



PROFESSIONAL SERVICE AGREEMENT

Internal Routing Page

The following departments have reviewed the Agreement:

Associate Vice President/Dean/Department Head

Approval Signature

Date

Director or Designee, Purchasing Department

Approval Signature

Date



PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT made this (____) day of (____), 20(____) ("Effective Date") by and between Lincoln University of the Commonwealth System of Higher Education, a non-profit corporation and institution of higher education organized under the laws of the Commonwealth of Pennsylvania, located at 1570 Baltimore Pike, Lincoln University, PA 19352 (hereinafter referred to as "Lincoln University "or" the University"), and (____), (____) located at (____) (hereinafter referred to as "**Service Provider**"). The University and the Service Provider may be referenced collectively in this Agreement as "the Parties."

WHEREAS, the University wishes to obtain the professional services of the Service Provider; and

WHEREAS, the Service Provider represents to the University that it has the skill, experience and all requisite occupational licenses to provide the Services with quality and in a professional manner; now

THEREFORE, in consideration of the foregoing, the Parties, intending to be legally bound, hereby agree to the following:

1. **Description of Services.** The University hereby engages the Service Provider, to provide the Services in accordance with the terms and conditions set forth in this Agreement as follows:
 - A. **Services.** Service Provider agrees to provide the Services, Schedule, Key Personnel, and to comply with the Obligations of the Service Provider set forth in Exhibit A, attached hereto and incorporated herein by this reference (the "Services").
 - B. **Place Where Services Will Be Rendered.** Service Provider will provide the Services at the main campus of Lincoln University, located at 1570 Baltimore Pike, Lincoln University, PA 19352 and further detailed in Exhibit A.
 - C. **Access to Facilities.** Service Provider shall be granted access limited to those facilities required to render the agreed upon Services. However, Lincoln shall not be liable for any personal injury to Service Provider or for any loss or damage to any personal property belonging to Service Provider in its custody or possession while using or accessing University facilities. The above shall include liability for all claims including claims of negligence.
2. **Payment.** In consideration of the Services provided, the University agrees to pay the Service Provider \$_____ as its total obligation to the Service Provider for the Services set forth in this Agreement. The University will pay the Service Provider within thirty (30) days following receipt of an itemized invoice with the amounts due in accordance with this Agreement. Any expenses incurred, not otherwise provided in this Agreement, shall be the sole responsibility of the Service Provider.

Performance beyond the limitations set forth in Exhibit A of this Agreement (either financial or time period) shall be at the sole risk and responsibility of the Service Provider and the University shall not be obligated to pay for additional Services exceeding the details outlined in Exhibit A of this Agreement, without prior written authorization of the University.

3. **Principal Contact.**

- A. Service Provider's principal contact at Lincoln shall be [Name] _____, [Title and Department for Lincoln] _____ [Telephone] _____ and all correspondence, reports and inquiries regarding this Agreement shall be directed to that person. Any additional services under this Agreement may be authorized only by the Principal Contact.
- B. The Principal Contact of the Service Provider for all purposes under this Agreement shall be [Service Provider's Principal Contact Name] _____ [Email and Telephone] _____ and all correspondence and inquiries regarding their Agreement shall be directed to that person.

4. **Insurance.** Before any of the Services outlined within this Agreement are performed, without limiting or diminishing the Service Provider's obligation to indemnify or hold harmless Lincoln University and the Commonwealth of Pennsylvania, the Service Provider:

- A. Shall at its own cost and expense, procure and maintain or cause to be maintained, insurance as applicable and as described in Exhibit B. Insurance, attached hereto and incorporated herein by this reference (the "Insurance") in a form satisfactory to Lincoln University for the performance of its Services under this Agreement and for the term of this Agreement in its entirety; and
- B. Shall furnish to the University, a Certificate of Insurance (COI), naming Lincoln University as primary additional insured, prior to or at the time of execution of this Agreement, to Lincoln University's Office of Finance and Administration, 1570 Baltimore Pike, Lincoln University, PA 19352; and
- C. Warrants that its insurance carriers are accurately informed regarding the business activities of the Service Provider and intends to cover those business exposures; and
- D. Agrees and acknowledges that failure to submit a COI in a form satisfactory to Lincoln University will render this Agreement immediately null and void.

5. **Protection of Minors.**

A. Compliance with PA Child Protective Services Law

Service Provider agrees to comply with all requirements for obtaining and maintaining background certifications and reporting child abuse set forth in the Pennsylvania Child Protective Services law ("CPSL"), 23 Pa. C.S., Chapter 63 (§§ 6301 et seq.) as amended, and its governing regulations for any program, activity, service, or event that involves direct contact with a minor including a three-part background check consisting of:

1. a report of criminal history record information from the Pennsylvania State Police (PSP); and
2. a child abuse history clearance certification from the Pennsylvania Department of Human Services (DHS); and
3. a report of federal criminal history record information, generated by fingerprints transmitted to the Federal Bureau of Investigation (FBI).

B. Compliance with Lincoln University Policy Protecting Minors on Campus

Service Provider, agrees to abide by the Lincoln University policy on [Protecting Minors on Campus HRM-128](#), made part of this Agreement and incorporated herein, in any program, activity, service or event that is sponsored by Lincoln University or provided on Lincoln University's campus that involves direct contact with a minor (anyone under the age of 18 years old).

- C. Service Provider represents that NO employee, volunteer, or other representative of the Service Provider, who has committed, any of the offenses identified in 23 Pa. C.S. Section 6344(c) shall provide any service, activity, program, or event to Lincoln University involving any Direct Contact with a minor as defined in the CPSL§ 6303(a).
6. **Independent Contractor.** Service Provider shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees in connection with its provision of the Services. Nothing herein is intended or shall be construed to establish any agency, partnership, or joint venture between Service Provider and the University. Service Provider represents that it has, or will secure at its own expense, all personnel required in performing the Services under this Agreement. Such employees shall not be employees of or have any individual contractual relationship with the University.
7. **Prohibited Behavior.** Prohibited Behavior under this Agreement, constitutes any violation of, the law, including but not limited to, rules, regulations, and/or ordinances, whether federal, state, or local, (the “Laws”) and the policies that govern Lincoln University. Service Provider agrees to abide by the Laws and policies governing Lincoln University and shall not tolerate any prohibited behavior by its employees, contractors, or any individual assigned by or under the control of the Service Provider, whether directly or indirectly, in the performance of the Services under this Agreement. Service provider shall immediately remove from the jobsite any individual assigned by or under the control of the Service Provider, including but not limited to its employees and contractors, either directly or indirectly, engaging in any prohibited behavior under this Agreement.
8. **Indemnification and Release.**
- A. For the purposes of this Agreement, to the maximum extent permitted by law, the Service Provider shall indemnify and hold harmless the University, its trustees, officers, directors, faculty, students, employees, successors, assigns, elected or appointed officials, agents and/or representatives, from and against any and all actions, causes of action, claims, damages, losses, liabilities, expenses, or demands (including attorneys' fees), accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Service Provider in the performance of this Agreement whether known or unknown, present or future, that arise from or are connected with the provision of the Services and the negotiation, execution and performance of this Agreement.
- B. Service Provider releases and waives any and all claims, demands, or causes of action against the University, its trustees, officers, directors, faculty, students, employees, successors, assigns, elected or appointed officials, agents and/or representatives, that arise from or are connected with the Service Provider's obligations pursuant to this Agreement, any injury to employees or agents of the Service Provider or damage to or loss of any property of Service Provider or its employees or agents, regardless of whether or not any such claims, losses, liabilities or expenses are caused in part by the negligence of the University or any of the other indemnified parties.
- C. The University's liability for bodily injury, property damage or any other matter sounding in tort is determined in accordance with the provisions, procedures, and limits of the Commonwealth of Pennsylvania Tort and Contract Liability Act 42 Pa. Cons. Stat. § 8522. The University does not waive its sovereign immunity or any rights or defenses under the Pennsylvania Tort and Contract Liability Act.
- D. In the event that any claim, demand, suit or other legal proceeding arising out of any matter relating to the Agreement is made or instituted by any person against the University, Service Provider shall, at its own cost and expense, provide the University with all reasonable information and assistance in the defense or other disposition thereof. This provisions of this Section shall survive the termination or expiration of this Agreement.

9. Confidentiality & Nondisclosure

A. Service Provider Obligations with Respect to Confidential Information.

Service Provider will hold all Confidential Information which is incorporated in strict confidence and not copy, reproduce, sell, transfer, give, or disclose Confidential Information to third parties other than its employees, agents, or subcontractors who have a need to know the information for purposes of the Work. Service Provider will require its employees, agents, and subcontractors to keep such information confidential as defined in Exhibit C, which is incorporated in and made part of this Agreement.

B. Use and Disclosure Limitations.

1. Service Provider shall not disclose Confidential Information to any person or entity whatsoever without the prior written consent of the University.
2. Service Provider agrees to maintain strict confidentiality concerning and in accordance with the requirements and conditions set forth herein.
3. Service Provider shall use its best efforts to prevent the not use or disclose Confidential Information. Service Provider shall advise the University immediately in the event that it knows or has reason to believe that Confidential Information has been disclosed or accessed in violation of this Agreement. Service Provider will cooperate with the University in seeking injunctive or other equitable relief against any such person.
4. Service Provider shall not use, provide, trade, give away, barter, lend, sell, or otherwise disclose Confidential Information, and shall not make any copies of such data or any type whatsoever, in readable or encrypted form, or in individually identifiable or aggregate form, except as necessary for the Services to be performed.
5. Service Provider shall only permit access to Confidential Information acquired by Service Provider in connection with this Agreement, and only to employees, agents or contractors of Service Provider
 - a. who are directly involved in performing the Services for the University and have a specific need to know such information, and
 - b. who have entered into written confidentiality agreements which impose, or are otherwise bound by, restrictions on the Confidential Information at least equivalent to those imposed under this Agreement
6. Service Provider will not photograph, sketch, copy or otherwise record confidential documents, material, or the like, except as may be authorized in writing by Lincoln. Service Provider agrees that any and all such records and copies made or kept by Service Provider, wherever completed or wherever kept, at home or otherwise, in connection with the Services performed under this Agreement shall be and are the sole and exclusive property of Lincoln.

C. Legal Disclosure.

If Service Provider is compelled by law to disclose Confidential Information, Service Provider shall:

1. Upon receipt of legal process, notify the University immediately in writing;
2. Give reasonable assistance in opposing such disclosure; and
3. After providing such notice and assistance as required herein, if Service Provider remains required by law to disclose any Confidential Information, it shall disclose no more than that portion of the Confidential Information it is legally required to disclose.

D. Return of Confidential Information.

Upon the expiration, cancellation, or termination of this Agreement, Service Provider shall return to the University all Confidential Information to the University as outlined in Exhibit C.

10. Intellectual Property and Copyright.

- A. All intellectual property, including but not limited to, patentable inventions, patentable plants, novel plant varieties, copyrightable works, mask works, trademarks, service marks and trade secrets invented, developed, created or discovered by Service Provider in performance of this Agreement shall be the property of the University. Notwithstanding the foregoing, Service Provider shall retain ownership of all intellectual property created by the Service Provider prior to execution of this Agreement (“Pre-existing IP”) and any improvements or modifications of Pre-existing IP created pursuant to this Agreement and Service Provider hereby grants the University an unrestricted, irrevocable, royalty free right to use such Pre-existing IP to the extent necessary to use the Services or any deliverables provided hereunder.
- B. Copyright in and to any copyrightable work, including, but not limited to, copy, art, negatives, photographs, designs, text, software, or documentation created as part of Service Provider’s provision of Services shall vest in the University. Works of authorship and contributions to works of authorship created by Service Provider in connection with its provision of Services are hereby agreed to be “works made for hire” within the meaning of 17 U.S.C. 201. However, if the University is not able to obtain copyright ownership under the statutory provisions for “works made for hire,” then Service Provider hereby assigns to the University all right, title, and interest in such works and contributions.
- C. Service Provider agrees to provide the University with any and all reasonable assistance which the University may require to file patent applications, to obtain copyright registrations, or to perfect its title in any such inventions or works, including the execution of any documents submitted by the University.
- D. Service Provider warrants that its Services do not infringe the copyright of others and agrees to release, discharge and hold harmless the University, its employees and agents, all persons acting under its authority, and those for whom it is acting, from all claims, causes of action and liability of any kind, in law or equity, based upon or arising out of the Services or this Agreement including, without limitation, claims of libel, slander, invasion of privacy, right of publicity, defamation, trademark infringement, and copyright infringement.

- 11. **No Conflicts.** Service Provider certifies that it is currently under no outstanding agreement or obligation which conflicts or prevents it from performing Services under this Agreement, and that this Agreement does not constitute a breach of any obligation it has to a third party.
- 12. **Severability.** In the event that any section, paragraph or term of this Agreement shall be determined to be invalid or unenforceable by any competent tribunal for any reason, the remainder of this Agreement shall be unaffected thereby and shall remain in full force and effect and if any section, paragraph, or term of this Agreement is adjudged to any extent to be invalid or unenforceable by any competent tribunal, such section, paragraph, or term will be deemed modified to the extent necessary to make it enforceable.
- 13. **Notices.** All notices shall be in writing and addressed to the party to receive such notice at the address given below, or such other address as may hereafter be designated by notice in writing. Notices may be sent by email, fax, hand delivery, private overnight mail service, or registered or certified U.S. mail. Notice will be deemed received on the completion of the third (3rd) business day following the documented date of deposit with the United States Postal Service.

TO: LINCOLN UNIVERSITY:

Lincoln University
Attn: Office of General Counsel
1570 Baltimore Pike
Lincoln University, PA 19352

Email: generalcounsel@lincoln.edu
Fax: 484.365.7316

TO: SERVICE PROVIDER:

Company: _____
Attn: _____
Address: _____

Email: _____
Fax: _____

14. **Amendment.** This Agreement may be amended only by mutual agreement of the parties in writing.
15. **Law Governing.** This Agreement and the rights and obligations of the parties hereto shall be interpreted, construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, and parties hereby submit to the exclusive jurisdiction of the courts located in the Eastern District of Pennsylvania for litigation of any disputes arising under this Agreement.
16. **Assignment.** Neither party shall assign or delegate its rights and obligations under this Agreement or any part hereof without the prior written consent of the non-assigning or non-delegating party.
17. **Complete Agreement.** This Agreement contains the entire agreement between the parties in respect to the subject matter hereof and supersedes any and all other agreements for consultation, oral or written, and all other communication between the parties relating to the subject matter of this Agreement. The language of all parts of this Agreement shall in all cases be construed according to its fair meaning and not strictly for or against any of the parties.
18. **Headings.** The headings and other captions in this Agreement are for convenience and reference only and shall not be used in interpreting, construing or enforcing any of the provisions of this Agreement.

The parties' have executed and delivered this Agreement as of the date(s) evidenced below with the intention that it shall be effective and accurate as of the date set forth in the preamble.

SERVICE PROVIDER

By: _____
Signature _____ Date _____
Print Name _____
Title _____

LINCOLN UNIVERSITY

By: _____
Signature _____ Date _____
Wilbourne Rusere, Vice President
Finance and Administration

SERVICES

On or before the dates specified below, the Service Provider shall perform, complete and provide to the University the Services in accordance with the Schedule and Key Personnel indicated below.

Services:

[Enter detail of Services to be performed – attach additional pages as necessary.]

Schedule:

[Enter the following information.]

- Services will begin: (date)/(time)
- Enter Daily/Weekly schedule: (example: M-F 8 hours per day)
- Services will end on: (date)/(time)

Key Personnel:

[Enter Key Personnel]

Service Provider's Obligations.

- a. **Key Personnel.** Service Provider shall not substitute key personnel assigned to the performance of this Agreement without the prior written approval of the University.
- b. **Background Check.** Service Provider is responsible for the performance of all individuals performing Services under this Agreement. Prior to commencing any Services, Service Provider shall at its expense:
 - 1. ensure that criminal background screenings as set forth herein, comply with and are completed prior to assigning any employee, subcontractor, or other individual employed, contracted or otherwise engaged by the Service Provider in the provision of Services to Lincoln University under this Agreement, and
 - 2. provide the University's Primary Contact with a list ("List") of all individuals who may be assigned to perform Services, and update the List immediately each time there is a change in the individuals assigned to perform Services, and
 - 3. shall not assign any individual to provide Services who has a history of unacceptable criminal conduct, including violent or sexual offenses.
- c. **Care of Property.** Service Provider shall be responsible for the proper custody and care of any property furnished by the University to Service Provider for use in connection with the provision of Services, and Service Provider shall reimburse the University for loss or damage to any such property.
- d. **Workmanship and Quality of Services.** Service Provider shall perform the Services in a workmanlike and professional manner, to the reasonable satisfaction of the University that conforms with the scope of work described in Exhibit A and all prevailing industry, commercial, academic, and professional standards.
- e. **Subcontracting, Assignment, and Transfer Prohibited.** Due to Service Provider's unique abilities, this Agreement is for personal Services and Service Provider shall not subcontract, assign, or transfer any interest in this Agreement without prior written approval of the University. Service Provider shall remain responsible for all obligations under this Agreement.
- f. **Compliance with Employment Regulations.** Service Provider shall comply with all federal and state requirements concerning equal opportunity and non-discrimination in employment and shall treat all employees equally without regard to their age, color, disability, gender identity, genetic information, national origin, race, religion, sex (including pregnancy), sexual orientation, or veteran status.
- g. **Compliance with Applicable Law.** Service Provider shall comply with all federal, state, and local laws, ordinances, codes, rules, regulations, and licensing requirements applicable to the conduct of its business and the provision of the Services.

INSURANCE REQUIREMENTS

Required Insurance Coverage (as applicable)

1. **Professional Liability:** Professional Liability Insurance providing coverage for the Service Provider's performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If Service Provider's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and Service Provider shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that Service Provider has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.
2. **Commercial General Liability:** Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of the University's performance of its obligations hereunder. Policy shall name the University as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.
3. **Auto Liability:** Auto liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the University as Additional Insureds.
4. **Workers' Compensation:** Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the Commonwealth of Pennsylvania. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the University and Commonwealth of Pennsylvania
5. **Cyber Liability:** Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Service Provider in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. If the Service Provider maintains broader coverage and/or higher limits than the minimums shown above, the University requires and shall be entitled to the broader coverage and/or higher limits maintained by the Service Provider. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the University.
6. **Aviation Liability:** Coverage shall be at least as broad as Aviation Liability Insurance on an "occurrence" basis, including products and completed operations, property damage, bodily injury with limits no less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate. This coverage may also be provided by endorsement to a Commercial General Liability policy.
7. **Umbrella or Excess Liability Coverage.** Umbrella or Excess Liability coverage with limits not less than \$1,000,000 per occurrence and aggregate and will be excess over and be no less broad than "following form" of all included coverage described herein.

Confidential Information

A. **Definitions.**

1. **Confidential Information.** The information and documentation of Lincoln University that has been marked “confidential”, as well as all information pertaining to students, prospective students, or employees, financial records, donor lists, fundraising plans, and any other confidential information compiled or maintained internally by the University concerning the operation of Lincoln University. Confidential Information includes but is not limited to the following:

2. **University Proprietary Information**

Data, information, or intellectual property in which the University has an exclusive legal interest or ownership right which, if compromised could cause harm to the University, including that which is acquired or developed by Service Provider pursuant to the performance of the Services.

Confidential and proprietary information and trade secrets, that the Service Provider may obtain or create from information that the University, another governmental Service Provider, university, or a company may disclose within the scope and in the course of performing the Services.

Examples may include, but are not limited to, research data, notebooks, drawings, technology, know-how, marketing plans, business plans, financial information, trade secret, copyrighted material, and software together with comparable material from a third party when the University has agreed to keep such information confidential, and any other information the disclosure of which could cause competitive harm to the owner.

3. **Sensitive Personally Identifiable Information.**

Data relating to an individual that reasonably identifies the individual and, if compromised, could cause harm to that individual or to University.

Examples may include, but are not limited to: Social Security Numbers, credit card numbers, bank account information, student grades or disciplinary information, salary or employee performance information, donations, health information, information the University has promised to keep confidential, and account passwords or encryption keys used to protect access to such information.

4. **Protected Health Information.**

Each party agrees to fully comply with the Health Insurance Portability and Accountability Act of 1996 and its associated regulations and, more specifically, in 45 C.F.R. §§ 160-164 (collectively referred to as (“HIPAA”)), any applicable state privacy and/or security laws, any applicable implementing regulations and the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the “HITECH Act”), and any regulations adopted or to be adopted pursuant to the HITECH Act that relate to the obligations of either party hereto as applicable to all Protected Health Information (as that term is defined in 45 C.F.R. § 160.103) received from, or received, maintained, transmitted, or created on behalf of, the parties in connection with the Services (collectively, “PHI”).

5. **Protected Student Information.**

Service Provider acknowledges that, personally-identifiable information about any of College’s is subject to the Family Educational Rights and Privacy Act of 1974, as amended, and all applicable implementing regulations at 34 C.F.R. Part 99 (collectively, “FERPA”). In addition to its contractual obligations of confidentiality, Service Provider agrees that it will not disclose any personally-

identifiable information of students to anyone other than Service Provider's employees, except as required by law. (f) Return of Information. Following the expiration, cancellation, or termination of this Agreement, Service Provider shall return to College all Confidential Information, in whatever form (hard copy, electronic or other form) maintained, and will not retain any copies of that information.

6. Protected Personal Data.

Service Provider shall comply with all applicable laws governing the protection of personal data, as amended and updated from time to time, including, when applicable, the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the General Data Protection Regulation (Regulation EU 2016/679), any laws substituting, re-enacting, or replacing those laws. Service Provider shall ensure that it has in place appropriate technical and organization measures to protect Personal Data (as defined in applicable laws) against accidental, unauthorized, or unlawful destruction, loss, alteration, disclosure, access, or processing. Service Provider will respond to, contain, and remediate any unauthorized access of Personal Data (a "Data Breach") using best efforts and shall notify College of any known or suspected Data Breach within twenty-four hours of becoming aware of it. In the event that Service Provider experiences a Data Breach, Service Provider shall bear full responsibility for complying with any laws governing, and Service Provider shall reimburse College for any costs incurred by College in responding to or mitigating damages resulting from any Data Breach that Service Provider experiences, including all costs of notice and/or remediation.

B. **Exclusions.**

Notwithstanding the above, Confidential Information shall not include any information that:

1. Service Provider shall have lawfully possessed before entering into this Agreement
2. was at the time of disclosure part of the public domain by publication or otherwise;
3. became part of the public domain after disclosure to Service Provider by publication or otherwise, except by breach of this Agreement;
4. was lawfully received from a third party who was under no obligation of confidentiality;
5. was independently developed by Service Provider without reference to Confidential Information; or
6. shall be lawfully acquired by Service Provider in circumstances not resulting from this Agreement or the performance of the Services;
7. becomes part of the public domain in any manner other than the publication thereof in violation of this Agreement or otherwise unlawfully; or
8. is required to be disclosed by law, regulation or judicial process (See Section 12.h. Legal Disclosure).

C. **Return of Confidential Information.**

Upon the expiration, cancellation, or termination of this Agreement, Service Provider shall return to the University all Confidential Information, in whatever form (hard copy, electronic or other form) maintained, and will not retain any copies of that information including but not limited to all Proprietary Information, and Sensitive Personally Identifiable Information, electronic and written records, data, drawings, notebooks, other documents, and information of the University, whether prepared by the Service Provider or others and shall not retain or take any notes, records or other reproductions relating or pertaining to Lincoln University, or connected with the Service Provider's Services as follows:

1. At its own expense, Service Provider shall immediately return to the University all Confidential Information embodied in tangible form, whether or not reduced to such form by Service Provider including all copies thereof, or
2. At the University's option, Service Provider shall certify in writing to University that all such Confidential Information has been destroyed, except that Service Provider may retain Confidential Information to the extent that retention is required by law or is needed to document performance under this Agreement.

D. Office of the General Counsel Approval Notice

This contract template has been pre-approved by the Office of the General Counsel (OGC) at Lincoln University of Pennsylvania. Users of this template are advised that no further review by the OGC is necessary, provided the template is used in its original, unaltered form.

However, if any modifications or changes are made to the terms, conditions, or clauses of this contract, it is required that the altered contract be resubmitted for review and approval by the OGC before execution.

For any questions or to submit a modified contract for review, please contact the Office of the General Counsel at generalcounsel@lincoln.edu.