



Encumbrance No. _____

INDEPENDENT CONTRACTOR TERMS OF AGREEMENT

Return to the Division of Human Resources when complete.

Part One: Independent Contractor Information ("Contractor")

Name: _____ Individual: Business: (mark one)

Address: _____ Phone: _____ Email: _____

Part Two: Scope of Work

Description of services, responsibilities, duties to be provided under this Agreement (please attach additional pages if necessary): *Attach a Statement of Work*

Enter Description

Terms of Payment: \$ _____ Hourly \$ _____ Total
Term of Agreement: _____ (starting date) to _____ (ending date).

Part Three: State of West Virginia Employee

The following certification must be completed and signed if the vendor is a full-time employee of the State of West Virginia.

Please check the appropriate boxes below:

- I am not currently a full-time employee of the State of West Virginia;
- I am currently a full-time employee of the State of West Virginia;
- I am currently an employee of Marshall University: MUID _____.

It is hereby certified that the service(s) to be performed under this agreement will not interfere with or detract from the full-time duties of the employee and the amount of annual compensation received by the above named Contractor from the State of West Virginia for full-time employment during the current fiscal year will be \$ _____.

The Contractor serves as _____ with the title of _____,

Certified by _____
(Supervisor's Signature)

INTENDING TO BE LEGALLY BOUND, the parties hereto have caused this Agreement to be executed by their duly authorized officers, mutually agree on the terms, and further agree to the "Additional terms," herein attached.

FOR MARSHALL UNIVERSITY:

FOR CONTRACTOR:

Name

Signature

Date

Name

Signature

Date

Approvals:

_____ Vice President/Dean or Authorized Delegate Signature	_____ Date
_____ Human Resources	_____ Date
_____ Office of Purchasing	_____ Date

Additional Terms

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements set forth herein, the parties to the "Independent Contractor Terms of Agreement" hereto further agree as follows:

ARTICLE I: NATURE OF CONTRACT

- 1.1 Contractor shall be retained as an independent contractor, on a non-exclusive basis, to fulfill the terms of this Agreement. MU may, from time to time, communicate specific requests to Contractor concerning the performance of the work described in this Agreement. It is expressly understood by the parties that these instructions and requests are for the sole purpose of performing the specific tasks requested to ensure satisfactory completion of the work described in this Agreement. The management of the work, including the exclusive right to control or direct the manner or means by which the work is performed, remains with the Contractor.
- 1.2 MU enters into this Agreement in reliance upon Contractor's representations that it has the necessary expertise and experience to perform its obligations hereunder, and Contractor warrants that it does possess the necessary expertise and experience. Furthermore, Contractor warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the contractor to its terms. The person(s) executing this contract on behalf of Contractor warrant(s) that such person(s) have full authorization to execute this contract.
- 1.3 Contractor may learn of information, documents, data, records, or other material that is confidential in the performance of this Agreement. Contractor may not disclose any information obtained by it as a result of this Agreement, without the written permission of MU. The Contractor must assume that all information, documents, data, records or other material is confidential. Contractor further agrees to abide by any and all pertinent federal, state and local laws and regulations. Contractor affirms that it has knowledge of, understands, and complies with the Family Educational rights and Privacy Act ("FERPA"). All provisions of this Agreement relating to "confidentiality" shall remain binding upon Contractor in the event of cancellation, unless law requires such disclosure.
- 1.4 The Contractor shall at all times perform the Services in a competent, diligent, and workmanlike manner, and in accordance with all of the terms and conditions of this Agreement, as well as all applicable University policies. The Contractor shall faithfully perform and use his/her best efforts in performing the Services according to the specifications, timetables, milestones and all other performance objectives requirements as set forth in the Terms of Agreement or otherwise attached and part of such Agreement.

ARTICLE II: SCOPE OF SERVICES

- 2.1 Contractor shall perform such services as are described on the "Independent Contractor Terms of Agreement" form, attached and applied herein.
- 2.2 As previously mentioned, The University reserves the right to inspect the services provided under this contract at all reasonable times and places during the term of the contract. "Services" as used in this clause includes the works and any tangible things produced or delivered in the performance of services, whether or not complete. If any of the services do not conform to contract requirements, the University may require the Contractor to perform the services again in conformity with contract requirements, with no additional payment. When defects in the quality or quantity of service cannot be corrected by re-performance, the University may (1) require the Contractor to take necessary action to ensure that the future performance conforms to contract requirements and (2) equitably reduce the payment due the Contractor to reflect the reduced value of the services performed. These remedies in no way limit the remedies available to the University in the termination provisions of this agreement, or remedies otherwise available at law.
- 2.3 Ownership of Work Products. All work product, including any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials prepared by Contractor in the performance of its obligations under this contract shall be deemed works for hire and are the exclusive property of the University unless otherwise agreement to in writing by both parties. All such materials shall be delivered to the University by the Contractor upon completion, termination, or cancellation of this contract. Contractor may, at its own expense, keep copies of all its writings for its personal files. Contractor shall not use, willingly allow, nor cause to have such materials used for any purpose other than the performance of Contractor's obligations under this contract without the prior written consent of the University. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works. Contractor agrees that all originals and all copies of any and all material containing, representing, evidencing, recording, or

constituting all or part of University Intellectual Property, however and whenever produced, whether by Contractor or others and whether protected under copyright law or patentable or protected under other intellectual property law, shall be immediately handed over to the University upon its creations and any copies thereof returned to the University upon termination of this Agreement for any reason.

ARTICLE III: TIME OF PERFORMANCE

3.1 The services as stated in Article II, Scope of Services, shall be commenced on the Effective Date of this Agreement and terminate on the date included on the "Independent Contractor Terms of Agreement" form, unless earlier terminated as provisions in this Agreement become effective.

ARTICLE IV: COMPENSATION

4.1 MU shall pay Contractor for services as are described and provided for on the "Independent Contractor Terms of Agreement" form, attached and applied herein. This fee represents the total fee for Services and, unless otherwise specifically provided for in writing in this Agreement or amendment hereto, Contractor shall not be reimbursed for any expenses accrued by Contractor during the performance of the Services.

4.2 This Agreement shall not exceed one year. University may renew this Agreement on the same terms and conditions by giving thirty (30) days prior written notice prior to expiration. Such renewal will be limited to one semester increments.

4.3 MU's obligation to pay Contractor the fees provided for under this Agreement shall be contingent upon Contractor submitting an invoice with the fee to University's Accounts Payable Department within thirty (30) days of when the fee is due. Each such invoice shall include the following information: Contractor's name and address, the specific Services provided and the dates worked. Contractor agrees to complete and return to University any required forms and paperwork (as applicable), including but not limited to Form W-9, Form BOG-48, and Vendor Registration request form, as a condition of receiving timely payment.

4.4 Any anticipated travel must be incorporated into the vendor's fee. No travel will be reimbursed by MU and is the sole responsibility of the vendor.

ARTICLE V: TERMINATION OF CONTRACTOR'S SERVICES

5.1 MU may, at any time prior to the completion of services by Contractor under this Agreement, suspend or terminate this Agreement with or without cause by giving written notice to Contractor.

5.2 Contractor, upon receipt of notice of suspension or termination, shall cease work on the suspended or terminated activities under this Agreement, suspend or terminate all subcontracts relating to the suspended or terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and, if requested by MU, furnish a report, as of the date of receipt of notice of suspension or termination, describing the status of all work and student/assignment/academic progress under this Agreement, including, without limitation, results, conclusions resulting therefrom, and any other matters MU requires.

5.3 Contractor shall be paid for services rendered up to the date Contractor received notice of suspension or termination, less any payments previously made, provided Contractor has supported such payments with detailed factual data containing services performed and hours worked. In the event of suspension or termination, any payments made by MU for which Contractor has not rendered services shall be refunded.

5.4 In the event this Agreement is terminated prior to its completion, Contractor, upon payment as specified, shall deliver to MU all work products and documents which have been prepared by Contractor in the course of providing services under this Agreement. All such materials shall become and remain the property of MU, to be used in such manner and for such purpose as MU may choose.

5.5 Contractor agrees to waive any right to, and shall make no claim for, additional compensation against MU by reason of such suspension or termination

5.6 In the event the Contractor desires to terminate the contract before its completion date, Contractor must give 90 days' notice and will not be entitled to any remaining payments after the date of termination. Contractor is responsible for any other debts, fees, or other encumbrances resulting from early termination.

ARTICLE VI: RELATIONSHIP OF PARTIES

- 6.1 MU and Contractor agree that, during the term of this Agreement, Contractor shall be engaged by MU solely on an independent contractor basis. Contractor acknowledges and agrees that any and all direct taxes and other returns required by the city, local, state or federal law or regulations of the United States, such country in which services are rendered, or anywhere as applicable with respect to the Services provided and the actives of the Contractor and all payments due thereon, and all licenses, registrations, permits, and the like, and all fees or other payments or coverages required or due in connection therewith, including but not limited to, income or other tax withholdings, and other taxes, etc., shall be the responsibility and obligation of the Contractor, and made, filed, paid, and maintained by the Contractor. Furthermore, Contractor acknowledges and agrees that Contractor shall pay, and be solely responsible for, all of Contractor's operating expenses. Contractor shall have no authority and shall make no representations, warranties or statements on behalf of University, and neither party hereto shall bind or be liable for the debts or obligations of the other.
- 6.2 The Contractor shall be solely responsible for the payment of all wages, taxes, expenses and benefits associated with the use and employment of its personnel. The Contractor agrees to indemnify and hold harmless the University against all claims, taxes, penalties, interest and costs which may be assessed against the University under any law, rule or regulation now in effect or hereafter enacted, with respect to the Contractor.
- 6.3 Contractor agrees to comply with all applicable federal, state and local laws in the conduct of the work hereunder.
- 6.4 Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent. Contractor acknowledges that no decision making authority is provided to the Contractor in regard to the activities and Services provided by the Contractor as an independent contractor under this Agreement. Contractor is prohibited from accepting service of process or notices on University's behalf.

ARTICLE VII: RECORD KEEPING AND NON-COMPETE AGREEMENT

- 7.1 During performance of this Agreement and for a period of three years after its completion, Contractor shall maintain auditable records of all charges pertaining to this Agreement and shall make such records available to MU as MU may reasonably require.
- 7.2 The Contractor shall immediately return to the University any and all Confidential or Proprietary Information (and any copies thereof in Contractor's possession or control) which may have been in tangible form, upon termination or expiration of this Agreement, or as the University may from time to time request.
- 7.3 For good consideration and as an inducement for MU to employ Contractor, the undersigned Contractor hereby agrees not to directly or indirectly compete with the business of MU and its successors and assigns during the contract period.

ARTICLE VIII: RELATED AGREEMENTS

- 8.1 The work contemplated in this Agreement is to be performed by Contractor and the Contractor alone. The Contractor's rights and obligations hereunder are deemed to be personal and may not be transferred or assigned, and any attempted assignment shall be void and of no effect. The Contractor shall not subcontract for any part of the Services or obligations hereunder without the prior written consent of the University. This Agreement may be assigned by the University, and notice of such assignment shall be given to the Contractor. Any unauthorized assignment shall be void. University shall have the right, but not the obligation to terminate this contract, without waiver of any other right or remedy, upon notice of Contractor's assignment or subcontract in violation of this section.

ARTICLE IX: LIABILITY

- 9.1 Contractor agrees to indemnify and to hold MU harmless and immune from any and all claims for injury or damages arising from this Agreement which are attributable to Contractor's own actions or omissions or those of its trustees, officers, agents, employees, subcontractors, suppliers, third parties utilized by Contractor, or joint ventures while acting under this Agreement. Such claims shall include any claims made under the Fair Labor Standards Act or under any other federal or state law involving wages, overtime, or employment matters and any claims involving patents, copyrights, and trademarks.

ARTICLE X: GENERAL PROVISIONS

- 10.1 Contractor warrants that it does not owe any monies or debts to the state of West Virginia, its agencies, political subdivisions, boards, commissions or other entities.
- 10.2 No Agency. Nothing herein shall be construed to create an agency relationship between the University and Contractor, or any employment relationship between Contractor and any staff member provided by MU to perform the services under this Agreement. Contractor will not represent to be or hold itself out as an agent or affiliate of the University at any time during the term of this Agreement.
- 10.3 Use of MU's Logos, etc. Contractor may not, and MU does not grant, use of the University's identifying marks without the express written permission of the University. Use of the University's identifying marks without such permission will be considered a material breach of this Agreement.
- 10.4 Time is of the Essence. All time limits, time periods, milestones and completion dates stated in the contract documents are of the essence of this contract.
- 10.5 Equal Opportunity. Both Contractor and MU subscribe to a policy of equal opportunity and will not discriminate on the basis of race, gender, religion, national origin, marital status, sexual orientation or physical disability.
- 10.6 Amendment. This Agreement contains the entire agreement between the parties hereto and shall not be modified, amended or supplemented, or any rights herein waived, unless such amendment or modification to this Agreement is (i) in writing; (ii) refers to this Agreement; and (iii) executed by an authorized representative of each party. This Agreement supersedes any and all previous agreements, whether written or oral, between the parties.
- 10.7 Notice. All notices, consents, and communications hereunder shall be given in writing, shall be deemed to be given upon receipt thereof, and shall be sent to the addresses first set forth above.
- 10.8 Headings. The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.
- 10.9 Severability. If any section or provision of this Agreement is held illegal, unenforceable or in conflict with any law by a court of competent jurisdiction, such Section or provision of this Agreement shall be deemed severed from this Agreement and the validity of the remainder of this Agreement shall not be affected thereby.
- 10.10 Choice of Law. This Agreement and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of West Virginia and only West Virginia courts shall have jurisdiction over any action or proceeding concerning the Agreement and/or performance thereunder.
- 10.11 Insurance. Where applicable, Contractor agrees to take all precautions necessary for the safety of and prevention of damage to property on or adjacent to the work site as applicable, and for the safety of and prevention of injury to persons, including MU's employees, contractor's employees, and third persons, on or adjacent to the work site. All work shall be performed entirely at contractor's risk. Contractor agrees to carry, for the duration of this contract, public liability insurance in an amount, and with an insurer, acceptable to the owner and commensurate with the minimum requirements of good practice and commercially reasonable standards.
- 10.12 Waiver. Failure of either party to insist upon the performance of any provision hereof or to exercise any right or remedy shall not be deemed a waiver of any right or remedy or of any existing or subsequent breach or default.