

MASTER CONSULTING SERVICES AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 20__ between _____ (Consultant), and Johns Hopkins University (JHU), a Maryland Corporation whose principal place of business is 3400 N. Charles Street, Baltimore, Maryland, 21218. In consideration of the mutual promises contained herein, the parties agree as follows:

1. The Complete Name of Consultant is: _____.
Consultant's principal place of business is located at:

Consultant is a: _____ Corporation _____ L.L.C. _____ L.L.P.
_____ Partnership _____ Limited Partnership
_____ Proprietorship _____ Other Legal Entity: _____

State of Organization or Incorporation: _____

Employer's Identification Number or Tax I.D. Number: _____

2. During the term of the Agreement, Consultant agrees to provide professional services to JHU which JHU may authorize, from time to time, by the execution of Work Orders as described in this Agreement. Consultant SHALL NOT BE OBLIGATED TO PROVIDE SERVICE UNTIL A WORK ORDER OR OTHER WRITTEN AUTHORIZATION HAS BEEN EXECUTED BY BOTH PARTIES IN ACCORDANCE WITH THIS AGREEMENT.

3. Consultant agrees to provide services to JHU, and JHU agrees to accept said services and pay Consultant for same as follows:

3.1. PERSONNEL AND RATES.

3.1.1. If the Work Order provides for services to be performed on a time and materials basis, or for a fixed time, Consultant will provide to JHU the various categories of personnel specified at the rates specified in all Work Order(s) issued under and incorporated into this Agreement. Rates specified therein shall be effective for six months from the date of the Work Order(s), unless otherwise stated in the Work Order.

3.1.2. If the Work Order is a fixed price Work Order, Consultant shall specify the personnel to be used to perform the services requested.

3.1.3. JHU has the right of refusal or approval of people presented by Consultant, but such right shall be exercised reasonably, and Consultant shall be given reasonable discretion for Fixed Price Work Orders.

3.1.4. Work Orders may specify subcontractors or allow subcontractors to perform part of the work. In such event, any subcontractors must agree to be bound by the terms of this Agreement, particularly as to confidentiality and ownership of work produced, and Consultant shall be liable to JHU for any breach by any subcontractor retained by Consultant. Rates for subcontractors and overrides to Consultant for managing subcontractors, if any, shall be specified in the Work Order. JHU must approve all subcontractors.

3.2. DIRECTION AND CONTROL. Consultant shall be an independent contractor, and control the method and manner of performing the work to be completed. Consultant shall be responsible for supervision and control of any Consultant employees who perform services pursuant to a Work Order. All such persons shall be employees of Consultant and not of JHU. The responsibility for specification of the work to be performed and the specific services hereunder shall be exclusively that of JHU. The function and direction of Consultant personnel, and the services to be performed, will be detailed in the appropriate Work Order.

4. WORK ORDERS.

4.1. Each Work Order shall be issued in accordance with the terms of this Agreement, and will contain, where required by JHU, estimate(s) of cost, time and/or funding limitations. All Work Orders or other forms of written authorization shall be subject to the terms and conditions set forth in this Agreement. In the event any conditions contained in a Work Order conflict with any terms, conditions, or clauses in this Agreement, the provisions of this Agreement shall govern, unless clearly and specifically stated otherwise in the Work Order, and specifically reviewed by and authorized by the JHU Office of General Counsel. In the event of an ambiguity between the Work Order and this Agreement, the terms of this Agreement shall control.

4.2. Work Orders shall be written as Fixed Price, Fixed Time, or Time and Materials.

4.2.1. Fixed Price Work Orders shall specify a fixed price for which a specific task shall be performed to completion by a date certain. It shall be the responsibility of Consultant to complete the task and all of the deliverables for the price stated in the time required.

4.2.2. Fixed Time Work Orders shall specify one or more individuals whose services shall be provided to JHU for a fixed time at an agreed compensation rate. All Fixed Time Work Orders may be terminated by JHU on 30 days notice.

- 4.2.3. Time and Materials Work Orders shall specify the time and materials estimated to perform a specific task.
- 4.2.4. Estimated costs in Time and Materials Work Orders.
 - 4.2.4.1. Estimated costs provided by Consultant, in Time and Materials Work Orders, which may be included at the request of JHU, are provided as a reasonable estimate of total cost, not as a fixed price.
 - 4.2.4.2. Consultant will make a reasonable attempt to notify JHU as soon as practicable if it appears that the estimated cost will be exceeded. Consultant shall not be obligated to but may continue performance under any Work Order and may incur charges in excess of the total cost estimated, but not more than twenty-percent (20%) in excess, until an amendment is made to said Work Order and is approved in writing by JHU or a notice of termination has been received by Consultant.
 - 4.2.4.3. Consultant shall in no circumstance exceed estimates by more than twenty-percent (20%) without an amendment to the Work Order. If Consultant exceeds estimates by more than twenty-percent (20%), without an amendment to increase said estimate, all charges in excess of the twenty-percent (20%) will be the responsibility of the Consultant.
 - 4.2.4.4. Funding limits represent a not-to exceed amount. If included in a Time and Materials Work Order, a funding limit may not be exceeded without written authorization of JHU.
- 4.3. **ACTIVATION OF WORK ORDERS.** The following procedure will be followed to initiate and activate a Work Order under this Agreement.
 - 4.3.1. Consultant or JHU will prepare a Work Statement on a Work Order and submit such form in duplicate, together with all appropriate technical attachments, to the other party for approval.
 - 4.3.2. JHU upon its acceptance, shall execute the Work Order and return one fully executed copy to Consultant.
 - 4.3.3. A Work Order shall become effective only when signed by both parties
- 4.4. **TIME REPORTS.** With the exception of Fixed Price Work Orders, for which Time Reports may be waived, Consultant shall prepare and submit to JHU, monthly, or as

otherwise specified in the Work Order, Time Reports showing the total number of hours worked for each of Consultant's employees performing services pursuant to the applicable Work Order. JHU shall review each Time Report, sign it and return it to the Consultant's designated staff member without undue delay. JHU's signature shall signify that JHU approves the accuracy of the itemization of hours and authorizes payment therefor.

- 4.5. **PROJECT RELATED EXPENSES.** Where travel for Consultant personnel is approved on the Work Order by JHU, all necessary and reasonable travel expenses by Consultant personnel directly relating to any JHU project will be billed to JHU. Local mileage and other travel related expenses to and from the designated work site will not be allowed, unless specifically so provided in the Work Order. Any expenses for which Consultant seeks reimbursement must be pre-approved, but expenses as a class, such as mileage between work sites, may be specified and pre-approved in a Work Order.
5. **TERM OF AGREEMENT.** This Agreement will commence on the day first above written and remain in full force until terminated as provided for herein.
6. **INSURANCE AND LIABILITY.** Consultant agrees to carry the following insurance coverage during the term of this agreement:
 - 6.1. Worker's compensation as required by the laws of the state in which the work is being performed.
 - 6.2. Comprehensive general liability and property damage insurance with combined bodily injured and property damages limit of \$1,000,000 for each occurrence.
 - 6.3. Fidelity bonding up to \$500,000 for claims arising from fraudulent or dishonest acts on the part of any Consultant employee. This requirement may be waived in a Work Order.
7. **INDEMNIFICATION.** Consultant hereby agrees that it will defend, at its own expense, any claim or suit brought against JHU by third parties (not affiliates of JHU) arising from or related to any act or omission of Consultant. Consultant further agrees to indemnify JHU against any award of damages and costs (including reasonable attorney's fees) made against JHU arising from or related to any act or omission of Consultant. Indemnification of costs shall extend only to actual costs assessed. Consultant's obligation to indemnify JHU as set forth above is conditioned on JHU giving Consultant prompt written notice of all claims, providing reasonable cooperation in their investigation and defense, and permitting Consultant to defend JHU at Consultant's expense with legal counsel of Consultant's choice.

Notwithstanding the above, Consultant will not be required to defend or indemnify JHU with respect to losses or expenses caused by JHU's own negligence or willful misconduct. In the event of claims combining indemnifiable and non-indemnifiable allegations, Consultant shall provide costs of defense, but remains obligated to pay only those damages assessed as the result of acts or omissions of Consultant. JHU shall have the right to participate in any action with counsel of JHU's choice at JHU's expense.

8. CONFIDENTIALITY.

- 8.1. Confidential materials furnished by JHU relating to the performance of any Work Order, and JHU's software and hardware are the property of JHU and shall be treated as "confidential" and shall not be disclosed to third parties by Consultant and its employees without JHU's prior approval.
- 8.2. Confidential materials furnished to JHU by Consultant relating to the performance of any Work Order, and Consultant's software and hardware are the property of Consultant and shall be treated as "confidential" and shall not be disclosed to third parties by JHU and its employees without Consultant's prior approval. This shall not apply to materials necessary to utilize the Deliverables or to derive the intended benefit of the Deliverables, which may be disclosed but only to the extent necessary to permit JHU to utilize the Deliverables for their intended purpose.
- 8.3. A party's Confidential Information shall not include information which: (a) is or becomes a part of the public domain through no act or omissions of the receiving party; (b) was in the receiving party's lawful possession prior to the disclosure and had not been obtained by the receiving party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (d) is independently developed by the receiving party. In the event that a receiving party receives a binding request from a governmental agency or court requiring disclosure of Confidential Information, the receiving party will notify the disclosing party in sufficient time to permit the disclosing party to object to and defend against the disclosure.

9. OWNERSHIP RIGHTS IN DELIVERABLES.

- 9.1. **Consultant prior developed materials. JHU acknowledges that the Deliverables may in whole or in part be created using Consultant prior acquired knowledge, skill and expertise, and may include Consultant proprietary information and prior developed intellectual property of Consultant, which Consultant shall continue to own and have an unrestricted right to use for other purposes. To the extent that such Consultant prior developed and proprietary materials are included in the Deliverables, JHU shall have a perpetual, non-exclusive license**

to use the proprietary materials as part of the Deliverables, such that JHU may copy and disseminate the Deliverables and create derivative works therefrom, as appropriate and as required by JHU and by any special funding under which the particular Work Order is issued. Consultant shall have no continuing proprietary interest in the Deliverables, except as stated herein. Consultant may retain archival copies of the Deliverables for Consultant's internal use, and nothing herein shall prevent Consultant from continuing to use Consultant's information, knowledge, skill and/or expertise for other purposes.

- 9.2. Consultant agrees that all Deliverables, which means and includes all reports, designs, diagrams, studies, conclusions, recommendations, analyses and other materials developed, generated or produced by Consultant pursuant to a Work Order, including, but not limited to, analysis, design, custom programming, documentation, and other work related to the addition of new enhancements or functionality of JHU's computer systems (the "Deliverables") pursuant to this Agreement and any Work Orders, shall be owned by and shall be the exclusive property of JHU for use as a contribution to a collective work, and considered a "**WORK MADE FOR HIRE**" as that term is defined for copyright and other purposes.
- 9.3. Consultant hereby assigns all copyrights, patents, service marks and trademarks and all other intellectual property rights of Deliverables and all software, documentation, and other products and materials related to the Deliverables and supplied to JHU pursuant to a Work Order, finally and irrevocably to JHU, and Consultant agrees to execute any and all documents necessary to accomplish such assignment and/or to allow JHU to register any patent, service or trade mark, or copyright arising from the Work performed pursuant to this Agreement.
- 9.4. Upon termination or expiration of this Agreement, all software, documentation or materials belonging to Consultant or JHU shall be returned to the respective owner thereof and no copies shall be retained by the non-owning party unless the respective owner consents thereto. This shall not include documentation or other materials necessary for JHU to properly utilize the Deliverables and/or products developed.
- 9.5. **SOURCE CODE.** To the extent that the Deliverables includes computer software, Consultant shall provide as part of the deliverables, reasonably commented source code which shall be the exclusive property of JHU. Consultant shall also provide reasonably commented source code for all prior or outside Consultant developed software which becomes part of JHU's system, pursuant to services performed under this agreement, to which JHU has a non-exclusive license as previously described in this Agreement.
- 9.6. **Subcontractor developed materials.** To the extent that services are provided to Consultant by subcontractors who produce any portion of the Deliverables,

Consultant shall insure that its agreements with Subcontractors include a full assignment of rights to the Deliverables as required herein of Consultant

10. WARRANTIES AND REPRESENTATIONS OF CONSULTANT.

10.1. Consultant warrants that all work performed shall be done in a good and workmanlike manner in accordance with the standards in Consultant's Profession.

10.2. Intellectual Property. Consultant warrants that it owns and or has the rights to, and the power and authority to transfer the Deliverables to JHU, and that it has the rights in the Deliverables granted hereby. Consultant further warrants that the Deliverables shall be delivered free of any rightful claim of any third party for infringement of any United States patent, copyright, trade secret, or other intellectual property right. Consultant shall indemnify and hold harmless JHU and its subsidiaries or affiliates under its control, and their trustees, officers, employees and agents, against any and all losses, liabilities, judgments, awards and costs (including legal fees and expenses) arising out of or related to any claim that JHU's use or possession of the Deliverables pursuant to and for the purposes set forth in this Agreement, or any license granted hereunder, infringes or violates the copyright, trade secret or other proprietary right of any third party. Consultant shall defend and settle at its sole expense all suits or proceedings arising out of the foregoing, provided that JHU gives Consultant prompt notice of any such claim of which it learns. No such settlement which prevents JHU from continuing to use the Deliverables as provided herein shall be made without JHU's prior written consent. In all events, JHU shall, at its own cost and expense, have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing. If the Deliverables, or any part thereof, are held to constitute such an infringement and the use for the purpose intended of said Deliverables is enjoined, then Consultant shall, at its reasonable expense and option, either procure for JHU the right to continue using same, or replace same with a non-infringing product, or modify same so it becomes non-infringing. If Consultant shall not be able to do so in a timely manner, Consultant shall reimburse to JHU all sums paid to Consultant by JHU for the Deliverables.

11. EMPLOYEE SOLICITATION. During the term of this Agreement, and for six months after the termination of this Agreement and all Work Orders, neither party will solicit or employ employees of the other party without the permission of the other Party.

12. EMPLOYEE ROTATION. Consultant reserves the right to replace a Consultant employee at any installation of JHU during the performance of any Work Order(s) provided that such replacement employee shall possess substantially equivalent training, skills and level of competence required to perform assigned duties as defined in the Work Order. Provided

further, however, that as to certain employees of Consultant which JHU shall identify as key persons in any Work Order, substitution of such persons shall be with the agreement of JHU, and JHU may terminate a Work Order if a key person terminates and cannot be replaced to the satisfaction of JHU.

13. **INVOICES AND PAYMENTS.** Invoicing and payment shall be as specified in a Work Order, but if not so specified, Consultant shall prepare and submit invoices to JHU monthly, and JHU will pay to Consultant the invoice amounts within 60 days after receipt of invoice.

14. **TERMINATION OF AGREEMENT.**

14.1. Either party by written notice of not less than 30 days may terminate this Agreement; however, the terms provided in Sections 6, 7, 8 and 9 shall survive any such termination.

14.2. All Work Orders executed prior to the effective date of termination of this Agreement shall be completed as if this Agreement were still in force and effect, unless the Work Order has also been terminated in accordance with this Agreement, or in accordance with the Work Order.

14.3. In the event JHU does not execute Work Order(s) within six months of the date first above written, this Agreement shall automatically terminate. This Agreement shall likewise terminate in the event that more than six months have elapsed since completion of the last Work Order executed as provided herein.

15. **TERMINATION OF WORK ORDERS.**

15.1. **Without Cause.** Any individual Work Order under this Agreement may be terminated, in whole or in part, by JHU, upon not less than 30 days written notice to Consultant, whenever, for any reason JHU shall determine that such termination is in its best interest. JHU shall be obligated to pay for time, materials and project related expenses incurred prior to the termination date, and any irrevocable expenses committed to by Consultant prior to notice of cancellation.

15.2. JHU may terminate this Agreement and any Work Order immediately upon notice to Consultant for any material breach of this Agreement, subject to Consultants right to cure any breach within 15 days of the date of the Notice.

15.3. Consultant shall, on or before the date of termination, turn over to JHU all programs, source code, documentation, reports, data, flow diagrams, materials, and all work in process generated during the performance of the terminated Work Order. If this

Agreement is terminated because of breach by Consultant, JHU may, but shall not be obligated to, accept any Deliverables, or part thereof completed by consultant up to the termination, and for any Deliverables accepted, JHU shall pay Consultant in accordance with the provisions of the Work Order, or in such reasonable amount as the parties agree.

16. **NOTICES.** Any notices provided for in this Agreement shall be given in writing and transmitted by personal delivery or prepaid first class registered or certified mail addressed as follows:

Consultant:

JHU:

Director of Purchasing
B001 Eastern
The Johns Hopkins University
1101 E 33rd Street
Baltimore, MD 21218

With a copy to
The Office of the VP and General Counsel
113 Garland Hall
The Johns Hopkins University
3400 N. Charles Street
Baltimore, MD 21218

17. **INDEPENDENT CONTRACTOR.** In making and performing this Agreement, the parties act and shall act at all times as independent contractors, and at no time shall either party make any commitments or incur any charges or expenses for or in the name of the other party.
18. **FORCED WORK STOPPAGE.** Neither party shall be liable for any failure to perform its obligations under this Agreement if prevented from doing so by a cause or causes beyond its control. Without limiting the generality of the foregoing, such causes include Acts of God, or the public enemy, fires, floods, storms, earthquakes, riots, strikes, lockouts, wars or war operations, restraints of government or other cause or causes which could not with reasonable diligence be controlled or prevented by the party.
19. **ASSIGNMENT.** Except as provided herein, this Agreement may not be assigned except upon the written Agreement of the parties. This Agreement may be assigned by JHU without Consultant approval, to any JHU entity, which shall mean any affiliated entity, or any entity in which JHU has a financial or other legal interest.

20. GENERAL.

- 20.1. Consultant 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.)
- 20.2. Both parties agree that, except as may be required by applicable law or regulations, they shall not disclose in advertising, publicity, or otherwise the terms and conditions of this Agreement without prior written consent of the other party.
- 20.3. As specifically provided by Md. Anno. Code, CL, Section 21-104, the Parties agree that neither this Agreement nor any Work Order shall not be governed by the Uniform Computer Information Transactions Act (UCITA) as adopted in Maryland under Title 21 of the Commercial Law Article of the Maryland Annotated Code, as amended from time to time. This agreement shall be governed by the common law of Maryland relating to written agreements, as well as other statutory provisions, other than UCITA which may apply, and shall be interpreted and enforced as if UCITA had never been adopted in Maryland. The Parties further agree that electronic self-help shall not be permitted under this Agreement. Jurisdiction and venue for the resolution of any disputes shall be in the state or federal courts located in Baltimore, Maryland.
- 20.4. Each paragraph and provision is severable from the Agreement, and if one or more provisions or parts are declared invalid, the remaining provisions shall nevertheless remain in full force and effect.
- 20.5. This Agreement shall be incorporated in any and all Work Orders by reference with the same effect as this Agreement had been combined in and made a part of the Work Order in its entirety.
- 20.6. This Agreement, and any related Work Orders, contain the entire agreement between the parties, in relation to their subject matter, and there are no other agreements or understandings, verbal or otherwise, between the parties at the time of execution of this Agreement. No statements, promises, or inducements made by either party or agent of either party that are not contained in this written Agreement shall be valid or binding; and this Agreement may not be enlarged, modified, or altered except in writing signed by the parties.
- 20.7. **TIME IS OF THE ESSENCE.** All fixed price and time and materials-based Work Orders shall be completed by the completion date specified in the Work Order. Delays beyond the scheduled date shall be a breach of this agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized agents as of the date first above written.

Johns Hopkins University

Consultant

Signature: _____

Signature: _____

Name: Paul N. Beyer

Name: _____

Title: Director of Purchasing

Title: _____

Date: _____

Date: _____

WORK ORDER

This Work Order, by and between, JOHNS HOPKINS UNIVERSITY (JHU) and _____, (Consultant) is entered under and pursuant to the **MASTER CONSULTING SERVICES AGREEMENT** dated _____, _____, and is subject to all the terms and conditions of that Agreement. **TIME IS OF THE ESSENCE.**

Type of Agreement:

Fixed Term _____ Term: Start Date _____ Duration or End Date: _____

Fixed Price _____ Total Charge by Consultant: _____
Extras: _____

Completion Date: _____

Time and Materials _____ (Rates and Charges Described Below)

Description of Work: As per attached scope of work

Completion Date: _____

Consultant Personnel:	_____	Rate: _____	Key (YES) (NO)
	_____	Rate: _____	Key (YES) (NO)
	_____	Rate: _____	Key (YES) (NO)
	_____	Rate: _____	Key (YES) (NO)
	_____	Rate: _____	Key (YES) (NO)

Description of Additional Charges and Materials Costs: _____

Circle If Additional Terms (Attach and sign separate page): (YES) (NO)

Johns Hopkins University

Consultant

Signature: _____

Signature: _____

Name: Paul N. Beyer

Name: _____

Title: Director of Purchasing

Title: _____

Date: _____

Date: _____