

**UNIVERSITY OF MIAMI
CONSULTING/ SERVICE AGREEMENT**

THIS AGREEMENT made this ____ day of _____, 20____ by and between the **University of Miami**, a Florida not-for-profit corporation located in Coral Gables, Florida, 33124, (hereinafter referred to as the “**University**”) and _____, (hereinafter referred to as the “**Consultant**”).

WHEREAS, the University desires to have the Consultant perform certain professional services; and

WHEREAS, The Consultant represents that he/she/it is ready, willing and able to perform such professional services;

NOW THEREFORE, the parties mutually agree as follows:

ARTICLE I. SCOPE OF WORK

ARTICLE II. AGREEMENT PERIOD

This Agreement shall commence on the date referenced above and terminate on _____.

The University reserves the right to alter the starting and ending dates according to the needs of the University.

ARTICLE III. COMPENSATION

A. The University will pay fees to the Consultant for all services performed and Deliverables to be provided hereunder on the following basis.

Total amount not to exceed \$_____

B. The Consultant will be compensated for additional services not specified in this Agreement only if approved in advance in writing by the University as an addendum to this Agreement.

C. Payment will be made only upon submission of detailed invoices, and/or University approved original receipts. The invoice must show the consultant's taxpayer identification number (Social Security number or Employer Identification number) in accordance with requirements of the Internal Revenue Service. Invoices shall contain or be attached to documentation that is satisfactory to the University. Reporting requirements (Article IV) must be met before payment will be made.

ARTICLE IV. REPORTING

In reporting the services performed hereunder, the Consultant shall report to:

_____ on _____.

Reports shall consist of:

ARTICLE V. CLASSIFIED/RESTRICTED PROPRIETARY DATA

The University agrees to apprise the Consultant as to any information or items made available hereunder to the Consultant which are classified, restricted, or proprietary data either in United States Government classifications or according to University classifications. The Consultant agrees that any such classified, restricted, or proprietary data will not be disclosed to other parties without express approval in writing from the University. The Consultant agrees that it will not photograph or video/audio tape any portion of the University, its trustees, officers, employees, and students without the express written consent of the University in addition to all other consents required by law. The Consultant further agrees that any such material furnished to him by the University will be returned to the University at its request or upon termination of this Agreement.

ARTICLE VI. COPYRIGHTS

To the extent permitted by law, the work created hereunder is a work made for hire, and all rights to it belong to the University. To the extent that the work created is not a work made for hire, as permitted by the law, all rights in the work are assigned to the University. The Consultant agrees that all papers, documents, writings or other tangible materials or

workproduct produced by the Consultant under this Agreement shall be the sole property of the University. The University shall own the worldwide copyright rights and any other proprietary rights in and to all such work. Possession shall be transferred to the University at the termination of performance of services under this Agreement or at the University's earlier request. Any reports, information, data, workproduct, etc., given to or prepared by or on behalf of the Consultant under this Agreement shall not be made available to any individual or organization by the Consultant without prior written approval of the University.

ARTICLE VII. PATENT RIGHTS

The Consultant agrees that any discovery or invention, whether or not subject to patent, developed as a direct result of work done under this Agreement, shall be the sole property of the University and the University shall have the exclusive right to any patent derived there from. Consultant further agrees to report promptly in writing to the University any discovery or invention developed under this Agreement.

ARTICLE VIII. INFRINGEMENT INDEMNITY

Consultant agrees to indemnify University, its officers, agents, servants, and employees against liability of any kind (including costs and expenses incurred) for the use of any work product, invention or discovery, or for the infringement of any patent, copyright, trademark, trade secret or any other intellectual property rights arising from the University's use or disposition thereof, occurring in the performance of this order, or otherwise arising by reason of disposal by or for the account of Consultant of items manufactured or supplied under this order. Consultant agrees that it shall have no right, title or interest in and to any product or processes which Consultant, alone or with others, may develop while performing services under this Agreement. Consultant hereby transfers any and all rights which he or she may have or acquire in and to any such invention, patent, copyright or other product, process or information to the University and agrees to execute any and all documents requested by the University in accordance with this provision.

ARTICLE IX. EXAMINATION OF RECORDS AND CONSULTANT'S PROGRESS

The University shall have access to and the right to examine any directly pertinent books, documents, papers, and records of Consultant involving transactions related to this Agreement until the expiration of three years after final payment hereunder.

ARTICLE X. INTEREST OF CONSULTANT

The Consultant covenants that it presently has no interest direct or indirect which would conflict in any manner or degree with the performance of its services hereunder and that it shall not employ any person having such conflicting interests in the performance of the Agreement. Consultant further covenants that Consultant, and any person employed by

Consultant in the performance of this Agreement, shall comply with the University of Miami Conflict of Interest Policy.

ARTICLE XI. PUBLICITY/USE OF NAME

It is also agreed that no advertising publicity matter having or containing any reference to the University of Miami or in which the name is mentioned, shall be used nor shall any other use of the University's or its faculty or employees names, logos, or trademarks be made by the Consultant or anyone on the Consultant's behalf unless and until the same shall have first been submitted to and received the written approval of an authorized representative of the University.

ARTICLE XII. TERMINATION

The University may, by written notice to the Consultant, terminate this Agreement in whole or in part at any time, either for the University's convenience or because of the failure of the Consultant to fulfill any contract obligation. Upon receipt of such notice, the Consultant shall: 1) immediately discontinue all services affected (unless the notice directs otherwise), and 2) deliver to the University all data, reports, summaries, and such other information and materials as may have been prepared for and/or accumulated by the Consultant in performing this Agreement, whether completed or in progress.

ARTICLE XIII. CHANGES

The University may, from time to time require changes in the scope of the services of the Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of the Consultant's compensation which are mutually agreed upon by the parties, shall be incorporated by written amendment to this Agreement.

ARTICLE XIV. ASSIGNABILITY

The Consultant shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the University thereto; provided, however that claims for money due or to become due to Consultant from the University under this Agreement may be assigned by a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the University.

ARTICLE XV. CONSULTANT'S RELEASE AND INDEMNIFICATION OF LIABILITY

University shall not be liable or responsible for any accident, loss assault, battery, defamation, false arrest, false imprisonment, invasion of privacy, intentional or negligent infliction of emotional distress, injury (including death), or damages to persons and/or property arising out of and/or resulting from Consultant's performance of the work, and

the Consultant shall hold harmless, release and fully indemnify and defend University from and against same. In addition to the liability imposed by law on the Consultant for damage or injury (including death), to persons or property by reason of negligence of the Consultant or his/hers/its agents, which liability is not impaired or otherwise affected hereby, the Consultant hereby assumes liability for and agrees to save University harmless and indemnify it for every expense, liability or payment by reason of: **(1)** any damage or injury (including death) to persons or property suffered in whole or in part or claimed to have been suffered through any act or omission of the Consultant or any of his/hers/its agents or anyone directly or indirectly employed by either of them; **(2)** from the conditions of the premises or any part of the premises while in control of the Consultant or any of his /hers/its agents or anyone directly or indirectly employed by either of them; **(3)** arising in any way from the work or workproduct called for by this order and/or University's use thereof; or **(4)** arising in any way from Consultant's breach of this Agreement.

ARTICLE XVI. CONSULTANT'S CERTIFICATIONS, LICENSES AND PERMITS

Consultant represents and warrants that Consultant and any of his/her/its agents, or anyone directly or indirectly employed by either, has and/or will obtain and maintain in force and effect throughout the term of this Agreement, any and all certificates, licenses and/or permits necessary for Consultant to fulfill its obligations herein or required by any applicable federal, state or local law, regulation or ordinance or any professional organization.

ARTICLE XVII. WAIVER OF DEFAULT

Any failure by University at any time, or from time to time, to enforce or require the strict keeping and performance by Consultant any of the terms or conditions of this order shall not constitute a waiver by University of a breach of any such terms or conditions and shall not affect or impair such terms or conditions in any way, or right of University at any time to avail itself of such remedies as it may have for any such breach or breaches of such terms or conditions.

ARTICLE XVIII. TAXES

Consultant shall pay all contributions, taxes, and premiums payable under Federal, State, and local laws upon the payroll of employees engaged in the performance of work under this Agreement, and all sales, use excise, transportation, privilege, occupational, and other taxes applicable to materials and supplies furnished or work performed hereunder and shall save University harmless from and indemnify the University for liability for any such contributions, premiums, and taxes.

ARTICLE XIX. OTHER APPLICABLE LAWS

Any provisions required to be included in a contract of this type by any applicable and valid Federal, State or local law, ordinance, rule, or regulation shall be deemed to be incorporated herein. This Agreement shall be governed by Florida law and disputes arising hereunder shall be subject to the jurisdiction and venue of the state and federal courts residing in Miami-Dade County, Florida.

ARTICLE XX. INSURANCE

Consultant agrees to purchase and maintain during the term of this Agreement a policy of comprehensive general liability endorsed to include personal injury and contractual liability as well as a policy of auto liability. Consultant agrees for each of these coverages to maintain terms and limits acceptable to the University's Director of Risk Management. Further, the Consultant agrees to purchase and maintain professional liability, errors and omission, and worker's compensation insurance, if applicable with terms and limits acceptable to the University's Director of Risk Management. All such policies shall name the University as additional insured. Copies of all such policies shall be forwarded to and approved by the University's Director of Risk Management prior to the start date of any services provided herein.

ARTICLE XXI. AFFIRMATIVE ACTION

Consultant agrees to adhere to the principles and requirements set forth in all state, federal and local laws including those pertaining to non-discrimination, such as the equal opportunity clause contained in section 202 of Executive Order 11246. Consultant specifically agrees to comply with the following EEO clauses that are here by incorporated by reference: 41 CFR 60-1.4; 41 CRF 60-250.4 and 41 CRF 60-741.4.

Consultant further agrees by entering into this Agreement to maintain employment policies and practices that affirmatively promote equality of opportunity for minority-group persons and women; to take affirmative steps to hire and promote women and minority-group persons at all job levels and in all aspects of employment, with outside recruiting services and the minority community at large; and provide non-segregated facilities for all employees. Consultant further agrees to obtain a similar Agreement in the event Consultant engages any subcontractors or other consultants in the performance of this Agreement.

The undersigned certifies to the University of Miami that if the undersigned has 50 or more employees and a contract/subcontract with the University of Miami for the furnishing of supplies or services or for the use of real or personal property in the amount of \$50,000 or more in the case of Executive Order 11246 and Section 503 of the Rehabilitation Act of 1973 and \$100,000 or more in the case of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 that it has developed and is maintaining written affirmative action plans for each of its establishments as required by OFCCP regulations 41 C.F.R. Sections 60-1.40, 60-250.5 and 60-741.5. In addition, the undersigned may have obligations under Executive Order 13201 to post notices informing its employees that they have certain rights

relating to union membership and use of union dues and fees if contract or subcontract is \$100,000 or more.

ARTICLE XXII. AGREEMENT VALIDITY

This Agreement does not constitute a valid Agreement until signed by either the Sr. Vice President for Business and Finance, Vice President of Finance & Treasurer, Asst. Vice President for Financial Operations, or Chief Procurement Officer or their designee.

ARTICLE XXIII. ENTmE AGREEMENT; CONFLICT OF TERMS

There are no oral agreements with respect to the subject matter of this Agreement which are not fully expressed herein. No representations, understanding, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein. This Agreement can only be modified by a writing signed by authorized representatives of both parties. In the event of any conflict between this consulting Agreement and other documents that may be part of this Agreement, the language of the consulting Agreement shall govern.

ARTICLE XXIV. JUSTIFICATION

Consultant covenants that the fees contained in Article III Compensation are fair and reasonable, predicated on other fees that the Consultant has charged for similar work in the past. Consultant agrees to provide to the University upon request a summary of fees charged for the previous twelve (12) months with synopsis of type/scope of work performed.

ARTICLE XXV. BONDING

The Consultant will provide the University with an appropriate indemnity bond (performance and payment) naming the University as the beneficiary of the bond in the amount of

ARTICLE XXVI. DEBARMENT

Consultant represents and warrants that Consultant (or anyone with a direct or indirect ownership control interest) has never been (1) convicted of a criminal offense related to health care and/or related to the provision of services paid for by Medicare, Medicaid or another federal health care program; or (2) excluded from participation in any federal health care program, including Medicare and Medicaid. Manger is required to immediately notify the University if any of the foregoing conditions occur. Furthermore, the University reserves the right to terminate this Agreement immediately upon notification by Consultant, or discovery by the University that any of the foregoing conditions occurred.

ARTICLE XXVII. EXCLUDED PARTIES LIST

Under penalties of perjury, vendor certifies that it is not a debarred, suspended, or ineligible party as defined in the rules implementing Executive Order 12549 and agrees to notify immediately if it placed on the List of Parties Excluded from Federal Procurement or Non-Procurement Programs.

ARTICLE XXVIII. VENUE AND GOVERNING LAW.

The parties hereby agree that any suit to enforce any provision of this Agreement arising out of or based upon this Agreement shall be brought in the federal or State court of competent jurisdiction in Miami-Dade County, Florida. This Agreement shall be governed, construed and enforced pursuant to and in accordance with the laws of the State of Florida, without regard to Florida's laws governing conflicts of laws.

ARTICLE XXIX. PROTECTED HEALTH INFORMATION

To the extent Consultant will have or be given access to Protected Health Information as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as part of performing services hereunder, Consultant will be deemed a Business Associate of University for purposes of this Agreement and will comply with all requirements of a Business Associate under HIPAA and/or any Addendum to this Agreement which University may provide.

ARTICLE XXX. FERPA.

University, as an educational institution, is subject to legal obligations with respect to the privacy of personally identifiable student education records ("Education Records"), as such term is defined under the Family Educational Rights and Privacy Act and regulations promulgated under the Act ("FERPA"). To the extent that consultant (i) creates, (ii) receives from or on behalf of University, or (iii) has access to such Education Records, Consultant agrees that it shall (i) abide by the terms of FERPA and the University's policy with respect to handling of Education Records; and (ii) not disclose the information to any third party without the prior written consent of the student as required by FERPA. If Consultant discloses any of the Education Records to a subcontractor or agent, Consultant shall require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Consultant by this Section.

Consultant shall take any action reasonably requested by the University to protect the privacy and confidentiality of Education Records.

1. Notice of Impermissible Use. If an impermissible use or disclosure of any of the Education Records occurs, Consultant shall provide written notice to University within one (1) business day after Consultant's discovery of that use or disclosure. Consultant shall promptly provide University with all information requested by University regarding the impermissible use or disclosure.

2. Termination. In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if University reasonably determines that Consultant has breached any of the restrictions or obligations set forth in this Section, University may immediately terminate this Agreement without notice or opportunity to cure.
3. Return of Education Records. Consultant agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all Education Records created or received from or on behalf of University shall be (1) returned to University, with no copies retained by Consultant; or (2) if return is not feasible, destroyed. Thirty (30) days before destruction of any of the Education Records, Consultant will provide University with written notice of Consultant's intent to destroy the Education Records. Consultant will confirm to University in writing the destruction of the Education Records.
4. Duration. The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

ARTICLE XXXI. TITLE IX.

The University complies with Title IX and all other related statutes. Accordingly, as a contractor on the University's campus, if you have any knowledge of a sexual assault, sexual harassment, or hostile work environment, you are required to inform any of the University's Title IX coordinators. A list of such coordinators can be accessed at http://www.miami.edu/index.php/wep/title_ix/title_ix_coordinators/. A copy of the University's Sexual Misconduct Policy can be found at <https://umshare.miami.edu/web/wda/equalityadministration/titleIX/Sexual%20Misconduct%20Policy.pdf>

The Persons signing below represent and warrant that they have full authority to bind the parties they represent.

Consultant

Address:

Tax ID #:

By:

Title:

Signature:

Date:

University of Miami

Coral Gables, Florida 33124-1432

By:

Title:

Signature:

Date:

Purchaser Order #:

Execution of this Agreement by the University: Insurance Binder letters or Certificates of Insurance must be sent to the office of Risk Management weeks prior to the execution of the Agreement. Work shall not commence prior to obtaining a fully executed copy of this Agreement.