



AMERICAN UNIVERSITY

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GENERAL PROVISIONS OF SERVICES TO AMERICAN UNIVERSITY

- 1. OFFER AND AGREEMENT:** These General Provisions of Services to American University (“AU”) and the Service Purchase Orders (with any and all appendices, and/or exhibits attached hereto or otherwise issued by AU in connection herewith, collectively, “SPOs” or “Orders”), constitute the entire agreement between AU and Vendor. In the event of a conflict between the General Provisions of Services to AU and the Orders, these General Provisions of Services shall govern.
- 2. ACCEPTANCE:** For a period of thirty (30) days from scheduled final deliverable, AU may inspect and reject the Services (“Inspection Period”). Deliverables shall be deemed to have passed inspection and be accepted after the expiration of the Inspection Period, unless AU notifies Vendor, during the Inspection Period, of a reasonable cause for rejection of the Deliverables.
- 3. TERMINATION:** AU may terminate the SPO (Order) or any part thereof for its sole convenience upon thirty (30) days written notice to the Vendor. In case of such termination for convenience, Vendor shall be paid a pro rata percentage of the Order price reflecting the percentage of work performed prior to day that notice of termination is delivered, plus actual direct costs resulting from termination. Vendor shall not be paid for work performed or costs incurred after receipt of notice of termination, or for costs incurred by Vendor's suppliers that Vendor reasonably could have avoided. All work to be paid to Vendor will be adequate to AU’s standards and approved by the internal AU Customer. AU may also immediately terminate the Order or any part hereof for cause if Vendor defaults, fails to comply with any terms and conditions of the Order, becomes insolvent or files for bankruptcy protection. In case of such termination for a default, failure to comply with any terms and conditions of the Order, or insolvency or bankruptcy, Vendor shall promptly reimburse AU the fees paid by AU to Vendor for the deficient services giving rise to such default in addition to any additional expenses incurred by AU for satisfactory completion of the Order.
- 4. PAYMENT:** AU shall pay all undisputed, itemized invoices referencing a valid SPO number within thirty (30) days of receipt (net 30). Vendor shall be responsible for and pay all costs of conducting vendor’s business, including, but not limited to, the expense and responsibility for any applicable insurance including city, county, state and federal licenses and permits, fees or taxes. Vendor shall be responsible for all taxes including, but not limited to, income taxes, Social Security taxes, and worker’s compensation premiums. Vendor shall procure all licenses and permits and comply with all statutes, ordinances, and regulations applicable to the conduct of its services hereunder.
- 5. TAX EXEMPTION:** AU is a District of Columbia nonprofit, tax-exempt corporation and is exempt from paying sales or use tax in Virginia (Cert. # SE530196549F04252022), Maryland (Cert. # 31142145), and District of Columbia (Cert. # 350000001934); and federal excise taxes (Cert. # 53-0196549). Seller shall not charge AU for such taxes. Proof of exemption is available upon request. AU may withhold payment or make such deduction as may be necessary to protect the AU from loss or damage on account of defective Services, claims, damages, or to pay for repair or correction of the effects of services rendered.
- 6. DISCOUNT PERIOD:** Discount period will start upon the receipt of the goods and/or services at the designated delivery point or receipt of proper invoice whichever is later. Invoices are considered paid on the date of the check or transaction date as appropriate.
- 7. ADDITIONAL WORK & CHANGES:** AU may make additions, changes, or deletions. Proposed modifications to an original Statement of Work must be mutually agreed to by both parties and duly executed in writing by an authorized agent of each party. AU will issue a change order to the original Order. Vendor shall make no changes, amendments, modifications, additions to or deletions from the Order without the prior written consent of AU. Acceptance of an Order shall bind Vendor to honor dates, pricing and other ordering

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information shown on the Order, unless otherwise stated. These General Provisions of Services are incorporated into the specific SPO (Order) referencing these provisions.

8. **RIGHT TO AUDIT:** AU reserves the right to audit the Vendor's records. Such records shall include, but not be limited to, accounting records, written policies and procedures, personnel records, training records, invoices, hazardous materials records, sub-agreement files (including proposals of successful and unsuccessful bidders), original estimates, estimating work sheets, correspondence, change order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related to the Services.
9. **INDEPENDENT CONTRACTOR:** Nothing in these terms is intended nor shall be construed to create any employer/employee relationship or a joint venture relationship between AU and Vendor. Vendor shall at all times and for all purposes be considered an independent Contractor.
10. **INSURANCE:** Prior to the start of the Services, it is required that the Vendor provide the AU a Certificate of Insurance which verifies compliance with the insurance requirements herein, and names AU as Additional Insured under General Liability, Automobile, and Excess Liability policies. Evidence of insurance is required upon ratification of the Orders. Policies will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to the AU. On or before the anniversary date of the Orders, or the expiration date of the Certificate of Insurance, the Vendor will provide a new Certificate of Insurance without demand. Vendor agrees to maintain the following:
 - 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 Service Provider's owned, non-owned, hired, or borrowed vehicles, assigned to or used in performance of these Orders.
11. Policies shall be endorsed to include AU, its agents, officials and employees and additional insureds for ongoing and completed operations. Vendor 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 Procurement and Contracts 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. Subcontractors of Service Provider must provide and maintain the same levels of insurance as Service Provide must under this section.
12. **SAFETY & COMPLIANCE:** During the performance of Services, Vendor shall be in compliance with all applicable state and federal laws, and the policies and procedures of AU. Before any work begins, the Vendor will provide a written, site-specific safety plan to the AU representative and shall be responsible for initiating, maintaining, and supervising all safety precautions and programs, including all those required by law in connection with the performance of the Services. All equipment and tools shall be maintained by the Vendor and be in a safe and good working condition. All equipment and tools must be operated in a safe manner with due consideration for AU employees, students, and property.

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- 13. MATERIALS:** All chemical products or other materials containing chemicals of any type brought on premise by the Vendor must be registered and have a Material Safety Data Sheet (MSDS) supplied to AU to be placed on file within the Facilities Management Department. Any and all disposal of waste products or cleaning process byproducts will be conducted in compliance with District of Columbia and Federal safety and environmental regulations.
- 14. VEHICLES:** All vehicles on university-related business are required to use only main thoroughfares when travelling to and from campus. This includes vehicles engaged for all external conferences and events. Main thoroughfares include Massachusetts and Nebraska Avenues, NW. All secondary, residential roads are strictly off-limits for all university-related bus traffic and parking.
- 15. DAMAGES TO AU:** Vendor agrees to compensate AU and its students, guests, visitors, staff, faculty, and other persons for any loss which they may suffer due to thefts, embezzlement, negligence, or criminal behavior by employees or agents of Vendor or its subcontractors. Should the employees of Vendor or its subcontractors cause damage or loss to the premises, surrounding areas, and/or furnishings or equipment contained therein, Vendor shall immediately identify the location, cause, and time of the damage to the appropriate AU contact. Vendor agrees to repair or replace any such damage or loss to AU's complete satisfaction at the Vendor's own expense.
- 16. CONFIDENTIALITY:** Vendor will keep information communicated by AU confidential using at least the same degree of effort it would use to keep its own information confidential. The Vendor will treat all such information as confidential, whether or not it is identified as confidential. Vendor will not disclose to any third party or use any reports, recommendations, opinions, and/or conclusions which the Vendor may provide to AU as part of his/her goods and services, without the express, written approval of AU.
- 17. 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 Vendor shall be solely the property of AU. Vendor agrees and understands that AU shall be the exclusive owner of any and all right, title, and interest including copyright in and to any works of authorship, derivative works, adaptations, inventions or other intellectual property generated by the Vendor, its employees or agents pursuant to these terms and conditions, and any advertising and or promotional materials relating thereto. AU and the Vendor agree that any product created, conceived, and/or prepared by the Vendor in the performance of the Services contained herein 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 Vendor, or in the Vendor'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 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 Vendor warrants and represents that the Vendor is the sole owner of the Deliverables and all the rights herein granted, and has full right and power to agree to these Terms and Conditions. The Vendor has not previously granted the rights to the Deliverables to another third party; that Vendor has used all reasonable care to ensure that all facts and statements in the Deliverables are true; that the Vendor 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 Vendor 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 Vendor 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' fee), arising out of or in any way connected with any breach of any

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representation, warranty, or covenant made by the Vendor herein. Subject to any pre-existing rights of third parties and of the Vendor, the Intellectual Property Rights (other than copyright) in all reports, documents and other materials which are generated or acquired by the Vendor (or any of its sub-contractors or agents) (“Vendor Materials”) in the performance of the Services shall belong to and be vested automatically in AU.

18. **INDEMNIFICATION:** Vendor shall defend, indemnify and hold AU harmless from and against all claims, demands, actions, causes of action, judgments, costs and reasonable attorneys’ fees and expenses of any kind or nature for bodily injury, death, property damage, or other damages of any kind incurred by AU, its employees, or third parties arising from any claim (i) resulting from Vendor’s acts or omissions in connection with the services provided; or (ii) resulting from Vendor’s breach of any of its obligations, representations or warranties under the Orders.
19. **FORCE MAJEURE:** AU may delay delivery, performance, or acceptance of the goods or services ordered hereunder in the event of causes beyond its control. AU shall be responsible only for Vendor’s direct additional costs incurred by holding the goods or delaying performance of the Order at AU’s request.
20. **LIMITATION OF LIABILITY:** In no event shall AU be liable for any loss of profits or for any indirect, incidental, special, exemplary, or consequential damages incurred by Vendor.
21. **ASSIGNMENT:** Terms may not be assigned, without the prior written consent of AU.
22. **OTHER VENDORS:** Nothing in these terms shall be construed to prevent AU from engaging other Vendors or persons during the term of work performed similar to that specified herein.
23. **GOVERNING LAW:** The Order and General Provisions of Services shall be governed by and construed in accordance with the laws of the District of Columbia.
24. **WAIVER & AMENDMENTS:** No waiver of any term, provision or condition of terms, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed as a further and continuing waiver of any such term, provision or condition of the terms. No amendment to any provision of the terms shall be effective unless in writing and signed by both parties.
25. **SEVERABILITY:** If any term, provision or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of the terms 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 shall be valid and enforceable to the fullest extent permitted by law.
26. **SUBCONTRACTED WORK:** In the event a portion of the Services is expected to be performed by Vendor’s subcontractor, before making any agreement with the Subcontractor, Vendor shall request approval in writing by AU’s representative, stating the subcontractor’s name, address, the particular portion of the Services to be performed by the subcontractor, and any and all pricing to be billed to Vendor. No provisions of the terms, nor any agreement between the Vendor and any subcontractor, shall be construed as an agreement between AU and any subcontractor. Vendor shall be fully responsible to AU for the acts and omissions of any Vendor’s subcontractor or any other vendors engaged by the subcontractor, as Vendor is for the acts and omissions of Vendor’s own employees. Vendor asserts that and of its subcontractors will abide by all terms of the General Provisions of Services as well as any referred terms from an SPO (Order) and/or AU accepted proposal.
27. **NO MECHANICS LIEN/S:** All services performed by the Vendor under the terms shall be kept free from all claims, liens, and charges whatsoever. Vendor shall from time to time upon AU’s request give a statement, in writing, sufficient to prove that all parties furnishing labor or materials under the terms have been paid.

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- 28. PUBLICATION & ADVERTISEMENT:** Neither party may use the name, logo, trademarks, service marks 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. AU's Executive Director of Communications and Marketing has authority over marks and publicity.
- 29. MANUFACTURER'S WARRANTY, MAINTENANCE, TRAINING AND DOCUMENTS:** Unless noted otherwise, all materials, equipment and workmanship provided under the terms shall be warranted for a period of not less than one year beyond the date of final acceptance. Vendor also agrees to fulfill the Orders in good faith and perform services and/or deliver goods in conformity to the Orders requirements. For any breach of warranty so notified to Vendor, Vendor shall re-perform the Services or correct any deficiencies in the Deliverables at no additional cost to AU. If Vendor is unable to re-perform the Services or correct any deficiencies in the Deliverables as warranted, Vendor shall promptly reimburse AU the fees paid by AU to Vendor for the deficient Deliverables and Services. Vendor shall provide appropriate training on the designated equipment prior to final project completion to AU free of charge. Preventative maintenance schedules shall be communicated in advance showing start dates, frequency of maintenance, details of work needed, materials and tools necessary to complete, safety issues or warnings (equipment lock out and/or tag out precautions) and other relevant information.
- 30. COMMITMENT TO AFFIRMATIVE ACTION / EQUAL OPPORTUNITY:** AU is an equal opportunity, affirmative action institution and, as such, operates in full compliance with the laws of the United States and the District of Columbia Human Rights Act of 1977. The policies of equal opportunity, affirmative action, and non-discrimination apply to every aspect of AU's operations and activities generally and that extends to admissions, employment, and access to AU programs and services.
- 31. WEBSITE REFERENCE:** Please see the following website for online version of these General Provisions of Services to AU for quick reference: [AU Terms and Conditions for Services](#)
- 32. COMPETITION OF DOCUMENTS:** The terms and conditions stated herein prevail over any conflicting documents. Any additional terms unilaterally proposed by Vendor are not agreed to by AU unless specifically acknowledged in writing.
- 33. DEBARMENT:** Seller represents that it is not currently listed on the Excluded Party List System and/or specially excluded (debarred) from Federal Procurement and Non-procurement Programs, which identifies those parties excluded throughout the U.S. Government (unless otherwise noted) from receiving Federal contracts or certain subcontracts and from certain types of Federal financial and nonfinancial assistance and benefits. Seller agrees to notify American University of any changes to this status within 10 days of that change.
- 34. ENTIRE AGREEMENT:** This Order and General Provisions of Services contains the entire agreement of AU and the Vendor and no terms may be modified or waived except by the mutual written consent of both AU and the Vendor.

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