

CONTRACT FOR PROFESSIONAL SERVICES

INSTRUCTIONS FOR CONTRACTORS

CONTRACTORS are asked to assist the contract administrator in filing out the Contract for Professional Services, thus ensuring an accurate contract and timely payments.

Section A

- CONTRACTORS are required to supply their Taxpayer Identification Number (TIN) and to verify accuracy of the number as entered on the form.
- Minnesota corporations are asked to furnish their State of Minnesota Charter Number. Corporations registered outside of Minnesota are asked to supply their State of Minnesota File Number.

Section C

- CONTRACTORS are asked to verify the accuracy of all information pertaining to this contract. Take special care in verifying that your name and address are correct, as well as the duties, dates and payment. Any errors may result in delayed payments.
- CONTRACTORS please note the certification statement as found in number 7a. This certification replaces the IRS Form W-9, Request For Taxpayer Identification Number and Certification; be sure to read this carefully before signing the contract.
- CONTRACTOR by signing this document, you agree to all terms and conditions as found and have verified that all information is correct. This document will become a legal and binding contract upon execution of the required signature levels of the UNIVERSITY.

TERMS AND CONDITIONS

- 1. Independent Contractor.** CONTRACTOR is an independent contractor and not an employee of the UNIVERSITY. CONTRACTOR shall, at CONTRACTOR'S expense, furnish all necessary services and facilities to satisfactorily perform CONTRACTOR'S obligations under the terms of this agreement. CONTRACTOR shall not have legal authority to bind the UNIVERSITY in any way.
- 2. Contract Administrator.** The UNIVERSITY'S representative for administration of this Agreement is designated in Section 8a. That administrator shall have final authority for acceptance of CONTRACTOR'S performance, and, if satisfactory, shall approve each invoice submitted by CONTRACTOR. No payment shall be made without approval.
- 3. Effective Date.** This Agreement shall become effective as of the commencement date specified in Section 6, provided it has been signed by CONTRACTOR and an authorized representative of the UNIVERSITY.
- 4. Assignment.** CONTRACTOR cannot assign any rights or obligations under this Agreement, without the prior written consent of the UNIVERSITY.
- 5. Effect of Prior Agreements.** This Agreement is intended by the parties as the final and binding expression of their contract and agreement and as the complete and exclusive statement of the terms thereof. This Agreement supersedes and revokes all prior negotiations, representations and agreements, whether oral or written, relating to the subject matter hereof.
- 6. Changes, Alterations and Modifications.** UNIVERSITY may at any time by a written order change the extent of the work covered by this contract, the drawing, specifications or other description herein, or the time of completion. Promptly upon receipt of the details of any such change, CONTRACTOR shall either advise that the change will not affect its costs, or furnish: (1) a breakdown of estimated cost and changes in the Contract Sum attributable thereto, and (2) a statement of any necessary changes in the time of completion. CONTRACTOR'S failure to advise UNIVERSITY within 10 days of the effect of any change hereunder shall constitute CONTRACTOR's consent to conform to the change without increase in the Contract Sum, or without change in other terms and conditions of this contract. If the change causes a material increase or decrease in costs, then an equitable adjustment of the contract sum herein to be paid to CONTRACTOR shall promptly be negotiated by UNIVERSITY and CONTRACTOR and incorporated in an amendment to this contract.
- 7. Property Rights.** The term "Subject Data" includes creative works, research data and reports, writings, sound recordings, pictorial reproductions, drawings, film and video recordings, and other graphical representations, and works of any similar nature (whether or not eligible for copyright, trademark, or patent protection) which are to be delivered under this Agreement. Ownership of the Subject Data and all copyrights, trademarks, patents and other proprietary rights in the Subject Data shall be held by the UNIVERSITY. CONTRACTOR agrees that the Subject Data shall be considered a "work for hire" and assigns all of the CONTRACTOR's right, title and interest to the UNIVERSITY.
- 8. Confidentiality.** CONTRACTOR agrees that any information received by CONTRACTOR during the course of CONTRACTOR's performance under the terms of this agreement, which concerns the personal, financial or other affairs of the UNIVERSITY, its Regents, officers, employees or students shall be kept in full confidence and shall not be revealed to any other person, firm, organization or other entity.
- 9. Minnesota Data Practices Act.** CONTRACTOR may be provided with certain information in connection with the performance of its obligations hereunder. CONTRACTOR agrees to comply with the provision of the Minnesota Data Practices Act, as amended from time to time, with regard to such information.
- 10. Return of Data.** Within 15 days of the completion or earlier termination of this Agreement, CONTRACTOR shall return all documents, data and other information provided by UNIVERSITY to CONTRACTOR, or CONTRACTOR's employees or agents in connection with this Agreement.
- 11. Audit.** The UNIVERSITY shall have the right, at its expense, to have a representative of the UNIVERSITY inspect such books and records of CONTRACTOR as are necessary to verify CONTRACTOR's performance and all expenses submitted pursuant to the terms of this Agreement. CONTRACTOR shall make such books and records available for inspection during normal business hours at CONTRACTOR's place of business.
- 12. Record Retention.** All records related to this Agreement, at any time in the possession of CONTRACTOR, shall be retained for a period of three (3) years after the conclusion of this Agreement. Records relating to any claim arising out of the performance of this Agreement, or costs and expenses of this Agreement to which exception has been taken by the UNIVERSITY, shall be retained by CONTRACTOR until the claim has been resolved.
- 13. Warranty.** CONTRACTOR warrants that all services provided hereunder shall be furnished in a manner consistent with industry standards and the level of professional skill generally acceptable in the industry with regard to services of this kind. CONTRACTOR warrants that the services and materials used to produce or incorporated into the work shall be fit for their intended purpose and of good quality and workmanship. CONTRACTOR further warrants that all services, materials and workmanship used for or incorporated into the work shall be free from errors and defects and shall conform to all applicable specifications for one (1) year from the termination of this Agreement unless otherwise specified.

14. Payment.

- A. The UNIVERSITY agrees to pay CONTRACTOR up to the compensation for services indicated in Section 5a, provided CONTRACTOR has satisfactorily performed the services within the time frames provided for under Section 6. CONTRACTOR must submit an invoice to the UNIVERSITY detailing the services performed and the dates such services were completed.
- B. CONTRACTOR shall be reimbursed for reasonable expenses. If consistent with UNIVERSITY policy and directly incurred as a result of CONTRACTOR's obligations under this Agreement, up to the maximum amount specified in Section 5b. Invoices for expenses must contain detailed itemizations and be accompanied with bills, invoices, or other documentation of payment.
- C. The UNIVERSITY's maximum obligation for both services and expenses is that amount specified in Section 5c.

15. Withhold Payment. UNIVERSITY, at its discretion, may withhold the whole or part of any payments to CONTRACTOR to such extent as may be necessary to protect UNIVERSITY from loss, due to, but not limited to the following causes:

- A. Defective work not corrected.
- B. Damage to personnel or property of UNIVERSITY or third party caused by act, omission or negligence of CONTRACTOR, or its agents or employees.
- C. The breach of any of the provisions of this Agreement by CONTRACTOR.
- D. Failure of CONTRACTOR to prosecute the work in a timely fashion to meet the Completion Date.

16. Termination for Breach. In the event CONTRACTOR fails to observe or perform any material condition of this agreement for a period of thirty (30) calendar days after the UNIVERSITY has given CONTRACTOR written notice of such failure, this Agreement shall automatically terminate.

17. Termination for Convenience. UNIVERSITY may at any time terminate this Agreement in whole or in part for its convenience upon five (5) days prior written notice to CONTRACTOR. Immediately upon receipt of such notice, CONTRACTOR shall discontinue his work and the placing of orders for material and supplies and shall make every reasonable effort to procure cancellation of all existing commitments on terms satisfactory to UNIVERSITY. In the event of such termination UNIVERSITY shall pay CONTRACTOR such amounts of money that together with the amounts already paid will result in fully reimbursing CONTRACTOR for the actual cost of the work done up to the effective date of cancellation plus reasonable costs for profit, but in no event more than the amount set forth in Section 5.

18. Construction. No waiver by any party of any default or non-performance shall be considered a waiver of any subsequent default or non-performance. If any provision in this Agreement is unenforceable, that shall not impair enforcement of other provisions.

19. Safety. CONTRACTOR shall be responsible for complying with all relevant safety laws and regulations and for taking all necessary safety precautions in connection with the performance of this Agreement in order to protect all persons and property.

20. Insurance. CONTRACTOR shall provide to the UNIVERSITY evidence of Errors and Omissions or Professional Liability insurance in an amount not less than \$1,000,000 Each Claim and \$3,000,000 Each Occurrence.

21. Indemnity. CONTRACTOR agrees to indemnify, defend and hold UNIVERSITY harmless from all liability, loss, cost, expense, claims or damages (including claims of bodily injury or property damage) which arise in connection with, in relation to or as a result of the performance of this Agreement by CONTRACTOR or CONTRACTOR's agents or employees.

22. Workers Compensation Insurance. CONTRACTOR represents that it has in force and effect throughout the life of this contract, workers compensation insurance to the extent required by law.

23. Applicable Law. This contract shall be interpreted and construed and under the laws of the State of Minnesota and the policies and procedures of the Regents of the University of Minnesota, as amended from time to time.

24. Affirmative Action. If this contract exceeds \$50,000 and CONTRACTOR has more than 20 full time employees in Minnesota at any time in the last 12 months, CONTRACTOR certifies that it has received a certificate of compliance from the Commissioner of Human Rights for its affirmative action plan.

25. Kickbacks. The Anti Kickback Act of 1986 provides that no fees, gifts, gratuities or compensation of any kind may be offered or accepted for the purpose of obtaining favorable treatment in the acquisitions of goods or services with federal funds. Report possible violations to the University of Minnesota, Director of Audits, (612) 625-1368.

26. Federally Funded Projects. In the event that this project is federally funded, in whole or in part, the following Government Contract Articles are hereby incorporated into this transaction by reference as applicable. Clauses and References are to the Federal Acquisition Regulation, which has general applicability for procurements made under prime contracts issued by all Federal agencies. Questions regarding these provisions may be directed to University of Minnesota Office of Research and Technology Transfer Administration, (612) 624-5599.

Clauses Which Apply Regardless of Dollar Amount of Subcontract:

Clause	Title	Date	Reference	Applicability/Remarks
52.203-6	Restrictions on Subcontract Sales to the Government	7-85	3.503-2	
52.203-7	Anti-Kickback Procedures	10-88	3.502-3	Less subparagraph (c) (1).
52.203-11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions	1-90	3.808	Applies only if prime contract is over \$100,000. Text of cert. must then be in all subcontracts, but subk certification required only if subk is > \$100,000
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	1-90	3.808	Same comments as for clause above.
52.215-26	Integrity of Unit Prices	4-87	15.812-2	Less Paragraph (c).
52.222-26	Equal Employment Opportunity	4-84	22.810(e)	
52.247-63	Preference for U.S.-Flag Air Carriers	4-87	47.405	If subcontract may involve foreign travel.

27. If you are currently debarred or suspended by any Federal agency from doing business with the Federal government, this order is null and void. Call the University of Minnesota Vendor Relations Coordinator at (612) 624-2095 regarding disposition of this order.