

**INDEPENDENT CONSULTANT
AGREEMENT**

THIS AGREEMENT is made by and between Cornell UNIVERSITY, Ithaca, New York 14850, a not-for-profit educational corporation, ("Cornell") and _____ ("Consultant").

For good and valuable consideration, the parties agree as follows:

1. General Purpose. The general purpose of this Agreement is to engage the services of Consultant to _____. The surrounding facts and circumstances are more fully set forth in the attached Schedules A (Statement of Work), B (Timetable of Deliverables), C (Compensation and Billing Authorization), D (Consultant's Personnel), and incorporated herein.

2. General Duties of Consultant. Consultant shall perform in conformance with the attached schedules A, B, C, and D incorporated herein, and in conformance with professional standards for performing services of a similar kind. Cornell will assign a representative ("Cornell's Representative"), as named in the attached Schedule A. Only directives from Cornell's Representative shall be recognized by Consultant. The work to be performed by Consultant shall be performed by the personnel listed in Exhibit D. Contractor may not replace or reassign such personnel without the prior written consent of Cornell. If any such personnel leave Contractor's employ, Contractor shall replace personnel with a person having at least equivalent experience and qualifications. Cornell shall have the right to review and approve such replacement personnel.

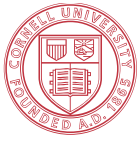
3. Timetable. The timetable of deliverables set forth in the attached Schedule B shall be adhered to unless such period is otherwise extended by Cornell. Consultant shall be responsible to Cornell for any damage caused by the failure by Consultant to comply with the timetable.

4. Independent Consultant. In the performance of the work hereunder, Consultant shall be an independent consultant and not an employee of Cornell. Consultant is not an agent of, or authorized to transact business, enter into agreements, or otherwise make commitments on behalf of Cornell unless expressly authorized in writing by an officer of Cornell. Contractors engaged through Consultant will be as employees of Consultant and not as employees or agents of Cornell. Cornell will not pay or withhold federal, state, or local income tax or other payroll tax of any kind on behalf of Consultant or his employees. Consultant is not eligible for, not entitled to, and shall not participate in any of Cornell's pension, health, or other benefit plans. Consultant is responsible for the payment of all required payroll taxes, whether federal, state, or local in nature, including but not limited to income taxes, Social Security taxes, Federal Unemployment Compensation taxes, and any other fees, charges, licenses, or payments required by law. Consultant indemnifies Cornell and holds it harmless against any fines, damages, assessments, or attorney fees in the event a court or administrative agency shall find that Consultant, or contractor(s) engaged through Consultant, is an employee of Cornell.

5. Confidentiality. All data and information submitted or made available to Consultant by Cornell or any other person, unless otherwise publicly available, and all data and information, and other work developed by Consultant under this Agreement, shall be utilized by Consultant in connection with this Agreement only and shall not be made available by Consultant to any other person.

6. Ownership.

- (a) Cornell shall own all data, information, and other work developed or obtained by Consultant pursuant to this Agreement.
- (b) Cornell shall at all times have access to review the ongoing work of Consultant or purposes of inspecting same and determining that work is being performed in accordance with the terms of this agreement.
- (c) Immediately upon termination of this Agreement for any reason, all such data, information, and other work, in whatever form, shall be turned over to Cornell.
- (d) For purposes of this Agreement any copyrightable work ("Work") developed in the course of performance under this Agreement shall be deemed "work made for hire" under federal copyright law and all ownership rights to such Work belong to Cornell.
- (e) Should such Work not constitute a "work made for hire" under copyright law, Consultant hereby grants, transfers, assigns, and conveys to Cornell and its successors and assigns, the entire right, title, and interest in the Work or any part thereof, including but not limited to the right to reproduce, prepare derivative works, distribute by sale, license or other transfer; to perform publicly, to display and to secure copyrights or patents and renewals, reissues, and extensions of any such copyrights or patents in the United States of America or any foreign country.



(f) Any patentable invention conceived or reduced to practice in the course of performance under this Agreement shall be the property of Cornell.

(g) Whether a copyright or patent in the Work will be maintained or registered in the United States of America or any foreign country shall be at the sole discretion of Cornell.

(h) Consultant agrees to cooperate fully with Cornell in the preparation and execution of all documents necessary or incidental to this assignment and the protection and preservation of rights herein granted to Cornell.

7. Compensation. The payment terms and schedule set forth in the attached Schedule C shall be adhered to. All invoices shall be mailed to Cornell University, Invoice Processing, PO Box 4040, Ithaca, N.Y. 14852-4040, referencing the purchase order.

8. Termination. Cornell may terminate this Agreement at any time without cause, upon 30 days written notice to Consultant. Consultant may retain amounts, if any, paid by Cornell under this Agreement prior to termination, but explicitly waives any right to additional or other amounts of any kind, including based on quantum meruit or other similar theory. The obligations imposed by Sections 5 and 6 of this Agreement as well as any licenses granted hereunder shall survive termination under this Agreement.

9. Insurance. Cornell requires that Consultant submit evidence of adequate insurance prior to commencement of performance of work for Cornell. Satisfaction of the minimum insurance requirements does not necessarily mean that a Consultant's insurance will be acceptable to Cornell's Department of Risk Management and Insurance. Minimum requirements are:

- a. Statutory workers' compensation:** Insurance under the laws of the State of New York and any other laws that may be applicable thereto. Coverage "B," Employer's Liability, must have limits of at least \$100,000.
- b. Commercial general liability insurance:** Subject to limits of not less than \$1,000,000 for each occurrence. Coverage must be provided for bodily injury liability, broad form property damage liability, contractual liability, and products/completed operations coverage. Completed operations coverage is to be maintained for a minimum period of two years after the completion of the Cornell contract.
- c. Automobile liability insurance:** Subject to a combined single limit of at least \$1,000,000 for each accident for bodily injury and property damage. Such automobile liability insurance shall be for the contractor's owned, non-owned, and hired vehicles.
- d. Cornell University must be added to the Consultant's commercial general liability insurance policy as an "additional insured," and evidence of such will be provided in all certificates of insurance.** The insurance shall be considered to be primary and non-contributory to other insurance or self-insurance maintained by Cornell University for allegations of negligence for the acts or performance of the Consultant in fulfilling the work order.

Other Requirements

These minimum requirements of the University shall not limit the liability or responsibility of the Consultant. Cornell's failure to enforce the requirements shall not be considered to be a waiver of the requirement. Any changes to these requirements shall only be made in writing and agreed upon by all parties.

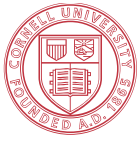
All Commercial general liability policies should be issued on an "occurrence" basis.

All certificates of insurance must provide for a minimum of 30 days' notice to Cornell University prior to the cancellation of, non-renewal of, or a change in policy terms and/or conditions.

A certificate of insurance for all policies required must be issued to Cornell University and received by Cornell Procurement Services prior to any work commencing under any contract subject to these requirements.

10. Cyber Risk Insurance. Consultant shall have and maintain insurance in the minimum amount of \$1,000,000 per claim to be maintained for the duration of this Agreement and three years following its termination to respond to privacy and network security liability claims including, but not limited to:

- 1. Liability arising from theft, dissemination, and/or use of Cornell University Confidential Information, including, but not limited to, bank, credit card account and personally identifiable information, such as name, address, social security numbers, etc. regardless of how stored or transmitted;
- 2. Network security liability arising from (i) the unauthorized access to, use of, or tampering with computer systems, including hacker attacks or (ii) the inability of an authorized third party to gain access to Consultant systems and/or Cornell University data, including denial of service, unless caused by a mechanical or electrical failure;
- 3. Liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon;
- 4. Crisis Management expenses (i.e. notification, public relations, reputation damage, forensics, etc.) for a data breach.



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11. Indemnification. Consultant shall release, defend, indemnify, and hold harmless Cornell and its trustees, officers, agents, and employees from all suits, actions, or claims of any character, name, or description including reasonable attorney fees, brought on account of any injuries or damage, or loss (real or alleged) received or sustained by any person, persons, or property, arising out of services provided under this Agreement or Consultant's failure to perform or comply with any requirements of this Agreement including, but not limited to any claims for personal injury, property damage, or infringement of copyright, patent, or other proprietary right. Cornell reserves the right to retain whatever funds which would be due consultant under this contract until such suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and satisfactory evidence to that effect furnished.

12. Waiver. A delay or failure by either party to exercise any right under this Agreement will not constitute a waiver of that or any similar or future right.

13. Assignment. This Agreement may not be assigned by any party without the express written consent of the other.

14. Entire Agreement. This Agreement represents the entire understanding of the parties and may not be modified except by written agreement of the parties and supersedes all prior written and/or oral agreements.

15. Jurisdiction. This Agreement shall be deemed to have been made in the State of New York. New York State law (exclusive of any choice of law principles) shall govern this Agreement. Consultant consents to the jurisdiction of the state or federal courts serving Tompkins County, New York for the resolution of any disputes arising under this Agreement.

16. Effective Date. The effective date of this agreement shall be the date of Cornell's signature.

17. Non-infringement. Consultant warrants and represents that services provided hereunder will not infringe, individually or collectively, any patent, copyright, trade secret, or other proprietary right of any third party; and Consultant has no reason to believe that any patent, copyright, trade secret, or other proprietary right of any third party may be infringed.

18. Compliance with Applicable Laws. Consultant warrants and represents that it will comply with all federal, state, and local laws applicable to performance of the work under this Agreement.

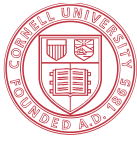
19. Advertisement. Consultant may not use the name Cornell or any variation thereof for advertising or publicity purposes without first obtaining the written consent of Cornell.

20. Notices. Each notice, request, or demand given or required to be given pursuant to this Agreement shall be in writing and shall be deemed sufficiently given if deposited in the United States mail, First Class, postage pre-paid, and addressed to the address of the intended recipient set forth below or to such other address as may be specified in writing by the parties.

21. Severability. If any provision of this Agreement is declared invalid by any tribunal, then such provision shall be deemed automatically modified to conform to the requirements for validity as declared at such time, and as so modified, shall be deemed a provision of this Agreement as though originally included herein. In the event that the provision invalidated is of such a nature that it cannot be modified, the provision shall be deemed deleted from this Agreement as though the provision had never been included herein. In either case, the remaining provisions of this Agreement shall remain in effect.

22. Authority. The parties warrant that they have the authority to enter into this Agreement and that entering into this Agreement is not restricted or prohibited by any existing agreement to which they are parties.

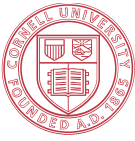
23. Affirmative Action. Consultant must provide a copy of firm's OEO/Affirmative Action Policy.



24. Right to Audit. Throughout the term of this Agreement, and for a period of three years after final payment, or longer if required by law, Cornell, at its own expense, shall be entitled to perform, or to have performed by a third party of Cornell's choosing, during normal business hours and upon five (5) business days' notice, an on-site audit of any and all records of Consultant necessary to permit Cornell to evaluate and verify Consultant's compliance with the requirements of this Agreement. Consultant grants Cornell permission to view and/or copy any books, documents, records, data and information (including data and information stored in electronic form) of Consultant which relate to or have been used in connection with the performance of this Agreement. Consultant also grants Cornell permission to interview Consultant's staff and agents as part of the audit. Consultant agrees to provide Cornell with adequate and appropriate workspace for conducting the audit. If Cornell, in its sole discretion, determines that an on-site audit is not necessary, Consultant agrees to complete, within 30 days of receipt, an audit questionnaire provided by Cornell. Any overcharges discovered by Cornell, or by a third party of Cornell's choosing, shall be paid within 30 days of Consultant's acceptance of Cornell's written notification of audit findings. Consultant may not unreasonably withhold acceptance of audit findings. Consultant shall include this audit provision in any subcontracts that it may issue under this Agreement.

25. FERPA AND HIPPA Compliance. If Cornell determines that Consultant's performance under this Agreement requires compliance with the Family Educational Rights and Privacy Act (FERPA) and/or the Health Insurance Portability and Accountability Act (HIPAA), Consultant agrees to enter into any and all additional terms necessary to address FERPA and/or HIPPA compliance.

26. Tax Withholding for Domestic and Foreign Consultants. All payments from Cornell to Consultant under this transaction may be subject to tax withholding. Cornell reserves the sole right and discretion to withhold tax where it believes it is required to do so under the tax laws of any jurisdiction. By accepting this contract, the Consultant is relinquishing all claims against Cornell for any amounts withheld and remitted by Cornell to a tax authority. It is the Consultant's sole responsibility to provide Cornell with timely, complete, accurate, and legible forms and/or documents necessary to claim a reduction or elimination of withholding taxes (e.g., Form W-8BEN); Cornell reserves the sole right and discretion to make these determinations as well as whether such forms and/or documents are sufficient to reduce or eliminate withholding tax on any payment to the Consultant.



Schedule A

STATEMENT OF WORK

See attached (check if document attached)

Detail and explanation of the agreement between Cornell University, a non-profit educational corporation ("Cornell") and Consultant:

Work Scope and Deliverables

[Specify work to be performed and any deliverables to be met.]

Initials Cornell Representative: _____ *Date:* _____

Initials Consultant Representative: _____ *Date:* _____

Schedule B

TIMETABLE

See attached (check if document attached)

Detail and explanation of the agreement between Cornell University, a non-profit educational corporation ("Cornell") and Consultant:

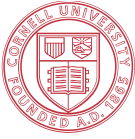
Project Timetable: The Term of this Agreement shall be from ____/____/____ until ____/____/____.

Deliverables:

[Specify work to be performed and any deliverables to be met.]

Initials Cornell Representative: _____ *Date:* _____

Initials Consultant Representative: _____ *Date:* _____



Schedule C

COMPENSATION AND BILLING AUTHORIZATION

See attached (check if document attached)

In full compensation for services under this Agreement, Cornell will pay Consultant on an hourly basis or as specified below. Cornell will pay Consultant any and all overtime approved by Cornell at the straight hourly rate. Expenses, other than those approved by Cornell, are the responsibility of Consultant. Expenses associated with interviewing or relocation will not be reimbursed.

Contractor(s) will be engaged through Consultant according to the stipulations outlined in Schedule A, Statement of Work and the following:

Detail and explanation of the agreement between Cornell University, a non-profit educational corporation ("Cornell") and Consultant:

Payment Amount and Schedule: (Specify assigned consultant(s), hourly rate(s), and/or per project amount(s), estimated total hours, term of assignment (if applicable))

Notwithstanding any other provisions of this Agreement, the total amount payable by Cornell for services will be determined by applying the stated rate of compensation to the services actually performed by Consultant. Consultant will not render services and Cornell will not be required to pay for services in excess of the amount stipulated above, unless Consultant has first secured prior written approval from Cornell.

Invoices will be based on weekly timesheets pre-approved by Cornell Representative (or designee) identified in Schedule A.

Consultant will invoice monthly, showing consultant(s) name, hours billed, fees, and other associated charges (if approved by Cornell) for period of invoice.

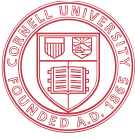
To ensure prompt payment, identify Cornell assigned Purchase Order number; send invoices directly to:

Cornell University
Invoice Processing
PO Box 4040
Ithaca, New York 14852-4040

All payments are due Net 30 after the receipt of invoice.

Initials Cornell Representative: _____ **Date:** _____

Initials Consultant Representative: _____ **Date:** _____



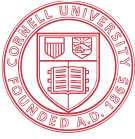
The following terms and conditions govern the substitution or addition of contractors by Consultant:

- (a) Consultant agrees to assign those contractors whose resumes, personnel data forms or personnel qualification statements were submitted as required and interviewed and accepted by Cornell and identified in Schedule C. No substitution or addition of contractor(s) will be made except in accordance with this clause. Personnel identified by Cornell as deficient will be removed in a manner to least affect the progress of the project.
- (b) Consultant agrees that during the assigned term as provided in Schedule C no contractors(s) substitutions will be permitted unless an individual's sudden illness, death, or termination of employment necessitates such substitutions. In any of these events, Consultant will promptly notify Cornell and provide the information required by paragraph (d) below.
- (c) If contractor(s) becomes unavailable for work during the assigned term for a continuous period exceeding thirty (30) working days, or are expected to devote substantially less effort to the work than specified by attached Schedules, Consultant will propose a substitution of such contractor(s), in accordance with paragraph (d) below.
- (d) All proposed substitutions will be submitted, in writing, to Cornell fifteen (15) days prior to the proposed substitution. Each request will provide a detailed explanation of the circumstances necessitating the proposed substitutions, a complete resume for the proposed substitute and any other information required by Cornell to approve or disapprove of the proposed substitution. All proposed substitutes will have qualifications equal to or higher than the qualifications of the contractor being replaced.
- (e) Cornell will evaluate requests for substitution and addition of contractor(s) and promptly notify Consultant, in writing, of whether the request is approved or disapproved.
- (f) If Cornell determines that suitable and timely replacement of contractor(s) who have become unavailable to perform under the agreement is not reasonably forthcoming or that the resultant reduction of productive effort would impair the successful completion of the agreement as incorporated herein, the agreement may be terminated by Cornell for default or for the convenience of Cornell, as appropriate.

Revised Schedule C must be agreed to and signed by representatives of Consultant and Cornell for additional and or substitute contractors.

Initials Cornell Representative: _____ *Date:* _____

Initials Consultant Representative: _____ *Date:* _____



Schedule D

CONSULTANT'S PERSONNEL

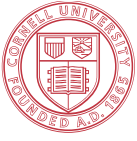
See attached (check if document attached)

Detail and explanation of the agreement between Cornell University, a non-profit educational corporation ("Cornell") and Consultant:

List of Personnel:

Initials Cornell Representative: _____ Date: _____

Initials Consultant Representative: _____ Date: _____



In witness thereof the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the date and year first written below.

For Consultant:

Signature: _____

Print Name: _____

Title: _____

Phone: _____

Email: _____

Address: _____

Date: _____

For Cornell Procurement Services:

Signature: _____

Print Name: _____

Title: _____

Phone: _____

Email: _____

Address: _____

Date: _____

Cornell PO #: _____

For Cornell College/Unit Representative:

Name: _____

Initials: _____

Date: _____