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|  | **HARVARD UNIVERSITY****OFFICE OF THE GENERAL COUNSEL**  |



**Model Services or Consulting Agreement**

**BEFORE GIVING THIS FORM TO SERVICE PROVIDERS, DELETE THE**

**OGC LOGO, THE HEADING ABOVE, THE EXPLANATORY**

**PARAGRAPH BELOW AND NOTES AND INAPPLICABLE**

**TEXT (for example, “optional” or “alternate”),**

**The Human Resources office for the contracting unit is responsible for determining if the party to be engaged can properly be classified as an independent contractor (as opposed to an employee). For more information, please see the** [**Independent Contractor Classification Policy**](https://policies.fad.harvard.edu/pages/independent-contractors)**.**

* **If your agreement is to obtain security, custodial, or dining services for a period of nine months or more and involves payments exceeding $50,000.00, then University policy requires the use of other mandatory contract provisions not contained here.**
* **In addition, this model agreement is not intended for use in the procurement of ongoing facilities management services such as dining services. Consult the Office of the General Counsel in such cases.**
* **Prior to signing this Agreement, you \*must\* ascertain whether the Service Provider is a foreign national without a green card and, if so, include the optional sentence requiring the Service Provider to establish authorization to be paid. \*A best practice\* is to require the Service Provider to submit the required documentation prior to the engagement, in order to avoid a case in which the Service Provider believes he/she has documentation to support payment but in fact does not. See Most Commonly Seen Visa Types for additional details.**
* **Consult the Office of Technology Development on intellectual property matters if your contract is to obtain services in the context of a research project.**
* **Consult the Office of Strategic Procurement if the agreement is intended to apply to the activities of multiple Harvard units.**
* **This model agreement is not intended for use as a subaward; consult the Office for Sponsored Programs in such cases.**
* **This model agreement is not intended for use for the purchase of goods or services using funds from a federal grant; consult the Office of Strategic Procurement in such cases.**
* **This model agreement is not intended for engaging an artist to create a work for installation in or on University property. Consult the Office of the General Counsel in such cases.**
* **If your unit is not part of President and Fellows of Harvard College, or if you are unsure if your unit is part of President and Fellows of Harvard College, consult the Office of Strategic Procurement or Office of the General Counsel before using this template.**

Rev. 8/23/2021

***[form begins on next page]***

**SERVICES AGREEMENT**

This Services Agreement (the “Agreement,” which terms shall include any Statement of Work and other attachments) effective as of the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_ 20\_\_ (the “Effective Date”), is by and between President and Fellows of Harvard College, a Massachusetts nonprofit educational corporation (“Harvard”), acting through ***[insert name of School, department, or other unit involved]*** with a place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(“***[insert defined name for unit]***”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ***[insert name of Service Provider]*** (“Service Provider”) with a place of business at\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Harvard and Service Provider ***[alternate*** *“Vendor”* ***]– if this is selected, change “Service Provider” to “Vendor” throughout]*** (each a “Party” and collectively the “Parties)agree as follows:

**1 Services.**

1.1 Service Provider shall provide the services and deliverables (collectively, the “Services”) as described in any Statement of Work incorporated into this Agreement (an “SOW,” said term being understood to include any and all Statements of Work entered into pursuant to this Agreement). Each SOW shall expressly reference this Agreement and shall be signed by Service Provider and ***[insert defined name of unit from above]***. The initial SOW is attached as Exhibit A. In no event shall Harvard be obligated to pay for services or deliverables that are not set forth in a duly executed SOW.

1.2 Any change to the Services or SOW must be approved in advance in writing by both parties.

1.3 In the event of a conflict between the terms of this Agreement and the terms of the SOW, the terms of this Agreement shall prevail.

***[Optional:*** 1.4 The Services will be performed primarily by ***[identify Service Provider's key employee]***. If for any reason said person is unavailable or fails to perform the Services for any period, then Harvard shall have the option to terminate this Agreement for breach or to require Service Provider to immediately provide one or more substitute individuals acceptable to Harvard.***]***

***[Required if services will be performed on Harvard premises or using Harvard systems:*** 1.5 All employees or contractors of Service Provider who perform Services on Harvard premises or have access to any Harvard network or other Harvard systems or equipment shall comply with Harvard’s instructions regarding safety and security of persons and facilities and non-interference with Harvard operations and business, and Service Provider shall be responsible for such compliance.While at any Harvard location or if Service Provider is given access to any Harvard network or computer or other systems (“Harvard Systems”), Service Provider and its employees and contractors will follow all reasonable directions and instructions given by Harvard with respect to Harvard Systems and will use Harvard Systems only to the extent necessary to provide or perform the Services. If Service Provider is given a key, code, combination or other device that may be used to access Harvard’s premises or if Service Provider is given any codes, passwords or credentials that may be used to access any Harvard Systems (collectively “Access Devices”), Service Provider will: (a) safeguard the Access Devices with the same degree of care as Service Provider safeguards access devices to its own premises or systems, but in no event with less than reasonable care; (b) maintain a log and on request provide copies to Harvard of the names of personnel who have possession of such Access Devices and when they use them, and immediately notify Harvard of any change to such personnel; and (c) return or destroy all such Access Devices immediately upon request by Harvard and in any case on completion of the Services or SOW (as applicable).

***[Required if Service Provider is an individual foreign national without a green card (or the Agreement calls for any individual person without a green card to be paid directly by Harvard) and the Services are to be performed in the U.S.:*** 1.­6 Service Provider represents and warrants that Service Provider is authorized under the United States Immigration and Nationality Act and its supporting regulations to perform the Services specified in this Agreement and has presented or can and will present to Harvard valid documentation (*e.g.*, a visa or work permit) sufficient to establish such authorization.***]***

**2 Payment to Service Provider.**

2.1 As compensation in full for the Services, all Work Product (as defined in the Rights in Work Product section) and all rights granted or assigned by Service Provider to Harvard under this Agreement, Harvard shall pay Service Provider the fees set forth in the SOW.

***[Alternate #1:*** Unless otherwise provided in the SOW, Harvard also shall reimburse Service Provider for all reasonable out-of-pocket expenses that Service Provider incurs in connection with the Services; provided that Harvard shall not be obligated to reimburse any expense of more than \_\_\_\_\_\_\_\_\_\_ ***[for example, $250]*** unless Service Provider has obtained prior written approval of such expense from ***[insert name or title]***. ***{optional if your unit has relevant policies:*** Service Provider shall comply with ***[insert name of School, department, or other unit]***’sexpense billing policy.***}]***

***[Alternate #2:*** Such fees shall also compensate Service Provider for all expenses incurred by Service Provider in connection with the Services.***]***

2.2 Service Provider shall submit invoices to Harvard in accordance with the payment schedule and conditions set forth in the SOW. All invoices shall specifically refer to the SOW and shall contain such information and supporting documentation as Harvard shall reasonably request. If Harvard is reimbursing expenses, the invoice shall include a list of any reimbursable expenses incurred during the period covered by the invoice, together with documentation of such expenses satisfactory to Harvard. ***[Include in international agreements:*** All fees and expenses shall be invoiced by Service Provider and paid by Harvard in U.S. dollars, unless otherwise provided in the SOW.***]***

2.3 If requested by Harvard, prior to receiving payment, Service Provider shall register with, and provide documentation required by, Harvard’s supplier portal. Provided that the Services have been performed in accordance with the SOW and the requirements of this Agreement, Harvard shall pay each properly prepared and submitted invoice within 45 days of receipt unless the SOW states other payment terms.

2.4 Harvard is a non-profit corporation that is exempt from Massachusetts sales and use tax. Harvard shall not be responsible for any applicable tax (e.g. value added tax, goods and services tax, sales tax, service tax, performers tax etc.) unless specifically stated in the SOW and itemized in each invoice. Service Provider shall be responsible for any such tax not itemized in the SOW and the invoices. Additional withholding may be required for foreign individuals or entities when providing services in the United States. Harvard shall not be responsible to gross up Service Provider for any applicable tax required to be withheld.

**3 Term and Termination.**

3.1 The term of this Agreement shall begin as of the Effective Date and shall continue ***[Alternate #1:*** until ***[date]***,***]*** ***[Alternate #2*:** until completion of the Services in accordance with the SOW,***]*** unless sooner terminated under this Term and Termination Section or extended by written agreement of the parties. Expiration of this Agreement shall also terminate the SOW unless otherwise provided in the SOW.

***[Optional:*** 3.2 Harvard shall have the right to terminate this Agreement or any SOW for any reason in its sole discretion upon ***[\_\_]*** ***[for example, 30]*** days’ written notice to Service Provider.***]***

3.3 In addition to any other rights and remedies it may have, Harvard may terminate this Agreement and any SOW if Service Provider fails to perform or breaches any of Service Provider’s obligations, warranties or representations in this Agreement and such failure or breach continues uncured for ***[30]*** days after Harvard has given Service Provider written notice of the failure or breach.

3.4 Upon completion of the Services in one or more SOWs, or within ***[30]*** days of any termination or expiration of this Agreement or one or more SOWs, (i) Service Provider shall deliver to Harvard at no cost to Harvard all Harvard Materials (as defined below), all Work Product, and all related records under the relevant SOW(s); and (ii) Harvard shall pay Service Provider undisputed amounts owing for Services performed in accordance with this Agreement ***[include if expenses are being reimbursed:*** and, if applicable, reimburse Service Provider for out-of-pocket expenses properly incurred by Service Provider through the date of termination or expiration***]***. If Harvard has prepaid any fees, Service Provider shall refund fees not earned. Promptly upon receiving notice of termination, Service Provider shall use reasonable efforts to wind up Services and cancel expenses.

3.5 The provisions of this Agreement that by their explicit terms or their manifest intent are to survive, including without limitation those which relate to confidentiality, rights in Work Product, use of Harvard Names, and indemnification, and limitation of liability ***[include if applicable:*** and insurance***]***, shall survive expiration or termination of this Agreement.

**4 Status and Authority of Service Provider; Benefits and Taxes.**

Service Provider is an independent contractor customarily engaged in its trade or business, offering services to multiple clients, and free from Harvard’s direction and control of the means and methods of performing the Services, and is not an agent or employee of Harvard. Service Provider shall have no authority to incur any obligations or expenses on behalf of Harvard or to act in any other manner on behalf of Harvard or in its name. Harvard shall have no responsibility for (i) compensation and expenses of Service Provider’s employees and contractors, (ii) taxes on Service Provider’s income, (iii) tax withholdings and welfare and benefits payments and contributions required with respect to Service Provider and Service Provider’s employees and contractors, (iv) Service Provider’s professional and other licensing fees, or (v) other taxes owed to any governmental authority in connection with the Services, except as otherwise provided in the SOW. Neither Service Provider nor any of Service Provider’s employees or contractors shall be entitled to receive any employee benefits from Harvard.

***[Include if the Service Provider is an individual:*** Service Provider shall not bring any claims against Harvard under this Agreement as a plaintiff or class member in any class action or other collective proceeding. To the extent permitted by law, Service Provider waives the right to bring, participate in, or receive money from any such proceeding against Harvard.***]***

**5 Confidentiality.**

5.1 During the course of the Services, Harvard may provide Service Provider with or Service Provider may obtain access to “Confidential Information,” which shall mean any and all (a) non-public information about Harvard, any Harvard department, faculty, school, unit, or affiliate or Harvard property (tangible or intangible), or about third parties, that is specifically identified as confidential or that Service Provider knows or in the circumstances should know is regarded as confidential; and (b) personally identifiable information about current or former Harvard faculty members, employees, students, other persons associated with Harvard and other individuals (“Personal Data”).

5.2 Service Provider (i) will use reasonable administrative, technical and physical safeguards to protect the security of Confidential Information; (ii) will not use Confidential Information for any purpose other than the performance of the Services; (iii) will limit access to Confidential Information to those of Service Provider’s employees and contractors who have a specific need for such access in order to perform the Services (each, a “Permitted Person”) and will enforce and be responsible for compliance with this Confidentiality Section and all other confidentiality obligations to Harvard by all of Service Provider’s employees and contractors; (iv) will not at any time during or after the term of this Agreement disclose Confidential Information to any persons other than Permitted Persons and Harvard personnel designated in writing by Harvard, except with Harvard’s prior written consent (and except as may be required by law in which case Service Provider shall, unless prohibited by law, notify Harvard promptly upon receiving the request for disclosure and prior to such disclosure); (v) will comply with such additional protections as Harvard shall reasonably require from time to time ; and (vi) will immediately notify Harvard upon learning of any breach in the security of Confidential Information and reasonably cooperate in the remediation of such breach at Service Provider’s expense.

5.3 Service Provider will ensure that Service Provider and Permitted Persons do not store Confidential Information in any unencrypted portable computing device, such as laptops, tablets, smartphones or similar devices, or in any unencrypted portable storage media, such as DVDs, flash drives or backup tapes.

5.4 Service Provider shall not (i) use email addresses of Harvard faculty, employees, students or other persons that Service Provider obtains in the course of performing Services, for any purpose except the Services; or (ii) sell or otherwise provide such email addresses to any third party except as required to accomplish the Services.

5.5 All Confidential Information will remain the property of Harvard. At any time on Harvard’s request and in any case upon termination or expiration of this Agreement, Service Provider will (i) unless otherwise instructed by Harvard return all documents containing Confidential Information to Harvard, (ii) delete all electronic files and records containing Confidential Information, and (iii) retain no copies of Confidential Information in any medium; provided that Service Provider shall be entitled to retain records containing Confidential Information as reasonably necessary solely for archive purposes (including archiving/back up by automatic electronic means) or for legal compliance, on the condition that such records shall continue to be subject to the provisions of this Confidentiality Section and any Personal Data in such records shall be deleted or redacted.

***[Include if applicable:*** 5.\_ In addition to the foregoing Confidentiality obligations, Service Provider shall comply with the provisions of the attached Rider: Requirements for the Protection of Harvard Personally Identifiable Information, which is added to and incorporated as part of this Agreement.***]***

***[Include if applicable:*** 5.\_ In addition to the foregoing Confidentiality obligations, Service Provider shall comply with the provisions of the attached Rider: Requirements for the Protection of Personal Data under the European Union General Data Protection Regulation or the United Kingdom Data Protection Act 2018, which is added to and incorporated as part of this Agreement.***]***

***[Include if applicable:*** 5.\_ In addition to the foregoing Confidentiality obligations, Service Provider shall comply with the provisions of the attached Rider: Requirements for the Protection of Credit Card Data, which is added to and incorporated as part of this Agreement.***]***

***[Include if applicable:*** 5.\_ In addition to the foregoing Confidentiality obligations, Service Provider shall comply with the provisions of the attached Rider: Requirements for Access to and Protection of the Harvard Network, which is added to and incorporated as part of this Agreement.***]***

**6 Warranties of Service Provider.**

6.1 Service Provider warrants to Harvard as follows:

 6.1.1 The Services shall be performed with reasonable care, consistently with applicable professional and industry standards, and in compliance with all applicable laws and regulations. Neither this Agreement nor Service Provider’s performance of the Services shall breach any obligations of Service Provider to any other party.

 6.1.2 The Services and all Work Product shall substantially conform to the requirements and specifications set forth in this Agreement and the SOW.

 6.1.3 Service Provider owns or on creation will own all the rights that Service Provider is granting or assigning to Harvard under this Agreement (see Rights in Work Product). Neither the Services nor any Work Product will infringe any patents, copyrights, trademarks, trade secrets or other rights of any third party, except that Service Provider makes no warranties regarding any Harvard Materials and reproduced accurately in any Work Product.

6.1.4 Service Provider shall not provide “covered telecommunications equipment or services”, as those terms are defined in FAR 52.204-25, to Harvard in the performance of this contract. Service Provider represents that it does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services.

***[Include if applicable:*** 6.1.\_ All information supplied by Service Provider to Harvard through Harvard’s supplier portal is true and correct.

 ***[Include if applicable:*** 6.1.\_ The Services and Work Product shall conform to the requirements of the attached Rider: Harvard Digital Accessibility Requirements, which is added to and incorporated as part of this Agreement.***]***

 ***[Include if applicable:*** 6.1.\_ Any Work Product shall be free of (i) any viruses, worms or other code or instructions that could damage, interfere with or otherwise adversely affect computer programs, data files, or hardware; and (ii) the coding deficiencies or vulnerabilities described in: (a) the Open Web Application Security Project’s (OWASP) “Top Ten Project,” *see* http://www.owasp.org (as updated from time to time); (b) the CWE/SANS Top 25 Programming Errors, *see* http://cwe.mitre.org/top25/ or http://www.sans.org/top25-programming-errors/ (as each may be updated from time to time); and (c) other comparable vulnerabilities generally recognized by the software development/security industry.***]***

6.2 Service Provider shall use commercially reasonable efforts to remedy any breach of the warranties contained in this Warranties Section promptly at Service Provider’s expense, including re-performance of Services and correction or replacement of Work Product, provided that Harvard gives Service Provider notice specifying the breach within a commercially reasonable period of time after discovering the breach. If Service Provider is unable to remedy the breach in a commercially reasonable amount of time, Service Provider shall, in addition to any other remedies available to Harvard, refund the fees Harvard paid for the non-conforming Services and Work Product.

**7 Rights in Work Product.**

7.1 As used in this Agreement, “Work Product” means all deliverables, including all interim versions and all works in progress, and all other materials, inventions, creations, works and data of any kind (whether or not copyrightable or patentable) conceived, created, made or developed for or to the order of Harvard in connection with the Services or in the course of performing this Agreement.

7.2 Harvard shall own and Service Provider agrees to assign and hereby does assign to Harvard all right, title and interest in and to all Work Product, whenever created, and any patents, copyrights, trademarks and other intellectual property rights embodied in the Work Product, free of all liens, claims, encumbrances, licenses and restrictions; ***[pick one] [Alternate #1, for contracts for services in the US:*** provided that all Work Product subject to copyright shall be considered work made for hire for Harvard to the extent permitted by law***]*** ***[Alternate #2: for contracts for services outside of the US:*** provided that rights in all Work Product subject to copyright shall vest in Harvard to the extent provided by law***]***. Without limiting the foregoing, Harvard will have the irrevocable, worldwide right to use and exploit the Work Product in any manner and to authorize third parties to exercise any of its rights. Service Provider hereby waives and agrees not to assert any “moral rights” in the Work Product to the extent permitted by law.

7.3 Service Provider shall execute and deliver to Harvard all documentation that Harvard reasonably requires to evidence, perfect, defend or enforce Harvard’s rights in and to Work Product. Service Provider shall comply at Harvard’s expense with all reasonable requests for assistance in connection with (i) applications for registration of any patents, copyrights, trademarks or other rights in Work Product and (ii) any action or proceeding with respect to Harvard's protection or defense of its rights.

7.4 If Work Product incorporates any technology or work of authorship created or acquired by Service Provider prior to and independently of this Agreement and owned by Service Provider (“Service Provider Work”), Service Provider hereby grants to Harvard a royalty-free, worldwide, perpetual, irrevocable, assignable license to use and exploit any Service Provider Work in any manner as a part of the Work Product and to authorize third parties to exercise any of its rights under such license. The assignment provisions in the first sentence of Section 7.2 do not apply to any such Service Provider Work.

7.5 Service Provider shall not include in the Work Product any technology or work of authorship created by a third party that Service Provider does not own (a “Third Party Work”) unless Service Provider has first obtained Harvard’s written consent on terms and conditions satisfactory to Harvard (including, if applicable, licenses from the third party). The assignment provisions in the first sentence of Section 7.2 do not apply to any such Third Party Works.

7.6 As used in this Agreement, “Harvard Materials” shall mean any and all materials, inventions, creations, works, information and data of any kind (whether or not copyrightable or patentable) owned by Harvard or provided to Service Provider by Harvard (other than Work Product). No ownership interests in any Harvard Materials are being transferred from Harvard to Service Provider. Service Provider will not use Harvard Materials for any purpose other than the performance of the Services.

**8 Use of Harvard Names.**

Service Provider shall not use the name “Harvard” (alone or as part of another name, and in any language) or any logo, seal, insignia or other word, name, symbol, image or device that identifies Harvard or any Harvard school, unit, division or affiliate (“Harvard Names”) for any promotional purpose in connection with the Services or this Agreement, including in any press release, public announcement, website or other advertising or publicity materials, except as expressly provided in this Agreement or the SOW, or with the prior written approval of, and in accordance with restrictions required by, Harvard. Service Provider shall not register, in any jurisdiction, any business or company name, trademark, service mark, domain name or trade name, or obtain any other type of registration, that contains or is confusingly similar to any Harvard Name. Service Provider shall cease any use of Harvard Names authorized under this Agreement on the termination or expiration of this Agreement. Without limiting the foregoing, Service Provider shall not in any manner suggest that Harvard or any Harvard department, faculty, school, unit, or affiliate has endorsed Service Provider or its products or services.

***[Include in international agreements:*** If, notwithstanding the foregoing prohibition, Service Provider registers any Harvard Name for any purpose anywhere in the world, then, in addition to any other remedies Harvard may have, Harvard shall have the right to compel Service Provider to assign Service Provider’s rights in such registration to Harvard and Service Provider shall take such steps as may be necessary to transfer record ownership of such registration to Harvard, at Service Provider’s cost.***]***

**9 Indemnification.**

Service Provider shall indemnify and hold Harvard and its affiliates, employees, faculty members, fellows, students, members of its governing boards and agents harmless from and against any claims, losses, liabilities, damages, costs and expenses including reasonable attorneys’ fees arising out of or relating to Service Provider's breach or alleged breach of any warranty or other provision of this Agreement, or any other negligent or wrongful act or omission of Service Provider. Neither Party will enter into any settlement that admits fault on the part of the other Party or requires any payment from the other Party without the other Party’s written consent.

**10 Remedies.**

Service Provider acknowledges that (i) any remedy at law for any violation of the provisions of this Agreement regarding Confidential Information, Harvard’s rights in Work Product, or the use of Harvard Names may be inadequate; and (ii) that Harvard may suffer irreparable damage through any such violation. Therefore, in addition to any other remedies it may have, Service Provider agrees that Harvard may seek to obtain injunctive relief against a breach or threatened breach of such obligations of Service Provider.

**11 Waiver.**

Any waiver by either Party of a breach of any provision of this Agreement must be in writing and shall not be deemed a waiver of any subsequent breach. No delay or omission in the exercise or enforcement by either Party of any right or remedy provided in this Agreement or by law shall be construed as a waiver of such right or remedy.

**12 Severability.**

In the event that any provision of this Agreement is held invalid by any court, the remainder of the Agreement shall remain in force unless the invalid provision materially affects the rights of the parties.

**13 Assignment; Subcontracting.**

This Agreement may not be assigned by either Party, nor transferred by operation of law, without the prior written consent of the other. Any assignment or transfer without such consent shall be void. Service Provider shall not engage any third party to perform any portion of the Services without Harvard’s prior written consent. If Harvard approves the engagement of a third party, Service Provider shall remain fully responsible and liable to Harvard for the performance of the Services and all other obligations of Service Provider under this Agreement, and for the third party’s compliance with the Confidentiality, Use of Harvard Names, Rights in Work Product and other applicable provisions of this Agreement. Harvard shall not be liable for any payments due to such third party.

**14 Governing Law.**

This Agreement, and any and all claims arising out of or in connection with this Agreement, including those relating to its existence, validity or termination, shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts (excluding its choice of law rules).

**15 Notices.**

Any notice under this Agreement may be delivered in person or sent by electronic mail, by registered or certified mail, postage prepaid, or by recognized delivery service, using the most recent contact information provided by the recipient (by means of notice complying with this paragraph), and such notice shall be deemed to have been given when so delivered, sent by electronic mail, or mailed.

**16 Entire Agreement; Amendment; Scope.**

This Agreement states the entire agreement between the parties with respect to the Services and supersedes and cancels all previous negotiations, agreements, and writings relating to the Services. It may be amended only by an agreement in writing that refers explicitly to this Agreement, signed by each of the Parties. The terms of this Agreement shall apply only to the Services described in any SOW and not to any other services performed by Service Provider for Harvard. Notwithstanding anything to the contrary, this Agreement does not incorporate, and may not be amended, superseded, or supplemented by, any passive, click-through, or click-wrap agreement or any pages of any website. Service Provider, for itself and on behalf of its affiliates, employees, shareholders or other related persons, agrees not to enforce any provision of any such agreement or website page that purports to impose personal liability on any Harvard employee, student, fellow, governing board member or other related person in connection with the Services.

**17 Signatures; Counterparts.**

This Agreement may be signed in counterparts, which shall be effective as a single agreement. Signatures of this Agreement may be affixed and exchanged by email or other electronic means.

**18 Limitation of Liability.**

EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, IN NO EVENT SHALL HARVARD OR SERVICE PROVIDER OR ANY OF THEIR AFFILIATES, SHAREHOLDERS, OFFICERS, EMPLOYEES OR MEMBERS OF THEIR GOVERNING BOARDS OR ANY HARVARD FACULTY MEMBER, FELLOW, OR STUDENT BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES WHATSOEVER IN CONNECTION WITH CLAIMS ARISING UNDER OR RELATING TO THIS AGREEMENT OR THE SERVICES, WHETHER BASED UPON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OR CAUSE OF ACTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS PARAGRAPH SHALL NOT APPLY TO CLAIMS BY HARVARD (INCLUDING CLAIMS FOR INDEMNIFICATION) ARISING UNDER OR RELATED TO (i) SERVICE PROVIDER’S OBLIGATIONS WITH RESPECT TO CONFIDENTIAL INFORMATION OR USE OF HARVARD NAMES, (ii) SERVICE PROVIDER’S WARRANTIES AND AGREEMENTS AS TO RIGHTS IN WORK PRODUCT AND NON-INFRINGEMENT, OR (iii) ANY CLAIM BY A THIRD PARTY. THIS PARAGRAPH SHALL NOT LIMIT EITHER PARTY’S LIABILITY FOR FRAUD OR ANY MATTER THAT CANNOT BE SO LIMITED UNDER APPLICABLE LAW.

***[Optional:* 19 Insurance.**

19.1 Service Provider shall maintain at all times during the term of this Agreement, at its own expense, insurance of the types and in the limits set forth below in this Section. All policies of insurance required pursuant to this Section shall be issued by insurance companies authorized to provide that class of insurance where the Services are to be performed and with a minimum rating of A-: VII by A.M. Best & Company:

 19.1.1 A fully-paid Commercial General Liability insurance policy in form and amount and with deductibles acceptable to Harvard, but with limits of not less than $1,000,000 per occurrence and $2,000,000 aggregate annual liability with respect to bodily injury, personal injury, property damage and products/operations liability; and

 19.1.2 Professional liability or errors and omissions insurance in form and amount and with deductibles satisfactory to Harvard, but with limits of not less than $1,000,000 per claim and $2,000,000 annual aggregate.

19.2

19.2.1 If the liability or errors and omissions policies described above are claims-made policies, Service Provider shall maintain such insurance (directly or through tail coverage) for a period of not less than three years after the termination or expiration of this Agreement. The retroactive date applicable to such claims-made insurance, if any, must precede the first date on which Services was performed.

19.2.2 Upon request, Service Provider shall promptly submit certificates of said policies to Harvard evidencing that the required coverages are in effect. Each certificate shall name “President and Fellows of Harvard College, its subsidiary and affiliated companies, and officers, directors, members of governing boards, employees and agents of any of them” as additional insureds and shall waive the insurer’s rights to recover any insurance payments from Harvard.

19.2.3 Service Provider shall provide at least 30 days’ written notice to Harvard prior to any cancellation or non-renewal of coverage, or modification of coverage that would cause it not to comply with Section 19.1. In the event of cancellation because of non-payment of premium, Service Provider shall provide Harvard with written notice of the insurer’s intent to cancel within 3 business days of Service Provider’s receipt of such notice from the insurer.

19.2.4 Coverage afforded Additional Insureds under the Service Provider’s policies shall be primary insurance. Any other insurance or self-insurance available to the Additional Insureds shall be in excess of this insurance and shall not contribute to it.

19.3 Service Provider shall in addition maintain:

19.3.1 Workers’ compensation insurance and other legally required insurance in accordance with applicable laws;

19.3.2 Employers liability insurance with limits of not less than $500,000 per accident/injury;

19.3.3 Umbrella/excess liability insurance over the insurance described in clauses 19.1.1, 19.1.2 and 19.3.2, with limits of not less than $1,000,000; and

19.3.4 If Service Provider will be bringing property of material value onto Harvard premises, insurance for such property in an amount no less than the replacement cost.

19.4 If Service Provider will collect, host, store, process or transmit Harvard Confidential Information, Service Provider shall maintain cyber security/data breach liability insurance against claims for loss caused by or resulting from unauthorized access to or use of Service Provider’s systems or networks containing such Confidential Information and the remediation thereof, in scope, form and amount and with deductibles acceptable to Harvard, but with limits per claim, alone or in combination with umbrella liability insurance, of not less than the greater of $1,000,000 aggregate or $100 per Harvard record that is dealt with in any manner by Service Provider. The provisions of Section 19.2 shall apply to such insurance.***]***

**20 Non-discrimination.**

Discrimination with respect to any aspect of the Services on the basis of race, color, gender or gender identity, sexual orientation, national or ethnic origin, religion, age, health condition or disability, political beliefs, or military veteran status, shall be grounds for Harvard to terminate this Agreement.

***[Include in international agreements:* 21. Resolution of Disputes.**

The Parties to this Agreement shall exclusively and finally resolve any and all disputes between them arising out of or in connection with this agreement (each a “Dispute”) through direct negotiations and then arbitration. If a Dispute arises, the Party seeking to initiate the dispute resolution process must give notice to the other Party setting out, in writing and in detail, the issues in Dispute and the total value of any and all claims being asserted. The Parties shall attempt to resolve the Dispute through direct negotiations. If the parties fail for any reason to resolve the Dispute by direct negotiations within thirty (30) days of initiation of the dispute resolution process, then the Dispute shall be finally resolved by binding arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (“ICC”). The place of arbitration shall be Boston, Massachusetts and the language of the arbitration shall be English. The arbitral tribunal’s award shall be final and binding and enforceable in any court of competent jurisdiction. The subject matter, proceedings and award in any arbitration shall be kept confidential by the parties and shall not be publicly disclosed except as necessary in any judicial proceedings, including to enforce or challenge an award, or as otherwise required by law or by any governmental authority.***]***

PRESIDENT AND FELLOWS
OF HARVARD COLLEGE acting through ***[insert defined name of unit from above]***

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [SERVICE PROVIDER]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

***[First Sample SOW, when RFP or proposal used as SOW; SOW should cover at a minimum services description, deliverables, specs, work schedule and delivery dates, payment terms and schedule, and any transition services]***

Exhibit A

**STATEMENT OF WORK**

This Statement of Work (“SOW”) is incorporated into, and governed by the terms and conditions of, the Consulting Agreement between President and Fellows of Harvard College, acting through *[insert name of School, department, or other unit involved]* (“Harvard”) and *[insert name of Service Provider]* (“Service Provider”), dated \_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_, 200\_ (the “Agreement”). Unless otherwise defined, capitalized terms used in this SOW shall have the meaning ascribed to them in the Agreement.

The parties agree that *[the attached proposal from Service Provider to Harvard]*, dated \_\_\_\_\_\_\_\_\_\_\_\_, shall constitute the SOW.

***[It is advisable for both parties to sign an SOW]***

|  |  |
| --- | --- |
| **HARVARD**By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: Title: Date:  | **SERVICE PROVIDER**By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: Title: Date:  |

***[Attach copy of proposal, etc.]***

***[Second Sample SOW]***

Exhibit A

**STATEMENT OF WORK**

This Statement of Work (“SOW”) is incorporated into, and governed by the terms and conditions of, the Consulting Agreement between President and Fellows of Harvard College, acting through ***[insert name of School, department, or other unit involved]***(“Harvard”) and ***[insert name of Service Provider]*** (“Service Provider”), dated \_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_, 20\_\_, (the “Agreement”). Unless otherwise defined, capitalized terms used in this SOW shall have the meaning ascribed to them in the Agreement.

***[The listed topics are examples.]***

**Background:**

**Scope:**

**Services to be performed:**

**Deliverables:**

**Specifications:**

**Work Schedule, Delivery Dates:**

**Progress Reports, Team Meetings:**

**Testing and Acceptance:**

***[Example:*** Upon delivery of any portion of the Services, Harvard shall have ***[\_\_]***days in which to determine whether it substantially conforms to the Specifications set out in this Statement of Work. Unless Harvard gives notice to Service Provider, as provided in the next sentence, that such Services does not substantially conform to the Specifications, Harvard shall be deemed to have accepted such Services upon expiration of the testing period. If Harvard reasonably believes that such Services does not substantially conform to the Specifications, Harvard shall give notice to Service Provider no later than ***[\_\_]*** days after the expiration of the testing period, specifying the non-conformance in reasonable detail. Service Provider shall have ***[\_\_]*** days from the receipt of such notice, and shall use all commercially reasonable efforts, to correct the deficiencies. Harvard shall then have ***[\_\_]*** days to inspect, test and reevaluate the Services. If the Work Product still does not substantially conform to the Specifications, Harvard shall notify Service Provider and may in its discretion (i) deem the non-conformance a default by Service Provider, or (ii) allow Service Provider to continue to attempt to correct the problems identified until acceptance occurs.***]***

**Project Managers:**

**Fees and Payment Schedule:**

***Example 1: fixed price, payment schedule –***

|  |  |  |
| --- | --- | --- |
| Milestone | Date for Completion of Milestone | Fees Due at Completion of Milestone |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

***Example 2: hourly or other periodic rate, not to exceed cap –***

Service Provider’s Fee: $***[\_\_]*** per ***[hour, day, etc.]***

Statement Schedule: Service Provider shall submit statements ***[monthly, quarterly, etc.]***.

Service Provider’s Maximum Fee (excluding expenses): $***[\_\_]***. Service Provider agrees to perform the Services in full for no more than Service Provider’s Maximum Fee. In no event shall Harvard be obliged to pay Service Provider more than Service Provider’s Maximum Fee for the completed Services.

***Example 3: Hourly or other periodic rate, no cap [rarely desirable for Harvard] –***

Service Provider’s Fee: $***[\_\_]***per ***[hour, day, etc.]***

Statement Schedule: Service Provider shall submit statements ***[monthly, quarterly, etc.]***.

**Invoice Requirements:**

***[Optional – Transition Assistance]:***

***[It is advisable for both parties to sign an SOW]***

|  |  |
| --- | --- |
| **HARVARD**By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: Title: Date:  | **SERVICE PROVIDER**By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: Title: Date:  |