

PROFESSIONAL SERVICES AGREEMENT

WORK MADE FOR HIRE

PART I: GENERAL INFORMATION

Service Provider Information:

Name: _____
Address: _____

Email: _____

*A completed W-9 is required if Service Provider is not an active vendor in Datatel

Check One: U.S. Citizen
 U.S. Permanent Resident
 Foreign National - If you checked this box please contact payroll regarding tax classification.

Is the Service Provider a current or former AU employee? Neither
Is the Service Provider a current AU Student?

Current employees may not use this agreement without Office of Finance approval

American University Information:

Department: _____
Contact: _____
Telephone: _____ Email: _____
Address: _____

PART II: TERMS AND CONDITIONS

1. **Introduction.** This Agreement is entered into on, _____, 202____, between American University ("AU") and the Professional Services Provider (the "Service Provider").

2. **Representations.**

- a. The Service Provider represents that the Service Provider: (i) has the rights to enter into this Agreement; (ii) has no family relationship or business affiliation of any kind with AU, other AU employee or third party that would lead to a conflict of interest; and (iii) shall comply with any and all applicable state and federal laws, and the Policies and Procedures of AU during the term of this Agreement.

- b. AU represents that: (i) it has the rights to enter into this Agreement; (ii) neither federal funds, nor grant funds are being used to pay the fees and expenses of the Service Provider; and (iii) the Services to be performed are essential and cannot be provided by persons receiving salary support from AU in the area of responsibility.

3. Services to be Performed. “Services” shall mean the services and/or tasks to be performed and the various items to be delivered and/or rendered by the Service Provider more specifically described in the Statement of Work attached hereto and incorporated herein by reference as Exhibit A and/or defined in this section:

AU reserves the right to make any changes to the Services to be provided which are within the attached Scope of Work. Such changes and any added cost, fees, expenses or cost reduction to AU must be agreed to in writing and signed by an authorized representative of both parties prior to proceeding with any changes.

4. Term and Termination. The performance period of this Agreement shall begin on _____, 202____ (“Effective Date”), and will remain in force for the full period specified and/or until the Service Provider has satisfactorily completed, as solely determined by AU, the Services in accordance with the Statement of Work or on _____, 202____ (“Term”), whichever occurs first, unless this Agreement is terminated earlier, as provided below.

AU may terminate this Agreement, in whole or in part, for its convenience at any time upon thirty (30) days prior written notice to the Service Provider. In case of such termination for convenience, AU shall be responsible for any portion of the compensation owed to the Service Provider under Section 5 for any Services properly provided up to the day that notice of termination is delivered and that no work shall be performed thereafter without the express written permission from AU. If either Party commits a material breach of any provision of this Agreement, the other Party may terminate this Agreement, in whole or in part, after providing fifteen (15) calendar days prior written notice and an opportunity to cure; provided, however, that, in addition to the other legal and equitable remedies that AU may pursue to redress such breach, the Service Provider shall promptly reimburse AU the fees paid by AU to the Service Provider for the deficient Services giving rise to such breach in addition to any additional expenses incurred by AU for satisfactory completion of the Services

5. Payment. AU shall pay the Service Provider after satisfactory performance of the Agreement, in accordance with the provisions thereof, and upon receipt of a properly completed and accurate invoice. AU reserves the right to withhold any or all payments or portions thereof for the Service Provider's failure to perform in accordance with the provision of the Agreement or any modifications thereto. The Service Provider shall submit a monthly invoice for services rendered within the current fiscal year by the Service Provider to Accounts Payable, Email: accountspayable@american.edu. In consideration of the Services to be performed by the Service Provider under this Agreement, AU shall pay to the Service Provider fees according to the payment schedule set forth in the Statement of Work. In the event that the Statement of Work does not specify a payment schedule, AU shall pay all undisputed invoices within thirty (30) days of receipt. For any changes to the initial Scope of Work, the Service Provider shall present a written Scope of Work, to include a descriptive narrative of

additional work needed as well as a listing of all additional expenses (“Change Order”). Additional work shall proceed only after there is a Change Order signed by the Service Provider and AU.

The Service Provider will provide itemized original receipts for all reimbursable expenses, including transportation, lodging, and meals as a condition of reimbursement. The Service Provider agrees to be responsible for any and all expenses not defined herein or in the attached SOW. Total fees and reimbursement of expenses during the term of this Agreement are not to exceed \$ [provide written and numerical expression dollars]. The Service Provider invoice will accurately itemize the Services performed, including as required, hours worked, fee schedule, service fees, costs, materials with no markup, and all charges, travel, lodging, and other expense reimbursements.

6. Independent Contractor. The Service Provider is retained by AU and shall perform the services under this Agreement as an independent contractor at all times, as defined in IRS code, section 3509. The Service Provider shall not be considered under the provisions of this Agreement or otherwise as having an employee status or be extended coverage under unemployment and Workers' Compensation insurance or any other group insurance plans and temporary disability, or be entitled to participate in any plans, arrangements or distributions by AU pertaining to or in connection with any pension, bonus or similar benefit plans. The Service Provider has no power or authority to act for, represent, or bind AU in any manner. The Service Provider is solely responsible for the payment of his/her self-employment, income, benefit plans, and social security taxes. Affirmative Action Programs of AU and applicable Federal regulations are binding on the Service Provider.

7. Intellectual Property Rights. All intellectual property rights in the Services, including but not limited to, any deliverable furnished to AU as part of the Services or any modifications, customizations and interfaces developed with respect to a deliverable (the “Deliverables”), in whole or in part, provided to AU by the Service Provider under a Statement of Work and this Agreement shall be solely the property of AU. The Service Provider hereby assigns all right, title and interest in and to and exclusive ownership of such Services and Deliverables to AU and the Service Provider shall take all actions necessary to transfer exclusive ownership of the same to AU. AU and the Service Provider agree that any product created, conceived, and/or prepared by the Service Provider in the performance of the Services contained in this Agreement shall in all respects be considered a “work made for hire” within the meaning of the federal copyright and patent laws and that no other right in the Deliverables shall inhere in the Service Provider, or in the Service Provider’s representatives, heirs, or assigns. The Deliverables shall be owned by AU and AU may, at its option and expense, seek copyright or patent registration, trademark, trade secret, or other intellectual property right for the Deliverables. As owner of the copyright or patent, AU shall have all rights attendant to that ownership, including, but not limited to, rights of reproduction, preparation of derivative works, distribution, and display. The Service Provider warrants and represents that the Service Provider is the sole owner of the Deliverables and all the rights herein granted, and has full right and power to make this Agreement; that the Service Provider has not previously granted the rights to the Deliverables to another third party; that the Service Provider has used all reasonable care to ensure that all facts and statements in the Deliverables are true; that the Service Provider has obtained the necessary releases of subjects and locations identified in the Deliverables; that AU’s inclusion and use of the Deliverables will not violate any copyright, proprietary or personal rights of any third party; that the Service Provider has not in any manner disposed of any of the rights herein granted to AU or granted any rights, adverse to or inconsistent therewith; nor are there any rights outstanding which would diminish, encumber, or impair the full enjoyment or exercise of the rights herein granted AU. The Service Provider shall indemnify and hold harmless AU, its successors, assigns and licensees, and the respective officers, directors, agents and employees, from and against any and all claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees), arising out of or in any way

connected with any breach of any representation, warranty, or covenant made by the Service Provider herein.

8. Indemnification. The Service Provider shall defend, indemnify, and hold harmless AU, its agents, representatives, officers, directors, officials, and employees from and against all claims, suits, costs, damages, losses and expenses, including but not limited to attorney fees and costs, that AU may sustain by any breach of the Service Provider's warranties, representations, or by any act or omissions of the Service Provider related to this Agreement.

9. Warranties. During the performance of the Services, the Service Provider shall comply with all applicable state and federal laws, and the Policies and Procedures of AU. The Service Provider warrants that all services performed under this Agreement shall be performed in a good and workmanlike manner, and exercise therein the highest degree of skill and competence, and shall conform to the specifications, drawings, samples, other description(s), and terms and conditions contained or referenced herein.

All Services shall be subject to AU's inspection before acceptance, and payment for Services rendered shall not constitute a waiver of any of the rights granted to AU under this section.

10. Insurance. If the Service Provider is to perform any of the Service on AU premises, then the Service Provider shall, at its sole expense, purchase and maintain the following minimum insurance for the duration of this Agreement:

- a. Commercial General Liability against all claims of bodily injury, death, personal injury, coverage for contractual employees, or property damage with a combined single limit of \$1,000,000 each occurrence, \$2,000,000 general aggregate, and \$1,000,000 products and or completed operations aggregate.
- b. Workers' Compensation and Employer's Liability as required by law with statutory limits. Employer's Liability shall be provided in the amounts of not less than \$500,000 per each accident for bodily injury, \$500,000 per disease per each employee, and \$500,000 policy limit per disease.
- c. Commercial automobile liability, for bodily injury and property damage of \$1,000,000 each accident combined single limit with respect to the Service Provider's owned, non-owned, hired, or borrowed vehicles, assigned to or used in performance of this Agreement.

Policies shall be endorsed to include AU, its agents, officials and employees and additional insureds for ongoing and completed operations. The Service Provider and its insurers shall waive all rights of subrogation or recovery against AU. Insurance policies shall be issued by reputable insurance companies duly authorized to engage in the insurance business in the District of Columbia with an A.M. Best's rating of A-, VII or better. Certificates of Insurance shall be mailed to the Purchasing Department at the following address PRIOR to any Services being performed- American University, 4400 Massachusetts Ave., N.W., Spring Valley Building 3rd Floor, Washington D.C., 20016-8020. AU reserves the right to waive or reduce the insurance requirements at AU's sole discretion.

If allowed under Section 16 below, subcontractors of the Service Provider must provide and maintain the same levels of insurance as the Service Provider must under this Section 10. The Service Provider must provide proof that insurance requirements are met by the subcontractor(s), as well as all other requirements as set forth in this Section for the Service Provider.

11. Confidential Information. In the course of performing services under this Agreement, AU may communicate information to the Service Provider or the Service Provider may have access to information related to AU, which may or may not be related to this Agreement. The Service Provider shall treat all such information as confidential, whether or not it is identified as confidential ("Confidential Information"). The Service Provider shall not disclose to any third party or use, for purposes not set forth in this Agreement, any reports, recommendations, opinions, and/or conclusions which the Service Provider may provide to AU as part of his/her services or may have received from AU. The Service Provider acknowledges that the unauthorized disclosure or use of any Confidential Information could cause irreparable harm and significant injury to AU, the extent and consequences of which may be impossible to assess. Therefore, the Service Provider agrees that if AU believes its Confidential Information is about to be, or has been, disclosed contrary to this Agreement, that AU has the right to seek an immediate injunction enjoining any, or any further, breach of this Agreement in addition to any other legal or equitable remedies AU may be entitled to pursue.

12 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the District of Columbia.

13. Marks and Publicity. Neither party may use the name, logo, trademarks, service marks or any other proprietary identifying symbols of the other party in any press release, press related or advertising media without the prior written consent of the other party.

14. Non-assignment. This Agreement is personal to the Service Provider and may not be assigned without the prior written consent of AU.

15. Force Majeure. Neither party shall be responsible to the other for any losses resulting from the failure to perform any terms or provisions of this Agreement, if the party's failure to perform is attributable to war, riot, strike, terrorist acts, or other work stoppage; fire; flood; epidemic, plague, pandemic, outbreak of disease or other public health crisis, including quarantine or other employee restrictions; act of government; act of God; or any other act not within the control of the party whose performance is interfered with, and which, by reasonable diligence, such party is unable to prevent. Any such occurrence shall be referred to as a "Force Majeure" occurrence. In the event of a Force Majeure occurrence, either party may terminate this Agreement without liability and any funds paid in advance will be fully refunded within thirty (30) days from the notice of termination.

16. Subcontracting. None of the services to be provided hereunder, or any portion thereof, shall be subcontracted by the Service Provider without the prior written consent of AU.

17. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

18. Conflict of terms. All of the terms and conditions of this Agreement are deemed incorporated into any Service Provider's agreement or proposal. In the event of a conflict between

the terms of this Agreement and the Service Provider's proposal, the terms of the AU Professional Services Agreement shall prevail to the extent necessary.

19. Patient or Student Information. In the event that the Services involve access to patient care areas and/or access to or use of protected health information OR access or involvement with student records, then the Service Provider agrees to comply with all applicable federal, state and local laws, rules and regulations including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and Family Educational Rights and Privacy Act ("FERPA") in the respective performance of the Service Provider's obligations hereunder.

20. Non-Discrimination. The Service Provider agrees not to discriminate in any manner on the basis of race, color, national origin, religion, sex (including pregnancy), age, sexual orientation, disability, marital status, personal appearance, gender identity and expression, family responsibilities, political affiliation, source of income, veteran status, an individual's genetic information, or any other bases under federal or local laws, and to comply with all non-discriminatory laws and policies which AU promulgates and to which AU is subject.

21. Signatures. With the consent of AU and the Service Provider, valid e-signatures or digital signatures will be considered originals in the execution of this Agreement.

22. Entire Agreement/Amendments. This Agreement contains the entire agreement between AU and the Service Provider and no terms may be modified or waived except by the mutual written consent of both AU and the Service Provider.

AMERICAN UNIVERSITY

Service Provider Name

Signed: _____

Signed: _____

By: _____

By: _____

For Brian Blair
Sr. Dir. - Contracts Management, PCD

Title: _____

Date: _____

Date: _____

Exhibit A-

Professional Services Agreement (PSA)
Professional Services Agreement - Work Made for Hire
Agreement Guidelines

- a) PSA terms and conditions may NOT be changed. If changes are necessary, please contact PCD contract's team.
- b) Value of the PSA must not exceed \$10,000. If \$10,000 or over, then PCD must review and sign as per policy. PSAs over \$10,000 should have an associated Purchase Order issued also.
- c) Use the PSA "Work Made for Hire" form when AU hires an independent contractor to complete a specific task or service that will result in a product or deliverable and you want that product or deliverable to belong to AU, including all intellectual property rights, (including copyrights or patent registrations, trademarks, design and content of brochures, web pages, etc.).
- d) Be sure to complete all requested information to be included in the agreement and any associated documentation (in the highlighted sections), including:
 - (1) Service Provider contact information, (2) AU contact information, (3) Effective Date (Section 1), (4) Services to be performed (Section 3), (5) term of Agreement (Section 4), (6) payment amount and payment schedule if applicable (Section 5), (7) Obtain the Service Provider certificate of insurance (Section 10). Do not leave any blank spaces.

Be detailed in description/scope of work and/or attach any required documents to the Agreement in Exhibit A.

For the termination date (or end date of the Agreement), insert the date of one year from the effective date of the Agreement or if less the end date of the Agreement or final day for services.

The term of the PSA should never exceed one (1) year without review by Procurement & Agreements.

- e) Who may sign- The head of the school or designated individual within the school may sign a PSA, typically a Dean, Assistant Dean or their designee at a Director level or above. Sign and print your name at the bottom of the PSA document only, under American University and write "for" before the Director of Procurement & Contract's name and title. Write your name and Title. Attach a Statement of Work if applicable as Exhibit A. *Please note- Never sign a vendor or independent contractors' proposal, Agreement or Statement of Work without having prior PCD or legal review.

PSA's may not be renewed more than twice in a year without review by Procurement & Contracts.

- f) To determine if the Service Provider is a US citizen or foreign national, include either the (1) Social Security number or Federal ID #, (2) permanent address and/or if a (3) W9/W8 must be supplied (Check with Accounts Payable if the Service Provider is new or has a current W9/W8 on file in Datatel). Check the applicable foreign national box on the PSA if it applies. If Service Provider is a foreign national, you must contact the payroll office (x6171) for further direction to determine if the United States has a treaty with the service provider's home country that would eliminate the requirement to withhold taxes. Absent such a treaty, payment must be made through payroll and applicable taxes withheld. In that case, do not use this PSA.

g) Determine that Service Provider is truly an “independent contractor” (applies to individuals, not corporations) as defined by the IRS (see IRS Publication 15-A, Employer’s Supplemental Tax Guide-<http://www.irs.gov/pub/irs-pdf/p15a.pdf>), and therefore eligible to be paid as a non-employee.

The following questions will serve as a guide. If you answer ANY ONE of them “Yes”, then the individual should **NOT** be hired using a PSA:

- a. Is the Service Provider a current AU employee?
- b. Is the Service Provider directly supervised by an AU employee (does AU define the Service Provider’s work hours and schedule)?
- c. Will you provide training to the Service Provider in order for him/her to complete the scope of work?

h) For audit purposes, a fully executed copy of the PSA must be kept on file in your department for seven (7) years following termination of the Agreement.

i) PSAs should not be used as an after the fact vehicle to pay an outstanding invoice. If this is found to be the case, the signer may be held responsible and the outstanding invoice will be prioritized accordingly within PCD policies and guidelines.

j) Purchase Orders are not required for PSAs to individuals, although a current W9/W8 will be required to process a payment with a PSA.

k) Any questions associated with these guidelines should be addressed to the Procurement and Contracts Department x2842, or email: PCD@american.edu.