

**CONSULTANT AGREEMENT  
(PCS# 110400-00028-O)**

This Consultant Agreement ("Agreement" or "Contract") is made and entered into by and between the University of Oregon, on behalf of the Phil and Penny Knight Campus for Accelerating Scientific Impact ("University" or "Knight Campus"), and Nexight Group, LLC (Consultant), a limited liability company organized under the laws of the State of Maryland and authorized to do business in the State of Oregon.

University and Consultant are each "Party" and collectively "Parties."

**RECITALS**

- A. On February 7, 2018, University issued a Request for Quotes (RFQ) to select a vendor to provide consulting services to assist in defining, developing, and implementing its research enterprise strategies.
- B. On February 14, 2018, Consultant submitted its timely and responsive proposal. Consultant is the successful proposer to the RFQ.
- C. Consultant represents it has the requisite skill, experience and qualifications to perform the services and work as described under this Agreement.
- D. University and Consultant wish to enter into this Agreement for work.

**AGREEMENT**

In consideration of the above Recitals, which are incorporated into this Agreement, the mutual promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

- 1. This Agreement is comprised of the following documents:
  - a. This Agreement along with all exhibits, attachments and/or appendices.
  - b. Throughout this Agreement, reference is made to the RFQ and Consultant's Proposal in response to the RFQ ("Bid Documents"), both of which are incorporated herein by reference, but not attached hereto. For the avoidance of doubt, in the event of a conflict, the terms and conditions of this Agreement shall control and supersede the terms and conditions of the Bid Documents.
- 2. Statement of Work.

Consultant will perform the services and provide the work described in the RFQ as it is again set forth in **Exhibit A**, Statement of Work, which is incorporated by reference.

### 3. Invoicing and Payment.

Consultant will invoice University and University will pay Consultant in accordance with the invoicing instructions and payment terms included on **Exhibit B, "Invoicing and Payment,"** which is incorporated by reference. Absent a written and signed amendment to this Agreement, the total compensation under this Agreement, including any reimbursable expenses, will not exceed \$149,461.00.

### 4. Term.

4.1 This term of this Agreement will commence on February 28, 2018, or on the date last signed, whichever is later ("Effective Date"). This Agreement shall terminate upon completion of the services and work by Consultant and acceptance by University.

### 5. Insurance.

Consultant will secure at Consultant's expense and keep that insurance in effect during the term of this Agreement either comprehensive general liability insurance with a broad form CGL endorsement or broad form commercial general liability insurance with a minimum combined single limit of not less than \$1,000,000 for each occurrence and \$2,000,000 aggregate, covering bodily injury and property damage, and will include personal and advertising injury liability, products liability, professional negligence and contractual liability coverage for the indemnity provided under this Agreement. Consultant's professional liability insurance will contain provisions for coverage of allegations of corporal punishment, sexual abuse, and molestation.

Consultant will secure at Consultant's expense and keep that insurance in effect during the term of this Agreement, professional liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 per occurrence and \$5,000,000 aggregate. This is to cover damages caused by error, omission, or negligent acts related to the professional services to be provided under this Contract. If this insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of 24 months.

Upon request by University, Consultant will secure at Consultant's own expense and keep in effect during the term of this Agreement a Commercial Auto Liability insurance policy with a minimum combined single limit of \$1,000,000 per occurrence for each accident and \$2,000,000 aggregate. Any requested insurance policies are to be issued by an insurance company authorized to do business in the State of Oregon with a minimum financial rating of an AM Best rating of A- or higher. All liability insurance will be arranged on an "occurrence" basis. No insurance will be allowed on a "claims made" basis.

If insurance is required by this Agreement, upon request by University, Consultant must provide a Certificate of Insurance to University from the insuring company evidencing insurance coverage required by this Agreement. The "Description of Operations" must include (using the following exact language) the **"State of Oregon, Board of Trustees of the University of Oregon, University of Oregon, and their respective officers, employees, and members"** as additional insured. Upon request, Consultant must also provide an endorsement to



University from the insuring company, naming (using the following exact language) the **"State of Oregon, Board of Trustees of the University of Oregon, University of Oregon, and their respective officers, employees, and members"** as additional insured.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30-days' written notice from Consultant or its insurer(s) to University, Contracts Manager at the following address: 1600 Millrace Drive, Suite 306, Eugene, Oregon 97403- 1995

#### 6. Notices.

Except as otherwise expressly provided in this Agreement, any communications between the Parties or notices to be given under this Agreement will be given in writing by personal delivery, facsimile, email, or mailing the same, postage prepaid, to Consultant or University at the address or number as set forth in this Agreement, or to such other addresses or numbers as either Party may indicate. Any communication or notice so addressed and mailed will be deemed to be received five days after mailing. Any communication or notice delivered by facsimile will be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against University, such facsimile transmission must be confirmed by telephone notice to University's representative. Any communication or notice by personal delivery will be given when actually delivered. Any communication or notice by email will be given when the recipient, by an email sent to the email address for the sender stated in this section or by a notice delivered by another method in accordance with this section, acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this section. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

#### **UNIVERSITY:**

Naomi Crow  
1399 Franklin Blvd., 3<sup>rd</sup> Floor  
Knight Campus for Accelerating Scientific Impact  
Eugene, OR 97403  
541.346.2196  
[ncrow@uoregon.edu](mailto:ncrow@uoregon.edu)

With a copy to:

Purchasing and Contracting Services  
1600 Millrace Drive, Suite 306  
Eugene, OR 97403-1005  
541.346.2419  
Fax: (541) 346-2425  
[pcsadmin@uoregon.edu](mailto:pcsadmin@uoregon.edu)

**CONSULTANT:**

Nexight Group, LLC  
ATTN: Ross Brindle, CEO  
8405 Colesville Road, 4<sup>th</sup> Floor  
Silver Springs, MD 20910  
240.667.7634  
rbrindle@nexightgroup.com

**7. Standard Terms and Conditions.**

University's Terms and Conditions of this Agreement are attached as **Exhibit C** and incorporated herein.

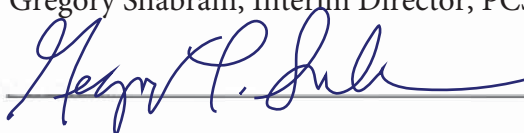
**8. Attachments.** All exhibits, attachments, addenda, and schedules which are referred to in this Agreement are incorporated in this Agreement.

IN WITNESS WHEREOF, the Parties have entered into this Agreement.

**UNIVERSITY**

By: Gregory Shabram, Interim Director, PCS

Signature:



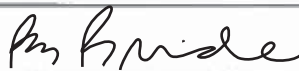
Date:

March 12, 2018

**CONSULTANT**

By: Ross Brindle, CEO

Signature:



Date:

March 8, 2018



## EXHIBIT A

### CONSULTANT AGREEMENT STATEMENT OF WORK (PCS# 110400-00028)

The following services and work are to be provided by the Consultant:<sup>1</sup>

#### **General Obligations of Consultant:**

The services and work to be performed by Consultant are divided into five phases/tasks as enumerated below.

**Phase 1: Conduct Stakeholder Interviews:** Consultant will conduct up to 30 conversational interviews to gather views on the University's research focus areas, approaches for accelerating scientific impact, establishing interdisciplinary educational programs, and other important aspects of the University strategic plan. Specifically, Consultant shall:

- Develop an interview guide with background information and detailed discussion questions.
- Work directly with University leadership to develop a list of stakeholders to be interviewed.
- Send interview invitations and schedule interviews at times that best accommodate stakeholder schedules, distributing interview questions as interviews are scheduled to help interviewees prepare.
- Conduct up to 30 interviews, providing an interviewee and note-taker for each interview to ensure all interview input is captured and documented.
- Synthesize interview discussions into an interview-findings briefing that highlights both areas of consensus and disagreement heard during interviews; findings to be documented in briefing/PowerPoint format, not lengthy narrative.

**Phase 2: Design In-Person Workshops:** Consultant will design "In-Person" workshops to facilitate consensus building among stakeholders. Specifically, Consultant shall:

- Work closely with University leadership to identify stakeholders and information requirements and design a series of workshops optimized to achieve the desired goals.
- Develop "core team" and larger workshops to engage stakeholders in the planning and development of the University strategic plan.

**Phase 3: Conduct "Core Team" Workshops:** Consultant shall:

- Develop a timed agenda, detailed focus questions, and contingency plans that allow facilitators to balance the need for flexibility with the requirement to deliver actionable workshop outcomes.

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<sup>1</sup> The Parties acknowledge that the services and work to be performed under this Agreement may be adjusted as certain data and variables are ascertained. The services and work enumerated herein are designed to define the primary responsibilities of Consultant and correspond to those identified in the RFQ and Consultant's Proposal to the RFQ.  
Consultant Agreement (PCS# 110400-00028-PSC)



- Provide meeting facilitation supplies (storyboards, markers, index cards, pushpins, sign-in sheets).
- Work with Knight Campus contacts to ensure all workshop logistics are appropriately planned (e.g., meeting rooms, food and beverage, A/V, name badges).
- Prepare brief meeting information package with background information, workshop scope and boundaries, a preliminary agenda, workshop outputs and outcomes, logistics information, and pre-workshop interview results in advance of the workshop, to be shared with session participants at least one week prior to the meeting. Information packages help to ensure participants are prepared to contribute to discussions and that each session yields the necessary outputs.
- Prepare scannable PowerPoint presentation of interview results, highlighting areas of consensus and dissent across both stakeholder groups.
- Provide three facilitators for each workshop, which are currently envisioned as 1-day meetings in Oregon. Given anticipated attendance of approximately 20-30 participants, this staffing plan allows for large plenary sessions and up to three facilitated breakout sessions. Facilitators present interview findings, actively lead discussions, monitor time, and ask probing questions to ensure expected session outputs are produced. Facilitators record discussions, using a combination of "on-screen" and "off-screen" methods to help participants remain informed and engaged.
- Produce summary briefing of key workshop findings.

**Phase 4: Conduct Large Stakeholder Workshop:** Consultant will conduct a workshop to ensure all stakeholders have a voice in the planning process without committing to final decisions. Specifically, Consultant shall:

- Develop a timed agenda, detailed focus questions, and contingency plans that allow facilitators to balance the need for flexibility with the requirement to deliver actionable workshop outcomes.
- Provide meeting facilitation supplies (storyboards, markers, index cards, pushpins, sign-in sheets).
- Work with Knight Campus contacts to ensure all workshop logistics are appropriately planned (e.g., meeting rooms, food and beverage, A/V, name badges).
- Prepare brief meeting information package with background information, workshop scope and boundaries, a preliminary agenda, workshop outputs and outcomes, logistics information, and pre-workshop interview results in advance of the workshop, to be shared with session participants at least one week prior to the meeting. Information packages help to ensure participants are prepared to contribute to discussions and that each session yields the necessary outputs.
- Prepare scannable PowerPoint presentation of interview results, highlighting areas of consensus and dissent across both stakeholder groups.
- Provide up to six facilitators for the workshop (1.5 days in Oregon with an estimated number of participants of 50-60) to facilitate and document the workshop.

**Phase 5: Prepare Draft and Final Strategic Plan:** Consultant will use interview and workshop findings and other relevant information to develop a draft strategic plan for the Knight Campus. The initial strategic plan development work will focus on establishing an outline and structure that reflects the Knight Campus's unique scope, the opportunities for accelerating translational

research, and the ways in which the Knight Campus intends to use its plan. As part of this activity, Consultant will work with its visual communications experts to develop key conceptual and organizational graphics that can quickly and accurately communicate key plan concepts. Specifically, Consultant shall:

- Develop an outline of the strategic plan to provide a map for content development.
- Develop the plan content in an iterative manner, regularly ensuring that plan tactics are clearly aligned with the Knight Campus vision and goals, engaging project leadership as needed to address gaps and seek clarification.
- Develop initial graphics during iterative content creation to enhance clarity of the narrative and aid in communication of key strategic plan concepts.
- Share select components of the plan in Microsoft Word format with stakeholders as the input is finalized and the edited, draft sections are completed to validate the direction and ensure strategic alignment, framing, accuracy, and completeness of the content.
- Circulate complete draft meeting report with Knight Campus leadership for review and comment.
- Collect and synthesize input to develop Revision 1 of the Knight Campus Strategic Plan.
- Conduct two additional review cycles to ensure the final Strategic Plan meets Knight Campus needs and deliver final Knight Campus Strategic Plan in Word and/or PDF format.<sup>2</sup>

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<sup>2</sup> The Strategic Plan will remain in simple Microsoft Word format, not desktop publishing software designed for public dissemination.)



## EXHIBIT B

### CONSULTANT AGREEMENT INVOICING AND PAYMENT (PCS# 110400-00028)

#### INVOICING:

Consultant will submit invoices when work is completed and accepted by University in accordance with the table below. Invoice documents will clearly identify all work performed, the date the work was completed, the time to complete the work, and the identities of those performing the work.

SERVICES/WORK	ESTIMATED COMPLETION DATE	PAYMENT AMOUNT
Phase 1: Conduct Stakeholder Interviews	Substantially completed by end of September, 2018.	\$ 22,238.00
Phase 2: Design In-Person Workshops	Completed by end of May, 2018.	\$ 16,631.00
Phase 3: Conduct "Core Team" Workshops	Substantially completed by end of October, 2018.	\$ 34,818.00
Phase 4: Conduct Large Stakeholder Workshop	Completed by end of November, 2018.	\$ 40,979.00
Phase 5: Prepare Draft and Final Strategic Plan	Completed by end of January, 2019.	\$ 34,795.00
Travel and other Direct Costs	As expended.	\$ 10,653.00
<b>TOTAL MAXIMUM COMPENSATION</b>		<b>\$ 149,461.00</b>

The Maximum Compensation due under this Agreement includes the sum of all fees, reimbursements, and expenses to be paid to Consultant under this Agreement. Under no circumstances will the amount paid to Consultant under this Agreement exceed the sum of \$149,461.00

#### PAYMENT:

Payment for goods and services under the Contract will be made within 45 days following the receipt of Consultant's invoice for each phase of work and acceptance of the services and work for each phase by University, whichever is later. Payment of overdue account charges by University will be subject to University Policy 580.061, Sec. J. Consultant will not be compensated by any other party for work performed under this Contract.



## **EXHIBIT C**

### **CONSULTANT AGREEMENT UNIVERSITY TERMS AND CONDITIONS (PCS# 110400-00028-O)**

1. **DEFINITIONS:** (i) "Agreement" and "Contract" mean the entire written purchase order, contract, or agreement attached to these University Standard Terms and Conditions ("Standard Terms"), these Standard Terms, and any other contracts, agreements, sales quotations, order acknowledgements, or similar documents including terms and conditions incorporated in the Contract; (ii) "ORS" means the Oregon Revised Statutes; "OAR" means Oregon Administrative Rules; "UCC" means Uniform Commercial Code; "USC" means United States Code; (iii) "Deliverables" means goods and/or services provided to University by Consultant under this Contract; (iv) "University" and "UO" each mean the University of Oregon, making the purchase pursuant to this Contract, and mean an Oregon Cooperative Procurement Program ("OrCPP") member if the purchase is being made under the State of Oregon's cooperative purchasing program authorized by ORS 190.240; (v) "Consultant" means the party named in Contract with whom University has contracted for the purchase of goods or goods and services; (vi) "Unsupervised Contact" with minor students means contact that provides the person opportunity and probability for personal communication or touch with students under the age of 18 when not under direct University supervision; and (vii) University and Consultant are each a "Party" and collectively "Parties".

2. **CONTROLLING TERMS.** These Standard Terms shall govern the Contract between the Parties and replace and supersede any conflicting terms and conditions found in the Contract, the RFQ, and the Proposal.

3. **INDEMNITY.** Consultant will be responsible for all damage to property, injury to persons, loss, expense, inconvenience, attorney's fees, and delay ("Harm") which may be caused by, or result from, any act or omission of Consultant, its subcontractors, agents, or employees. Consultant will defend, indemnify and hold University harmless, as well as University's governing board, trustees, directors, officers, agents, employees, and members, with respect to all claims, suits, and actions of any nature, or alleging Harm of any nature, resulting from or arising out of the acts or omissions of Consultant or its subcontractors, officers, agents, or employees. The University has no obligation to and will not indemnify, defend, or hold Consultant harmless with respect to any act or omission, or any Harm resulting therefrom, of the University, its governing board, trustees, directors, officers, agents, employees, and members.

4. **INDEMNITY FOR INFRINGEMENT CLAIMS.** Except to the extent arising from materials or modifications provided or made by University, which materials are utilized by Consultant in their unaltered form, and without limiting the generality of the indemnification clause above, Consultant expressly agrees to indemnify and hold University harmless, as well as University's directors, officers, employees, and agents, from and against any and all claims, suits, actions, losses, liabilities, costs, expenses, and damages arising out of or related to any claims that the Deliverables infringe any patent, copyright, trade secret, trademark, trade dress,



mask work, utility design, or other proprietary right of any third party. In the event that a court of competent jurisdiction determines in a final, non-appealable order that the work is infringing in a manner for which Consultant is obligated to indemnify University pursuant to this Section, Consultant will, at its option: (1) procure for University the right to continue using such infringing work; (2) replace the infringing work with a non-infringing item of like form, fit or function; or (3) modify the work so that it no longer infringes.

5. **UNSUPERVISED CONTACT WITH MINOR STUDENTS.** Consultant shall ensure that none of its officers, employees, or agents, including subcontractors, will have direct, Unsupervised Contact with minor students while on University property. Consultant will work with University to ensure compliance with this requirement. If Consultant is unable to ensure through a security plan that none of its officers, employees, or agents, including subcontractors, will have direct, Unsupervised Contact with minor students in a particular circumstance or circumstances, then Consultant shall notify University before beginning any work that could result in such contact. Consultant authorizes University to obtain information about Consultant and its history and to conduct a criminal background check, including fingerprinting, of any Consultant officers, employees, or agents, including subcontractors, who will have Unsupervised Contact with minor students. Consultant shall cause its officers, employees, agents, including subcontractors, if any, to authorize University to conduct these background checks. Consultant shall pay all fees assessed by University for processing the background check. University may deduct the cost of such fees from an interim or final payment to Consultant under this Contract, unless Consultant elects to pay such fees directly.

6. **INDEPENDENT CONTRACTOR STATUS.** Any services rendered under this Contract are those of an independent contractor. Consultant certifies that Consultant is not an employee of the University and neither Consultant nor any of Consultant's agents or employees are entitled to any of the benefits that University provides for its employees. Nothing in this Contract will be construed to create a partnership, joint venture, franchise, agency, or employment relationship between the Parties.

7. **CONFIDENTIALITY.**

7.1. **Definition.** As used in this Contract, "Confidential Information" means information and materials provided by University to Consultant information or materials that (a) are identified as confidential at the time of disclosure, or (b) a reasonable person in the relevant industries should understand to be confidential based on the nature of the information and materials and all other relevant factors. For the avoidance of doubt, University Confidential Information includes, without limitation, University's non-public data and information, work product, privileged information and communications, information that is subject to existing non-disclosure agreements, Personal Identifying Information, the results of communications and reports arising from the services performed by Consultant, and all other non-public aspects arising in connection with Consultant's performance of the services described in this Contract.

7.2. **Purpose.** Consultant must not use any of University Confidential Information for any purpose other than carrying out Consultant's obligations or exercising its rights under this Contract (the "Purpose"). For the avoidance of doubt, use of Confidential Information in an



aggregated and anonymized manner that does not include personally identifiable information and/or personal information is not prohibited.

7.3. Permitted Disclosures and Obligations. Consultant must not disclose to any third party any Confidential Information, other than to Consultant's affiliates, contractors and consultants who (a) need to know such information in order to fulfill the Purpose, and (b) are bound by confidentiality obligations substantially similar Consultant's under this Contract. Consultant must treat all University Confidential Information with the same degree of care Consultant gives to its own Confidential Information, but not less than reasonable care. Further, Consultant may not disclose publicly the existence or nature of any negotiations, discussions or consultations in progress between the Parties without the prior written consent of University. Consultant and its affiliates, contractors and consultants who receive Confidential Information hereunder must promptly notify University of any unauthorized use or disclosure of its Confidential Information of which Consultant becomes aware and reasonably assist University in remedying any such unauthorized use or disclosure.

7.4. Exclusions. Consultant's obligations under this section will not apply to any University Confidential Information that Consultant can prove: (a) is or becomes part of in the public domain through no fault of Consultant; (b) is rightfully in Consultant's possession free of any confidentiality obligation; (c) was independently developed by Consultant without use of any University Confidential Information; or (d) is communicated by University to an unaffiliated third party free of any confidentiality obligation. A disclosure by Consultant of any Confidential Information (i) in response to a valid order or other legal process issued by a court or other governmental body having jurisdiction, (ii) as otherwise required by law, or (iii) necessary to establish the rights of either Party under this Contract will not be a breach of this Contract if, to the extent legally permitted, Consultant gives 30 days written notice to University of its intent to disclose University Confidential Information along with the asserted grounds for disclosure.

7.5. Ownership and Destruction of Confidential Information. As between Consultant and University, all University Confidential Information is the property of University, and no license or other rights are granted or implied hereby. All materials provided to Consultant by University, whether or not they contain or disclose Confidential Information, are University's property. Promptly after any request by University, Consultant will (a) destroy or return to University all Confidential Information and materials in Consultant's possession or control, and (b) upon written request by University, confirm such return/destruction in writing. Consultant hereby acknowledges that any confidential information it discloses to University, or any duty of the University to destroy records upon completion of use, is subject to the provisions of the Oregon Public Records laws.

7.6. Confidentiality Period. Consultant's obligations with respect to University's Confidential Information under this section will remain in effect for the term of this Contract and for three (3) years after any expiration or termination of this Contract.

8. OWNERSHIP OF WORK PRODUCT. All Deliverables that result from this Contract ("Work Product") are the exclusive property of University. University and Consultant intend that such Work Product be deemed "work made for hire" of which University will be deemed the author. If, for any reason, the Work Product is not deemed "work made for hire", Consultant



irrevocably assigns to University all its rights, title, and interest in, and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Consultant will execute such further documents and instruments as University may reasonably request in order to fully vest such rights in University. Consultant forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

9. **EXCLUSIVITY.** University is not bound by exclusivity provisions.

10. **REPRESENTATIONS AND WARRANTIES.** Consultant represents and warrants that (1) Consultant has the power and authority to enter into and perform this Contract; (2) The individual signing for Consultant is authorized to execute this Contract on behalf of Consultant; (3) This Contract, when executed and delivered, will be a valid and binding obligation of Consultant, enforceable in accordance with its terms; (4) The services and work under this Contract will be performed in a good and workmanlike manner and in accordance with the highest professional standards; (5) Consultant will, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the work; and (6) Consultant's name, as it appears in this Contract, is Consultant's legal name, as it will appear in Consultant's W-9, and if Consultant is an entity rather than an individual, that the entity named in this Contract is validly existing and in good standing. Unless otherwise stated in the Contract, all Deliverables will be new and current models and will carry full manufacturer warranties. Consultant warrants all Deliverables delivered to be free from defects in labor, material, and manufacture and to be in compliance with solicitation specifications. All implied and expressed warranty provisions of the UCC (ORS chapter 72) are incorporated in this Contract. All warranties will inure to the benefit of University. The warranties set forth in this Section are in addition to, and not in lieu of, any other warranties provided.

11. **ACCEPTANCE.** Deliverables furnished under this Contract will be subject to acceptance by University. If University finds the Deliverables furnished to be incomplete or not in compliance with solicitation specifications, University may reject the Deliverables and require Consultant to either correct them without charge, or provide them at a reduced price, at University's discretion. If Consultant is unable or refuses to cure any defects in the provided Deliverables within a time deemed reasonable by University, University may reject the Deliverables and cancel this Contract in whole or in part. Nothing in this paragraph will in any way affect or limit University's rights as buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

12. **TERMINATION.** (a) This Contract may be terminated at any time by mutual written consent of both Parties. (b) University may, at its sole discretion, terminate this Contract in whole or in part upon 30-days' written notice to Consultant. (c) University may terminate this Contract effective immediately upon delivery of written notice to Consultant, or at such later date as may be established by University if: (i) Consultant is in violation of applicable federal, state, or local laws, rules, regulations, ordinances, or guidelines or any University policy (found at <http://policies.uoregon.edu/>) ("Applicable Laws"), including, but not limited to any policy related to sexual harassment and sexual misconduct (ii) Applicable Laws are modified or



interpreted in such a way that any Deliverables or services to be provided by Consultant under this Contract are no longer allowable or appropriate for purchase by University or are no longer eligible for the funding proposed for payment authorized by this Contract; (iii) any license or certificate required by Applicable Laws to be held by Consultant to provide Deliverables under this Contract is denied, revoked, or not renewed for any reason; (iv) if Consultant becomes insolvent or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; (v) if a petition under any foreign, state, or United States bankruptcy act, receivership statute, or the like, as they now exist, or as they may be amended, is filed by Consultant; or (vi) if such a petition is filed by any third party, or an application for a receiver is made by anyone and such petition or application is not resolved favorably to Consultant within ninety (90) calendar days. (d) University may terminate this Contract for default (including breach of contract) if (i) Consultant fails to provide Deliverables called for by this Contract within the time specified in this Contract or any extension of this Contract; or (ii) Consultant fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from University, fails to correct such failures within ten business days. (e) Consultant may terminate this Contract upon 30-days' written notice to University if University fails to pay Consultant pursuant to the terms of this Contract and University does not cure such failure to pay within 30-business days after receipt of Consultant's written notice, or such longer period as Consultant may specify.

13. **TERMINATION DUE TO NONAPPROPRIATION OF FUNDS.** University may terminate this Contract upon written notice to Consultant if University has not: (a) Received from the Oregon Legislative Assembly appropriations, limitations, or other expenditure authority; or (b) Received allotments pursuant to ORS Chapter 291 sufficient to allow University, in the exercise of its reasonable administrative discretion, to pay the amounts of this Contract.

14. **REMEDIES.** (a) Consultant's sole remedy under this Contract will be a claim for the sum designated for providing and/or completing the Deliverables multiplied by the percentage of Deliverables provided and/or completed and accepted by University, less previous amounts paid and any claim(s) which University has against Consultant. If previous amounts paid to Consultant exceed the amount due to Consultant under this subsection, Consultant will pay any excess to University upon demand. (b) University's remedies under this Contract include any remedy available to it in law or equity. If it is determined for any reason that Consultant was not in default of this Contract pursuant to Section 12(d), the rights and obligations of the Parties will be the same as if the Contract was terminated pursuant to Section 12(b). (c) Upon receiving a notice of termination of this Contract, Consultant will immediately cease all activities under this Contract, unless University expressly directs otherwise in writing. Upon termination of this Contract, Consultant will deliver to University all Work Product, documents, information, works-in-progress and other materials that are or would be Deliverables or otherwise the property of University had the Contract been completed. Upon University's request, Consultant will surrender to anyone University designates, all documents, research or objects or other tangible things needed to complete the work.

15. **SUBCONTRACTS AND ASSIGNMENTS.** Notwithstanding any provision to the contrary, Consultant may not subcontract, assign, transfer, or any of its interest in this Contract or delegate its responsibilities without obtaining prior written approval from University, such



consent may be withheld by University in its sole discretion. As a condition to requesting prior written approval, Consultant must provide a written copy of any such proposed assignment or subcontract to University. University's consent to any assignment or subcontract will not relieve Consultant of any of its duties or obligations under this Contract. Any assignment or subcontract in contravention of this Section will be null and void. This Contract will be binding upon and will inure to the benefit of the Parties and their respective authorized successors and assignees.

16. **CONFLICT OF INTEREST.** Consultant covenants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner with or prohibit Consultant's full performance of this Contract. Consultant also covenants that in the performance of this Contract no person having any such interest will be employed. Consultant further covenants that its performance of this Contract will not cause any employee or volunteer of University to violate ORS Chapter 244.

17. **ACCESS TO RECORDS.** Consultant will maintain records, sufficient to accurately document its performance of this Contract, including, but not limited to costs claimed to have been incurred and anticipated to be incurred. University and, if applicable, the federal government will have access to the records of Consultant for the purpose of determining compliance with this Contract. Consultant will retain all such records, for a minimum of six years following final payment under or termination of this Contract, or such longer period as may be required by Applicable Laws or to conclude any audit, review, or controversy.

18. **OREGON PUBLIC RECORDS LAW.** Consultant hereby acknowledges this this Contract is subject to the requirements of Oregon public records law (ORS 192.410 – 192.505) and that information Consultant discloses to University may be subject to public disclosure. University is not in breach of any provision of the Contract if, according to the University's interpretation of public records law, it discloses or maintains records of any information provided by the Consultant.

19. **FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT.** Consultant will protect the confidentiality of student education records, including personally identifiable information found in education records, in compliance with the Family Educational Rights and Privacy Act of 1974 ("FERPA") and its implementing regulations, specifically 20 U.S.C. § 1232g, 34 C.F.R. § 99.1 et seq., and University Policy 571.020. Consultant will not use personally identifiable information from student education records it receives for any purpose other than performing its obligations under this Contract. Consultant may not disclose or redisclose any personally identifiable information from student education records obtained from the University or collected by Consultant on the University's behalf without the University's written authorization. Any unauthorized disclosure of student education records or personally identifiable information by Consultant may result in damages owed pursuant to the indemnity section above.

20. **EQUAL EMPLOYMENT OPPORTUNITY NOTICES.** This Consultant and any subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or



national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

21. **COMPLIANCE WITH APPLICABLE LAW.** Consultant will comply with all Applicable Laws. As required by University policy, Consultant certifies that Consultant has not discriminated against historically underrepresented businesses, including Minority Business Enterprises, Women Business Enterprises, and Emerging Small Businesses. Consultant will, when applicable, have made good faith efforts to work with or obtain materials to be used in performing the Contract from minority-owned, women-owned, and emerging small business enterprises.

22. **GOVERNING LAW; JURISDICTION; VENUE.** This Contract will be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between University and Consultant will be brought and conducted solely and exclusively in the Circuit Court for Lane County for the State of Oregon. However, if any claim, action, or suit must be brought in a federal forum, it will be brought and conducted exclusively in the United States District Court for the District of Oregon. BY EXECUTION OF THIS CONTRACT, CONSULTANT CONSENTS TO IN PERSONAM JURISDICTION OF SUCH COURTS. In no event will any part of this Contract be construed as a waiver by University of its sovereign and governmental immunities.

23. **SURVIVAL.** All provisions of this Contract that would reasonably be expected to survive the termination of this Contract will do so.

24. **SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected. The Parties agree to attempt to substitute for any illegal or unenforceable provision a valid or enforceable one that achieves the economic, legal, and commercial objectives of the illegal and unenforceable provision to the greatest extent possible.

25. **NO THIRD PARTY BENEFICIARIES.** University and Consultant are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or will be construed to give any benefit or right, whether directly, indirectly or otherwise, to third persons, unless such third persons are individually identified by name and expressly described in this Contract as intended beneficiaries.

26. **TIME IS OF THE ESSENCE.** Consultant agrees that time is of the essence under this Contract.

27. **LIMITATION OF LIABILITY.** Consultant agrees that to the fullest extent permitted by law, University shall not be liable to Consultant for any special, indirect or consequential damages whatsoever, whether caused by negligence, errors, omissions, strict liability, breach of contract, breach of warranty or other cause or causes whatsoever, including but not limited to, loss of profits or revenue.



28. **FORCE MAJEURE.** Neither University nor Consultant will be held responsible for delay or default caused by fire, riot, acts of nature, terrorist acts, or other acts of political sabotage, or war where such cause was beyond, respectively, University or Consultant's reasonable control. Consultant will, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and will, upon the cessation of the cause, diligently pursue performance of its obligation under this Contract. However, if a default or delay due to a force majeure event continues for an unreasonable time, as determined by the University, then the University is entitled to terminate the Contract.

29. **WAIVER.** The failure of University to enforce any provision of this Contract will not constitute a waiver by University of that or any other provision.

30. **ATTACHMENTS.** All attachments, addenda, schedules, and exhibits which are referred to in this Contract are incorporated in this Contract.

31. **MERGER.** THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED IN THIS CONTRACT REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT WILL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER WILL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN.

32. **USE OF UNIVERSITY'S PROPRIETARY MARKS AND INFORMATION.** Consultant is not permitted to use the University's marks, logos, trade names or other proprietary information for marketing, advertising, or other any other purpose other than performing the Contract without advance written approval by the University. All such uses must comply with University's Style and Grammar Guide and University's brand management strategy available at: <https://brand.uoregon.edu/>.

33. **AMBIGUITIES.** Each party has participated fully in the review and revision of this Contract and neither party shall be considered the "drafter" for the purposes of any rule of construction that might cause any provision to be construed against the drafter of this Contract.

34. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way affect the meaning or interpretation of this Contract.

35. **EXECUTION AND COUNTERPARTS.** This Contract may be executed in counterparts, and via facsimile or electronically transmitted signature (i.e. emailed scanned true and correct copy of the signed Contract), each of which will be considered an original and all of which together will constitute one and the same Contract. At the request of a Party, the other Party will confirm facsimile or electronically transmitted signature by delivering the Contract with an original signature to the requesting Party.