

STATE OF GEORGIA  
COUNTY OF FULTON

**CONSULTING AGREEMENT**

THIS AGREEMENT (hereinafter referred to as the "Agreement"), effective this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, is made by and between the Board of Regents of the University System of Georgia by and on behalf of Georgia State University (hereinafter referred to as "the University"), and \_\_\_\_\_, whose principal place of business is located at \_\_\_\_\_ (hereinafter referred to as "Consultant").

WHEREAS, the University desires to retain Consultant, and Consultant desires to provide consulting services to the University, as described herein;

NOW, THEREFORE in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1. **Services.** Consultant agrees to perform for the University the services set forth in the "Statement of Work" section of Exhibit A, which is attached hereto and hereby incorporated by reference. Such services are hereinafter referred to as the "Services." No other services shall be performed unless this Agreement is amended as hereinafter provided.
2. **Payment.** The University shall pay Consultant an amount not to exceed \$\_\_\_\_\_ for Services in accordance with the "Payment Schedule" contained in Exhibit A within thirty (30) days after receipt of Consultant's invoice, provided that the Services invoiced for have been accepted by the University as hereinafter provided.
3. **Independent Contractor.**
  - a. Consultant is an independent contractor and shall not be deemed to be an employee of the University. The University is hereby contracting with Consultant for the Services, and Consultant reserves the right to determine the method, manner, and means by which the Services will be performed. Consultant is not required to perform the Services during a fixed hourly or daily time, and if the Services are performed on the University's premises, then Consultant's time spent at the premises is to be at the discretion of Consultant, subject to the University's normal business hours and security requirements. Consultant hereby confirms to the University that the University will not be required to furnish or provide any training to Consultant or to any employees of Consultant in order to enable Consultant to perform the Services. The Services shall be performed by Consultant and the University shall not be required to hire, supervise, or pay any assistants to help the Consultant perform the services. The order and sequence in which the work is to be performed shall be under the control of Consultant. Except to the extent that Consultant's work must be performed on or with the University's resources, all equipment used in providing the Services shall be provided by the Consultant. The University will not withhold any amount that would normally be withheld from an employee's pay and neither Consultant nor any employee of Consultant shall participate in any benefits of any sort which the University offers to its employees.
  - b. Inasmuch as the University and Consultant are contractors independent of one another, neither has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other, unless otherwise expressly agreed to in a writing signed by authorized representatives of both parties hereto prior to any such act or representation. Consultant agrees not to represent himself or herself as the University's agent for any purpose to any party or to allow any employee of Consultant to do so, unless specifically authorized, in advance and in writing, to do so, and then only for the limited purpose stated in such authorization. Consultant shall assume sole and full liability for any contracts or agreements Consultant enters into on behalf of the University without the express, prior written consent of the University.

4. **Intellectual Property Rights.** Consultant agrees that all patentable or copyrightable ideas, writings, drawings, inventions, designs, parts, machines, processes, computer software (together with any related documentation source code or code, object codes, upgrades, revisions, modifications, and any related materials) developed as a result of or in the course of, Services rendered to the University by Consultant, or any employee or employees of Consultant, during the term of this Agreement shall be the property of the University. Consultant herewith assigns all rights in such intellectual property to the University and shall (and will ensure that Consultant's employees and subcontractors shall) supply all assistance reasonably requested in securing for the University's benefit any patent, copyright, trademark, service mark, license, right or other evidence of ownership of any such intellectual property, and will provide full information regarding any such item and execute all appropriate documentation prepared by the University in applying or otherwise registering, in the University's name, or in the name of any cooperative organization of the University, all rights to any such item. The University does not grant any licenses to Consultant to use any intellectual property developed under this Agreement.
5. **Term.** The term of this Agreement shall be as set forth in Exhibit A attached hereto.
6. **Warranty.** Consultant warrants that in performing the Services:
  - a. Consultant will strictly comply with the descriptions and representations as to the Services (including performance, capabilities, accuracy, completeness, scheduling characteristics, specifications, configurations, standards, functions, and requirements) which appear herein and Consultant and any employees of Consultant will perform the Services on time;
  - b. Consultant's products, if any, will conform to generally applicable standards in the industry;
  - c. the Services will not be in violation of any applicable law, rule or regulation, and Consultant will obtain all permits required to comply with such laws and regulations;
  - d. the Services will not violate or in any way infringe upon the rights of third parties, including proprietary information and non-disclosure rights, or any trademark, copyright or patent rights;
  - e. Consultant is the lawful owner or licensee of all proprietary material or intellectual property used in the performance of the Services contemplated herein, such programs have been lawfully developed or acquired by the Consultant, and the Consultant has the right to permit the University access to or use of such intellectual property or proprietary material;
  - f. with respect to any Consultant personnel designated as "Key Personnel" in Exhibit A, the assignment of Consultant personnel to perform the Services will be continuous throughout the term of the Agreement, except in the case of the termination of employment of any such Key Personnel by Consultant;
  - g. Consultant shall assign to the University the manufacturers' warranties for material furnished to the University by the Consultant; and
  - h. Consultant will screen all employees supplied to the University by Consultant in the performance of Consultant's services to ensure that each employee is fully qualified to perform the Services, and if required by law or ordinance, is validly licensed and/or has obtained all requisite permits to perform such Services for the University.
7. **Proprietary Information.**
  - a. Consultant acknowledges that in order to perform the Services called for in this Agreement, it may be necessary for the University to disclose to Consultant certain materials and information relating to or associated with the University's business, activities, processes, equipment, or programs ("Proprietary Information") in the possession of the University. Consultant further acknowledges

that the Services, including any deliverables, may of necessity incorporate such Proprietary Information. In that event, Consultant agrees that it shall not disclose, transfer, use, copy, or allow access to any such Proprietary Information, identified as such orally or in writing, to any employees or to any third parties, excepting those who have a need to know such Proprietary Information, in order to allow Consultant to perform the Services, and who have executed a non-disclosure agreement consistent with the provisions herein.

- b. Consultant agrees to promptly return, following the termination of the Agreement or upon earlier request by the University, all Proprietary Information in Consultant's possession and (i) supplied by the University in conjunction with the Consultant's performance of services under this Agreement and (ii) generated by the Consultant in the performance of services under this Agreement.

8. **Indemnification.**

- a. Consultant does hereby indemnify and shall hold harmless the University and the Board of Regents of the University System of Georgia and their members, agents, servants and employees (each of the foregoing being hereinafter referred to individually as "Indemnified Party") against all claims, demands, causes of action, actions, judgments, or other liability, including attorneys' fees (other than liability solely the fault of the Indemnified Party) arising out of, resulting from, or in connection with, this Agreement, including, but not limited to: (1) the violation of any third party's trade secrets, proprietary information, trademarks, copyright, patent rights, or other intellectual property rights; (2) all injuries or death to persons or damage to property, including theft; (3) Consultant's failure to perform all obligations owed to Consultant employees, including any claim Consultant's employees might have or make for privilege, compensation, or benefits under any employee benefit plan; and (4) any and all sums that are due and owing by Consultant to the Internal Revenue Service for withholding, FICA, and unemployment or other state and federal taxes.
- b. Consultant's obligation to indemnify any Indemnified Party will survive the expiration or termination of this Agreement by either party for any reason.

9. **Interim Reports.** Consultant shall provide such interim written reports concerning the services required under this Agreement as the University may request in writing.

10. **Acceptance of Services.** Consultant shall provide written notification of completion of any deliverables, or other performance of services, to the University. The University shall have thirty (30) days from the date of receipt of the notice of completion, or from the date of receipt of any deliverables, or other performance of services, whichever is later, to provide Consultant with written notification of acceptance or rejection due to unsatisfactory performance. Consultant shall, as quickly as is practicable, correct at its expense all deficiencies caused by Consultant, its employees, agents, contractors or subcontractors.

11. **Examination of Records.** University shall have access to and the right to examine any directly pertinent books, documents, papers, and records of Consultant involving transactions and work related to this Agreement until the expiration of three (3) years after final payment thereunder.

12. **Key Personnel.** In the event that any "Key Personnel" are listed in Exhibit A, the parties agree that such personnel are essential to the Services offered pursuant to this Agreement and are not employees of the University or relatives of such employees. The parties further agree that should any such Key Personnel no longer be employed by Consultant during the term of this Agreement, for whatever reason, the University shall have the right to terminate this Agreement on thirty (30) days written notice to Consultant.

13. **Termination.**
- a. Each party has the right to terminate this Agreement immediately if the other party breaches, is in default of any obligation hereunder, or otherwise performs the Services in an unsatisfactory manner.
  - b. The University may terminate this Agreement immediately by written notice to Consultant and may regard Consultant in default of this Agreement if Consultant becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated business, whether voluntarily or otherwise.
  - c. Either party may terminate this agreement without cause with thirty (30) days written notice to the other party. However, if Consultant terminates, the University will have no further financial obligation to Consultant after the date of the notice of termination.
14. **Funding.** Notwithstanding any other provision of this Agreement, the parties agree that the charges payable hereunder by the University are payable solely from appropriations made by the General Assembly of the State of Georgia or by external funding sources. In the event such appropriations are determined, in the sole discretion of the chief operating officer of the University, to no longer exist or to be insufficient with respect to the charges payable hereunder, this Agreement shall automatically and immediately terminate without further obligation of the University as of that moment. The certification of the University of these events stated above shall be conclusive.
15. **Taxes.** Consultant will pay all taxes lawfully imposed upon it with respect to the Services or this Agreement, including but not limited to all federal and state unemployment taxes, FICA and income taxes. Consultant certifies that (a) the tax identification number listed is correct (b) he/she is not subject to backup withholding according to the Internal Revenue Service rules and regulations.
16. **Assignment.** Consultant shall not assign or subcontract the whole or any part of this Agreement without the University's prior written consent.
17. **Site of Services.** Consultant will perform the Services at a location other than the University's premises if possible. If the Services are such that, in the University's sole discretion, they must be performed on the University's premises, the University will provide Consultant office space and facilities to the extent the University deems it necessary to perform the Services.
18. **Interests of Consultant.** Consultant warrants that he/she currently is not an employee of the University, nor is a close relative of an employee of the University. Consultant also warrants that he/she presently has no interest, direct or indirect, that would conflict in any manner or degree with the performance of its services hereunder. Further, Consultant covenants that in the performance of this Agreement, Consultant shall not employ any person having such conflicting interests. Additionally, Consultant must initial one of the following:
- \_\_\_\_\_ The services provided hereunder are not pursuant to a project sponsored by a U.S. Public Health Service agency.
  - \_\_\_\_\_ The services provided hereunder are pursuant to a project sponsored by a U.S. Public Health Service agency, but the Consultant is not considered an "Investigator" as defined by the regulations entitled "Responsibility of Applicants for Promoting Objectivity in Research for which PHS Funding is Sought" (42 C.F.R. Part 50, Subpart F) and "Responsible Prospective Contractors" (45 C.F.R. Part 94).
  - \_\_\_\_\_ The services provided hereunder are pursuant to a project sponsored by a U.S. Public Health Service agency, and the Consultant is considered an "Investigator" as defined by the regulations

entitled “Responsibility of Applicants for Promoting Objectivity in Research for which PHS Funding is Sought” (42 C.F.R. Part 50, Subpart F) and “Responsible Prospective Contractors (45 C.F.R. Part 94). If this paragraph applies, Consultant must also initial one of the following:

\_\_\_\_\_ Consultant hereby certifies that it has in place a policy addressing conflicts of interest that complies with all applicable laws, regulations and rules, including, but not limited to, 42 CFR Part 50 and 45 CFR Part 94. Consultant shall report all identified conflicts of interest to the University prior to beginning any work under this Agreement.

\_\_\_\_\_ Consultant hereby certifies that it will follow the University’s Policy of Financial Disclosures in Sponsored Projects located at [http://www.gsu.edu/research/conflicts\\_of\\_interest.html](http://www.gsu.edu/research/conflicts_of_interest.html).

19. **Drug Free Work Place.**

- a. If Consultant is an individual, he or she hereby certifies that he or she will not engage in the unlawful sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Agreement.
- b. If Consultant is an entity other than an individual, it hereby certifies that:
  - (1) A drug free work place will be provided for the Consultant’s employees during the performance of this Agreement; and
  - (2) It will secure from any subcontractor hired to work in a drug free work place the following written certification: “As part of the subcontracting agreement with (Consultant’s Name), (Subcontractor’s Name) certifies to Consultant that a drug free work place will be provided for subcontractor’s employees during the performance of this Agreement pursuant to paragraph 7 of subsection B of Official Code of Georgia Annotated Section 50-24-3.”
- c. Consultant may be suspended, terminated, or debarred if it is determined that:
  - (1) Consultant has made false certification herein.
  - (2) Consultant has violated such certification by failure to carry out the requirements of Official Code of Georgia Annotated Section 50-24-3.

20. **Non-Discrimination.** Consultant shall not discriminate against any individual on the basis of age, race, color, religion, national origin, sex or disability. Further, the Consultant agrees to comply with all non-discriminatory laws and policies to which the University is subject. The University provides accommodations for the disabled as required by law. However, Consultant agrees to be solely responsible for all costs and expenses associated with any such accommodation(s) related to this Agreement and, without limitation, the “Statement of Work” to be performed hereunder. Notwithstanding any other provision of this Agreement, the University reserves the right to change the “Statement of Work” as set forth in Exhibit A of this Agreement to better meet the needs of the disabled and reserves the right to immediately cancel this Agreement due to the University’s inability to provide such accommodation(s).

21. **Insurance.** Consultant shall insure against all losses and damages which are the result of or the fault or negligence of the Consultant, its agents, servants, members, employees, contractors and subcontractors. Consultant shall at the time of the execution of this Agreement furnish the University with a copy of said policy or a certificate that such insurance has been issued naming the Board of Regents of the University System of Georgia by and on behalf of Georgia State University as a party to be contacted if such a policy is cancelled prior to its renewal date.

22. **Immigration and Security Compliance.** Consultant agrees that throughout the performance of this Agreement it will remain in full compliance with all federal and state immigration laws, including but not limited to provisions 8 U.S.C. § 1324a and Act 252 of the 2011 Session of the Georgia General Assembly (Illegal Immigration Reform and Enforcement Act of 2011) – so long as the physical performance of the Services hereunder occurs within the State of Georgia – regarding the unlawful employment of unauthorized aliens and verification of lawful presence in the United States. Consultant will ensure that only persons who are citizens or nationals of the United States or non-citizens authorized under federal immigration laws are employed to perform services under this contract or any subcontract hereunder.

Consultant further certifies by signing this Agreement it will comply with the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603 and, if applicable, the Illegal Immigration Reform and Enforcement Act of 2011 (O.C.G.A. § 13-10-90 et seq.). Consultant further warrants that it will include the provisions contained in the forgoing paragraph in each subcontract for services hereunder, and will otherwise hold subcontractors responsible to applicable rules and regulations issued by the Georgia Department of Labor set forth at Rule 300-10-1-.01 et seq.

**Consultant must initial one of the identifying categories below (As Applicable):**

\_\_\_\_\_ Consultant has 500 or more employees and Consultant warrants that Consultant has complied with the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603 and the Georgia Security and Immigration Compliance Act by registering at <https://www.vis-dhs.com/EmployerRegistration> and verifying information of all new employees; and by executing any affidavits required by the rules and regulations issued by the Georgia Department of Labor set forth at Rule 300-10-1-.01 et seq.

\_\_\_\_\_ Consultant has 100-499 employees and Consultant warrants that no later than July 1, 2008, Consultant will comply with the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603 and the Georgia Security and Immigration Compliance Act by registering at <https://www.vis-dhs.com/EmployerRegistration> and verifying information of all new employees; and by executing any affidavits required by the rules and regulations issued by the Georgia Department of Labor set forth at Rule 300-10-1-.01 et seq.

\_\_\_\_\_ Consultant has 99 or fewer employees and Consultant warrants that no later than July 1, 2009, Consultant will comply with the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603 and the Georgia Security and Immigration Compliance Act by registering at <https://www.vis-dhs.com/EmployerRegistration> and verifying information of all new employees; and by executing any affidavits required by the rules and regulations issued by the Georgia Department of Labor set forth at Rule 300-10-1-.01 et seq.

23. **Waiver.** The waiver by the University of any breach of any provision contained in this Agreement shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision contained in this Agreement. Any such waiver must be in a properly signed writing in order to be effective, and no such waiver or waivers shall serve to establish a course of performance between the parties contradictory to the terms hereof.
24. **Applicable Law.** This Agreement shall be governed by the laws of the State of Georgia.
25. **Uniform Commercial Code.** All Services performed hereunder shall, to the greatest extent possible, be deemed “goods” within the meaning of the Uniform Commercial Code of Georgia.
26. **Non-profit Organization.** If the Consultant is, or is a member of, a non-profit organization, Consultant warrants that it is in compliance with the requirements of O.C.G.A. § 50-20-1, et seq. regarding state government relations with non-profit contractors.

27. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter. This Agreement may be amended, but only upon advance mutual written agreement by the parties.

IN WITNESS WHEREOF the parties have executed this Agreement on the date first written above.

AGREED TO BY:

THE BOARD OF REGENTS OF THE  
UNIVERSITY SYSTEM OF GEORGIA  
BY AND ON BEHALF OF  
GEORGIA STATE UNIVERSITY

CONSULTANT

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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

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

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

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

FEI/SS#: \_\_\_\_\_

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

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

**Exhibit A**

**I. Statement of Work**

Consultant agrees to provide the following consulting services to the University: (Please provide 5 – 6 sentences detailing the exact type of work requested, the hours expected from Consultant, and other relevant information) (Attach additional sheets if necessary):

Required Deliverables/Specific Tasks, if any:

**II. Payment Schedule**

The University agrees to pay the Consultant for the satisfactory performance of the work detailed herein the total sum of \$\_\_\_\_\_ to be paid as follows:

Flat Fee: \_\_\_\_\_ or Hourly Fee: \_\_\_\_\_

Reasonable Travel Expenses Not to Exceed (if applicable): \_\_\_\_\_

Reasonable Expenses Not to Exceed (if applicable): \_\_\_\_\_

Prior authorization by the University is required for any travel taken under this Agreement for which reimbursement is requested. Reimbursement of Consultant travel and incidental expenses must comply with State and University travel and expenses policies and Consultant agrees to provide University with copies of receipts and other documentation upon request.

**III. Term**

The term of this Agreement shall commence on \_\_\_\_\_ and shall terminate on \_\_\_\_\_, unless otherwise terminated in accordance with other provisions of this Agreement. Further, the University may renew the Agreement for additional periods upon written agreement.

**IV. Key Personnel**

Key personnel (non-University personnel only) for this Agreement are as follows: