# Brown University Standard Company Professional Service Agreement

**(required when the total cost of service by a company is greater than $5,000)**

## Part I: Service Profile – To be completed by hiring department

This standard Professional Services Agreement may only be used for contracts that are less than $50,000. Professional Service Agreements that exceed $50,000 must be individually reviewed and approved through the Office of the General Counsel. In situations where an amendment to an agreement causes the value to exceed $50,000, OGC must be contacted to review and approve the amendment.

Important information: All Suppliers, including consultants and independent contractors are required to complete the University's Supplier and Individual Payee Registration form. This form is used as a substitute for the IRS W-9 form. This registration form is available through the Purchasing website: http://brown.edu/about/administration/purchasing/

Name of consultant/contractor:

Permanent Address:

Address for Invoice Payments:

Department requesting services:

Department contact person: Phone number:

If this consultant/contractor has been previously hired by your department, please indicate month and year of previous engagement for services:

Describe the nature of services or scope of duties to be performed and how services will be provided; please provide a scope of duties attachment if necessary.

Briefly describe the selection criteria used for this Contractor (e.g., education, training) and attach a sole source justification for selection and reasonableness of cost or three quotes should the total value of the PSA exceed $25,000.

**Part II - Determination of proper status**

# Brown University
# Employee or Independent Contractor Checklist

This checklist will provide support for classifying individuals as an independent contractor or employee and should be completed by the department requesting payment. If the individual is deemed to be an independent contractor, payment should be processed through Accounts Payable. If the individual is deemed to be an employee, payment should be processed through Human Resources. The questions below are categorized according to IRS guidelines and will assist in determining the payment method.

| Identifying Factors | Yes | No |
|---|---|---|
| **Behavioral Control factors:** | | |
| 1. Is the individual required to comply with oral or written instructions from Brown University as to when, where, and how the work is to be performed? | ☐ | ☐ |
| 2. Does Brown University provide training on how to perform the task? | ☐ | ☐ |
| 3. Does the individual hire and supervise employees of Brown University? | ☐ | ☐ |
| 4. Is the individual required to work hours set by Brown University? | ☐ | ☐ |
| 5. Is the individual required to work on site at a Brown University facility? | ☐ | ☐ |
| 6. Does Brown University determine the sequence of tasks required to complete the work? | ☐ | ☐ |
| 7. Are regular written or oral reports required to be submitted to Brown University? | ☐ | ☐ |
| **Financial factors:** | | |
| 8. Does the individual receive payments of regular amounts at set intervals? | ☐ | ☐ |
| 9. Does Brown University pay for business and/or travel expenses for the individual? | ☐ | ☐ |
| 10. Does Brown University furnish tools and materials? | ☐ | ☐ |
| 11. Does Brown University have an investment in the work performed? (as opposed to the individual in their own business) | ☐ | ☐ |
| 12. Is Brown University able to make a profit or suffer a loss as opposed to the individual making a profit or suffering a loss? | ☐ | ☐ |
| **Relationship factors:** | | |
| 13. Does the individual work only for Brown University? | ☐ | ☐ |
| 14. Has the individual had a long term relationship with Brown University or will they have a long term relationship with Brown University? | ☐ | ☐ |
| 15. Does the individual have the right to terminate without incurring liability for nonperformance? | ☐ | ☐ |
| 16. Can the individual be fired at any time by Brown University? | ☐ | ☐ |
| 17. Does the individual advertise their services to other entities? | ☐ | ☐ |
| 18. Does the individual work for Brown University on a full time basis? | ☐ | ☐ |
| 19. Is the service provided integral to the regular operations of the University and performed on a routine basis? | ☐ | ☐ |
| 20. Are the services rendered with the aid of coworkers or an assistant? (not personally) | ☐ | ☐ |
| **Certification:** Based on the above, it is my determination that proper classification of this individual is (select one):<br>-Employee ☐<br>-Independent Contractor ☐ | | |
| **Note:** A misclassification may result in taxes, interests, and penalties being assessed by the IRS. If this happens, departments will be billed for their proportional taxes, interests, and penalties. | | |
| **Printed Name:** **Title:**<br><br>**Signature:** _____ | | |
| **Department Name:** **Phone:** | | |

**Part III -** **PROFESSIONAL SERVICES AGREEMENT**

**_____ DEPARTMENT**

**BROWN UNIVERSITY**

**NOTE: This form may be used for professional services provided by a company when compensation is greater than $5,000.**

AGREEMENT made and entered into this _____ day of _____, _____ by and between Brown University (hereinafter referred to as "BROWN"), a not-for-profit corporation organized and existing under the laws of the State of Rhode Island and Providence Plantations, located in the City of Providence, State of Rhode Island and Providence Plantations, on behalf of its _____ Department (hereinafter referred to as "DEPARTMENT") and _____ of _____ (hereinafter referred to as "CONTRACTOR").

WITNESSETH

WHEREAS, DEPARTMENT is desirous of obtaining the professional services of a contractor to perform services as specified herein; and

WHEREAS, CONTRACTOR represents that it is an organization in the business of providing the services covered hereunder and is desirous of providing said services to the DEPARTMENT under the terms and conditions set forth in this agreement;

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter contained and the sums of money hereinafter agreed to be paid the parties agree as follows:

1. **SCOPE OF DUTIES**. BROWN does hereby retain and engage CONTRACTOR in its professional capacity to perform the following services: (Use additional pages if necessary.)

CONTRACTOR shall perform such other duties as are customarily performed by one providing such services in other, same, or similar businesses, and shall also render such other services and duties as may be required of CONTRACTOR from time to time. CONTRACTOR does hereby accept and agree to such engagement.

Contact Person within the DEPARTMENT for the purpose of this agreement is: _____.

2. **HOURS OF WORK.** In the performance of the services described herein, BROWN will rely upon CONTRACTOR to put in such number of hours as is reasonably necessary to fulfill the spirit and purpose of this agreement. However, depending upon the needs of the DEPARTMENT, CONTRACTOR may be required from time to time to work a different schedule or devote additional time to the project. Such duties shall be rendered at such place/s as the DEPARTMENT shall in good faith require.

3. **WORK PRODUCT**. All work product, whether intellectual or real property, including, but not limited to, documents, charts, drawings, reports, manuscripts and inventions, developed or prepared for the DEPARTMENT by CONTRACTOR or its employees under the terms of this agreement shall belong exclusively to BROWN and shall be deemed to be works made for hire and BROWN shall be the sole owner of all copyright and other proprietary rights (both tangible and intangible), title, and interest therein. To the extent that any of such deliverable items may not, by operation of law, be works made for hire, CONTRACTOR hereby assigns to BROWN the ownership of rights including, but not limited to, copyrights, registrations and similar protections which may be available. CONTRACTOR agrees to give BROWN or its designees all assistance reasonably required to perfect such rights.

Nothing in the foregoing shall be construed so as to prohibit CONTRACTOR from using like or similar materials in the performance of agreements with other parties. CONTRACTOR retains all rights, including, but not limited to, copyrights, patents, trademarks, or other proprietary rights (both tangible and intangible) to materials previously owned or used in the development of the work product.

4. **WORK STANDARDS**. In the performance of the services herein contemplated, CONTRACTOR is an independent contractor with the authority to control and direct the manner and means of performing its responsibilities hereunder, BROWN and the DEPARTMENT being interested only in the results obtained. However, the work contemplated herein must meet the approval of the DEPARTMENT and shall be subject to the DEPARTMENT's general right of supervision to secure the satisfactory completion thereof.

CONTRACTOR and its employees shall perform all services required under this agreement in compliance with all applicable federal, state or local rules, and/or regulations and policies established by BROWN and the DEPARTMENT. CONTRACTOR shall perform services in accordance with generally accepted professional standards and procedures for persons in the same or similar businesses.

5. **BEST EFFORTS**. CONTRACTOR shall ensure that employees performing services under this agreement pursuant to the express and implicit terms hereof do so to the best of their abilities, experience, and talents to the reasonable satisfaction of the DEPARTMENT. CONTRACTOR shall inform the DEPARTMENT of any deviation from the scope of work or any cause which renders CONTRACTOR unable to perform the work as required.

6. **PERIOD OF PERFORMANCE**. The term of this agreement shall commence on _____, and terminate on _____, subject, however, to prior termination as hereinafter provided.

7. **COMPENSATION**. In consideration of the performance of the terms of this agreement, BROWN shall pay CONTRACTOR, and CONTRACTOR shall accept from BROWN, in full payment for CONTRACTOR's services hereunder, a total sum not to exceed _____ Dollars ($_____.___), such sum including _____ Dollars ($_____.____) for services, payable at a rate of _____ Dollars ($_____.___) per _____ and an amount not to exceed Dollars ($_____.___) for reimbursement of reasonable related expenses incurred in conjunction with the performance of this agreement as determined by DEPARTMENT. Said amount shall be paid from the DEPARTMENT's Funding Source_____. Payment shall be made as follows:

CONTRACTOR shall be paid only for those services which have been rendered, with said payments being pro-rated for any period that CONTRACTOR has not worked in accordance with the terms of this agreement. Final payment is contingent upon all services having been performed to the DEPARTMENT's satisfaction.

CONTRACTOR agrees that the above amount is sufficient compensation to cover the costs of all of CONTRACTOR's expenses and fees relative to the performance of the services to be rendered hereunder. In the event that CONTRACTOR incurs expenses which exceed the total compensation as stated herein, BROWN, at its option and at its sole discretion, may reimburse CONTRACTOR for any or all of said expenses, in whole or in part, upon submission of receipts for the same by CONTRACTOR.

8. **TERMINATION**. CONTRACTOR agrees that in the event of any violation by CONTRACTOR of any of the terms of this agreement, or the inability or failure of CONTRACTOR, in the DEPARTMENT's opinion, to provide the services contracted for hereunder, BROWN may then terminate CONTRACTOR's engagement immediately and without notice. If BROWN shall terminate this agreement, CONTRACTOR shall be only entitled to compensation for work completed or otherwise performed, pro-rated from the time CONTRACTOR commenced the work up to the time of termination and BROWN shall be relieved of any further obligations or liabilities to CONTRACTOR, financial and otherwise.

Upon expiration or earlier termination of this engagement, CONTRACTOR will surrender to BROWN in good condition any record or records pertaining to BROWN's business and all other items that are the property of BROWN.

9. **REPRESENTATIONS AND INDEMNIFICATION**. In the performance of this agreement, CONTRACTOR represents that it is a ☐ non profit ☐ for-profit organization (please check one) offering the services described herein to the general public. (If CONTRACTOR is incorporated, indicate date of incorporation _____and state of incorporation _____.) CONTRACTOR's employees are not agents or employees of the DEPARTMENT or BROWN for any purpose and are not entitled to the benefits provided by BROWN to its employees including, but not limited to, fringe benefits, health,

workers' compensation, and unemployment insurance and pension plans or any other remuneration. CONTRACTOR shall assume full responsibility and liability for making and/or paying any and all federal, state, and/or municipal taxes, assessments, social security benefits and/or other deductions as required by law on behalf of itself and its employees.

CONTRACTOR certifies that this agreement will not violate the terms of any contract with, or any obligation to, another institution or employer. CONTRACTOR may not contract with others to perform the same or similar services where such participation would interfere with the performance of CONTRACTOR's duties under this agreement.

CONTRACTOR certifies that s/he is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. (If debarred, suspended, proposed for debarment, please check here.☐ Payment from federal funds is prohibited in such cases.)

CONTRACTOR further hereby exonerates, indemnifies and holds harmless BROWN, including the Corporation, its trustees, officers, employees, and agents, for all liability, losses, damages or expenses from any and all fines, suits, claims, and demands, including reasonable attorney's fees, arising from any actions of any kind or nature resulting from any acts, errors, or omissions of CONTRACTOR as a result of performing the services to be rendered hereunder, provided, however, that such indemnification shall not apply to any fines, suits, claims, and demands resulting from the sole negligence of DEPARTMENT or BROWN.

CONTRACTOR avers that it complies with all applicable federal and state laws and regulations governing employment relationships with its employees and subcontractors, including, but not limited to, equal employment and nondiscrimination, affirmative action, sexual harassment, equal pay, accommodation of disabilities, family and medical leave and workplace safety.

10. **ASSURANCES OF CONFIDENTIALITY AND SAFEGUARDING.** In accordance with the Gramm-Leach-Bliley Act and the Family Education Rights and Privacy Act, Contractor assures that it is capable of maintaining appropriate safeguards for non-public personal financial information, student education records, and other protected information ("Brown Confidential Information (BCI)") to which Contractor may be provided access to or gathering on behalf of Brown. Information shall be held in the strictest confidence and may only be used/accessed for the purposes set out in the agreement. Contractor will protect BCI in accordance with generally accepted commercial standards and no less rigorously than it protects its own confidential information. Contractor shall not release BCI obtained/accessed to any other party unless authorized in writing by the appropriate data owner at Brown. Contractor laptops and/or PDAs used to transmit or store BCI (with written permission) must be patched and protected with up-to-date anti-virus and anti-spyware software. Remote access to BCI must be protected with a Brown-approved encryption mechanism (e.g. VPN, SSH). Upon termination of this agreement, Contractor shall return to Brown all BCI in its possession and Contractor shall not maintain any originals or copies of BCI, in any format or on any media. Any breach by Contractor of these obligations shall be cause for immediate termination of this Agreement. Contractor shall immediately notify Brown of any breach of its obligations of confidentiality. Contractor agrees that any breach of its obligations of confidentiality will cause immediate and irreparable injury and that Brown shall be entitled to obtain injunctive relief in addition to any other remedies available at law.

11. **NOTICE**. All notices, requests, and consents required to be made or given hereunder shall be given in writing, registered mail (return receipt requested), addressed:

If to the DEPARTMENT/BROWN: to _____ with a copy to Office of the General Counsel, Brown University, Box 1913, Providence, RI. 02912.

If to CONTRACTOR: to _____ with a copy to

12. **GENERAL TERMS**. The failure of the DEPARTMENT at any time to require performance by CONTRACTOR or its employees of any provision expressed herein shall in no way affect BROWN's right thereafter to enforce such provision on behalf of the DEPARTMENT; nor shall the waiver by the DEPARTMENT and/or BROWN of any breach of any provision expressed herein be taken or held to be a waiver of any succeeding breach of any such provision or as a waiver of a provision itself.

Neither CONTRACTOR nor its employees shall have the right to make any contracts or legally binding commitments for or on behalf of the DEPARTMENT or BROWN. This agreement may not be assigned, or otherwise transferred without the express prior written consent of BROWN.

The captions or headings of the paragraphs hereof are for convenience only and shall not control or affect the meaning or construction of any of the terms or provisions of this agreement. This agreement may be executed in one or more counterparts any or all of which shall constitute one and the same instrument.

This agreement embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior agreements, understandings representations and statements, whether oral or written, are merged into this agreement. Neither this agreement nor any provisions hereof may be modified or amended unless in an instrument signed by a duly authorized representative of both CONTRACTOR and of BROWN.

The parties agree that this agreement shall be construed in accordance with and governed by the laws of the State of Rhode Island and Providence Plantations and the parties consent to the jurisdiction and venue of the state and federal courts of the State of Rhode Island and Providence Plantations.

This agreement shall not be valid unless and until signed by an authorized representative of BROWN, in which event the agreement shall be deemed effective on the date signed by said representative of BROWN.

IN WITNESS WHEREOF, BROWN and CONTRACTOR, through their duly authorized representatives, have hereunto executed this agreement in duplicate as provided below.

BROWN UNIVERSITY
(Authorized Signer)

By:_____

Printed Name:

Title:

Date:_____

_____

Witness

CONTRACTOR

_____

Printed Name:

Title:

Date:_____

_____

Witness

Acknowledgment:

By: _____

Printed Name:

Title:

Date:

OGC: 99/316EM Prof. Svcs Generic Co.
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