recoverable costs to the University.

**6.** **Changes to University Support.**  The Contractor acknowledges and agrees that University student participation is contingent upon the nomination and support of the University. Therefore, if the University withdraws support of a student or decides to bring student(s) home, Contractor agrees to defer to the University’s decision and end its relationship with the student(s) effective on the date(s) requested by the University, unless the University specifically agrees otherwise in writing.

**7.** **Force Majeure.** Neither the University nor the Contractor shall be responsible for any delays or failure to perform any obligation under this Agreement due to causes beyond the reasonable control of such party, including (but not limited to) health epidemics, terrorist acts, war, insurrection, embargoes, governmental restrictions or other acts of governmental authorities beyond the control of such party. Notwithstanding the foregoing, the University and the Contractor agree to cooperate in good faith to mitigate the effect of any such delays or failures to perform, with the goal of achieving, to the extent possible, the objectives of this Agreement.

**IN WITNESS WHEREOF**, each party hereby represents and warrants that the individual signing below on its behalf is duly authorized to execute and deliver this Agreement on behalf of her/his respective party.

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| **Regents of the University of Minnesota*****Recommended for approval:*** |  |
| By: Name:      Title:      Date:  | By: Name:      Title:      Date:  |
| By: Name:      Title:      Date:  | By: Name:      Title:      Date:  |