CONTRACT FOR GOODS AND SERVICES

THIS AGREEMENT is entered into by and between the Trustees of Tufts College, hereinafter also referred to as “Tufts” or “Tufts University” and………………………hereinafter also referred to as “Supplier”.

Tufts University and Supplier agree as follows:

1. **Term of Agreement.** This Agreement shall be effective on ………………… and shall remain in effect until ………………or until all obligations set forth in this Agreement have been satisfactorily fulfilled, or the Agreement has been terminated, whichever occurs first.

2. **Scope of Work.** Supplier shall perform all of the services set forth on Exhibit A (“Scope of Work”). Supplier understands that time is of the essence in this Agreement and agrees to meet all milestones set forth in Exhibit A.

3. **Consideration and Terms of Payment.** The consideration for all services (and goods if any) performed or supplied by Supplier under this Agreement shall be paid by the University as follows:
   
   3.1. **Total Obligation.** Tufts University’s total obligation to Supplier under this Agreement, including compensation for goods, services, and reimbursable expenses, shall not exceed $......................without the University’s prior written approval.
   
   3.2. **Expenses.** If expenses are reimbursable, each request for reimbursement must be itemized and accompanied by receipts.
   
   3.3. **Frequency of Invoicing and Terms of Payment.** Supplier shall submit invoices upon completion of the milestones described in Exhibit A, or as may otherwise be provided in Exhibit A. The University shall pay such invoices consistent with Section 4.1.

4. **Terms and Conditions.** The terms and conditions contained in this Agreement shall be deemed a part of any written agreement (“this Agreement”) between Tufts University (“Tufts”) and Supplier. To the extent there exists any inconsistency between this rider and the terms of any other agreement, the terms of this rider shall control. Except as expressly provided herein, this Agreement supersedes all prior communications, oral or written, between University and Supplier. Supplier’s provision of products and/or services to Tufts signifies Supplier’s consent to and acceptance of these general terms and conditions.
4.1. **Payment Terms.** Payment is due net thirty (30) days from Tufts’ receipt of Supplier’s undisputed invoice. All payments will be in U.S. dollars.

4.2. **Changes.** Tufts reserves the right, by notice to Supplier as provided herein, to make reasonable changes in the scope of services and/or products required or in the specifications or drawings relating to such products or services, in which event an equitable adjustment will be made to the price, time of performance, and/or other relevant provisions of this Agreement required to be changed thereby. Any claim by Supplier for such an adjustment must be made within fifteen (15) calendar days from the date of receipt by Supplier of such change and such claim is subject to negotiation with Tufts.

4.3. **Confidentiality.** Confidential information (hereafter, “Confidential Information”) means information marked or otherwise identified in writing by a party as proprietary or confidential or that, under the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential. It includes non-public information regarding either party’s products, features, marketing and promotions, information on employees, customers, alumni, students, systems and business practices. Confidential Information does not include (i) information which the recipient developed independently; (ii) information which the recipient knew before receiving it under the relevant agreement; or (iii) information which is or subsequently becomes publicly available or is received from another source, in both cases other than by a breach of an obligation of confidentiality.

Each party agrees to hold the other party’s Confidential Information in confidence. Each party will exercise its best efforts to safeguard each other’s Confidential Information. Such precautions will be at least as great as those that either party takes to protect its own Confidential Information, but in no event less than a reasonable degree of protection. Each party will disclose the other party’s Confidential Information to its employees or consultants only on a need-to-know basis and subject to the confidentiality obligations imposed here. When Confidential Information is no longer necessary to perform any obligation under any of the agreement, it will be, at the option of the disclosing party, returned to its owner or destroyed.

Neither party will use the other’s Confidential Information except in furtherance of this business relationship or disclose the other’s Confidential Information except (i) to obtain advice from legal or financial consultants, or (ii) if compelled by law, in which case the disclosing party will use its best efforts to give the other party notice of the requirement so that the disclosure can be contested or limited. This provision shall survive termination of this Agreement.

4.4. **Use of Name.** Supplier shall not use the names “Tufts” or “Tufts University”, or the name of any school or division thereof, or any logo or insignia of Tufts or of any school or division thereof, or otherwise identify Tufts or any school or division thereof, in any form of publicity or disclosure without the prior written consent of Tufts, which consent may be withheld or granted by Tufts in its complete and uncontrolled discretion at any time or times. Any request for any such name use shall be directed to the Office of University Counsel at Tufts.
4.5. **Media Contact.** Supplier shall not communicate with members of the media or otherwise make any public announcement regarding the services performed and/or products provided by Supplier pursuant to this Agreement, or the terms of this Agreement, without the prior written consent of Tufts’ Vice President for University Relations or its Director of Public Relations. Any inquiries from the media shall be referred to Tufts’ Vice President for University Relations or Director of Public Relations.

4.6. **Compliance with Law.** Supplier agrees to comply with all applicable federal, state and local laws and regulations applicable to this Agreement or to the Supplier’s performance of services and/or supply of products to Tufts hereunder. The Supplier shall be responsible for obtaining all licenses and permits required for the performance of the services and supply of products to Tufts. When work and articles covered by this Agreement are for use on a contract or subcontract with the United States government or any state government (provided such fact has been disclosed to Supplier), this Agreement shall be subject to all applicable provisions of, and will be deemed to contain all clauses and agreements required by the terms of any government contract under which or for which this Agreement is issued, and federal laws and regulations. Supplier warrants to Tufts that Supplier has full legal right to enter into this Agreement and that neither the services and/or products to be supplied hereunder, nor any work product to be provided hereunder, will violate or infringe the rights of any person, including any contract right or any patent, copyright, trade secret or other property right. In accordance with Executive Order 12549, Supplier certifies by entering into this transaction that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.

Without limiting the foregoing, M.G.L. Chap. 93H and 201 Code of Mass. Regs. 17.00 et seq. (collectively, the “IS Regulations”) mandate certain procedures to safeguard the “Personal Information” (as defined in the IS Regulations) of Massachusetts residents. To the extent that Supplier may have access to Personal Information pursuant to this Agreement, Supplier hereby certifies that it has implemented and will maintain appropriate security measures to protect Personal Information, in accordance with the IS Regulations. Supplier further agrees that, in the event of any suspected or actual data breach involving such Personal Information, Supplier will promptly notify Tufts and will comply with the applicable provisions of the IS Regulations.

4.7. **Tufts Property.** All schedules, designs, tools or tooling, molds, patterns, drawings, specifications, documents, fixtures, materials, equipment and similar property supplied by Tufts to Supplier or purchased or fabricated by Supplier for Tufts (hereinafter sometimes referred to as “Tufts Property”) shall be and remain the sole property of Tufts and no title or interest shall pass from Tufts to Supplier hereunder. All Tufts Property shall be used only in providing services to Tufts under this Agreement, shall be kept separate from other property, shall be held at Supplier’s risk of loss or damage until returned to Tufts, and shall be kept free of any liens or encumbrances. All Tufts Property shall be subject to recovery by Tufts at any time. Upon Tufts’ request, or
cancellation or termination of this Agreement, Supplier shall deliver all Tufts’ Property not previously delivered hereunder in good repair, normal wear and tear excepted.

4.8. **Ownership/License of Intellectual Property.** To the extent Supplier generates any unique drawings, designs, processes, inventions, specifications, mask works or other technical information in any form (herein called “Intellectual Property”) specifically for Tufts in the course of performing its services under this Agreement, such Intellectual Property shall be deemed to be works made for hire, shall be the sole property of Tufts, and Supplier shall not use, duplicate or disclose such data for any purpose, other than the performance of the work required hereunder, without the prior written consent of Tufts. Supplier hereby assigns to Tufts any interest Supplier may have in such Intellectual Property. To the extent that any work product of Supplier created pursuant to this Agreement incorporates or requires the use of processes, software, inventions or similar intellectual property owned by Supplier, Supplier hereby grants to Tufts an irrevocable, non-exclusive license to use such intellectual property as required.

If the Supplier’s work under this Agreement involves the development or incorporation of software, then the rights of the parties shall be governed by the separate rider entitled “Ownership and License of Intellectual Property including Software”.

4.9. **Inspection and Approval; Conformance with Specifications.** Supplier represents and warrants to Tufts that all labor, products, materials and/or services furnished pursuant to this Agreement shall perform substantially in conformance with all specifications and warranties contained in any written proposal made by Supplier to Tufts, and with those contained in any request for proposals delivered by Tufts to Supplier. All materials shall be new and of first quality. All material and work furnished by Supplier shall be subject to final inspection and approval by Tufts after delivery (“Acceptance”) and Tufts reserves the right to reject non-conforming products and/or services. Notwithstanding prior payment, the parties expressly agree that payment will not constitute final Acceptance. Supplier agrees, at its own expense, to diligently correct any work and replace any materials deemed unsatisfactory by Tufts.

4.10. **Taxes.** Unless otherwise agreed by Tufts, the prices for any work or services to be provided under the Agreement do not include any state or local sales, use or other taxes. Upon request, Tufts will provide Supplier with a copy of its tax exemption certificate.

4.11. **Packing and Shipment.** If applicable, deliveries of materials furnished pursuant to this Agreement shall be made as specified without additional charge to Tufts for boxing, crating, carting or storage, unless otherwise specified. Such materials shall be suitably packed to minimize breakage and transportation costs and to conform to the requirements of common carriers. Tufts’ order numbers must be plainly marked on all invoices, packages, bills of lading and shipping orders.

4.12. **Status of Contractor.** In all matters relating to this Agreement and the performance of services hereunder, the status of the Supplier shall be that of an independent contractor and not that of an employee, agent or partner of Tufts. The Supplier shall have no power or authority to act on behalf of Tufts or in its name or to bind Tufts, either directly or indirectly, in any manner.
4.13. **Breach of Agreement, Termination.**

a. In any case where the Supplier has failed to deliver or has delivered non-conforming goods or services (with time being deemed of the essence with respect to adherence to any timetable agreed to in writing by Supplier in this Agreement or in any specifications issued by Supplier), Tufts may deliver a “Notice to Cure” to Contractor, citing the instances of noncompliance with this Agreement. Supplier shall have ten (10) days to reply to the Notice to Cure and indicate why this Agreement should not be terminated and recommend remedies to be taken.

i. If Supplier and Tufts reach an agreed upon solution, Supplier shall then have thirty (30) days after such agreement (the “cure agreement”) is reached to cure the noncompliance cited in the Notice to Cure.

ii. If a mutually agreed-upon solution cannot be reached within ten (10) days after receipt of Notice to Cure by Contractor, Tufts reserves the right to terminate this Agreement.

iii. If the mutually agreed upon solution is not implemented to Tufts’ reasonable satisfaction within thirty (30) days from the date of the cure agreement, Tufts reserves the right to terminate this Agreement.

b. The occurrence of any of the following events, unless consented to by Tufts in writing, shall be also deemed a breach of this Agreement by Supplier, without Tufts being required to give Supplier an opportunity to cure: (i) Supplier becomes insolvent or makes an assignment for the benefit of creditors; or a receiver or similar officer is appointed to take charge of all or part of Supplier’s assets and such condition(s) is not cured within thirty (30) days; or (ii) Supplier violates the provisions of Section 4.15 of this Agreement.

c. Tufts may also terminate this Agreement at any time, in whole or in part and at the convenience of Tufts, upon not less than thirty (30) days’ written notice to Supplier.

d. Upon any termination of this Agreement, Supplier shall stop work on and terminate all subcontracts under this Agreement and shall deliver to Tufts all Tufts’ proprietary information, Tufts Property and such work in process or completed articles as Tufts may request. Tufts shall have no liability to Supplier beyond payment for services rendered to and accepted by Tufts prior to the effective date of any notice of termination and for such additional articles specifically requested by and delivered to Tufts. In the event of any termination for convenience by Tufts, Supplier may recover reasonable cancellation costs, provided Supplier submits a claim for such costs to Tufts within thirty (30) days of receipt of such cancellation notice. The amount of such costs which may be recovered from Tufts shall be established by negotiations between Tufts and Supplier, conducted by each of the respective parties in good faith, and shall include only Supplier’s actual costs incurred up to the date of termination and a reasonable profit thereon; provided, however, if Supplier would have sustained a loss on the Agreement, no profit shall be included. The foregoing notwithstanding, in no event shall Tufts’ liability to Supplier hereunder exceed the purchase price set forth in
the Agreement. Supplier shall make available to Tufts for inspection all inventory included in the claim and all books and records related to the claimed costs. The remedies provided herein with respect to any cancellation for convenience are exclusive and in lieu of any other remedies available at law or equity.

e. Any cancellation or termination by Tufts whether for default or otherwise, shall be without prejudice to any claims or damages or other rights of Tufts against Supplier. To the extent any fees or expenses have been prepaid by Tufts, Supplier shall refund a pro rata portion of such fees or expenses. In any action by either party for any default hereunder, the prevailing party shall be entitled to reimbursement of its attorney’s fees.


a. Supplier shall be liable for the loss of, damage to or destruction of Tufts Property or any other property furnished to Supplier by Tufts for work to be performed under this Agreement while such property is in Supplier’s possession or under its control. Supplier agrees to indemnify, defend and hold Tufts harmless from any and all judgments, orders, awards, costs, claims, liabilities and expenses, including attorney’s fees and also claims on account of damage to property or bodily injury (including death) which may be sustained by Supplier, Supplier’s employees, Tufts, Tufts’ employees or third persons, arising out of or in connection with any act or omission of Supplier, its agents, employees or subcontractors.

b. Supplier shall indemnify, defend and hold Tufts and its trustees, officers, employees and agents harmless from and against any and all costs, expenses (including attorneys’ fees), interest, losses, obligations, liabilities, and damages paid or liability (“Losses”) incurred by Tufts, and which arise out of or are in connection with or are for the purpose of avoiding any and all claims, demands, actions, causes of action, suits, appeals, and proceedings (“Claims”), all whether groundless or not, or the settlement thereof, based on any actual or alleged injuries, damages, or liability of any kind whatsoever, to the extent arising, directly or indirectly, out of Supplier’s performance of Services, any breach of Supplier’s agreements or warranties or the presence of Supplier, or Supplier’s property, employees or agents, on Tufts’ premises.

c. Tufts shall indemnify, defend and hold harmless Supplier from and against any and all costs, expenses (including attorneys’ fees), interest, losses, obligations, liabilities, and damages paid or liability (“Losses”) incurred by Supplier, and which arise out of or are in connection with or are for the purpose of avoiding any and all claims, all whether groundless or not, or the settlement thereof, based on any actual or alleged injuries, damages, or liability of any kind whatsoever, to the extent arising, directly or indirectly, out of any negligence on the part of Tufts or its employees or agents. Tufts shall maintain such comprehensive general liability and property damage insurance that will be adequate to protect Supplier from said risks and claims. EXCEPT FOR ITS INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS PARAGRAPH, IN NO EVENT WILL TUFTS BE LIABLE TO SUPPLIER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
4.15. **Insurance.** The following minimum insurance standards shall apply to all vendors performing, selling or distributing products and services at Tufts University: (i) comprehensive general liability insurance including bodily injury and property damage liability, independent contractors liability, products liability and completed operations liability in an amount not less than $1,000,000 combined single limit, per occurrence and $1,000,000 aggregate, (ii) workers compensation insurance for all employees in compliance with Chapter 152 of the laws of the Commonwealth of Massachusetts, (iii) automobile liability for vendors driving on Tufts University property in an amount not less than $1,000,000 per occurrence for bodily injury and property damage, including owned, hired and non-owned vehicle coverage, (iv) professional liability, $1,000,000 each claim for all professional services including, but not limited to architects, engineers, consultants and testing services. Tufts University shall be named as an additional insured for general liability, auto liability and professional liability as it pertains to the work done/service provided/product delivered to the University, and Supplier shall provide a 30 day notice of cancellation or non-renewal of coverage to the University. Such insurance must be primary as to any other valid and collectible insurance. All policies shall evidence insurance written by a carrier licensed in the Commonwealth of Massachusetts and rated at least “A” in A.M. Best’s Key Rating Guide. Renewal certificates of insurance shall be provided by Supplier prior to the delivery of any goods or performance of any services to Tufts and annually until all work is completed.

4.16. **Title; Risk of Loss; Release of Liens and Claims.** Title to all products (other than software products) and services will vest in Tufts upon the delivery to Tufts. Risk of loss for products purchased will pass to Tufts upon Tufts’ receipt and acceptance at Tufts’ premises. Supplier will furnish Tufts with a complete "Release of Liens and Claims" at intervals requested by Tufts and before final payment is made. If any lien is filed or remains unsatisfied after final payment, Supplier will indemnify Tufts for all costs incurred in discharging such lien.

4.17. **Assignment and Subcontracting.** Supplier shall not assign or transfer all or part of this Agreement or any interest therein, including but not limited to, any rights to receive payments from Tufts (other than an assignment to a commercial lender to secure financing), without the prior written consent of Tufts. If Supplier merges with or is acquired by a third party (except for any merger or acquisition with or by any company which previously controls or is controlled by Supplier, as represented by ownership of not less than fifty-one percent (51%) of the issued and outstanding common stock), such transaction shall be deemed a transfer of this Agreement by Supplier. Supplier shall not subcontract or delegate its obligations under this Agreement without the prior written consent of Tufts. Any attempt to assign such interests or delegate such duties shall be void. Purchases of parts and materials normally purchased by Supplier or required by this Agreement shall not be construed as subcontracts or delegations.

4.18. **Waiver.** The failure of Tufts in any one or more instances to enforce one or more of the terms or conditions of this Agreement or to exercise any right or privilege in this Agreement or the waiver by Tufts of any breach of the terms or conditions of this
Agreement shall not be construed as a waiver of such term, condition, right, or privilege or thereafter waiving any such terms, conditions, rights or privileges, and the same shall continue and remain in force and effect as if no such failure to enforce had occurred.

4.19. **Suspension of Work.** Tufts may order Supplier in writing to suspend, delay or interrupt all or any part of the work hereunder for a period not to exceed ninety (90) consecutive days. An adjustment shall be made for any increase in the cost of performance of this Agreement (excluding profit) necessarily caused thereby. An adjustment shall also be made in the delivery or performance dates and any other contractual provisions affected thereby. However, no adjustment shall be made for any suspension, delay or interruption to the extent that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of Supplier. Also, no adjustment shall be made under this clause for any suspension, delay or interruption for which an equitable adjustment is provided for or excluded under any other provision of this Agreement. No claim under this clause shall be allowed unless the claim, in an amount stated, is asserted in writing within fifteen (15) days after the termination of such suspension, delay or interruption.

4.20. **Controlling Law.** This Agreement and the performance of the parties hereunder shall be controlled and governed by the laws of the Commonwealth of Massachusetts, without giving effect to the principles of conflicts of laws or to the United Nations Convention on Contracts for the International Sale of Goods. Tufts and Supplier agree that the state and federal courts located in eastern Massachusetts shall have jurisdiction over any dispute that is litigated and any dispute that is arbitrated shall be settled by binding arbitration with hearings in Boston, MA, pursuant to the rules of the American Arbitration Association, using expedited procedures to the extent available.

4.21. **Waiver of Jury Trial.** Each party waives the right to a jury trial in connection with any dispute arising out of the Agreement.

4.22. **Notices.** Any notices required or permitted to be given or made under this Agreement by one of the parties hereto to the other shall be in writing and shall be deemed given when delivered personally or via reputable national overnight carrier, or shall be deemed received after three days of mailing by certified mail, return receipt requested. A copy of any notice to Tufts shall also be sent to the Office of University Counsel, Ballou Hall, Tufts University, Medford, MA 02155.

4.23. **Amendment.** No revision of this Agreement shall be valid unless made in writing and signed by duly authorized representatives of the parties.

4.24. **Force Majeure.** Any delay or failure of either party (the “affected party”) in the performance of its required obligations hereunder shall be excused if and to the extent caused by acts of God, strike, fire, storm, flood, windstorm, riot, war, court injunction or order, delays by or acts or orders of any governmental body or changes in laws or government regulations, or any other similar cause or causes beyond the reasonable control of such party, provided that (i) written notice of such delay or suspension is given by such party to the other party within 72 hours of such event, which notice shall
set forth in detail the nature of each delay; (ii) such party shall use all commercially
reasonable efforts to minimize the extent of such force majeure delay and (iii)
additional expense or other adverse financial conditions shall not be deemed force
majeure. Upon receipt of a notice of force majeure, the time for the affected party’s
performance shall be extended for a period of time reasonably necessary to overcome
the effect of such delays and such party’s sole remedy shall be reimbursement for the
additional cost of such delays; provided, further, that other party may terminate this
Agreement by written notice to the affected party within ten (10) business days of
receiving the affected party’s notice of force majeure, in which event the other party
shall receive a refund of all monies paid hereunder for goods and services which has
failed to deliver, which are non-conforming or which have failed to achieve
Acceptance.

4.25. **Conflict of Interest.** Supplier acknowledges that University and Federal policies
prohibit Tufts employees from accepting gifts or gratuities from vendors,
subcontractors and contractors. This includes the use of property or facilities, gift
certificates, entertainment, or other favors of value extended to employees or their
families. The applicable policy is found on the University website at
Supplier agrees to use all reasonable efforts and diligence to ensure that its
officers, employees and subcontractors comply with Tufts policy.

4.26. **Severability.** If any provision of this Agreement shall be declared void, illegal or
unenforceable, the remaining provisions of this Agreement shall be valid and
enforceable to the extent permitted by applicable law.

**Trustees of Tufts College**

Contracts for $5,000 and above require the
signature of an officer of the corporation or an
authorized member of the Tufts Purchasing
Department

By: ____________________________
Name: __________________________
Title: __________________________
Date: __________________________

**Supplier**

Contract must be signed by an officer or
authorized agent of the responding firm.
(Include the signatory’s title.)

By: ____________________________
Name: __________________________
Title: __________________________
Date: __________________________
EXHIBIT A

SCOPE OF WORK

(Include Milestones and Payment Schedule)