

THIS SERVICE AGREEMENT (this “*Agreement*”) is entered into as of the ____ day of _____, 20__ (the “Effective Date”) by and between Yale University, a corporation organized and existing under and by virtue of a charter granted by the General Assembly of the Colony and State of Connecticut and located in New Haven, Connecticut (“The University”), acting through its _____ Department and _____ (“Consultant”), a _____ Corporation, whose principal place of business is at _____.

In consideration of the promises and mutual covenants contained in this Agreement, the University hereby engages Consultant, and Consultant accepts the engagement by the University, to perform the Services (as defined below) on the following terms and conditions.

ARTICLE 1. SCOPE OF SERVICES

1.1 **General Responsibilities.** Consultant agrees to perform the services set forth in Exhibit A (“Services”) and to provide the deliverables, if any, set forth in Exhibit A (“Deliverables”), on the schedule set forth in Exhibit A. Any material amendments to the Services, their scope, the Deliverables, or the timing of performance, shall be set forth in a separate writing duly executed by authorized representatives of each party and treated as an amendment to this Agreement.

1.2 **Schedule.** Consultant understands that time is of the essence in this Agreement and agrees to meet all milestones set forth in Exhibit A. Consultant shall monitor the progress of its provision of the Services and shall promptly advise the University of any delays or reasonably anticipated delays that may prevent the Services from being completed on the schedule set forth in Exhibit A.

1.3 **Professionalism.** Consultant agrees to use its best skill and judgment at all times to provide the Services expeditiously in accordance with the expertise, care and skill exercised by nationally recognized individuals and firms performing similar services for projects of comparable size and complexity.

ARTICLE 2. TERM AND TERMINATION

2.1 **Term of Agreement.** This Agreement shall be effective as of the Effective Date, and shall remain in effect until _____ or until all obligations set forth in this Agreement have been satisfactorily fulfilled, or the Agreement has been terminated under this Article, whichever occurs first.

2.2 **Termination for Convenience.** The University shall have the right to terminate this Agreement for any reason in its sole discretion upon ten (10) business days’ written notice given to Consultant, specifying the extent of termination and the effective date of termination. If the University gives notice of termination under this section, Consultant shall immediately cease to perform the Services upon receipt of such notice, using reasonable care in concluding its provision of the Services, and the University shall compensate Consultant for Services Consultant has satisfactorily performed as of the effective date of termination and pay Consultant for all Reimbursable Expenses (as defined in §3.2) properly incurred by Consultant as of the effective date of termination, and any reasonable wind-up costs mutually agreed to by the parties. Consultant shall not be entitled to additional payment or damages, including anticipated fee or profit, any claim to which Consultant hereby expressly waives.

2.3 **Termination for Cause.** Either party may terminate this Agreement for breach effective upon seven (7) calendar days’ written notice to the other if, through no fault of the non-breaching party, and provided such breach is not corrected within the notice period, the other substantially fails to perform in accordance with the terms of this Agreement or fails to perform with the diligence that will ensure timely completion of its obligations. If the University terminates this Agreement in whole or in part for cause, then the University may withhold further payments to Consultant. The University shall have the right to reduce and set off against amounts payable under this Agreement any indebtedness or other claim which the University may have against Consultant, however and whenever arising. Consultant shall not be entitled to additional payment or damages, including anticipated fee or profit, which damages are hereby expressly waived.

ARTICLE 3. COMPENSATION; REIMBURSEMENT OF EXPENSES; AND PAYMENT

3.1 **Total Compensation/Total Obligation.** The University's total obligation to Consultant under this Agreement, including compensation for goods, services, and reimbursable expenses, shall not exceed _____ without the prior written approval of the University. The University shall make no additional payment for extra services unless performed pursuant to a fully executed Amendment to this Agreement. To request payments due, Consultant shall submit invoices to the University as provided below in §3.3 upon completion of the milestones described in Exhibit A, or as may otherwise be provided in Exhibit A. The University shall make final payment only after receipt of the final satisfactory Deliverable (if any) or completion of the Scope of Work.

3.2 **Expenses.** Unless Exhibit A provides otherwise, the University will reimburse Consultant for its reasonable and actual expenses [travel, meals and/or pre-approved incidentals] incurred in performing this Agreement ("Reimbursable Expenses"). All travel expenses must demonstrate an appropriate use of University funds and as such, shall conform to University policy (see Yale Policy 3301, *Travel on University Business*, available at <https://your.yale.edu/policies-procedures/policies/3301-travel-university-business>, including without limitation, that the University will not reimburse Consultant for first-class or business class travel. Meals and incidental expenses while traveling in the performance of this Agreement will be reimbursed at actual costs or the U.S. Government General Services Administration (GSA) per diem rates (available at www.gsa.gov), whichever is less. Consultant agrees to substantiate each request for reimbursement by providing The University with reasonable documentation, including original papers and receipts. Unless otherwise specified by Exhibit A, no other expenses will be reimbursable.

3.3 **Payment.** The University shall pay Consultant's invoices by the day that is Forty-five (45) calendar days after the University receives Consultant's invoice as directed below, unless the University has grounds to withhold payment pursuant to §2.3. Consultant shall submit invoices to Yale University Accounts Payable, P.O. Box 208228, New Haven, Connecticut 06520-8228 noting the Purchase Order Number, department/school and contact on the invoice. The University shall make all payments in U.S. dollars.

ARTICLE 4. CONSULTANT REPRESENTATIONS AND WARRANTIES

Consultant expressly represents and warrants that:

4.1 Neither Consultant, nor any of its principals, nor any employee or subcontractor of Consultant performing the Services, is a faculty member, employee, postdoctoral scholar, student, or agent of the University. Neither Consultant, nor any of its principals, or any of its employees or subcontractors performing the Services, has a familial or other relationship with a University employee participating in the contracting for or receipt of the Services under this Agreement.

4.2 Neither Consultant, nor any of its principals, nor any employee or subcontractor of Consultant performing the Services, is as of the Effective Date debarred, declared ineligible, or voluntarily excluded by any Federal department or agency from participation in federally-funded contracts. Neither Consultant nor any of its employees is, as of the Effective Date, debarred, declared ineligible or voluntarily excluded by any State of Connecticut department or agency from participation in State-funded contracts. Consultant shall notify the University promptly and in writing if it becomes debarred or suspended during the term of this Agreement or if it becomes subject to any investigation that could lead to debarment.

4.3 No Services or Deliverables provided to the University by Consultant under this Agreement infringe any patents, copyrights, trade secrets, or any other rights of third parties. Consultant has obtained all necessary permissions required for the University to utilize the Services and the Deliverables as contemplated by this Agreement. Consultant shall indemnify the University for any loss, damage, and cost of defense associated with any breach or alleged breach of this representation, as set forth further in §5.2 below.

4.4 All material work product and merchandise supplied under this Agreement (a) shall strictly conform to all specifications, drawings, samples, or other descriptions furnished to and approved by the University (b) shall be fit and serviceable for the purpose intended, as agreed to by the University and Consultant, (c)

shall be of good quality and free from defects in materials and workmanship, and (d) shall be new and not refurbished or reconditioned, unless expressly agreed in writing by the University.

4.5 All of Consultant's employees and subcontractors working under this Agreement are working legally in the United States under a valid immigration status.

4.6 Consultant has obtained all licenses and permits required under applicable law to perform services under this Agreement.

4.7 While at any University location, Consultant's personnel, agents, and permitted subcontractors shall comply with all reasonable requests, standard rules, and regulations of the University communicated to Consultant regarding personal and professional conduct, including without limitation any security or privacy requirements, and shall otherwise conduct themselves in a business-like manner.

4.8 When engaged in activities involving live vertebrate animals under this agreement, it has in place:

- An active PHS Assurance;
- An active USDA Registration, if covered species are identified in Exhibit A; A process for the notification of reportable items to regulatory or accrediting agencies when required due to non-compliance or significant adverse event that directly impact animal welfare and well-being;
- A protocol(s) approved by a duly constituted IACUC supporting the Services and Deliverables, if any, as set forth in Exhibit A; and
- A process to promptly notify the University of any reportable events, related to the Services as set forth in Exhibit A.

4.9 Consultant agrees to the ownership of animals expressly provided in Exhibit A.

4.10 Consultant agrees and warrants that [except as expressly provided in Exhibit A] it is AAALAC accredited.

ARTICLE 5. LIABILITY AND INSURANCE

5.1 **Insurance.** At all times during its performance under this Agreement, Consultant shall obtain and keep in force (a) Comprehensive General Liability insurance against all claims of bodily injury, death, or property damage with a combined single limit of \$2,000,000 each occurrence and \$2,000,000 aggregate; (b) Workers' Compensation within statutory limits; and (c) Comprehensive automobile liability insurance, if applicable, with limits of \$2,000,000 each person, \$2,000,000 each occurrence; and (d) Errors and Omissions insurance with limits of \$1,000,000 per claim, \$1,000,000 aggregate, if applicable. All such certificates evidencing such insurance shall name the University as an additional insured. Upon request by the University, Consultant shall provide all such certificates to the University Office of Risk Management prior to commencement of services or delivery of goods.

5.2 **Indemnification.** Consultant agrees to indemnify and hold The University harmless from and against all liability, injuries, claims, damages or loss, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of Consultant's negligent acts or omissions under this Agreement or in connection with Consultant's breach of warranties or representations under this Agreement. The foregoing agreement to indemnify and hold harmless shall not apply to the extent such liability, injuries, claims, damages, or loss was caused directly by the intentional, willful, or reckless acts of The University.

5.3 **Limitation on Damages.** Consultant and its subcontractors expressly waive all rights, interest and claims against The University for indirect, incidental, special, punitive, or consequential damages, including lost profits, arising out of or relating to this Agreement. Under no circumstances will damages payable to Consultant arising out this Agreement exceed the University's total obligation specified in §3.1.

5.4 **Consultant Responsibility.** Consultant shall be fully responsible to The University for acts and omissions of its employees, subcontractors and others directly or indirectly furnishing services, labor, materials or equipment on its behalf.

ARTICLE 6. PAYMENT OF TAXES

The University is exempt from federal and state taxation, under section 501(c)(3) of the Internal Revenue Code (including all Connecticut sales and use taxes (Permit E00015) and federal excise taxes (Exemption No. 06730237F)). Consultant shall be solely responsible for payment of any and all taxes or fees, whether foreign or domestic, relating to Consultant's activities under this Agreement.

ARTICLE 7. INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION

7.1 **A. Ownership.** Consultant agrees and warrants that all Work Product (as defined below) shall automatically be the sole property of the University upon their creation or (in the case of copyrightable works) fixation in a tangible medium of expression, and the University shall own all rights, including all Intellectual Property Rights (as defined below), title and interest therein. Consultant acknowledges that all original works of authorship that are made by Consultant (solely or jointly with others) within the scope of its consulting relationship with the University and which are protectable under copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 U.S.C. Section 101). As used in this Agreement, "Work Product" shall mean all materials, inventions, ideas, research results, information, improvements, works of authorship and any other work product created, developed, made, conceived, reduced to practice or delivered by Consultant in connection with this Agreement, in whole or in part, solely or in collaboration with others, including, without limitation, the Deliverables, and all intermediate and partial versions thereof, as well as all program materials, flow charts, notes, outlines, and the like created in connection therewith; and "Intellectual Property Rights" shall mean all copyrights, trademarks, trade secrets, know-how, patents, patent applications, continuations, continuations in part, divisions, reissues and extensions, all foreign counterparts, mask work rights and all other proprietary and intellectual property rights throughout the world.

B. Assignment of Rights. Consultant hereby assigns to the University all of its right, title and interest in and to all of the Work Product and all copies of any of the foregoing, including, without limitation, all copyright and other proprietary rights thereto throughout the world (and all renewals and extensions thereof).

C. Cooperation. Consultant will at all times during the term of this Agreement and after termination for any reason, assist the University or its assignee or designee in every proper way to obtain for the benefit of the University or its assignee or designee, patents, copyrights, trade secrets and other legal protection for the Work Product. Consultant agrees to: (i) promptly and fully disclose to the University or its assignee or designee, any and all Work Product; (ii) assist the University or its assignee or designee in evidencing, recording, obtaining, perfecting, registering, and from time to time (at University's expense) in enforcing, all patents, copyrights and other rights and protections relating to the Work Product in any and all countries; and (iii) execute, acknowledge and deliver, when so requested by the University or its assignee or designee or its or their attorneys, all papers, including applications for patents or copyrights, assignments and affidavits, as reasonably requested in order to obtain, maintain or renew any such patents or copyrights, trade secrets or other legal protection, or to vest title thereto in the University or its assignee or designee, or to otherwise carry out the purposes of this section. Further, Consultant irrevocably designates and appoints the University as its agent and attorney-in-fact to act for and on its behalf to execute, register and file any such applications, and to do all lawfully permitted acts to further the registration, prosecution and issuance of patents, copyrights or similar protections with the same legal force and effect as if executed by Consultant

D. Injunctive Relief. Consultant acknowledges that the University may not have an adequate remedy at law in the event of any breach or threatened breach by Consultant of any provision of this section and that the University will suffer irreparable damage and injury as a result. Accordingly, in the event of any such breach or threatened breach, Consultant hereby consents to the granting of injunctive relief against it by any court of competent jurisdiction without the posting by the University of any bond or other security therefore, and Consultant further agrees not to raise as a defense the availability of monetary damages as a remedy.

7.2 **Confidentiality.** During the course of this Agreement, Consultant may receive non-public documents and confidential information, however transmitted, from The University ("Confidential Information"). Consultant shall presume that all documents and information received by it from The University are confidential, absent written

confirmation of their non-confidentiality. Confidential Information shall not include information that Consultant can demonstrate, by written evidence, was publicly available at the time of disclosure or was independently developed by Consultant without reference to Confidential Information. Consultant agrees to use Confidential Information only in performing its responsibilities in this Agreement; to keep The University's Confidential Information strictly confidential; to disclose any Confidential Information to its employees and subcontractors only on a need-to-know basis; to take all reasonable steps to maintain confidentiality (such steps shall not be less than Consultant takes with respect to its own confidential information) and to preserve confidentiality when using email as a form of communication. Consultant shall obtain agreements from its employees and subcontractors to meet the obligations of confidentiality set forth in this section. Consultant will not disclose Confidential Information to any third party except with The University's written permission; provided, however, that Consultant may disclose Confidential Information if required to do so by law, regulation, or judicial order, but only after having given prompt notice to The University of any such request received by Consultant.

7.3 Return or Destruction of Data. Within 15 (fifteen) calendar days of the completion of the term or of the termination of this Agreement, or upon earlier request of The University, Consultant shall return all documents, data and other information provided by The University to Consultant or Consultant's employees or agents in connection with this Agreement. Consultant, upon the request of The University, shall destroy all copies of such The University-provided data, documents, or information in Consultant's possession or control, and certify to The University that it has completed such destruction.

ARTICLE 8. RESTRICTIONS ON USE OF THE YALE NAME

Consultant agrees not to use (a) Yale's name, (b) the name of any employee, student or agent of Yale, or (c) any trademarks, service marks or trade names owned or controlled by Yale, in any sales, promotional, advertising or other publication, without the express prior written permission of Yale. In no event shall Consultant or its employees, agents or subcontractors represent themselves as employees or agents of Yale.

ARTICLE 9. INDEPENDENT CONTRACTOR

Consultant and its employees shall perform its duties in this Agreement as an independent contractor and not as employees of the University. Neither Consultant nor any agent or employee of Consultant shall be or, shall be deemed to be, an agent or employee of the University and Consultant shall have no authorization, express or implied, to bind the University to any agreements, liability, or understanding. Consultant shall be responsible for all tax withholding or other federal, state, employment and other taxes related to its own operations and its relationships with its employees. The University shall not withhold any state or federal taxes unless such withholding is required in accordance with nonresident alien taxation laws or backup withholding procedures. The University shall issue an IRS Form 1099 in Consultant's name for total payments made. Consultant further acknowledges that Consultant and its employees are not entitled to receive from the University worker's compensation, unemployment compensation, or any employee benefits, statutory or otherwise.

ARTICLE 10. GENERAL PROVISIONS

10.1 Force Majeure. The provisions of this Agreement may be suspended and performance delayed or cancelled if performance is made impracticable by an Act of God, terrorism, labor dispute, action of court or public authority, pandemic, military action or any other reason beyond the reasonable control of either party.

10.2 Nondiscrimination. Consultant shall abide by the University's nondiscrimination policies, as described in Yale University's Equal Opportunity Statement, <http://www.yale.edu/equalopportunity/policies/index.html>. Further, both parties agree to comply with all relevant local ordinances, state, and federal statutes in the administration of its employment policies.

Yale University is a federal government contractor and, as such, the provisions of 41 CFR § 60-1.4(a) are, if applicable, incorporated by reference. In addition, this contractor and subcontractor shall abide by the requirements of 41 CFR § 60-300.5(a) and 41 CFR § 60 741.5(a). These regulations prohibit, respectively, discrimination against qualified protected veterans and qualified individuals on the basis of disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.

10.3 **Waiver.** No waiver by either party of any provision or any breach in this Agreement shall be deemed a waiver of any other provision or subsequent breach, nor shall any such waiver constitute a continuing waiver. Delay or failure of either party to insist on strict performance of any provision of the Agreement or to exercise any rights or remedies in this Agreement shall not be deemed a waiver.

10.4 **Compliance with Laws.** Consultant shall ensure that its performance of Services under this Agreement is in compliance with all federal, state and local laws, ordinances, rules and regulations (collectively “Laws”) and that all Deliverables satisfy any requirements of, and do not violate, any applicable Laws. Consultant represents and warrants that it is under no obligation or restriction, nor will Consultant assume any obligation or restriction which would in any way interfere or be inconsistent with its commitments under this Agreement.

10.5 **No Third-Party Beneficiary Rights.** This Agreement is not intended to create rights for any third parties. Any person who is not a party to this Agreement has no right to enforce any term or terms of this Agreement.

10.6 **Assignment.** Consultant may not assign any obligations of this Agreement without the prior written consent of the University.

10.7 **Governing Law.** This Agreement is governed by and interpreted in accordance with the laws of the State of Connecticut, without regard to its principles of conflicts of law. All disputes regarding this Agreement shall be resolved in the cognizant state or federal courts located in New Haven, Connecticut.

10.8 **Interpretation.** All parties acknowledge and agree that this Agreement has been freely negotiated and that in any dispute over the meaning, interpretation, validity or enforceability of this Agreement or any of its terms or conditions, there shall be no presumption whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.

10.9 **Successors and Assigns.** Consultant binds itself, its partners, successors, assigns and legal representatives to the University and its successors, assigns and legal representatives with respect to all of its covenants and representations in the Agreement.

10.10 **Entire Agreement.** This Agreement and attached Exhibits contain and constitute the entire agreement between the parties concerning its subject matter and supersedes all oral or written agreements, negotiations, correspondence, documentation, and statements made before its acceptance and execution.

10.11 **Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be enforceable to the same extent as an original.

10.12 **Survival.** Consultant and the University shall have a continuing obligation after termination of this Agreement to comply with any provision of this Agreement intended for the University’s protection or benefit, or that by its sense and context, is intended to survive the completion, expiration or termination of this Agreement.

10.13 **Notices.** All notices concerning this Agreement shall be in writing and deemed sufficiently given if delivered in person with a receipt signed by the person accepting delivery; or sent by facsimile, with confirmation of receipt; or by registered or certified mail, postage prepaid; or by recognized overnight delivery service, with confirmation of receipt, to the address of the applicable party as set forth below signature.

10.14 **Severability.** If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

10.15 **Rights Cumulative.** Except as otherwise provided herein, all rights and remedies available to any party hereto, whether hereunder, at law or in equity, will be cumulative and may be resorted to or relied on simultaneously or seriatim, and the exercise of any one or more rights or remedies will not be deemed an election of remedies or rights.

10.16 **Order of Precedence.** In the event of any inconsistency between any provision of this Professional Services Agreement and the provisions of any Schedule, Exhibit or Rider hereto, the provisions of this Professional Services Agreement shall govern.

10.17 **Not for Profit Tax Exempt Status.** Notwithstanding any other provision of this Agreement, Consultant acknowledges that the University is obligated to act exclusively in furtherance of the educational and research mission and not-for-profit tax exempt purposes and actions so taken by the University in good faith should not be deemed a breach by the University of any of its obligations hereunder.

The following are incorporated into and made fully a part of this Agreement:

Exhibit A Scope of Services; Milestones; Deliverables

IN WITNESS WHEREOF, the parties have caused the signature of their duly authorized representatives to be affixed hereto, as of the date specified below:

YALE UNIVERSITY

(CONSULTANT)

Signature

Signature

Print Name:

(Associate Vice-President and Chief Procurement Officer or Director of Purchasing Services, Assistant Vice President and Controller or their Designee)

Print Name:

Title:

Date: _____

Date: _____

**NOTICE INFORMATION FOR THE UNIVERSITY
(PLEASE TYPE OR PRINT)**

Name (in print):

Title:

Address:

Address:

City:

State:

Zip Code:

Email:

Telephone:

Fax:

With a copy to:

Contract Manager

Yale University Purchasing Services

150 Munson Street, 5th Floor

New Haven, Connecticut 06511

Fax: (203)432-9966

**NOTICE INFORMATION FOR CONSULTANT (PLEASE
TYPE OR PRINT)**

Name (in print):

Title:

Address:

Address:

City:

State:

Zip Code:

Email:

Telephone:

Fax:

With a copy to (if applicable):

Name (in print):

Title:

Address:

Address:

City:

State:

Zip Code:

Email:

Telephone:

Fax: