

MASTER PROFESSIONAL SERVICES AGREEMENT

This Master Professional Services Agreement (this "Agreement") is made and entered into as of the ___ day of _____, 2017 (the "Effective Date"), by and between the UNIVERSITY OF LA VERNE ("the University") and _____, with its principal offices located at _____ (the "Service Provider").

WHEREAS, the University wishes to obtain the professional services of the Service Provider; and,

WHEREAS, the Service Provider has the knowledge, skill and capability to perform such services for the University.

THEREFORE, in consideration of the foregoing, the parties, intending to be legally bound, hereby agree to the following:

1. **Services.** The Service Provider is hereby retained by the University, and Service Provider agrees to provide the services as described in this Agreement (the "Services"). Services shall be performed in accordance with the time period set forth in Exhibit A, the Service Orders issued substantially in the form of and identified as Addendum A, as well as any supplemental instructions agreed to in writing by the parties. In the event no time for performance is specified, the Services shall be performed within a reasonable time in light of the nature of the engagement and any timing needs on the part of University of which Service Provider has or should have knowledge.
2. **Service Requirements.** The Services delivered hereunder shall conform in all material respects to (i) the provisions and specifications described in the Scope of Services attached as Exhibit A and the Service Orders issued substantially in the form of and identified as Addendum A authorizing provision of services, (ii) the University of La Verne General Terms and Conditions attached as Exhibit C, and (iii) any other requirements agreed upon by the parties in writing. Service Provider agrees to use sound and professional principles and practices in accordance with normally accepted industry standards in rendering Services, and Service Provider further agrees that performance shall reflect the best professional knowledge, skill and judgment of Service Provider. Service Provider shall furnish competent personnel for fulfillment of its obligations. If the University deems Service Provider personnel unsatisfactory to perform Services due to a failure by such personnel to comply with the terms and conditions imposed on Service Provider as set forth in this Agreement or for any other reason in the judgment of University, Service Provider agrees to remove and replace such personnel immediately.
3. **OWNERSHIP AND COPYRIGHT.**
 - a. **Work Product.** Any and all reports, documentation, files, media and other materials created or produced by Service Provider in connection with the Services shall be deemed "Work Product" and belong to the University. The University retains the right to modify the Work Product or to merge the Work Product into other documents or other materials owned or utilized by the University. Service Provider agrees to perform any and all acts

- necessary for an effective transfer and assignment to University of any and all intellectual property rights to the Work Product. Service Provider further agrees not to disseminate the Work Product, in whole or in part, to anyone other than designated University representatives without the express authorization of University unless required by law.
- b. **Service Provider Proprietary Material.** University does not under this Agreement acquire any ownership rights in and/or to any software, documentation, tools, techniques, methodologies or other material that was not or is not created as part of the Services to be rendered which is proprietary to Service Provider (“Service Provider Proprietary Material”). However, if Service Provider incorporates any Service Provider Proprietary Material into any Work Product, Service Provider hereby grants the University a nonexclusive, royalty free, fully paid, perpetual, irrevocable license to use the Service Provider Proprietary Material as part of the Work Product.
 - c. **Third Party Proprietary Material.** The University does not under this Agreement acquire any ownership rights in and/or to any software, documentation, tools, techniques, methodologies or other material which is proprietary to any third party (“Third Party Proprietary Material”). Service Provider may not incorporate any Third Party Proprietary Material into the Work Product without the prior written consent of the University. Service Provider shall be responsible for obtaining any necessary licenses for Third Party Proprietary Material.
4. **Payment.** The University agrees to pay Service Provider for Services completed in accordance with the terms of this Agreement. The fees and charges shall be based on the rates and descriptions specified in Exhibit B and the Service Orders issued as Addendum A, and shall be due and payable within thirty (30) days after receipt and approval by the University of Service Provider’s invoice accurately reflecting such matters. Except as otherwise specified in Exhibit B, Service Provider shall not incur or charge the University any other fees or expenses without the prior written authorization of the University.
 5. **Term.** The term of this Agreement shall commence on the Effective Date and shall continue for the performance period set forth in the Scope of Services, or if none, for a reasonable period in light of the nature of the Services to be performed, unless otherwise terminated in accordance with the provisions of this Agreement. Services authorized by Service Order issued as Addendum A shall be performed with the time period specified in such Service Orders, or if none, for a reasonable period in light of the nature of the Services to be performed. In no event shall the term of this Agreement extend beyond three (3) years unless otherwise expressly stated or extended by mutual written agreement. However, to the extent Service Provider is then obligated to perform services pursuant to one or more Service Orders at the time the term of this Agreement would otherwise expire, the term shall extend for period reasonable to allow Service Provider to complete such Services in accordance with the terms of the applicable Service Orders.
 6. **Insurance.** Prior to beginning any Services pursuant to this Agreement, Service Provider, at its sole cost and expense, agrees to comply with the insurance provisions set forth in Exhibit D, attached and incorporated by reference.

7. **Notices.** Except as otherwise provided, all notices under this Agreement shall be in writing, and shall be sent by certified mail, return receipt requested; hand delivered or delivered by a nationally recognized overnight courier, and shall be addressed as follows:

To University: University of La Verne
 1950 Third Street
 La Verne, CA 91750
 Attn: _____

Service Provider: _____

Attn: _____

Hand-delivered notices shall be effective immediately upon delivery. Notices sent by mail or overnight delivery shall be effective upon the earlier of actual receipt or two days after dispatch.

8. **Entire Agreement.** This Agreement, including the exhibits, addenda and other referenced documents that by this reference are incorporated and made part of this Agreement, represents the entire agreement between the parties and supersedes all prior and contemporaneous written or oral agreements and all other communications between the parties relating to the Services. Any additions, deletions or modifications shall not be binding on either party unless accepted and approved in writing by duly authorized representatives of both parties. In the event of any contradictory provisions between this Agreement and the terms of any Exhibits, addenda, attachments or any other authorized documents issued by the University or Service Provider in connection with this Agreement, the terms set forth in the body of this Agreement shall prevail, followed by the following order of priority:
- (i) Terms and Conditions – Exhibit C
 - (ii) Insurance Requirements – Exhibit D
 - (iii) Scope of Services – Exhibit A
 - (iv) Fees and Charges – Exhibit B
 - (v) Service Order – Addendum A
 - (vi) Most recent supplemental written instructions
9. **Modifications.** Alteration or variation of the terms of this Agreement shall not be valid unless made in writing and signed and dated by the parties.
10. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, and such counterparts will together constitute the same instrument.

11. **Severability.** The provisions of this Agreement shall be deemed severable, and if any portion should be held invalid, illegal or unenforceable for any reason, the remainder of this Agreement shall be effective and binding upon the parties, unless to do so clearly would violate the present legal and valid intention of the parties.

12. **Remedies.** Pursuit by either party of any remedies described in this Agreement, or otherwise available at law or in equity, shall not preclude pursuit by that party of any other remedy or remedies in the Agreement or otherwise. All remedies, rights, undertakings, obligations and agreements shall be cumulative and none of them shall be in limitation of any other remedy, right, undertaking, obligation or agreement of either party.

IN WITNESS WHEREOF, this Master Professional Services Agreement has been duly executed by the authorized representatives of the parties as of the date first set forth above.

Dated: _____, 20____

UNIVERSITY OF LA VERNE: University

By: _____

Name: _____

Title: _____

Dated: _____, 20____

_____: Service Provider

By: _____

Name: _____

Title: _____

List of Attachments:

Exhibit A – Scope of Services

Exhibit B – Fees and Charges

Exhibit C – Terms and Conditions

Exhibit D – Insurance Requirements

Addendum A – Service Order [Sample]

EXHIBIT A — SCOPE OF SERVICES

Service Provider shall provide the following services for and to the University of La Verne:

EXHIBIT B — FEES AND CHARGES

The fees for the Services described above shall be billed in accordance with the following schedule of fees:

In addition to the fees described above, the following charges may be billed to University, if applicable:

EXHIBIT C

UNIVERSITY OF LA VERNE GENERAL TERMS AND CONDITIONS

See Attached.

Exhibit C
UNIVERSITY OF LA VERNE
General Terms and Conditions – Professional Services

1. **Service Provider Relationship.** Both parties expressly acknowledge and agree that in the performance of Services under this Agreement, Service Provider is an independent contractor and is not an employee, agent, or officer of the University. Service Provider shall have no authority to, and shall not, incur any debt, obligation or liability on behalf of the University. While Service Provider may be required by this Agreement to carry Worker's Compensation Insurance, in no event shall Service Provider, its employees or agents be entitled to unemployment or workers' compensation benefits from the University.
2. **Compliance with Laws.** In the performance of this Agreement, Service Provider shall comply with and conform to all applicable laws and regulations of the United States, State of California, governing local jurisdictions and licensing and accrediting organizations.
3. **Payments and Invoices.** Payments under this Agreement shall be made in arrears of work increment completed to the satisfaction of the University and upon submission of an invoice detailing the Services performed, applicable billing rate, the identity of the person(s) who performed services, as well as an itemization of any expenses and disbursements for which reimbursement is sought. Unless otherwise specified, payments for services rendered will be processed monthly upon presentation and approval of the invoice. Invoices should be sent to the attention of the University Representative designated to receive notices under this Agreement.
4. **Time.** Time is of the essence in the performance of this Agreement
5. **Indemnification.** The Service Provider agrees to hold harmless, defend, and indemnify the University, its Trustees, officers, employees representatives, and agents from any and all claims, damages, losses, causes of action and demands, and all costs and expenses incurred in connection therewith, including, but not limited to, attorneys' fees and costs accruing or resulting to any other person, firm or corporation furnishing or supplying work, service, materials or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation related to, arising out of or resulting from Service Provider's performance of this Agreement. The duty to indemnify includes, by is not limited to, (1) any act or omission by Service Provider or its Personnel related to furnishing of Services under this Agreement, and (2) any claim alleging any unauthorized or infringing use by University or University's agents of any patent, process, trade secret, copyright, trademark, or other intellectual property right regarding the Services or Deliverables. This provision shall survive the expiration or termination of this Agreement.
6. **FERPA and Confidentiality.** Service Provider expressly acknowledges that records relating University students constitute education records of the students and are protected by the Family Educational Rights and Privacy Act ("FERPA"), at 20 U.S.C. § 1232g. To the extent the Services to be performed by Service Provider requires access to student education records, Service Provider acknowledges and agrees that it is considered to be a school official of University and is obligated to comply with the requirements of FERPA and its implementing regulations at 34 C.F.R. Part 99. Service Provider agrees to protect the privacy of education records concerning all University students, and will not transmit, share or disclose any such records without the student's written consent or as otherwise required by law, except to other school officials of the University who have a legitimate educational interest in the records.

Service Provider further acknowledges that in the performance of Services, it may have access to information pertaining to or otherwise in the possession of University. Service Provider acknowledges that such information is confidential. Service Provider expressly agrees not to use, disclose or otherwise divulge such information, in whole or in part, to any person or entity except as properly authorized by University.

This provision shall survive the expiration or termination of this Agreement.

7. **Termination for Convenience.** University may terminate this Agreement upon fifteen (15) calendar days' advance written notice to Service Provider. In the event of such termination, Service Provider shall be paid only for the work satisfactorily completed up to the effective date of termination, conditioned upon Service Provider delivering to University all Work Product and related materials.

8. **Termination for Cause.** Either party may terminate this Agreement for cause should the other party fail to perform any material obligation under this Agreement and such failure remains uncured ten (10) days after the effective date of a written notice of breach. In the event of such termination for cause by the University, University shall be relieved of the obligation to make any payment then due to Service Provider, and University may proceed by other means with the work in any manner then deemed proper in the sole judgement of University.

9. **Nondiscrimination.** In the performance of this Agreement, the Service Provider and its personnel shall not deny the Agreement's benefits nor shall they discriminate unlawfully against any person on the basis of race, color, religion, national origin, ethnic origin, ancestry, citizenship, sex (including pregnancy, childbirth, or related medical conditions), sexual orientation, gender (including gender identity and expression), marital status, age, physical or mental disability, medical condition, genetic characteristics, military and veteran status, or any other characteristic or status protected by applicable law. Additionally, the Service Provider and its personnel shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination as well.

10. **Assignment.** The parties acknowledge and agree that a substantial inducement to University for entering into this Agreement is the personal and professional skill, competence and reputation of Service Provider and its personnel. Accordingly, Service Provider acknowledges and agrees that it shall not assign this Agreement or delegate its duties under this Agreement in whole or in part without the prior written consent of University. Any attempt by Service Provider to assign its rights or duties under this Agreement to another person or entity without the prior written consent of University shall be void and ineffective.

11. **Non-Waiver of Rights.** No provision of this Agreement, or the right to receive reasonable performance of any act called for by its terms, shall be deemed waived by a waiver of a breach as to a particular transaction or occurrence and shall not prevent University from enforcing such provision or right on any future occasion. University's rights and remedies provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

12. **Attorneys' Fees.** The prevailing party in any dispute arising out of the performance of this Agreement shall be entitled to recover its attorneys' fees reasonably incurred in pursuing or defending the matter.

13. **Governing Law.** This Agreement is made under and shall be governed by and be subject to the laws of the State of California.

End of Exhibit C

EXHIBIT D

UNIVERSITY OF LA VERNE INSURANCE REQUIREMENTS

See Attached.

EXHIBIT D

UNIVERSITY OF LA VERNE Insurance Requirements

Prior to beginning any Services pursuant to this Agreement, Service Provider, at its sole cost and expense, shall obtain and maintain for the duration of the Agreement, and provide evidence in a form acceptable to the University, of the insurance coverage specified below with insurers and under forms of insurance satisfactory in all respects to the University:

a) Required Coverage:

- (i) Commercial General Liability Insurance: Including, but not be limited to, coverage for bodily injury or death, products and completed operations with broad form property damage coverage, premise liability coverage and coverage for all liabilities assumed by Service Provider and its agents pursuant to this Agreement, with coverage limits of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage per occurrence, and not less than Two Million Dollars (\$2,000,000) in the aggregate, annually.
- (ii) Automobile Liability Insurance: \$1,000,000 per accident for bodily injury and property damage.
- (iii) Workers' Compensation Insurance: As statutorily required with Employer's Liability insurance with a limit of \$1,000,000 and other limits required under California law.
- (iv) Professional Liability Insurance: Professional liability insurance on a claims made basis with coverage limits of not less than \$1,000,000 per claim, and \$2,000,000 policy aggregate. Amount may be increased to \$2,000,000 per claim, and \$4,000,000 policy aggregate at University's discretion based on the nature of the services to be performed pursuant to a Letter of Engagement for a specific matter.

b) Form of Policies and Required Provisions:

- (i) Deductibles and Self-Insured Retentions. All deductible and Self-Insured Retention amounts pertaining to any insurance procured by Service Provider pursuant to this Agreement must have deductibles or self-insured retentions not to exceed \$10,000 dollars per occurrence.
- (ii) Certificate Holder. The Certificate Holder should read as follows: University of La Verne, Attn: Risk Management, 1950 Third Street, La Verne, CA 91750.

- (iii) Additional Insured's. With the exception of the Professional Liability and Workers' Compensation - Employer's Liability and Automobile Liability policies, all policies of insurance which Service Provider is to obtain and maintain under this Agreement shall name University and its directors, officers, trustees, president, employees, volunteers, and agents as additional insured's, using Insurance Services Offices Form B (version CG 20 10 11 85 or equivalent acceptable to University). The additional insureds shall be provided the same coverage as provided Service Provider, and such additional insured coverage shall include completed operations coverage. All policies shall provide that the additional insured coverage shall be primary and that any other insurance coverage carried by or otherwise available to the additional insureds will be excess and will not contribute with this additional insured coverage. The following should be included in the "Description of Operations" of the certificate of insurance: "It is agreed that the Certificate Holder, University of La Verne, is included as an Additional Insured, as its interests may appear with respect to the operations of the Service Provider for services rendered to the Certificate Holder." All endorsements and exclusions affecting such additional insured coverage must be provided to, reviewed by, and found acceptable by University.
 - (iv) Service Provider's Insurance is Primary. Except Professional Liability and Workers Compensation, all policies of insurance required to be obtained and maintained by Service Provider under this Agreement shall state that such policy is primary and noncontributory with any insurance carried by University. The following should be included in the "Description of Operations": "The insurance provided by the Service Provider is primary and non-contributory to any insurance maintained by the University of La Verne."
 - (v) Insurer Requirements. All policies of insurance required to be obtained and maintained by Service Provider under this Agreement shall be issued by an insurance company acceptable to University, licensed to do business in the State of California, with a rating classification of "A-" or better and a financial size category rating of "IX" or better according to the latest edition of the A.M. Best Company Key Rating Guide.
- c) Proof of Coverage. As a condition precedent to University's duty to pay for any Services, Service Provider shall provide to the University a certificate of insurance issued by the insurance carrier providing coverage, accompanied by the endorsements (CG 20 10 11 85 or equivalent acceptable to University) showing the required coverages and additional insured or a copy of each insurance policy. Throughout the term of this Agreement, Service Provider shall furnish University with the required proof of insurance as follows: (i) with respect to any policy or coverage first obtained after the date of this Agreement, within thirty (30) days after such insurance is first obtained; and (ii) evidencing renewal of all insurance required to be maintained by Service Provider pursuant to this Agreement not less than thirty (30) days prior to the expiration of the insurance being renewed. The failure of Service Provider to provide such proof or University's failure to request the same shall not act as a waiver of any

of Service Provider's insurance requirements under this Agreement.

- d) Waiver of Subrogation. Service Provider for itself and on behalf of its insurers, to the extent legally possible without voiding the insurance required under this Agreement, hereby waives and releases University and all additional insureds from liability for loss, damage, or loss of property, which loss or damage is covered by said insurance. Service Provider shall obtain a waiver of any subrogation right that its insurers may acquire against the additional insureds by virtue of payment of any such loss covered by such insurance. The following should be included in the "Description of Operations": "Waiver of Subrogation included is in favor of the University of La Verne, its officers, officials, employees, and volunteers for general liability, auto liability, and workers' compensation."
- e) Notification of Cancellation. Service Provider agrees to immediately notify (or cause its insurers or insurance broker to notify) University of any notice of cancellation or rescission received from an insurance carrier referring to or relating to a policy which provides coverage to the additional insureds or otherwise may impact the ability of Service Provider to fully perform its insurance obligations, and such insurance shall not be cancelable, be subject to non-renewal, or otherwise be subject to material modification except with thirty (30) calendar days prior written notice to University.

ADDENDUM A

SERVICE ORDER [SAMPLE]

See Attached.

UNIVERSITY OF LA VERNE
Master Professional Services Agreement
Addendum A - Service Order _____ [Insert number]
Project Name: _____

Date: _____

Service Provider: Name: _____

Address: _____

This Service Order incorporates by reference all terms, provisions and conditions set forth in the Master Professional Services Agreement between the University of La Verne ("University") and _____ ("Service Provider") dated _____ ("MPSA"). To the extent there is any conflict between the terms of this Service Order and the terms of the MPSA, the terms of the MPSA shall prevail, followed by the order of precedence set forth in Section 8 of the MPSA.

When fully executed in counterparts, this Service Order authorizes Service Provider to provide the Services described below:

Project Name: _____

Project Location: _____

Project Number: _____

Scope of Services:

[Attach additional pages if necessary]

Deliverables:

[Attach additional pages if necessary]

Schedule/Time for Performance:

Start date: _____

Completion date: _____

Time for Performance: _____

UNIVERSITY OF LA VERNE
Master Professional Services Agreement
Addendum A - Service Order _____ [Insert number]
Project Name: _____

Payment/Compensation:

Compensation for this Service Order shall be in accordance with the Fees and Charges set forth in Exhibit B of the MPSA, not to exceed \$_____.

If applicable, reimbursable charges will be paid in addition to this amount in accordance with the MPSA, not to exceed \$_____.

Notes:

Approval Signatures:

This Service Order may be executed in counterparts, all of which together shall constitute a completely executed Service Order. A copy of a signed Service Order in PDF or facsimile format shall be considered as valid and binding as an original.

UNIVERSITY OF LA VERNE: University

By: _____
<Signature>

<Printed name and title of authorized signatory>

Date: _____

_____: Service Provider

By: _____
<Signature>

<Printed name and title of authorized signatory>

Date: _____