



## PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("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, Indiana 46227 (either "University" or "Client" or "Customer") and \_\_\_\_\_, whose principal place of business is \_\_\_\_\_ (either "Contractor" or "Provider" or "Supplier"), is executed pursuant to the terms and conditions set forth herein. University and Contractor sometimes are referred to herein collectively as the "Parties" and individually as a "Party." In consideration of those mutual undertakings and covenants, the Parties agree as follows:

### RECITALS

WHEREAS, University desires to engage Contractor to supply certain services and deliverables, hereafter collectively referred to as the "Services and Deliverables," to the University, subject to the terms and conditions set forth in this Agreement and the attached Scope(s) of Services; and

WHEREAS, Contractor possesses expertise in the provision of such Services and Deliverables and desires to provide such Services and Deliverables to University, meeting the requirements established pursuant to the Scope(s) of Services and in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises made in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, the Parties agree as follows:

### AGREEMENT

- 1. INTERPRETATION AND INTENT OF AGREEMENT.** The "Agreement," as referred to herein, shall mean this Professional Services Agreement executed by University and Contractor, and shall include these Terms and Conditions and the Attachments described in *Section 4* and *Section 5*, attached hereto.

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. **IN THE EVENT THAT THERE IS ANY CONFLICT OR INCONSISTENCY BETWEEN A TERM, PROVISION OR SECTION IN A SCOPE OF SERVICE OR ANY ATTACHMENT AND THIS AGREEMENT, THE TERMS SET FORTH IN THIS AGREEMENT SHALL CONTROL AND TAKE PRECEDENCE.**

In resolving conflicts, errors, discrepancies and disputes concerning the scope of the work or Services and Deliverables 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. Any interpretation applied to this Agreement, by the Parties hereto, by a 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.

2. **TERM.** The term of this Agreement shall be three (3) months. The term of this Agreement shall commence upon the date of last signature as executed by the Parties ("Effective Date"). The Agreement shall terminate upon expiration of the term unless the Agreement is terminated earlier in accordance with the provisions contained herein. This Agreement may be renewed by mutual agreement of Parties. The term of the renewal may be less but shall not be longer than the initial term of the 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 unless specified by amendment.
3. **TERMINATION.** If Contractor becomes insolvent, or if it refuses or fails to perform the work and Services and Deliverables provided by this Agreement, or if it refuses to perform disputed work or Services and Deliverables as directed pending resolution of such dispute, or if it fails to make payments to approved subcontractors employed by it, or if it otherwise violates or fails to perform any term, covenant or provision of this Agreement, then University may at its sole discretion, without prejudice to any other right or remedy, immediately terminate this Agreement in whole or in part, in writing, by providing Contractor with written notice with sufficient detail of its 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 and Deliverables 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.

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) business days written notice of intent to terminate. If University terminates for convenience, Contractor's compensation shall be equitably adjusted to reflect all documented Services and Deliverables performed prior to the effective date of termination.

Upon receipt of notice of termination for default or for University's convenience, Contractor shall (1) promptly discontinue all Services and Deliverables affected, unless the termination notice directs otherwise, and (2) deliver or otherwise make available to University all Works, as defined in *Section 12*, and such other information, materials or documents as may have been accumulated by Contractor in performing this Agreement, whether completed or in process upon receipt of payment of the final invoice amount.

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 this *Section 3* and the recovery of such price adjustment shall be Contractor's sole remedy and recovery.

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 prompt 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.

4. **SERVICES OF CONTRACTOR.** Contractor shall provide Services and Deliverables as specified in *Attachment A*, attached hereto and incorporated into this Agreement. Contractor shall provide the Services and Deliverables as specified in *Attachment A* in a professional and workmanlike manner using commonly accepted means and methods of work in Contractor's recognized professional industry.

- 5. FEES, PRICING AND PAYMENT TERMS.** Contractor proposes to furnish all labor, materials and supplies in accordance with the conditions of this Agreement necessary to complete the work as more fully defined in *Attachment A* at the price and/or rates set forth in *Attachment A*, attached hereto and incorporated herein. However, in no event shall compensation for Services and Deliverables under this Agreement exceed \_\_\_\_\_ (\$ \_\_\_\_\_). All travel expenses must be itemized and pre-approved in writing by University prior to any confirmed travel arrangements.

The Parties understand, covenant and agree that, subsequent to the execution of this Agreement, University may require Contractor to provide services and deliverables 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 Deliverables, and compensation for such services, by using *Attachment B* (attached hereto for demonstrative purposes only). Upon mutual agreement and execution by the Parties, *Attachment B* shall serve as an addendum to this Agreement with any description of services, deliverables, and fees contained therein supplementing *Attachment A* (the "Scope of Services"). Unless otherwise specified in the Scope of Services, Contractor warrants that University will not be charged for any additional costs or expenses without University's prior written consent. Such additional costs or expenses include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, and crating.

Contractor shall submit a properly itemized invoice for Services and Deliverables performed and documented expenses incurred under this Agreement and shall cooperate with and provide any other necessary detailed information to verify the accuracy of any invoice to the University. University will pay each undisputed invoice in full net thirty (30) days after receipt of such properly itemized invoice.

University may, upon prompt written notice to Contractor, delay or suspend any payment or portion thereof that is due and payable without penalty if a service or deliverable, in University's sole discretion, is not satisfactory.

- 6. 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.
- 7. SUBCONTRACTING.** The Parties agree that Contractor shall not subcontract, assign or delegate any portion of this Agreement or the Services and Deliverables 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 and Deliverables 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.

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 and Deliverables provided hereunder. Failure of Contractor to comply with this paragraph shall constitute a material breach of this Agreement.

Contractor shall maintain books, records, documents and other evidence directly pertinent to performance of Services and Deliverables under this Agreement (the "Materials"). Contractor shall, at Contractor's expense, make such Materials available at its offices during all reasonable and customary times during the term of this Agreement. For a period of three (3) years from the date of expiration or termination of this Agreement, Contractor shall retain Materials for inspection by University, auditors, and any government agency with audit authority. Contractor shall fully cooperate with any audit of Contractor's performance of Services and Deliverables hereunder. Copies of the Materials, if requested, shall be furnished at no cost to University.

8. **DISPUTES AND ACCEPTANCE OF SERVICES OR DELIVERABLES.** Contractor shall carry on all work required under this Agreement and maintain the schedule for Services and Deliverables as defined in each Scope of Service during all disputes or disagreements with University. During such time, the Parties mutually agree to promptly work in good faith to resolve such disputes or disagreements. 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 without penalty on disputed items pending resolution of the dispute.
9. **FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT.** Contractor acknowledges that, depending on the nature of the Services and Deliverables 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, ("Student Information") is protected by the Family Educational Rights and Privacy Act of 1974, as amended ("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.
10. **CONFIDENTIALITY.** 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 and Deliverables 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 and Deliverables 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. 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 subpart (d), above.
11. **PUBLICATIONS AND USE OF NAME.** Contractor may not for any reason issue any press release, public statement, advertisement or use the University's name or logo on its website or other social media or any print media or other marking medium without prior review by the University's Associate Vice President of Communications and Marketing and its written consent, given in University's sole and absolute discretion. Additionally, this Agreement is not a sale and does not convey to Contractor any rights of ownership in or related to the service, or University of Indianapolis' intellectual property rights owned by the University.

The University's name, the University's logo, and the service are trademarks, or service marks of the University, and no title, right, or license is granted to Contractor to use them. Violation of this provision shall constitute a material breach of this Agreement.

**12. OWNERSHIP.** "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 and creating the Services and Deliverables under this Agreement, including, but not limited to, presentations, curricula, 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.

- (i) All Works made or created by Contractor, either solely or jointly with the University, in the course of Contractor's performance of Services and Deliverables under this Agreement shall be deemed to be works for hire, are and shall be the exclusive property of the University. By executing this Agreement, Contractor hereby assigns and agrees to assign to the University, and shall require all its subcontractors in writing to assign to the University all right, title, and interest in and to the Works, Services and Deliverables, and all intellectual property rights therein and to be derived therefrom. At the University's request, Contractor will execute any and all subsequent documents reasonably required to confirm or perfect ownership of such Works and any corresponding copyright rights in and to such Works in the University. Without the prior, express, written request and consent of the University, Contractor shall not use, copy or prepare derivative works of the Works, or any parts of them. 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. The 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 thereof. 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, and Contractor's use thereof shall be governed and restricted by the terms of this Agreement. The University may use, in its sole and exclusive discretion, the Works in any manner and for any purpose it deems appropriate, including but not limited to modifying the Works and creating derivatives of the Works. The University does not grant, and nothing in this Agreement shall be construed as to grant to Contractor: (a) any license or sublicense to the Works; (b) any license or sublicense to the University's derivatives of the Works, or (c) any license authorizing Contractor to use, copy, or to create derivative works from the Works.
- (ii) Contractor shall retain all rights in and to its know-how, methods, and techniques, 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") as more fully described in the attached *Annex 1* to this Agreement, provided that a listing of such Pre-Existing Works is attached to this Agreement, by way of *Annex 1*.
- (iii) Contractor hereby grants the University a license to use, in any manner and in the sole discretion of the University, the Pre-Existing Works for the purpose of the University's own provision of Services and Deliverables to its clients. Contractor covenants and agrees that the University may derive profits from its use of the Pre-Existing Works and any derivatives therefrom, and that Contractor shall not be entitled to any compensation in connection therewith. The license granted herein is fully paid, royalty-free, worldwide, non-exclusive and non-transferable, and nothing contained herein shall be deemed to convey any title or ownership interest in the Pre-Existing Works contained in any Deliverable to the University. Contractor hereby expressly agrees that the use of the Pre-Existing Works by the University as set forth in this Agreement shall not be deemed to have any adverse effect or infringement upon Contractor's proprietary rights in the Pre-Existing Works.

- 13. SAFETY.** Contractor shall be solely responsible for identifying, establishing and implementing all safety precautions and requirements for the Services and Deliverables described in *Attachment A* at the site(s) where Services and Deliverables 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 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.
- 14. 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:
- (i) Claims under Worker's Compensation and Occupational Disease Acts, and any other employee benefits acts applicable to the performance of the work;
  - (ii) Claims for damages because of bodily injury and personal injury, including death, and;
  - (iii) 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>B. Auto Liability</b>	\$1,000,000.00 (combined single limit) (owned, hired & non-owned)
Bodily injury & property damage	\$1,000,000.00 each accident
<b>C. Excess/Umbrella Liability</b>	\$2,000,000.00 (each occurrence and aggregate)
<b>D. Worker's Compensation &amp; Disability</b>	Statutory
<b>E. Employer's Liability</b>	
Bodily Injury Accident	\$500,000.00 each accident
Bodily Injury by Disease	\$500,000.00 each employee
Bodily Injury by Disease	\$500,000.00 policy limit
<b>F. [Reserved for Professional Liability Errors and Omissions, Cyber Liability or additional riders as needed]</b>	

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. The insurance company(ies) will endeavor to alert additional insureds of any policy changes or cancellations.

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

**15. WARRANTIES AND REPRESENTATIONS.** Contractor represents and warrants to the University as follows:

- (i) Contractor represents and warrants to University that it will perform its obligations set forth herein and under each Scope of Services in a professional manner that conforms to generally accepted standards in the industry.
- (ii) Contractor represents and warrants that the Services and/or each Deliverable will substantially conform to the specifications described in the Scope of Service or any attachments for such Service or Deliverable.
- (iii) Contractor certifies, represents, and warrants that Contractor, its employees, officers, agents, and subcontractors are legally authorized and eligible to work in the United States.
- (iv) Contractor represents and warrants that each Service and/or Deliverable will comply with all Laws that are applicable to such Services and Deliverables. For purposes of clarity, “Laws” shall mean all applicable federal, state, local, or other industry or governmental authority laws, regulations, ordinances, orders, standards, rules, and other requirements that may now or hereafter govern the performance of Contractor pursuant to this Agreement.
- (v) Except as otherwise provided in *Section 12* and to the extent applicable, Contractor represents, warrants and covenants that: (a) at the time of transfer of ownership to University, it will have good and valid title in and to all of the deliverables, free and clear of any liens or encumbrances; (b) no other party owns or has any rights or interests in any of the deliverables; and (c) no deliverable or portion thereof has been copied, used or obtained from any third party without such third party’s written permission.

**16. INDEMNIFICATION.** Contractor agrees to indemnify, defend, and hold harmless the University and its respective officers, its Trustees, 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 or its subcontractors 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 reasonable attorneys’ 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.

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.

Contractor will indemnify, defend and hold the University of Indianapolis and its respective officers, Trustees, agents, officials, employees, and assigns (collectively the “Indemnified Parties”) harmless, from and against any claim against the Indemnified Parties by reason of the Indemnified Parties’ use of the Services and/or Deliverables as permitted hereunder, brought by a third party alleging that the Services and/or Deliverables infringe or misappropriate a third party’s valid patent, copyright, trademark or trade secret (an “IP Claim”). Contractor shall, at its expense, defend such IP Claim and pay damages finally awarded against

the Indemnified Parties in connection therewith, including the reasonable fees and expenses of the attorneys engaged by Contractor for such defense, provided that (a) the Indemnified Parties promptly notify Contractor of the threat or notice of such IP Claim, (b) Contractor will have the sole and exclusive control and authority to select defense attorneys, defend and/or settle any such IP Claim, and (c) the Indemnified Parties fully cooperates with Contractor, at Contractor's cost and expense, in connection therewith. If use of the Services and/or Deliverables by the Indemnified Parties has become, or in Contractor's opinion is likely to become, the subject of any such IP Claim, Contractor may at its option and expense (A) procure for the Indemnified Parties the right to continue using the Services and/or Deliverables as set forth hereunder; (B) replace or modify the Services and/or Deliverables to make it non-infringing; or (C) if options (A) or (B) are not commercially and reasonably practicable as determined by Contractor, terminate this Agreement and repay the Indemnified Parties, on a pro-rated basis, any fees previously paid to Contractor for the corresponding unused portion of the Indemnified Parties' Service Term. Contractor will have no liability or obligation under this Section 16 with respect to any IP Claim if such claim is caused in whole or in part by (i) modification of the Services and/or Deliverables by anyone other than Contractor; or (ii) the combination, operation or use of the Services and/or Deliverables with other services where the Services and/or Deliverables would not by themselves be infringing.

- 17. 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.
- 18. DISPUTE RESOLUTION; APPLICABLE LAWS; JURISDICTION AND VENUE.** Any dispute arising out of or in connection with this Agreement (each "Dispute") shall be referred by either Party first to the representatives of each of the Parties for resolution. If the Dispute cannot be resolved by the representatives of the Parties within ten (10) business days after the Dispute has arisen, either Party may give notice to the other Party in writing ("Notice") that a Dispute has arisen. Within ten (10) business days after the date of the Notice, the Dispute shall be referred to a senior executive of each of Contractor and University for resolution. If the Dispute is not resolved by agreement in writing between the Parties within ten (10) business days after the date of the Notice, then each Party shall be entitled to pursue such remedies as may be available to it under this Agreement or otherwise at law or in equity. This Section is without prejudice to either Party's right to seek interim relief against the other Party (such as injunction) through local courts, as defined herein, to protect its rights and interests, or to enforce the obligations of the other Party.

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.

This Agreement shall be construed in accordance with the laws of the State of Indiana. All proceedings relating to or arising out of this Agreement are subject to the exclusive jurisdiction of the state and federal courts serving Marion County, Indiana, and each Party waives any right to object to the exercise of personal jurisdiction by these courts. Both Parties also agree that all proceedings will be venued exclusively in the circuit or superior court of Marion County in the State of Indiana or the United States District Court for the Southern District of Indiana, Indianapolis Division.

**19. OTHER TERMS AND CONDITIONS.**

- 19.1 NOTICES.** 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:**

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**To University:**

University of Indianapolis  
Attn: General Counsel  
1400 E. Hanna Avenue  
Indianapolis, IN 46227

19.2 **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, epidemics or pandemics, acts or decrees of governmental bodies or other causes beyond such Party’s reasonable control (“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 services already provided. If the period of nonperformance exceeds thirty (30) days from the receipt of the Force Majeure Event, then the Party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement, and the Parties shall have no further obligations to each.

19.3 **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.

19.4 **DEBARMENT AND SUSPENSION.**

- (i) 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.
- (ii) 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.
- (iii) 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.

- 19.5 **CONFLICT OF INTEREST.** Contractor certifies, represents 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 and Deliverables required by this Agreement has or will have any conflict of interest, direct or indirect, with University.
- 19.6 **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.
- 19.7 **NON-CONTINGENT FEES.** Contractor represents and 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.
- 19.8 **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. Neither Party shall assign or transfer this Agreement or all or any part of its rights or obligations under this Agreement or any applicable Scope of Service, by operation of law or otherwise, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of University.
- 19.9 **WAIVER; SEVERABILITY.** 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. 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.
- 19.10 **AMENDMENT.** This Agreement and the exhibits hereto may be amended only in a writing signed by the authorized representatives of both Parties which writing clearly identifies that it amends a provision(s) of this Agreement.
- 19.11 **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.
- 19.12 **MULTIPLE COUNTERPARTS.** This Agreement, and all Scope of Services, may be executed in multiple counterparts, all of which when taken together shall constitute one and the same agreement. Delivery of an executed counterpart signature page of this Agreement by facsimile, email, or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

19.13 **ENTIRE AGREEMENT.** This Agreement and the exhibits hereto constitute the entire agreement between the Parties with respect to the Services and Deliverables to be provided by Contractor hereunder and supersede all prior proposals, and all other written and oral communications between the Parties with respect to the provision of such Services and Deliverables.

19.14 **SURVIVAL.** The terms of this Agreement that should, by their nature, survive the termination of this Agreement will survive the termination of this Agreement including, but not limited to, Sections 1 (Interpretation and Intent of Agreement), 3 (Termination), 7 (Subcontracting), 9 (Family Educational Rights and Privacy Act), 10 (Confidentiality), 12 (Ownership), 13 (Safety), 15 (Warranties and Representations), 16 (Indemnification), 17 (Hold Harmless and Waiver of Subrogation), 18 (Dispute Resolution; Applicable Laws; Jurisdiction and Venue), and 19 (Other Terms and Conditions).

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement as of the date of last signature, the Effective Date.

\_\_\_\_\_ (“Contractor”)

By: \_\_\_\_\_

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

Printed: \_\_\_\_\_

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

**UNIVERSITY OF INDIANAPOLIS** (“University”)

By: \_\_\_\_\_

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

Printed: \_\_\_\_\_

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

By: \_\_\_\_\_

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

Printed: \_\_\_\_\_

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

**ATTACHMENT A**  
**Services, Deliverables, and Fees**



**ATTACHMENT B**  
**ADDITIONAL SERVICES AND COMPENSATION**  
**AGREED BY THE PARTIES**  
**SUBSEQUENT TO THE ORIGINAL**  
**PROFESSIONAL SERVICES AGREEMENT DATED**

*(This Attachment B is to be used and executed **only** where the Parties have negotiated additional Services and Deliverables or deliverable to be provided subsequent to the execution of the original Professional Services Agreement.)*

The Parties mutually agree to incorporate into the Agreement the additional services and deliverables set out below in *Attachment A* to reflect the additional Scope of Services and compensation for Services and Deliverables to be performed by Contractor through \_\_\_\_\_. Except as expressly modified herein, all terms and conditions of the Agreement remain unchanged, and shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this *Attachment B* on the dates subscribed below.

\_\_\_\_\_ (“Contractor”)

By: \_\_\_\_\_

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

Printed: \_\_\_\_\_

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

**UNIVERSITY OF INDIANAPOLIS (“University”)**

By: \_\_\_\_\_

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

By: \_\_\_\_\_

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