

# PROFESSIONAL SERVICES AGREEMENT

## WORK MADE FOR HIRE

### PART I: GENERAL INFORMATION

#### Service Provider Information:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Check One:  Single Proprietor - Supply Social Security Number \_\_\_\_\_  
 Partnership - Supply Fed EIN \_\_\_\_\_  
 Corporation - Supply Fed EIN \_\_\_\_\_

Check One:  U.S. Citizen  
 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?  Yes  No

#### American University Information:

Department: \_\_\_\_\_  
Contact: \_\_\_\_\_  
Telephone: \_\_\_\_\_

### PART II: TERMS AND CONDITIONS

- 1. Introduction.** This Agreement is dated, \_\_\_\_\_, 200\_\_ between American University (AU) and the Professional Services Provider (the "Service Provider").
- 2. Services to be Performed.** "Services" shall mean the services and tasks to be performed and the various items to be prepared and/or delivered by Service Provider more specifically described in the Statement of Work attached hereto and incorporated herein by reference as Exhibit A and/or defined in the following section:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 3. Term and Termination.** The Services associated with this Agreement shall begin on \_\_\_\_\_, 200\_\_, and shall terminate on Service Provider's completion of the Services in accordance with the Statement of Work, 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 Service Provider under Section 4 for any Services provided up to the day that notice of termination is delivered and that no work 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) 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, Service Provider shall promptly reimburse AU the fees paid by AU to Service Provider for the deficient Services giving rise to such breach.

4. **Payment.** AU shall pay the Service Provider the following compensation for services performed under this Agreement: The Service Provider shall submit a monthly time sheet (invoice) for service time performed by the Service Provider to Accounts Payable, **American University, 4400 Massachusetts Avenue, NW, Washington, DC 20016-8020**; such compensation to be paid within thirty (30) days after the time sheet is received and verified. In consideration of the Services to be performed by Service Provider under this Agreement, AU shall pay to Service Provider fees according to the payment schedule set forth in the Statement of Work. AU shall pay all undisputed invoices within thirty (30) days of receipt. Each Service Provider invoice will accurately itemize the hours of work performed, fees, and all charges, travel, and other expense reimbursements. Service Provider agrees to obtain AU's advance written approval for expenses over \$500. Service Provider will provide itemized original receipts for all expenses, including transportation, lodging, and meals as a condition of reimbursement. Total compensation and reimbursement of expenses during the term of this Agreement are not to exceed \$ \_\_\_\_\_ dollars.
5. **Independent Contractor.** The Service Provider is retained by AU and shall perform the services under this Agreement as an independent contractor. 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 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 taxes.
6. **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 Service Provider under a Statement of Work and this Agreement shall be solely the property of AU. Service Provider hereby assigns all right, title and interest in and to and exclusive ownership of such Services and Deliverables to AU and 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 this Work shall inhere in the Service Provider, or in the Service Provider's representatives, heirs, or assigns. The Work shall be owned by AU and AU may, at its option and expense, seek copyright or patent registration for the Work. 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.

- 7. Indemnification/Hold Harmless.** The Service Provider shall indemnify and hold AU harmless from any and all loss or damage to persons or property which AU or its employees may suffer on account of any accident or occurrence caused by the Service Provider. In consideration of the mutual agreements set forth in this Agreement, the Service Provider relieves, acquits, and forever discharges AU of and from any and all liabilities, causes of action, claims, costs, damages, expenses, lawsuits, demands or other amounts (including reasonable attorneys' fees) arising from or relating to any claims (i) for loss, injury or damage to a person, property, or business resulting from the Service Provider's negligent or willful acts or omissions in connection with the Services or (ii) resulting from the Service Provider's breach of any of its obligations, representations or warranties under this Agreement, except to the extent where the same is caused by the negligence or willful misconduct of AU.
- 8. 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 University information, 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. 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 Service Provider may provide to AU as part of his/her services or may have received from AU. Except as expressly permitted by this Agreement, for a period of three (3) years from the termination of this Agreement, the Service Provider shall protect the Confidential Information of AU from unauthorized dissemination, using the same degree of care which Service Provider ordinarily uses with respect to its own proprietary information, but in no event with less than reasonable care. "Confidential Information" will not include information that: (i) is or becomes generally known or available by publication, commercial use or otherwise through no fault of the Service Provider; (ii) is known and has been reduced to tangible form by the Service Provider at the time of disclosure and is not subject to restriction; (iii) is independently developed by the Service Provider without use of AU's Confidential Information; (iv) is lawfully obtained from a third party who has the right to make such disclosure; or (v) is released for publication by AU in writing. Service Provider may disclose the terms and conditions of this Agreement or its existence to third parties having a need to know, such as auditors, banks, financial advisors or other third parties entering into or considering entering into a material transaction with AU, provided such third parties are bound to an obligation of confidentiality. 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.
- 9. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the District of Columbia.

10. **Marks and Publicity.** Neither party may use the name, logo, trademarks, service marks, publications or 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.
11. **Non-assignment.** This Agreement is personal to the Service Provider and may not be assigned, without the prior written consent of AU.
12. **Force Majeure.** The parties hereto shall not be responsible for any failure or delay in the performance of any obligations hereunder caused by acts of God, fire, flood, war, riot or public enemy.
13. **Subcontracting.** None of the services to be provided hereunder, or any portion thereof, shall be subcontracted by Service Provider without the prior written consent of AU.
14. **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.
15. **Signatures.** With the consent of AU and the Service Provider, facsimile signatures will be considered originals in the execution of this Agreement.
16. **Entire Agreement/Amendments.** This Agreement contains the entire agreement of 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: \_\_\_\_\_

Brian Blair  
Director, Procurement & Contracts

Title: \_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT A

**Statement of Work**

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

**Contract Guidelines**

- a) PSA terms and conditions may NOT be changed.
- b) Value of the PSA must not exceed \$10,000.
- c) Use the PSA “Work Made for Hire” form when the university hires an independent contractor to complete a specific task that will result in a product and you want that product to belong to the university, including all intellectual property rights (e.g., design and content of brochures, web pages, etc.).
- d) Be sure to complete all requested information, including service provider information, AU contact information, date, services to be performed, term of agreement, and payment. Sign and print your name at the bottom of the PSA under AU and write “For” before the Director of Procurement & Contract’s name and title. Attach a Statement of Work if applicable.
- e) The term of the PSA should never exceed one (1) year.
- f) PSA’s may not be renewed more than twice in a year without review by Procurement & Contracts.
- g) Determine if service provider is a US citizen or foreign national and check applicable box on the PSA agreement. If service provider is a foreign national, you must contact the payroll office (x6171) 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.
- h) 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), 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?

- i) For audit purposes, a fully executed copy of the PSA must be kept on file in your department for one (1) year.