



# Provider Agreement

This Provider Agreement (“Agreement”) is between the American Heart Association, Inc. (“AHA”), a New York not-for-profit corporation, having its principal offices at 7272 Greenville Avenue, Dallas, Texas 75231-4596, and:

**Provider’s Business Name:** ( “Provider”)

**Business Address:**

**Remit to Address (if different than above):**

In consideration of the mutual promises of the parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both, the AHA and Provider agree to the following terms and conditions:

1. **Project:** Provider agrees to provide AHA with the services (“Services”) and deliverables (“Deliverables”) described on Attachment A, which is attached to and incorporated in this Agreement by reference. Time is of the essence, and Provider must meet all deadlines and timetables.
2. **Payment:** The AHA will pay Provider the Fees and Expenses(if applicable) set out below, together not to exceed the total sum payment of \$\_\_\_\_\_, payable by AHA within thirty (30) days of AHA’s receipt of Provider’s itemized invoice of actual time worked and expenses incurred, supported by receipts:

<p>a. <u>Fee:</u> The AHA will pay to Provider a total Fee not to exceed \$ _____ as full compensation for all Services rendered by the following schedule: (check only one box below).</p> <p><input type="checkbox"/> _____% of the total Fee on _____ (date), _____% on _____ (date) and remaining amount of the total Fee upon Provider’s satisfactory completion of this Agreement and AHA’s final written acceptance of all Services and Deliverables; <u>OR</u></p> <p><input type="checkbox"/> at the rate of \$ _____ per <input type="checkbox"/> hour <input type="checkbox"/> day <input type="checkbox"/> week <input type="checkbox"/> month (check only one); <u>OR</u></p> <p><input type="checkbox"/> according to milestones set out in Attachment A; <u>OR</u></p> <p><input type="checkbox"/> at a piece rate of \$ _____ per _____ as set out in Attachment A.</p>
<p>b. <u>Expenses:</u> (check only one box below):</p> <p><input type="checkbox"/> AHA will pay Provider’s reasonable travel and related expenses (in accordance with AHA’s policies) which have been approved in advance by the AHA in writing, not to exceed the total sum of \$_____.</p> <p><input type="checkbox"/> AHA will pay NO expenses under this Agreement.</p>

3. **Term:** This Agreement is effective \_\_\_\_\_ (“Agreement Effective Date”) and ends on \_\_\_\_\_ (“Agreement End Date”) (such term not to exceed one year), unless terminated sooner in accordance with the provisions of Section 13.
4. **Entire Agreement:** This Agreement, with the incorporated attachments, embodies the entire agreement and the understanding of the parties with respect to the subject matter of this Agreement. The parties have not relied upon any promises, representations, warranties, agreements, covenants, or undertakings, other than those expressly set forth or referred to in this Agreement. This Agreement supersedes all prior agreements and the understanding between the parties with respect to such subject matter. This Agreement may not be amended except by a writing signed by authorized representatives of both parties. The terms in Sections 1-15 of the Agreement will supersede any additional or conflicting legal and payment terms in any Attachments or other attached documents.
5. **Project Management and Reports:** Provider is responsible for, and will personally direct the performance of, all Services covered by this Agreement. Provider will use qualified and experienced employees and contractors to provide the Services and Deliverables under this Agreement. Provider will produce any Deliverable (if applicable) described in Attachment A by the stated deadline(s). Provider’s failure to provide the Services or Deliverables described in this Agreement according to the deadlines and standards stated in Attachment A will constitute a breach of this Agreement. Provider must furnish, at its own expense, all labor, materials, equipment, and other items necessary for this Agreement. All Services and Deliverables under this Agreement must be performed to the complete satisfaction of the AHA. Provider must provide the AHA with periodic progress reports as requested by AHA and grant access to AHA representative(s) during regular business hours to inspect the quality or progress of Services including, but not limited to, the security of systems storing or processing AHA Confidential Information. At all times, Provider will grant the AHA representative(s) reasonable access to all books, records, correspondence, instructions, receipts, vouchers and memoranda relating to the contracted Services that are in the possession or custody of Provider.
6. **Relationship of Parties:** This Agreement creates an independent contractor relationship between the AHA and Provider. Provider, including but not limited to a Provider employee, is not an employee of the AHA, and is not entitled to any of the benefits provided by the AHA to its employees, including but not limited to, group insurance or pension plan. Provider must not represent itself as an employee, agent, or representative of the AHA. Provider may not incur any obligations for the AHA not specifically authorized in this Agreement. The AHA may retain others to perform the same or similar Services that Provider performs in this Agreement. Provider shall not use the AHA’s trademarks in any manner whatsoever.
7. **Ownership of Intellectual Property:**
  - a. **AHA Materials:** Provider agrees that the AHA owns the copyright in all copyrighted or copyrightable works (“AHA Materials”) provided or created by AHA hereunder, in any form, format, medium or means of transmission or distribution. Provider may not copy, modify or distribute AHA Materials without the AHA’s prior review and written consent. Nothing in this Agreement shall be deemed an assignment or transfer of AHA’s ownership rights in AHA Materials to Provider.

- b. Deliverables:** Any materials including, but not limited to, writings, designs, drawings, photographs or data that Provider creates for or provides to AHA while performing this Agreement shall be considered Deliverables, and, to the fullest extent allowed by law, are "work-for-hire" prepared specifically for the AHA by Provider, and the AHA is the sole owner of the copyright. If Deliverables are not, by law, capable of characterization as "work-for-hire," Provider agrees to assign, and hereby assigns, and shall cause each employee, individual, subcontractor, or other Provider engaged in connection with the creation or publication of Deliverables, to assign to the AHA any and all copyrights and other intellectual property rights, including without limitation, rights to use, reproduce, distribute, display, perform and prepare compilations, derivative works or any other secondary works, that Provider or such employee, individual, subcontractor or Provider owns or acquires, or may own or acquire in the Deliverables. Except as specified in performance of this Agreement, Provider will not use Deliverables without AHA's prior written consent. Provider shall not raise, and shall ensure that no employee, individual and/or company engaged to assist in the creation of Deliverables raises, any copyright claim, including, without limitation, any moral rights, intellectual property, ownership or any other claims of any kind against the AHA arising out of or in connection with the Deliverables. Provider warrants that the Deliverables are Provider's original and unpublished work, or, if applicable, that Provider owns all right, title and interest in the Deliverables and that it has the sole and exclusive right to dispose of the Deliverables and grant the rights granted in this Agreement. Further, Provider warrants that the Deliverables contain no defamatory or unlawful matter and do not infringe the copyright or violate the proprietary rights of any person or entity. Provider agrees to cooperate with the AHA as necessary to protect AHA's ownership interest in the Deliverables and further agrees, upon written request of the AHA, to execute any documents and provide any other cooperation and assistance necessary to accomplish the assignments pursuant to this Section 7.b., to perfect the AHA's sole ownership in and to all Deliverables, and to file any application and obtain any registration in the AHA's name with regard to any Deliverables.
- 8. Warranty & Liability:** Provider warrants that the Services and Deliverables described in this Agreement conform to the requirements and criteria as detailed in this Agreement, and that the Services and Deliverables are free from defects in material, design, and workmanship and meet industry standards. Provider warrants that all work under this Agreement will be performed in the United States, unless Provider specifically states otherwise. Provider assumes total responsibility for all loss of, and damage to, its equipment or materials used or held for use in connection with the Services performed during the term of this Agreement. Provider agrees to indemnify and defend the AHA against any and all liabilities, losses, damages, suits, claims, demands, costs and expenses, including but not limited to reasonable attorney's fees, which arise or result in any way from the Provider's performance of this Agreement. ***IN ADDITION, WHEN PERSONAL AND BODILY INJURY CLAIMS ARISE FROM PROVIDER'S PERFORMANCE OF SERVICES ON AHA'S PREMISES, THE INDEMNITY SET FORTH ABOVE APPLIES NOTWITHSTANDING ANY ALLEGED OR PROVEN NEGLIGENCE ON THE AHA'S PART.*** For the purposes of this paragraph, the parties indemnified and insured include the AHA, its officers, directors, members, agents and employees. Provider must carry liability insurance as described in Attachment B, which is attached to and incorporated into this Agreement by reference. The AHA shall give Provider prompt written notice of any liabilities, losses, damages, suits, claims or demands (hereinafter "Claims") for which the AHA is entitled to indemnification hereunder. Provider shall assume defense of the Claims, and shall consult with the AHA about all aspects of the defense and keep the AHA apprised of any and all court proceedings, filed court papers, and/or settlement offers relating to the Claims. The AHA shall have the right to approve any settlement of the Claims providing for any relief other than the payment of money; and the AHA shall cooperate with and provide reasonable assistance to in defending against any Claims, at Provider's expense.
- 9. Confidentiality:** The term "Confidential Information" includes all non-public information of the AHA, including, but not limited to, business affairs, finances, methods of operation, plans and/or other data proprietary to the AHA, personal information of individuals ("Personal Information") and other data contained within files, databases, networks and computer systems of the AHA ("Systems") or gathered by Provider for AHA under this Agreement. Except as otherwise expressly directed by the AHA in writing, Provider agrees, on behalf of itself, its officers, directors, employees, subcontractors and agents, that it will not, at any time during or after the term of this Agreement, use Confidential Information for purposes not authorized in writing by AHA, or disclose or allow to be disclosed any Confidential Information to any third party whatsoever, or permit any third party to examine and/or make copies of any reports, documents, data, or non-public information prepared by it or that comes into its possession or under its control by reason of this Agreement. If Provider or any of its Personnel becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil or criminal investigative demand or similar process) to disclose any Confidential Information, then Provider shall provide AHA with prompt prior notice so that AHA may seek a protective order or other appropriate remedy. Provider agrees not to access any Systems without express written authorization of the AHA, and to fully comply with AHA policies regarding use of the Systems. Upon termination of this Agreement, it will turn over to AHA all Confidential Information and data files, documents, tapes, disks, papers and other matter in print or electronic form in its possession or under its control that relate to the Confidential Information. Upon notice given by AHA, Provider will immediately destroy its own files and other records, whether in print or electronic format, that contain any Confidential Information and will certify destruction to AHA.
- 10. Data Security:** If the Agreement requires Provider to gather or maintain Personal Information for AHA, Provider agrees to gather and store such information in a manner that complies with the AHA's Privacy Policy at [http://www.heart.org/HEARTORG/General/Privacy-Policy\\_UCM\\_300371\\_Article.jsp](http://www.heart.org/HEARTORG/General/Privacy-Policy_UCM_300371_Article.jsp), as may be amended, and to obtain all relevant and necessary consents for use and disclosure of the Personal Information in conformity with applicable law and AHA policies. Provider will notify AHA immediately of any breach or possible breach of its systems that might result in the disclosure of Confidential Information to third parties not authorized to receive or use such information. Provider will immediately take appropriate action to correct any deficiency in its security systems in order to prevent further disclosure of Confidential Information. Provider will cooperate with the AHA in sending notices if Personal Information may have been disclosed and will pay all costs associated with sending such notices or other remedial action that may be needed. Provider shall maintain back-up files of any AHA data. Provider shall so maintain at least three (3) generations (3 days of data) of the data, and at least one generation shall at all times be kept by Provider in a secure, fire-proof, off-site storage facility.
- 11. Background Checks:** Provider agrees that all employees and subcontractors it assigns to work on AHA premises or that will have access to AHA networks, Systems or sensitive proprietary information shall have undergone criminal and U.S. Patriot Act background checks, and shall have been determined to be acceptable by AHA prior to beginning any such assignments. Provider shall provide AHA with proof of such checks upon the receipt of a written request from AHA for such documentation.
- 12. Compliance:**
- a. No Conflict of Interest:** Provider warrants and represents that all persons or entities utilized by Provider to carry out its obligations under this Agreement ("Suppliers"), including Provider, are free from conflict of interest. By way of illustration, and not as limitation, this means that Provider's staff cannot receive payments or other compensation from Suppliers that might improperly influence Provider's acquisition of goods or services for the AHA; Provider's staff cannot have a financial or other interest, direct or indirect, in a Supplier for the goods or services provided under this Agreement; and Provider may not make payments or provide gifts or other items of value to an AHA employee which might influence their decision to acquire goods or services from Provider. Provider also agrees that in the event a conflict of interest arises, Provider will immediately notify the AHA in writing.

- b. **Laws:** Provider and its subcontractors shall comply with all federal, state and local laws and regulations, including but not limited to 41 C.F.R. Sec. 60-1.4(a), 60-250.5, 60-300.5(a), 60-741.5(a), and 29 C.F.R. Sec. 471, Appendix A to Subpart A, as applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment qualified individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.
  - c. **Acceptable Use Policy:** When Services and Deliverables covered by this Agreement include access to the AHA's Systems, Provider warrants and agrees that Provider, its employees, and subcontractors agree to comply with the AHA's Acceptable Use Policy.
  - d. Provider acknowledges and agrees that a breach by Provider of any portion of this section 12. shall be a material breach, and the AHA shall be entitled, in addition to other remedies available to it, to immediately terminate the Agreement.
- 13. Termination:** If Provider defaults in the performance of any of the terms or conditions of this Agreement, the AHA may terminate this Agreement immediately. Alternatively, in AHA's sole discretion, AHA may provide Provider with ten (10) business days after receipt of written notice to cure this default. If Provider fails to cure the default within this ten (10) business day period, then the AHA may, without further notice, and without prejudice to any other remedy to which it may be entitled at law or in equity, or elsewhere under this Agreement, terminate this Agreement. Upon termination or expiration of this Agreement for any reason, Provider agrees to (i) deliver to the AHA all documents, papers, and other matters, in print or electronic form, including those comprising the Deliverables, in whatever stage of completion, that are in Provider's possession or under its control that relate to the AHA or this Agreement, including all Confidential Information; (ii) any material purchased specifically for the AHA that has been billed to the AHA and for which the AHA has paid/reimbursed Provider; and to (iii) fully destroy any copies of such Confidential Information from Provider's own computers, systems or recording media. Provider will cooperate with AHA to promptly transfer services to another AHA service provider, if required by AHA. Upon termination, AHA will pay Provider undisputed amounts as follows: (1) the fees for Services and Deliverables completed and delivered in conformity with this Agreement prior to the date of termination; plus, (2) expenses actually incurred by Provider as approved by AHA under the terms of this Agreement.
- 14. Force Majeure:** Neither party shall be in default under this Agreement for a failure to perform, if such failure results from fire, explosion, strike, freight embargo, natural disaster, act of God, act of the public enemy, war, civil disturbance, terrorism, act of any government de jure or de facto or agency or official thereof, labor shortage, transportation contingencies, unusually severe weather, default of manufacturer or a supplier, quarantine restrictions, epidemic, catastrophe, or similar cause beyond the reasonable control of such party. Whenever possible, any schedule or time for performance set out in this Agreement shall be extended as necessary to overcome the effects of such force majeure.
- 15. Miscellaneous:** This Agreement may not be assigned by either party without the prior written consent of the other party. A waiver by a party of any term, provision, or condition of this Agreement, whether by conduct or otherwise, is not a waiver of any other provision of the Agreement; and will not constitute a continuing waiver. A waiver is not binding unless put in writing by the party making the waiver. **No amendment of any of these preprinted terms is binding upon the AHA unless approved in writing by the AHA.** This Agreement does not confer upon any person or entity, other than between the parties, any rights or remedies under this Agreement. This Agreement does not relieve or discharge any liability of the parties or any third party. No provision in this Agreement gives any person or entity any right of subrogation or action against the AHA. Should a court declare any part, term, or provision of this Agreement invalid, void, or unenforceable, all remaining parts, terms, and provisions will remain in full force and effect. The subject headings of this Agreement are included for the purposes of convenience and reference only, and will not be deemed to explain, modify, limit, amplify or aid in the meaning, construction or interpretation of any of the provisions of this Agreement. Sections 7 (Ownership of Intellectual Property), 8 (Warranty & Liability), 9 (Confidentiality) and 10 (Data Security) survive termination of this Agreement. This Agreement is governed by the laws of the State of Texas regardless of its conflict of laws provisions. Venue for any action will be in Dallas County, Texas.

**This Agreement is made and entered into by both parties as of the Agreement Effective Date.**

**American Heart Association, Inc.**

**Provider**

By: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

By: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

**Attachment A**

## Description of Services and Deliverables

*[Below in italicized font are the elements of the project that should be described in this Attachment A. AHA staff must write descriptions for each element, and delete italicized directions]*

1. Description of Services. Provider shall perform the following Services for AHA:
  - *[Describe the Services to be provided by Provider. Be specific as to the specifications and expectations of AHA in order to have an enforceable contract]*
2. Description of Deliverables. Provider shall provide the following Deliverables to AHA:
  - *[Describe the Deliverables to be provided by Provider. Be specific as to the specifications and expectations of AHA in order to have an enforceable contract.]*
3. Parties Responsibilities. The Parties are responsible for the following: *[List any resources, equipment, tools or supplies required from either party]*
  - Provider is responsible for:
  - AHA is responsible for: *[optional, if no AHA responsibilities, delete]*
4. Schedule. Provider shall perform Service and provide Deliverables according to the following schedule:
  - *[List all dates of the timetable or target dates for Services and Deliverables.]*
5. Milestones & Payments. AHA shall pay Provider in the amounts and according to the following milestones:  
*[Complete if this option is selected in Section 2a of Agreement. Otherwise delete]*
6. Performance Standards. Provider shall perform Services and Deliverables to the following standards:
  - *[How will AHA determine if Provider has performed satisfactorily – that services and deliverables meet AHA needs?]*
6. Additional Provisions. *[List additional provisions if necessary. Otherwise delete this section.]*

**Attachment B**  
Insurance

Provider must carry liability insurance in the following amounts as well as all necessary workers compensation insurance, to fully protect both parties from any and all claims for damages, injury or death arising from the performance of this Agreement. Such insurance must be primary and non-contributory.

<b>Commercial General Liability Products/Complete Operations/Services</b>	\$1 million each occurrence/\$2 million aggregate
<b>Umbrella Limit</b>	\$5 million
<b>Automobile Liability</b>	\$1 million each occurrence
<b>Worker's Compensation</b> (If more than 5 employees)	Statutory Limits
<b>Employers Liability</b>	\$1 million each occurrence
<b>Professional Liability</b>	\$1 million each occurrence

Professional Liability with a minimum limit of \$1,000,000 per claim is required for certain professional services, as required by AHA.

AHA must be named as **Additional Insured** with respects to General Liability coverage insofar as it pertains to the work done/service provided/product delivered to the AHA. The Provider's policy must be Primary as to any other valid and collectible insurance, but only as to acts of the named insured.

Coverages and limits are to be considered as minimum requirements and in no way limits the liability of the Provider. A certificate of insurance with the coverage as cited above and listing the AHA as the certificate holder, must be submitted to the AHA prior to approval of this Agreement. Coverages represented on the certificates of insurance must show policy numbers, effective dates and limits. All policies shall evidence insurance written by a licensed carrier. Renewal certificates of insurance shall be provided immediately on renewal until the work is completed.