

Professional Service Agreement

This Professional Service Agreement (the “Agreement”) is made by and between Carleton College (“Carleton”) and _____ (“Consultant”).

The parties agree as follows:

- 1. General Purpose.** The general purpose of this Agreement is to engage the services of Consultant to perform the services described in Exhibit A (the “Services”).
- 2. General Duties of Consultant.** Consultant shall perform the Services in conformance with schedules attached as incorporated herein (if applicable), and in conformance with professional standards for performing services of a similar kind. Whether or not the work of Consultant, or any part or segment thereof, conforms with such standards shall be determined solely by Carleton. Nothing in this Agreement shall be construed to prevent Consultant from performing work for other persons, businesses or organizations during the term of this Agreement unless doing so would violate any obligations under this Agreement.
- 3. Terms of Payment.** As compensation for the satisfactory performance of the Services, Carleton shall pay Consultant [\$ _____ per [hour] **OR** a total fee of \$ _____ upon completion of the Services] (the “Fee”). [***CONSIDER:** Hours in excess of _____ hours per [CHOOSE ONE: day **OR** week **OR** month] must be pre-approved in writing by Carleton.]* [**IF APPLICABLE:** Consultant shall submit timely invoices to Carleton and shall not submit more than one invoice per month. The invoices shall include an itemization of charges and, at a minimum, a description of the services performed. No payment shall be due before receipt of a properly prepared invoice.]
- 4. Supplies.** Consultant shall supply all equipment, tools, materials, and supplies necessary to provide and complete the Services, and shall be responsible for Consultant’s own equipment and personal property.
- 5. Independent Contractor.** In the performance of the work hereunder, Consultant shall be an independent contractor and not an employee of Carleton. Consultant may determine, in Consultant’s sole discretion, the means and manner of performing the Services except as expressly limited by this Agreement. Consultant is not an agent of, or authorized to transact business, enter into agreements, or otherwise make commitments on behalf of Carleton unless expressly authorized in writing by an officer of Carleton. Carleton will not pay or withhold federal, state, or local income tax or other payroll tax of any kind on behalf of Consultant or its employees. Consultant is not eligible for, not entitled to, and shall not participate in any of Carleton’s pension, health, or other benefit plans. If any taxing authority determines that Consultant is an employee of Carleton, the parties agree that Consultant shall not be deemed a participant in any benefit plan of Carleton irrespective of such determination, except as may be required by applicable law. Consultant is responsible for the payment of all required payroll taxes, whether federal, state, or local in nature, including, but not limited to income taxes, Social Security taxes, Federal Unemployment Compensation taxes, and any other fees, charges, licenses, or payments required by law. Consultant indemnifies Carleton and holds it harmless against any fines, damages, assessments, or attorney fees in the event a court or administrative agency finds that Consultant or anyone engaged through Consultant is an employee of Carleton; Consultant will reimburse Carleton for any such taxes, interest, or penalties that Carleton is required to pay.

6. Confidentiality. All data and information in any format submitted or made available to Consultant by Carleton or any other person on behalf of Carleton, unless otherwise publicly available, and all data and information, and other work developed by Consultant under this Agreement (“Carleton Data”), shall be utilized by Consultant solely in connection with the performance of the Services under this Agreement and shall not be made available by Consultant to any other person. Confidentiality obligations shall survive termination of any agreement with Consultant for a period of ten (10) years or for so long as the information remains confidential, whichever is longer.

7. Assignment of Work. All documentation, designs, methods, writings, compilations of information, reports, graphics and/or other materials produced or created by Consultant in connection with performing the Services (collectively the “Work”), shall be considered work made for hire and ownership of the entire right, title and interest in the Work, including but not limited to any copyrights, patents, trade secrets, trademarks and other intellectual property rights therein, shall reside in Carleton. If the Work cannot for any reason be considered a work made for hire, then the parties agree that the entire right, title and interest in the Work, shall be and hereby are assigned by Consultant to Carleton, and that Consultant will execute all documents necessary to assign and transfer to Carleton, or its nominees, successors, or assigns, free of encumbrances, all rights, title, and interest in and to the Work and for Carleton to perfect such rights in and to the Work.

8. Compliance with Applicable Laws and Carleton Policies. Consultant agrees to comply with all applicable state and federal laws, regulations, and Carleton policies pertaining to information designated as private, protected, sensitive or confidential by law or by Carleton, including Carleton's data classification and handling policies, MN Statute 325E.61, the Family Educational Records Protection Act (FERPA), Health Information Privacy and Accountability Act (HIPAA), and the Gramm-Leach Bliley Act (GLBA). Consultant shall obtain and maintain all necessary permits, licenses and certificates required to provide for the delivery of the Services.

9. Data Security. All facilities and other resources used to store and/or process Carleton Data will employ reasonable and appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure Consultant's own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved. Consultant will use industry-standard and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing services under this Agreement. Consultant will update its tools and technologies during the course of the Agreement as industry standards change and updated tools and technologies become available. Consultant will ensure that its employees, subcontractors and agents who perform work under this Agreement receive appropriate instruction as to how to protect data consistent with the provisions of this Agreement. Consultant will perform background checks on all personnel who have potential to access Carleton Data. Consultant agrees that it will (1) conduct criminal and sex offender background checks on all staff, volunteers and agents of Consultant; (2) disqualify staff, volunteers and agents who have been convicted of, pled guilty to, or not contested any theft, fraud, hacking or other threats to cybersecurity. Background checks will be performed before permitting any staff, volunteers and/or agents to assist in the performance of the Services.

10. Data Breach Notification. If Consultant becomes aware of any potential breach, or experiences a security breach, relating to Carleton Data, in addition to Consultant's responsibilities under state and federal law, Consultant shall immediately, but no later than twenty-four (24) hours, notify Carleton and shall fully cooperate with Carleton. “Data Breach” shall be defined to include, but is not limited to, unauthorized access, use, loss or disclosure of Carleton Data irrespective of data classification, confidentiality, or sensitivity. Consultant shall indemnify Carleton for any breach of confidentiality or

failure of its responsibilities to protect confidential information, specifically with regard to, but not limited to, the cost of notification of affected persons as a result of its accidental or negligent release of data provided to Consultant pursuant to this Agreement.

11. Return of Property and Data. Consultant agrees that upon Carleton's request or upon termination of this Agreement it shall return all Carleton Data and other property that come into Consultant's possession pursuant to this Agreement or the performance of the Services to Carleton. Carleton Data shall be returned to Carleton in a useable electronic form, and Consultant shall erase, destroy, and render unreadable all Carleton Data in its entirety in a manner that prevents its physical reconstruction through the use of commonly available file restoration utilities. Consultant shall certify in writing that these actions have been completed within 30 days of the termination of this Agreement or within 7 days of Carleton's request, as applicable.

12. Indemnification and Release. Consultant shall defend, indemnify, and hold harmless Carleton from and against any and all claims, losses, liabilities, or expenses of any type whatsoever that may arise from the Consultant's performance of the Services, the actions or inactions taken by Consultant, and the presence of Consultant or its employees on Carleton property, whether or not any such claims, losses, liabilities, or expenses are caused, in whole or in part by, or are based upon, the alleged negligence of Carleton or any of the other indemnified parties or caused or based upon the alleged breach of any legal duty or obligation on the part of Carleton.

The indemnification provision shall include, but not be limited to, those claims resulting in personal injuries, death, loss, or damage to property of Carleton, Consultant or any other party. Consultant acknowledges that the indemnity granted to Carleton by this Agreement includes indemnification for claims brought by employees of Consultant against Carleton. In the event that an employee of Consultant makes such a claim, Consultant agrees to waive the immunity that the Worker's Compensation Act provides to employers against indemnity claims by parties such as Carleton or the other parties indemnified hereunder.

Consultant releases and waives any and all claims, demands, or causes of action against Carleton, its trustees, officers, faculty, students, employees and/or agents that arise from or are connected with Consultant's obligations pursuant to this Agreement, any injury to employees or agents of Consultant or damage to or loss of any property of Consultant or its employees or agents, regardless of whether or not any such claims, losses, liabilities or expenses are caused in part by the negligence of Carleton or any of the other indemnified parties.

In the event that any claim, demand, suit or other legal proceeding arising out of any matter relating to this Agreement is made or instituted by any person against Carleton, Consultant shall, at its own cost and expense, provide Carleton with all reasonable information and assistance in the defense or other disposition thereof. The provisions of this Section shall survive the termination or expiration of this Agreement.

13. Insurance. Consultant, at its own cost and expense, shall obtain and maintain in force during the term of this Agreement, the following insurance coverage:

- (a) Commercial General Liability insurance all on an occurrence basis in an amount not less than \$1,000,000 per occurrence limit per project/jobsite for bodily injury and property damage; \$1,000,000 personal and advertising injury; \$2,000,000 General Aggregate; \$2,000,000 products/completed operations aggregate; and \$100,000 Fire Damage Legal. Coverage is to include full contractual liability coverage. **If the services involve any work with minors, coverage shall also include Sexual Abuse and Molestation in an amount no less than**

\$1,000,000 per occurrence. If the Sexual Abuse and Molestation coverage is not included in the Commercial General Liability policy and is a separate policy, it must also be covered under the excess/umbrella liability policy.

- (b) Worker's Compensation insurance in amounts required by law for all employees, and Employer's Liability insurance with minimum limits as follows: Bodily Injury by Accident \$500,000 Each Accident, Bodily Injury by Disease \$500,000 Policy Limit, Bodily Injury by Disease \$500,000 Each Employee.
- (c) Business Automobile Liability insurance for bodily injury (including death) and property damage with a minimum combined single limit of \$1,000,000 per occurrence including coverage for owned, non-owned and hired vehicles.
- (d) Professional Liability Insurance including errors and omissions in an amount not less than \$2,000,000 per claim covering the Services under this Agreement and shall be maintained for a minimum of two years following completion of all Services under this Agreement.
- (e) Excess (Umbrella) Liability insurance all on an occurrence basis with an occurrence/aggregate minimum limit of \$5,000,000 all to be following form over underlying Commercial General Liability, Business Automobile, and Employers Liability insurance policies.
- (f) **If Consultant has access to private, protected, confidential and/or sensitive information as described in this Agreement:** Cyber/Network Security & Privacy Liability coverage with a minimum of \$5,000,000 per incident/claim/\$5,000,000 aggregate covering described services contained within the Agreement to include, but not be limited to, data breach, security and privacy violations, first party damage, third party liability, regulatory fines and penalties, crisis management costs which include customer notification expenses and credit monitoring. Coverage shall be maintained for a minimum of two years following completion of all services under this Agreement.
- (g) Consultant is responsible for insuring its/his/her own property and equipment and waives subrogation against Carleton for any loss, theft or damage.

The insurance requirements identified above shall not be construed to modify, limit or reduce the indemnifications requirements set forth herein. All such coverage shall be in a form and with insurers acceptable to Carleton and licensed to conduct business in the State of Minnesota with an A.M. Best Carrier rating of A VIII or better.

A certificate of insurance must evidence each policy of insurance listed above. Carleton, its subsidiaries and affiliates, trustees, officers, faculty, students, employees and/or agents must also be named as an additional insured for each line of insurance, on a primary and non-contributory basis, except for (b), (d), (f) and (g). In addition, Consultant must attach a copy of Additional Insured endorsement CG 2010 and Additional Insured Completed Operations endorsement CG2037 (or their equivalent) to the certificate. Coverage shall include any and all costs and expenses incurred in connection with the investigation, adjustment or defense of claims. Certificate must also evidence waiver of subrogation on all insurance policies. The required certificates of insurance shall be delivered as soon as possible, but no later than five (5) days before the Term of the Agreement commences to: purchasing@carleton.edu. Consultant shall provide written notice of cancellation or non-renewal. Neither the issuance of any insurance policy required under this Agreement, nor the minimum limits specified herein with respect to Consultant's

insurance coverage, shall be deemed to limit or restrict in any way Consultant's liability arising under or out of this Agreement.

14. Assignment. Consultant may not assign, transfer, convey, pledge, or otherwise dispose of its interest, or any part thereof, in this Agreement. Carleton may, at any time, assign, transfer, convey, pledge, or otherwise dispose of its interest, or any part thereof, under this Agreement.

15. Publicity. Consultant may not use any intellectual property or other property of Carleton including but not limit to logo, data, pictures, word marks, trademarks, copyrights or other property belonging to Carleton in its external advertising, marketing programs, or other promotional efforts, except with advance, written authorization from Carleton.

16. Termination.

(a) Without Cause. Either Carleton or Consultant may cancel and terminate this Agreement and the Services upon at least twenty (20) days' written notice to the other party.

(b) With Cause. Either party may terminate this Agreement and the Services immediately for cause. For this purpose, "cause" means a material breach of this Agreement by the other party that is not cured within five (5) days of the receipt of notice of the alleged breach by the non-breaching party to the breaching party; provided that no opportunity to cure is required if the alleged breach is not, by its nature, curable.

17. Governing Law. This Agreement shall be governed by and construed exclusively in accordance with the laws of the state of Minnesota. If any term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law governing this Agreement, the validity of the remaining portion shall not be affected thereby.

18. Force Majeure. This Agreement is subject to immediate termination upon written notice to the other party in the event of sickness, accidents, whether, riots, strikes, epidemics, pandemics, acts of God, or any other legitimate conditions beyond Carleton's or Consultant's control. In the event this Agreement is terminated pursuant to this paragraph, Carleton shall not be obligated to compensate or make payments to Consultant.

19. Conduct. During the performance of this Agreement, Consultant acknowledges and is responsible to ensure that its officers, directors, employees, agents or sub Consultants adhere to and obey all Carleton rules, policies, and procedures when on Carleton property, including, but not limited to, prohibition of the use of drugs and alcohol, as well as banning weapons from Carleton's premises.

20. Entire Agreement. This Agreement (including Exhibit A) constitutes the entire agreement and there are no oral or other representations regarding the subject of this Agreement that are binding on either party. All changes to this Agreement or Exhibit A must be in writing, signed by both parties. It is understood and agreed that e-mail correspondence shall not constitute "a writing" to this Agreement unless expressly included herein.

21. Miscellaneous. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns; (ii) may be executed in one or more counterparts, all of which shall be considered one and the same agreement; (iii) embodies the entire agreement and understanding, and supersedes all prior agreements and understandings between Carleton and Consultant relating to the subject matter hereof; and (iv) may be amended or modified only in writing or as specifically provided herein.

THE INDIVIDUAL SIGNING below hereby represents and warrants that s/he is duly authorized to execute and deliver this Agreement on behalf of Consultant and that this Agreement is binding upon Consultant in accordance with its terms.

CONSULTANT:

CARLETON:

Printed Name

Printed Name

By _____
(signature)

By _____
(signature)

Date _____

Date _____



EXHIBIT A

DESCRIPTION OF SERVICES

Consultant shall provide the services described below or in Consultant's proposal attached hereto and incorporated herein. To the extent that Consultant's proposal contains terms and conditions that conflict with the terms of this Agreement or bind Carleton to any obligations that are not set forth in this Agreement, this Agreement controls and such conflicting terms and conditions are unacceptable, void and of no effect.

Description of Services: