**CONSULTING SERVICES AGREEMENT**

###### This consulting services agreement (“**Agreement**”) is entered into as of the last signature date below, and is between Utah Valley University, a body politic and corporate of the State of Utah, located at 800 W. University Parkway, Orem, Utah 84058 (“**University**”), and, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with offices locates at \_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Consultant**”).

###### The parties agree as follows:

# Term. The term of this Agreement shall commence on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ (the “Effective Date”), and continue until \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, unless terminated earlier or extended in accordance with the terms and conditions of this Agreement.

# Standard Terms and Conditions. The Standard Terms and Conditions for Independent Consultants that apply to this Agreement are set forth in Attachment A to this Agreement, which is incorporated herein by this reference.

# Scope of Work. Consultant agrees to perform the services for University (the “Services”) set forth in Attachment B to this Agreement, which is incorporated herein by this reference.

# Payment(s). University will pay Consultant the total sum of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars for the Services, according to the schedule set forth in Attachment B.

# Attachments. The following attachments are attached hereto and made part of this Agreement. Should any conflict between Attachment A and other attachments exist, Attachment A will govern.

#### Attachment A: Utah Valley University Standard Terms & Conditions for Independent Consultants

Attachment B: Consultant’s Scope of Work and Fee Schedule

# Effective Date. This Agreement will become effective on the date when all parties have signed it (“Effective Date”). The Effective Date of this Agreement will be the date this agreement is signed by the last party to sign it (as indicated by the date associated with that party’s signature).

IN WITNESS WHEREOF, the Parties have caused this Independent Consultant Services Agreement to be executed by their duly authorized representatives effective as of the Effective Date.

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| **CONSULTANT**  By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Signature) (Date)  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Print name of Signer)  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Print title of Signer) | **UTAH VALLEY UNIVERSITY**  By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Signature) (Date)  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Print name of Signer)  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Print title of Signer) |

**ATTACHMENT A**

**UTAH VALLEY UNIVERSITY**

**STANDARD TERMS & CONDITIONS FOR INDEPENDENT CONSULTANTS**

# Jurisdiction, Choice of Law, and Venue. The Agreement shall be governed by the laws of the State of Utah, without regard to conflicts of laws principles. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Agreement or the breach thereof. Venue shall be in the Fourth Judicial District Court for Utah County.

# Consultant is an Independent Contractor. It is the express intention of the parties that Consultant is an independent contractor and will not be considered an employee of University for any purpose. The parties acknowledge that University does not control what will be done by the Consultant, how it will be done, or the method of accomplishing the result of the Consultant’s efforts. Consultant recognizes that Consultant has not entered into an employment relationship with University during, after, or at any time during the performance of the Services. Consultant represents that Consultant is in the business of providing the Services to the general public, and that nothing herein prevents Consultant from offering such services to persons other than University. Consultant acknowledges that Consultant is not being granted any exclusive right to perform the Services for University and hereby waives any such claim as against University. Consultant represents and warrants that Consultant is independently established as a business, including but not limited to being customarily engaged in the type of services being provided to University; providing tools and materials customarily required to perform the Services; having a place of business separate from University; performing or having performed services of the same nature as the Services for other clients; having the opportunity to realize a profit or risk a loss from expenses and debts incurred through an independently established business; having a business license; maintaining records that validate expenses, business asset valuation or income earned so Consultant may file self-employment and other business tax form with the IRS and other agencies; and maintaining workers’ compensation insurance for Consultant and Consultant’s employees (or having received a waiver from such from the applicable government agency).

# Place, Time, and Manner of Performance. Consultant shall complete the Services in a timely manner and understands that time is of the essence in completing the Services. Consultant shall be liable for all damages to University as a result of Consultant’s failure to timely perform the Services. Consultant’s Services may be rendered at the Consultant’s place of business and/or at University’s place of business, as agreed to by the parties depending on the types of Services provided. Consultant shall make reasonable service trips to University’s place of business, or such other places as designated by University, and shall be responsible for his attendance at meetings and other activities that are reasonably required to perform the Services, or which the Parties have agreed that Consultant shall attend. Consultant shall work as many hours as may be reasonably necessary to render the Services, to meet deadlines or milestones reasonably required by University, and to otherwise fulfill the purposes of this Contract. With certain exceptions, such as when Consultant is required to attend meetings, the hours that Consultant is to work on any given day will be within Consultant's control. Consultant may elect the manner in which the Services are to be performed; provided, however, that Consultant shall perform all work in a professional manner and shall meet or exceed the standards prevailing in Consultant’s industry or profession among those providing similar services. Consultant represents to University that Consultant is qualified to perform the work described herein, and needs and expects no training or supervision from University. University shall not have the right to control the means or manner of Consultant’s work.

# Payment(s) and Expenses.

## Because Consultant is an independent contractor, University will not withhold taxes from the amount of Payment(s) paid to Consultant and will instead issue Consultant an IRS Form 1099. All applicable federal and state taxes assessed on the Payment(s), including without limitation, FICA and any other payments required by federal or state law, will be paid by Consultant. Consultant indemnifies and holds University harmless from any tax liability or penalty assessed to University for non-payment of such taxes or other payments.

## Consultant shall not be entitled to participate in, nor receive any benefits from, any insurance plan, disability plan, medical or dental plan, retirement benefit plan, deferred compensation plan, savings plan or any fringe benefit or welfare benefit plan sponsored, maintained or provided by University.

## Unless the parties agree otherwise in advance in writing with respect to particular business and travel expenses, Consultant will be responsible for supplying all tools needed to perform the Services and for paying all expenses incurred in providing the Services.

## Consultant warrants that Consultant is a citizen of the United States of America or a resident alien. Consultant will provide such documents as required by the laws of the United States and the laws of the State of Utah necessary to prove her/his eligibility to perform the Services. Consultant further agrees that s/he will provide University with an IRS Form W-9 as required by the Internal Revenue Code.

# Compliance with Laws and Rules. Consultant, and Consultant’s employees and agents, as applicable, agree to (i) comply with all laws, rules, regulations and ordinances applicable to the performance of the Services by Consultant, and (ii) observe all University rules, regulations and policies with regard to conduct, as well as those pertaining to the health, safety and protection of persons or property, at any time Consultant is on University’s premises. Consultant, and Consultant’s employees and agents as applicable, assume all risk of and liability for loss of or damage to Consultant’s property, and for personal injury, sickness or death, in case sustained by any of them, where such loss or damage is incurred or results from, the performance of the Services hereunder, except to the extent the same is finally determined by a court of competent jurisdiction to have been caused by the gross negligence or willful misconduct of University or University’s employees or agents.

# Change in Scope of Work. Any changes in the scope of the work of the Services may only be made by written amendment, mutually agreed to and signed by duly authorized representatives of both parties, specifying the exact nature of the changes, including any fee adjustments, time of performance adjustments, or any other significant factors.

# Ownership of Work Product.

## Consultant agrees that all notes, records, drawings, designs, inventions, improvements, developments, discoveries, copyrightable material and trade secrets conceived, discovered, developed or reduced to practice by Consultant during the Term, whether on Consultant’s own or in collaboration with others, including subcontractors, that are conceived, discovered, developed or reduced to practice in connection with the performance of the Services hereunder and relate to the actual or, to the extent communicated to Consultant by University, anticipated business of University (collectively, “Inventions”) are and will remain the sole property of University; provided, however, that the foregoing will not be construed as transferring to University any Pre-Existing Right (as defined in subsection 7(c) below). Consultant agrees to assign (or cause to be assigned) and hereby assigns fully to University all Inventions and any copyrights, patents, mask work rights or other intellectual property rights relating to the Inventions.

## Consultant agrees to assist University or Consultant’s designee, at University’s expense, in every proper way to secure University’s rights in all Inventions and any copyrights, patents, mask work rights or other intellectual property rights relating to all Inventions in any and all countries. Consultant acknowledges that such assistance may include: (i) disclosing to University all pertinent information and data with respect to all Inventions, and/or (ii) executing all applications, specifications, oaths, assignments and all other instruments that University may deem necessary to apply for and obtain such rights and/or to assign and convey to University, its successors, assigns and nominees the sole and exclusive right, title and interest in and to all Inventions and any copyrights, patents, mask work rights or other intellectual property rights relating to the Inventions. Consultant agrees that Consultant’s obligations under this subsection (b) shall continue after the termination of this Contract.

## Consultant agrees that if, in the course of performing the Services hereunder, Consultant elects to incorporate into any Invention any invention, improvement, development, concept, discovery or other proprietary information or intellectual property right owned by Consultant (or in which Consultant has an interest) that was created or obtained by Consultant either (a) prior to the Effective Date or (b) after the Effective Date in a manner unrelated to the performance of the Services (“Pre-Existing Rights”), Consultant will notify University in writing before incorporating such Pre-Existing Right into any Invention. Consultant hereby grants to University a non-exclusive, fully paid-up, royalty-free, perpetual, irrevocable, worldwide license to make, have made, modify, use, offer for sale, sell, reproduce, create derivative works of, distribute, perform or display any such Pre-Existing Right to the extent necessary to enable University to fully exploit any Invention or other deliverable provided by Consultant in connection with the performance of the Services. Consultant will not incorporate any invention, improvement, development, concept, discovery or other proprietary information owned by any third party into any Invention without prior notice to and the prior written consent of University.

## Consultant agrees that, if University or its agents is unable, because of Consultant’s unavailability, dissolution, mental or physical incapacity, or for any other reason, to secure Consultant’s signature for the purpose of applying for or pursuing any application for any United States or foreign patents or mask work or copyright registrations covering the Inventions assigned to University in Section 7(a) of these terms and conditions, then Consultant hereby irrevocably designates and appoints University and its duly authorized officers and agents as Consultant’s agent and attorney-in-fact, to act for and on Consultant’s behalf to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of patents, copyright and mask work registrations with the same legal force and effect as if executed by Consultant.

# University Trademarks and Name; Publicity. Nothing in the Agreement establishes in Consultant any right or interest in University’s names or marks, including such names as “Utah Valley University,” “UVU,” or any derivation thereof. Notwithstanding any provision of the Agreement, Consultant agrees not to use, attempt to use, or assert ownership or any interest in any University intellectual property, including any name or mark. Consultant will not use University’s name or marks, or mention University as a customer, partner, or client, in any advertisement, promotion, announcement, press release, or other marketing communication without prior written approval from University.

# Conflict of Interest. Consultant represents that none of its officers or employees are officers or employees of Utah Valley University unless disclosure regarding such has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.

# Indemnification. Consultant agrees to indemnify, hold harmless, and defend University and its trustees, officers, employees, agents and affiliates from and against any and all taxes, claims, losses, damages, liabilities, fees, judgments, costs and expenses, including attorneys’ fees and other legal expenses, arising directly or indirectly from or in connection with: (a) any negligent, reckless or intentionally wrongful act of Consultant or Consultant’s assistants, employees, officers, subcontractors or agents, as applicable, (b) a determination by a court or agency that the Consultant or any of Consultant’s employees, agents or subcontractors is an employee of University, (c) any breach by the Consultant or Consultant’s assistants, employees, subcontractors or agents, as applicable, of this Agreement, or (d) any violation or claimed violation of a third party’s rights resulting in whole or in part from University’s use of the work product of Consultant under this Agreement.

# Insurance. Prior to execution of this Agreement, if Consultant plans to complete the Services under this Agreement himself/herself and not to hire employees to assist him/her in completing said Services, Consultant shall provide proof of either worker’s compensation insurance or health insurance for himself/herself. If Consultant plans to engage employees to assist in completing the Services under this Agreement, Consultant must secure, and prior to execution of this Agreement, provide proof of workers’ compensation insurance for himself/herself and his/her employees involved in performing the Services pursuant to the Agreement. Consultant will cause any of his/her subcontractors who provide materials or perform Services relative to this Contract, also to maintain the insurance coverages and provisions listed above. Consultant shall indemnify and hold the University harmless from any claims which may arise as a result of Consultant’s failure to provide any of the insurance coverage required herein.

# Confidentiality.

## Consultant acknowledges and agrees that all business and financial data provided by University to Consultant or accessed by Consultant in connection with its obligations or rights under this Agreement or the performance of any services by Consultant under this Agreement (collectively, “University Data”), are proprietary and confidential in nature. Consultant shall not use University Data for any purpose other than the authorized purposes of this Agreement. Except as expressly and unambiguously allowed herein, and except where disclosure is required by law (provided, however, that Consultant shall promptly notify University and take reasonable steps to assist University, at University’s expense, in contesting such disclosure requirement or in otherwise protecting University’s rights prior to any such disclosure), Consultant will, and will require its employees to, hold in confidence and not use, disclose, share, or publish any University Data in any manner whatsoever, in whole or in part, without the prior written consent of University in each case and shall similarly bind its permitted subcontractors, if any, in writing. Consultant’s nondisclosure obligation shall not apply to information it can document is generally available to the public (other than through breach of this Contract). Without limiting the generality of the foregoing obligations, in the event that such disclosure is sought by subpoena, document request, or notice of deposition or other legal proceeding, Consultant agrees to notify University in writing as soon as reasonably possible but no later than forty-eight (48) hours prior to any deadline for such disclosure. In addition, promptly following the expiration or earlier termination of this Contract, Consultant shall, after consultation with University, either (i) destroy University Data in a manner that completely protects the confidentiality of University Data or (ii) return all of University Data to University, at University’s election. The expiration or termination of this Agreement by either party shall not terminate the continuing confidentiality obligations imposed on the parties by the terms of this Agreement.

## Consultant is hereby informed that University is a governmental entity and thus subject to the Government Records Access and Management Act of the Utah Code, Section 63-2G-101 et seq., 1953, as amended (“GRAMA”). Pursuant to GRAMA, certain records within University’s possession or control may be subject to public disclosure. University hereby informs Consultant that any person or entity that provides University with records that such person or entity believes should be protected from disclosure for business reasons must, pursuant to Section 63-G2-309 of GRAMA, provide to University, with the record, a written claim of business confidentiality and a concise statement of reasons supporting such claim.

# Termination. Unless otherwise stated in this Agreement, University may terminate this Agreement upon seven (7) days’ written notice to Consultant if Consultant (i) refuses to or is unable to perform the Services, or (ii) has breached any one or more Sections of this Agreement. Within thirty (30) days after the expiration or earlier termination of this Agreement for any reason, University will pay all amounts owing to Consultant for Services performed by Consultant and accepted by University prior to such expiration or termination and all related expenses, if any, submitted before such date. On the expiration or earlier termination of this Agreement for any reason, Consultant will promptly deliver to University any and all Inventions, software, documents, materials, data or information identified, developed and/or delivered by Consultant under this Agreement in the course of performance of the Services hereunder and not previously delivered to University, together with all written documents, materials, data or information, if any, furnished by University to Consultant in connection with the performance of the Services hereunder and not consumed as part of such performance.

# Assignment/Transfer. Consultant will not assign or transfer Consultant’s obligations under this Agreement, nor engage any third party to perform the Services, without the prior written consent of University, which consent may be granted or withheld in University’s sole discretion. Consultant will ensure that each employee, agent and subcontractor of Consultant is bound in writing to abide by the provisions of this Agreement.

# Governmental Entity. Consultant acknowledges that University is a governmental entity under the Governmental Immunity Act of Utah, Utah Code Ann., Section 63G-7-101 *et seq*., as amended (the “Act”). Nothing in the Agreement shall be construed as a waiver by University of any protections, rights, or defenses applicable to University under the Act, including without limitation the provisions of Section 63G-7-604 regarding limitation of judgments. It is not the intent of University to incur by contract any liability for the operations, acts, or omissions of the other Party or any third party and nothing in the Agreement shall be so interpreted or construed.

# Consultant Not Agent. Notwithstanding any provision of the Agreement, Consultant shall not be appointed the University’s officer, agent, or attorney-in-fact and shall not have authority to execute documents or take action with the legal force and effect as if those actions were taken by the University.

# Force Majeure. Neither party to this Agreement will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. University may terminate this Agreement after determining such delay or default will reasonably prevent successful performance of this Agreement.

# Attorney Fees. In the event it is necessary for either party to bring any action to enforce any of the terms of this Agreement, it is agreed that the prevailing party will be entitled to its attorneys’ fees and costs.

# Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior written and oral agreements between the parties regarding the subject matter of this Agreement.

# Notices. All notices under this Agreement shall be in writing and shall be given by (i) established express delivery service which maintains delivery records, or (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested, to the parties at the following addresses, or such other addresses as the parties may designate from time to time by written notice in the above manner:

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| CONSULTANT  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | UTAH VALLEY UNIVERSITY  Attn: General Counsel  800 W. University Parkway  Orem, UT 84058 |

ATTACHMENT B

Consultant’s Scope of Work and Fee Schedule