



## **GUIDELINES TO UNIVERSITY OF MARYLAND CONSULTANT AGREEMENT**

**PURPOSE OF CONTRACT-** The standard University of Maryland consultant agreement is to be used to document agreements between consultants and the University where the total value of the agreement will be \$5,000 or less. Do not use this agreement for honorariums, cultural events, rental of physical space or equipment, game rentals or exhibitors.

**STATEMENT OF WORK:** The Consultant should provide a written work statement outlining what is intended to be accomplished, dates by which milestones will be completed, who – specifically – will do the work, where the work will be performed, and the general methodology for accomplishing the tasks. The Statement of Work should be labeled *Attachment #1 – Statement of Work* and attached to the agreement. The Statement of Work is subject to the approval of the University's representative.

**MODIFICATIONS TO CONTRACT:** The attached agreement has been preapproved by University's Department of Procurement and Supply. Many of the terms are mandatory and protect authorized University signatories from potential legal problems. If a consultant requests modifications to the contract, you must receive prior written approval from Procurement which will consult with Legal Affairs, if necessary. If a consultant insists upon using his or her own agreement, that agreement must be reviewed and signed by Procurement and Supply.

**RIDERS:** Many consultant agreements will require the use of riders to specify matters such as responsible people, deliverables, milestones and payment schedules. Those riders must be attached to the agreement.

**PROCESSING:** The sponsoring University department completes two original agreement forms, has the consultant sign both copies, then reviews the agreement to ensure that the agreement satisfies their requirement and no modifications have been made, and counter signs the agreement forms. If the consultant will not accept the University Purchasing Card for payment, attach an SM form. The sponsoring department should retain a copy of the executed contract for its files. If the consultant modifies the agreement, forward the agreement to the Department of Procurement and Supply for review and signature.

**QUESTIONS:** Copies of the Consultant Agreement are available from the Office of Procurement and Supply (301-405-5813). Questions about Procurement's functions should also be directed to Procurement at that number. Questions relating to payment should be directed to the Office of the Comptroller, Accounts Payable (301-405-2634).

### **IS THE CONSULTANT AN EMPLOYEE OR AN INDEPENDENT CONTRACTOR?**

The Consultant Agreement form should NOT be used if the individual is considered to be an employee by the Internal Revenue Service. The legal analysis of this issue may be complex. Generally, if the answer to any of the following questions is yes, in most cases the individual is considered to be an employee. However, all Departments should consult with the President's Legal Office before making the final determination as to the proper classification, and whether use of a Consultant Agreement form is appropriate.

#### **Factors supporting classification as an employee:**

- % Is the individual an employee of the University of Maryland or of any other agency, department, public corporation, instrumentality or independent unit of the State of Maryland?
- % Is the individual working exclusively or substantially full-time for the University?

- % Are the services normally performed or can they be performed by a University employee? (training, etc.).
- % Are the services of the individual integrated into the operations of the University?
- % Is the University providing long-term assistance to the individual such as additional personnel, support, supplies, equipment, tools, office space, etc, and/or does the individual receive reimbursement for travel and business expenses?
- % Is the University providing on-going training and direction concerning how to complete the task? Or is the individual getting more than general directions and the objectives of the task?
- % Does the prospective consultant report to a University staff member who has the right to control how, when and where the individual does his/her work?
- % Is there a regular or on-going relationship with the prospective consultant? For example, are you hiring the individual for more than a one-time task and is he/she getting paid on an hourly, daily or weekly basis?
- % Is the prospective consultant using experience or expertise gained as a current or previous employee of the University to provide the service?
- % Can the consultant quit prior to completion of the project without incurring any legal liability?
- % Can the consultant be terminated at will by the University?

**Factors Supporting Classification As An Independent Contractor:**

- % Consultant maintains a separate business with his own work facility, equipment, materials or similar accommodations;
- % Consultant holds or has applied for a federal employer identification number, unless he is a sole proprietor who is not required to obtain a federal employer identification number;
- % Consultant performs or agrees to perform specific series or work for a specific amount of money and controls the means of performing the services or work;
- % Consultant incurs the principal expenses related to the service or work that he performs or agrees to perform;
- % Consultant is responsible for the satisfactory completion to work or services that they performs or agrees to perform and is or could be held liable for failure to complete the work or services;
- % Consultant receives compensation for work or services that he performs for a commission or on a per-job or competitive-bid basis;
- % Consultant may realize a profit or suffer a loss in connection with performing work or services; and
- % Consultant has continuing or recurring business liabilities or obligations.

**CONTRACT BELOW.....**

UNIVERSITY OF MARYLAND

Contract No.:

This Agreement is entered into between \_\_\_\_\_, (hereinafter [referred to as] “Contractor”) and the University of Maryland, College Park, Maryland 20742 (hereinafter [referred to as] “the University”), a public corporation and independent unit of the State of Maryland.

**1. Scope Of Work:**

**See Attachment #1 for Statement of Work.**

*Consultant should provide a written work statement outlining what is intended to be accomplished, dates by which milestones will be completed, who – specifically – will do the work, where the work will be performed, and the general methodology for accomplishing the tasks. The Statement of Work should be labeled Attachment #1 – Statement of Work and attached hereto. The Statement of Work is subject to the approval of the University’s representative.*

**2. Compensation and Method of Payment**

Contractor’s Federal Tax Identification Number or Social Security Number is \_\_\_\_\_.

\_\_\_\_\_**INVOICING** – Invoices in triplicate shall be provided to the University’s designated representative. If the contractor does not accept the University’s Procurement Card, then the University representative must prepare a separate small procurement order. The purchase order number or SM order number must appear on all invoices.

**3. Term**

The contractor shall provide delivery within \_\_\_\_\_ days from the date this agreement has been signed by both parties.

**4. Delivery and Acceptance**

Delivery shall be made in accordance with the scope of work and specifications. The University, in its sole discretion, may extend the time of performance for excusable delays due to unforeseeable causes beyond the Contractor’s control. The University unilaterally may order in writing the suspension, delay, or interruption of performance hereunder. The services listed in the scope of work and specifications shall be delivered to the point or points specified prior to, or on the date specified in this Contract. Any services that fail to meet the specifications shall be rejected. The University reserves the right to purchase replacement services in the open market and charge the Contractor for any excess price paid for the replacement, plus applicable expenses, if any.

**5. Maryland Law Prevails.**

The laws of Maryland shall govern the interpretation and enforcement of this Contract.

**6. Non-Hiring of State Employees**

No employee of the State of Maryland or any unit thereof, whose duties as such employee include matters relating to or affecting the subject matter of this contract, shall, while so employed, become or be an employee of the party or parties hereby contracting with the State of Maryland or any unit thereof.

**7. Insurance**

If insurance is required by the University, the Contractor shall maintain, during the term hereof, Workmen’s Compensation, Personal Injury and Property Insurance, and if the contract requires use of an automobile, Automobile Liability Insurance, in amounts required by statute. Contractor shall also require its subcontractors, if any, who enter University premises to maintain such insurance. Contractor and its subcontractors shall furnish the University, upon request, with copies of policies or other satisfactory proof of insurance.

**8. University Rules and Regulations**

Contractors and subcontractors, if applicable, while on University premises, shall comply with all University rules and regulations. Contractor shall become familiar with University procedures governing delivery, receipt and storage of materials at the work site, if applicable, so as not to unduly interfere with University operations. Contractor shall not stop, delay, or interfere with the University work schedule without the prior approval of the University’s designated representative.

**9. Independent Contractor**

It is understood and agreed that Contractor is an independent contractor and not an employee of the University. The University will not withhold income taxes, social security or any other sums from the payments made to the Contractor herein. The Contractor shall in no way hold himself out to any third person as an agent of the University. All persons furnished by Contractor shall be considered solely its employees or agents and Contractor shall be responsible for payment of all unemployment, social security and other payroll taxes, including making contributions when required by law.

**10. Disputes**

Pending Resolution of a claim, the Contractor shall proceed diligently with the performance of the contract in accordance with the procurement officer's decision. Disputes that cannot be settled promptly may be addressed to the University of Maryland, Department of Procurement and Supply, 2113-R Chesapeake Bldg, College Park, MD 20742. Telephone 301-405-5813.

**11. Termination for Default**

If the Contractor fails to fulfill its obligation under this contract properly and on time, or otherwise violates any provision of the contract, the University may terminate the contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the University's option, become the University's property. The University shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the University can affirmatively collect damages. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of USM Procurement Policies And Procedures.

**12. Termination for Convenience.**

The performance of work under this contract may be terminated by the University in accordance with this clause in whole, or from time to time in part, whenever the University shall determine that such termination is in the best interest of the University. The University will pay all reasonable costs associated with this contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of the USM Procurement Policies and Procedures.

**13. Nondiscrimination in Employment**

The Contractor agrees not to discriminate in any manner against an employee or applicant on the grounds of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap.

**14. Delays and Extensions of Time**

The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

**15. Entire Agreement**

This Agreement, Attachment #1, and the University's standard contract terms and conditions, which are hereby incorporated by reference (and are available on the internet at

<http://www.usmd.edu/Leadership/BoardOfRegents/Bylaws/Section VIII/VIII300.html> - see Policy and Procedures Appendix

A) contain the entire agreement of the parties and supersede all prior agreements and understanding, oral or otherwise, between the parties. No modification or amendment of this Agreement shall be effective unless the same shall be in writing duly executed by all parties hereto.

AGREED TO BY: The University of Maryland

AGREED TO BY: (Contractor)

BY: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

(Printed name)

(Printed name)

(Title)

(Date)

(Title)

(Date)