Contracting for Independent Contractor services with the University of Utah may require completion of the following:

- **Employee/Independent Contractor Classification Checklist** (Required when potential Independent Contractor is an individual.)

- **Independent Contractor Services Agreement** [Required when potential Independent Contractor is a non-individual Legal Entity or when the Checklist (above) has determined the individual is an Independent Contractor.]

- **IRS Form W-9** (Required for payments made to all Independent Contractors.)

**PROCEDURAL STEPS:**

1. Read Policy 3-111, Service Contracts with Individuals and Other Legal Entities.

2. When in consideration of an individual Independent Contractor, the preparer or unit should then complete the **Employee/Independent Contractor Classification Checklist** which will lead to a determination of whether the individual service provider will be classified as an Independent Contractor or a University Employee. If the preparer or unit is in doubt after completing the Checklist, they should contact **Accounts Payable** for clarification.

   a. If the **Employee/Independent Contractor Classification Checklist** leads you to the conclusion that this individual service provider should be classified as an Employee, the individual service provider should be retained by following the University’s Regulations regarding hiring temporary or permanent Employees.

3. The department requesting the services of an Independent Contractor (individual or other legal entity) should complete the **Independent Contractor Services Agreement**, providing as much detail as possible. Much of the information will need to be provided by the proposed Independent Contractor.

   a. If the Independent Contractor will be accessing, using, or disclosing Personal Health Information (PHI) or will have indirect exposure to PHI, either physically or electronically, then **Business Associate Agreement Addendum** will be required in addition to this Independent Contractor Services Agreement. Indirect exposure can come in the form of physical transportation, transport across a network, or...
having the ability to access PHI even if it is not expressly part of the service being provided (i.e. custodial services, IT resource maintenance).

b. If the Consultant wishes to negotiate or delete any of the standard provisions in the Independent Contractor Services Agreement, the Office of General Counsel must be consulted prior to obtaining a University Officer’s signature.

4. Once the Independent Contractor Services Agreement, the Employee/Independent Contractor Classification Checklist, and where applicable, the Business Associate Agreement Addendum are completed, two signed copies of the agreement should be sent to the Independent Contractor for their signature. One executed copy will be retained by the contracting department or unit; one copy will be retained by the Independent Contractor.

a. A non-original, signed copy of the Independent Contractor Services Agreement, the Employee/Independent Contractor Classification Checklist and the IRS Form W-9 should be attached to all Payment Requests.

5. When the Independent Contractor’s duties involve an externally sponsored project, including federal contracts and grants, a copy of the Independent Contractor Services Agreement along with the Employee/Independent Contractor Classification Checklist should be sent to the appropriate administrator in the Office of Sponsored Projects at the same time that it is sent to the Independent Contractor. A signature from the Office of Sponsored Projects will be required in addition to the normal approvals required on the Independent Contractor Services Agreement.
INDEPENDENT CONTRACTOR
SERVICES AGREEMENT

This Services Agreement (“Agreement”) is entered into and effective as of the _____ day of _____, 2009 (the “Effective Date”), by and between the UNIVERSITY OF UTAH, a body politic and corporate of the State of Utah and a public institution of higher education, for and on behalf of its ____________________________ (“University”), and ______________________________ (“Service Provider”). University and Service Provider are sometimes collectively referred to herein as “Parties”, or individually, as a “Party”. In consideration of the mutual promises, conditions and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Scope of Work and Compensation. Subject to and in accordance with the provisions of this Agreement, Service Provider is willing to provide and University wishes to obtain those certain professional services described in Appendix A attached hereto and incorporated herein by this reference (the “Services”). All Services provided by Service Provider under this Agreement shall be provided in a competent, prompt, and professional manner. Service Provider agrees to cooperate in good faith with University in connection with the resolution of any concerns that may arise with respect to any of the Services. The compensation due to Service Provider for any Services (“Compensation”) is detailed in Appendix A. Unless expressly provided otherwise in Appendix A, the Compensation includes all expenses related to the Services, and no expenses of any kind relating to the Services may be separately charged to the University without the University’s prior written approval. If the Parties agree in Appendix A or in an amendment to this Agreement that any expenses relating to the Services shall be reimbursed by University, the following shall apply: (i) all such expenses to be reimbursed by University must be actually incurred, reasonable, and necessary to the performance of the Agreement, and may in no event include office overhead or salaries or any items or expenses for which Service Provider receives reimbursement from third parties; (ii) long-distance travel and lodging shall be coordinated in advance with University and shall not be initiated without University’s prior approval in each case; (iii) if the costs of any hardware, software, or equipment or services (other than the Services) are to be reimbursed to Service Provider, University must have consented in writing in advance to the specific hardware, software, equipment, or services, and to the cost thereof, and consented in writing in advance that the cost of these specific items is not included in the Compensation and may be separately charged to University; (iv) any invoice requesting reimbursement shall itemize in reasonable detail the incidental expense for which reimbursement is requested, and (v) upon University’s request, Service Provider shall promptly (and in no event later than ten (10) calendar days following written request from University) provide supporting receipts or other reliable back-up documentation for any expense invoiced to University. All Compensation and permitted reimbursable expenses shall be paid by University in accordance with all applicable University policies and procedures, and shall be based upon invoices submitted by Service Provider. Invoices shall identify Service Provider’s taxpayer identification number, and shall be sent to the
attention of _____________________ (or such other individual as University may designate in writing to Service Provider), at the address for University set forth herein. Compensation checks shall be payable to Service Provider and shall be delivered to Service Provider’s notice address set forth in this Agreement.

2. **Term.** The term of this Agreement (sometimes referred to herein as the “Term”) shall commence upon the Effective Date and shall expire on __________, unless earlier terminated as permitted herein.

3. **Materials.** All materials, equipment, and instruments purchased using funds provided by University shall at all times remain under the sole ownership and control of University.

4. **Indemnification.** Service Provider shall hold harmless, defend and indemnify the University of Utah and its trustees, officers, employees, and agents from and against any and all claims, losses, causes of action, judgments, damages and expenses, including, but not limited to, reasonable attorneys’ fees, because of bodily injury, sickness, disease or death, or injury to or destruction of tangible property or any other injury or damage resulting from or arising out of: (a) performance or breach of this Agreement by Service Provider, or (b) Service Provider’s use of University of Utah premises, or (c) any act, error, or omission on the part of Service Provider, or its agents, employees, invitees, participants, or subcontractors, except where such claims, losses, causes of action, judgments, damages or expenses result solely from the negligent acts or omissions or willful misconduct of University of Utah, or its trustees, officers, employees, or agents.

5. **Insurance.** Prior to performing any work or Services under this Agreement, Service Provider shall secure and maintain Comprehensive General Liability insurance with per occurrence limits of at least $1,000,000 and general aggregate limits of at least $2,000,000. Service Provider shall also secure and maintain, if applicable to Service Provider’s operations or performance of the Agreement, Business Automobile Liability Insurance covering Service Provider’s owned, non-owned and hired motor vehicles and/or and Professional Liability insurance with liability limits of at least $1,000,000 per occurrence. Such insurance policies shall be endorsed to be primary and not contributing to any other insurance maintained by University of Utah.

Service Provider shall also secure and maintain all employee related insurances, in the statutory amounts, such as unemployment compensation, worker’s compensation, and employer’s liability, for its employees involved in performing the Services pursuant to the Agreement. Service Provider shall also maintain “special form” property insurance at replacement cost applicable to Service Provider’s property or its equipment and that contains a waiver of subrogation endorsement in favor of University of Utah.

Service Provider’s insurance carriers and policy provisions must be acceptable to the University of Utah’s Risk and Insurance Manager and remain in effect for the duration of the Agreement. The University of Utah shall be named as an additional insured on the Commercial
General Liability insurance policy by endorsement. Service Provider will cause any of its subcontractors, who provide materials or perform Services relative to this Agreement, also to maintain the insurance coverages and provisions listed above.

Service Provider shall submit certificates of insurance as evidence of the above-required insurance to University of Utah prior to the commencement of the Agreement (mail to: University of Utah, Risk & Insurance Management, Attn: Jerry Allred, 201 S. Presidents Circle, Room 110, Salt Lake City, Utah 84112). Such insurance certificates shall indicate that University of Utah will be given thirty (30) calendar days’ written notice prior to the cancellation of coverage. Service Provider shall require that all subcontractors, of any tier, carry the same insurance with the same limits of coverage as required of Service Provider. Service Provider shall indemnify and hold the University of Utah harmless from any claims which may arise as a result of Service Provider’s failure to provide any of the insurance coverage required herein.

6. Compliance With Laws. In performing the Services, Service Provider shall comply with all applicable federal, state and local laws, regulations and orders of the United States, and any other country having jurisdiction over the activities of Service Provider hereunder. Service Provider shall obtain, at its expense and as part of the price for Services, all required government licenses, permits and approvals for the performance of the Services.

7. Confidentiality. Service Provider is hereby informed that University is a governmental entity and thus subject to the Government Records Access and Management Act of the Utah Code, Section 63-2G-101 et seq., 1953, as amended (“GRAMA”). Pursuant to GRAMA, certain records within University’s possession or control may be subject to public disclosure. University hereby informs Service Provider that any person or entity that provides University with records that such person or entity believes should be protected from disclosure for business reasons must, pursuant to Section 63-G2-309 of GRAMA, provide to University, with the record, a written claim of business confidentiality and a concise statement of reasons supporting such claim. Service Provider acknowledges and agrees that all business and financial data provided by University to Service Provider or accessed by Service Provider in connection with its obligations or rights under this Agreement or the performance of any services by Service Provider under the Agreement (collectively, “University Data”), are proprietary and confidential in nature. Service Provider shall not use University Data for any purpose other than the authorized purposes of the Agreement. Except as expressly and unambiguously allowed herein, and except where disclosure is required by law (provided, however, that Service Provider shall promptly notify University and take reasonable steps to assist University, at University’s expense, in contesting such disclosure requirement or in otherwise protecting University’s rights prior to any such disclosure), Service Provider will, and will require its employees to, hold in confidence and not use, disclose, share, or publish any University Data in any manner whatsoever, in whole or in part, without the prior written consent of University in each case and shall similarly bind its permitted contractors, if any, in writing. University’s nondisclosure obligation shall not apply to information it can document is generally available to the public (other than through breach of this Agreement). Without limiting the generality of the foregoing obligations, in the event that such disclosure is sought by subpoena, document request, or notice of deposition or other legal proceeding, University agrees to notify University in writing as soon
as reasonably possible but no later than forty-eight (48) hours prior to any deadline for such disclosure. In addition, promptly following the expiration or earlier termination of this Agreement, Service Provider shall, after consultation with University, either (i) destroy University Data in a manner that completely protects the confidentiality of University Data or (ii) return all of University Data to University, at University’s election. The expiration or termination of this Agreement by either party shall not terminate the continuing confidentiality obligations imposed on the parties by the terms of this Agreement.

8. **Relationship of Parties.** The relationship between the Parties is solely that of contractor and contractee. In assuming and performing the obligations of this Agreement, University and Service Provider are each acting as independent parties and neither shall be considered nor represent itself as a joint venturer, partner, agent or employee of the other.

9. **Early Termination and Remedies.** Either Party may terminate this Agreement at any time, for any reason or no reason, by giving not less than ________ (_____) days’ written notice thereof to the other Party. Upon the expiration of the notice period, this Agreement shall terminate without further liability to either Party other than those liabilities, rights, and obligations that accrued prior to the date of such termination. Termination pursuant to this foregoing provision shall not give rise to any right to rescind any payment(s) made prior to the date of such termination, but University shall have no obligation to pay Service Provider any compensation covering any period after the date of such termination. In addition to the Parties’ other termination available under this Agreement or at law or in equity, the Parties shall also have the following termination rights. If either Party defaults in the performance of any material term, covenant, or condition of this Agreement, the non-defaulting Party may provide the defaulting party with written notice of such breach and such defaulting Party shall have 10 calendar days to cure any monetary breach and 30 calendar days to cure any other breach, unless provided otherwise by the provisions of this Agreement. If such defaulting Party does not cure such breach during such cure period, the non-defaulting Party may terminate this Agreement. The various rights and remedies of the Parties contained in this Agreement shall be cumulative and no one of them shall be construed as exclusive of any of the others or of any right, priority, or remedy allowed or provided for by this Agreement or at law or in equity.

10. **Record Keeping, Audit Rights, and Reports.** Service Provider shall maintain accurate accounting records for all goods and services provided pursuant to this Agreement, and shall retain all such records for a period of at least three (3) years following termination of this Agreement. Upon reasonable notice and during normal business hours, University, or any of its duly authorized representatives, shall have access to and the right to audit any records or other documents pertaining to the provision of good and services under this Agreement. University’s audit rights shall extend throughout the Term of this Agreement and for a period of at least three (3) years thereafter. During the Term, upon request, Service Provider shall summarize and concisely report to the University in a timely manner information requested by the University pertaining to the Services.
11. **Notices.** All notices under this Agreement shall be in writing and shall be given by (i) established express delivery service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or such other addresses as the Parties may designate from time to time by written notice in the above manner:

To Service Provider:

Telephone:
E-mail address:
Facsimile No.:

To University: University of Utah
Attn:

Telephone:
Facsimile No.:
E-mail address:

Such communications may also be given by e-mail or facsimile transmission, provided any such communication is concurrently given by one of the above methods. Notices shall be deemed effective upon the receipt, or upon attempted delivery thereof if the delivery is refused by the intended recipient or if delivery is impossible because the intended recipient has failed to provide a reasonable means of accomplishing delivery.

12. **Miscellaneous.**

12.1 **Assignment.** Neither Party shall assign or transfer any interest in this Agreement, subcontract any portion of the work to be performed, or assign any claims for money due or to become due under this Agreement, without the prior written consent of the other Party.

12.2 **Governing Law.** This Agreement shall be interpreted and construed in accordance with the laws of the State of Utah, without application of any principles of choice of laws.

12.3 **Equal Opportunity.** Neither Party shall discriminate against any employee, applicant for employment, or recipient of services on the basis of race, religion, color, sex, age, disability, or national origin.
12.4 Taxes. Service Provider shall pay all taxes which may be levied or incurred in connection with the performance of any services under this Agreement, including taxes levied or incurred against Service Provider’s income, inventory, property, sales, or other taxes.

12.5 Publicity. Service Provider shall not refer to the University in any press release, advertising or materials distributed to prospective clients without the prior written consent of the University.

12.6 Construction. The Parties to this Agreement recognize that each of them have independently initiated this Agreement and the terms within this document. As such, ambiguities within this Agreement may not be construed against either Party. Furthermore, each Party has had the opportunity to have this Agreement reviewed by its own legal counsel.

12.7 Nonwaiver. A waiver by either Party of any breach of this Agreement shall not be binding upon the waiving Party unless such waiver is in writing. In the event of a written waiver, such waiver shall not affect the waiving Party’s rights with respect to any other or further breach.

12.8 Execution. The individuals who execute this Agreement represent and warrant that they are duly authorized to execute this Agreement on behalf of Service Provider or University, as the case may be. This Agreement may be executed separately or independently in any number of counterparts, each and all of which together shall be deemed to have been executed simultaneously and for all purposes to be one Agreement.

12.9 Incorporation of RFP and Proposal. The provisions of that certain Request for Proposal (RFP) for ___________________________ # ____________ issued by University on __________________________ (the “RFP”) and that certain __________________________ dated __________________________ responding to the RFP (the “Response”) are hereby incorporated into this Agreement by this reference. In the event of a conflict between the provisions this Agreement, the Response, and/or the RFP, the conflict shall be resolved by reference to the documents in the following order of priority: (a) this Agreement; (b) the Response, and (c) the RFP.

12.10 Captions. Captions used herein are for convenience of reference only, and shall not be used in construing this Agreement.

12.11 Survival. The provisions of sections 4, 7, and 10 and subsection 12.2 hereof shall survive the expiration or termination of this Agreement.
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives effective as of the Effective Date.

SERVICE PROVIDER

By: __________________________
   (Signature)
Name: __________________________
Title: __________________________
Date: __________________________

THE UNIVERSITY OF UTAH

By: __________________________
   (Signature)
Name: __________________________
   (University Officer)
Title: __________________________
Date: __________________________

OFFICE OF SPONSORED PROJECTS

By: __________________________
   (Signature)
Name: __________________________
Title: __________________________
Date: __________________________

APPENDIX A - SCOPE OF SERVICES AND COMPENSATION