

INDEPENDENT CONTRACTOR AGREEMENT

(International)

**THIS AGREEMENT** dated as of the \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

**BETWEEN:**

**[*INSERT NAME OF CONTRACTOR*]**

(the “Contractor”)

- and -

University of Prince Edward Island (the “University”)

This Agreement will confirm the agreement between the University and the Contractor in regard to [*insert project title here*].

**SERVICES**

1. The services to be provided by the Contractor to the University are as follows:

(a) [*insert brief description of services here*]

(the “Services”), as more completely described in Appendix “A” hereto annexed.

2. The term of this Agreement shall commence on [*insert start date*] and end on [*insert end date*], and is subject to earlier termination as set out in Sections 11 and 12 hereof.

**CONDITIONS**

3. Upon receipt of invoice, the Contractor will be paid for the Services in accordance with and as described in Appendix “B” hereto annexed.

4. The Contractor is solely responsible for making any arrangements and for paying any and all expenses incurred in connection with providing the Services (including telephone, office supplies, document copying, facsimile transmission, postage and all types of insurance).

5. The Contractor shall be solely responsible for all legally required employer and employee contributions and deductions for the Contractor and any staff including worker’s compensation, government or private pension plan, employment insurance and government income taxes and medical coverage.

6. As a condition of this Agreement, the Contractor will be required to comply with all applicable University policies.

7. The parties shall sign the Confidentiality Agreement hereto annexed as Appendix “C’ upon execution of this Agreement.

8. The Contractor warrants that it is a corporation/partnership/sole proprietor [*choose one*] Further, the Contractor warrants and represents that it is duly registered and qualified to do business wherever necessary to carry out the terms of this Agreement. Acceptance of this Agreement does not constitute employment by the University or employment under *The Employment Insurance Act*. The status of the Contractor shall at all times remain that of an independent contractor.

9. All materials including, but not limited to, documents, raw data, research, processes, technology, programs and inventions conceived or produced in the performance of this Agreement shall belong to the University.

10. (a) The Contractor shall perform all services in accordance with applicable professional standards. The Contractor shall maintain errors and omissions insurance under a contract of indemnity with a limit of liability of not less than \_\_\_ million dollars and shall provide the University with written confirmation of such insurance upon the execution of this Agreement and at any time during the term of this Agreement upon request.

 **OR**

(a) Each party shall, at its own cost, provide and maintain during the entire term of this Agreement commercial general liability insurance of $\_\_\_,000,000, providing 30 days’ notice of cancellation. Each party shall provide the other with satisfactory proof of such insurance.

 (b) The Contractor agrees to indemnify and save harmless the University, the University’s officers, employees and agents against any and all liabilities, actions, losses, damages, costs and expenses which the University, its officers, employees and agents may sustain, incur, suffer or be required to pay by reason of the Contractor’s breach of this Agreement or by reason of any act, omission, fault, default or negligence of the Contractor or of those for whom the Contractor is responsible at law. This indemnity shall not be prejudiced by, and shall survive, the termination of this Agreement.

11. This Agreement may be terminated as follows:

(a) By the University where:

(i) in the reasonable opinion of the University, the Services provided by the Contractor are unsatisfactory, inadequate, or are improperly provided;

(ii) in the reasonable opinion of the University, the Contractor has failed to comply with any substantive term or condition of this Agreement;

(iii) the Contractor is dissolved or becomes bankrupt or insolvent;

(iv) the Services are provided in connection with a project for which the University has been awarded funding from an external source or for

 which the University receives payment for the provision of services to a third party, and that project or contract has been terminated or funding or payment reduced;

b) Following a written notice by either party at least 30 calendar days prior to the proposed cancelation, delivered in accordance with section 13, below.

12. Upon termination of this Agreement, the Contractor shall cease to provide any further Services. The University shall be under no obligation to the Contractor other than to pay, upon receipt of an invoice and satisfactory supporting documentation, such compensation as, in the reasonable opinion of the University, the Contractor may be entitled to receive under this Agreement for work completed to the satisfaction of the University up to the date of termination.

13. The parties agree that all notices required to be given under this Agreement shall be well and sufficiently given if sent by registered mail, postage prepaid, as follows:

To the Party of the First Part: [Insert Contractor’s Address]

To the Party of the Second Part: University of Prince Edward Island

 Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 550 University Avenue

 Charlottetown PE

 C1A 4P3

With a Copy to: Vice-President, Admin. & Finance

550 University Avenue

 Charlottetown PE

C1A 4P3

and any such notice shall be deemed to have been given and received on the second business day after which the envelope containing the notice was deposited and registered in a post office. In the event of an interruption of mail service, all notices shall be delivered by personal delivery.

14. This Agreement, or any of the rights or obligations thereunder, shall not be assigned in whole or in part by the Contractor without the prior written consent of the University. This Agreement shall enure to the benefit of and be binding upon the parties, their successors and permitted assigns.

15. This Agreement contains the entire agreement between the parties. There are no undertakings, representations, or promises, express or implied, other than those contained in this Agreement.

16. Governing Law – This Agreement shall be construed and governed by the laws of the

 Province of Prince Edward Island. With the exception of disputes arising in connection with the Confidentiality Agreement in Appendix “C”, in the event of any dispute arising out of this Agreement, the parties agree that the dispute will be resolved by final and binding arbitration as described in Appendix D.  Any arbitration shall be confidential, and except as required by law, neither party may disclose the content or results of any arbitration hereunder without the prior written consent of the other parties, except that disclosure is permitted to a party’s auditors and legal advisors.

17. This Agreement can only be amended by mutual written consent of the parties.

18. This Agreement may be executed in counterparts, each of which, when so executed and delivered to the other parties, shall be deemed to be an original, and when taken together, shall be deemed to be one and the same Agreement.

**IN WITNESS WHEREOF** the parties hereto have affixed their signatures as of the day and year first written above.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Contractor’s Full Name

 Per:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness

(Authorized Signatory for Contractor)

 Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 University of Prince Edward Island

 Per:

(Authorized Signatory)

Witness

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**[Note: UPEI requires 2 signatures if contract is valued at $100,000 or more]**

**APPENDIX A**

**DUTIES**

1. *{Insert full description of duties and service to be provided}*

2. The Contractor shall be responsible for the completion of the work and deliverables as described above and shall report to the following University official(s):

3. The primary person(s) responsible for delivery of the Services on behalf of the Contractor under this Agreement is/are as follows: *{insert name(s)}*

4. Satisfactory completion under this Agreement is defined as: *{insert as applicable}*

**APPENDIX B**

**FEES AND PAYMENT**

**The Contractor** shall provide the Services for a total fee of {insert $} plus applicable taxes *{per diem, per hour, total fee, etc}*, to be paid upon receipt of invoice and according to the following schedule:

{*Insert dates and payment amounts, or monthly, or bi-weekly or upon final delivery, or upon satisfactory completion, etc*}

Reasonable expenses shall be reimbursed upon presentation of invoice {*insert ‘to a maximum of’, or travel costs and other costs as follows :*}

Non-resident suppliers (individuals and corporations) will be subject to Canadian Non-resident tax withholding of 15 percent for the portion of services provided in Canada unless a waiver of withholding tax is provided. For this contract {*insert # of hours/days/weeks)* of services will be performed in Canada out of a total of \_\_\_\_ *(insert hours/days/weeks).* If this information is not available at time of contract signing, it must be clearly identified on the invoice.

For each calendar year, individuals who are self-employed will be issued a T4NR information slip reporting the total amount paid to the Contractor by the University. For the purposes of issuing a T4NR, the self-employed contractors Social Security Number (SSN or equivalent) is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and date of birth is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. (*Insert information for self-employed individuals. Delete section if supplier is incorporated)*

To receive payment, a valid business invoice must be issued to the University containing a HST registration number or information indicating that the business is not required to be registered for HST purposes.

Please note that any HST charged will be calculated at the PEI HST rate.

Individuals who are not incorporated or who are not registered for HST purposes must provide his/her social security number (SSN) before payment shall be issued.

**APPENDIX C**

**CONFIDENTIALITY AGREEMENT**

THIS CONFIDENTIALITY AGREEMENT dated the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

BETWEEN:

THE UNIVERSITY OF PRINCE EDWARD ISLAND

(the “University”)

AND:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(“Third Party”)

WHEREAS the University operates a university in Charlottetown, Prince Edward Island;

AND WHEREAS the Third Party wishes to enter into a relationship with the University to provide certain goods and/or services to the University (the “Relationship”) and, during the course of the Relationship, certain confidential information relating to the University may be disclosed, communicated, or otherwise provided to the Third Party by the University;

NOW THEREFORE this Confidentiality Agreement witnesses that, for good and valuable consideration (the receipt and sufficiency of which the Third Party hereby acknowledges by its signature), the Third Party covenants to, and agrees with, the University as follows:

**Section 1: Non-Disclosure of Confidential Information**

A) The Third Party and, as the case may be, the directors, officers, employees, subcontractors, agents or advisors of the Third Party, including its accountants, lawyers, lenders, consultants and financial advisors of the Third Party (collectively, the “Representatives”), shall:

1. keep confidential all information relating to the University that is disclosed, communicated, or otherwise provided to the Third Party by the University, regardless of whether such information is in oral, visual, electronic, written or other form and regardless of whether such information is identified as “confidential”, and including any and all documents, reports, correspondence, data, studies, or other information prepared by, on behalf of, or for the benefit of the Third Party that contains, reflects, summarizes, analyzes, discusses, reviews or otherwise includes any of the forgoing information (collectively, the “Confidential Information”);
2. use the Confidential Information solely to perform its obligations under the Relationship and not directly or indirectly for any other purpose;
3. not disclose the Confidential Information except as permitted by this Confidentiality Agreement; and
4. not, except with prior written approval from the University, reproduce, copy or otherwise duplicate any of the Confidential Information disclosed, communicated, or otherwise provided to the Third Party by the University.

(B) For the purpose of this Confidentiality Agreement, the Confidential Information does not include any information that:

1. is or becomes generally available to the public (other than as a result of disclosure directly or indirectly by the Third Party);
2. is or becomes available to the Third Party on a non-confidential basis from a source other than the University, provided such source does not owe a duty of confidentiality to the University or to any other person; or
3. is or was independently acquired or developed by the Third Party without the use of any information disclosed, communicated, or otherwise provided by the University.

(C) The disclosure restrictions contained in this Confidentiality Agreement do not apply to any information that is required to be disclosed either by law, or by a professional body or association in the context of a disciplinary matter. However, prior to making any such disclosure, the Third Party must, unless prohibited by law:

1. immediately advise the University of the requirement;
2. fully cooperate with the University to limit the extent of the disclosure; and
3. provide the University with a reasonable opportunity to obtain a protective order or other remedy in order to preserve the confidentiality of the information required to be disclosed.

(D) The Third Party may disclose Confidential Information to the Representatives of the Third Party, but only to the extent that such Representatives need to know the Confidential Information, have been informed of the confidential nature of the Confidential Information, and agree in writing with the University to be bound by, and act in accordance with, the provisions of this Confidentiality Agreement.

(E) The Third Party is responsible for any breach by the Representatives, or any persons associated with any of the Representatives, of the provisions of this Confidentiality Agreement.

(F) The Third Party will immediately notify the University of any decision by the Third Party not to continue the Relationship. If such notice is given, or at any time

 upon the written request of the University, the Third Party shall, and shall cause the Representatives to, immediately destroy or return to the University (as directed by the University) all of the Confidential Information, without retaining any electronic or paper copies, and the Contractor shall certify to the University in writing that the deliveries or destruction required by this section have been completed and the provisions of this Confidentiality Agreement have been complied with.

(G) This Confidentiality Agreement shall survive the termination of the Relationship and shall remain binding upon the Third Party.

**Section 2: No Representations or Warranties**

The Third Party acknowledges and agrees: (a) that the University makes no representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information; (b) that, in no event, shall the University be liable to the Third Party, the Representatives, or to any other person for any losses, liabilities, damages, claims, demands or expenses resulting from, connected with, or arising out of the use of the Confidential Information; and (c) that the use of the Confidential Information does not confer upon the Third Party any interest in the Confidential Information.

**Section 3: Remedies**

In the event of a breach of this Confidentiality Agreement, the Third Party must, immediately, following discovery of the breach, give notice to the University of the nature of the breach. The Third Party acknowledges and agrees that any breach of this Confidentiality Agreement will give rise to irreparable injury and harm to the University, which cannot be rectified by, or be compensable in, damages. The University may, in addition to any other remedy, enforce the performance of this Confidentiality Agreement by way of injunction or specific performance upon application to a court of competent jurisdiction without proof of actual damages (and without the requirement of posting a bond or other security).

**Section 4: Other Covenants and Agreements**

The Third Party acknowledges and agrees that the Confidential Information is and remains the property of the University and that no waiver of any privilege is implied by the disclosure of the Confidential Information to any person pursuant to the terms of this Confidentiality Agreement.

**Section 5: Miscellaneous**

1. This Confidentiality Agreement is binding on the parties and their respective successors and permitted assigns.
2. Neither this Confidentiality Agreement nor any of the rights or obligations under this Confidentiality Agreement is assignable or transferable by the Third Party without the prior written consent of the University.
3. If any provision of this Confidentiality Agreement is determined to be illegal, invalid or otherwise unenforceable by any court of competent jurisdiction from which no appeal exists, or is taken, that provision shall be severed from this Confidentiality Agreement and the remaining provisions shall remain in full force and effect.
4. This Confidentiality Agreement is governed by, and shall be interpreted and enforced in accordance with, the laws of the Province of Prince Edward Island and the federal laws of Canada applicable in the Province of Prince Edward Island. The Third Party further acknowledges and agrees that any question or dispute arising from this Confidentiality Agreement shall be resolved or determined exclusively by the Supreme Court of Prince Edward Island.
5. This Confidentiality Agreement may be executed in any number of counterparts (including by electronic mail and facsimile) and all counterparts taken together constitute one and the same agreement.

IN WITNESS WHEREOF the parties have duly executed this Confidentiality Agreement on the date set out above.

 Third Party:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Per:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |  |
| --- | --- | --- |
| ­­­­­­Witness\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Witness |   University of Prince Edward Island: Per:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  |  |
|  |  |  |

**APPENDIX D**

**ARBITRATION PROCEDURES**

1. Any matter referred to arbitration in accordance with the procedures set out in this Appendix (a “Matter”) shall be settled by arbitration which shall proceed in accordance with this Appendix and with the rules of the *Arbitration Act* R.S.P.E.I. 1988, Cap. A-16 (the “Rules”) in effect at the date of commencement of such arbitration. Where the Rules are inconsistent with the provisions of this Appendix, the provisions of this Appendix shall prevail.
2. Any arbitration hereunder shall be conducted by one (1) arbitrator (the “Tribunal”) appointed by the parties.  If the parties fail to agree on the choice of the arbitrator, each party shall appoint one arbitrator for the sole purpose of choosing the arbitrator who will hear and decide the Matter.
3. The arbitration shall take place in the City of Charlottetown, Province of Prince Edward Island unless otherwise agreed in writing by the parties hereto. The language to be used in the arbitration shall be English.
4. If a Matter is before the Tribunal, then the parties cannot bring the Matter to court unless the Tribunal takes an unreasonable amount of time to make the award.
5. The power or authority of the Tribunal shall not be revoked or terminated by any of the parties hereto, or by the death, bankruptcy, insolvency, legal incapacity or disability of any of them, but the Tribunal shall notwithstanding any such event proceed with the business of the arbitration as if no such event had happened.
6. The Tribunal shall have the right to determine all questions of law and jurisdiction including questions as to whether a Matter is arbitrable and shall have the right to grant legal and equitable relief including injunctive relief and the right to grant permanent and interim injunctive relief, final and interim damages awards and shall have the discretion to award costs including reasonable legal fees and expenses, reasonable experts’ fees and expenses, reasonable witnesses’ fees and expenses, pre-award and post-award interest and costs of the arbitration.
7. The parties agree that the existence of a Matter and the arbitration process, any information in connection therewith and the award of the Tribunal shall remain confidential except and only to the extent that a party requires in good faith the intervention of a Court of competent jurisdiction with regards to the application of the Rules or the enforcement of the award.