



BROWN

Strategic Purchasing, Contracts &
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STANDARD BROWN UNIVERSITY AGREEMENT TERMS AND CONDITIONS - PROFESSIONAL SERVICES/CONSULTING AGREEMENTS

In addition to contract terms that are customary to include such as Term of the Agreement, Payment terms (the University's payment terms are available on the supplier registration site), Assignment, and Scope of Work, the University is required to include language that addresses compliance with certain laws and regulations. There are also University requirements related to issues such as indemnification, insurance, name use and ownership of intellectual property.

The language included below is an example of what can be expected in the University's contracts including Professional Services Agreements. It is the University expectation that suppliers and contractors will accept these standard provisions. The University's contract review and approval process is streamlined in those instances. Brown University uses a contract management system on the Jaggaer platform that will be used to issue professional services agreements and to review other terms and conditions presented. The finalized contract will be sent from this system (Brown Contract Management system) using DocuSign to obtain signatures to finalize the agreement.

COMPLIANCE WITH LAW. Contractor agrees to comply with (i) all international, federal, state, and local laws and the rules and regulations promulgated thereunder, applicable to this Agreement or to Contractor's provision of the Services to Brown hereunder and (ii) Brown's applicable policies and procedures.

If the Services are for electronic or information technology, Contractor shall design and/or provide the Services in compliance with the ADA to ensure that end users with disability-related impairments have an equal opportunity to use the Services in a manner consistent with the W3C Web Content Accessibility Guidelines. Upon request by Brown, Contractor shall provide to Brown a current completed Voluntary Product Accessibility Template ("VPAT") to demonstrate compliance with the WCAG 2.0 level AA ("WCAG") standards. If the Services do not comply with the WCAG standards, Brown reserves the right to terminate this Agreement (effective upon notice to Contractor) and seek redress for any harm incurred, including, but not limited to, adapting or modifying the Services in a manner that is consistent with federal and state accessibility laws. In the event Contractor provides the Services not in compliance with WCAG, notwithstanding any provision set forth herein to the contrary, Contractor hereby grants (and shall cause any subcontractor or holder of any intellectual property right in the non-compliant Services to grant) Brown an irrevocable royalty-free license (and right) to adapt, modify, decompile, and take such other reasonable action necessary to cause such non-compliant Services to become compliant with WCAG and/or the ADA (as applicable).

Contractor shall comply with [Brown's Corporation Statement on Nondiscrimination](#) and not discriminate against qualified individuals based on their race, color, religion, age, national or ethnic origin, disability, status as a veteran, sexual orientation, gender identity, gender expression,

or sex (except where sex is a bona fide occupational qualification). Brown's Corporation Statement on Nondiscrimination is posted online at www.brown.edu.

Materials and Services of Contractor. None of the materials to be provided or Services to be rendered hereunder by Contractor shall infringe in any way upon the proprietary rights of others including, without limitation, confidential relationships, patents, trade secrets, copyright rights, intellectual property rights, or any other proprietary rights. Except as otherwise expressly agreed in writing by the Parties, all equipment, materials and supplies used in the performance of the Services shall be furnished by Contractor.

Use of Name. Brown University retains the right, at its sole discretion, to review and approve any and all informational, promotional, or advertising materials that use the name, trademarks, service marks, logos, and/or representative image(s) of the University, or that describe University projects and/or define a relationship with the University; therefore, Contractor agrees to present such materials to the University prior to their distribution or publication, in accordance with the "Brown Name Use Policy" (posted online at www.brown.edu).

INDEMNIFICATION. Contractor shall indemnify, defend, protect, and hold harmless Brown, including its Corporation, trustees, officers, employees, students, representatives, and agents (each an "**Indemnitee**", and collectively, the "**Indemnitees**") from and against all claims, losses, liabilities, damages, lawsuits, actions, proceedings, arbitrations, taxes, penalties, or interest, associated auditing and legal expenses, and other costs incurred by Indemnitee(s) (including reasonable attorneys' fees and costs of suit) ("**Indemnified Claims**") arising from Contractor's: (i) negligence; (ii) performance of its obligations under the Agreement; (iii) injury to persons or property or other tort arising out of any act, omission or negligence of Contractor (including, Contractor's personnel), except to the extent such injury, damage or other tort is caused by the gross negligence of Brown.

INSURANCE. During the Term of this Agreement, Contractor, at its sole cost and expense, shall purchase and maintain the following policies **as applicable** to the scope of work being performed:

- General liability insurance with combined single limits coverage for bodily injury and property damage of not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) aggregate;
- Worker's compensation insurance, where required by law;
- Professional liability insurance, including errors and omissions, affording protection of not less than One Million Dollars (\$1,000,000) per incident and One Million Dollars (\$1,000,000) in the aggregate;
- Comprehensive automobile liability insurance covering the operation of all motor vehicles used by Contractor or its agents in connection with services being provided to Brown University, affording protection in an amount of not less than One Million Dollars (\$1,000,000) combined single limit with respect to personal injury, death, or damage to property; and
- Cyber Liability/Network & Information Security Liability with aggregate minimum liability coverage limits of at least One Million Dollars (\$1,000,000) covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional or unintentional release of private information, alteration of electronic information, extortion and network security.

All insurance required in this section shall be issued in the name of Contractor with Brown named as an additional insured on general liability and auto liability policies. Contractor shall provide a certificate of insurance to Brown prior to the commencement of this Agreement, and, if work is on-going, upon renewal of the policy. The Contractor shall send certificates of insurance to Brown by email at certificatesofinsurance@brown.edu.

All insurance policies required under this Agreement shall be issued by insurance companies with an A.M. Best rating of "A" or better and shall be issued by companies qualified to do business in Rhode Island.

CONFIDENTIALITY. Contractor acknowledges that in connection with this Agreement and the Services provided by Contractor under this Agreement, Brown may provide, and Contractor may acquire and make use of, certain Confidential Information (as defined hereafter) of Brown relating to the provision of the Services.

"**Confidential Information**" shall mean all information provided by Brown or any directors, officers, employees, representatives, or agents thereof, to Contractor or its directors, officers, employees, affiliates, representatives or agents, whether provided orally or in writing (including electronic format), by electronic or any other means. Confidential Information includes, without limitation, Work Product (as defined herein), Educational Records (as defined by the Family Educational Rights and Privacy Act of 1974), personally identifiable information ("**PII**") (as defined by the Brown University Human Research Protection Program policies), Customer Data (as defined under the Gramm-Leach-Bliley Act), and non-public information regarding Brown's financials, investments, intellectual property, trade secrets, products, courses, courseware, features, trustees, officers, faculty, employees, customers, alumni, donors, students, applicants, clients, contractors, agents, systems, marketing plans, promotions, business practices and other information shared by third parties with Brown or its trustees, officers, faculty, employees, students, customers, clients, or agents in confidence.

Excluding Educational Records, PII, and Customer Data, the obligations with respect to Confidential Information shall not apply to Confidential Information that: (i) Contractor already knows at the time it is disclosed as shown by Contractor's written records; (ii) is publicly known without breach of this Agreement; (iii) Contractor received from a third party authorized to disclose it without restriction; (iv) Contractor, its agents, or subcontractors developed independently without the use of the Confidential Information, or (v) based on advice of legal counsel, Contractor is required by law, regulation, or valid court or governmental agency order to disclose; provided, however, that Contractor first notifies Brown of its intent to make such a disclosure, so that Brown may seek a protective order.

Except as otherwise required by applicable law, during the Term and for a period of five (5) years thereafter, Contractor shall not use such Confidential Information except in connection with the performance of its obligations related to delivery of the Services under this Agreement, or divulge the Confidential Information to any third party, unless Brown consents in writing to such use or divulgence or such disclosure is required by law (pursuant to Section 9.3(v) hereof). In the event Contractor receives a request or demand from a third party for the disclosure of Confidential Information, Contractor shall promptly (within two (2) business days after receipt of such request or demand) provide written notice to Brown of such request or demand, including a copy of any written document of such request or demand.

Contractor agrees to protect and safeguard from and against unauthorized access, use, or disclosure of the Confidential Information of Brown in the same manner that it protects the

confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care).

Upon expiration or termination of this Agreement, Contractor shall not take nor retain, without prior written consent from Brown, any Confidential Information or copies thereof in any form or medium of any kind. Upon the expiration or termination of this Agreement or otherwise upon the request of Brown, all Confidential Information received by Contractor shall be promptly returned to Brown or, upon request of Brown, destroyed with such destruction confirmed in a form reasonably satisfactory to Brown by Contractor. Without limiting other possible remedies for the breach of these covenants relating to Confidential Information, the Parties agree that injunctive or other equitable relief shall be available to enforce any and all of these covenants, such relief to be without the necessity of posting a bond, cash or otherwise.

Contractor acknowledges and agrees that it is responsible for the security of all Brown's Cardholder Data (as defined in the Brown University "Accepting and Handling Payment Cards to Conduct University Business" policy) in its possession. Contractor represents and warrants that for the life of the Agreement and/or while Contractor has involvement with Brown University's Cardholder Data, the software and services used for processing transactions shall be compliant with current standards established by the Payment Card Industry Security Standards Council (<https://www.pcisecuritystandards.org/>). Contractor shall, upon written request, furnish proof of compliance in the form of an Attestation of Compliance ("AOC") with the Payment Card Industry Data Security Standard ("PCI DSS") within ten (10) business days of the request. Contractor agrees that the University may terminate this Agreement immediately, without penalty, upon notice to the Contractor in the event Contractor fails to maintain compliance with the PCI DSS or fails to maintain the confidentiality or integrity of any Cardholder Data.

INTELLECTUAL PROPERTY. Except as otherwise set forth in this section, all items created or developed in, or resulting from, the course of performance of the Services by Contractor of its various obligations under this Agreement, including, without limitation, all (i) plans; (ii) materials; (iii) reports and results; (iv) documents; (v) graphic elements, aesthetic qualities, "look and feel" of any deliverable and all other unique, novel and/or customized parts and aspects of any and all deliverables not generally used or applied to similar products; (vi) computer software, in source code, object code and/or script form, and all related user, programmer and technical documentation, as well as all modifications, and enhancements of any of the foregoing; (vii) text, photos, recordings or other materials of any kind or nature; and (viii) all elements of the deliverables created or developed by or on behalf of Contractor (collectively, the "**Work Product**") have been or shall have been specially ordered or commissioned by Brown and, accordingly, each is and shall be a "work made for hire" (as that term is defined in the United States Copyright Act of 1976) for Brown, effective as of the moment each such item is fixed in a tangible medium, whether such item is complete. Brown shall be the sole author of such Work Product and the sole owner of all rights therein. Without limiting the foregoing, Brown shall have the irrevocable, worldwide right to use and exploit the Services and Work Product in any manner and to authorize third parties to exercise any of its rights. Contractor shall not use, duplicate or disclose such Work Product for any purpose, other than the performance of the Service required hereunder, without the prior written consent of Brown.

Contractor hereby transfers and assigns to Brown all of its right, title, and interest in the Work Product, including, without limitation, all patents, trade secrets, copyrights, and other propriety rights of Contractor contained therein. Notwithstanding any other provision of applicable law that may cause rights to such Work Product to vest initially in Contractor, all right, title, and interest, including, without limitation, all copyrights in and to any and all copyrightable Services,

resulting from or developed in connection with any Services shall be, or shall become owned by Brown and the same are hereby transferred in their entirety to Brown. Contractor shall have no right, title, or interest in any Work Product and shall not use, license, or otherwise transfer or distribute any such Work Product without the prior written consent of Brown. Upon expiration or termination of this Agreement, Contractor shall not take or retain, without prior written consent of Brown, any Work Product or copies thereof in any form or medium of any kind.

Contractor shall (i) execute any and all such documents as Brown may reasonably request from time to time to vest in Brown all of the rights granted or transferred by Contractor under this Agreement and (ii) take all reasonable steps to have each of those persons who has or shall have participated in the development of the Work Product for, or on behalf of, Contractor execute any and all such documents required by Brown for such purposes. Furthermore, Contractor shall assist and cooperate with Brown and its representatives in any controversy or legal proceedings relating to such Work Product.

Contractor shall not acquire any rights of any kind whatsoever including, but not limited to, publication rights, patent, copyright, trademark, or service mark rights, ownership rights, or promotional rights with respect to any inventions, discoveries, technology, or scientific or medical findings, whether patentable or non-patentable, in the Work Product and/or resulting from the Services provided by Contractor. Contractor shall promptly disclose only to Brown or its designee any invention, discovery, technology, or scientific or medical findings, whether patentable or non-patentable, in the Work Product and/or resulting from the Services provided by Contractor.

Notwithstanding the foregoing, the term "Work Product" shall not include any verifiably pre-existing materials, information or products of Contractor including, but not limited to, software, schematics, prototypes, artwork, literature, signage, photography, videography, documentation, displays, and exhibits (collectively, "**Contractor Materials**"). Contractor Materials shall be owned by and shall remain the sole and exclusive property of Contractor (or Contractor's suppliers, as applicable) at all times. Contractor has the power to and hereby grants to Brown a non-revocable, non-transferable, fully-paid up license without conflict with rights of any third party to use such Contractor Materials in connection with the Work Product and transactions contemplated by this Agreement and for no other purpose whatsoever. The Parties acknowledge that the Fees set forth in this Agreement have been priced accordingly.

The terms of this section shall not apply to any product that has been created by a third party, provided that Contractor shall not include any such third party product in the Services or any Work Product unless Contractor has obtained Brown's written consent to such inclusion on terms and conditions (including, licenses from the third party) approved by Brown.

INDEPENDENT CONTRACTOR. Contractor shall be considered to be an independent contractor. Any agreement formed shall not be construed to form any relationship of agency, master-servant, employer/employee, partnership, joint venture, or association Contractor shall be wholly responsible for the Services to be provided and for the supervision of its employees (if applicable) in connection with its provision of the Services. Contractor's employees are not agents or employees of Brown for any purpose. Contractor shall be solely responsible and liable for all salary, workers compensation payments/benefits, income tax withholding, unemployment insurance, Federal Insurance Contributions Act ("**FICA**"), and all other aspects of employment of its employees.

FORCE MAJEURE. In the event that the performance of the obligations under this Agreement is prevented or delayed by reason of Force Majeure, the parties are released from their obligations and neither party shall be responsible for any damages or costs sustained and have no further recourse against the other party. Force Majeure shall mean fire, earthquake, hurricane, tornado, flood, tsunami, or other natural disasters or acts of God, infectious diseases, epidemics, pandemics, endemics, nuclear explosions, strikes, work stoppages, or other labor disturbances, riots or civil commotions, war or other act of any foreign nation, terrorism, power of government, or governmental agency or authority, or any other cause beyond the control of either party.

GOVERNING LAW. The Parties agree that this Agreement shall be construed in accordance with and governed by the laws of the State of Rhode Island and the Parties consent to the jurisdiction and venue of the state and federal courts of Rhode Island.

Related Information:

<https://www.brown.edu/about/administration/purchasing/conducting-business-brown-university>

This site provides important information regarding expectations for suppliers/contractors/vendors including those that relate as a result of COVID-19 safety considerations.