



708.1.2f - INDEPENDENT CONTRACTOR SERVICES AGREEMENT
The University Of North Carolina at Chapel Hill

This Independent Contractor Services Agreement (this “**Agreement**”), made and entered into effective as of the last date signed below, is by and between _____ (“**Contractor**”) and The University of North Carolina at Chapel Hill (“**University**”).

WITNESSETH

WHEREAS, the University desires to engage Contractor for the performance of certain services; and,

WHEREAS, the University and Contractor desire to reduce the terms of their agreement to writing;

NOW, THEREFORE, for and in consideration of the mutual promises to each other, as hereinafter set forth, the parties hereto do mutually agree as follows:

- 1. Services.** Contractor shall provide the University the services described on the attached statement of work (“**Statement of Work**”). References to the “**Agreement**” shall mean the main body of this Agreement and the Statement of Work, collectively.
- 2. Payment Terms.** University agrees to pay the Contractor the amount or amounts set forth on the attached Statement of Work in consideration of the services rendered by the Contractor. Unless otherwise designated in the Statement of Work, the fee to be paid by the University as shown on the Statement of Work is a fixed, not-to-exceed fee. Payment terms are net thirty (30) days after the University’s receipt and approval of an invoice from Contractor.
- 3. Key Personnel.** Contractor shall not substitute key personnel assigned to the performance of this Agreement without prior written approval by the University’s designated contract administrator. The Contractor’s key personnel, for purposes of this Agreement, are the Contractor’s personnel listed on the Statement of Work.
- 4. Travel Expenses.** If the Statement of Work states that the University will reimburse Contractor for Contractor’s travel expenses, then such reimbursement will be subject to University travel regulations, which are located at <http://policies.unc.edu/TDClient/2833/Portal/KB/?CategoryID=21853>. Contractor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. Unless otherwise agreed by the parties, all Contractor-incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt, and shall be paid by the University within thirty (30) days after invoice approval. The University will reimburse travel allowances only for days on which the Contractor is required to be in North Carolina performing services for which it is necessary to be on site under this Agreement. Contractor shall not bill University for travel time unless agreed in advance by the University in writing.
- 5. Ownership of Work Product.** Unless otherwise agreed in writing by the parties, deliverables developed or prepared specifically for the University hereunder (the “**Deliverables**”) shall be deemed “works made for hire” under the federal copyright laws. Contractor hereby assigns to the University any and all rights, title and interest, including, without limitation, copyrights, trade secrets and proprietary rights to the Deliverables. To the extent the Deliverables include data, modules, components, designs, utilities, subsets, objects, processes, tools, models and specifications (“**Technical Elements**”) owned or developed by Contractor prior to, or independently from, its engagement hereunder, Contractor retains ownership of such Technical Elements and Contractor hereby grants to the University a perpetual, worldwide, fully paid-up limited license to use such Technical Elements for University related purposes.



- 6. Independent Contractor.** The Contractor is an independent contractor, and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Contractor and its personnel are not employees or agents of the University. Nothing herein is intended or will be construed to establish a joint venture, partnership, trust, or agency relationship between the parties.
- 7. Insurance Coverage.** Contractor shall maintain insurance from a financially sound and reputable insurance company covering the operations of Contractor contemplated by this Agreement in at least such amounts and against at least such risks as are usually insured against in the same general area by companies engaged in the same or a similar business as Contractor.
- 8. Confidentiality: Care of Information.**
- (a) *Confidentiality.* Any information, data, documents, studies and reports given to or prepared or assembled by the Contractor under this agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the University.
- (b) *Response to Third-party Requests for University Data.* If Contractor is served with a subpoena related to University data, then, unless prohibited by law, Contractor will provide prior notice of such subpoena to the University to allow the University an opportunity to seek injunctive relief before disclosure of the information.
- (c) *Protection of University's Sensitive and Confidential Information.* Contractor shall safeguard and protect Sensitive and Confidential Information of the University in accordance with all applicable laws and regulations and consistent with information security best practices. "Sensitive and Confidential Information" means any of the following: "Personal Information" under the North Carolina Identity Theft Protection Act of 2005, confidential "personnel information" under in the State Personnel Act, "Protected Health Information" under the Health Insurance Portability and Accountability Act (HIPAA), student "education records" under Family Educational Rights and Privacy Act (FERPA), "customer record information" under Gramm Leach Bliley Act (GLBA), "card holder data" under the Payment Card Industry Data Security Standard (PCI-DSS) and the Payment Application Data Security Standard (PA-DSS), and any information protected from disclosure under the North Carolina Public Records Act. Sensitive and Confidential Information must be restricted by Contractor to those with a legitimate business need for access to such information. For purposes of illustration, Sensitive and Confidential Information may appear in research data, student data, financial donor information, system access passwords, information security records, and information file encryption keys. If Contractor becomes aware of a confirmed or suspected exposure of Sensitive and Confidential Information of the University, Contractor shall notify as promptly as possible the University's Information Security Office (tel: 919-445-9397) and the University's Office of University Counsel (tel: 919-962-1219).
- (d) *FERPA Acknowledgement.* If Contractor will be hosting or accessing student education records,
- Contractor acknowledges and agrees that (i) the University has outsourced to Contractor the performance of institutional services or functions for which the University would otherwise use its own employees, (ii) Contractor is considered to be a "school official" with "legitimate educational interests" in "personally identifiable information" from "education records" of University students, as those terms have been defined under FERPA (34 CFR 99), (iii) Contractor is under the direct control of the University with respect to Contractor's use and maintenance of data in the education records, and (iv) Contractor will abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials. Contractor will use such data only for the purpose of fulfilling its duties under this Agreement, and will not monitor or share such data with or disclose it to any third party except as required by law, or authorized in writing by the University.
- 9. Indemnification.** Contractor shall indemnify and hold the University, its trustees, officers, employees, and agents (collectively, "Indemnitees") harmless against all costs, fees, expenses, damages, and liabilities of



any kind incurred by the Indemnities arising from or related to (i) the services of Contractor; (ii) a breach of this Agreement by Contractor; or (iii) any misconduct or negligence of Contractor.

10. Subcontracting: Assignment. The Contractor may not subcontract the performance of services under this Agreement without the prior written consent of the University. The Contractor may not assign this Agreement to another party without the prior written consent of the University.

11. Availability of Funds. Payment of compensation specified in this Agreement beyond the current fiscal year, and any continuation or renewal of this Agreement, is dependent upon and subject to the University's availability of funds for the purpose set forth in this Agreement.

12. Termination.

(a) The University may terminate this Agreement at any time by giving 30 days prior notice in writing to the Contractor. In addition, if Contractor shall fail to fulfill in timely and proper manner the obligations under this Agreement for any reason, the University shall have the right to terminate this Agreement by giving written notice to the Contractor and termination will be effective upon receipt. Contractor shall cease performance immediately upon receipt of such notice.

(b) In the event of early termination, Contractor shall be entitled to receive just and equitable compensation for costs reasonably incurred prior to receipt of notice of termination and for the satisfactory work completed as of the date of termination and delivered to the University. Notwithstanding the foregoing, in no event will the total amount due to Contractor exceed the total amount due Contractor under this Agreement. The Contractor shall not be relieved of liability to the University for damages sustained by the University by virtue of any breach of this Agreement, and the University may withhold any payment due to the Contractor for the purpose of setoff until such time as the University can determine the exact amount of damages due the University because of the breach.

13. Amendments. This Agreement may not be amended orally or by performance. Any amendment, in order to be effective, must be made in written form and signed by duly authorized representatives of the University and Contractor.

14. Advertising. Contractor shall not use the existence of this Agreement or the name, logo, images or trademarks of the University of North Carolina at Chapel Hill as a part of any marketing or commercial advertising without prior written approval of the University. Requests to use the University's name, logo, images or trademarks should be directed to the University's Office of Trademarks and Licensing. (<http://licensing.unc.edu>).

15. Compliance with Laws; Compliance with University Policies. The Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to its operations, including those of federal, state, and local agencies having jurisdiction and/or authority. The Contractor shall comply with all University policies applicable to Contractor's performance of services contemplated by this Agreement.

16. Care of University Property. Contractor shall be responsible for the proper custody and care of any University property furnished it for use in connection with the performance of this Agreement or purchased by it for this Agreement and will reimburse the University for loss of damage of such property.

17. Auditor Access. The North Carolina State Auditor and the University's internal auditor shall have access to persons and records as a result of all contracts or grants entered into by the University in accordance with N.C. Gen. Stat. §147-64.7 and Session Law 2010-194, Section 21.

18. Prohibition on Vendor Gifts. Under N.C. Gen. Stat. § 133-32, it is unlawful for any vendor or contractor to make gifts or to give favors to any officer or employee of the University whose job responsibilities include awarding or administering University contracts.

19. Governing Laws; Venue. This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. In the event the parties are unable to resolve any



dispute relating to this Agreement, the exclusive venue for any judicial action or proceeding arising out of or relating to this Agreement shall be the state or federal courts located in the State of North Carolina.

20. **Counterparts and Facsimile Signature.** This Agreement and any amendments may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one and the same document, binding on all parties notwithstanding that each of the parties may have signed different counterparts. Facsimiles or scanned copies of signatures or electronic images of signatures shall be considered original signatures unless prohibited by Applicable Law.
21. **Entirety; Severability; No Waiver; Survival.** This Agreement and any documents incorporated specifically by reference constitutes the entire agreement of the parties on the specific subject matter hereof and supersedes all prior representations, understandings and agreements between the parties with respect to such subject matter. Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other of its provisions. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. The provisions in this Agreement that by their sense and context are intended to survive the completion of performance and termination of this Agreement shall so survive the completion of performance and termination of this Agreement.

[Signature page follows]



IN WITNESS WHEREOF, and intending to be bound hereby, the parties have executed this Agreement, in their official capacities on the day and year listed below.

Contractor: _____

Signature: _____

Name: _____

Title: _____

Date: _____

**THE UNIVERSITY OF NORTH CAROLINA
AT CHAPEL HILL**

Recommended by departmental authority:

Signature: _____

Name: _____

Title: _____

Date: _____

(The signature below is only required when the University’s standard terms and conditions are not accepted.)

Approved by Procurement Services officer:

Signature: _____

Name: _____

Title: _____

Date: _____



Statement of Work

[Please contact Accounts Payable and Vendor Services if you need assistance writing SOW or would like to see samples.]