

SERVICE CONTRACT

The parties to this contract are the North Dakota State Board of Higher Education, acting through the University of North Dakota (UNIVERSITY), and (CONTRACTOR).

1. SCOPE OF SERVICE

CONTRACTOR, in exchange for the compensation paid by the UNIVERSITY under this contract, agrees to provide the following services:

2. TERM OF CONTRACT

The term of this contract is for a period of months, commencing on the day of , and terminating on the day of .

3. COMPENSATION

UNIVERSITY will pay for the services provided by CONTRACTOR under this contract an amount not to exceed per to be paid .

4. TERMINATION OF CONTRACT

- a. Termination without cause. This contract may be terminated by mutual consent of both parties, or by either party upon 30 days' written notice.
- b. Termination for lack of funding or authority. The UNIVERSITY may terminate this contract effective upon delivery of written notice to the CONTRACTOR, or on any later date stated in the notice, under any of the following conditions:
 - 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term. The contract may be modified by agreement of the parties in writing to accommodate a reduction in funds.
 - 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
 - 3) If any license, permit or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended or not renewed.

Termination of this contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

- c. Termination for cause. The UNIVERSITY by written notice of default to the CONTRACTOR may terminate the whole or any part of this contract:
- 1) If the CONTRACTOR fails to provide services required by this contract within the time specified or any extension agreed to by the UNIVERSITY; or
 - 2) If the CONTRACTOR fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms.

The rights and remedies of the UNIVERSITY provided in the above clause related to defaults by the CONTRACTOR are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

5. FORCE MAJEURE

CONTRACTOR shall not be held responsible for delay or default caused by fire, riot, acts of God or war if the event is beyond the CONTRACTOR's reasonable control and the CONTRACTOR gives notice to the UNIVERSITY immediately upon occurrence of the event causing the delay or default or which is reasonably expected to cause a delay or default.

6. RENEWAL

This contract will not automatically renew. UNIVERSITY will provide written notice to CONTRACTOR of its intent to renew this contract at least sixty days before the scheduled termination date.

7. MERGER AND MODIFICATION

This contract constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this contract. This contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

8. SEVERABILITY

If any term of this contract is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms shall not be affected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

9. ASSIGNMENT AND SUBCONTRACTS

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without the UNIVERSITY's express written consent. However, the CONTRACTOR may enter into subcontracts provided that any such subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor. CONTRACTOR shall not have the authority to contract for or incur obligations on behalf of the UNIVERSITY.

10. NOTICE

All notices or other communications required under this contract shall be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

To Contractor:

To University:

or Purchasing Office
264 Centennial Drive, Stop 8381
Grand Forks, ND 58202

The provisions of this section do not supersede any statutes or rules of court regarding notice of claims or service of process. In the event of a conflict between this section and any statutes or rules of court, the statutes or rules of court govern.

11. APPLICABLE LAW AND VENUE

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be brought in the Northeast Central District Court of Grand Forks County, North Dakota.

12. SPOLIATION - NOTICE OF POTENTIAL CLAIMS

CONTRACTOR shall promptly notify UNIVERSITY of all potential claims which arise or result from this contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to the UNIVERSITY the opportunity to review and inspect the evidence, including the scene of an accident.

13. INDEMNIFICATION

CONTRACTOR agrees to defend, indemnify, and hold harmless the UNIVERSITY and its officers and employees, from and against claims based upon the vicarious liability of UNIVERSITY or its agent(s), but not against UNIVERSITY's comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by CONTRACTOR to UNIVERSITY under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the UNIVERSITY is necessary. Any attorney appointed to represent the UNIVERSITY must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under section 54-12-08 of the North Dakota Century Code. CONTRACTOR also agrees to defend, indemnify, and hold the UNIVERSITY harmless for all costs, expenses, and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Agreement.

14. INSURANCE

- a. CONTRACTOR shall secure and keep in force during the term of this Agreement (and shall require all subcontractors, prior to commencement of an agreement between CONTRACTOR and the subcontractor to secure and keep in force) from insurance companies, government self-insurance pools, or government self-retention funds authorized to do business in North Dakota, the following insurance coverages:
- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum limits of \$500,000 per person and \$2,000,000 per occurrence;
 - 2) Workers' compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this Agreement; and
 - 3) Employer's liability or "stop gap" insurance of not less than \$2,000,000 as an endorsement on the workers' compensation or commercial general liability insurance.

Further, if checked CONTRACTOR will maintain the following coverages:

- 4) Professional errors and omissions, including a three year "tail coverage endorsement," with minimum limits of \$2,000,000 per occurrence and in the aggregate;
- 5) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum limits of \$500,000 per person and \$2,000,000 per occurrence;

- b. The insurance coverages listed above must meet the following additional requirements:
- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of CONTRACTOR.
 - 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with the insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Insurers rated less than an "A-" rating must be approved by the UNIVERSITY.
 - 3) The duty to indemnify UNIVERSITY under this Agreement shall not be limited by the insurance required in this Agreement.
 - 4) UNIVERSITY, including its officers and employees, shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable) as additional insureds. UNIVERSITY shall have all the benefits, rights, and coverages as CONTRACTOR under said policies.
 - 5) The insurance required in this Agreement, through policy or endorsement, shall include:
 - (a) a "Waiver of Subrogation" waiving any right to recovery the insurance company may have against UNIVERSITY; and
 - (b) a designated entity notice of cancellation or nonrenewal endorsement giving the Owner the same notification rights as the Contractor under the policy.
 - 6) Any attorney who represents UNIVERSITY under the policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under section 54-12-08 of the North Dakota Century Code.
 - 7) CONTRACTOR's insurance coverage shall be primary (i.e., pay first) in respect to any insurance, self-insurance, or self-retention maintained by UNIVERSITY and that any insurance, self-insurance, or self-retention maintained by UNIVERSITY shall be excess of CONTRACTOR's insurance and shall not contribute with it.
 - 8) The legal defense provided to the UNIVERSITY under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the UNIVERSITY is necessary.
 - 9) The insolvency or bankruptcy of CONTRACTOR shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents CONTRACTOR from meeting the retention limit under the policy.
 - 10) CONTRACTOR shall furnish a certificate of insurance to the undersigned University representative prior to commencement of this Agreement. All endorsements shall be provided as soon as practicable.
 - 11) Failure to provide insurance as required in this Agreement is a material breach of contract entitling UNIVERSITY to terminate this Agreement immediately.
 - 12) Contractor shall provide at least 30-day notice of any cancellation or material change to the policies or endorsements.
 - 13) Contractor shall provide on an ongoing basis current certificate of insurance during the term of the contract. A renewal certificate should be provided 10 days prior to coverage expiration. An updated current certificate of insurance shall be provided in the event of any change to a policy.

15. ATTORNEY FEES

In the event a lawsuit is instituted by the UNIVERSITY to obtain performance due of any kind under this contract, and the UNIVERSITY is the prevailing party, CONTRACTOR shall, except when prohibited by section 28_26_04 of the North Dakota Century Code, pay the UNIVERSITY's reasonable attorney fees and costs in connection with the lawsuit.

16. ALTERNATIVE DISPUTE RESOLUTION - JURY TRIAL

The UNIVERSITY does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. The UNIVERSITY does not waive any right to a jury trial.

17. CONFIDENTIALITY

CONTRACTOR agrees not to use or disclose any information it receives from the UNIVERSITY under this contract that the UNIVERSITY has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by the UNIVERSITY. The UNIVERSITY agrees not to disclose any information it receives from CONTRACTOR that the CONTRACTOR has previously identified as confidential and which the UNIVERSITY determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, North Dakota Century Code section 44_04_18. The duty of UNIVERSITY and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this contract, or any extensions or renewals of it.

18. COMPLIANCE WITH PUBLIC RECORDS LAW

CONTRACTOR understands that, except for disclosures prohibited in Section 17, the UNIVERSITY must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records which are obtained or generated by the CONTRACTOR under this contract, except for records that are confidential under Section 17, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. CONTRACTOR agrees to contact the UNIVERSITY immediately upon receiving a request for information under the open records law and to comply with the UNIVERSITY's instructions on how to respond to the request.

19. WORK PRODUCT, EQUIPMENT, AND MATERIALS

All work product, equipment or materials created or purchased under this contract belong to the UNIVERSITY and must be delivered to UNIVERSITY at UNIVERSITY's request upon termination of this contract. CONTRACTOR agrees that all materials prepared under this contract are "works for hire" within the meaning of the copyright laws of the United States and assigns to UNIVERSITY all rights and interests CONTRACTOR may have in the materials it prepares under this contract, including any right to derivative use of the material. CONTRACTOR shall execute all necessary documents to enable UNIVERSITY to protect its rights under this section.

20. INDEPENDENT ENTITY

CONTRACTOR is an independent entity under this contract and is not a UNIVERSITY employee for any purpose, including but not limited to the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workers' Compensation Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out the CONTRACTOR's activities and responsibilities under this contract, except to the extent specified in this contract.

21. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR agrees to comply with all applicable laws, rules, regulations and policies, including but not limited to those relating to nondiscrimination, accessibility and civil rights. CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including but not limited to sales and use taxes and unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the term of this contract all licenses and permits required by law.

22. UNIVERSITY AUDIT

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this contract are subject to examination by the North Dakota State Auditor or the Auditor's designee. CONTRACTOR will maintain all such records for at least three years following completion of this contract.

23. PREPAYMENT

The UNIVERSITY will not make any advance payments before performance by the CONTRACTOR under this contract.

24. TAXPAYER ID

CONTRACTOR will need to provide the University with its North Dakota and federal tax ID numbers before any payments can be made by the University.

25. ADDITIONAL TERMS

Any additional or different terms or conditions which may appear in any other communication from CONTRACTOR are hereby expressly objected to and shall not be effective or binding unless specifically agreed to in writing by UND and no such additional or different terms or conditions in any printed form of CONTRACTOR shall become a part of this Contract despite UND's acceptance of goods or services unless such acceptance specifically, in writing, recognizes or assents to their inclusion. Mere signature by UND on a purchase order or other document provided by CONTRACTOR in the performance of this Contract does not constitute acceptance by UND of the terms and conditions of such document.

26. EFFECTIVENESS OF CONTRACT

This contract is not effective until fully executed by both parties.

CONTRACTOR

BY: _____
(Authorized Signature)

TITLE:

DATE:

UNIVERSITY OF NORTH DAKOTA

BY: _____
(Authorized Signature)

TITLE:

DATE: