**This is a form agreement for discussion purposes only. It does not constitute a binding offer or contract with the University of Delaware until all of the terms have been approved and this agreement is executed by authorized university officers.**

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**CONSULTING SERVICE AGREEMENT**

ThisConsulting Service Agreement (“Agreement”) is made and executed on May 2, 2018 by and between the University of Delaware (“University”), a privately chartered, state assisted, non-profit 501(c)(3) institution of higher education with its principal place of business at 222 Chapel Street, Newark DE 19716, and xxxxxxx (“Consultant”), xxxxxxxxxx.

**RECITALS:**

 **WHEREAS,** University desires to retain a consultant to assist the Research Office; and

 **WHEREAS**, Consultant has extensive experience in providing such consulting services and Consultant desires to provide such services to University.

 **NOW, THEREFORE,** in consideration of the mutual agreements and covenants contained therein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed and covenanted by and between the parties to this Agreement as follows:

**1. ENGAGEMENT OF CONSULTANT.**

1. University hereby retains the services of the Consultant, and Consultant agrees to provide to University the services set forth in the Scope of Work (“Services”) attached as Exhibit A and hereby incorporated and made a part of this Agreement.
2. If University wishes to change the scope of services included in the Work or wishes to obtain additional services not covered by this Agreement, University shall notify Consultant and provide a description of such change or additional services. After receipt of such description Consultant shall notify University as to whether the performance of such changed or additional services will result in the payment of an additional fee to Consultant and, if so, the amount of such additional fee. If University accepts the additional fee, University and Consultant shall execute a supplement to the Scope of Work, which shall contain (i) a description of such changed or additional services, and (ii) any additional fee payable to Consultant, together with any payment conditions not otherwise contained in this Agreement. If the parties do not agree on the terms for such a supplement, and University directs the Consultant to proceed with the change in services, Consultant’s compensation shall be computed on the basis of reasonable hourly rates for the services actually and necessarily rendered as set forth on Exhibit B. The Consultant shall not be entitled to compensation of any kind for changed or additional services unless such services are authorized by University in writing before commencement. No services made necessary, in whole or in part, by any fault or omission of the Consultant to perform its duties, responsibilities or obligations under this Agreement, shall be compensated as an additional service.

**2. STANDARD OF PERFORMANCE.**

1. Consultant shall perform the Services described on Exhibit A with care, skill and diligence, in accordance with the applicable professional standards currently recognized in the Consultant’s profession, and shall be responsible for the professional quality, completeness, and coordination of all reports and other services furnished und this Agreement. If Consultant fails to meet any applicable professional standards, Consultant shall, upon University’s request and without additional compensation, correct or revise any errors or deficiencies in its reports or other services provided hereunder, in a timely manner.
2. Consultant shall keep University advised both in writing and orally of the progress in completing the Services.

**3. TERM.** The Consultant shall commence the Services promptly upon the execution of this Agreement and shall complete its Services in accordance with the schedule set forth in the Scope of Work (Exhibit A), unless sooner terminated pursuant to Paragraph 3 hereof. Time is of the essence and failure to perform and complete the Services within the required time will constitute a material breach of this Agreement by the Consultant. Upon termination of this Agreement, Consultant shall remain subject to all covenants, restrictions and conditions set forth in Paragraph 7.

**4. TERMINATION.**

1. University may terminate the Consultant’s employment under this Agreement for its convenience, without cause of any kind, upon not less than fifteen (15) days’ prior written notice to the Consultant. In such event, the Consultant, as its sole and exclusive remedy, shall be entitled to receive any compensation that may be due to it under the terms of this Agreement for that portion of the Work actually and properly completed in accordance with the terms of this Agreement to the date of such written notice. In no event shall the Consultant be entitled to recover from University any consequential damages on account of such termination including, without limitation, lost profits on the Work not completed.
2. In the event the Consultant fails to perform, or materially breaches the terms of this Agreement, University, in addition to any other rights and remedies provided by the Agreement or by law, shall have the right to terminate the Consultant’s employment under this Agreement for cause upon not less than fifteen (15) days’ prior written notice to the Consultant. Absent a cure by the Consultant within such period deemed satisfactory by University, University may terminate the Consultant’s employment under this Agreement, withhold any payments that might otherwise have been due to the Consultant and recover from the Consultant all direct and consequential damages arising out of or relating to the Consultant’s failure to perform or material breach to the extent provided by applicable law.

**5. TAXES.** University represents that it is a tax-exempt corporation under Sections 501(c)(3) of the Internal Revenue Code of the United States, as amended, and under applicable laws of the State of Delaware. Consultant shall take all action required to cause the provision of the services hereunder or the purchase of any products hereunder to be treated as a tax-exempt transaction, and in no event shall University be responsible for any sales, use, property, gross receipts, or similar taxes levied against any party to this Agreement. Upon request, University shall provide Consultant with certificates evidencing its tax-exempt status.

**6. COMPENSATION.** University shall compensate Consultant for all services to be performed hereunder and for all related expenses in accordance with the schedule on Exhibit B.The Consultant’s acceptance of final payment from University under this Agreement shall release University from all claims, demands and causes of action arising out of or relating to this Agreement, except for those that have been previously identified by the Consultant in writing and remain unresolved at the time of final payment.

**7. INDEMNIFICATION AND RELEASE.**

1. Consultant will defend, indemnify and hold University, its affiliates, subsidiaries, trustees, officers, employees, students and agents harmless from any and all losses, claims, liabilities, damages, costs and expenses (including reasonable attorney’s fees) which arise out of the negligent acts or omissions of Consultant, its agents or employees in connection with the provision of its services under this Agreement or by any breach or default in the performance of the obligations of Consultant hereunder, regardless of whether or not such claim, loss, liability, damage, cost or expense is caused in part by a party indemnified hereunder. The Consultant acknowledges that the indemnity granted to University by this Agreement includes indemnification for claims brought by employees of the Consultant against University. In the event that such a claim is made by an employee of the Consultant, the Consultant agrees to waive the immunity that the Worker’s Compensation Act provides to employers.
2. The Consultant releases and waives any and all claims, demands, or causes of action against University, its trustees, officers, faculty, students, employees and/or agents that arise from or are connected with the Consultant’s obligations pursuant to this Agreement, any injury to employees or agents of the Consultant or damage to or loss of any property of the Consultant or its employees or agents.
3. This indemnification and hold harmless provision shall survive the expiration or termination of this Agreement.

**8. PROPRIETARY INFORMATION: CONFIDENTIAL INFORMATION.**

1. Consultant recognizes that University’s business interests require a confidential relationship between University and Consultant and the fullest practical protection and confidential treatment of its trade secrets, business plans, contracts, agreements, internal reports, patient rates and charges or any other pricing information, patient information, management systems, utilization review methodologies, security systems, auditing procedures, policies, techniques, concepts, programs, innovations, inventions and improvements (hereinafter collectively termed “information”) which will be received or learned by Consultant during the term of this Agreement. Accordingly, Consultant agrees, both during and after the term of this Agreement, to keep secret and to treat confidentially all of University’s information, whether patentable, patented or not, and not to use or aid others in using any such information in competition with University. Upon termination of this Agreement, Consultant agrees to return to University all property of University, its parent and subsidiaries, if any, in its possession, including all computer discs and computer generated information. Consultant covenants that it will not disclose any of the information to any third party, and Consultant further covenants that it will not, either directly or indirectly, copy, or cause to be copied, or otherwise duplicated or reproduced any of the information. Consultant further covenants not to disclose or otherwise make known to any party, nor to issue or release for publication any articles or advertising or publicity matter relating to this Agreement or the information in which the name of University or any of its affiliate names are mentioned or used, directly or indirectly, unless prior written consent is granted by University. Further, Consultant agrees that each employee who provides any services to University under this Agreement shall be advised of his/her responsibility to abide by these confidentiality provisions. Notwithstanding the foregoing, the confidential information shall not include information which is (i) in the public domain or subsequently comes into the public domain without breach of this Agreement; or (ii) required to be disclosed pursuant to a judicial or court order, provided University shall be given prior notice and an opportunity to be object to such disclosure. The non-disclosure restrictions described above shall remain in effect after the termination date of this Agreement. Consultant shall return all property of University in its possession at the termination of this Agreement
2. Consultant agrees that all materials developed, generated or produced by Consultant pursuant to this Agreement (the “Work Product”) shall be the exclusive property of University for use as contribution to a collective work, is a work made for hire pursuant to U.S. Copyright Law and the Consultant may not use any Work Product for purposes not relating to University or University’s name or logo, without University’s prior written consent. Consultant shall have no continuing proprietary interest in such Work Product, except that University acknowledges that the Work Product may be created by the use of proprietary systems or programs of Consultant, which Consultant shall continue to have an unrestricted right to use for other purposes. Upon completion of the Services, or if this Agreement is terminated by University before completion for its convenience or for cause under Article 3, the Consultant shall submit to University two (2) full and complete reproductions of the Consultant’s Work Product. All such reproductions shall be the property of University, which may use them without the Consultant’s permission for any proper purpose.
3. Consultant agrees that upon University’s request, but without expense to Consultant, Consultant will execute any and all applications, assignments and other legal instruments, which University reasonably shall deem necessary of convenient for the protection of its information and property.

**9. INJUNCTIVE RELIEF.** Because of the difficulty in measuring economic loss to University as a result of any breach by Consultant of the provisions in Paragraph 7 above, and because of the immediate and irreparable damage that may be caused to University, for which it would have no other adequate remedy, Consultant agrees that University, in addition to and without limiting any other remedy or right it may have, shall have the right to an injunction or other equitable relief in any court of competent jurisdiction. The existence of this right shall not preclude any other rights and remedies at law or equity which University may have.

**10. STATUS OF CONSULTANT.**

1. In performing services hereunder, Consultant shall at all times be acting as an independent contractor. Consultant shall be responsible for the payment of all wages, salaries and other amounts and benefits due Consultant’s employees and shall be responsible for all reports and obligations relating to social security, income tax withholding, unemployment insurance, worker’s compensation and similar matters. Consultant shall not have any right or authority to execute any contract, or otherwise to assume any obligation or responsibility in the name of or on behalf of University, except to the extent specifically authorized in writing by University. Neither party shall be considered an agent, employee or servant of the other. Neither party is authorized to act as an agent for the other party.
2. Consultant will be solely responsible for determining the means and methods for performing the services and will determine the time, place and manner in which it will carry out the services within an overall schedule and strategy as agreed between Consultant and University.
3. No Consultant employee shall have any claim under this Agreement or otherwise against University for vacation pay, paid sick leave, retirement benefits, social security, workers compensation, health, disability, professional malpractice or unemployment insurance benefits or other employee benefits of any kind. Consultant will indemnify and hold University harmless from any and all liability arising from claims relating to the failure to make such payments, withholdings and benefits of any kind. This duty of Consultant shall survive the termination of this Agreement.
4. University will not withhold on behalf of such independent contractor/employee any sums for income tax, unemployment insurance, social security, or any other withholding pursuant to any law or requirement of any governmental body. Consultant will indemnify and hold University harmless from any and all liability arising from claims relating to the failure to make such payments, withholdings and benefits of any kind. This duty of Consultant shall survive the termination of this Agreement

**11. NOTICES.** All notices and other communications pertaining to this Agreement shall be in writing and shall be deemed duly to have been given if personally delivered to the other party, sent by facsimile or if sent by the United States Postal Service certified mail, return receipt requested, postage prepaid or by Federal Express, United Parcel or other nationally recognized overnight carriers. All notices or communications between University and Consultant pertaining to this Agreement shall be addressed as follows:

 **If to University:** University of Delaware

 Leigh Botner, Research Development Director

 University of Delaware

 206A Hullihen Hall

 Newark, DE 19716

 University of Delaware

 124 Hullihen Hall

 Newark, DE 19716-0101

 Attention: Office of General Counsel

 **If to Consultant:** Please insert

Either party may change its notification address by giving written notice to that effect to the other party in the manner provided herein. Notices shall be effective upon receipt.

**12. INSURANCE.** Consultant shall maintain the insurance in the amounts and types set forth on Exhibit C which is attached hereto and incorporated by reference herein.

**13. NOTICES.** All consents, waivers or other communications that are required or permitted hereunder shall be sufficient if given in writing and delivered personally, by a national overnight delivery service providing receipted delivery or by certified mail, return receipt requested, postage prepaid to University and Consultant at their respective addresses set forth on the signature page of this Agreement. All such notices shall be deemed to have been given on the date delivered or three (3) days after being mailed in the manner provided herein. Either party may, from time to time, change the address to which notices to it are to be sent by giving written notice thereof to the other party in accordance with this Section.

**14. ENFORCEMENT.**With respect to any judicial proceedings by and between the parties, it is hereby agreed that they shall be commenced only in: (a) the Complex Commercial Litigation Division of the Superior Court of New Castle County, Delaware; or (b) in default of subject matter jurisdiction therein, in any other state court of competent subject matter jurisdiction located within New Castle County, Delaware; or (c) in the United States District Court for the District of Delaware, and the parties do hereby consent to both personal jurisdiction and venue in and to proceedings brought in any such court which has competent subject matter jurisdiction. TO THE EXTENT PERMITTED BY LAW, IT IS MUTUALLY AGREED BY AND BETWEEN UNIVERSITY AND CONSULTANT THAT THE RESPECTIVE PARTIES HERETO SHALL, AND THEY DO HEREBY, WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BETWEEN THE PARTIES HERETO OR THEIR SUCCESSORS OR ASSIGNS ON ANY MATTERS ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS AGREEMENT OR THE PROJECT. In the event of any controversy, claim or action being filed respecting the Agreement or the Project, the substantially prevailing party shall be entitled, in addition to all other expenses, costs or damages, reasonable attorneys’ fees as determined by a court, whether or not such controversy was litigated or prosecuted to judgment.

**15. MISCELLANEOUS.**

1. Waiver of Breach. The parties hereto agree that the waiver by either party of a breach by the other party of any of the provisions contained in this Agreement shall not operate as or be construed to be a waiver of any other breach of this Agreement by either party.
2. Entire Agreement: Binding Effect. This Agreement constitutes the entire understanding between the parties hereto and is intended to be the complete and exclusive statement of the agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements and negations thereto. Any term from Consultant on any document containing terms inconsistent with those contained herein are not valid and will not be binding on University. Exhibit Ais intended to be and is hereby made a part of this Agreement for the purpose of describing in greater detail the Services to be performed by the Consultant; provided, however, that **Exhibit “A”** shall not confer any rights or privileges upon the Consultant that are inconsistent with the terms of this Agreement. The provisions of this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.
3. Assignment. The prior written approval of University shall be required to allow a delegation or assignment of duty to perform any obligation owed to University by Consultant, its agents, employees, suppliers, contractors or affiliates.
4. Modification. This Agreement may not be modified in any respect other than by an agreement in writing signed by both parties.
5. Construction and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware (excepting any conflict of laws provisions which would serve to defeat application of Delaware substantive law).
6. Severability. If any portion of this Agreement is held invalid, such invalidity shall not affect the validity of the remaining portions of the Agreement, and the parties will substitute for any such invalid portion hereof a provision which best approximates the effect and intent of the invalid provision.
7. Compliance with Laws. Consultant shall perform the Agreement in compliance with all applicable federal, state and local laws, rules, regulations, ordinances and all University policies and procedures, including University Design Standards as applicable, and represent that it and any personnel providing services hereunder has obtained all licenses and permits required by law to engage in the activities necessary to perform its obligations under the Agreement.
8. Counterparts. Provided that all parties hereto execute a copy of this Agreement, this Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Executed copies of this Agreement may be delivered by facsimile transmission or other comparable means. This Agreement shall be deemed fully executed and entered into on the date of execution by the last signatory required hereby.
9. Equal Employment Opportunity**.** In connection with the performance of the Services under this Agreement, the Consultant agrees as follows:
10. The Consultant agrees that as applicable it will comply with the nondiscrimination clause and reporting requirements contained in Executive order 11246 of September 24, 1965, and amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin and the implementing rules and regulations prescribed by the Secretary of Labor as well as the conditions and regulations applicable in the Vietnam Era Veterans Readjustment Act of 1972 and the Rehabilitation Act of 1973. These laws and regulations are incorporated in this Agreement.
11. The Consultant will furnish as applicable all information and reports required by Executive Order No. 11246 as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Consultant’s books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
12. In the event of non-compliance with the non-discrimination clauses of this Order or with any of the rules, regulations and orders, University may suspend or terminate this Agreement in whole or part and the Consultant may be declared ineligible for further Government contracts as provided by law.

**IN WITNESS WHEREOF,** University and Consultant, intending to be legally bound, have executed this Agreement as of the day and the year first written above by their duly authorized representatives.

**CONSULTANT:**   **UNIVERSITY OF DELAWARE**

By: By:

Title: Title:

Date: Date:

**EXHIBIT A**

**SCOPE OF WORK**

Consultant shall provide the Services as follows: grant writing and editing.

**EXHIBIT B**

**COMPENSATION**

Consultant shall be paid a fixed fee based on the scope of work per project. The amount per hour for the Services provided under the Agreement (“Fee”) may not exceed $Insert per hour. Parking on campus will not be covered by University.

Consultant shall submit invoices for authorized fees incurred hereunder on a monthly basis as agreed between Consultant and University. Such invoices will record the amount of time spent on University’s behalf and the contract matter. University shall pay all complete and undisputed invoices within thirty (30) days from receiving such invoices.

The compensation provisions set forth in this Exhibit B supersede any conflicting provisions in any other document or exhibit.

A schedule of the Consultant’s hourly fees is included in this Exhibit B. Such hourly fees shall not be increased during the Term of this Agreement without University’s written consent.

**EXHIBIT C**

**INSURANCE REQUIRMENTS**

The Consultant, at its own cost and expense, shall obtain and maintain in force during the term of this Agreement, the following insurance coverage:

1. Commercial General Liability insurance all on an occurrence basis in an amount not less than $3,000,000 per occurrence limit per project/jobsite for bodily injury, property damage, personal and advertising injury and products/completed operations. Coverage is to include full contractual liability coverage.
2. Worker's Compensation insurance in amounts required by law, and Employer's Liability insurance in the minimum of $500,000.
3. Business Automobile Liability insurance including comprehensive third party coverage for bodily injury (including death) or property damage with a minimum combined single limit of $1,000,000 per occurrence including coverage for owned, non-owned and hired vehicles.
4. Professional Liability Insurance including errors and omissions in an amount not less than two million dollars ($2,000,000) per claim and in the aggregate covering said services of this contract and shall be maintained for a minimum of two years following completion of all services under this agreement.

The insurance requirements identified above shall not be construed to modify, limit or reduce the indemnifications requirements set forth herein. All such coverage shall be in a form and with insurers acceptable to University. Additional coverage may be required from time to time based on the scope of services provided by the Consultant. Each policy of insurance listed above must be evidenced by a certificate of insurance. The University must also be named as a primary additional insured for each line of insurance, except for (b) and (d). Coverage shall be not contributing with or in excess of any coverage University may carry. The required certificates of insurance shall be delivered, no later than five (5) days before Term of the Agreement commences to the: Office of Risk Management, University of Delaware, 220 Hullihen Hall, Newark, Delaware 19716. All such insurance shall be renewed at least thirty (30) days before the expiration of any certificate previously furnished. The certificate shall also evidence twenty (20) days prior written notice of cancellation. Neither the issuance of any insurance policy required under this Agreement, nor the minimum limits specified herein with respect to the Consultant’s insurance coverage, shall be deemed to limit or restrict in any way the Consultant’s liability arising under or out of this Agreement.