

PROFESSIONAL SERVICES AGREEMENT

UNIVERSITY/DEPARTMENT AGREEMENT NO. _____

This Professional Services Agreement (hereinafter referred to as “Agreement”), entered into by and between the University of Indianapolis, an Indiana nonprofit corporation whose principal place of business is 1400 E. Hanna Avenue, Indianapolis, IN 46227 (hereinafter referred to as “University”) and _____, whose principal place of business is _____ (hereinafter referred to as “Contractor”), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

SECTION I. INTERPRETATION AND INTENT

- 1.01 The “Agreement”, as referred to herein, shall mean this Agreement executed by University and Contractor, and shall include these Terms and Conditions, the Attachments described in Sections II and IV and attached hereto, all addenda issued prior to receipt of RFPs, quotes, or bids, whether or not receipt thereof has been acknowledged by Contractor, all conditions, plans, specifications and standards, instructions and notice to vendors, and any written supplemental agreement or modification entered into between University and Contractor, in writing, after the date of this Agreement.
- 1.02 This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written or verbal, between University and Contractor. No statements, promises or agreements whatsoever, in writing or verbal, in conflict with the terms of the Agreement have been made by University or Contractor which in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations herein stated. This Agreement may be amended with additional terms and conditions or addenda and modified only in writing signed by both University and Contractor.
- 1.03 In resolving conflicts, errors, discrepancies and disputes concerning the scope of the work or services to be performed by Contractor or other rights or obligations of University or Contractor the document or provision thereof expressing the greater quantity, quality or scope of service or imposing the greater obligation upon Contractor and affording the greater right or remedy to University, shall govern.
- 1.04 Any interpretation applied to this Agreement, by the parties hereto, by an arbitrator, court of law, or by any other third party, shall not be made against University solely by virtue of University or University’s representatives having drafted all or any portion of this Agreement.

SECTION II. DUTIES OF CONTRACTOR

- 2.01 Contractor shall provide services as specified in Attachment A, _____, attached hereto and incorporated into this Agreement.
- 2.02 Contractor shall provide the services as specified in Attachment A in a workmanlike manner using commonly accepted means and methods of work in Contractor's professional industry.

SECTION III. TERM

- 3.01 The term of this Agreement shall be _____ (___) months. The term shall begin upon the date this Agreement is executed by all parties ("Effective Date") and shall terminate upon expiration of the term unless the Agreement is terminated earlier in accordance with the provisions contained herein.
- 3.02 This Agreement may be renewed by agreement of parties. The term of the renewal may be less but shall not be longer than the term of the original Agreement. A renewal shall be only by written instrument signed by both University and Contractor and attached hereto as an amendment. All other terms and conditions of the Agreement shall remain the same as set forth herein.

SECTION IV. COMPENSATION

- 4.01 Contractor proposes to furnish all labor, materials and supplies in accordance with the conditions of this Agreement necessary to complete the work as defined in Attachment A at the rates set forth in Attachment B, attached hereto and incorporated herein. However, in no event shall compensation for services under this Agreement exceed _____ (\$_____._____).
- 4.02 The parties understand, covenant and agree that, subsequent to the execution of this Agreement, University may require Contractor to provide services in addition to the services described in Attachment A. Should this occur, the parties shall at that time identify and itemize these additional services and compensation for such services by using Attachment C. Upon execution by the parties, Attachment C shall serve as an addendum to this Agreement.
- 4.03 Contractor shall submit a properly itemized invoice for services performed and expenses incurred under this Agreement and shall cooperate with and provide any other necessary information to University. University will pay Contractor within thirty (30) days after receipt of such properly itemized claim forms.

SECTION V. GENERAL PROVISIONS

- 5.01 Independent Contractor. The parties agree that Contractor is an independent contractor as that term is commonly used and is not an employee of University. As such, Contractor is solely responsible for all taxes and none shall be withheld from the sums paid to Contractor. Contractor acknowledges that it is not insured

in any manner by University for any loss of any kind whatsoever. Contractor has no authority, express or implied, to bind or obligate University in any way.

5.02 Subcontracting.

5.02.1 Approval required. The parties agree that Contractor shall not subcontract, assign or delegate any portion of this Agreement or the services to be performed hereunder without prior written approval of University. In the event that University approves of any such subcontracting, assignment or delegation, Contractor shall remain solely responsible for managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. University shall have no obligation whatsoever toward such persons. Contractor shall take sole responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve Contractor of any responsibility for performing under this Agreement.

5.03 Necessary Documentation. Contractor certifies that it will furnish University, if requested, any and all documentation, certification, authorization, license, permit, bonding/insurance or registration required by the laws or rules and regulations of the University of Indianapolis, the County of Marion, other units of local government, the State of Indiana, and the United States. Contractor further certifies that it is now and will remain in good standing with such governmental agencies and that it is now and will maintain its license, permit, registration, authorization, or certification, as applicable, in force during the term of this Agreement for any services provided hereunder. Failure of Contractor to comply with this paragraph shall constitute a material breach of this Agreement.

5.04 Records; Audit. Contractor shall maintain books, records, documents and other evidence directly pertinent to performance of services under this Agreement. Contractor shall make such materials available at its offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under this Agreement for inspection by University. Copies thereof, if requested, shall be furnished at no cost to University.

5.05 Confidentiality.

5.05.1 The obligations of this section shall survive the termination of this Agreement. Contractor understands that the information, records, and documents provided to it or obtained from University during the performance of its services is confidential and may not, without prior written consent of University, be disclosed to a person not in University's employ except to employees or agents of Contractor who have a need to know in order to provide the services described herein. Further, Contractor's work product generated during the performance of this Agreement is confidential to and owned by University. The failure to comply in all material respects with this section shall be considered a material breach of this Agreement.

Confidential information shall not include information, that: (a) was known by Contractor at the time it was received; (b) is, as of the time of its disclosure or thereafter becomes, part of the public domain through a source other than Contractor; (c) is made known to Contractor by a third person who does not impose any obligation of confidence on Contractor with respect to such information; (d) is required to be disclosed pursuant to governmental authority, law, regulation, duly authorized subpoena or court order whereupon Contractor shall provide notice to University prior to such disclosure; or (e) information that is independently developed by Contractor without references to the confidential information.

5.05.2 Contractor shall not, under any circumstances, release information provided to it by, or on behalf of, University that is required to be kept confidential pursuant to Indiana law except as contemplated by Section 5.05.1(d), above.

5.05.3 Contractor acknowledges that, depending on the nature of the services to be provided hereunder, Contractor may have occasion to receive information from University pertaining to University's Students. Contractor hereby acknowledges and agrees that information provided by University, or others on behalf of University, that directly relates to any student, hereinafter ("Student Information") is protected by the Family Educational Rights and Privacy Act ("FERPA"). Contractor agrees that it (1) will protect the confidentiality of Student Information; (2) will not use Student Information for any purpose other than to carry out the purposes of this Agreement; and (3) will not disclose Student Information except to individuals within its organization who have a legitimate need to know Student Information. Breach of this provision shall constitute a material breach of this Agreement.

5.06 Ownership.

5.06.1 "Works" means works of authorship fixed in any tangible medium of expression by Contractor or its officers, employees, agents or subcontractors in the course of performing the services under this Agreement, including, but not limited to, computer programs, electronic art, computer generated art, notes, specifications, drawings, plans, flow charts, memoranda, correspondence, records, notebooks, documentation, reports and charts, regardless of the medium in which they are fixed, and all copies thereof.

5.06.2 All Works made or created by Contractor, either solely or jointly with University, in the course of Contractor's performance of services under this Agreement shall be deemed to be works for hire and are and shall be the exclusive property of University. At University's request, Contractor will execute all documents reasonably required to confirm or perfect ownership of such Works and any corresponding copyright rights in and to such Works in University. Without the prior written consent of University, Contractor

shall not use, copy or prepare derivative works of the Works, or any parts of them, other than as related to the performance of this Agreement. During the performance of this Agreement, Contractor shall be responsible for loss or damage to the Works while they are in Contractor's possession or control. Any loss or damage shall be restored at Contractor's expense. University shall have free and unlimited access to the Works at all times and, upon demand, shall have the right to claim and take possession of the Works and all copies. Notwithstanding the foregoing, Contractor shall be entitled to retain a set of its work papers for archival purposes only, in accordance with applicable professional standards.

5.06.3 Contractor shall retain all rights in and to its know-how, methods, techniques, discoveries, concepts, and ideas, whether patentable or not, and whether possessed by Contractor prior to or acquired by Contractor during the performance of this Agreement. Contractor also shall retain all rights in and to all works of authorship fixed in a tangible medium of expression which were made, created or acquired by Contractor prior to the Effective Date of this Agreement ("Pre-Existing Works"), provided that a listing of such Pre-Existing Works is attached to this Agreement.

5.07 Safety.

Contractor shall be solely responsible for identifying, establishing and implementing all safety precautions and requirements for the services described in Attachment A at the site(s) where services are to be performed during the term of this Agreement. Contractor shall abide by the safety standards established and generally accepted in Contractor's particular industry and expertise. This requirement includes, but is not limited to, Contractor's obligations to comply with the safety standards and requirements mandated by all applicable federal, state and local laws, rules, regulations or ordinances as further described in Section 5.18. Contractor agrees and covenants that University shall not be liable for any breach of these obligations or for the failure of Contractor to take appropriate measures for the safety of itself and its employees, its subcontractors, University, and/or University's employees, students, invitees, officers, and assigns.

5.08 Insurance.

Contractor and its subcontractors shall, as a condition precedent to this Agreement, purchase and thereafter maintain such insurance as will protect each of them and University from the claims set forth below which may arise out of or result from Contractor's operations under this Agreement, whether such operations be by Contractor or by its subcontractors or by anyone directly or indirectly employed by any of them, or by anyone directly for whose acts any of them may be liable:

- 1) Claims under Worker's Compensation and Occupational Disease Acts, and any other employee benefits acts applicable to the performance of the work;

- 2) Claims for damages because of bodily injury and personal injury, including death, and;
- 3) Claims for damages to property.

Contractor's insurance shall be not less than the amounts shown below:

A.	Commercial General Liability (Occurrence Basis)	
	Bodily Injury, personal injury, property damage, Contractual liability, product/completed operations	
	Each Occurrence Limit	\$1,000,000.00
	Damage to Rented Premises	\$100,000.00 (each occurrence)
	Medical Expense Limit	\$5,000.00
	Personal and Advertising Injury Limit	\$500,000.00
	General Aggregate Limit	\$3,000,000.00 (Other than Products Completed Operations)
	NOTE: GENERAL AGGREGATE TO APPLY PER PROJECT	
	Products/Completed Operations	\$1,000,000.00
B.	Auto Liability	\$1,000,000.00 (combined single limit) (owned, hired & non-owned)
	Bodily injury & property damage	\$1,000,000.00 each accident
C.	Excess/Umbrella Liability	\$2,000,000 (each occurrence and aggregate)
D.	Worker's Compensation & Disability	Statutory

E.	Employer's Liability	
	Bodily Injury Accident	\$500,000 each accident
	Bodily Injury by Disease	\$500,000 each employee
	Bodily Injury by Disease	\$500,000 policy limit
F.	[Reserved for Professional Liability or additional riders as needed]	

All insurance procured must be from an insurance company possessing a minimum A.M. Best's Insurance Guide rating of A VII. All insurance shall be purchased from and maintained with insurance company(ies) lawfully authorized to do business in the State of Indiana.

Certificates of Insurance, naming the University of Indianapolis as an "additional insured," (A. B. and C. only) showing such coverage obtained by Contractor and all subcontractors then in force (but not less than the amount shown above) shall be filed with University prior to commencement of any work. These certificates shall contain a provision that the policies and the coverage afforded will not be canceled until at least thirty (30) days after written notice has been given to University.

5.08.1 With the prior approval of University, Contractor may substitute different types of coverage for those specified as long as the total amount of required protection is not reduced. Contractor shall be responsible for all deductibles.

5.08.2 Nothing in the above provisions shall operate as or be construed as limiting the amount of liability of Contractor to the above enumerated amounts.

5.09 Termination for Cause or Convenience.

5.09.1 If Contractor becomes insolvent, or if it refuses or fails to perform the work and services provided by this Agreement, or if it refuses to perform disputed work or services as directed pending resolution of such dispute, or if it fails to make payments to subcontractors employed by it, or if it otherwise violates or fails to perform any term, covenant or provision of this Agreement, then University may, without prejudice to any other right or remedy, terminate this Agreement in whole or in part, in writing, provided that Contractor shall be given (1) not less than ten (10) calendar days written notice of University's intent to terminate. In determining the amount

of final payment to be made to Contractor upon such termination for default, if any, no amount shall be allowed for anticipated profit on unperformed services or other work; furthermore, an adjustment shall be made to the extent of any additional costs incurred or reasonably foreseen by University to be incurred by reason of Contractor's default.

5.09.2 This Agreement may be terminated in whole or in part in writing by University for University's convenience; provided that Contractor is given not less than ten (10) calendar days written notice of intent to terminate. If University terminates for convenience, Contractor's compensation shall be equitably adjusted to reflect services performed prior to the effective date of termination.

5.09.3 Upon receipt of notice of termination for default or for University's convenience, Contractor shall (1) promptly discontinue all services affected, unless the termination notice directs otherwise, and (2) deliver or otherwise make available to University all Works and such other information, materials or documents as may have been accumulated by Contractor in performing this Agreement, whether completed or in process.

5.09.4 If, after termination for Contractor's default, it is determined that Contractor was not in default, the termination shall be deemed to have been made for the convenience of University. In such event, adjustment of the price provided for in this Agreement shall be made as provided in Section 5.09.2 and the recovery of such price adjustment shall be Contractor's sole remedy and recovery.

5.10 Termination for Failure of Funding. Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by University are at any time insufficient or not forthcoming through failure of any entity to appropriate funds or otherwise, then University shall have the right to terminate this Agreement without penalty by giving written notice documenting the lack of funding, in which instance this Agreement shall terminate and become null and void on the last day of the fiscal period for which appropriations were received. University agrees that it will make its best efforts to obtain sufficient funds, including but not limited to, requesting in its budget for each fiscal period during the term hereof sufficient funds to meet its obligations hereunder in full.

5.11 Indemnification. Contractor agrees to indemnify, defend, and hold harmless the University and its respective officers, agents, officials and employees for any and all claims, actions, damages, causes of action, judgments and liens to the extent they arise out of or are in any way connected to the actions of Contractor under this Agreement, including any negligent or wrongful act or omission or breach of any provision of this Agreement by Contractor or any of its officers, agents, employees or subcontractors regardless of whether or not it is caused in part by the negligence of a party indemnified hereunder. Such indemnity shall include attorney's fees and all costs and other expenses arising therefrom or incurred in

connection therewith and shall not be limited by reason of the enumeration of any insurance coverage required herein.

- 5.12 Notice. Any notice required to be sent under this Agreement shall be sent by internationally recognized overnight courier, certified mail, facsimile or other delivery method which provides confirmation of receipt and shall be directed to the persons and addresses specified below (or such other persons and/or addresses as any party may indicate by giving notice to the other party) :

To Contractor:

To University:

Andrea Brandes Newsom
 Vice President & General Counsel
 University of Indianapolis
 1400 E. Hanna Avenue
 Indianapolis, IN 46227

- 5.13 Disputes. Contractor shall carry on all work required under this Agreement and maintain the schedule for services during all disputes or disagreements with University. No work shall be delayed or postponed pending resolution of any disputes or disagreements except as Contractor and University may otherwise agree in writing. Should Contractor fail to continue to perform its responsibilities with respect to all non-disputed work without delay, any additional costs incurred by University or Contractor as a result of such failure to proceed shall be borne by Contractor, and Contractor shall make no claim against the University for such costs. University may withhold payments on disputed items pending resolution of the dispute.
- 5.14 Non-discrimination. Contractor and its officers, agents, employees, and subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of her or his race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability, or United States military service veteran status. Breach of this section shall be regarded as a material breach of this Agreement.
- 5.15 Conflict of Interest. Contractor certifies and warrants to University that neither it nor any of its officers, agents, employees, or subcontractors who will participate in the performance of any services required by this Agreement has or will have any conflict of interest, direct or indirect, with University.
- 5.16 Non-contingent Fees. Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty University shall have the right to annul this Agreement without liability or in its discretion to

deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

- 5.17 Force Majeure. In the event that either party is unable to perform any of its obligations under this Agreement – or to enjoy any of its benefits – because of fire, explosion, power blackout, natural disaster, strike, embargo, labor disputes, war, terrorism, acts of God, acts or decrees of governmental bodies or other causes beyond such party's reasonable control (hereinafter referred to as Force Majeure Event), the party who has been so affected shall immediately give notice to the other and shall take commercially reasonable actions to resume performance. Upon receipt of such notice, all obligations under this Agreement shall immediately be suspended except for payment obligations with respect to service already provided. If the period of nonperformance exceeds sixty (60) days from the receipt of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.
- 5.18 Applicable Laws; Forum.
- 5.18.1 Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations or ordinances, and all provisions required thereby to be included in this Agreement are hereby incorporated by reference. This includes, but is not limited to, the Federal Civil Rights Act of 1964 and, if applicable, the Drug-Free Workplace Act of 1988. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by University and Contractor to determine whether the provisions of the Agreement require formal modification.
- 5.18.2 This Agreement shall be construed in accordance with the laws of the State of Indiana. Legal actions, if any, shall be brought in the State of Indiana, County of Marion.
- 5.19 Waiver. University's delay or inaction in pursuing its remedies set forth in this Agreement, or available by law, shall not operate as a waiver of any of University's rights or remedies.
- 5.20 Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.
- 5.21 Attorneys' Fees. Contractor shall be liable to University for reasonable attorneys' fees incurred by University in connection with the collection or attempt to collect, any damages arising from the negligent or wrongful act or omission of Contractor, or from Contractor's failure to fulfill any provisions or responsibility provided herein.
- 5.22 Successors and Assigns. University and Contractor each binds itself and its partners, successors, executors, administrators and assigns to the other party of

this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as otherwise provided herein, Contractor shall not assign, sublet or transfer its interest in this Agreement without the written consent of University. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of University.

5.23 Authority to Bind Contractor. Notwithstanding anything in this Agreement to the contrary, the signatory for Contractor represents that he/she has been duly authorized to execute agreements on behalf of Contractor and has obtained all necessary or applicable approval from the home office of Contractor to make this Agreement fully binding upon Contractor when his/her signature is affixed and accepted by University.

5.24 Debarment and Suspension

5.24.1 Contractor certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from or ineligible for participation in any Federal assistance program by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Contractor.

5.24.2 Contractor shall provide immediate written notice to University if, at any time after entering into this Agreement, Contractor learns that its certification was erroneous when submitted, or Contractor is debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded from or becomes ineligible for participation in any Federal assistance program. Any such event shall be cause for termination of this Agreement as provided herein.

5.24.3 Contractor shall not subcontract with any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in any Federal assistance programs by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana.

5.25 Key Persons. The parties agree that the work described in this Agreement to be performed by Contractor is a personal service, highly professional in nature, and that the identity of the individual who is to be personally responsible for such work is of prime importance to University. The parties therefore agree that in the event of the death or disability of Contractor, or, if Contractor is a firm, partnership, or corporation, in the event of the death, or disability or termination of employment of anyone understood to be personally responsible for the work described in this Agreement, University may, without penalty and in its discretion, terminate this

Agreement, and make its own new Agreement with any other party for completion of the work herein described.

5.26 Hold Harmless and Waiver of Subrogation. In execution of this Agreement, University, its Board of Trustees, employees, agents, volunteers and assigns are held harmless by Contractor and subrogation is hereby waived by Contractor against University, its Board of Trustees, employees, agents volunteers and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates subscribed below.

CONTRACTOR NAME ("Contractor")

By: _____

Date: _____

Printed: _____

Title: _____

UNIVERSITY OF INDIANAPOLIS ("University")

By: _____

Date: _____

Michael P. Holstein, Vice President,
Treasurer and Chief Financial Officer

By: _____

Date: _____

Andrea B. Newsom, Vice President and
General Counsel

ATTACHMENT A**SCOPE OF SERVICES**

In accordance with the terms and conditions of the attached Professional Services Agreement (hereinafter "Agreement") by and between the University of Indianapolis (hereinafter "University") and _____ (hereinafter "Contractor"), Contractor shall do, perform, and carry out in a good, professional and workmanlike manner the following services:

ATTACHMENT B
COMPENSATION

ATTACHMENT C

**ADDITIONAL SERVICES AGREED BY THE PARTIES SUBSEQUENT TO ORIGINAL
CONTRACT EXECUTION**

[Additional sheets may be added as needed to detail additional services to be provided by Contractor.]

CONTRACTOR NAME ("Contractor")

By: _____

Date: _____

Printed: _____

Title: _____

UNIVERSITY OF INDIANAPOLIS ("University")

By: _____

Date: _____

Michael P. Holstein, Vice President,
Treasurer and Chief Financial Officer

By: _____
Andrea B. Newsom, Vice President and
General Counsel

Date: _____