



Cornell University

Professional Services Agreement

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is made by and between Cornell University, a New York not-for-profit education corporation, ("Cornell") on behalf of its _____ ("College/Unit"), and _____ ("Consultant") as of the Effective Date.

For good and valuable consideration, the parties agree as follows:

1. **General Purpose.** The general purpose of this Agreement is to engage the services of Consultant to perform the services and provide the deliverables described in **Schedule A** (the "Services" or "Scope of Services"). The surrounding facts and circumstances are more fully set out in the attached: **Schedule A** (Scope of Services), **Schedule B** (Project Timetable and Task Description), **Schedule C** (Payment Amount and Schedule), **Schedule D** (Consultant's Personnel), and **Appendix 1** (Insurance Requirements), all of which are incorporated by this reference.

2. **General Duties of Consultant.**

2.1 Consultant shall perform the Services in accordance with the attached Schedules and in accordance with professional standards for performing services of a similar kind. Consultant warrants that all persons assigned by Consultant to the performance of this Agreement (or any specified subcontractor) are fully qualified to perform the Services required. Cornell has assigned a representative ("Cornell's Representative") to provide direction to Consultant with respect to the Services. Consultant's personnel who will perform the Services are listed in **Schedule D**. Consultant may not replace or reassign such personnel without the prior written consent of Cornell's Representative. If applicable, Consultant shall replace personnel with a person having at least equivalent experience and qualifications. Cornell shall have the right to review and approve such replacement personnel.

2.2 Subject to Section 2.1 above, Consultant may assign the performance of any portion of the Services to a subcontractor; provided that Consultant shall be fully responsible for any and all acts and omissions of any subcontractor in connection with the performance of this Agreement. All terms, conditions and requirements of this Agreement will apply without qualification to any services performed or goods provided by any subcontractor.

3. **Period of Performance.** Consultant agrees that all Services provided under this Agreement shall commence on _____, 20____ and be completed no later than _____, 20____ (the "Term"). Consultant shall adhere to the timetable in **Schedule B** unless such period is otherwise extended by Cornell in writing. Consultant shall be responsible to Cornell for any damage caused by its failure to comply with the timetable.

4. **Compensation.** Subject to the terms and conditions of this Agreement, Cornell shall pay Consultant an amount not to exceed \$_____ in exchange for the Services. The schedule of payments is contained in **Schedule C**. Consultant shall submit all invoices to Cornell Accounts Payable, 377 Pine Tree Road, Ithaca, NY 14850 or emailed to dfa-4040_invoice@cornell.edu, referencing the purchase order number. Notwithstanding any other provisions of this Agreement, the total amount payable by Cornell for the Services will be determined by applying the stated rate of compensation to the services actually performed by Consultant. Consultant will not render the Services and Cornell will not be required to pay for any services in excess of the amount stipulated above, unless Consultant has first secured prior written approval from Cornell through a contract amendment.

5. **Payment Terms.** Consultant shall be paid after Cornell's receipt from Consultant of properly prepared invoices in accordance with Cornell's invoicing instructions as further set forth below in this Section. Cornell may make adjustments to Consultant's invoice due to shortages, rejection, or other failure to comply with the provisions of this Agreement. Discount periods, if any, shall commence after the latest of final acceptance, delivery, receipt of any required documentation, or receipt of invoice. Delays in receiving the invoice, errors or omissions on the invoice, or lack of supporting documentation required by the terms of this Agreement will be cause for withholding settlement without losing prompt payment discount privilege. Invoices must be accompanied by transportation receipt if transportation is payable as a separate item. Consultant shall submit an original invoice to Cornell promptly after each shipment, if applicable, in accordance with the instructions on the purchase order. If Consultant elects to use paper or email invoices, all payments are due either (i) within sixty (60) days following Cornell's receipt of the invoice if receiving check payments, or (ii) forty-five (45) days following Cornell's receipt of the invoice if Consultant is enrolled to receive direct deposit payments. If Consultant elects to register for electronic invoicing and direct deposit payments through the Automated Clearing House (ACH), then all payments are due Net 30 days after the receipt of invoice.

6. **Tax Withholding for Domestic and Foreign Consultants.** All payments from Cornell to Consultant under this Agreement may be subject to tax withholding. Cornell reserves the sole right and discretion to withhold tax where it believes it is required to do so under the tax laws of any jurisdiction. By accepting this Agreement, the Consultant is relinquishing all claims against Cornell for any amounts withheld and remitted by Cornell to a tax authority. It is the Consultant's sole responsibility to provide Cornell with timely, complete, accurate, and legible forms and/or documents necessary to claim a reduction or elimination of withholding taxes (e.g., Form W-8BEN). Cornell reserves the sole right and discretion to make the determinations as well as whether such forms and/or documents are sufficient to reduce or eliminate withholding tax on any payment to the Consultant.

7. **Independent Contractor Status.** Consultant is an independent contractor and not an employee, partner, or joint venturer of Cornell. Consultant is not an agent of Cornell, nor is it authorized to transact business, enter into agreements, or otherwise make commitments on behalf of Cornell, unless expressly authorized in writing by an authorized representative of Cornell. Cornell will not pay or withhold federal, state, or local income tax or other payroll tax of any kind on behalf of Consultant or its employees. Consultant is not eligible for, not entitled to, and shall not participate in any of Cornell's pension, health, or other benefit plans. Consultant is solely responsible for the payment of all required payroll taxes, whether federal, state, or local in nature, including, but not limited to income taxes, Social Security taxes, Federal Unemployment Compensation taxes, and any other fees, charges, licenses, or payments required by law.

8. **Use of Cornell Data.** Cornell shall retain, as between the parties, exclusive ownership of all data, material, books, records, and information in any format or medium (including provided orally) submitted or made available to Consultant by Cornell or by any other person acting on behalf of Cornell (collectively, "Cornell Data"), unless otherwise publicly available. Subject to terms and conditions contained in Section 11. Intellectual Property, Consultant is granted a limited, non-transferable, non-sublicensable, nonexclusive license to use such Cornell Data solely for the purpose of performing its obligations under this Agreement. Consultant will provide access to Cornell Data only to those Consultant employees, subcontractors and agents who need to access the data to fulfill Consultant's obligations under this Agreement. **Consultant shall not access or use Cornell Data to create aggregated or de-identified data nor use Cornell Data as training data in generative artificial intelligence systems unless directed by Cornell.** Upon expiration or termination of this Agreement, Consultant will return to Cornell in a readily usable format, remove, or securely delete or destroy, as directed by Cornell, all Cornell Data.

9. Access to Data, Response to Legal Demands or Requests for Data.

9.1 Cornell shall have the right, at all times during the Term of this Agreement, to access, copy and/or remove any and all Cornell Data and information from Consultant. In addition, in connection with Cornell's response to an e-discovery request or other legal proceeding, governmental request, or other a claim or demand upon receipt of written request from Cornell, Consultant will provide Cornell with any existing logs or other Cornell Data and information upon receipt of a written request from Cornell.

9.2 If Consultant (a) files a petition seeking to take advantage of any law relating to bankruptcy or insolvency, (b) is adjudicated to be bankrupt, (c) is the subject of a petition seeking liquidation, reorganization, winding-up, dissolution or adjustment of indebtedness, (d) becomes insolvent or makes an assignment for the benefit of creditors, or (e) has a receiver appointed on its behalf, Consultant will return in a readily usable format, remove, or destroy, as directed by Cornell, all Cornell Data and information.

9.3 Upon receipt of valid legal process (the "Legal Request") seeking Cornell Data, Consultant will attempt to redirect the requesting third party to Cornell and/or request that the third party notify Cornell of its Legal Request. If Consultant's redirecting efforts are unsuccessful, and provided Consultant is not prohibited by law from doing so, Consultant will provide commercially reasonable notice to Cornell of the Legal Request, prior to disclosure of any Cornell Data, which would include, to the extent permitted by law, a copy of the Legal Request received by Consultant from the third party. Consultant will thereafter respond to the Legal Request in the time permitted unless Cornell has taken appropriate legal steps (e.g., Motion to Quash or Motion for a Protective Order) to stop or limit Consultant's response.

9.4 If any legal process is served on Cornell to which Cornell intends to respond, then Consultant will provide Cornell with access to any Cornell Data in Consultant's possession together with any necessary encryption keys. If Cornell is unable to access any Cornell Data using the tools and documentation provided by Consultant, then, upon request, Consultant will provide commercially reasonable assistance to enable Cornell to obtain the Cornell Data.

10. Confidentiality.

10.1 Consultant shall not directly or indirectly disseminate or otherwise disclose, deliver, or make available to any person outside its organization any Confidential Information (as defined below) without Cornell's prior, express, written consent or as otherwise expressly permitted by this Agreement. Consultant shall protect Confidential Information with the same degree of care used to protect its own proprietary or confidential information from unauthorized use or disclosure, which shall not be less than a reasonable degree of care. Consultant shall use Confidential Information solely for purposes of its performance of the Services and shall not use Confidential Information for any other purpose without the prior written consent of Cornell. Consultant may disclose Confidential Information only to persons within its organization who have a need to receive such Confidential Information in order to perform Consultant's obligations under this Agreement and who are bound by confidentiality and non-use obligations with respect to the Confidential Information in a manner that is consistent with the terms of this Section.

10.2 Notwithstanding the foregoing, Consultant's obligations with respect to Confidential Information shall not apply to any information that: (a) is or becomes publicly available in a manner not involving Consultant's violation of this Agreement or any other agreement to which Consultant is a party; (b) was known to Consultant at the time it was disclosed, other than by previous disclosure by or on behalf of Cornell, as evidenced by Consultant's written records at the time of disclosure; (c) is independently developed by Consultant outside the scope of this Agreement without use of or reference to any Confidential Information; or (d) is lawfully and in good faith made available to Consultant by third

persons without the breach of any confidentiality obligation of which Consultant is or reasonably should be aware.

10.3 As used in this Agreement, the term “Confidential Information” means all information disclosed by or on behalf of Cornell to Consultant in connection with this Agreement or Consultant’s performance of the Services, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information includes, without limitation, the terms of this Agreement; work performed and deliverables provided by Consultant to Cornell pursuant to this Agreement; Cornell Data; Cornell’s scientific, technical, trade or business information; information pertaining to Cornell’s information security, physical security, network security, systems security, or staff security; Cornell’s business, development, or construction needs, plans, methods, or proposals; and financial information.

10.4 If required by law or by order of a court of competent jurisdiction, then Consultant may disclose Confidential Information to a governmental authority, provided that Consultant shall: (i) make reasonable efforts to give Cornell notice of such requirement prior to disclosure (which must include a copy of any applicable subpoena or order) in order to permit Cornell to obtain, at its own expense, protective treatment of such Confidential Information and (ii) limit the disclosure only to such portion of the Confidential Information that it is required by law or such court order to disclose. If Consultant breaches its confidentiality obligations, Cornell shall have all rights available to it at law and in equity to enforce the provisions in this Section including, but not limited to, applying to a court of competent jurisdiction for specific performance and/or injunctive relief.

10.5 The obligations of this Section shall expressly survive the expiration or earlier termination of this Agreement.

11. Intellectual Property.

11.1. Ownership.

11.1.1. Cornell shall own all information, deliverables, and other work product developed, created, produced, or otherwise obtained by Consultant pursuant to this Agreement.

11.1.2. Any copyrightable work (“Work”) developed in the course of Consultant’s performance under this Agreement shall be deemed “work made for hire” under federal copyright law and all interests in such Work shall belong to Cornell. To the extent any such Work does not constitute a “work made for hire” under copyright law, Consultant hereby grants, transfers, assigns, and conveys to Cornell and its successors and assigns the entire right, title, and interest in the Work or any part of the Work, including but not limited to, the right to: reproduce, prepare derivative works, distribute by sale, license or other transfer, perform publicly, display, and to secure copyrights or patents and renewals, reissues, and extensions of any such copyrights or patents in the United States of America or any foreign country.

11.1.3. Any patentable invention conceived or reduced to practice in the course of Consultant’s performance under this Agreement shall be the property of Cornell, and Cornell has the right to secure patents, reissues, and extensions of the same in the United States of America or any foreign country. Whether a copyright or patent in the Work will be maintained or registered in the United States of America or any foreign country shall be at the sole discretion of Cornell.

11.1.4. Consultant agrees to cooperate fully with Cornell in the preparation and execution of all documents necessary or incidental to the assignment in this Section and the protection and preservation of rights herein granted to Cornell. The obligations of this Section shall

expressly survive the expiration or earlier termination of this Agreement.

11.1.5. Notwithstanding the foregoing, Consultant owns and shall retain ownership to all of its pre-existing intellectual property, including all rights, title, and interest to inventive intellectual property conceived or acquired by Consultant external to or pre-dating this Agreement consistent with U.S. patent law ("Background IP"). Consultant agrees that Cornell may use Consultant's Background IP in connection with the Services. Consultant hereby grants to Cornell a perpetual, worldwide, non-exclusive, non-terminable, fully transferable, royalty-free, fully paid up right and license to use any Background IP incorporated into the Services or any deliverable. All Services and deliverables exclusive of Consultant's Background IP shall be owned by Cornell to the extent such remainder is functionally separable. Nothing in this Agreement shall restrict Cornell from owning any ideas, concepts, know-how, techniques, or experience developed by its personnel while carrying out the Services under this Agreement. This Agreement does not give Consultant any rights, implied or otherwise, information, or intellectual property, except as expressly stated in this Agreement.

11.1.6. If Consultant includes third-party owned assets in the deliverables ("Third-Party Assets"), Consultant shall obtain all licenses for such Third-Party Assets from the rights holder for inclusion in the deliverables. Upon Cornell's request, Consultant will provide Cornell with the source from which it obtained such Third-Party Assets and, as an alternative, Cornell may request to negotiate and obtain licenses directly from the source of the Third-Party Assets if deemed necessary by Cornell.

11.2. Non-infringement Warranty. Consultant warrants and represents that the Services and all work provided under this Agreement will not infringe, individually or collectively, any patent, copyright, trade secret, or other proprietary right of any third party; and Consultant has no reason to believe that any patent, copyright, trade secret, or other proprietary right of any third party may be infringed by Consultant's provision of the Services and any work under this Agreement.

12. **Termination.**

12.1 Termination for Convenience. Cornell may terminate this Agreement at any time without cause upon thirty (30) days' written notice to Consultant.

12.2 Termination for Cause. Either party may terminate this Agreement immediately upon notice for the following reasons:

(i) the other party's non-performance or other breach of the Agreement if not cured within thirty (30) days.

(ii) Conflict of Interest between a Cornell employee and Consultant. For purposes of this Agreement, a "Conflict of Interest" may be deemed present if, in Cornell's reasonable judgment, a Cornell employee who reviews, approves, or administratively manages this Agreement and/or a member of such Cornell employee's family has a significant financial interest in the Consultant, is directly involved in performing obligations under this Agreement on behalf of Consultant, or receives any personal financial advantage or compensation from this transaction. In this Section, the terms "family" and "significant financial interest" have the same meaning as defined in the university conflicts of interest policy.

(iii) In the event of any suspension of payment or the institution of any proceedings by or against the other party voluntary or involuntary, in bankruptcy or insolvency, or under the provisions of the Federal Bankruptcy Act, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors of the property of the other party.

13. **Effect of Termination.** In the event of termination, Consultant is obligated to provide Cornell with copies of any and all Work in progress and complete Work created in the course and scope of this Agreement on or before the date of termination. Except in the event of termination for cause, Consultant shall be entitled to payment for Services performed to the satisfaction of Cornell prior to termination, if any, and explicitly waives any right to additional or other amounts of any kind, including based on quantum meruit or other similar theory.

14. **Indemnification.** Consultant shall release, defend, indemnify, and hold harmless Cornell and its trustees, officers, agents, and employees from all liability, suits, actions, or claims of any character, name, or description including reasonable attorneys' fees, brought on account of any injuries or damage, or loss (real or alleged) received or sustained by any person, persons, or property, arising out of the Services or any other work provided under this Agreement, and/or Consultant's failure to perform or comply with any requirements of this Agreement, including, but not limited to, any claims for personal injury, property damage, breach of warranty, or infringement of copyright, patent, or other proprietary right. Consultant indemnifies Cornell, and its agents, officers, employees and trustees, and holds each harmless against any fines, damages, assessments, or attorney fees in the event a court or administrative agency shall find that Consultant or anyone or entity engaged through Consultant is an employee of Cornell. Cornell reserves the right to retain whatever funds which would be due to Consultant under this Agreement until such suits, action or actions, claim or claims for injuries or damages as aforesaid are settled and satisfactory evidence to that effect furnished. These obligations shall expressly survive the expiration or earlier termination of this Agreement.

15. **Insurance.**

15.1. **Insurance Coverages.** Consultant shall procure and carry insurance to financially support indemnification of Cornell as provided herein, and shall provide certificates of such insurance, upon request. Annual automatic renewals of the certificate(s) of insurance must be requested from the Consultant's insurance carrier and sent to Cornell upon the annual expiration date of the insurance policies. For the Term of the Agreement, Consultant shall procure, at its sole cost and expense, the insurance coverages in **Appendix 1**, Insurance Requirements.

15.2. **Other Insurance-Related Requirements.**

15.2.1. The limits of insurance stated in Appendix 1 for each type of insurance are minimum limits only; if any policy provided by Consultant provides limits greater than those stated, then the additional insureds will be entitled to the full limits of such policy and this Agreement shall be deemed to require such full limits. Except with respect to Professional Liability, all policies shall contain a waiver of subrogation. Consultant shall be responsible for all deductibles under its policies and all defense costs if its policies do not cover such expenses.

15.2.2. All policies required to be maintained shall be issued by an insurance company licensed or authorized to do business in New York State with a rating of A- VII or better by A.M. Best.

15.2.3. All contractors and subcontractors used by the Consultant to provide Services under this Agreement shall be required to comply with the insurance requirements in this Agreement.

15.2.4. Insurance coverage in the minimum amounts shall not relieve the Consultant or any of its subcontractors of any liability, nor shall it preclude Cornell from exercising any rights or taking such other actions as are available to it under the law.

15.2.5. A Certificate of Insurance is required evidencing all coverages outlined above prior to commencement of work. Further, each policy shall contain provisions giving Cornell at least 30 days written (10 days in the case of non-payment) notice of cancellation, non-renewal, or other change in coverage.

15.2.6. Cornell reserves the right to require additional coverage or to increase limits depending upon the liability exposure in the scope of work in this Agreement.

15.2.7. Cornell's failure to enforce these requirements shall not be considered a waiver of the requirements. Any changes to these requirements shall only be made in writing and agreed upon by all parties.

15.2.8. Consultant shall not do or permit anything to be done that would invalidate the insurance policies required herein.

16. **Compliance with Applicable Laws and University Policies.** Consultant is subject to applicable Cornell University regulations and policies, and all applicable federal, state, and local laws and regulations. Further, Consultant, its employees, contractors and agents shall act at all times in a professional and ethical manner, and shall not engage in harassing, retaliatory, or discriminatory behavior of any kind. If Consultant violates any of these obligations or otherwise engages in behavior on Cornell property that is considered to be detrimental to students or Cornell, or for any other reason in Cornell's sole discretion, Cornell shall have the right to terminate this Agreement without prior notice. Prior to gaining access to Cornell's facilities in order to perform Services, Consultant personnel will execute Cornell's document(s) required for access privileges and shall at all times act in compliance with Cornell's policies and procedures. Consultant and all individuals assigned by Consultant to a project under this Agreement must comply with Cornell policies.

17. **Nondiscrimination; Equal Employment Opportunity.** Cornell is an equal opportunity employer and federal contractor or subcontractor. Consultant shall abide by Cornell's nondiscrimination policies, as described in Cornell University's Equal Education and Employment Opportunity (EEEE) Statement (<https://hr.cornell.edu/about/workplace-rights/equal-education-and-employment>). If Consultant is a federal subcontractor for Cornell, Consultant and all subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a) and 1.4(b), incorporated by reference. Further, Consultant and all subcontractors shall abide by the requirements of 41 CFR § 60-300.5(a) and 41 CFR § 60-741.5(a), incorporated by reference. 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. If Consultant is a federal subcontractor for Cornell, upon request Consultant will provide to Cornell a copy of its written polic(ies) or other documentation to comply with Section 503 of the Rehabilitation Act of 1973 (Section 503) and the Vietnam Era Veterans Readjustment Assistance Act (VEVRAA) and implementing federal regulations.

18. **Advertisement.** Consultant may not use the name Cornell or any variation of the Cornell name, including logos and trademarks of any kind, or those of any of Cornell's colleges, divisions, departments, or programs, for advertising or publicity purposes without first obtaining the written consent of Cornell in each instance.

19. **Inspection and Right to Audit.** Cornell shall at all times have access to review the ongoing work of Consultant for purposes of inspecting the same and determining that the Services are being performed in accordance with the terms of this Agreement. Throughout the Term of this Agreement, and for a period of three years after the later of final payment, expiration or termination, or longer if required by law,

Cornell, at its own expense, shall be entitled to perform, or to have performed by a third party of Cornell's choosing, during normal business hours and upon ten (10) days' notice, an on-site audit of any and all relevant records of Consultant necessary to permit Cornell to evaluate and verify Consultant's compliance with the requirements of this Agreement. Consultant grants Cornell permission to view and/or copy any books, documents, records, data, and information (including data and information stored in electronic form) of Consultant which relate to or have been used in connection with the performance of this Agreement. Consultant also grants Cornell permission to interview Consultant's staff and agents as part of the audit. If applicable, Consultant agrees to provide Cornell with adequate and appropriate workspace for conducting the audit. If Cornell, in its sole discretion, determines that an on-site audit is not necessary, Consultant agrees to complete, within thirty (30) days of receipt, an audit questionnaire provided by Cornell. Consultant shall refund to Cornell any overcharges discovered by Cornell, or by a third party of Cornell's choosing, within thirty (30) days following Consultant's acceptance of Cornell's written notification of audit findings. Consultant may not unreasonably withhold or delay acceptance of audit findings. Consultant shall include this audit provision in any subcontracts that it may issue under this Agreement.

20. FERPA and HIPAA Compliance.

20.1. FERPA. To the extent that performance of the Services under this Agreement involves disclosure to Consultant of personally identifiable information from student education records protected by the Family Educational Rights and Privacy Act (FERPA) ("Student Information"), the following obligations shall apply. Consultant acknowledges that for the purposes of this Agreement, it will be designated as a "school official" with "legitimate educational interests" in the Student Information, as those terms have been defined under FERPA and its implementing regulations, and Consultant agrees to abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials. Consultant will use Student Information only for the specific purpose of fulfilling its obligations under this Agreement. Consultant may not disclose Student Information to or share any Student Information with any other party or for any other purpose without the prior written consent of the student. Without limiting the foregoing, Consultant will not use such information for Consultant's own benefit or engage in "data mining" of Cornell Data or communications, whether through automated or human means, except as necessary to fulfill its specific obligations under this Agreement. Consultant agrees that prior to releasing any Student Information to any subcontractor or agent, Consultant will require such subcontractor or agent to agree in writing to terms substantively similar to the obligations in this Section. Promptly following the termination or expiration of this Agreement, Consultant shall return to Cornell or certify in writing to Cornell the destruction of all Student Information (including that provided to or obtained by its subcontractors or agents) disclosed to Consultant in connection with this Agreement.

20.2. HIPAA. If Cornell determines that Consultant's performance under this Agreement requires compliance with the Health Insurance Portability and Accountability Act (HIPAA), Consultant agrees to enter into any and all additional documents or amendments Cornell deems necessary to address HIPAA compliance, including, without limitation, a Business Associate Agreement in substantially the form provided by Cornell.

21. **Compliance with Personal Data Protection and Privacy Laws.** Consultant will comply in all respects with applicable laws and regulations relating to privacy and the collection, processing, and use of personal data, including those of the United States and any other country to the extent applicable to the processing of personal data under this Agreement (together, the "Privacy Laws"). Consultant agrees to process personal data for which Cornell is the controller (as defined under any applicable Privacy Law) only to the extent necessary to perform its obligations under this Agreement, and to implement and maintain appropriate technical and administrative safeguards (as defined in the applicable Privacy Laws) to prevent the unauthorized access, use or disclosure of such data. Consultant further agrees to allow

Cornell staff or representatives to examine such measures upon request, and to take all reasonable steps to ensure the reliability of any Consultant personnel who will have access to personal data. Without prejudice to Consultant's obligations set out above, Consultant will report to Cornell within forty-eight (48) hours any loss, damage, or destruction of any personal data processed under this Agreement for which Cornell is a controller, regardless of whether such personal data constitutes Cornell Data. If required or deemed advisable for compliance with the Privacy Laws, then Cornell and the Consultant agree to execute Cornell's Personal Data Processing Agreement (PDPA) or other required documentation under applicable Privacy Laws. For purposes of this Section, "personal data" means information relating to an identified or identifiable individual, and an "identifiable individual" means one who can be identified, directly or indirectly, by use of any identifier or characteristic specific to that individual.

22. **Export Control Compliance.** Consultant acknowledges that it is subject to U.S. export control laws and regulations (collectively, "Export Control Laws"), which include (without limitation) the International Traffic in Arms Regulations ("ITAR"), the Export Administration Regulations ("EAR"), and regulations and orders administered by the Treasury Department's Office of Foreign Assets Control ("OFAC Regulations"). Consultant agrees to comply with all Export Control Laws. Consultant shall not disclose any technology or technical data subject to Export Control Laws unless and until a plan for the transfer, use, dissemination, and control of the information has been approved in writing by Cornell's Export Control Office. Furthermore, Consultant represents and warrants that it is not an entity or individual identified on, or owned by a party identified on, any denied or restricted party list under Export Control Laws.

23. **DOJ Rule: 28 CFR Part 202.** At all times, the parties shall comply with 28 CFR Part 202, "Preventing Access to Americans' Bulk Sensitive Personal Data and U.S. Government-Related Data by Countries of Concern or Covered Persons."

23.1 **No Data Brokerage Agreement.** The parties shall not engage in any data brokerage arrangement, i.e. the sale or licensing of data or similar commercial transactions, where the recipient did not collect or process the data directly from the individuals linked or linkable to the data, as prohibited under 28 CFR Part 202. Further, the parties shall not engage in any data broker arrangement involving access to bulk human 'omic data or to human biospecimens from which such data could be derived. If Consultant knows or suspects that Consultant has gained access to "government-related data" or "bulk U.S. sensitive personal data" (as those terms are defined in 28 CFR Part 202) under this Agreement, Consultant shall immediately inform Cornell's Representative. Failure to comply with this reporting requirement will constitute a material breach of this Agreement and may constitute a violation of 28 CFR Part 202. Upon receipt of such notification, Cornell may immediately terminate this Agreement if Cornell determines, in its sole discretion, that continuing performance of this Agreement would violate applicable law, including without limitation, 28 CFR Part 202.

23.2 **Below Threshold Limits.** Except where the parties agree in writing that this Agreement is exempt under 28 CFR Part 202, Subpart E, Cornell shall not provide, give access, transfer, or share with Consultant any "government-related data" (in any amount) nor "bulk U.S. sensitive personal data" over the thresholds stated in 28 CFR Part 202, as defined therein. Bulk U.S. sensitive personal data includes the following kinds of sensitive personal data (or any combination thereof) relating to U.S. persons (even if anonymized, pseudonymized, de-identified, or encrypted) that exceed listed thresholds in any given 12-month rolling period where Cornell is the party sharing access: Covered personal identifiers (more than 100,000 U.S. persons); Precise geolocation data (collected on or maintained on 1,000+ U.S. devices); Biometric identifiers (collected on or maintained on 1,000+ U.S. persons); Human 'omic data (collected on or maintained on 1,000+ U.S. persons, or in the case of human genomic data, 100+ U.S. persons); Personal health data (collected on or maintained on 10,000+ U.S. persons) and Personal financial data (collected on or maintained on 10,000+ U.S. persons), as more specifically described in 28 CFR 202,

Subpart B. Further, Cornell shall have the right to modify the volume of data transmitted to Consultant under this Agreement if Cornell determines, in its sole discretion, that provision of such data will violate 28 CFR Part 202 or other applicable law.

24. **Force Majeure.** A Party shall be excused from liability for its failure or delay in performance of an obligation under this Agreement to the extent the failure or delay results from causes beyond that party's reasonable control including, but not limited to, a fire, a flood, an explosion, an earthquake, a natural disaster or any other act of God, as well as a pandemic, an epidemic, a recognized health threat as determined by any federal, state or local government or quasi-governmental authority (including the federal Centers for Disease Control), civil unrest, a strike or labor disturbance, war or threat of war, terrorism or a threat of terrorism, a governmental or quasi-governmental order or directive to "shelter in place", or any other event, occurrence, order or directive similar to those enumerated above (each, a "Force Majeure Event"). A Force Majeure Event may also include a then-current order, policy, rule or regulation imposed by Cornell University based upon the health and safety of its student body, faculty, staff and/or broader community. A party seeking to rely on this provision shall (i) use reasonable diligence to remove the condition that prevents performance and shall not be entitled to suspend performance of its obligations in any greater scope or for any longer duration than is required by the Force Majeure event, (ii) use its commercially reasonable efforts to mitigate the effects of such Force Majeure Event, remedy its inability to perform, and resume full performance of its obligations under this Agreement, and (iii) promptly provide notice of failure or delay in performance due to a Force Majeure Event to the other party, including anticipated impact on performance and efforts to mitigate the failure or delay. The party shall provide such notice within ten (10) days prior to the required performance unless the circumstances and/or conditions giving rise to the Force Majeure Event necessitate a shorter notice period.

25. **Gramm-Leach-Bliley.** Consultant represents that its management and storage of Cornell Data shall in all respects, including, without limitation, administrative, physical and technical aspects, meet the privacy and security standards set forth in Gramm-Leach- Bliley Act, 15 U.S.C. sections 6801-6809 ("GLBA") and its implementing regulations. Without representing that it is subject to GLBA, Consultant understands that it may have access under this Agreement to Cornell financial information and other nonpublic personal information protected by law. To assist Cornell in meeting Cornell's GLBA obligations, Consultant will implement, maintain, and use appropriate administrative, technical, and physical security measures to protect the confidentiality and integrity of all electronically maintained or transmitted Cornell Data.

26. **Notices.** All notices given or required to be given pursuant to this Agreement shall be in writing and shall be deemed sufficient upon: (i) personal delivery; (ii) delivery by email with confirmation of receipt; or (iii) the third business day after first class certified mailing, in each case to the addresses first written above or to such other address as may be specified in writing by the parties for notice purposes.

27. **Effective Date.** The effective date of this Agreement shall be the later of the two dates of signature below.

28. **Waiver.** A delay or failure by either party to exercise any right under this Agreement will not constitute a waiver of that or any similar or future right.

29. **Authority; Binding Agreement.** Each party warrants that: (a) it has all requisite power and the authority to enter into this Agreement; (b) it is not under, and will not enter into, any obligation to any person or entity, contractual or otherwise, that is conflicting or inconsistent in any material respect with the terms of this Agreement or that would impede the diligent and complete fulfillment of its obligations under this Agreement; and (c) entering into this Agreement is not restricted or prohibited by any existing

agreement to which it is a party. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns.

30. **Severability.** In the event that any provision of this Agreement is held to be invalid, illegal, or unenforceable, then that provision will be limited or eliminated to the minimum extent necessary, and the remaining provisions of this Agreement will remain in full force and effect.

31. **Survival.** The provisions of this Agreement which expressly or by their nature survive expiration or termination of this Agreement will remain in effect after the expiration or termination of this Agreement.

32. **No Third-Party Beneficiary Rights.** This Agreement is not intended and shall not be construed to give any person or entity other than Consultant and Cornell any interests or rights in connection with this Agreement except as otherwise expressly stated.

33. **Assignment.** Consultant may not assign, transfer, or delegate any of or all of its rights or obligations under this Agreement, voluntarily or involuntarily, including by change of control, merger, operation of law, or any other manner, without the express prior written permission of Cornell. Any purported assignment or delegation in violation of this Section shall be null and void.

34. **Governing Law; Dispute Resolution; Jurisdiction.** This Agreement will be interpreted under, and be governed by, the laws of the State of New York, without regard to its conflict of laws principles. The parties shall strive to settle amicably, in good faith, and with due diligence any dispute arising from or relating to this Agreement. The parties agree if such attempts to resolve a dispute are unsuccessful, then any claims, suits, actions, or proceedings between the parties arising in whole or in part under or in connection with this Agreement will be brought in the state courts of Tompkins County, New York or the federal district court for the Northern District of New York. Each party irrevocably consents to personal jurisdiction and exclusive venue in such courts and waives any related claim of improper forum.

35. **Entire Agreement.** This Agreement, including all incorporated appendices, exhibits, and attachments, represents the entire understanding of the parties and may not be modified except by written agreement of the parties and supersedes all prior written and/or oral agreements. Any terms or conditions on Consultant's quote, invoice, statement of work, or other similar document related to this Agreement, including any online terms or click-through agreements, are expressly rejected and are deemed void. This Agreement may be executed in counterpart signatures each of which when executed and delivered will together constitute one and the same instrument. In the event of a conflict between the terms in this Agreement and the terms of any other agreement, including a purchase order, the terms in this Agreement shall control.

(Appendix, Schedules, and Signature Page Follow)

APPENDIX 1 INSURANCE REQUIREMENTS

At all times during the Term of this Agreement, Consultant will procure and maintain the following insurance coverages:

- A. **Statutory Worker's Compensation Insurance:** under the laws of the State of New York and any other laws that may be applicable thereto. Coverage "B" Employers' Liability must have limits of at least \$1,000,000 per accident for bodily injury and disease. Where permitted by law and allowed by insurance, the Consultant's policy shall be specifically endorsed to waive any rights of subrogation against Cornell, its subsidiaries, and its directors, officers, and employees. **For Longshore, Harbor, or Maritime Workers** the policy shall be endorsed to include United States Longshore and Harbor Workers Compensation Act (USL&H) and/or Jones Act insurance.
- B. **Commercial General Liability Insurance:** subject to at least \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage must be provided for Bodily Injury Liability, Broad Form Property Damage Liability, Contractual Liability, and Products-Completed Operations coverage. Completed Operations coverage is to be maintained for a minimum period of three (3) years after completion of the Agreement. The policies shall be primary and non-contributory. Cornell University shall be included as an additional insured in the policy utilizing additional insured endorsements CG 20 10 07 04 and CG 20 37 07 04 or their equivalents. *Coverage shall not contain exclusions for claims related to (New York) labor law. Consultant must expressly hold harmless, defend and indemnify Cornell as an additional insured for any suits referencing or seeking recovery under New York Labor Law §§ 200, 240, 240(1), 241, 241(6) and any related sections, and their insurance certificate or accompanying letter from an authorized representative must specifically state the same.* **For services involving minors**, the Commercial General Liability policy shall provide coverage for any incidents related or connected to or arising out of sexual misconduct, sexual molestation, sexual or physical assault, or abuse subject to \$1,000,000 separate limit per occurrence and \$2,000,000 aggregate separate limit, and the corresponding certificate of insurance must indicate as such.
- C. **Automobile Liability Insurance:** (based on scope of Services, Merchandise and/or materials) subject to limits of not less than \$1,000,000 combined single limit for each accident. Such Automobile Liability Insurance shall be for all owned, non-owned, and hired automobiles. *(Cornell requires limits of \$5,000,000 for any bus charter-related services. Aircraft or watercraft travel that is not a ticketed event (e.g., charters) requires higher insurance limits and pre-approval from Cornell Risk Management and Insurance.)*
- D. **Umbrella/Excess Liability Insurance:** subject to at least \$5,000,000 per occurrence and follow-form of the primary General Liability, Automobile Liability, and Employers Liability policies. These policies shall contain an endorsement stating that any entity qualifying as an additional insured on the insurance stated in the Schedule of Underlying Insurance shall be an Additional Insured on the Umbrella/Excess liability policy and that they apply immediately upon exhaustion of the insurance stated in the Schedule of Underlying Insurance as respects to the coverage afforded to any additional insured.
- E. **All Risk Property Insurance:** providing replacement cost coverage for any property damage to the Consultant's property which is caused by a loss of any kind and description to any property brought onto Cornell University premises. The Consultant agrees to waive on behalf of itself and its insurance company subrogation against Cornell for any loss or damage, which is covered or should be covered by this insurance.
- F. **Professional Liability/Errors & Omissions Insurance:** subject to \$1,000,000 per claim/\$3,000,000 aggregate covering the activities of the Consultant. The coverage must be maintained during the Term of this Agreement and at least three (3) years following its

completion or earlier cancellation. Consultant's policy will provide a carve-back to the "Insured versus Insured" exclusion for claims brought by or on behalf of additional insureds.

- G. **Liquor Liability Insurance:** (based on scope of Services, Merchandise and/or materials) with a minimum of \$1,000,000 per occurrence.
- H. **Crime Insurance:** (based on scope of Services, Merchandise and/or materials) subject to at least \$1,000,000 per occurrence.
- I. **Environmental Liability Insurance:** (based on scope of Services, Merchandise and/or materials) with a minimum of \$5,000,000 per occurrence. The coverage must be maintained during the Term of this Agreement and at least three (3) years following its completion or earlier termination.
- J. **Cyber and Technology Products & Services Liability insurance:** (based on scope of Services, Merchandise and/or materials) with limits of not less than \$5,000,000 for each wrongful act, that provides coverage for:
 - 1. Liability for network security failures or privacy breaches, including loss or unauthorized access, use or disclosure of Cornell Data, whether by Consultant or any of subcontractor or cloud service provider used by Consultant;
 - 2. Costs associated with a privacy breach, including notification of affected individuals, customer support, forensics, crises management/public relations consulting, legal services of a privacy attorney, credit monitoring and identity fraud resolution services for affected individuals;
 - 3. Expenses related to regulatory compliance, government investigations, fines, fees/assessments and penalties;
 - 4. Liability for technological products and services;
 - 5. PCI fines, fees, penalties and assessments;
 - 6. Cyber extortion payment and response costs;

If the Cyber Liability policy is written on a claims-made basis and non-renewed at any time during the Term of this Agreement, the Consultant shall purchase an Extended Reporting Period for at least a two-year period. The Consultant's policy will provide a carve-back to the "Insured versus Insured" exclusion for claims brought by or on behalf of additional insureds.

Schedule A

SCOPE OF SERVICES



See attached (check if document attached)

Project Description, Work Scope, and Deliverables:

Schedule B

PROJECT TIMETABLE AND TASK DESCRIPTION

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See attached (check if document attached)

Detail and explanation of the agreement between Cornell and

Consultant: Completion Date:

Schedule C

PAYMENT AMOUNT AND SCHEDULE

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See attached (check if document attached)

Payment Amount and Schedule: (Specify assigned consultant(s), hourly rate(s), and/or per project amount(s), estimated total hours, term of assignment (if applicable):

Schedule D

CONSULTANT'S PERSONNEL

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See attached (check if document attached)

List of Consultant's Personnel:

List of Cornell's Representative(s):

In witness whereof the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

Company Name:

Signature: _____
Signature Date: _____
Print Name: _____
Title: _____
Phone: _____
Email: _____
Address: _____

Cornell University Procurement Services:

Signature: _____
Signature Date: _____
Title: Procurement Agent
Email: _____@cornell.edu
Address: 377 Pine Tree Road, Ithaca, NY 14850
Purchase Order #: _____