

PROFESSIONAL SERVICES AGREEMENT

(Required when the total cost of service is greater than \$2,000)

To be completed by department:

Part I - Service Profile:

1. Name of contractor:

Address:

(Attach a completed Form W-9)

2. Describe the nature of services or scope of duties to be performed and how services will be provided.
3. Briefly describe the selection criteria used for this Contractor (e.g., education, training) and attach a sole source justification for selection and reasonableness of cost or three quotes.

Part II - Establishment of Employer/Independent Contractor Relationship

1. Will a Brown employee determine the specific hours to be worked, the way Services will be performed, or otherwise supervise or direct the work of the Contractor? If yes, please describe. Yes No
2. Will the services be provided at a Brown location? Yes No
Will Brown or Contractor determine the hours the services will be performed?
Brown University Yes
Contractor Yes
3. Will Contractor receive training, guidance or assistance other than audio or video presentation aids, or be provided with equipment, tools or supplies? If yes, please describe. Yes No
4. If assistance is needed to perform services
a.) will the assistance be provided by a Brown employee(s)? Yes No
b.) will the Contractor hire his/her own help? Yes No
5. Do you contemplate continuing or recurring work with this Contractor? Yes No
Has the Contractor provided this or similar service to the Department within the last six months? Yes No
6. Did you previously provide these services to Brown as either an employee or as an individual independent contractor? Yes No
7. Is the Contractor related to any Brown employee who has a controlling interest in or relationship to the performance of these services? Yes No
8. Is the Contractor actively engaged in providing these or similar services to Other organizations? If so, who are the clients? Yes No
9. If Contractor's costs for performing these services exceeds the price Brown has agreed to pay, does the Contractor bear the risk of this economic loss? Yes No

Certified by Department Head or Designee

By:

Title:

Signature

Date

PROFESSIONAL SERVICES AGREEMENT

DEPARTMENT
BROWN UNIVERSITY

NOTE: This form may be used for professional services provided by a company when compensation is greater than \$2,000.

AGREEMENT made and entered into this _____ day of _____, _____, by and between Brown University (hereinafter referred to as "BROWN"), a not-for-profit corporation organized and existing under the laws of the State of Rhode Island and Providence Plantations, located in the City of Providence, State of Rhode Island and Providence Plantations, on behalf of its _____ Department (hereinafter referred to as "DEPARTMENT") and _____ of _____ (hereinafter referred to as "CONTRACTOR").

WITNESSETH

WHEREAS, DEPARTMENT is desirous of obtaining the professional services of a contractor to perform services as specified herein; and

WHEREAS, CONTRACTOR represents that it is an organization in the business of providing the services covered hereunder and is desirous of providing said services to the DEPARTMENT under the terms and conditions set forth in this agreement;

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter contained and the sums of money hereinafter agreed to be paid the parties agree as follows:

1. **SCOPE OF DUTIES.** BROWN does hereby retain and engage CONTRACTOR in its professional capacity to perform the following services: (Use additional pages if necessary.)

CONTRACTOR shall perform such other duties as are customarily performed by one providing such services in other, same, or similar businesses, and shall also render such other services and duties as may be required of CONTRACTOR from time to time. CONTRACTOR does hereby accept and agree to such engagement.

Contact Person within the DEPARTMENT for the purpose of this agreement is:
_____.

2. **HOURS OF WORK.** In the performance of the services described herein, BROWN will rely upon CONTRACTOR to put in such number of hours as is reasonably necessary to fulfill the spirit and purpose of this agreement. However, depending upon the needs of the DEPARTMENT, CONTRACTOR may be required from time to time to work a different schedule or devote additional time to the project. Such duties shall be rendered at such place/s as the DEPARTMENT shall in good faith require.

3. **WORK PRODUCT.** All work product, whether intellectual or real property, including, but not limited to, documents, charts, drawings, reports, manuscripts and inventions, developed or prepared for the DEPARTMENT by CONTRACTOR or its employees under the terms of this agreement shall belong exclusively to BROWN and shall be deemed to be works made for hire and BROWN shall be the sole owner of all copyright and other proprietary rights (both tangible and intangible), title, and interest therein. To the extent that any of such deliverable items may not, by operation of law, be works made for hire, CONTRACTOR hereby assigns to BROWN the ownership of rights including, but not limited to, copyrights, registrations and similar protections which may be available. CONTRACTOR agrees to give BROWN or its designees all assistance reasonably required to perfect such rights.

Nothing in the foregoing shall be construed so as to prohibit CONTRACTOR from using like or similar materials in the performance of agreements with other parties. CONTRACTOR retains all rights, including, but not limited to, copyrights, patents, trademarks, or other proprietary rights (both tangible and intangible) to materials previously owned or used in the development of the work product.

4. **WORK STANDARDS.** In the performance of the services herein contemplated, CONTRACTOR is an independent contractor with the authority to control and direct the manner and means of performing its responsibilities hereunder, BROWN and the DEPARTMENT being interested only in the results obtained.

However, the work contemplated herein must meet the approval of the DEPARTMENT and shall be subject to the DEPARTMENT's general right of supervision to secure the satisfactory completion thereof.

CONTRACTOR and its employees shall perform all services required under this agreement in compliance with all applicable federal, state or local rules, and/or regulations and policies established by BROWN and the DEPARTMENT. CONTRACTOR shall perform services in accordance with generally accepted professional standards and procedures for persons in the same or similar businesses.

5. **BEST EFFORTS.** CONTRACTOR shall insure that employees performing services under this agreement pursuant to the express and implicit terms hereof do so to the best of their abilities, experience, and talents to the reasonable satisfaction of the DEPARTMENT. CONTRACTOR shall inform the DEPARTMENT of any deviation from the scope of work or any cause which renders CONTRACTOR unable to perform the work as required.

6. **PERIOD OF PERFORMANCE.** The term of this agreement shall commence on _____, and terminate on _____, subject, however, to prior termination as hereinafter provided.

7. **COMPENSATION.** In consideration of the performance of the terms of this agreement, BROWN shall pay CONTRACTOR, and CONTRACTOR shall accept from BROWN, in full payment for CONTRACTOR's services hereunder, a total sum not to exceed _____ Dollars (\$_____), such sum including _____ Dollars (_____) for services, payable at a rate of _____ Dollars (\$_____) per _____ and an amount not to exceed _____ Dollars (\$_____) for reimbursement of reasonable related expenses incurred in conjunction with the performance of this agreement as determined by DEPARTMENT. Said amount shall be paid from the DEPARTMENT's _____ account (account # _____). Payment shall be made as follows:

CONTRACTOR shall be paid only for those services which have been rendered, with said payments being pro-rated for any period that CONTRACTOR has not worked in accordance with the terms of this agreement. Final payment is contingent upon all services having been performed to the DEPARTMENT's satisfaction.

CONTRACTOR agrees that the above amount is sufficient compensation to cover the costs of all of CONTRACTOR's expenses and fees relative to the performance of the services to be rendered hereunder. In the event that CONTRACTOR incurs expenses which exceed the total compensation as stated herein, BROWN, at its option and at its sole discretion, may reimburse CONTRACTOR for any or all of said expenses, in whole or in part, upon submission of receipts for the same by CONTRACTOR.

8. **TERMINATION.** CONTRACTOR agrees that in the event of any violation by CONTRACTOR of any of the terms of this agreement, or the inability or failure of CONTRACTOR, in the DEPARTMENT's opinion, to provide the services contracted for hereunder, BROWN may then terminate CONTRACTOR's engagement immediately and without notice. If BROWN shall terminate this agreement, CONTRACTOR shall be only entitled to compensation for work completed or otherwise performed, pro rated from the time CONTRACTOR commenced the work up to the time of termination and BROWN shall be relieved of any further obligations or liabilities to CONTRACTOR, financial and otherwise.

Upon expiration or earlier termination of this engagement, CONTRACTOR will surrender to BROWN in good condition any record or records pertaining to BROWN's business and all other items that are the property of BROWN.

9. **REPRESENTATIONS AND INDEMNIFICATION.** In the performance of this agreement, CONTRACTOR represents that it is a for-profit not-for-profit organization offering the services described herein to the general public. (If CONTRACTOR is incorporated, indicate date of incorporation _____ and state of incorporation _____) CONTRACTOR's employees are not agents or employees of the DEPARTMENT or BROWN for any purpose and are not entitled to the benefits provided by BROWN to its employees including, but not limited to, fringe benefits, health, workers' compensation, and unemployment insurance and pension plans or any other remuneration. CONTRACTOR shall assume full responsibility and liability for making and/or paying any and all federal, state, and/or municipal taxes, assessments, social security benefits and/or other deductions as required by law on behalf of itself and its employees.

CONTRACTOR certifies that this agreement will not violate the terms of any contract with, or any obligation to, another institution or employer. CONTRACTOR may not contract with others to perform the same or similar

services where such participation would interfere with the performance of CONTRACTOR's duties under this agreement.

CONTRACTOR certifies that s/he is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. (If debarred, suspended, proposed for debarment, please check here. Payment from federal funds is prohibited in such cases.)

CONTRACTOR further hereby exonerates, indemnifies and holds harmless BROWN, including the Corporation, its trustees, officers, employees, and agents, for all liability, losses, damages or expenses from any and all fines, suits, claims, and demands, including reasonable attorneys fees, arising from any actions of any kind or nature resulting from any acts, errors, or omissions of CONTRACTOR as a result of performing the services to be rendered hereunder, provided, however, that such indemnification shall not apply to any fines, suits, claims, and demands resulting from the sole negligence of DEPARTMENT or BROWN.

CONTRACTOR avers that it complies with all applicable federal and state laws and regulations governing employment relationships with its employees and subcontractors, including, but not limited to, equal employment and nondiscrimination, affirmative action, sexual harassment, equal pay, accommodation of disabilities, family and medical leave and workplace safety.

10. **ASSURANCES OF CONFIDENTIALITY AND SAFEGUARDING.** In accordance with the Gramm-Leach-Bliley Act and the Family Education Rights and Privacy Act, Contractor assures that it is capable of maintaining appropriate safeguards for non-public personal financial information, student education records, and other protected information ("Brown Confidential Information (BCI)") to which Contractor may be provided access to or gathering on behalf of Brown. Information shall be held in the strictest confidence and may only be used/accessed for the purposes set out in the agreement. Contractor will protect BCI in accordance with generally accepted commercial standards and no less rigorously than it protects its own confidential information. Contractor shall not release BCI obtained/accessed to any other party unless authorized in writing by the appropriate data owner at Brown. Contractor laptops and/or PDAs used to transmit or store BCI (with written permission) must be patched and protected with up-to-date anti-virus and anti-spyware software. Remote access to BCI must be protected with a Brown-approved encryption mechanism (e.g. VPN, SSH). Upon termination of this agreement, Contractor shall return to Brown all BCI in its possession and Contractor shall not maintain any originals or copies of BCI, in any format or on any media. Any breach by Contractor of these obligations shall be cause for immediate termination of this Agreement. Contractor shall immediately notify Brown of any breach of its obligations of confidentiality. Contractor agrees that any breach of its obligations of confidentiality will cause immediate and irreparable injury and that Brown shall be entitled to obtain injunctive relief in addition to any other remedies available at law.

11. **NOTICE.** All notices, requests, and consents required to be made or given hereunder shall be given in writing, registered mail (return receipt requested), addressed:
If to the DEPARTMENT/BROWN: to _____ with a copy to Office of the General Counsel, Brown University, Box 1913, Providence, RI. 02912.

If to CONTRACTOR: to _____ with a copy to _____.

12. **GENERAL TERMS.** The failure of the DEPARTMENT at any time to require performance by CONTRACTOR or its employees of any provision expressed herein shall in no way affect BROWN's right thereafter to enforce such provision on behalf of the DEPARTMENT; nor shall the waiver by the DEPARTMENT and/or BROWN of any breach of any provision expressed herein be taken or held to be a waiver of any succeeding breach of any such provision or as a waiver of a provision itself.

Neither CONTRACTOR nor its employees shall have the right to make any contracts or legally binding commitments for or on behalf of the DEPARTMENT or BROWN. This agreement may not be assigned, or otherwise transferred without the express prior written consent of BROWN.

The captions or headings of the paragraphs hereof are for convenience only and shall not control or affect the meaning or construction of any of the terms or provisions of this agreement. This agreement may be executed in one or more counterparts any or all of which shall constitute one and the same instrument.

This agreement embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior agreements, understandings representations and statements, whether oral or written, are merged into this agreement. Neither this agreement nor any provisions hereof may

be modified or amended unless in an instrument signed by a duly authorized representative of both CONTRACTOR and of BROWN.

The parties agree that this agreement shall be construed in accordance with and governed by the laws of the State of Rhode Island and Providence Plantations and the parties consent to the jurisdiction and venue of the state and federal courts of the State of Rhode Island and Providence Plantations.

This agreement shall not be valid unless and until signed by an authorized representative of BROWN, in which event the agreement shall be deemed effective on the date signed by said representative of BROWN.

IN WITNESS WHEREOF, BROWN and CONTRACTOR, through their duly authorized representatives, have hereunto executed this agreement in duplicate as provided below.

BROWN UNIVERSITY
(Authorized Signer)

CONTRACTOR

By: _____

Printed Name:

Title:

Date: _____

Printed Name:

Title:

TIN#:

Date: _____

Witness

Witness

Acknowledgment:

By: _____

Printed Name:

Title:

Date:

OGC: 99/316EM Prof. Svcs Generic Co.
Revised 3/13/2007