



AGREEMENT FOR SERVICES

This Agreement for Services ("Agreement") is entered into by and between **SAMUEL MERRITT UNIVERSITY**, a California nonprofit public benefit corporation (SMU), and _____ ("Contractor"). In consideration of the mutual promises made in this Agreement, the parties agree as follows.

ARTICLE 1. RELATIONSHIP.

1.01. Independent Contractor. SMU and Contractor intend and agree that Contractor is an independent contractor. Nothing in this Agreement is intended to be construed or to establish Contractor as an employee, joint venturer, agent or partner of SMU.

1.02. Non-exclusive Engagement. Contractor shall have the right to perform services for others during the term of this Agreement. When performing the contractual obligations under this Agreement, Contractor may, at Contractor's own expense, employ such assistants as Contractor deems necessary to carry out Contractor's duties under this Agreement. Contractor assumes all responsibility for the payment of any compensation and expenses of these assistants and to withhold and pay timely all federal and state employment taxes and wage withholdings. Contractor further assumes all responsibility for providing Contractor's employees with paid sick leave pursuant to Section 12W of the San Francisco Administrative Code should any such employees perform services under this Agreement in San Francisco, California. Contractor shall indemnify SMU for any claims arising from Contractor's failure to provide such compensation, insurance coverage, benefits or paid sick leave.

1.03. Method of Performing Contractual Responsibilities. Contractor shall have the sole right to determine the method, details and means of carrying out Contractor's duties under this Agreement. Contractor may carry out Contractor's obligations under this Agreement at any place or location and at such times as the Contractor shall determine. Notwithstanding the foregoing, SMU shall retain all professional and administrative responsibility for the services rendered pursuant to this Agreement to the extent required to comply with Title 22 of the California Code of Regulations, Section 70713.

ARTICLE 2. OBLIGATIONS.

2.01. Contractor's Services. The Contractor agrees to provide the following services ("Services") for SMU:

PROJECT, DELIVERABLES and COMPENSATION:

- _____
- _____

2.02. Fee. In consideration for Contractor's satisfactory performance under this Agreement SMU agrees to pay Contractor. The compensation is not to exceed the following amount: \$_____.

2.03. Payment of Fee. Contractor shall submit invoices for payment under this Agreement monthly. Contractor shall submit with each invoice a detailed explanation of the services rendered. SMU agrees to pay Contractor's invoice within thirty (30) calendar days after SMU has received the invoice.

2.04. Expenses. Contractor is solely responsible for payment of any expenses incurred in connection with carrying out Contractor's duties under this Agreement. These expenses would include costs of all travel, lodging, food, licenses, bonds, taxes and costs of doing business. In no event shall SMU be responsible to pay any expenses of Contractor whether or not incurred in connection with Contractor's performance under this Agreement.

2.05. Licenses. Contractor agrees to provide SMU a copy of the Contractor's current business license and any other licenses or certification necessary for the provision of services specified in Section 2.01. Contractor agrees to maintain these licenses at Contractor's sole expense throughout the term of this Agreement.

2.06. Insurance. Contractor agrees to maintain, at Contractor's sole expense, comprehensive general liability insurance and errors and omissions insurance in the minimum amounts of \$1,000,000 per occurrence/\$2,000,000 aggregate, and name SMU as an additional insured. Contractor shall also provide workers' compensation insurance for its employees providing services under this Agreement. If such insurance is made on a "claims-made" basis, and such coverage is later terminated or converted to an "occurrence" coverage (or vice versa), Contractor shall also acquire "prior acts" or "tail" coverage in the above amounts, covering all periods that this Agreement is or has been in effect. Contractor shall procure an endorsement whereby its insurer shall immediately notify SMU in the event of any change or termination of coverage that affects coverage during the term of this Agreement. Contractor shall provide SMU with proof of all such insurance upon request by SMU.

2.07. Ownership of Proprietary Rights. Contractor agrees that SMU shall be the sole owner of all proprietary rights in any and all reports, documents, charts, information and other property generated out of or in the course of Contractor's performance of its obligations under this Agreement (collectively "Proprietary Rights") and Contractor shall have no interest therein. Accordingly, Contractor hereby assigns and agrees to assign to SMU all of Contractor's right, title and interest in and to the Proprietary Rights.

2.08. California Tax Status. Contractor agrees that any payments to Contractor under this Agreement will be subject to seven percent (7%) tax withholding unless Contractor can establish that either (a) Contractor has resident status in the State of California and/or (b) a California tax return was filed in Contractor's name for the immediately preceding calendar or fiscal year.

2.09. Eligibility to Perform Services. Contractor warrants that Contractor and Contractor's employees are eligible to perform the Services in the United States of America.

2.10. Background Check. SMU reserves the right to conduct a lawful background check of Contractor or to request that Contractor provide proof of a lawful background check of any employees or subcontractors of Contractor before Services are performed under this Agreement. Such a background check shall include at a minimum the following: a county criminal background search in each county where the Contractor has resided in the seven (7) years prior to the effective date of this Agreement; and a sanction search of the Department of Health and Human Services, Office of Inspector General, for listing as debarred, excluded or otherwise ineligible for federal program participation (<http://oig.hhs.gov/fraud/exclusions.html>). SMU further reserves the right to conduct a registry search of violent sexual offenders and predators in Contractor's state of residence.

ARTICLE 3. TERM AND INDEMNITY.

3.01. Term of Agreement. This Agreement shall commence as of _____ and continue until _____ unless sooner terminated as follows:

A. This Agreement may be terminated upon mutual agreement of SMU and Contractor.

B. This Agreement may be terminated for cause if a party has materially breached the Agreement where the defaulting party has been given written notice of its deficiencies and has failed to correct such deficiencies within fifteen (15) days after receipt of such notice or such longer time as agreed upon by the parties. Termination pursuant to this Section 3.01.B shall be effective at the expiration of the cure period. This provision shall not constitute an election of remedies by or liquidated damages to the terminating party. The terminating party shall have and retain all rights to damages at law and rights to equitable relief in the event of breach by the defaulting party.

C. This Agreement may be terminated without cause by any party upon thirty (30) days' advance written notice.

D. This Agreement may be terminated as otherwise set forth in this Agreement.

3.02. Indemnification. Contractor agrees to indemnify, defend (with counsel selected by SMU), and hold SMU and any officer, director, attorney, agent, employee, parent or affiliate of SMU harmless from all claims, costs (including costs of settlement and attorneys' fees), losses, damages, or liabilities arising from or connected with Contractor's breach of its obligations under this Agreement, or connected with any damage to person or property that Contractor or Contractor's assistants, employees or

agents may have caused directly or indirectly. This indemnity shall survive the termination of this Agreement.

ARTICLE 4. MISCELLANEOUS.

4.01. Entire Agreement/Amendment. This Agreement, including any and all exhibits (which are incorporated herein by this reference), constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended at any time by mutual agreement of the parties, but any such amendment must be in writing, dated, and signed by the parties.

4.02. Assignment/Binding on Successors. Neither party may assign its rights or delegate its duties without the express written approval of the other party, which shall not be unreasonably withheld. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto, their successors and assigns, except as otherwise provided in this Agreement.

4.03. Dispute Resolution. If the parties cannot resolve a dispute between them relating to this Agreement after using good faith efforts to resolve the dispute informally, the parties shall submit the dispute to binding arbitration in accordance with the then prevailing Commercial Arbitration Rules of JAMS/Endispute. The parties shall bear the arbitrator's fees and expenses equally. The place of arbitration shall be in the city where SMU is located. Judgment upon the award may be entered and enforced in the appropriate state or federal court sitting in the county where SMU is located.

4.04. Attorneys' Fees. If any legal action or proceeding is brought to enforce or interpret this Agreement, the prevailing party shall be entitled to recover from the other party all reasonable costs (excluding arbitrator's fees), including but not limited to, reasonable costs and attorneys' fees, including such fees and costs as may be incurred in enforcing a judgment or order entered in any arbitration or legal action. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of such attorneys' fees and costs.

4.05. Severability. In the event any portion of this Agreement is declared void by a court or arbitrator, such portion shall be severed from this Agreement, and the remaining provisions shall remain in effect, unless the effect of such severance would be to alter substantially this Agreement or the obligations of the parties, in which case this Agreement may be immediately terminated.

4.06. Waiver. Any failure of a party to insist upon strict compliance with any term or condition of this Agreement shall not be deemed to be a waiver of such term or condition. To be effective, a waiver must be in writing, signed and dated by the parties.

4.07. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

4.08. Headings. The headings of sections in this Agreement are for reference only and are not to be construed in any way as part of this Agreement.

4.09. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument.

4.10. No Referrals. Nothing in this Agreement is intended to obligate and shall not obligate any party to this Agreement to refer clients to any other party.

4.11. Notices. All written notices to be given in connection with this Agreement shall be sufficient if sent by (a) facsimile (together with proof of transmission and provided a hard copy is mailed within one business day), (b) certified or registered mail, postage prepaid, or (c) national overnight delivery service addressed to the party entitled to receive such notice at the address specified by such party below:

SAMUEL MERRITT UNIVERSITY

450 30th Street, Suite 2832

Oakland, CA 94609

Attn: Becky Carson-Amos, Contract Specialist

Phone: +1-510-869.9200 Ext. 7547

bcarsonamos@samuelmerritt.edu

On behalf of Contractor:

4.12. Access to Records. Contractor agrees to make available, upon request, its books, documents and records to SMU or to the Secretary, U.S. Department of Health and Human Services, the U.S. Comptroller General, and their representatives, to the extent that such books, documents, and records are necessary to certify the nature and extent of SMU's costs and payment for Services provided by Contractor. Such books, documents, and records shall be preserved and available for four (4) years after the furnishing of Services by Contractor. If Contractor provides such services through a subcontract worth \$10,000 or more over a 12-month period with a related organization, the subcontract shall also contain a clause permitting access by SMU, Secretary, Comptroller General, and their representatives to books and records of the related organization. Contractor agrees to indemnify SMU in the event that any amount of reimbursement is denied or disallowed because of the failure of Contractor to comply with this obligation. Such indemnity shall include the amount of reimbursement denied, plus any interest, penalties and legal costs. This paragraph is intended to assure compliance with Section 1861 of the Social Security Act.

4.13. Disaster Plan. In the event of a disaster (e.g. act of God, earthquake, fire, flood, natural disaster, inclement weather, epidemic, pandemic, act of terrorism, explosion, sabotage, nuclear incident) and SMU requires the Services of Contractor, Contractor agrees that it will use all commercially reasonable

and good faith efforts to perform or coordinate such Services within twenty-four (24) hours' notice from SMU, or as soon thereafter as possible, and to complete such Services as quickly as possible. This provision shall apply equally to an event that has already occurred and to an event that is imminent, upon the sole discretion of SMU. In the event of such a disaster, SMU shall pay for all Services provided to SMU by Contractor according to the rates set forth in this Agreement. If it is impossible for Contractor to provide such transports, then the provisions of Section 4.14, Force Majeure, shall apply.

4.14. Force Majeure. Except as set forth in Section 4.13, Disaster Plan, above, if it is impossible for either SMU or Contractor to perform its duties under this Agreement due to strikes, lock-outs, labor disputes, governmental restrictions, fire or other casualty, emergency, or any cause beyond the reasonable control of the party, such non-performing party shall be excused the performance by the other party, and shall not be in breach of this Agreement, for a period equal to any such prevention, delay or stoppage. Notwithstanding this provision, a party may terminate this Agreement immediately upon written notice if such events continue for thirty (30) consecutive days.

4.15. Confidentiality. Both parties shall protect the confidentiality of each other's records and information and shall not disclose confidential information without the prior written consent of the other party. If SMU is to disclose to Contractor individually identifiable health information and SMU thus deems that a Business Associate Agreement consistent with the Health Insurance Portability and Accountability Act of 1996, and its attendant regulations, as amended, is necessary, Contractor agrees to enter into such a Business Associate Agreement with SMU.

4.16. Use of Name and Logos. Neither party shall be permitted to use the other's name, logo or corporate identity for any purpose without the prior written consent of the party whose name, logo or corporate identity is used.

4.17. No Third Party Beneficiaries. Unless otherwise set forth herein, nothing contained herein is intended nor shall be construed to create rights running to the benefit of third parties.

4.18. Ambiguities. This Agreement has been negotiated at arm's length, and the parties have participated fully in the review and revision of the Agreement. Therefore, any rule of law (including California Civil Code section 1654) or legal decision that would require interpretation of any ambiguities to be resolved against the drafting party shall not apply in interpreting this Agreement, and is hereby waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties.

4.19. Execution. By their signatures below, each of the following represent that they have the authority to execute this Agreement and to bind the party on whose behalf their execution is made.

SAMUEL MERRITT UNIVERSITY

by Contractor:

By: _____

By: _____
(Signature & Title)

Date: _____

Date: _____