

SERVICE AGREEMENT

This Service Agreement (“Agreement”) is entered into by and between The Missouri Foundation for Health (“Foundation”) and _____ (“Contractor”).

WHEREAS, Foundation desires the services of a qualified contractor to provide services more specifically described herein; and

WHEREAS, Contractor represents to Foundation that Contractor is qualified to provide such services and is willing to do so under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of their mutual duties and responsibilities herein, the parties agree as follows:

1. Scope of Services and Timing of Performance. Foundation hereby retains Contractor and Contractor hereby agrees to perform those duties and responsibilities set forth on Attachment A attached hereto and incorporated herein by reference including all of the materials and documents of any kind produced in whatever format as part and result of the services set forth on Attachment A (hereinafter the “Services”). Unless the timing of the performance of the Services is specified on Attachment A, Contractor will cooperate with Foundation regarding the timing of the performance of the Services. Contractor shall maintain time records for the performance of Services under this Agreement, which shall be made available to Foundation at such times as Foundation may request.
2. Term. The Services shall begin on _____, or upon full execution of this Agreement, whichever is later, and shall be completed within a duration of ___ months (the “Term”).”
3. Compensation for Services and Reporting. As compensation for performance of Contractor’s Services, Foundation will pay Contractor a sum not to exceed \$ _____ (inclusive of services and expenses) upon receipt of invoices with appropriate supporting documentation and a description of progress made in the delivery of Services as stated in Attachment A.

<u>Detailed Expense</u>	<u>Appropriate Documentation</u>
Professional fees	Detailed time records (hours worked by date/task)
All other	Receipts or paid invoices

Any substantiated travel required will be reimbursed according to the following guidelines which includes coach airfare, single occupancy lodging at moderate hotels, rental car or public transportation, meals and incidentals expenses at reimbursed amount not to exceed the federal per diem rate. Contractor’s cost proposal shall be set forth on Attachment A. Fees and expenses must be specified in the cost proposal to be paid or reimbursed.

Contractor shall report to, and confer with, Foundation employees on a regular basis, and as may be reasonably requested, concerning the Services performed by Contractor and issues related to the Services. Contractor also agrees to meet and confer with other Foundation officers and employees as directed, or as may be necessary or appropriate.

4. Use of Data/Results.

A. Contractor is granted the right to use the results of the Services only as provided in this paragraph 4. If Contractor desires to publish or in any other way use the results of the Services or any data or other information derived from the Services for purposes similar to those described in this Agreement or for any other purposes, including academic research and/or publication in a journal or trade publication, such use must be approved by Foundation and Foundation shall be offered the opportunity to review and comment on the document or use before submission for publication or otherwise used. If approval for use is received by Contractor, Contractor must acknowledge or credit Foundation for its ownership and role in development of the data or information in a manner consistent with the Foundation's publicity guidelines available on the Foundation's website. All acknowledgement text must be approved by the Foundation in advance. Contractor will provide Foundation with copies of any and all publications or other documentation of use.

To allow the Foundation time for review and approval, Contractor shall provide Foundation with a minimum of fifteen (15) days to review and comment on the document or other use before submission for publication or other use. Contractor agrees that Foundation's support will be acknowledged in any publication or communication of results during and subsequent to the Term.

- B. Information and other data developed or acquired by or furnished to Contractor in the performance of this Agreement is and shall remain Foundation's property and, unless otherwise provided herein, shall be used by Contractor only in connection with Services provided to Foundation.
- C. Information and other data developed or acquired by or furnished by Contractor other than in the performance of the Services under this Agreement, but which is used in providing the Services shall remain the Contractor's property if identified by Contractor on Attachment B attached to this Agreement; and as to such information and data identified on Attachment B Foundation shall have a perpetual, irrevocable, royalty-free, worldwide license to make, use, reproduce and distribute such information and other data; to make, have made, and use, products and services that include such information and other data; and otherwise by all means and in any medium or format, now known or later developed.

5. Performance Warranty. Contractor warrants that Contractor has the background, experience, expertise, and qualifications to undertake and to carry out the Services. Contractor warrants and represents that during the term of the Agreement, the Services provided hereunder will be performed in a professional manner consistent with generally accepted industry standards reasonably applicable to the provision of the Services.
6. Insurance. Contractor shall maintain occurrence-based insurance including comprehensive general liability, automotive liability, and if applicable, worker's compensation and employers' liability. Such insurance shall be provided by insurance companies authorized to do business in the State of Missouri. Certificates of insurance demonstrating Contractor's insurance coverage shall be furnished to Foundation upon request.

7. Remedies for Unsatisfactory Services. In the event Contractor fails to provide the Services consistent with the warranties and representations set forth in paragraph 5 above, Foundation at its option, may: (a) require Contractor to re-perform the unsatisfactory Services at no cost to Foundation; (b) refuse to pay Contractor for Services, unless and until Services are corrected and performed satisfactorily; (c) require Contractor to reimburse Foundation for all amounts paid for such unsatisfactory Services; and/or (d) proceed with, and assert, any and all remedies available at law. The foregoing options and remedies available to Foundation shall be deemed to be mutual and severable and not exclusive.
8. Termination.
 - A. Foundation may terminate this Agreement at any time by giving 30 days' prior written notice to the Contractor of its intention to terminate as of the date specified in the notice. Contractor shall be paid for Services satisfactorily performed up to the time notice of termination is received. Contractor shall also be paid for all Services satisfactorily performed between the time notice is received and the date of termination; as long as all such performed Services are approved by Foundation in a separate writing and in advance of their performance.
 - B. In the event of a breach of this Agreement by either Contractor or Foundation, the non-breaching party shall give the breaching party written notice specifying the default, and the breaching party shall have 15 days within which to cure the default. If the default is not cured within that time, the non-breaching party shall have the right to then terminate this Agreement by providing written notice of such termination.
 - C. The foregoing options and remedies available to Foundation shall not be deemed exclusive of any other remedy available to Foundation herein or at law or equity.
9. Indemnity. Contractor agrees to indemnify and hold harmless Foundation, its affiliates, and each of their respective directors, officers, employees, servants, agents successors, and assigns from and against any and all liabilities, losses, damages, costs and expenses of any kind (including, without limitation, reasonable legal fees and expenses in connection with any investigative, administrative or judicial proceeding, whether or not designated a party thereto) which may be suffered by, incurred by or threatened against Foundation or any directors, officers, employees, servants or agents or successors or assigns of Foundation on account of or resulting from injury, or claim of injury, to person or property arising from Contractor's actions or omissions relating to this Agreement, or arising out of Contractor's breach or failure to perform any term, covenant, condition or agreement herein provided to be performed by Contractor.

Contractor agrees to indemnify and hold harmless Foundation, its affiliates, and each of their respective directors, officers, employees, servants, agents successors, and assigns from and against any and all loss, damage, liability, and expenses (including reasonable attorneys' fees and court costs) arising from any claim brought against any such indemnified party alleging that the Services infringe upon any valid patent, copyright, trademark, trade secret, or other proprietary right of such third party.

10. Independent Contractor. It is expressly acknowledged by the parties that Contractor is an independent contractor. Nothing in this Agreement is intended, nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow Foundation to exercise control over the manner or method by which Contractor performs the Services; provided always that the Services to be provided by Contractor shall be rendered in a manner consistent with state and federal laws and regulations.

Foundation will not withhold from payments to be made to Contractor any sum for state or federal income tax, unemployment insurance, Social Security or any other withholding taxes or obligations pursuant to any laws or requirements of any governmental body, nor shall Contractor be eligible for those benefits afforded to Foundation employees, including, but not limited to, vacation pay, sick leave, and retirement benefits.

In the event any taxing or withholding agency should question or challenge the independent contractor status of Contractor, the parties hereto mutually agree that both Foundation and Contractor shall have the right to participate in any discussions or negotiations occurring with the taxing or withholding agency notwithstanding by whom said discussions or negotiations are initiated. Contractor shall indemnify and hold Foundation harmless from and against any losses, liabilities, taxes, penalties, recoupments, expenses (including reasonable attorneys' fees) and fines that may arise or result from the non-payment of withholdings and benefits.

11. Contractor Representations. Contractor acknowledges and represents that (i) the entering into this Agreement has been duly approved by the Contractor, (ii) the undersigned is duly authorized to execute this Agreement on behalf of Contractor and to bind Contractor to the terms hereof, and (iii) Contractor will comply with all State, federal and local statutes, regulations and ordinances, including civil rights and employment laws, and agrees not to discriminate against any employee or applicant for employment or in the provision of Services on the basis of race, color, national origin, sex, sexual orientation, age, religion, veteran status, disability, parental status or marital status.
12. Ownership of Services and Results. Full and exclusive rights and ownership in the Services, including but not limited to all work product, and all materials or information arising from this Agreement, and in any and all related letters, patents, trademarks, copyrights, trade secrets, confidential information or any other proprietary rights, intangible property or work product, that are delivered, produced or created in connection with Contractor's Services under this Agreement shall vest in and are hereby assigned to Foundation. Except as provided in this Agreement, Contractor shall retain no right, ownership or title in the Services including but not limited to all work product and all materials or information arising from this Agreement, or in any related letters, patents, trademarks, copyrights, trade secrets, confidential information or any other proprietary rights, intangible property or work product. Contractor acknowledges that any copyrightable works prepared by Contractor under this Agreement shall be deemed works for hire under the copyright laws, it being the intent of this Agreement to vest full and exclusive ownership rights in Foundation, including, but not limited to the exclusive right to prepare derivative works. The Services and all such rights belong to Foundation for whatever use it desires, and nothing contained herein shall be deemed to constitute a mere license or franchise in Foundation.

13. Infringement. Contractor warrants to Foundation that Contractor, in connection with performing the Services, will not infringe any patent, trademark, copyright, trade secrets, confidential information or any other proprietary right of any person. Contractor further represents and warrants to the Foundation that neither Contractor nor any other company or individual performing Services pursuant to this Agreement is under any obligation to assign or give any work done under this Agreement to any third party.
14. Notices. Unless otherwise provided herein, all notices, or other communications which are required or permitted hereunder shall be given in writing and delivered personally, by first class or express mail (postage prepaid), by Federal Express or other overnight courier service (charges prepaid), or by facsimile or electronic transmission to the physical address, facsimile number, or email address which Foundation and Contractor provide to each other from time to time. If such notice is sent by first class or express mail, it shall be deemed to have been given to the person entitled thereto three (3) days after deposit in the United States mail, or if by Federal Express or other overnight courier service, using “the day after deliver to” service for delivery to that person then the date of delivery, or in the case of facsimile transmission, when received.
15. Waiver. No failure on the part of either party at any time to require the performance by the other party of any term hereof shall be taken or held to be a waiver of such term or in any way affect such party’s right to enforce such term, and no waiver on the part of either party of any term hereof shall be taken or held to be a waiver of any other term hereof or a breach thereof.
16. Lobbying. Contractor agrees that in no way has Contractor been engaged by the Foundation to lobby and Contractor shall not within the scope of its Services carry on propaganda, or otherwise attempt to influence legislation or participate in any political campaign on behalf of any candidate for office or for political campaign contributions.
17. No Assignment. This Agreement may not be assigned by either party to any person, corporation, partnership, or other entity without express written approval of the other party.
18. Severability. If any term, provision, covenant, condition, or portion of this Agreement is held invalid or unenforceable for any reason, the remaining terms, provisions, covenants, conditions, or portions of this Agreement shall remain in effect. The parties further agree that in the event such invalid or unenforceable portion is an essential part of this Agreement, the parties will immediately negotiate a replacement.
19. Paragraph Headings. The paragraph headings of this Agreement are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement.
20. Applicable Law. This Agreement shall be deemed to have been entered into under the laws of the State of Missouri and the rights and obligations of the parties hereunder shall be governed according to the laws of said state. Any lawsuit, action or proceeding resulting from, or related to this Agreement, shall be commenced in a court of competent jurisdiction located in St. Louis County or St. Louis City, Missouri and the parties hereby agree that venue in St. Louis County or St. Louis City, Missouri is proper for any such action.

21. Conflicting Terms. Terms or conditions presented in an invoice or any other document submitted by either party, which conflict with the terms and conditions of this Agreement, shall have no effect on either party.
22. Nondiscrimination. Contractor affirms that Contractor will not discriminate on the basis of race, color, sex, religion, national origin, age, disability, sexual orientation, gender identity or veteran status either in its employment practices or in its policies and procedures.
23. Entire Agreement. This Agreement and all Attachments constitute the entire Agreement between the parties regarding the Services and supersede all previous related understandings or written or oral agreements between the parties.
24. Amendment. Unless otherwise permitted herein, any alteration in the terms of this Agreement must be in written form and must be signed by an authorized representative of both Foundation and Contractor.
25. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original.
26. Binding effect. This Agreement shall not be binding and effective unless and until it is duly and fully executed by both parties. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the respective parties.
27. Licenses and permits. Contractor shall obtain at Contractor's expense all licenses and permits necessary to perform the Services.
28. Rights cumulative. All the rights and remedies of each party hereunder or pursuant to present or future law shall be deemed to be separate, distinct and cumulative, and no one or more of them, whether exercised or not, or any mention of or reference to any one or more of them herein, shall be deemed to be an exclusion or a waiver of any of the others, or of any of the rights or remedies which such party may have, whether by present or future law or pursuant hereto, and each party shall have, to the fullest extent permitted by law, the right to enforce any rights or remedies separately and to take any lawful action or proceedings to exercise or enforce any right or other remedy without thereby waiving or being barred or estopped from exercising and enforcing any other rights and remedies by appropriate action or proceedings.
29. Effective Date. This Agreement will become effective when signed by both parties. The date this Agreement is signed by the last party to sign it (as indicated by the date stated below that party's signature) will be deemed the date of this Agreement.

IN WITNESS WHEREOF, Contractor and Foundation execute this Agreement effective as of the day first set forth above.

The Missouri Foundation for Health

By: _____ Date _____
Dwayne Proctor, PhD
President and Chief Executive Officer

Contractor Name

By: _____ Date _____
Authorized Signatory Name
Title

Attachment(s)

- A. Scope of Services and Cost Proposal
- B. Contractor's Intellectual Property List

Attachment A.

Scope of Services and Cost Proposal

Follows this page

Attachment B.

Contractor's Intellectual Property List

[ATTACHMENT TO BE COMPLETED BY CONTRACTOR]

[IF ATTACHMENT CONTAINS NO INFORMATION ON DATE OF EXECUTION, THE
ATTACHMENT SHALL BE REGARDED BY THE PARTIES AS PROVIDING THAT
THERE IS NO PROPERTY FOR INCLUSION]