

UND SERVICES CONTRACT

The parties to this contract (Contract) are the University of North Dakota (UND), a public institution of higher education and an instrumentality of the state of North Dakota organized under the constitution of the state, having its principal place of business in Grand Forks, North Dakota 58202, and **COMPANY NAME** (Company), a _____(type of business organization), having its principal place of business at _____(Company city/state);

1. SCOPE OF WORK

UND, in exchange for the compensation paid by Company under this Contract, will provide the following services:

SCOPE OF WORK

2. COMPENSATION

a. Contractual Amount

Company will pay for the accepted services provided by UND under this Contract an amount not to exceed \$ _____ (Contractual Amount). The Contractual Amount is firm for the duration of the Contract and constitutes the entire compensation due UND for performance of its obligations under this Contract, unless amended, regardless of the difficulty, materials, or equipment required, including fees, licenses, overhead, profit, and all other direct and indirect costs incurred by UND, except as provided by an amendment to this Contract.

b. Payment

Payment will be made within thirty days after receipt of a correct invoice. All invoices and payment inquiries must be directed via email to:

Procurement & Payment Services at:
und.APIInvoice@ad.ndus.edu

or mailed to:

Procurement & Payment Services,
Bronson Center Room 120
1301 Ralph Engelstad Arena Dr., Stop 8356
Grand Forks, ND 58202-8356

c. Prepayment

UND may require advance payments before performance under this Contract.

d. Taxpayer ID

UND will provide its federal employer ID number to Company upon request.

3. TERM OF CONTRACT

This Contract begins on [Month, Day], 20[Year] or its effective date, and ends on [Month, Day], 20[Year]. This Contract may be extended upon mutual written agreement of the parties.

4. TIME IS OF THE ESSENCE

The parties acknowledge that time is of the essence for performance under this Contract unless otherwise agreed to in writing by the parties.

5. TERMINATION

a. Termination without cause

This Contract may be terminated by mutual consent of both parties, or by either party upon 30 days' written notice.

b. Early Termination in the Public Interest

UND is entering into this Contract for the purpose of carrying out the public policy of the State of North Dakota, as determined by its Governor, Legislative Assembly, the State Board of Higher Education, and the Courts. If this Contract ceases to further the public policy of the State of North Dakota, UND, in its sole discretion, by written notice to Company, may terminate this Contract in whole or in part.

c. Termination for Non-appropriation or Lack of Funding or Authority.

UND by written notice to Company, may terminate the whole or any part of this Contract under any of the following conditions:

- 1) Continuation of this Contract beyond June 30 of any odd-numbered year is contingent on continued legislative appropriation of funds for the purposes of this Contract. If those appropriations are not forthcoming, UND will notify Company as soon as possible and the Contract will terminate on June 30 of that year or upon the termination of any pre-paid terms, whichever occurs later. Further, UND may terminate this Contract if funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services in the indicated quantities or term.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
- 3) If any license, permit, or certificate required by law or rule, or by the terms of this Contract, is for any reason denied, revoked, suspended, or not renewed.

UND will not be penalized or incur any liability because of termination of this Contract as provided in this subsection. Termination of this Contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

d. Termination for Cause.

Either party may terminate this Contract effective upon delivery of written notice to the other party, or any later date stated in the notice if a party fails to perform any of the other provisions of this Contract or fails to pursue the work as to endanger performance of this Contract in accordance with its terms.

e. Termination, Deliveries

Upon termination, no costs incurred after the effective date of termination will be allowable, except 1) those costs which the a party could not reasonably avoid or eliminate, and 2) those costs which were authorized by the termination notice.

The rights and remedies of UND provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

6. FORCE MAJEURE

Neither party will be held responsible for delay or default caused by fire, riot, terrorism, acts of God, or war if the event is beyond the party's reasonable control and the affected party gives notice to the other party promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.

7. LIABILITY

Each party shall be responsible for claims, losses, damages, and expenses which are proximately caused by the negligence or wrongful acts or omissions of that party or its employees, agents, or representatives acting within the scope of their employment. The tort liability of UND is subject to the conditions and limitations contained in Chapter 32-12.2 of the North Dakota Century Code. Nothing herein shall preclude

either party from asserting against third parties any defenses to liability it may have under the law or be construed to create a basis for a claim or suit when none would otherwise exist. This provision shall survive the termination of this Contract.

8. LIABILITY COVERAGE

UND's tort liability coverage is provided by the State of North Dakota's risk management fund (a government self-insured pool). The limits on the amount to be paid out of this fund are determined by statute and are currently US\$468,750 per person, and US\$1,875,000 per occurrence with no aggregate limit. UND carries Worker's Compensation in the statutory amounts covering all of UND's employees.

9. WORK PRODUCT

All work product, equipment, or materials created for Company or purchased by Company under this Contract belong to Company and must be immediately delivered to Company at Company's request upon termination of this Contract.

10. NOTICE

All notices or other communications required under this Contract must be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

UND	Company
	COMPANY_CONTACT_NAME
	COMPANY_CONTACT_TITLE
	COMPANY_ADDRES

The provisions of this section do not supersede any statutes or rules of court regarding notice of claims or service of process. In the event of a conflict between this section and any statutes or rules of court, the statutes or rules of court shall govern.

11. CONFIDENTIALITY

Neither party will use or disclose any information it receives from the other party under this Contract that the disclosing party has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Contract or as authorized in advance by the disclosing party. In the case of Company disclosed information, UND will not disclose any information it receives from Company that Company has previously identified as confidential and that UND determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, N.D.C.C. ch. 44-04. The duty of UND and Company to maintain confidentiality of information under this section continues beyond the term of this Contract.

12. COMPLIANCE WITH PUBLIC RECORDS LAWS

The parties acknowledge this Contract is subject to North Dakota's public records law. Under the North Dakota public records law certain records may be open to the public upon request. Public records may include: (a) records UND receives from Company under this Contract, (b) records obtained by either party under this Contract, and (c) records generated by either party under this Contract. Company shall contact UND immediately upon receiving a request for information under the public records law and shall comply with UND's instructions on how to respond to that request.

13. INDEPENDENT ENTITY

Each party, its employees, agents, and representatives under this Contract are not employees of the other party for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law, and the North Dakota Workforce Safety and Insurance Act. The employing party retains sole and absolute discretion in the manner and means of carrying out the activities and responsibilities of that party under

this Contract, except to the extent specified in this Contract. No part of this Contract shall be construed to represent the creation of an employer/employee relationship.

14. ASSIGNMENT AND SUBCONTRACTS

Neither party may assign or otherwise transfer or delegate any right or duty without the other party's express written consent. However, UND may enter into subcontracts provided that any subcontract acknowledges the binding nature of this Contract and incorporates this Contract, including any attachments. UND is solely responsible for the performance of any subcontractor with whom UND contracts. Neither party has the authority to contract for or incur obligations on behalf of the other party for purposes of carrying out their duties of this Contract.

15. SPOILIATION – PRESERVATION OF EVIDENCE

Each party agrees to promptly notify the other party of all potential claims which arise from or result from this Contract. The parties further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant the other party the opportunity to review and inspect such evidence, including the scene of the accident.

16. MERGER AND MODIFICATION, CONFLICT IN DOCUMENTS

This Contract, including the following documents, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Contract. This Contract may not be modified, supplemented, or amended, in any manner, except by written agreement signed by both parties.

Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Contract, the documents must control in this order of precedence:

- a. The terms of this Contract as may be amended;
- b. The Facility Use Agreement dated _____.

All terms and conditions contained in any automated end-user agreements (e.g., click-throughs, shrink wrap, or browse wrap) are specifically excluded and null and void, and will not alter the terms of this Contract.

17. SEVERABILITY

If any term of this Contract is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Contract did not contain that term.

18. APPLICABLE LAW AND VENUE

This Contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Contract must be brought in the Northeast Central Judicial District Court of Grand Forks County, North Dakota. UND does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. UND does not waive any right to a jury trial.

19. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

The Company must, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including Title VI of the Civil Rights Act of 1964 and other laws concerning fair employment and employment of the handicapped, and concerning the treatment of all employees without regard to race, color, national origin, religion, sexual orientation, gender identity, genetic information (GINA), sex, age, creed, marital status, veteran's status, political belief or affiliation, or physical, mental, or medical disability unrelated to the ability to engage in activities involved with the

job. Any subletting or subcontracting by Company will subject the subcontractor(s) to the same requirements.

20. AUDIT

UND will have full access at all times to all of the Company's records that relate to this Contract, regardless of physical form. Company will maintain all such records for at least three years following completion of this Contract.

21. ADDITIONAL TERMS

Any additional or different terms or conditions which may appear in any other communication from Company are hereby expressly objected to and shall not be effective or binding unless specifically agreed to in writing by UND and no such additional or different terms or conditions in any printed form of Company shall become a part of this Contract despite UND's acceptance of services unless such acceptance specifically, in writing, recognizes or assents to their inclusion. Mere signature by UND on a purchase order or other document provided by Company in the performance of this Contract does not constitute acceptance by UND of the terms and conditions of such document.

No remedy conferred by any of the specific provisions of this Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Contract, now or in the future existing at law or in equity or by statute or otherwise.

Either party's failure to exercise any of its rights under this Contract, its delay in enforcing any right, or its waiver of its rights on any occasion, shall not constitute a waiver of such rights on any other occasion. No course of dealing by either party in exercising any of its rights shall constitute a waiver thereof. No waiver of any provision of this Contract shall be effective unless it is in writing and signed by the party against whom the waiver is sought to be enforced.

22. ON-CAMPUS PARKING

All contractors, delivery persons, and vendors parking on campus are required to either: obtain a UND parking permit; park in the visitor pay lot; utilize the pay-as-you-go option at the parking ramp; or park at a meter while conducting business at UND. Those who purchase a delivery/vendor permit are entitled to park in service vehicle zones. It is the responsibility of the vendor that a company vehicle, or the vehicle driver in the case of a privately owned vehicle, is parked legally and that all parking restrictions on campus are obeyed. Further parking information will be provided upon request. Applications for construction, delivery, and vendor permits can be printed off the UND Parking Services website <https://campus.und.edu/transportation/parking/permits/other.html> or picked up in UND Parking Services located in the Facilities Building, 3791 Campus Road, Grand Forks, ND 58202

23. BACKGROUND CHECKS

Company acknowledges that Company's activities on campus may involve heightened risks as a result of access or exposure by Company's employees or agents to one or more secure or sensitive environments. Company expressly acknowledges that Company shall take all commercially reasonable measures to mitigate any such risks, which measures shall include but are not limited to conducting criminal history checks and a national Sex Offender Registry (SOR) check, on all employees, agents, or subcontractors who will be performing secure or sensitive work at UND. Upon UND request, Company shall certify in writing that it has complied with this provision and that all employees, agents, and subcontractors performing work hereunder have satisfactorily completed Company's background check, at Company's expense.

If a Company's employee, agent, or subcontractor fails to satisfactorily complete a background check, or if any negative result is obtained that Company or UND determines to be disqualifying for the work to be performed, then, at UND's option, and in its sole discretion:

UND may request Company to assign another employee, agent, or subcontractor to perform the work; or UND may terminate this Contract.

24. EFFECTIVENESS OF CONTRACT

This Contract is not effective until fully executed by both parties. This Contract may be executed in multiple, identical counterparts, each of which is be deemed an original, and all of which taken together constitute one and the same contract. If no start date is specified in the Term of Contract, the most date of last signature of the parties will be deemed the Effective Date.

Company	UND
COMPANY NAME	University of North Dakota
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date: