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

1. **Access to Records**: Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of the Contract. University, the Oregon University System, the Oregon Secretary of State, Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to the Contract for the purpose of making audit, examination excerpts, and transcripts. Such books and records shall be maintained by Contractor for six (6) years or such different period as may be authorized by law, from the date of Contract expiration unless a shorter period is authorized in writing. Contractor is responsible for any audit discrepancies involving deviation from the terms of the Contract and for any commitments or expenditures in excess of amounts authorized by University.

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 neither assign, sell, sublet rights or transfer its interest nor delegate its obligation or subcontract any work under this Contract without obtaining prior express written consent of University.

5. **Availability and Non-Appropriation of Funds**: University certifies that sufficient funds are available and authorized for expenditure to finance costs of the Contract within University's current biennial appropriation or expenditure limit, provided, that continuation of the Contract, or any extension, after the end of the fiscal period in which it is written, is contingent upon a new appropriation or limitation for each succeeding fiscal period for the purpose of the Contract. If sufficient funds are not provided in future legislatively approved budgets of University or from applicable Federal, state, or other sources to permit University in the exercise of its reasonable administrative discretion to continue the Contract, or if the program for which the Contract was executed is abolished, the University may terminate the Contract without further liability by giving Contractor not less than thirty (30) days’ notice. In determining the availability of funds from the Oregon Legislature for the Contract, University may use the budget adopted for it by the Joint Ways and Means Committee of the Oregon Legislative Assembly. University may also unilaterally amend the Contract to accommodate funding reductions.

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.

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 non-compliance 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 or the State of Oregon. 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 assigned, 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 the 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 the Contract from minority; women; or emerging small; business enterprises.

14. **Force Majeure:** Neither party shall be held responsible for delay or default caused by fire, riot, acts of God and war which is beyond its reasonable control. The affected party 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 obligation under the Contract.

15. **Foreign Contractor:** If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor certifies that it has provided to the Oregon Department of Revenue and the Secretary of State, Corporation Division, all information required by those agencies relative to the Contract.

16. **FERPA Confidentiality of Student Records.** If access to student records is within the scope of this Contract, Contractor shall keep confidential and shall not disclose to any person or entity (a) student applications; (b) student health records or reports; and/or (c) any student records as defined in the Family Educational Rights and Privacy Act, 20 U.S.C. § 123G, concerning any student, unless such disclosure is authorized by the student or is ordered by a court of competent jurisdiction. Contractor shall have such procedures as are necessary to protect the confidentiality of student records.
17. **Governing Law:** This Contract shall be governed by 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 the Contract shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. 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:** 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 sub-contracted Contractor, or employees. Contractor shall save, defend (at University’s request and with legal counsel acceptable to University), indemnify, and hold harmless the Oregon University System, the State Board of Higher Education, University, and their departments, subdivisions, 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, subcontracted Contractor, or agents acting under this Contract.

20. **Independent Contractor Status:** The services to be rendered under the 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 the Contract.

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 the 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. The State Board of Higher Education acting by and through Portland State University, and their officers and employees shall be included as an additional insured in said insurance policy. If any of the liability insurance is arranged on a "claims made basis, "tail" coverage will be required at the completion of the Contract for duration of twenty four (24) months.

22. **Insurance Certification:** At its discretion, University may require that the Contractor furnish the University 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 if the insurance is canceled or materially changed.

23. **Insurance, Workers’ Compensation:** The 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 them to provide workers’ compensation coverage for all their subject workers. 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 shall be delivered or mailed postage prepaid to the parties at their respective places of business as identified in the Contract, unless otherwise designated in writing.

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 the Contract (the 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:** In the performance of the Contract the Contractor shall use, to the maximum extent economically feasible, recycled paper, recycled PETE products (As defined in ORS 279A.010 (ff)) and other recycled products (as defined in ORS 279A.010 (gg)).

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 term or provision of the Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any 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 the 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, as required by ORS 305.385(6), hereby certifies, under penalty of perjury, that the Contractor is not, to the best of the undersigned’s knowledge, in violation of any Oregon tax laws. For purposes of this certification, (4) “Tax” means a state tax imposed by ORS 401.792 to 401.816 and 320.005 to 320.150 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620. [1987 c.843 §6; 1997 c.99 §35;
33. **Terminations**: The Contract may be terminated at any time by mutual consent of both parties, or by either party upon thirty (30) days’ notice in writing or delivered by certified mail or in person to the other party. The Contract may also be terminated by University for default (including breach of Contract) if (a) Contractor fails to provide services or materials called for by the Contract within the time specified; or (b) Contractor fails to perform any of the other provisions of the Contract, or so fails to pursue the work as to endanger performance of the Contract in accordance with its terms, and after receipt of written notice from University, fails to correct such failures within ten days. The rights and remedies of University provided in the above clause related to defaults (including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

34. **Waiver**: The failure of University to enforce any provision of the 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](http://www.pdx.edu/purchasing-contracting/contractor-resources).

36. **Merger**: THE CONTRACT, INCLUDING THESE CONTRACT TERMS AND CONDITIONS, CONSTITUTES THE ENTIRE CONTRACT BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THE CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THE CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THE PARTIES, BY THEIR SIGNATURES ACKNOWLEDGE HAVING READ THE CONTRACT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.