UNIVERSITY OF MIAMI
CONSULTING/SERVICE AGREEMENT
(inbound services)

THIS SERVICES AGREEMENT ("Agreement") is made this __ day of
__________________, 20__ ("Effective Date"), between University of Miami ("University"), and
______________________ ("Vendor") (collectively, the “Parties”).

Recitals

WHEREAS, the University desires to have the Vendor perform certain services as set forth
herein; and

WHEREAS, the Vendor represents that it is ready, willing and able to perform such
services;

NOW THEREFORE, the Parties mutually agree as follows:

Terms and Conditions

1. Scope of Work and Deliverables

Vendor is being engaged to …
University may, from time to time require changes in the scope of work of Vendor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Vendor’s compensation which are mutually agreed upon by the Parties, shall be incorporated by written amendment to this Agreement.

2. **Compensation**

University will pay fees to Vendor for all services performed and deliverables to be provided hereunder on the following basis: ________________. The total fee of $_____ includes any and all costs Vendor may incur in hiring outside assistance to complete project. Vendor will be compensated for additional services not specified in this Agreement only if approved in advance in writing by an authorized representative of University.

Payment will be made upon submission of a detailed invoice and, if applicable, original receipt(s) satisfactory to and approved by University. Invoices must indicate Vendor’s taxpayer identification number (either Social Security Number or Employer Identification Number) in accordance with requirements of the Internal Revenue Service. Reporting requirements hereunder must be met before payment will be made.

3. **Term and Termination**

This Agreement shall commence on the Effective Date and continue for a period of ____ __________, but may be terminated by University, in whole or in part, either for University’s convenience or because of the failure of Vendor to fulfill any contract obligation, upon thirty (30) days’ prior written notice, delivered in accordance with the Notice section herein. Unless instructed otherwise by an authorized representative of University, upon receipt of such notice, Vendor shall: 1) immediately discontinue all services affected, and 2) deliver to University all data, reports, summaries, and such other information and materials as may have been prepared for and/or accumulated by Vendor in performing this Agreement, whether completed or in progress. All services rendered until the date of termination shall be paid by University upon compliance with all payment terms herein. University reserves the right to alter the starting and ending dates according to the needs of the University.

4. **Notices**

All notices required or permitted to be given or made under this Agreement shall be in writing and shall be delivered via (1) hand delivery, (2) certified United States mail, return receipt
requested, or (3) via recognized overnight delivery service, such as UPS or FedEx. Notices shall be deemed delivered upon personal delivery, or on the third business day following mailing via certified United States mail, return receipt requested or via recognized overnight delivery service, such as UPS or FedEx. Notices shall be sent to the addresses set forth below:

**If to University:**

Attn: Executive Director, Purchasing
University of Miami
1320 S. Dixie Hwy, Suite 400
Coral Gables, Florida 33146

*with copy to:*

Attn: Director, Contract Administration
University of Miami
1320 S. Dixie Hwy, Suite 1230
Coral Gables, Florida 33146

**If to Vendor:**

INSERT NAME AND ADDRESS FOR NOTICES TO VENDOR

5. **Collaboration/Subcontracting**

Any subcontracting or collaborative efforts between Vendor and a third-party, affiliate, or subcontractor must be approved in advance by an authorized representative of University and shall be memorialized in a separate agreement, as University, in its sole discretion, may deem appropriate. Such agreement shall contain such confidentiality and other provisions as University, in its sole discretion, may deem appropriate.

6. **Assignment**

This Agreement may not be assigned in whole or in part by Vendor. Any assignment or delegation in violation of this Agreement shall be void.

7. **Reporting/Examination of Records**

In reporting the services performed hereunder, Vendor shall report to: ________________________. Report(s) shall be delivered upon request by University. Additionally, University shall have access to and the right to examine any directly pertinent books, documents, papers, and records of Vendor involving transactions or services related to this Agreement until the expiration of three years after final payment hereunder.

8. **Vendor’s Certifications, Licenses and Permits**

Vendor represents and warrants that Vendor and any of its agents, or anyone directly or indirectly employed by either, has 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 Vendor to fulfill its obligations herein or required by any applicable federal, state or local law, regulation or ordinance or any professional organization.

9. **Conflict of Interest**

Vendor represents and warrants that neither it, nor any of its employees or agents, presently have any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Vendor represents and warrants that it shall not employ or engage to provide services hereunder to University any person having such conflicting interests. Vendor further covenants that Vendor, and any person employed by Vendor in the performance of this Agreement, shall comply with University’s conflicts of interest and vendor policies, as may be amended from time-to-time, including its Interactions with Health Industry Entities policy and its Conflict of Interest policy, which will be supplied to Vendor upon request.

Vendor shall disclose in Appendix A any and all University employees/faculty whom Vendor is aware receives compensation of any kind or nature from Vendor, or who has received such compensation at any time in the preceding 24 months. Vendor shall also disclose in Appendix A any and all University employees/faculty whom Vendor is aware has an ownership interest, either direct or indirect, in Vendor (with the exception of, in the case Vendor is a publicly traded corporation, stock ownership of 5% or less of Vendor). The foregoing disclosure obligations shall be ongoing for the duration of the term of the Agreement. Failure to accurately report such information shall be deemed a material breach of this Agreement and shall entitle University to immediately terminate this Agreement.

10. **Copyrights**

To the extent permitted by law, services provided, and works created, hereunder are work made for hire, and all rights to said work belong to 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 hereby assigned to University. Vendor agrees that all papers, documents, writings or other tangible materials or work product produced by Vendor under this Agreement shall be the sole property of University. University shall own the worldwide copyright rights and any other proprietary rights in and to all such work. Possession shall be transferred to University at the termination of performance of services under this Agreement or at University’s earlier request.

11. **Patent Rights**
Vendor 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 University, and University shall have the exclusive right to any patent derived there from. Vendor further agrees to report promptly in writing to University any discovery or invention developed under this Agreement.

12. Confidentiality

During the term of this Agreement, Vendor may be exposed to information which is confidential, classified, restricted or proprietary to University, either pursuant to United States Government classifications or according to University classifications. Vendor agrees that any classified, restricted, or proprietary data including but not limited to business information, financial information, operational information, trade secrets, confidential information, personally identifiable information, any other sensitive data or that is of a nature that a reasonable person would understand is of a confidential and non-public nature (“Confidential Information”) will not be disclosed to other parties without prior written permission from an authorized representative of the University. Confidential Information shall be deemed covered whether in oral form, machine-readable form, written, digital, electronic or other tangible form, and whether designated as confidential or unmarked. Vendor further agrees that Confidential Information provided by University will be used only in accordance with the purpose set forth in this Agreement and will not be stored outside the United States without prior written consent from an authorized representative of the University. Vendor shall protect the Confidential Information according to commercially acceptable standards and no less rigorously than it protects its own sensitive data and information.

Vendor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Confidential Information received from, or on behalf of, University. Vendor shall require all of its agents, including subcontractors, that receive, use, or have access to Confidential Information under this Agreement to agree, in writing, to adhere to the same restrictions and conditions on the use and/or disclosure of Confidential Information that apply to the Vendor through this Agreement.

Vendor shall report to University any use or disclosure of Confidential Information not authorized by this Agreement or in writing by University. Vendor shall make the report to
University not less than five (5) business days after Vendor learns of such use or disclosure. Vendor’s report shall identify:

i. The nature of the unauthorized use or disclosure,

ii. The Confidential Information and Information used or disclosed,

iii. In the event of a disclosure of personally identifiable information, the identities of any and all affected individuals,

iv. Who made the unauthorized use or received the unauthorized disclosure,

v. What Vendor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and

vi. What corrective action Vendor has taken or shall take to prevent future similar unauthorized use or disclosure.

Vendor agrees that in the event any individually identifiable information is lost, stolen, used or disclosed in violation of one or more data breach notification laws or principles, including but not limited to state data breach notification laws or actions in the civil realm, Vendor shall promptly: (i) cooperate and assist University with any investigation into any breach or alleged state breach conducted by any third party or governmental entity, including but not limited to a state Attorney General or State Consumer Affairs Department (or their respective agents), (ii) assist with the mitigation, to the extent practicable, of any potential harm to the individual(s) impacted and (iii) assist with the implementation of notification to individual(s) impacted or potentially impacted by a breach.

Notwithstanding anything herein to the contrary, should Vendor become legally required pursuant to applicable law or regulation or regulatory, legal or judicial process (including, without limitation, by deposition, interrogatory, request for documents, subpoena, civil investigative demand, government investigation or similar process) to disclose any of the Information provided to it or the information referred to above, the Vendor shall provide the University with prompt prior written notice of such requirement so that University may seek a protective order or other appropriate remedy and/or waive in writing compliance with the provisions of this agreement. If such protective order or other remedy is not obtained and such a written waiver has not been received from the University that would permit such required disclosure, Vendor (and its respective representatives) agrees to disclose (and shall be permitted without liability to disclose) only that portion of the Information which it is advised in the opinion of its counsel is legally
required to be disclosed and to take all reasonable steps to preserve the confidentiality of the Information and the information referred to above (including, without limitation, by cooperating with University to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information or any portion thereof. This clause shall survive termination of this Agreement.

Vendor shall promptly either return or destroy Confidential Information upon the written request of the University or upon termination of this Agreement. Vendor may maintain Confidential Information if under a legal obligation to maintain such information, provided that such Confidential Information shall remain fully subject to the obligations of confidentiality stated herein, and shall be destroyed immediately upon cessation of such legal obligation.

Should Vendor come into contact intentionally or unintentionally with any Protected Health Information (PHI within the meaning of the HIPAA regulations, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164), Vendor shall immediately become the business associate of the University and undertake all regulatory obligations toward the PHI on an instant basis. Vendor shall also notify the University of same immediately.

Nothing in this Agreement will prohibit or limit the Vendor's use of information which Vendor can show by written documentation was (a) known to the Vendor prior to disclosure by the University, (b) that is independently developed by the Vendor, without reference to the Confidential Information, or (c) that is or becomes publicly available through no breach of this Agreement by the Vendor.

13. Debarment

Vendor represents and warrants that Vendor (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 United States federal health care program; or (2) excluded from participation in any United States federal health care program, including Medicare and Medicaid. Vendor is required to immediately notify University if any of the foregoing conditions occur. Furthermore, University reserves the right to terminate this Agreement immediately upon notification by Vendor, or discovery by University that any of the foregoing conditions occurred, notwithstanding any provisions to the contrary herein.

14. Infringement Indemnity
Vendor agrees to indemnify University, its officers, trustees, agents, and employees, against liability of any kind (including, but not limited to, reasonable attorney’s fees, 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 University’s use or disposition thereof, occurring in the performance of this Agreement, or otherwise arising by reason of disposal by or for the account of Vendor of items manufactured or supplied under this order. Vendor agrees that it shall have no right, title or interest in and to any product or processes which Vendor, alone or with others, may develop while performing services under this Agreement. Vendor hereby transfers any and all rights which it 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. This clause shall survive termination of this Agreement.

15. Release of Liability and Indemnification

To the fullest extent of the law, Vendor shall indemnify, defend and hold harmless University, its officers, trustees, employees, agents, representatives, Vendors, and contractors from and against any and all loss, costs, penalties, fines, damages, claims, expenses (including attorney’s fees and court costs through the appellate level) or liabilities arising out of, resulting from, or in connection with the services contemplated by this Contract, including without limitation, every expense, liability or damage, claim 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 Vendor or any of its agents; (2) from the conditions of the premises or any part of the premises while in control of Vendor or its agents or anyone directly or indirectly employed by either of them; (3) arising in any way from the work or work product called for by this Agreement and/or University's use thereof; (4) arising in any way from Vendor's breach of this Agreement; or (5) arising out of Vendor's violation of applicable law. This clause shall survive termination of this Agreement.

16. Insurance

Vendor agrees to purchase and maintain in full force and effect during the term of this Agreement: (1) a policy of comprehensive general liability coverage, including personal injury, property damage and contractual liabilities, in the amount of $1,000,000 per occurrence / $2,000,000 in the aggregate, naming the University of Miami as an additional insured, (2) a policy
of professional liability coverage for errors and omissions in the amount of $1,000,000 per occurrence / $3,000,000 in the aggregate, and (3) worker’s compensation coverage in statutorily prescribed amounts. Copies of all such policies shall be forwarded to, and approved by, the University’s Executive Director of Risk Management prior to the start date of any services provided herein.

17. Taxes

Vendor shall pay all applicable contributions, taxes, and premiums payable under its country’s laws or under United States’ 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 University for liability for any such contributions, premiums, and taxes. This clause shall survive termination of this Agreement.

18. Publicity/Use Of Name

Vendor agrees that no materials, including, but not limited to, advertising or marketing materials, having or containing any reference to either of the University, or in which University’s name is mentioned, shall be used nor shall any other use of University’s faculty or employees’ names, logos, or trademarks be made by Vendor or anyone on Vendor’s behalf unless and until the same shall have first been submitted to and received the written approval of an authorized representative of University, in University’s sole discretion. This clause shall survive termination of this Agreement.

19. Choice of Law, Jurisdiction, and Venue

This Agreement shall be governed by the laws of the State of Florida, in the United States, without giving effect to its conflict of law provisions. Any dispute under this Agreement shall be subject to the exclusive jurisdiction of the state and federal courts residing in Miami-Dade County, Florida. Each party hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of any action in Miami-Dade County, Florida. This clause shall survive termination of this Agreement.

20. Compliance with Laws
The Parties shall comply with all laws, rules, and regulations applicable to the performance of their respective obligations under this Agreement, including, but not limited to, HIPAA and the following:

A. FCPA

The anti-bribery provisions of the United States Foreign Corrupt Practices Act (“FCPA”) make it unlawful to bribe foreign government officials to obtain or retain business. The Parties are familiar with the FCPA, its prohibitions and purposes, and will not undertake any actions that may violate the FCPA.

B. ITAR/EAR

The Parties further acknowledge that performance of the Agreement is subject to compliance with those laws, regulations, or orders that may relate to the export of technical data and equipment, such as International Traffic in Arms Regulations (“ITAR”) and/or Export Administration Regulations (“EAR”), as may be amended, and agree to comply with all such laws, regulations or orders. No party will export, directly or indirectly, any confidential information without first obtaining any required export license or government approval and, in the case of confidential information disclosed by University, without first obtaining permission from University. In the event any confidential information is export-controlled, the disclosing party shall provide the receiving party with written notice containing the nature of the export-controlled information, prior to any exchange of export-controlled confidential information.

C. FERPA

The parties further agree to comply with applicable United States laws, regulations, or orders, to the extent applicable, regarding 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”). Vendor agrees to (i) abide by the terms of FERPA and 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 Vendor discloses any of the Education Records to a subcontractor or agent, Vendor shall require the subcontractor or agent to comply with the same restrictions and obligations as
are imposed on Vendor by this section. Vendor shall take any action reasonably requested by the University to protect the privacy and confidentiality of Education Records.

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

Vendor 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 Vendor; or (2) if return is not feasible, destroyed. Thirty (30) days before destruction of any of the Education Records, Vendor will provide University with written notice of Vendor’s intent to destroy the Education Records. Vendor will confirm to University in writing the destruction of the Education Records.

D. GDPR

The European General Data Protection Regulation (“GDPR”) imposes specific obligations on University with regard to its relationships with vendors engaged in Processing of Personal Data, as those terms are defined in Article 4 of the GDPR. For purposes of this Section, the term GDPR includes Regulation (EU) 2016/679, together with any additional implementing legislation, rules or regulations that are issued by applicable supervisory authorities. Words and phrases in this Section shall have the meanings given to them in Article 4 of the GDPR.

To the extent that Vendor is engaged in the Processing of Personal Data, Vendor shall be deemed a Processor and shall comply with all requirements under the GDPR which are applicable to Processors of Personal Data. Vendor shall immediately notify University of same and shall execute University’s Data Processing Addendum.

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. The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason with respect to obligations during the term of the Agreement.

21. **Relationship of the Parties**

   Nothing herein shall be construed to create a joint venture or partnership between the Parties hereto or an employee/employer relationship. The Parties shall be each be independent contractors pursuant to this Agreement. Neither party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement or undertaking with any third party.

22. **Non-Exclusivity**

   The Parties hereby acknowledge that this Agreement is not exclusive, and that each party may freely contract with any other person, firm or entity concerning the subject matter hereof.

23. **Severability**

   Should any term or provision of this Agreement be held, to any extent invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this Agreement, to the extent that the Agreement shall remain operable, enforceable and in full force and effect to the extent permitted by law.

24. **Waiver**

   Any failure by University at any time, or from time to time, to enforce or require the strict keeping and performance by Vendor 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.

25. **Affirmative Action**

   To the extent legally applicable to Vendor, Vendor agrees to adhere to the principles and requirements set forth in all United States 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. Vendor specifically agrees to comply with the following EEO clauses that are here by incorporated by reference: 41 CFR 60-1.4; 41 CFR 60-250.4 and 41 CFR 60-741.4.

   Vendor 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. Vendor further agrees to obtain a similar Agreement in the event Vendor engages any subcontractors or other Vendors in the performance of this Agreement.

26. **Entire 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.

27. **Justification**

Vendor covenants that the fees contained herein are fair and reasonable, predicated on other fees that Vendor has charged for similar work in the past. Vendor 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.

28. **Excluded Parties List**

Under penalty 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.

29. **Protected Health Information**

To the extent Vendor 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, Vendor 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 Business Associate Agreement which University may provide.

30. **Title IX**

University complies with Title IX and all other related statutes. Accordingly, if Vendor has any knowledge of a sexual assault, sexual harassment, or hostile work environment, Vendor is
required to inform any of 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.

31. **Representation by Counsel**

   Each party acknowledges that it has had the opportunity to be represented by counsel of such party’s choice with respect to this Agreement. In view of the foregoing and notwithstanding any otherwise applicable principles of construction or interpretation, this Agreement shall be deemed to have been drafted jointly by the Parties and in the event of any ambiguity, shall not be construed or interpreted against the drafting party.

32. **Authorization**

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

IN WITNESS WHEREOF, the parties have executed this Agreement as follows:

**UNIVERSITY OF MIAMI:**

By: __________________________
Name: ______________________
Title: _______________________
Date: _______________________

**VENDOR:**

By: __________________________
Name: ______________________
Title: _______________________
Date: _______________________


APPENDIX A
CONFLICT OF INTEREST DISCLOSURE
(to be completed by Vendor)

A. Vendor shall list below any and all University employees/faculty whom Vendor is aware receives compensation of any kind or nature from Vendor, or who has received such compensation at any time in the preceding 24 months:

<table>
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<tr>
<th>University employee/faculty name:</th>
<th>Amount of compensation:</th>
<th>Date(s) of compensation:</th>
<th>Nature/purpose of compensation:</th>
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Please provide any additional info deemed pertinent to the information disclosed above:

B. Vendor shall list below any and all University employees/faculty whom Vendor is aware has an ownership interest, either direct or indirect, in Vendor (with the exception of, in the case Vendor is a publicly traded corporation, stock ownership of 5% or less of Vendor):

<table>
<thead>
<tr>
<th>University employee/faculty name:</th>
<th>Ownership interest (% or terms):</th>
<th>Direct or indirect (please indicate and elaborate):</th>
<th>Date upon which ownership interest came into effect:</th>
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Please provide any additional info deemed pertinent to the information disclosed above: