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