

## **AGREEMENT FOR PRODUCTS AND SERVICES**

This Agreement is made this \_\_\_ day of \_\_\_\_\_ 20\_\_, by and between Long Island University (“University”), an educational institution incorporated and doing business under the laws of the State of New York with its principal place of business located at 700 Northern Blvd. Brookville, New York 11548, and \_\_\_\_\_ (“Contractor”), a corporation incorporated under the laws of the State of \_\_\_\_\_ with offices located at \_\_\_\_\_

**WHEREAS**, the University desires to retain the services of Contractor in connection with the Contractor’s expertise and experience in the business of \_\_\_\_\_, and Contractor wishes to provide such services to University;

**NOW THEREFORE**, in consideration of the mutual covenants, conditions and promises contained herein, University and Contractor agree as follows:

### **1. Services**

- a) Contractor agrees to perform to the University’s satisfaction the professional services and product installations set forth in the attached “Specification of Services” (“Services”) with the standard of care and skill customarily provided in the industry for performance of such services, and to devote such amount of its business during the Term as is necessary to fulfill all of its duties and obligations hereunder.
- b) Contractor agrees that should University determine, in its sole discretion, that any of Contractor’s agents or employees has been unable to discharge duties for any cause for a period exceeding one consecutive week, or has failed or refused to perform Services under this Agreement in a manner satisfactory to University, then University shall notify Contractor in writing of such opinion. Contractor shall immediately substitute the agent or employee with a replacement acceptable to University.

### **2. Payment for Services**

- a) In full consideration for the Services, University shall pay Contractor a fee of \$ \_\_\_\_\_ per annum in accordance with the rates and guidelines set forth in the attached “Specification of Compensation.”
- b) Contractor shall issue a monthly invoice to the University detailing all work performed during the previous month. University shall pay these monthly invoices within 30 days of receipt.
- c) On notice to Contractor, University may withhold payments for unsatisfactory performance results and/or question any item reflected on Contractor’s invoice. Pending settlement or resolution of the issue, University’s nonpayment shall not constitute a default of this Agreement. University shall pay all invoiced amounts not in dispute.
- d) University must consent in writing prior to Contractor’s working in excess of the maximum work values set forth in the attached Specifications.

### **3. Term**

Unless terminated sooner as provided below, this Agreement shall commence on [ \_\_\_\_\_ ] and terminate on [ \_\_\_\_\_ ], or on completion of the Services, whichever shall occur first in time.

### **4. Contractor’s Capacity and Responsibilities**

- a) It is expressly understood that Contractor shall perform the Services as an independent contractor and is not an agent, affiliate, partner, joint venture or employee of University. Contractor agrees that the manner in which it performs its obligations under this Agreement is solely within its direction and control, subject to the terms and conditions of the attached Specifications, and that it is not entitled to tax withholding, Worker’s Compensation, unemployment compensation or any employee benefits, statutory or otherwise.

- b) Contractor shall not have the authority to enter into any contract or agreement to bind University and shall not represent to anyone that Contractor has such authority.
- c) Contractor represents and warrants that it has / its personnel have or will obtain and maintain all necessary licenses, permissions, certifications, authorizations, registrations and approvals required for the provision of Services under this Agreement. Contractor specifically represents that it will take and perform all acts, conditions and things necessary to enable it to lawfully fulfill the terms and conditions of this Agreement and lawfully comply with the obligations assumed hereunder.
- d) Contractor represents and warrants to University that in performing the Services, Contractor will not be in breach of any agreement with or infringe the intellectual property rights of any third party.

## **5. Product Delivery**

- a) Product offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered, and Contractor represents and warrants that no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.
- b) Delivery must be made to the address specified in paragraph 16 below and in accordance with the terms of any attached specification sheets. Risk of loss shall not pass from the Contractor to University until the products have been received, inspected and accepted by University. Acceptance shall occur within the period specified in this Agreement, or, if none is so specified, within a reasonable time. Mere acknowledgment by University personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the products received. Any delivery of product that is substandard or does not comply with Agreement terms and conditions, may be rejected or accepted on an adjusted price basis, as determined by the University. Either option shall be exercised in writing by the University.
- c) If product is rejected by the University, it must be removed by Contractor from the premises of University within ten calendar days after notification of rejection. Risk of loss of rejected or non-conforming product shall remain with Contractor. Rejected items not removed by Contractor within ten calendar days after notification shall be regarded as abandoned by the Contractor, and University shall have the right to dispose of product as its own property. Contractor shall promptly reimburse University for all costs and expenses incurred in the storage, removal or disposition of such product after the ten-calendar day period
- d) In the event a specified manufacturer's product listed in the Agreement becomes unavailable or cannot be supplied by the Contractor for any reason, a product deemed in writing by the University to be equal to or better than the specified product must be substituted by the Contractor at no additional cost or expense to the University. Unless otherwise specified, any substitution of product prior to the University's written approval may be cause for cancellation of the Agreement.
- e) Where Contractor is required to repair, replace or substitute product or parts or components of the product under the Agreement, the repaired, replaced or substituted products shall be subject to all terms and conditions for new parts and components set forth in the Agreement, including warranties, as set forth in paragraph 6 Warranties below. Replaced or repaired product, or parts and components of such product shall be new and shall, if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components meeting new product standards may be permitted by the University. Before installation, all proposed equivalents for the original manufacturer's installed parts or components must be approved by the University. The part or component shall be equal to or of better quality than the original part or component being replaced.

## **6. Warranties**

- a) Where Contractor, product manufacturer or service provider generally offers standard commercial, additional or more advantageous warranties than those set forth below, Contractor shall offer or pass through all such warranties to University at no additional charge.

- b) Contractor warrants and represents that (i) products delivered pursuant to this Agreement conform to the manufacturer's specifications, performance standards and documentation, (ii) it has provided University with a complete, correct and accurate set of the product documentation and (iii) the documentation fully describes the proper procedure for using the products.
- c) Contractor warrants, represents and conveys full ownership and clear title free of all liens to any products provided to University under this Agreement. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor fully indemnifies University for any losses, damages or actions arising from a breach of this warranty, without limitation.
- d) Contractor further warrants and represents that components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, shall be substantially uninterrupted or error-free in operation and guaranteed against faulty material and workmanship for the warranty period, or for a minimum of one (1) year from the date of acceptance, whichever is longer ("product warranty period"). During the product warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to the University. Contractor shall extend the product warranty period for individual component(s), or for the system as a whole, as applicable, by the cumulative period(s) of time during which an individual component or the system requires servicing or replacement (down time) or is in the possession of Contractor, its agents, officers, subcontractors, distributors or employees ("extended warranty").
- e) Any part or component replaced by Contractor under the product warranty period shall be replaced at no cost to University and guaranteed for the greater of (i) the warranty period under paragraph (d) above, or (ii) if a separate warranty for that part or component is generally offered by the manufacturer, the standard commercial warranty period offered by the manufacturer for the individual part or component.
- f) This provision shall survive expiration or termination of this Agreement.

## **7. Installation**

Where installation is required, unless otherwise specified in the Agreement or attachments, Contractor shall be responsible for placing and installing the product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the appearance of the product and environs or render either structurally unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the product in the proper location. Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by Contractor, its subcontractors, employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, Contractor shall thereafter promptly restore the structure or site. Work shall be performed to cause the least inconvenience to University and with proper consideration for the rights of its students and staff. Contractor shall perform its work promptly and shall coordinate its activities with those of other contractors. Contractor shall clean up and remove all debris and rubbish from its work as directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, with everything in satisfactory repair and order.

## **8. On Site Storage**

With University's written approval, materials, equipment or supplies may be stored on site at Contractor's sole risk.

## **9. Product Acceptance**

- a) University shall have thirty (30) days from the date of delivery to accept hardware products and sixty (60) days from the date of delivery to accept all other products. Where the Contractor is responsible for installation, delivery shall be from completion of installation. Failure to provide notice of acceptance or rejection or a deficiency statement to Contractor by the end of the period provided for under this provision constitutes acceptance by the University as of the expiration of that period.

- b) University shall have the option to run functionality testing on product installation prior to acceptance, such test runs and periods to be specified by the University. University shall notify Contractor of acceptance on successful completion of the installation test. If the installation tests cannot be completed successfully within the specified acceptance period, and Contractor or product is responsible for the delay, the University shall have the option to cancel the order in whole or in part, returning all defective product to Contractor, or to extend the testing period for an additional sixty (60) day increment. Costs and liabilities associated with product failure to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor. Such cancellation shall not give rise to any cause of action against the University for damages, loss of profits, expenses, or other remuneration of any kind and Contractor shall refund to the University all monies paid to date.

## **10. Assignment**

Contractor may not assign, transfer, subcontract, delegate or otherwise dispose of its interest or delegate any part of its duties hereunder without the prior written consent of University.

## **11. Compliance with Laws**

Contractor agrees that it will comply at its expense with all applicable federal, state, county and local laws, ordinances, regulations and codes in the performance of its obligations under this Agreement, including but not limited to the procurement of permits and certificates where required.

## **12. Insurance**

Contractor will secure, purchase and maintain, at its own expense, the following insurance policies in full force and effect during all periods of Service covered by this Agreement:

Statutory workers compensation covering all states in which the Service will be performed, disability benefits, and employer's liability coverage in amounts not less than \$500,000 per accident or disease.

Commercial general liability insurance with limits of \$1,000,000 per occurrence, bodily injury and property damage combined; \$1,000,000 per occurrence for personal and advertising injury; \$2,000,000 products/completed operations aggregate; and \$2,000,000 per location aggregate. This policy shall be written on an "occurrence" basis, shall apply on a primary basis irrespective of any other insurance, whether collectible or not, and the deductible shall not exceed \$2000 per occurrence.

Comprehensive automobile liability insurance containing a \$1,000,000 combined single limit for bodily injury and property damage covering all owned, non-owned and hired vehicles utilized in or related to all work covered by the Agreement documents.

**Each insurance policy described above shall be endorsed to name Long Island University as an "Additional Insured" for all activities covered by this Agreement. The definition of Additional Insured shall include all of Long Island University's trustees, officers, employees, agents and representatives. Further, coverage for the Additional Insureds shall apply on a primary basis irrespective of any other insurance, whether collectable or not.**

All policies shall be written with insurance companies licensed to do business in the State of New York and rated not lower than A-IX by A.M. Best. All policies shall provide primary coverage for obligations assumed by Contractor under this Agreement and University shall receive thirty days prior written notice in the event of cancellation, non-renewal or material modification.

Contractor will, at least ten (10) days before the initial period of Services undertaken pursuant to this Agreement, and prior to any expiration or anniversary of the respective policy terms, deposit with the Insurance Coordinator of Long Island University, University Center, 700 Northern Blvd., Brookville, NY 11548-1326, certificates of insurance evidencing compliance with all insurance provisions noted above. Contractor accepts that failure to

provide adequate or proper certification of insurance, specifically including Long Island University as “Additional Insured” shall immediately be deemed a breach of contract.

It is further agreed that Contractor will require all subcontractors and others acting under its direction or control in performing the Services to: (a) execute an insurance and indemnification agreement in favor of University with the Indemnifying Parties agreeing to the same terms and conditions as is contained herein, (b) maintain the same insurance coverage set forth herein, and (c) provide certificates of insurance evidencing the required coverage and naming University as “Additional Insured.”

### **13. Indemnification**

Contractor shall, at its own expense, defend, indemnify and hold harmless the University, its trustees, officers, employees, representatives and agents, from and against any and all losses, expenses, claims, demands, judgments, liabilities or alleged liabilities (including attorney’s fees) of any nature whatsoever resulting from, arising out of or related to any action or cause of action occurring in connection with Contractor’s provision of the Services contemplated by this Agreement, including, but not limited to, intellectual property rights claims or any injury or damage sustained by any person or property in consequence of any act, words or images included as part of Contractor’s Services under the Agreement, or breach of any obligation, representation or warranty of Contractor set forth herein. University may participate in any such defense or negotiations to protect its interests.

### **14. Termination**

The University may terminate this Agreement at any time for breach thereof by Contractor. If the Agreement is terminated early, the Contractor will receive a pro-rated fee based upon the work completed as of the termination date.

### **15. Coordination**

Contractor shall cooperate with such contractors, persons or entities as University may designate from time to time in connection with the Services to be performed hereunder, and Contractor agrees to meet with such contractors, other persons or entities at such times as University may require in order to maintain a continuous review process or to expedite any determinations or approvals required during the various phases of performance of the Service work.

### **16. Notices**

Any notice, approval, request, bill or statement from either party to the other shall be in writing and be deemed given when deposited with the U.S. Postal Service in a postage pre-paid envelope sent regular mail or delivered by hand with an appropriate receipt obtained, addressed as follows:

If to the University, to:

Long Island University  
Attention:  
720 Northern Boulevard  
Brookville, New York 11548

[or]

Long Island University  
Attention:  
1 University Plaza  
Brooklyn, New York 11201

If to Contractor, to:

### **17. Miscellaneous**

- a) If any term or provision of this Agreement is declared invalid by a court of competent jurisdiction, the remaining terms and provisions of this Agreement shall remain unimpaired and in full force and effect.
- b) Failure by either party at any time to claim a breach of any Agreement term, exercise any power or enforce any obligation hereunder will not be construed as a waiver of any right, power or obligation under this Agreement, and will not prejudice either party in the context of any subsequent action.
- c) This Agreement shall be construed and enforced in accordance with the laws of the State of New York. It is expressly understood by the parties that any dispute hereunder, unless settled by the parties, shall be resolved by legal action brought in the Supreme Court for the State of New York and each party shall waive their right to a jury trial.
- d) This Agreement and attached Specifications constitute the entire agreement between the parties and incorporate all prior understandings in connection with the subject matter hereof. The Agreement and Specifications may not be modified, waived, amended or discharged except by a writing signed by both parties hereto.
- e) To the extent that any terms or conditions contained in any documents appended hereto or accepted to in electronic format conflict with this Agreement, this Agreement shall control.

**IN WITNESS WHEREOF**, the University and Contractor have executed this Agreement by and through their respective representatives as of the date first above written.

LONG ISLAND UNIVERSITY

CONTRACTOR

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

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

**SPECIFICATION OF COMPENSATION**

**I. COST ESTIMATE STATEMENT**

Contractor shall prepare and submit to University for approval the Specification of Services statement annexed hereto. The Specification of Services statement shall include:

- (i) a mutually agreed upon description of the overall services to be performed,
- (ii) the specific tasks to be undertaken in performance of the services,
- (iii) start and completion dates for each task,
- (iv) specifications and documentation standards applicable to the services,
- (v) all Deliverables to be supplied by Contractor,
- (vi) the estimated costs of each task, and if applicable,
- (vii) the names and billing rates of the individuals who will undertake each task.

At any time it appears that the initial (or any revised) cost estimate or assignment will be exceeded or any completion date not met, Contractor shall inform University immediately. Subsequently, the Statement is to be updated in conjunction with the reviews described in Section II below.

**II. MANAGEMENT AND MONITORING RESPONSIBILITY**

The Contractor and University's Project Manager will review the progress of the work each month, including compliance with the initial Statement, estimated completion dates, costs incurred and estimated future costs.

### III. BILLING PROCEDURES

**A. Establishment of Fees and Disbursements** Contractors are retained because of their expertise. Accordingly, time spent educating staff within or external to Contractor's company shall not be billed to University. Reasonable routine disbursements (out-of-pocket expenses) will be reimbursed direct to the Contractor at the cost paid by the Contractor (i.e. without mark-up), in accordance with University's standard policy, including but not limited to Coach Class travel, unless another class of travel has been specifically authorized, and the use of pre-approved hotels. As a general matter University does not pay for time spent traveling. Cost differentials between pre-approved travel expenses and those incurred will be borne by Contractor.

**B. Invoices** Contractor will present to the University Project Manager an invoice every month for work done during the immediately preceding month period. No invoice will be paid unless the University Project Manager has approved it for payment. Time spent preparing invoices may not be charged.

All invoices shall be rendered on the basis of hourly rates unless a different arrangement is agreed to in advance by the Contractor and University's Project Manager. Contractor shall list on each invoice (i) each activity performed, (ii) the individuals / subcontractors involved, (iii) the amount of time spent, (iv) billing rates and (v) the total cost. If requested, Contractor will provide signed time sheets with each invoice. Disbursements must be itemized separately.

University may decline to pay any invoice received more than 90 days after the end of the month in which the work was performed. All invoices are subject to approval by University's Office of Finance and once approved will be processed for payment within 30 days.

**C. Auditing of Invoices** University has the right to audit all invoices presented, using either University in-house auditors or the services of an independent auditor. Contractor shall make all necessary receipts and records available to University for this purpose. University will give the Contractor at least seven business days' notice of any such audit.

**D. Overruns Over Cost Estimate** Actual billings will be tracked against the cost estimates in the initial and any revised Statements. Contractor must notify the University Project Manager immediately, as soon as an overrun to the initial or any revised Statement is anticipated (Contractor should not wait to report such an overrun in the regularly scheduled monthly review). Project overruns in excess of 5% of the original estimate will not be paid unless the circumstances that caused the overrun are reviewed with University's Project Manager, and approved by the University Office of Finance.

### SPECIFICATION OF SERVICES

#### SCOPE OF WORK

(must be completed in entirety; may attach relevant section of Contractor's proposal)

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

Period Covered: \_\_\_\_\_

Name of Project: \_\_\_\_\_

Name of Contractor's Firm \_\_\_\_\_

Project Manager/Telephone Number \_\_\_\_\_

Is there an existing contract for this Contractor? Please circle YES or NO. If YES, do not complete the remainder of this form. If NO, please complete this form. In either situation, attach this form to each invoice forwarded to the University's Office of Finance for payment.

1. Background description (i.e. reason for services):

\_\_\_\_\_  
\_\_\_\_\_

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2. Specific services / tasks to be performed to complete the project:

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3. Tasks to be undertaken, each with time frames for completion and estimated costs:

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4. Specifications and documents applicable: (attach all relevant standards, specifications and documents required to perform Services)

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5. Deliverables (work product):

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6. Anticipated staffing (with billing rates):

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7. Estimated total costs (list a subtotal for fees; a subtotal for disbursements and the estimated total cost):

Subtotal for fees: \_\_\_\_\_  
Subtotal for disbursements: \_\_\_\_\_  
Total cost of Services: \_\_\_\_\_

For similar projects in the past, what % of the total bill has Contractor charged for disbursements? \_\_\_\_\_

LONG ISLAND UNIVERSITY

CONTRACTOR

By: \_\_\_\_\_  
Print Name, Title:

By: \_\_\_\_\_  
Print Name, Title:

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Signature/Date