

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 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.

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.**

- a. University complies with all applicable Federal and State work authorization and immigration laws, including, but not limited to the Georgia Security and Immigration Compliance Act, as amended by the Illegal Immigration Reform Act of 2011 (O.C.G.A. §13-10-90 et. seq.), and as further defined in the rules and regulation of the Georgia Department of Labor as set forth at Rule 300-10-1-.01 (collectively, the “Work Authorization and Immigration Acts”). As a condition of providing Services to the University, University requires Consultant to comply with all applicable Work Authorization and Immigration Acts.
 - b. In furtherance of University’s compliance with the Work Authorization and Immigration Acts, University requires Consultant to initial the statement(s) applicable to Consultant below:
 - i. _____: Consultant represents and warrants that (1) Consultant’s Services are compensated in excess of \$2,499.99; (2) Consultant is registered at <https://e-verify.uscis.gov/enroll/> to verify information of all new employees in order to comply with the Work Authorization and Immigration Acts; (3) Consultant is authorized to use and uses the work authorization program; (4) Consultant will continue to use the work authorization program through the Term; and (5) Consultant will execute and return to the University any and all affidavits required by the Work Authorization and Immigration Acts (as found in Exhibit B attached and incorporated herein).
 - ii. _____: Consultant will not employ or contract with any subcontractor in connection with this Agreement unless (1) it has obtained the University’s prior written authorization pursuant to Section 16 of this Agreement and (2) the approved subcontractor is registered, authorized to use, and uses the Federal work authorization program. Consultant will obtain from any authorized subcontractor all affidavits required by the Work Authorization and Immigration Acts (as found in Exhibit C attached and incorporated herein) and return to the University executed copies of such.
 - iii. _____: Consultant agrees to provide the University with copies of all affidavits of compliance as required by the Work Authorization and Immigration Acts prior to the commencement of Services as described in this Agreement. Consultant agrees that he/she/it shall not be paid for any Services if the University does not receive a copy of all applicable affidavits of compliance from Consultant and any authorized subcontractors.
 - iv. _____: Consultant represents and warrants that his/her/its Services shall not be compensated in excess of \$2,499.99 and thus he/she/it does not have to comply with the Georgia Security and Immigration Compliance Act, as amended by the Illegal Immigration Reform Act of 2011 (O.C.G.A. §13-10-90 et. seq.), and as further defined in the rules and regulation of the Georgia Department of Labor as set forth at Rule 300-10-1-.01.
 - v. _____: Consultant represents and warrants that his/her/its Services are being provided by an individual who is licensed by either Title 26 or Title 43 of the Official Code of Georgia or the State Bar of Georgia (and is in good standing by the applicable licensing body) and thus he/she/it does not have to comply with the Georgia Security and Immigration Compliance Act, as amended by the Illegal Immigration Reform Act of 2011 (O.C.G.A. §13-10-90 et. seq.), and as further defined in the rules and regulation of the Georgia Department of Labor as set forth at Rule 300-10-1-.01.
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 a total sum not to exceed \$ _____, 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:

Exhibit B
Contractor Affidavit

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. §13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in performing services on behalf of **the Board of Regents of the University System of Georgia by and on behalf of Georgia State University** has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. §13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. §13-10-91(b). Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal E-verify Number

Date of Authorization

Name of Contractor

Name of Project

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20__ in _____ (City), _____ (State).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE _____ DAY OF _____, 20_____.

NOTARY PUBLIC

My Commission Expires: _____

Exhibit C
Subcontractor Affidavit

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. §13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in performing services under a contract with _____ (Contractor Name) on behalf of **the Board of Regents of the University System of Georgia by and on behalf of Georgia State University** has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. §13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. §13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five business days of receipt. If the undersigned subcontractor receives notice that a sub-subcontractor has received an affidavit from any other contracted sub-subcontractor, the undersigned subcontractor must forward, within five business days of receipt, a copy of the notice to the contractor. Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal E-verify Number

Date of Authorization

Name of Subcontractor

Name of Project

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20__ in _____ (City), _____ (State).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE _____ DAY OF _____, 20 ____.

NOTARY PUBLIC

My Commission Expires: _____