

**Portland State University
Personal/Professional Services Contract
(PSC) PSU Standard Contract Provision
ATTACHMENT A to PSC**

- 1) Access to Records:** Contractor shall maintain all records pertinent to this contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that PSU, the state and federal government, and their duly authorized representatives shall have access to such fiscal records and other books, documents, paper, plans and writings of Contractor that are pertinent to this Contract to perform examination and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this contract, or until the conclusion of any audit, controversy or litigation arising out of or relating to this contract, whichever date is later.
- 2) Amendments:** The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without the prior written approval of University.
- 3) Approvals:** No work shall commence under this Contract until the Contract has been approved and signed by all parties.
- 4) Assignment and Subcontracts:** Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of University. No such written approval shall relieve Contractor of any obligations of this Contract, and any transferee or subcontractor shall be considered the agent of Contractor. Contractor shall remain liable to University under the Contract as if no such assignment had occurred.
- 5) Availability and Non-Appropriation of Funds:** University certifies that sufficient funds are available and authorized for expenditures to finance costs of this Contract within University's current biennial appropriation or expenditure limit, provided, however, that continuation of the Contract, or any extension, after the end of the fiscal period it is written, is contingent upon a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of University's reasonable administrative discretion to continue to make payments under the Contract.
- 6) Breach of Contract:** If Contractor breaches any of the provisions of this Contract, University reserves the right to cancel this Contract effective immediately upon written notice to Contractor. Contractor shall be liable for any and all damages, including incidental and consequential damages, suffered by PSU as the result of Contractor's breach of contract. PSU shall also have any and all remedies provided under the Uniform Commercial Code (ORS chapter 72) in the event of breach of contract by Contractor.
- 7) Captions:** The captions or headings in the Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of the Contract.
- 8) Compliance with Applicable Law:** Contractor shall comply with all federal, state, and local laws, codes, regulations, and ordinances applicable to the goods to be purchased and the work to be done under this Contract. Contractor shall comply with the Americans with Disabilities Act of 1990 (Public Law No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659.425 and all regulations and administrative rules established pursuant to the laws. Failure to comply with such requirements shall constitute a breach of contract and shall be grounds for Contract cancellation. Damages or costs resulting from noncompliance shall be the sole responsibility of Contractor.

- 9) Confidential Information:** Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to University. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed confidential information of University and of State ("Confidential Information"). Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than in the performance of the Contract, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor agrees that Contractor will not at any time during or after the term of this Contract disclose, directly or indirectly, and Confidential Information to any person, and that upon termination of this Contract, or at University's request, Contractor will turn over to University all documents, papers and other material in Contractor's possession which contain Confidential Information.
- 10) Conflict of Interest:** Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services under the Contract. Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed by Contractor.
- 11) Consideration:**
- a) Contractor shall not exceed and the University will not pay any amount in excess of the maximum compensation amount set forth in the Contract. If this maximum compensation amount is increased by amendment of the Contract, the amendment must be fully executed before Contractor performs work subject to the amendment. No payment will be made for any services performed before the beginning date or after the expiration date of the Contract.
 - b) Interim payments may be made to the Contractor if authorized in the Scope of Work of the Contract.
- 12) Dual Payment:** Contractor shall not be compensated by any other agency or entity of the State of Oregon for work performed under this Contract.
- 13) Economic Opportunities:** Contractor shall, when applicable, have made good faith efforts to subcontract or establish joint ventures with or obtain materials to be used in performing this Contract from minority, women, or emerging small business enterprises.
- 14) Force Majeure:** Neither party to this Contract shall be held responsible for delay or default caused by fire, riot, act of nature, terrorist acts, or other acts of political sabotage, or war where such cause was beyond that party's reasonable control. PSU may terminate this Agreement upon written notice after determining such delay or default will reasonably prevent successful performance of the agreement. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 15) Foreign Contractor:** If the amount of this Contract exceeds \$10,000 and if Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Oregon Secretary of State, Corporation Division, all information required by those agencies relative to this Contract. Contractor shall demonstrate its legal capacity to perform under this Contract in the State of Oregon prior to entering into this Contract. PSU shall withhold final payment under this Contract until Contractor has met this requirement.

16) FERPA Confidentiality of Student Records:

- a) Contractor acknowledges that student records are protected by the Family Education Rights and Privacy Act of 1974, 20 USC 1232g ("FERPA"). Contractor is a "school official" as defined in University's Student Records Policy, OAR 570-030-0010(6), and Contractor's handling of student information will comply with FERPA and with the University's Student Records Policy, OAR 570-030-0005 et seq.
- b) Contractor is aware of and will comply with the limitations on the use and re-disclosure of personally identifiable information from education records as set forth in FERPA (34 CFR 99.33(a)(2)). Contractor agrees to hold education records in strict confidence. Contractor will not use or disclose information from student records received from or on behalf of University except as permitted or required by this Contract, as required by law, or as otherwise authorized in writing by University. Contractor agrees not to use information from education records for any purpose other than the purpose for which disclosure was made.
- c) Upon termination, cancellation, expiration or other conclusion of this Agreement, Contractor will return all personally identifiable information regarding University's students to University or, if return is not feasible, destroy any and all personally identifiable information regarding University's students and provide University a certificate confirming the date of the destruction of the information.
- d) Contractor shall develop, implement, maintain and use appropriate administrative, technical and physical safeguards to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted personally identifiable information regarding University's students, which is disclosed to or accessed, maintained, or transmitted by Contractor.
- e) Contractor will, within one day of discovery, report to University any use or disclosure of personally identifiable information regarding University students not authorized by this Contract or in writing by University. Such notice shall identify: (1) the nature of the unauthorized use or disclosure, (2) the information that was used or disclosed, (3) who made the unauthorized use or received the unauthorized disclosure, (4) what Contractor has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (5) what corrective action Contractor has taken or will undertake to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably required by University.

17) Governing Law: This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "claim") between University and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County for the State of Oregon. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

18) Government Employment Status: If the payment for services is to be charged against Federal funds, the Contractor certifies that it is not currently employed by the Federal Government. Contractor further certifies that it is not excluded from receiving U.S. Government funds.

19) Indemnity, Responsibility for Damages:

- a) Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of work under this Contract, or from any act, omission, or neglect of Contractor, its subcontractors, or employees. Contractor shall save, defend (at University's request and with legal counsel acceptable to University), indemnify, and hold harmless PSU and the PSU Board of Trustees, along with any of their past, present, or future officers, employees and agents from all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from or arising out of, or relating to the activities or omissions of Contractor or its officers, employees, subcontractors, or agents acting under this Contract.
- b) Without limiting the generality of Section 19(a), Contractor expressly agrees to defend (at PSU's request and with legal counsel acceptable to PSU), indemnify, and hold harmless PSU and the PSU Board of Trustees, along with any of their past, present, or future officers, employees and agents from any and all

claims, suits, actions, losses, liabilities, costs, expenses, including attorney's fees, and damages arising out of or related to any claims that the goods or any other tangible or intangible items delivered to PSU by Contractor that may be the subject of protection under any state or federal intellectual property law or doctrine, or PSU's use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided, that PSU shall provide Contractor with prompt written notice of any infringement claim.

- c) Contractor shall have control of the defense and settlement of any claim that is subject to Sections 19(a) or (b); however, PSU may, at its election and expense, assume its own defense and settlement in the event that PSU determines that Contractor is prohibited from defending PSU, or is not adequately defending PSU's interests, or that an important governmental principle is at issue and PSU desires to assume its own defense.

20) Independent Contractor Status: The services to be rendered under this Contract are those of an independent contractor. Contractor is not to be considered an agent or employee of University for any purpose and neither Contractor nor any of Contractor's agents or employees are entitled to any of the benefits that University provides for its employees. Contractor will be solely and entirely responsible for its acts and for the acts of its agents or employees during the performance of this Contract. This Contract is not intended and nothing contained herein shall be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association between University and Contractor, but is rather an agreement between independent parties, these being University and the Contractor.

21) Insurance: If insurance is required as set out on the first page of the Contract, then Contractor shall secure at its own expense and keep in effect during the term of this Contract either comprehensive general liability insurance with broad form CGL endorsement or commercial general liability insurance with a minimum limit of \$1,000,000 per occurrence and auto liability insurance with a minimum limit of \$1,000,000 per occurrence. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Portland State University, and its Board of Trustees, and its officers, agents, and employees shall be included as an additional insured in said insurance policy(ies). If any of the liability insurance is arranged on a "claims made" basis, tail coverage will be required at the completion of this Contract for duration of twenty-four (24) months.

22) Insurance Certification: At its discretion, University may require that the Contractor furnish the University's designated Contract Officer with certificate(s) of insurance as evidence of insurance coverage before commencing work under the Contract. The certificate(s) shall provide that the insurance company Contract will give a 30-day written notice to University's Contract Officer before the insurance is canceled or materially changed.

23) Insurance, Workers' Compensation: Contractor, its subcontractors, if any, and all employers providing work, labor or materials under the Contract are subject employers under the Oregon Workers' Compensation Law, and shall comply with ORS 656.017, which requires Contractor to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126. Out of State employers must provide Oregon workers' compensation coverage for their workers who work in Oregon. Contractors who perform the work without the assistance of any employees need not obtain such coverage. The Contractor shall require proof of such workers' compensation by receiving and keeping on file a certificate of insurance from each subcontractor or anyone else directly employed by either the Contractor or subcontractor.

24) No Third Party Beneficiaries: University and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of the Contract.

- 25) Notices and Representatives:** All notices, certificates, or communications rendered shall be sufficiently given when delivered or mailed postage prepaid to the representatives of the parties at their respective places of business as identified in the Contract, unless otherwise designated in writing. Any communication mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when satisfactory receipt of the transmission is generated by the transmitting machine. To be effective against PSU, such facsimile transmission must be confirmed by telephone notice to PSU's contracting representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.
- 26) Order of Precedence:** These Terms and Conditions are for Personal Services Contracts (PSC) for the provision of services to the University. University Standard Terms and Conditions appear in the Purchase Order (PO) which may be associated with this Contract. In the event of a conflict between these PSC and PO Terms and Conditions, these PSC Terms and Conditions take precedence, unless the PO Standard Terms and Conditions in question are required by law. Whenever possible all Terms and Conditions are to be integrated. By signing this Contract, the Contractor agrees that, in the event of a conflict, all the terms and conditions of this PSC superseded all preprinted Terms and Conditions on any forms used by the Contractor.
- 27) Ownership of Work Product:** All work product of Contractor that results from this Contract ("Work Product") is the exclusive property of University. University and Contractor intend that such Work Product be deemed "work made for hire" of which University shall be deemed the author. If for any reason the work product is not deemed "work made for hire", Contractor hereby irrevocably assigns to University all its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as University may reasonably request in order to fully vest such rights in University. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- 28) Recycling:** Contractor shall use recyclable products to the maximum extent economically feasible in the performance of this Contract.
- 29) Rights of University After Expiration of Contract:** Passage of the Contract expiration date (as recorded in the Scope of Work of the Contract) shall not extinguish or prejudice University's right to enforce the Contract with respect to any default or defect in performance that is not cured prior to expiration of the Contract.
- 30) Severability:** If any provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 31) Successors in Interest:** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- 32) Tax Compliance Certification:** By signature on the Contract, the authorized representative of the Contractor, hereby affirms, under penalty of perjury, as provided in ORS 305.385(6), that to the best of the Contractor's knowledge the Contractor is not in violation of any of the tax laws described in ORS 305.380(4).
- 33) Terminations:**
- a) This Contract may be terminated for convenience at any time by mutual consent of both parties, or by either party upon thirty (30) days' notice in writing and delivered by certified mail or in person to the other party.
 - b) PSU may also terminate this contract effective upon delivery of written notice to Contractor or at such later date as may be established by PSU under any of the following conditions:

- i) if federal or state regulations or guidelines are modified or changed in such a way that the materials or services are no longer allowable or appropriate for purchase under this contract; or,
 - ii) if PSU fails to receive funding, appropriations, limitations, allotments, or other expenditure authority as contemplated by the PSU budget or spending plan and PSU determines, in its assessment and ranking of the policy objectives explicit or implicit in the PSU budget or spending plan, that it is necessary to terminate this Agreement.
- c) The rights and remedies of University provided in the above clause are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

34) Waiver: No waiver, consent, modification or change or terms of this Contract shall bind either party unless in writing and signed by both parties and all necessary PSU approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of University to enforce any provision of this Contract shall not constitute a waiver by University of that or any other provision.

35) WORKING ON-SITE AT UNIVERSITY: While on-site at the University, Contractor shall comply with all applicable University policies. A discussion of University policies with which Contractor must comply may be found at <http://www.pdx.edu/purchasing-contracting/contractor-resources>.

36) Merger: This Contract, including these Terms and Conditions, and any and all attached exhibits, appendices, attachments, solicitation, and Contractor's Quote or Proposal constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract.