

**Agreement**

**By and Between Regents of the University of Minnesota (“University”)**

**And** **(“**Institution of Higher Education**”)**

**1.** **Term**. This Agreement is effective on the date signed by both parties and will remain in effect until the date indicated on the Contract for Professional Services (“CPS”) cover page, until all obligations set forth in this Agreement have been fulfilled, or the Agreement has been terminated.

**2. Scope of Work.** Institution of Higher Education will perform all of the services and supply goods as set forth in the CPS (“Services”) and any Scope of Work attached thereto (“SOW”).

**3. Payment.** University will pay for all Services as set out in the SOW.

3.1. Total Obligation. University’s total obligation to Institution of Higher Education will not exceed the amount indicated on the CPS without University’s prior, express written approval. Reimbursement requests must be itemized and accompanied by receipts. Travel expenses must be consistent with University’s [travel policy](https://policy.umn.edu/finance/travel).

3.2. Invoicing and Terms of Payment. Institution of Higher Education will submit invoices as set out in the SOW. University will pay such invoices thirty (30) days after receipt.

**4. General Terms and Conditions.** This Agreement will govern and control over different or additional terms and conditions Institution of Higher Education may have included in any document provided to University. Handwritten changes on this document will be ignored and have no effect unless initialed by both parties. If this Agreement was made pursuant to a Request for Proposal (RFP) or Request for Bid (RFB), the following order of precedence will apply: (1) this Agreement, (2) RFP or RFB, and (3) Institution of Higher Education’s Response to RFP or RFB.

4.1. Entire Agreement and Amendment. 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”). If Services are procured with federal funds, the requirements set forth in Exhibit B (<http://purchasing.umn.edu/docs/FederalFlowdown.pdf>) are incorporated into this Agreement. In addition, if the price is in excess of $10,000, **University and Institution of Higher Education shall abide by the requirements of 41 CFR 60-741.5(a), which prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities**. If the price is in excess of $100,000, **University and Institution of Higher Education shall abide by the requirements of 41 CFR 60-300.5(a), which prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans**. Also, if federal funds are being used, Institution of Higher Education must fill out the form required by the Federal Funding Accountability and Transparency Act, Pub. L. No. 109-282. If federal contract funds are not being used, Institution of Higher Education will not receive Exhibit B.

4.2. Warranty. Institution of Higher Education warrants it (i) is not debarred or suspended from doing business with the federal government; (ii) shall provide Services in with care consistent with recognized, prudent scientific and professional standards, all applicable laws and regulations, and the provisions of this Agreement, but it makes no representations as to the achievement of a specific result; and (iii) it is not restricted by any existing agreement or obligation between it and a third party, nor by patents, copyrights, trade secrets, or other rights of third parties, except as otherwise stated in Section 4.11 (Intellectual Property Rights).

4.3. Assignment. Neither party may assign any part of this Agreement without the other’s express, prior written consent.

4.4. Use of Name or Logo. Neither party will use the name, logo, or other marks owned by or associated with the other or the name of any representative of the other without the other’s written permission. Permission from the University must be obtained from University’s Office of University Relations.

4.5. Termination. Either party may terminate this Agreement in whole or in part for its convenience*.* Upon notice of such termination, Institution of Higher Education will immediately stop all work, including shipment of goods. In the event of such termination, University will pay Institution of Higher Education a pro rata or other equitable amount.

4.6. Responsibility. Subject to law applicable to a party in its home state, each party will be responsible for its own acts and the results thereof. Each party will assume all risk and liability to itself, its agents or employees for any injury to persons or property resulting in any manner from the conduct of its own operations and the operations of its agents or employees, and for any direct damage caused thereby during the performance of this Agreement. 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.

4.7. Independent Contractors. The relationship between the parties is solely that of independent contractors. Neither may bind the other in any manner, and shall not represent or imply that it has such authority

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

4.9. 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 Institution of Higher Education, its agents, and subcontractors solely to verify Institution of Higher Education’s performance and expenses submitted pursuant to this Agreement. Institution of Higher Education will make such items available for inspection during normal business hours at Institution of Higher Education’s place of business. All such items will be retained by Institution of Higher Education 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 Institution of Higher Education, its agents and subcontractors until the claim has been resolved.

4.10. Information. Any Non-public information a party receives from the other will be kept confidential and in conformance with all applicable state and federal laws. Within fifteen (15) days of request, each will return or destroy all such information to the other.

4.11. Intellectual Property Rights. University shall own all deliverables which Institution of Higher Education delivers under this Agreement. Institution of Higher Education shall own all of its background intellectual property it uses in such preparation.

4.12. Kickbacks. This Agreement is subject to the Anti-Kickback Enforcement Act of 1986, P. L. 99-634 (41 U.S.C. 51-58). Institution of Higher Education certifies it has not paid kickbacks directly or indirectly to any University employee, nor provided fees, gifts, gratuities, compensation, or anything of value for the purpose of obtaining this Agreement.

4.13. Rights of the Federal Government to Inventions Made Under a Contract or Agreement. To the extent this Agreement involves the performance of experimental, developmental, or research work, the rights of the Federal Government and University to any resulting inventions will be determined in accordance with 37 CFR part 401, *“Rights to Inventions made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,”* and any implementing regulations issued by the awarding agency.

4.14. Notices/Administration. Notices will be in writing and delivered personally, by facsimile or electronic mail (with delivery confirmed), by a recognized overnight courier service, or by United States mail, first-class, certified, 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 by notice.

4.15. Fund Availability; Federal Funds Contingency. University’s financial obligations payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this Agreement is funded in whole or in part with federal funds, University’s payment obligations are contingent upon the continuing availability of those funds for the purposes hereof.

4.16. 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.

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