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| veritas | **HARVARD UNIVERSITY****OFFICE OF THE GENERAL COUNSEL**  |

**Model Consulting Agreement, Short Form**

**BEFORE GIVING THIS FORM TO CONSULTANTS, DELETE THE OGC LOGO, THE HEADING ABOVE, THE EXPLANATORY PARAGRAPH**

**BELOW AND NOTES AND INAPPLICABLE TEXT**

**(for example, “optional” or “alternate”).**

**This short form is appropriate for simple engagements with individuals (not companies), with relatively short terms (for example, twelve months or less), modest fees, and uncomplicated services generally excluding a deliverable which is a “product”. (See** [**Model Consulting Agreement with Comments**](http://www.ogc.harvard.edu/document_download.php?file=OGC_-_Model%20Consulting%20Agreement%20with%20Comments%20Rev%20%20February%202011%202%2024%2011%20_4_.pdf)**.) The contracting unit is responsible for determining if the party to be engaged can properly be classified as an independent contractor (as opposed to an employee). This form should not be used to obtain security, custodial or dining services for any period of time exceeding nine months or if payments will exceed $50,000. Consult the Office of Technology Development on intellectual property matters if your contract is to obtain services in the context of a research project. This model agreement is not intended for use as a master services agreement; note further that individual units should not accept agreements that purport to be binding on the University as a whole. This form should not be used to engage an artist to create a work of art for installation in or on University property. If you have questions about this form, please call the Office of the General Counsel at**

**(617) 495-1280.**

**CONSULTING AGREEMENT**

This Consulting Agreement (the “Agreement”) dated as of the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_ (the “Effective Date”), is by and between President and Fellows of Harvard College, a Massachusetts nonprofit educational corporation, acting through *[insert name of School, department, or other unit involved]* (“Harvard”) with a principal place of business at *[insert address]*, and *[insert name of Consultant]* (“Consultant”) with an address at *[insert address]*.

***[Optional recitals,*** *for example,**description of project, business or educational activity involved, special skills of consultant.****]***

 Harvard and Consultant agree as follows:

**1. Consultant’s Services.**

Consultant shall provide the following services and deliverables (the "Work"): *[describe]*. ***[Alternate:*** Consultant shall provide the services and deliverables (the "Work") described in the Statement of Work attached as Exhibit A (the “SOW”). In the event of a conflict between the terms of this Agreement and the terms of the SOW, the terms of this Agreement shall prevail.***]***

Any change to the Work must be approved in advance in writing by both parties.

Consultant shall perform the Work with reasonable care, consistent with applicable professional and industry standards and in compliance with all applicable laws, and substantially in accordance with the description set forth in this Agreement. Consultant represents that this Agreement and Consultant’s performance of the Work will not breach any obligations of Consultant to any other party.

Consultant owns all the rights that Consultant is granting or assigning to Harvard under this Agreement (see Rights in Work Product). Consultant represents that the work product created or delivered by Consultant will not infringe any patents, copyrights, trademarks, trade secrets or other rights of any third party.

**2. Payment to Consultant.**

 As compensation in full for the Work and for all rights granted or assigned by Consultant to Harvard under this Agreement, Harvard shall pay fees to Consultant as follows: *[describe, including payment schedule]*.

***[Alternate #1:*** Harvard also shall reimburse Consultant for all reasonable, documented out-of-pocket expenses that Consultant incurs in connection with the Work; provided that Harvard shall not be obligated to reimburse any expense of more than \_\_\_\_\_\_\_\_\_\_ [*for example, $250*] unless Consultant has obtained prior written approval of such expense from *[insert name or title]*. ***{optional:*** Consultant shall comply with *[insert name of School, department, or other unit]*’s expense billing policy.***}]***

***[Alternate #2:*** Such fees shall also compensate Consultant for all expenses incurred by Consultant in connection with the Work.*]*

***[optional]*** Provided that the Work has been performed in accordance with this Agreement, Harvard shall pay each invoice within 60 days of receipt.

**3. Term and Termination.**

The term of this Agreement shall begin as of the Effective Date and shall continue ***[Alternate #1:*** until completion of the Work,***]*** ***or [Alternate #2*:** until \_\_\_\_\_\_\_\_\_\_\_\_\_\_,***]*** unless sooner terminated under this Term and Termination Section or extended by written agreement of the parties.

***[optional]***Harvard shall have the right to terminate this Agreement for any reason in its sole discretion upon \_\_\_\_\_\_\_ [*for example, 30*] days’ written notice to Consultant.

In addition to any other rights and remedies it may have, Harvard may terminate this Agreement if Consultant fails to perform or breaches any of Consultant’s obligations, warranties or representations in this Agreement and such failure or breach continues uncured for [\_\_] days after written notice thereof is given by Harvard to Consultant .

Within [\_] days of any termination or expiration of this Agreement, (i) Consultant shall deliver to Harvard all work product and materials related to Work completed or in progress as of the date of termination or expiration; and (ii) Harvard shall pay Consultant undisputed amounts owing for Work performed in accordance with this Agreement ***[include if expenses are being reimbursed:*** and, if applicable, reimburse Consultant for out-of-pocket expenses properly incurred by Consultant through the date of termination or expiration***]*** . Consultant shall use reasonable efforts to promptly wind up Work and cancel expenses upon receiving notice of termination.

The provisions of this Agreement which by their explicit terms or their manifest intent are to survive, including without limitation those which relate to confidentiality, rights in work product and use of Harvard Names, ***[if Indemnification section is included:*** and indemnification,***]*** shall survive expiration or termination of this Agreement.

**4. Status and Authority of Consultant; Benefits and Taxes**.

Consultant shall be an independent contractor, free from Harvard’s direction and control of the means and methods of performing the Work, and not an agent or employee of Harvard. Consultant shall have no authority to incur any obligations or expenses on behalf of Harvard or to act in any other manner on behalf of Harvard or in its name. Consultant shall be solely responsible under all applicable laws for (i) taxes on Consultant’s income, (ii) other tax and welfare and benefits payments and contributions required with respect to Consultant, and (iii) Consultant’s professional and other licensing fees. Consultant shall not be entitled to receive any employee benefits from Harvard.

**5. Confidentiality.**

During the course of the Work, Harvard may provide Consultant with or Consultant may obtain access to “Confidential Information,” which shall mean any and all (a) non-public information about Harvard, a Harvard department, faculty, school or other unit, or Harvard property (tangible or intangible), or about third parties, that is specifically identified as confidential or that Consultant knows or in the circumstances should know is regarded as confidential, and (b) personally identifiable information about current or former Harvard faculty members, employees, students, other persons associated with Harvard and other individuals (“Personal Data”). Consultant (i) will use reasonable care to protect the security of Confidential Information; (ii) will not use Confidential Information except as necessary for the performance of the Work; (iii) will not at any time during or after the term of this Agreement disclose Confidential Information to any person except with Harvard’s prior written consent (except as otherwise required by law in which case Consultant shall, unless prohibited by law, notify Harvard prior to such disclosure); (iv) will comply with such additional protections as Harvard shall reasonably require from time to time; and (v) will immediately notify Harvard upon learning of any breach in the security of Confidential Information. All Confidential Information will remain the property of Harvard. At any time on Harvard’s request and in any case upon termination or expiration of this Agreement, Consultant will unless otherwise instructed by Harvard return all documents containing Confidential Information to Harvard, delete all electronic files and records containing Confidential Information, and retain no copies of Confidential Information in any medium; provided, that Consultant shall be entitled to retain records containing Confidential Information if reasonably necessary solely for reference and archive purposes, on the condition that such records shall continue to be subject to the provisions of this Confidentiality Section and any Personal Data in such records shall be deleted or redacted.

**6. Rights in Work Product**.

Harvard shall own and Consultant hereby assigns to Harvard all right, title and interest in and to all Work and all work product created, prepared or developed by Consultant in the course of performing the Work and any patents, copyrights and other intellectual property embodied in the Work and work product, free of all liens, claims, encumbrances and licenses; provided that all Work and work product subject to copyright shall be considered work made for hire by Consultant for Harvard to the extent permitted by law. Without limiting the foregoing, Harvard will have the irrevocable, worldwide right to use and exploit the Work and work product in any manner and to authorize third parties to exercise any of its rights. Consultant hereby waives all "moral rights" to the extent permitted by law.

 Consultant shall execute and deliver to Harvard all documentation that Harvard reasonably requires to evidence Harvard’s rights in and to Work and work product and shall comply at Harvard's expense with all reasonable requests for assistance in connection with (i) applications for registration of any patents, copyrights or other similar ownership rights in Work and work product and (ii) any action or proceeding with respect to Harvard's protection or defense of its ownership rights.

**7. Use of Harvard Names.**

Consultant shall not use the name "Harvard" (alone or as part of another name) or any logos, seals, insignia or other words, names, symbols or devices that identify Harvard or any Harvard school, unit, division or affiliate (“Harvard Names”) for any purpose in connection with the Work or this Agreement except with the prior written approval of, and in accordance with restrictions required by, Harvard. Consultant shall not seek to register any Harvard Name in any jurisdiction. Without limiting the foregoing, Consultant shall cease all use of Harvard Names authorized under this Agreement on the termination or expiration of this Agreement.

**8. Remedies.**

Consultant acknowledges that any remedy at law for any violation of the provisions of this Agreement regarding Confidential Information, Harvard’s rights in work product, and the use of Harvard Names, may be inadequate and that Harvard may suffer irreparable damage through any such violation and that therefore, in addition to any other remedies it may have, Harvard may seek and obtain injunctive relief against a breach or threatened breach of such obligations of Consultant.

**9. Waiver.**

Any waiver by either party of a breach of any provision of this Agreement must be in writing and shall not be deemed a waiver of any subsequent breach. No delay or omission in the exercise or enforcement of any right or remedy provided in this Agreement or by law by either party shall be construed as a waiver of such right or remedy.

**10. Severability.**

In the event that any provision or section of this Agreement shall be held to be invalid by any court, such holding shall not affect in any respect whatsoever the validity of the remainder of the Agreement.

**11. Assignment; Subcontracting.**

This Agreement may not be assigned by either party, nor transferred by operation of law, without the prior written consent of the other. Any assignment or transfer without such consent shall be void. Consultant shall not engage any third party to perform any portion of the Work without Harvard’s prior written consent.

**12. Governing Law.**

This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts (excluding conflict of laws rules).

**13. Entire Agreement; Amendment.**

This Agreement contains and constitutes the entire agreement between the parties hereto with respect to the transactions which are the subject of this Agreement and supersedes and cancels all previous negotiations, agreements, commitments, and writings relating to said transactions. It may be amended only by an agreement in writing, signed by each of the parties hereto.

***[Optional]*14. Indemnification.**

 Consultant agrees to indemnify and hold Harvard and its affiliates, employees, faculty members, students, members of its governing boards and agents harmless from and against any claims, losses, liabilities, damages, costs and expenses including reasonable attorneys' fees arising out of or relating to Consultant's breach or alleged breach of any warranty or other provision of this Agreement, or any other negligent or wrongful act or omission of Consultant. Consultant shall not be obliged to pay or indemnify any settlement amount unless Consultant has consented to the settlement, such consent not to be unreasonably withheld.

***[Optional]*15. Insurance.**

Consultant shall maintain at all times during the term of the Agreement, at Consultant’s cost and expense:

* A fully-paid Commercial General Liability insurance policy, alone or in combination with umbrella liability insurance, in form and amount and with deductibles acceptable to Harvard, but with limits of not less than $1,000,000 per occurrence and $2,000,000 aggregate annual liability with respect to bodily injury, personal injury, and property damage; and
* Professional liability or errors and omissions insurance in form and amount satisfactory to Harvard with limits of not less than $2,000,000 per claim.

If the liability or errors and omissions policies described above are claims made policies, Consultant shall maintain such insurance for a period of not less than three years after the termination or expiration of this Agreement. Consultant shall submit certificates of said policies to Harvard evidencing that the required coverages are in effect prior to the commencement of the Work under this Agreement. Each certificate shall name Harvard as an additional insured and provide for at least 30 days notice to Harvard prior to any cancellation or modification of the coverage.

The parties have executed this Agreement under seal as of the date first above written.

PRESIDENT AND FELLOWS
OF HARVARD COLLEGE acting through \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:

 Title:

 [CONSULTANT]

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:

 Title:

Rev. February 2011

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