SERVICES AGREEMENT

Between

University of Cincinnati

and

[Client Name]

This Services Agreement (the “Agreement”), effective the date last signed below (the “Effective Date”), is entered into by and between the University of Cincinnati, a state institution of higher education organized under Chapter 3361 of the Ohio Revised Code, having its primary business address at 2614 McMicken Circle, 625 University Pavilion, Cincinnati, Ohio 45221 (“UC”) and [Client Name] , having its primary business address at [Client Address] (“Client”). UC and Client agree as follows:

## Article 1 - Services and Fees

1.1 UC shall provide the services listed in **Exhibit A** (collectively, the “Service” or “Services”), with pricing set forth in **Schedule 1** to Exhibit A, which is attached hereto and incorporated herein. At the conclusion of the then-current term, the parties will negotiate in good faith reasonable increases in pricing for each Renewal Term (hereinafter defined).

## Article 2 - Invoices and Payment

2.1 UC will invoice Client for all Services. All invoices for Services shall be delivered to:

[ADD CLIENT NAME]

[ADD ADDRESS]

[ADD ADDRESS]

[ADD CITY, STATE, ZIP]

2.2 Client will pay UC within 30 days of receipt of UC’s invoice.

## Article 3 - Term and Termination

3.1 This Agreement shall be effective on the Effective Date and remain in effect for an initial term of one (1) year (the “Initial Term”), unless sooner terminated. Prior to expiration, this Agreement may be renewed by written agreement of the parties for an unlimited number of successive one (1) year periods (each, a “Renewal Term” and collectively, the “Term”). In the event the Agreement is not renewed prior to the expiration date, this Agreement will automatically terminate.

3.2 If a party asserts that the other party committed a material breach of this Agreement, then the non-breaching party must notify the breaching party in writing of the specific breach and request that it be cured. If the breaching party does not cure within thirty (30) days after such notice, then the non-breaching party may terminate this Agreement without cost or penalty by sending final written notice to the breaching party.

3.3 UC may terminate this Agreement without cause by providing the Client with at least thirty (30) days’ prior written notice of intent to terminate.

3.4 The termination of this Agreement by either party (a) does not excuse either party from performing any duty or obligation assumed under this Agreement before termination, (b) does not have the effect of waiving any right either party may have to obtain performance under this Agreement, and (c) does not preclude either party from pursuing any and all remedies available to it at law or equity.

## Article 4 – Mutual Responsibility

4.1 Each party agrees to be solely responsible for its negligent acts or omissions in the performance of its activities hereunder and the negligent acts or omissions of its employees, officers, or directors, to the extent allowed by applicable Laws. The parties agree that this section is only a statement setting forth the limited responsibility of each party for its own acts of negligence or willful malfeasance, and is not and shall not be construed as any contractual or other obligation to defend, indemnify, or hold harmless the other party or any third party. The parties further agree that nothing contained herein shall be construed or interpreted as UC consenting to be sued or waiving its sovereign immunity or denying any remedy or defense available to UC under the laws of the State of Ohio.

## Article 5 – Disclaimer of Warranties

5.1 UC MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES OR PRODUCTS PROVIDED UNDER THIS AGREEMENT. FURTHERMORE, UC EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTIBILITY, USE/FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS WITH REGARD TO SERVICES, DATA, RESEARCH RESULTS, OR OTHER RESULTS, PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT.

## Article 6 - Limitation on Liability

6.1 NEITHER PARTY SHALL BE RESPONSIBLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OR ANY OTHER SIMILAR DAMAGES UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE), EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UC’S TOTAL MAXIMUM AGGREGATE LIABILITY TO THE CLIENT UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT PAID TO UC IN THE INITIAL TERM OR THE THEN-CURRENT RENWAL TERM. THE LIMITATIONS PROVIDED IN THIS SECTION SHALL APPLY EVEN IF ANY OTHER REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

## Article 7 – Confidentiality; Data Security

7.1 As used herein, “Confidential Information” shall mean information, know-how, samples, drawings or data, technical or non-technical, provided hereunder that originates with either party, is appropriately marked as confidential (or if disclosed verbally or visually, is promptly reduced to writing and designated as confidential) and is disclosed or provided to the other party. The recipient may use the originator’s Confidential Information for purposes of this Agreement but agrees neither to use for any other purpose nor to disclose nor provide such Confidential Information to any third party at any time during the term of this Agreement or thereafter, except as follows:

 a) To the extent that the Confidential Information was known to the recipient from sources other than the originator prior to its disclosure hereunder, and this is demonstrably documented in written records made by the recipient prior to disclosure by the originator; or

 b) To the extent that the Confidential Information in fact is public knowledge prior to or after its disclosure by originator, other than through acts or omissions attributable to the recipient; or

 c) To the extent the Confidential Information was disclosed or provided to the recipient by a third party who did not derive such information from the originator; or

 d) To the extent disclosure is required by law, valid subpoena, or court order.

7.2 UC shall not be required to maintain the confidentiality of any information (including Confidential Information) if, in the sole opinion of UC’s Office of General Counsel, the disclosure of such information is required by the Ohio Public Records Act, Ohio Revised Code §149.43, or any other applicable federal or state law governing UC.

## Article 8 - Intellectual Property

8.1 Each party shall retain all right, title and interest in any patent, patent application, trade secret, know-how, trade mark or other intellectual property owned by it prior to the date of this Agreement, and no license grant or assignment, express or implied, by estoppel or otherwise, with regard thereto is intended by, or shall be inferred from, this Agreement. In accordance with Ohio law, UC shall be sole owner of all rights in and to materials developed and produced by UC personnel and students, including such materials developed and produced prior to, during, or after the execution of this Agreement. No unauthorized use of UC materials or information is permitted by Client without the express written approval of UC.

## Article 9 - Compliance with Laws; Debarment

9.1 This Agreement is intended to comply with all relevant federal, state and local statutes, regulations, and rules (collectively, “Laws”) applicable to the subject matter of this Agreement.

9.2 Client acknowledges that UC, in the performance of Services, may utilize the personal services of UC employees, visiting professionals and students who may not be U.S. citizens or permanent residents. Client assumes all responsibility for compliance with the provisions of the International Trade in Arms Regulations, 22 C.F.R. §§ 120-130 (“ITAR”) and the Export Administration Regulations, 15 C.F.R. §§ 730-744 and 768 (“EAR”). Client shall not disclose or provide to UC or any employee or agent of UC any information subject to the licensing provisions of ITAR and/or EAR without the prior written notice to and advance approval of UC’s Export Controls Officer and Office of General Counsel. UC reserves the right to decline to receive any such export-controlled materials or information.

## Article 10 – Miscellaneous

10.1 Notices. Any notice required to be given under this Agreement must be in writing, postage and delivery charges pre-paid, and may be sent by email, fax, hand delivery, overnight mail service, first-class mail, or certified mail with return receipt requested, to UC at the addresses set forth below. Any party may change the address to which notices are to be sent by notice given in accordance with the provisions of this Section 10.1. Notices under this Agreement are deemed to have been given, and are effective upon, actual receipt by the other party or, if mailed, upon the earlier of the fifth day after mailing or actual receipt by the other party.

If to UC: With copy to:

University of Cincinnati

[DEPT NAME]

[DEPT ADDRESS]

Cincinnati, OH [ZIP]

University of Cincinnati

Office of General Counsel

2618 McMicken Circle

PO Box 210623

Cincinnati, OH 45221-0623

If to Client:

[CLIENT NOTICE ADDRESS]

[ ]

[ ]

10.2 Relationship of the Parties. This Agreement does not create a joint venture or partnership between the parties. UC is an independent contractor, and Client shall not control the manner, means, or method by which UC performs any of the Services called for by this Agreement. Each party has all ownership, rights and title to any of its unique information that it provides or discloses in connection with the administration of this Agreement or in connection with any transaction under this Agreement.

10.3 Force Majeure. No party shall be liable for any delay or failure to perform if such delay or failure to perform is due to a cause beyond the control of the party, including without limitation restrictions of law or regulations, acts of God, acts of terrorism or war, telecommunications, network or power failures or interruptions, or mechanical or electronic breakdowns.

10.3 Use of UC Names/Marks. Client shall not advertise the fact that it has contracted with UC or appropriate or make use of UC’s name or registered marks, logos, or property without the prior written consent of UC’s Director, Trademarks & Licensing.

10.4 Governing Law/Venue. This Agreement shall be governed by, construed and interpreted according to the laws of the State of Ohio without regard to any principles of choice of law. The parties agree that any disputes arising out of or under this Agreement shall be litigated in the Ohio Court of Claims.

10.5 Assignment. Neither party may assign this Agreement to a third party without the express written permission of the other party.

10.6 Survival. Articles 4-8 and 10 shall survive the expiration or termination of this Agreement.

10.7 Entire Agreement; Waiver; Signature. This Agreement, including all Exhibit(s) and Schedule(s) (all of which are incorporated in this Agreement by reference), constitutes the entire agreement on this subject and supersedes all previous and contemporaneous communications, representations, or agreements between UC and Client regarding the referenced subject matter. This Agreement may be executed in one or more counterparts, each of which counterpart shall be deemed an original Agreement and all of which shall constitute but one Agreement. The failure of either party to assert a right under this Agreement or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right. In the event any provision of this Agreement shall be illegal or otherwise found unenforceable by any court, such provision shall be severed, and the balance of the Agreement shall continue in full force and effect. The parties agree that this Agreement may be executed and transmitted electronically, and a facsimile or signed electronic copy shall be as enforceable as an original. This Agreement may be modified or extended only by written agreement signed by both parties.

 **IN WITNESS WHEREOF**, each of the parties hereto has caused this Agreement to be executed by its duly authorized officers or representatives as of the Effective Date.

CLIENT UNIVERSITY OF CINCINNATI

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Date: ­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: ­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# EXHIBIT A

## Services

### [Attach Scope of Services or Statement of Work]

# SCHEDULE 1 TO EXHIBIT A

## Fees/Pricing

### [Attach Fee Schedule/Pricing]