



Information Technology Professional Services Agreement

THIS AGREEMENT is made by and between Cornell University, Ithaca, New York 14853, a not-for-profit educational corporation, ("Cornell") on behalf of

_____ (College unit) and
_____ ("Contractor").

The parties agree as follows:

- 1. General Purpose.** The general purpose of this Agreement is to engage the services of Contractor to perform the services described in Schedule A.
- 2. General Duties of Contractor.** Contractor shall perform in conformance with schedules attached as incorporated herein, and in conformance with professional standards for performing services of a similar kind. Whether or not the work of Contractor, or any part or segment thereof, conforms with such standards shall be determined solely by Cornell. Cornell will assign a representative ("Cornell's Representative") to provide direction to Contractor. The work to be performed by Contractor shall be performed by the personnel listed in Schedule D annexed hereto. Contractor may not replace or reassign such personnel without the prior written consent of Cornell. If any such personnel leave Contractor's employ, Contractor shall replace personnel with a person having at least equivalent experience and qualifications. Cornell shall have the right to review and approve such replacement personnel.
- 3. Term.** The term of this Agreement shall be from _____, 20____ until _____, 20_____.
- 4. Timetable.** The timetable set forth in the attached Schedule B shall be adhered to unless such period is otherwise extended by Cornell. Contractor shall be responsible to Cornell for any damage caused by the failure by Contractor to comply with the schedule.
- 5. Compensation.** Contractor shall be paid an amount not to exceed \$_____. The payment terms and schedule of payments is set forth in the attached Schedule C.
- 6. Independent Contractor.** In the performance of the work hereunder, Contractor shall be an independent contractor and not an employee of Cornell. Contractor is not an agent of, or authorized to transact business, enter into agreements, or otherwise make commitments on behalf of Cornell unless expressly authorized in writing by an officer of Cornell. Cornell will not pay or withhold federal, state, or local income tax or other payroll tax of any kind on behalf of Contractor or its employees. Contractor is not eligible for, not entitled to, and shall not participate in any of Cornell's pension, health, or other benefit plans. Contractor 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. Contractor indemnifies Cornell and holds it harmless against any fines, damages, assessments, or attorney fees in the event a court or administrative agency shall find that Contractor or anyone engaged through Contractor is an employee of Cornell.
- 7. Confidentiality.** All data and information in any format submitted or made available to Contractor by Cornell or any other person on behalf of Cornell, unless otherwise publicly available, and all data and information, and other work developed by Contractor under this Agreement, shall be utilized by Contractor



solely in connection with the performance of services under this Agreement only and shall not be made available by Contractor to any other person.

8. Rights and License in and to Cornell Data. Cornell shall own all data, information, and other work product developed or obtained by Contractor pursuant to this Agreement. Cornell shall at all times have access to review the ongoing work of Contractor for purposes of inspecting same and determining that work is being performed in accordance with the terms of this Agreement. Immediately upon termination of this Agreement for any reason, all such data, information, and other work, in whatever form, shall be turned over to Cornell.

The parties agree that as between them, all rights including all intellectual property rights in and to data and information provided by Cornell or on behalf of Cornell or created by Contractor in the performance of services hereunder shall remain the exclusive property of Cornell. Contractor has a limited, nonexclusive license to use such data and information solely for the purpose of performing its obligations under this Agreement. This Agreement does not give Contractor any rights, implied or otherwise, data, information, or intellectual property, except as expressly stated in this Agreement.

For purposes of this Agreement any copyrightable work ("Work") developed in the course of performance by Contractor under this Agreement shall be deemed "work made for hire" under federal copyright law and all ownership rights to such work shall belong to Cornell. Should such Work not constitute a "work made for hire" under copyright law, Contractor hereby grants, transfers, assigns, and conveys to Cornell and its successors and assigns, the entire right, title, and interest in the Work or any part thereof, including but not limited to the right to reproduce, prepare derivative works, distribute by sale, license or other transfer; to perform publicly, to display and to secure copyrights renewals, reissues, and extensions of any such copyrights or patents in the United States of America or any foreign country.

Any patentable invention conceived or reduced to practice in the course of performance under this Agreement shall be the property of Cornell. Cornell has the right to secure patents, reissues and extensions of thereof in the United States of America or any foreign country.

Whether a copyright or patent in the Work will be maintained or registered in the United States of America or any foreign country shall be at the sole discretion of Cornell.

Contractor agrees to cooperate fully with Cornell in the preparation and execution of all documents necessary or incidental to this assignment and the protection and preservation of rights herein granted to Cornell.

9. Warranties. Contractor warrants and represents that services provided hereunder will not infringe, individually or collectively, any patent, copyright, trade secret, or other proprietary right of any third party; and Contractor has no reason to believe that any patent, copyright, trade secret, or other proprietary right of any third party may be infringed.

10. Data Privacy. Performance of services under this Agreement may entail the disclosure to Contractor of personally identifiable information from student education records protected by the Family Educational Rights and Privacy Act (FERPA) ("Student Information"). Contractor acknowledges that for the purposes of this Agreement, it will be designated as a "school official" with "legitimate educational interests" in the Student Information, as those terms have been defined under FERPA and its implementing regulations, and Contractor agrees to abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials. Contractor will use Student Information only for the specific purpose of fulfilling its obligations under this Agreement. Contractor may not disclose student information to or share any Student Information with any other party or for any other purpose without the prior written consent of the student. By way of illustration and not of limitation, Contractor will not use such information for Contractor's own benefit or engage in "data mining" of Cornell Data or communications, whether through automated or human means, except as necessary to fulfill its specific obligations under this Agreement. The provisions of this section will be applicable to any subcontractors or agents to whom Contractor may release Student Information in order to perform services under this Agreement. Contractor agrees that prior to releasing any Student Information to any subcontractor or agent, Contractor will require such subcontractor or agent to acknowledge its obligations as a "university official" and to agree to comply with the FERPA requirements



articulated in this section. Improper re-disclosure of Student Information can result in Contractor being denied access to such information for at least 5 years. Contractor shall return or certify destruction of all Student Information (including that provided to or obtained by its subcontractors or agents) upon termination of this Agreement.

Contractor will provide access to Cornell Data only to those Contractor employees, subcontractors and agents who need to access the data to fulfill Contractor's obligations under this Agreement.

11. Data Security. All facilities and other resources used to store and/or process Cornell 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 Contractor'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.

Contractor 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. Contractor will update its tools and technologies during the course of the Agreement as industry standards change and updated tools and technologies become available.

Contractor 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. Contractor will perform background checks on all personnel who have potential to access Cornell Data. Background checks will be performed in accordance with the Fair Credit Reporting Act and will, at a minimum, include Social Security Number validation and trace or foreign equivalent, seven (7) year felony and misdemeanor criminal records of federal, state, or local courts, Office of Foreign Assets Control List (OFAC), Bureau of Industry and Security List (BIS) and Office of Defense Trade Controls Debarred Persons List (DDTC).

12. Access to Data Response to Legal Demands or Requests for Data. Cornell shall have the right, at all times during the term of the Agreement for any reason whatsoever in Cornell's sole discretion, to access, copy and/or remove any and all Cornell data and information from Contractor. In addition, in connection with Cornell's response to an e-discovery request or other legal proceeding, governmental request, or other a claim or demand upon receipt of written request from Cornell, Contractor will provide Cornell with any existing logs or other Cornell data and information.

If Contractor files a petition seeking to take advantage of any law relating to the bankruptcy or insolvency or is adjudicated to be bankrupt, or is the subject of a petition seeking liquidation, reorganization, winding-up, dissolution or adjustment of indebtedness, or if becomes insolvent or makes an assignment for the benefit of creditors or if a receiver is appointed, Contractor will return in a readily usable format, remove, or destroy, as directed by Cornell, all Cornell data and information.

Upon receipt of valid legal process (the "Legal Request") seeking Cornell-related data or information, Contractor will attempt to redirect the requesting third party to Cornell and/or request that the third party notify Cornell of its Legal Request. If Contractor's redirecting efforts are unsuccessful, and provided Contractor is not prohibited by law from doing so, Contractor will provide commercially reasonable notice to Cornell of the Legal Request, prior to disclosure of any Cornell Data, which would include, to the extent permitted by law, a copy of the Legal Request received by Contractor from the third party. Contractor will thereafter respond to the Legal Request in the time permitted unless Cornell has taken appropriate legal steps (i.e., Motion to Quash or Motion for a Protective Order) to stop or limit Contractor's response.

With respect to any legal process served on Cornell for which Cornell intends to respond, Contractor will provide Cornell with access to any Cornell Data in Contractor's possession together with any necessary encryption keys. If Cornell is unable to access Cornell Data using the tools and documentation provided by Contractor, then, upon request, Contractor will provide commercially reasonable assistance to enable Cornell to obtain the Cornell Data.

13. Security Incident Response. Upon becoming aware of any unauthorized access to any Cornell Data stored on Contractor's equipment or in Contractor's facilities, or unauthorized access to such equipment



or facilities reasonably expected to result in loss, disclosure, or alteration of Cornell Data (each a "Security Incident"), Contractor will: (1) promptly notify Cornell at security@cornell.edu of the Security Incident; (2) investigate the Security Incident and provide Cornell with detailed information about the Security Incident; (3) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident; (4) take prompt and appropriate corrective action aimed at preventing the reoccurrence of a similar Security Incident in the future; and (5) hold Cornell harmless from any costs associated with a data breach attributable to the actions or inactions of Contractor.

14. Data Transfer Upon Termination or Expiration. Upon expiration or termination of Services, Contractor will deliver to Cornell all work performed under this Agreement and return to Cornell in a readily usable format, remove, or securely delete or destroy, as directed by Cornell, all Cornell Data.

15. Termination. Cornell may terminate this Agreement at any time without cause, upon written notice to Consultant/Contractor or immediately for non-performance. Consultant/Contractor shall be entitled to payment for work performed to the satisfaction of Cornell prior to termination, but explicitly waives any right to additional or other amounts of any kind, including based on *quantum meruit* or other similar theory. Personnel identified by Cornell as deficient will be removed in a manner to least affect the progress of the project. The obligations imposed by Sections 7 and 8 of this Agreement as well as any licenses granted hereunder shall survive termination under this Agreement.

16. Indemnification. Contractor shall defend, indemnify, and hold harmless Cornell and its trustees, officers, agents, and employees from all suits, actions, or claims of any character, name, or description, including reasonable attorneys' fees and litigation expenses, brought on account of any injuries, damage or loss (real or alleged) sustained by any person or persons arising out of (1) negligent acts or omissions of Consultant, its employees, subcontractors or agents, including, but not limited to any claims for personal injury, including any injuries or damages sustained by Contractors' employees, property damage, or infringement of copyright, patent, or other proprietary rights; or (2) any other claims of any nature whatsoever arising out of the Contractor's performance of the services to be provided pursuant to this Agreement, or Contractor's failure to perform or comply with any requirements of this Agreement, including specifically but not limited to employment-related claims arising under the common law or based upon any federal, state, or local statutes, ordinances, or regulations.

17. Insurance. Contractor will carry insurance as provided herein. Cornell requires that contractors submit evidence of adequate insurance prior to commencement of performance of work for Cornell. Satisfaction of the minimum insurance requirements does not necessarily mean that a Contractor's insurance will be acceptable to Cornell's Office of Risk Management and Insurance. A certificate of insurance for all policies required must be issued to Cornell University as the Certificate Holder and received by Procurement Services prior to any work commencing under any contract subject to these requirements. All certificates of insurance must provide for a minimum of 30 days notice to Cornell prior to the cancellation of, non-renewal of, or a change in policy terms and/or conditions. Contractor shall ensure that new certificates of insurance will be automatically sent upon expiration of any coverage period.

All Commercial general liability policies should be issued on an "occurrence" basis.

Minimum requirements are:

Statutory workers' compensation: Insurance under the laws of the State of New York and any other laws that may be applicable thereto. Coverage "B," Employer's Liability, must have limits of at least \$100,000.

This coverage is required for all vendors unless they are exempt under the laws of the New York State or other applicable jurisdiction. . Coverage from other States may be substituted by individuals, who are residents of other states but working on a temporary basis in New York.

Commercial general liability insurance: Subject to limits of not less than \$1,000,000 for each occurrence and \$2,000,000 aggregate. Coverage must be provided for Bodily Injury Liability, Broad Form Property Damage Liability, Contractual Liability, and Products and Completed



Operations coverage. Completed Operations coverage is to be maintained for a minimum period of two years after the completion of the Agreement.

Cornell University must be added to the Contractor's commercial general liability insurance policy as an "additional insured," and evidence of such will be provided in all certificates of insurance. The insurance shall be considered to be primary and non-contributory to other insurance or self-insurance maintained by Cornell University for allegations of negligence for the acts or performance of the Contractor in fulfilling the services hereunder. These minimum requirements shall not limit the liability or responsibility of the Contractor. Cornell's failure to enforce the requirements shall not be considered to be a waiver of the requirement. Any changes to these requirements shall only be made in writing and agreed upon by all parties.

Automobile liability insurance: Subject to a combined single limit of at least \$1,000,000 for each accident for bodily injury and property damage. Such automobile liability insurance shall be for the contractor's owned, non-owned, and hired vehicles.

All Risk Property Insurance providing replacement cost coverage for any property damage to contractor's property which is caused by a loss of any kind and description to any property brought onto Cornell University premises. Contractor agrees to waive on behalf of itself and its insurance company subrogation against Cornell for any loss or damage, which is covered or should be covered by this insurance.

Professional Liability ("errors and omissions") with a minimum of \$2,000,000 per claim.

Crime Insurance with a minimum of \$1,000,000 per occurrence.

Cyber Risk Insurance: Contractor shall have and maintain insurance in the minimum amount of \$1,000,000 per claim for the duration of this Agreement and three years following its termination to respond to privacy and network security liability claims including, but not limited to: Liability arising from theft, dissemination, and/or use of Cornell Data, including, but not limited to, bank, credit card account and personally identifiable information, such as name, address, social security numbers, etc. regardless of how stored or transmitted; Network security liability arising from (i) the unauthorized access to, use of, or tampering with computer systems, including hacker attacks or (ii) the inability of an authorized third party to gain access to Cornell data, including denial of service, unless caused by a mechanical or electrical failure; liability arising from the introduction of a computer virus into, or otherwise causing damage to, a Cornell or third party computer, computer system, network, or similar computer related property and the data, software, and programs thereon; crisis management expenses (i.e. notification, public relations, reputation damage, forensics, etc.) for a data breach.

Employers Legal Liability/Directors and Officers insurance coverage: Subject to limits of \$1,000,000 per claim. Coverage must be provided for employment related claims, including claims presented by governmental agencies. This coverage shall be maintained for a minimum period of three years after the completion of the Agreement.

18. Compliance with Applicable Laws and Cornell Policies. Contractor warrants and represents that it will comply with all laws, including data protection and data privacy laws, applicable to the Contractor's performance of services of Contractor under this Agreement.

Prior to gaining access to Cornell's systems and/or prior to gaining access to Cornell's facilities in order to perform Services, Contractor personnel will execute Cornell's document(s) required for access privileges and at all times act in compliance with Cornell's policies and procedures. Contractor and all individuals assigned by Contractor to a project under this Agreement must comply with Cornell policies and sign the Cornell IT Access Security Agreement for Consultants.

Contractor represents that its management and storage of Cornell Data shall in all respects, including, without limitation, administrative, physical and technical aspects, meet the privacy and security standards set forth in Gramm-Leach-Bliley Act, 15 U.S.C. sections 6801-6809 ("GLB") and its implementing regulations. Without representing that it is subject to GLB, Contractor understands that it may have access under this Agreement to Cornell financial information and other nonpublic personal information protected thereby. To assist Cornell in meeting Cornell's GLB obligations, Contractor will implement, maintain, and use appropriate administrative, technical and physical security measures to protect the confidentiality and integrity of all electronically maintained or transmitted Cornell Data.



PCI DSS Compliance. The credit card industry has developed technical and business standard that affect the way in which credit card business is conducted, called "Payment Card Industry Data Security Standards" (PCI DSS) (www.pcisecuritystandards.org).

All processes, procedures, or technologies must follow the security standards dictated in the credit card industry's "Payment Card industry Data Security Standards" (PCI DSS).

Service provider must submit annually, an Attestation of Compliance (AOC), which is evidence of a successfully completed PCI DSS assessment.

Failure to submit annually an Attestation of Compliance (AOC) or a successfully completed PCI DSS assessment indicating you are PCI-compliant will result in the contract being null and void.

19. Waiver. A delay or failure by either party to exercise any right under this Agreement will not constitute a waiver of that or any similar or future right.

20. Assignment. This Agreement may not be assigned by Contractor without the express prior written permission of Cornell, to be granted at Cornell's sole discretion.

21. Affirmative Action Consultant. If required, must provide a copy of firm's Office of Equal Opportunity Affirmative Action Policy.

22. Jurisdiction. This Agreement shall be deemed to have been made in the State of New York. New York State law (exclusive of any choice of law principles) shall govern this Agreement. Contractor consents to the jurisdiction of the state or federal courts serving Tompkins County, New York for the resolution of any disputes arising under this Agreement.

23. Advertisement. Contractor may not use the name Cornell or any variation thereof for advertising or publicity purposes without first obtaining the written permission of Cornell.

24. Severability. If any provision of this Agreement is declared invalid by any tribunal, then such provision shall be deemed automatically modified to conform to the requirements for validity as declared at such time, and as so modified, shall be deemed a provision of this Agreement as though originally included herein. In the event that the provision invalidated is of such a nature that it cannot be modified, the provision shall be deemed deleted from this Agreement as though the provision had never been included herein. In either case, the remaining provisions of this Agreement shall remain in effect.

25. Notices. Each notice, request, or demand given or required to be given pursuant to this Agreement shall be in writing and shall be deemed sufficiently given if deposited in the United States mail, first class, postage pre-paid, and addressed to the address of the intended recipient set forth on the first page hereof or to such other address as may be specified in writing by the parties.

26. Force Majeure: This Agreement is subject to cancellation or change on written notice to the Vendor in the event of causes beyond Cornell's reasonable control, including without limitation acts of God or war, fires, earthquakes, floods, strikes, labor troubles, riots, curtailment or operations due to governmental orders or rulings, and the like.

27. Sale or Bankruptcy of Vendor's Business: If, during the life of this Agreement, the Vendor disposes of its business by sale, transfer, force of law or by any means to another party, all obligations are transferred to such party. In the event, the new owner(s) may, in Cornell's absolute discretion, be required to submit a performance bond in the amount of the open balance of the Agreement. In the event of any suspension of payment or the institution of any proceedings by or against Vendor, voluntary or involuntary, in bankruptcy or insolvency, or under the provisions of the Federal Bankruptcy Act, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors of the property of Vendor, Cornell shall have, in addition to the rights stated in the two preceding sentences, the right to cancel this Agreement forthwith.



28. Payment: Vendor shall be paid after receipt of properly prepared invoices in accordance with Cornell's invoicing instructions for Merchandise or Services delivered to and accepted by Cornell. Any adjustments in Vendor's invoice due to shortages, rejection or other failure to comply with the provisions of the Agreement may be made by Cornell before payment. Discount periods shall commence after the latest of final acceptance, delivery, receipt of any required documentation, or receipt of invoice. Delays in receiving the invoice, errors or omissions on the invoice, or lack of supporting documentation required by the terms of the Agreement, will be cause for withholding settlement without losing prompt payment discount privilege. Invoices must be accompanied by transportation receipt, if transportation is payable as a separate item. Original invoice shall be mailed or emailed immediately after each shipment in accordance with the instructions on the Purchase Order.

29. Right to Audit: Throughout the term of this Agreement, and for a period of three years after final payment, or longer if required by law, Cornell, at its own expense, shall be entitled to perform, or to have performed by a third party of Cornell's choosing, during normal business hours and upon five (5) business days' notice, an on-site audit of any and all records of Vendor necessary to permit Cornell to evaluate and verify Vendor's compliance with the requirements of this Agreement. Vendor grants Cornell permission to view and/or copy any books, documents, records, data and information (including data and information stored in electronic form) of Vendor which relate to or have been used in connection with the performance of this Agreement. Vendor also grants Cornell permission to interview Vendor's staff and agents as part of the audit. Vendor agrees to provide Cornell with adequate and appropriate workspace for conducting the audit. If Cornell, in its sole discretion, determines that an on-site audit is not necessary, Vendor agrees to complete, within 30 days of receipt, an audit questionnaire provided by Cornell. Any overcharges discovered by Cornell, or by a third party of Cornell's choosing, shall be paid within 30 days of Vendor's acceptance of Cornell's written notification of audit findings. Vendor may not unreasonably withhold acceptance of audit findings. Vendor shall include this audit provision in any subcontracts that it may issue under this Agreement.

30. Effective Date. The effective date of this agreement shall be the date of Cornell's signature.

31. Entire Agreement. This Agreement represents the entire understanding of the parties and may not be modified except by written agreement of the parties and supersedes all prior written and/or oral agreements.

32. Authority. Each party warrants that it has the authority to enter into this Agreement and that entering into this Agreement is not restricted or prohibited by any existing agreement to which it is a party.

33. Tax Withholding for Domestic and Foreign Vendors/Payees. All payments from Cornell to Vendor/Payee under this transaction may be subject to tax withholding. Cornell reserves the sole right and discretion to withhold tax where it believes it is required to do so under the tax laws of any jurisdiction. By accepting this contract, the Vendor/Payee is relinquishing all claims against Cornell for any amounts withheld and remitted by Cornell to a tax authority. It is the Vendor/Payee's sole responsibility to provide Cornell with timely, complete, accurate, and legible forms and/or documents necessary to claim a reduction or elimination of withholding taxes (e.g., Form W-8BEN); Cornell reserves the sole right and discretion to make these determinations as well as whether such forms and/or documents are sufficient to reduce or eliminate withholding tax on any payment to the Vendor/Payee.



Cornell University

In witness thereof the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

For Contractor:

Signature: _____

Printed Name: _____

Title: _____

Phone: _____

Email: _____

Address: _____

Date: _____

For Cornell Procurement Services:

Signature: _____

Printed Name: _____

Title: _____

Phone: _____

Email: _____

Address: _____

Date: _____

Cornell PO#: _____

For Cornell College/Unit Representative:

Name: _____

Initials: _____

Date: _____

Schedule A

SCOPE OF WORK

Project Description:

Initials:
For Cornell University _____
Version: 09/30/2015

For Contractor _____

Schedule B

PROJECT TIMETABLE

Task Description:

Completion Date:

Initials:
For Cornell University _____
Version: 09/30/2015

For Contractor _____

Schedule C

COMPENSATION

Payment Amount and Schedule:

Initials:
For Cornell University _____
Version: 09/30/2015

For Contractor _____

Schedule D

PERSONNEL

Contractor's Personnel:

Cornell's Representative:

Initials:
For Cornell University _____
Version: 09/30/2015

For Contractor _____