

## Independent Contractor Agreement (Long Form)

This Agreement is made between Babson College ("College"), a Massachusetts non-profit corporation with a principal place of business at 231 Forest Street, Babson Park, Massachusetts 02457-0310 and \_\_\_\_\_ ("Independent Contractor"), [an individual] [a corporation] [limited liability company] [\_\_\_\_\_] with its principal place of business at \_\_\_\_\_.

College desires to obtain the services of Independent Contractor, and Independent Contractor represents it has expertise and experience to provide the services described herein for the benefit of College. Therefore, the parties agree as follows:

### 1.0 Scope of Services

- 1.1** Independent Contractor agrees to perform such professional services and deliver such deliverables as are set forth in **Schedule 1** to this Agreement which is incorporated herein by this reference. Independent Contractor will perform such services and deliver such deliverables with the standard of professional care and skill customarily provided in the performance of such services. Independent Contractor agrees to perform as set forth in **Schedule 1** to the satisfaction of College. Any discrepancy or conflict between the terms or conditions in **Schedule 1** and the terms of this Agreement shall be decided in favor of this Agreement.
- 1.2** The parties may from time-to-time extend the scope of services and deliverables or omit services and deliverables previously agreed to, and the provisions of this Agreement shall apply to all such additions and omissions. All such additions and omissions must be in a written Change Order executed by both parties in order to be effective. In the event of conflict between the terms of this Agreement and a Change Order, the terms of this Agreement shall control unless otherwise specified in such Change Order.

### 2.0 Fees and Expenses

- 2.1** Except as otherwise agreed in writing, College agrees to pay a [fixed] [maximum] fee of \_\_\_\_\_ dollars (\$\_\_\_\_\_) for services and deliverables rendered by Independent Contractor hereunder, including all amounts paid prior to the date hereof, which amount shall include any taxes unless otherwise specified. Babson College is a tax-exempt entity.
- 2.2** The total fee, and any reimbursement for incidental out-of-pocket expenses identified in Section 2.4, shall be payable upon completion of the Scope of Services or as otherwise specified on **Schedule 1**. An application for payment of fees and expenses, accompanied by proper documentation, including receipts, shall be submitted by Independent Contractor to College upon completion of the Scope of Services (or portion thereof as designated on **Schedule 1**), said application to cover and include all fees earned and expenses incurred. Payment for expenses will not be made unless proper documentation is included. Independent Contractor shall be deemed to have waived its right to payment for any fees earned or expenses incurred if not included on the application. College reserves the right to require reasonable additional supporting documentation from Independent Contractor.
- 2.3** Independent Contractor agrees that Independent Contractor is solely responsible for payment of income, social security, and other employment taxes due to the proper taxing authorities (collectively, "Impositions"), and that College will not deduct such taxes from any payments to Independent Contractor hereunder. Independent Contractor shall submit a Form W-9 (or Form W-8BEN) as a condition of any payment.
- 2.4** Provided the same are approved in advance and appropriate receipts are provided with a request for reimbursement, College shall reimburse the following incidental out-of-pocket expenses: \_\_\_\_\_. Prior written approval is required for any expenses [in excess of \$200 for any individual expense and for any monthly expenses in excess of \$500].

### **3.0 Term**

The services to be rendered by Independent Contractor under this Agreement shall commence not later than \_\_\_\_\_, 20\_\_\_\_, and be completed by [\_\_\_\_\_, 20\_\_] or in accordance with **Schedule 1**. Time is of the essence with respect to this Agreement. This term may be extended beyond such completion date if College agrees to the extension in writing.

### **4.0 Contractor's Capacity and Responsibilities**

- 4.1** It is expressly understood that Independent Contractor is an independent contractor and not the agent, partner, or employee of College. Independent Contractor and Independent Contractor's workers are not employees of College and are not entitled to tax withholding, Workers' Compensation, unemployment compensation, or any employee benefits, statutory or otherwise.
- 4.2** Independent Contractor shall not have the authority to enter into any contract or agreement to bind College and shall not represent to anyone that Independent Contractor has such authority.
- 4.3** Independent Contractor represents and warrants to College that in performing the services called for hereunder Independent Contractor will not be in breach of any agreement with a third party or any third party's patent, trademark, copyright, or other intellectual property rights.

### **5.0 Confidentiality of Information**

- 5.1** Independent Contractor agrees, and agrees to require its employees and agents, to keep confidential and not to disclose to third parties any information provided by College pursuant to or learned by Independent Contractor during the course of this Agreement unless Independent Contractor has received the prior written consent of College to make such disclosure. This provision shall survive expiration and termination of this Agreement. This obligation of confidentiality does not extend to any information that: 1) was in the possession of Independent Contractor at the time of disclosure by College, directly or indirectly; 2) is or shall become, through no fault of Independent Contractor, available to the general public; or 3) is independently developed and hereafter supplied to Independent Contractor by a third party without restriction or disclosure.
- 5.2** Independent Contractor acknowledges that a violation of Section 5.1 will cause College irreparable damage for which remedies other than injunctive relief will be inadequate, and agrees that College may request injunctive or other equitable relief seeking to restrain such use or disclosure, without limitation or waiver of any other remedy available at law or in equity.

### **6.0 Property Rights and Reports**

- 6.1** Independent Contractor agrees that any intellectual property including but not limited to computer programs, software, documentation, copyrightable work, discoveries, inventions, or improvements developed by Independent Contractor solely, or with others, resulting from the performance of services pursuant to this Agreement is a work for hire and constitutes College's property. To the extent the intellectual property developed hereunder is not deemed to be a work for hire, Independent Contractor hereby assigns all rights therein to College. Independent Contractor further agrees to provide College with any assistance which College may require to obtain patents, trademark, or copyright registrations, including the prompt execution of any documents submitted by College.
- 6.2** Independent Contractor shall provide \_\_\_\_ (\_\_) copies of the deliverables to be provided under this Agreement on or before \_\_\_\_\_, 201\_\_\_\_. College shall be considered the author thereof, and the sole and exclusive owner throughout the world forever of all rights existing therein, including all manuscripts, reports, sketches, drafts, notes, maps, memoranda, etc., relating to the work, and all revisions, editions, and versions thereof in all languages, forms, and media now or hereafter known and developed.

**6.3** This provision shall survive expiration and termination of this Agreement.

## **7.0 Suspension or Termination of Contract; Survival**

**7.1** College reserves the right to suspend indefinitely or terminate this Agreement and the services to be rendered by Independent Contractor for any reason upon seven (7) days' prior written notice. In the event of termination prior to completion of all work described in Section 1.0, the amount of the total fee to be paid Independent Contractor shall be determined by College on the basis of the portion of the total work actually completed up to the time of such termination.

**7.2** Sections 2; 5; 6; 8-16, and any other provisions that by their nature reasonably should be deemed to survive, shall survive the expiration or termination of this Agreement for any reason.

## **8.0 Insurance**

**8.1** Independent Contractor and its subcontractors shall at its (their) own expense obtain and maintain the insurance coverage in **Schedule 2** below.

## **9.0 Indemnification and Hold Harmless**

**9.1** Independent Contractor agrees that any personal injury to Independent Contractor or third parties or any property damage incurred in the course of performance of the Consulting Services shall be the responsibility of Independent Contractor.

**9.2** Independent Contractor agrees to indemnify, defend, and hold harmless College and its trustees, officers, employees, and agents from and against any and all costs, losses, damages, liabilities, expenses, demands, actions, and judgments, including court costs and reasonable attorney's fees, which may arise out of (i) Independent Contractor's performance of the Consulting Service, (ii) its breach of this Agreement, (iii) arising from a claim by a third party alleging that the Consulting Services (or any work product) infringes a validly existing U.S. patent or copyright, or other intellectual property right of a third party, or (iv) the payment or non-payment of Impositions, except to the extent any of the foregoing are caused by the sole negligence of College.

## **10.0 Notice**

Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

<b>Contact Person for College:</b>  Babson College  231 Forest Street  Babson Park, Massachusetts 02457-0310 USA  Attention: _____  Phone: (781) 239-_____  Facsimile: (781) 239-_____  Email: _____@babson.edu	<b>Contact Person for Independent Contractor:</b>  Contractor:  Address:  Phone:  Facsimile:  Email:
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Any notice shall be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, or (c) the day facsimile delivery is verified. Actual notice, however and from whomever received, shall always be effective.

## **11.0 Entire Agreement; Modification**

**11.1** This Agreement (and its attachments, if any) constitutes the entire understanding between the parties with respect to the subject matter hereof and may not be amended except by an agreement signed by Independent Contractor and an authorized representative of College. It is expressly understood and agreed that e-mail correspondence shall not be considered to be "a writing" under the terms of this agreement.

## **12.0 Severability**

The terms of this Agreement are severable such that if any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.

## **13.0 Governing Law**

The laws of the Commonwealth of Massachusetts without regard to its conflicts of law principles shall govern the validity, construction, and effect of this Agreement. All lawsuits arising out of this agreement, wherever derived, shall be resolved in Norfolk County in the Commonwealth of Massachusetts.

## **14.0 Assignment**

Independent Contractor may not assign the rights or delegate the obligations under this Agreement without College's prior written consent.

## **15.0 Representations and Warranties**

Independent Contractor represents and warrants the following: (a) that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to provide the equipment and goods, complete the services, and perform its obligations hereunder; (b) that it is able to furnish any of the plant, tools, materials, supplies, equipment, and labor required to complete the services required and perform all of its obligations hereunder and has sufficient experience and competence to do so; (c) that it is authorized to do business in Massachusetts, properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and the services, equipment, and goods required hereunder, and has or will obtain all licenses and permits required by law; and (d) that it has familiarized itself with the local conditions under which this Agreement is to be performed.

## **16.0 Compliance with Rules, Regulations, and Instructions**

Independent Contractor shall follow and comply with all rules and regulations of College and the reasonable instructions of College personnel. College reserves the right to require the removal of any worker it deems unsatisfactory for any reason.

## **17.0 Publicity**

Neither party shall issue any news release, public announcement, advertisement, or publicity concerning this Agreement or the parties' relationship hereunder, or use the other party's name, trademarks, service marks, tag lines, or logos, without the prior written approval of the other party.

**IN WITNESS WHEREOF**, the authorized representatives of the parties have executed this Agreement:

### **COLLEGE**

Babson College

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

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

### **INDEPENDENT CONTRACTOR:**

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

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

## **Schedule 1**

### **Description of Professional Services and Deliverables**

**A. Schedule for Completion of Services**

**B. Deliverables**

**Attach Proposal if it incorporates the above information.**

## **Schedule 2**

### **Insurance Requirements**

#### **1. Requirements**

- 1.1.** Comprehensive general liability insurance, covering bodily injury, property damage, premises and operations, products and completed operations with limits of liability not less than one-million dollars (\$1,000,000) combined single limits;
- 1.2.** Workers' compensation insurance in accordance with the laws of the Commonwealth of Massachusetts;
- 1.3.** Employers' Liability with limits of liability of not less than \$500,000;
- 1.4.** Commercial automobile insurance providing coverage for bodily injury and property damage caused by vehicles owned, non-owned or hired by the independent contractor, with limits of liability not less than one-million dollars (\$1,000,000) combined single limits;
- 1.5.** If available generally to members of Independent Contractor's profession, professional liability (errors and omissions) insurance on a claims made basis with limits of liability of not less than one million dollars (\$1,000,000) each wrongful act, \$2,000,000 annual aggregate; claims made coverage must be maintained for a minimum of two (2) years beyond the date of the project completion.

- 2.** All insurance required hereunder shall be maintained in full force and effect in a company or companies reasonably satisfactory to College and shall be maintained at Independent Contractor's expense. Insurance policies (other than Professional Liability) shall be written on an occurrence basis. Insurance items 1.1, 1.3, and 1.4 required hereunder shall name "Babson College, its trustees, officers, employees, its agents, and their assigns" as additional insureds on a primary and non-contributory basis. Independent Contractor and Independent Contractor's insurers shall waive their rights of subrogation against Babson College, The Trustees of Babson College, its officers, employees, agents and assigns. Independent Contractors shall ensure that the College receives written notice (Babson College| Attention: Risk Management |231 Forest Street | Babson Park, MA 02457) 30 days in advance of the cancellation, non-renewal, or material modification of said insurance. Certificates of insurance shall be provided contemporaneously with the execution and delivery of a final contract. Said certificates shall evidence compliance with all provisions of this **Schedule 2**. The Independent Contractor shall be responsible for providing evidence of insurance for its subcontractors to the College. The above insurance requirements shall not be construed as limiting in any way the extent to which Vendor may be held responsible for the payment of damages to the College or to any persons resulting from its operations or the activities of any person or persons for which it is liable.

**If any of the foregoing requirements are to be waived or modified, please confer with the Risk Manager. Then, strike and initial.**

**Note: Higher limits may be required depending upon the nature of the services.**