



## Information Technology Professional Services Agreement

**THIS INFORMATION TECHNOLOGY PROFESSIONAL SERVICES AGREEMENT** is made by and between Cornell University, a New York not-for-profit education corporation, ("Cornell") on behalf of its \_\_\_\_\_ ("College/Unit"), and \_\_\_\_\_ ("Consultant").

For good and valuable consideration, 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 Schedule A (the "Services").
2. **General Duties of Consultant.** Consultant shall perform the Services in conformance with the attached Schedules, all of which are incorporated herein, and in conformance with professional standards for performing services of a similar kind. Whether or not Consultant's performance of the Services, or any part or segment thereof, conforms with such standards shall be determined solely by Cornell. Cornell has assigned a representative ("Cornell's Representative") in relation to this Agreement and the Services, as named in Schedule A, to provide direction to Consultant. The Services to be performed by Consultant shall be performed by the personnel listed in Schedule D. Consultant may not replace or reassign such personnel without the prior written consent of Cornell. If any such personnel leave Consultant's employ, Consultant 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 Schedule B shall be adhered to unless such period is otherwise extended by Cornell in writing. Consultant shall be responsible to Cornell for any damage caused by its failure to comply with the timetable.
5. **Compensation.** Consultant shall be paid an amount not to exceed \$\_\_\_\_\_. The payment terms and schedule of payments is set forth in Schedule C. All invoices shall be mailed to Cornell Procurement and Payment Services, Accounts Payable, 377 Pine Tree Road, Ithaca, N.Y. 14850 or emailed to dfa-4040\_invoice@cornell.edu, referencing the purchase order number.
6. **Independent Contractor.** In the performance of the Services hereunder, Consultant shall be deemed an independent contractor and not an employee of Cornell. Consultant is not an agent of Cornell, nor is it 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 Consultant or its employees. Consultant is not eligible for, not entitled to, and shall not participate in any of Cornell's pension, health, or other benefit plans. 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 Cornell, and its agents, officers, employees and trustees, and holds each harmless against any fines, damages, assessments, or attorney fees in the event a court or administrative agency shall find that Consultant or anyone or entity engaged through Consultant is an employee of Cornell.
7. **Confidentiality.** All data, material, books, records and information in any format or medium (including provided orally) submitted or made available to Consultant by Cornell, or any other person acting on behalf of Cornell (collectively, "Cornell Data"), unless otherwise publicly available, and all data and information, and other work developed by Consultant under this Agreement, shall be utilized by Consultant solely in connection with the performance of the Services under this Agreement only and shall not be made available by Consultant to any other person unless required by law. In the event of a breach of this Section 7, Cornell shall have all rights available to it at law and in equity to enforce the provisions hereof including, but not limited to, applying to a court of competent jurisdiction for specific performance and/or injunctive relief. The obligations of this Section 7 shall expressly survive the expiration or earlier termination of this Agreement.



**8. Rights and License in and to Cornell Data.** Cornell shall own all data, information, and other work product developed or obtained by Consultant pursuant to this Agreement. Cornell shall at all times have access to review the ongoing work of Consultant for purposes of inspecting the same and determining that the Services are 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, including all Cornell Data, 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 (including Cornell Data) or created by Consultant in the performance of the Services hereunder shall remain the exclusive property of Cornell. Consultant 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 Consultant 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 Consultant's performance 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, Consultant 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, perform publicly, display, and to secure copyrights or patents and 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 Consultant's performance under this Agreement shall be the property of Cornell, and 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.

Consultant agrees to cooperate fully with Cornell in the preparation and execution of all documents necessary or incidental to the assignment in this Section 8 and the protection and preservation of rights herein granted to Cornell. The obligations of this Section 8 shall expressly survive the expiration or earlier termination of this Agreement.

**9. Warranties.** Consultant warrants and represents that the Services and all work provided hereunder will not infringe, individually or collectively, any patent, copyright, trade secret, or other proprietary right of any third party; and Consultant has no reason to believe that any patent, copyright, trade secret, or other proprietary right of any third party may be infringed by it providing the Services and any work hereunder.

**10. Data Privacy.** Performance of the Services under this Agreement may entail the disclosure to Consultant of personally identifiable information from student education records protected by the Family Educational Rights and Privacy Act (FERPA) ("Student Information"). Consultant 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 Consultant agrees to abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials. Consultant will use Student Information only for the specific purpose of fulfilling its obligations under this Agreement. Consultant 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, Consultant will not use such information for Consultant'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 Consultant may release Student Information in order to perform the Services under this Agreement. Consultant agrees that prior to releasing any Student Information to any subcontractor or agent, Consultant 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 Consultant being denied access to such information for at least 5 years. Consultant 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.

Consultant will provide access to Cornell Data only to those Consultant employees, subcontractors and agents who need to access the data to fulfill Consultant'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 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 the Services under this Agreement. Consultant will update its tools and technologies during the course of this 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 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).

Consultant agrees to locate all servers and related equipment and infrastructure used to provide the Services and to store and/or process Cornell Data in the United States

**12. Access to Data Response to Legal Demands or Requests for Data.** Cornell shall have the right, at all times during the term of this Agreement for any reason whatsoever in Cornell's sole discretion, to access, copy and/or remove any and all Cornell Data and information from Consultant. 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, Consultant will provide Cornell with any existing logs or other Cornell Data and information.

If Consultant 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, Consultant 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 information and/or Cornell Data, Consultant will attempt to redirect the requesting third party to Cornell and/or request that the third party notify Cornell of its Legal Request. If Consultant's redirecting efforts are unsuccessful, and provided Consultant is not prohibited by law from doing so, Consultant will provide commercially reasonable notice to Cornell of the Legal Request, prior to disclosure of any Cornell information and/or Cornell Data, which would include, to the extent permitted by law, a copy of the Legal Request received by Consultant from the third party. Consultant 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 Consultant's response.

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

**13. Security Incident Response.** Upon becoming aware of any unauthorized access to any Cornell Data stored on Consultant's equipment or in Consultant's facilities, or unauthorized access to any equipment or facilities reasonably expected to result in loss, disclosure, or alteration of Cornell Data (each a "Security Incident"), Consultant will: (1) promptly notify Cornell at [security@cornell.edu](mailto: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 Consultant, which costs shall include, but not be limited to, the mailing of legally required notices, providing credit monitoring, and governmental/regulatory fines and penalties that may be due and owing. The foregoing costs shall be deemed direct damages, not consequential damages or otherwise.



**14. Data Transfer Upon Termination or Expiration.** Upon expiration or termination of the Services, Consultant 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 or immediately for non-performance. Consultant 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 Services.

**16. Indemnification.** Consultant shall release, 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) received or sustained by any person, persons or property, 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 Consultants' employees or for property damage; (2) claims of infringement of copyright, patent, or other proprietary rights; or (3) any other claims of any nature whatsoever arising out of the Consultant's performance of the Services to be provided pursuant to this Agreement, or Consultant's failure to perform or comply with any requirements of this Agreement, including, but not limited to, employment-related claims arising under the common law or based upon any federal, state, or local statutes, ordinances, or regulations. Cornell reserves the right to retain whatever funds which would otherwise be due Consultant under this Agreement until such suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and satisfactory evidence to that effect furnished. The obligations of this Section 16 shall expressly survive the expiration or earlier termination of this Agreement.

**17. Insurance.** Consultant shall procure and maintain, at its sole cost and expense, the insurance coverages set forth below during the term of this Agreement:

**a. 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 \$1,000,000 per accident for bodily injury and disease.

*(This coverage is required for all consultants unless they are exempt under the laws of 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 State. Individuals providing Services on harbor fronts or over the water should provide proof of US Longshoremen and Harbor Workers insurance and/or Jones Act insurance.)*

**b. Commercial General Liability Insurance:** subject to at least limits of \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage must be provided for bodily injury liability, broad form property damage liability, and contractual liability and products and completed operations coverage. Completed operations coverage is to be maintained for a minimum period of three (3) years after completion of this Agreement. The policies shall be primary and non-contributory. Cornell shall be included as an additional insured in the policy utilizing additional insured endorsements CG 20 10 07 04 and CG 20 37 07 04 or their equivalents. *(Coverage shall not contain exclusions for claims related to (New York) labor law. Consultant must expressly hold harmless, defend and indemnify Cornell as an additional insured for any suits referencing or seeking recovery under New York Labor Law §§ 200, 240, 240(1), 241, 241(6) and any related sections, and their insurance certificate or accompanying letter from an Authorized Representative must specifically state the same.)*

**c. Automobile Liability Insurance:** subject to limits of not less than \$1,000,000 combined single limit for each accident. Such Automobile Liability Insurance shall be for all owned, non-owned, and hired automobiles. *(Cornell requires limits of \$5,000,000 for any bus charter-related services. Aircraft or watercraft travel that is not a ticketed event (e.g. charters) requires higher insurance limits and pre-approval from Cornell Risk Management and Insurance.)*

**d. Umbrella/Excess Liability Insurance:** subject to limits of not less than \$5,000,000 per occurrence and follow-form of the primary Commercial General Liability, Automobile Liability, and Employers Liability policies. These policies shall contain an endorsement stating that any entity qualifying as an additional insured on the insurance stated in the Schedule of Underlying Insurance shall be an additional insured on the Umbrella/Excess liability policy and that they apply immediately upon exhaustion of the insurance stated in the Schedule of Underlying Insurance as respects to the coverage afforded to any additional insured.

**e. All Risk Property Insurance:** providing replacement cost coverage for any property damage to



Consultant's property which is caused by a loss of any kind and description to any property brought onto Cornell University premises. Consultant 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.

**f. Professional Liability/Errors & Omissions:** subject to \$1,000,000 per claim/\$3,000,000 aggregate covering the activities of the Consultant. The coverage must be maintained during the term of the agreement and at least three (3) years following its completion. Consultant's policy will provide a carve-back to the "Insured versus Insured" exclusion for claims brought by or on behalf of additional insureds.

**g. Crime Insurance (based on scope of work):** with a minimum of \$1,000,000 per occurrence.

**h. Cyber and Technology Products & Services Liability Insurance:** (based on scope of work) with limits of not less than \$5,000,000 for each wrongful act, that provides coverage for:

- 1) Liability for network security failures or privacy breaches, including loss or unauthorized access, use or disclosure of Cornell Data, whether by Consultant or any of subcontractor or cloud service provider used by Consultant;
- 2) Costs associated with a privacy breach, including notification of affected individuals, customer support, forensics, crises management/public relations consulting, legal services of a privacy attorney, credit monitoring and identity fraud resolution services for affected individuals;
- 3) Expenses related to regulatory compliance, government investigations, fines, fees/assessments and penalties;
- 4) Liability for technological products and services;
- 5) PCI fines, fees, penalties and assessments;
- 6) Cyber extortion payment and response costs;

If the Cyber Liability policy is written on a claims-made basis and non-renewed at any time during and up until the expiration or earlier termination of this Agreement, Consultant shall purchase an Extended Reporting Period for at least a two-year period. Consultant's policy will provide a carve-back to the "Insured versus Insured" exclusion for claims brought by or on behalf of additional insureds.

#### Other Requirements

a. The limits of insurance stated above for each type of insurance are minimum limits only; in the event that any policy provided by Consultant provides limits greater than those stated above, then the additional insureds will be entitled to the full limits of such policy and this Agreement shall be deemed to require such full limits. Except with respect to professional liability, all policies shall contain a waiver of subrogation. Consultant shall be responsible for all deductibles under its policies and all defense costs if its policies do not cover such expenses. Insurance coverage in the minimum amounts shall not relieve the Consultant or any of its subcontractors of any liability, nor shall it preclude Cornell from exercising any rights or taking such other actions as are available to it under the law. Cornell's failure to enforce these requirements shall not be considered a waiver of the requirements. Any changes to these requirements shall only be made in writing and agreed upon by all parties.

b. All policies required to be maintained shall be issued by an insurance company licensed or authorized to do business in New York State with a rating of A- VII or better by A.M. Best.

c. All contractors and subcontractors used by the Consultant to provide the Services under this Agreement shall be required to comply with the insurance requirements in this Agreement.

d. A Certificate of Insurance is required evidencing all coverages outlined above prior to commencement of work. Further, each policy shall contain provisions giving Cornell at least 30 days written (10 days in the case of non-payment) notice of cancellation, non-renewal, or other change in coverage.

e. Cornell reserves the right to require additional coverage or to increase limits depending upon the liability exposure in the scope of work in this Agreement.

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

Prior to gaining access to Cornell's systems and/or prior to gaining access to Cornell's facilities to perform Services, Consultant personnel will always agree to the requirements for access privileges and act in compliance with Cornell's policies and procedures. Consultant and all individuals assigned by Consultant to a project under this Agreement must comply with Cornell policies.

Consultant 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- Biley Act, 15 U.S.C. sections 6801-6809 ("GLB") and its implementing regulations. Without representing that it is subject to GLB, Consultant 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, Consultant 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](http://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 either party without the express prior written permission of the other party.

**21. Affirmative Action.** If required by Cornell, Consultant must provide a copy of its 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 law (exclusive of any choice of law principles) shall govern this Agreement. Consultant 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.** Consultant 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:** Cornell shall be excused from liability for the failure or delay in performance of an obligation under this Agreement due to an event beyond its reasonable control including, but not limited to, a fire, a flood, an explosion, an earthquake, a natural disaster or any other act of God, as well as a pandemic, an epidemic, a recognized health threat as determined by any federal, state or local government or quasi-governmental authority (including the federal Centers for Disease Control), civil unrest, a strike or labor disturbance, war or threat of war, terrorism or a threat of terrorism, a governmental or quasi-governmental order or directive to "shelter in place", or any other event, occurrence, order or directive similar to those enumerated above (each, a "Force Majeure Event"). A Force Majeure Event may also include a then-current order, policy, rule or regulation imposed by Cornell University based upon the health and safety of its student body, faculty, staff and/or broader community. Notice of Cornell's failure or delay in performance due to a Force Majeure Event must be given to Consultant promptly but no less than ten (10) days prior to the required performance; provided, however, that any such notification may be on shorter notice if the circumstances and/or conditions giving rise to the Force Majeure Event occur within less than the aforementioned ten (10) day period.



**27. Sale or Bankruptcy of Consultant's Business:** If, during the term of this Agreement, the Consultant 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 this Agreement. In the event of any suspension of payment or the institution of any proceedings by or against Consultant, 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 Consultant, Cornell shall have, in addition to the rights stated in the two preceding sentences, the right to cancel this Agreement.

**28. Payment:** Consultant 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, as further set forth below in this Section 29. Any adjustments in Consultant's invoice due to shortages, rejection or other failure to comply with the provisions of this 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 this 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 submitted immediately after each shipment in accordance with the instructions on the purchase order. If Consultant elects to use paper or email invoices, all payments are due either (i) Net 60 days after the receipt of invoice if receiving check payments, or (ii) Net 45 days after the receipt of invoice if enrolled to receive direct deposit payments. If Consultant elects to register for electronic invoicing and direct deposit payments through the Automated Clearing House (ACH), all payments are due Net 30 days after the receipt of invoice.

**29. Right to Audit:** Throughout the term hereof, and for a period of three years after the later of final payment, expiration or termination, 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 Consultant necessary to permit Cornell to evaluate and verify Consultant's compliance with the requirements of this Agreement. Consultant grants Cornell permission to view and/or copy any books, documents, records, data and information (including data and information stored in electronic form) of Consultant which relate to or have been used in connection with the performance of this Agreement. Consultant also grants Cornell permission to interview Consultant's staff and agents as part of the audit. If applicable, Consultant 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, Consultant 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 Consultant's acceptance of Cornell's written notification of audit findings. Consultant may not unreasonably withhold acceptance of audit findings. Consultant shall include this audit provision in any subcontracts that it may issue under this Agreement.

**30. FERPA and HIPAA Compliance.** If Cornell determines that Consultant's performance under this Agreement requires compliance with the Family Educational Rights and Privacy Act (FERPA) and/or the Health Insurance Portability and Accountability Act (HIPAA), Consultant agrees to enter into any and all additional documents or amendments Cornell deems necessary to address FERPA and/or HIPAA compliance.

**31. Effective Date.** The effective date of this Agreement shall be the later of the two dates of signature below.

**32. 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. This Agreement may be executed in counterpart signatures. In the event of a conflict between the terms in this Agreement and the terms of any other agreement, including a purchase order, the terms in this Agreement shall control.

**33. 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.

**34. Tax Withholding for Domestic and Foreign Consultants.** All payments from Cornell to Consultant under this Agreement 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 Agreement, the Consultant is relinquishing all claims against Cornell for any amounts withheld and remitted by Cornell to a tax authority. It is the Consultant'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 the determinations contemplated in this Section 34 as well as whether such forms and/or documents are sufficient to reduce or eliminate withholding tax on any payment to the Consultant.

**35. Web Content Accessibility.** In accordance with the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973, all web pages, web functionality, websites or web applications developed or provided under this Agreement will attempt to conform to the W3C Web Content Accessibility 2.0 Level AA Guidelines that can be found at <https://www.w3.org/WAI/WCAG20/quickref/>. If Consultant is hosting websites or providing web design services or web-based products, and if required, shall provide written evidence that their product or service addresses each of the WCAG 2.0, Level AA criteria. For any area of noncompliance, Consultant should describe any planned remediation roadmaps, including timelines and steps that will be taken to achieve full compliance, as well as interim workarounds to enable access by individuals with disabilities. Consultants may be required to demonstrate how to use the product with assistive technology, and may be required to undergo third-party accessibility testing. Consultant must provide contact information to facilitate more detailed inquiries from Cornell if so required.

**36. GDPR Compliance.** If this Agreement, and/or the activities contemplated hereby involve the processing (as such term is defined under the Regulation (EU) 2016/679 (General Data Protection Regulation, or "GDPR")) by Consultant of personal data (as defined in the GDPR) of which Cornell is the controller (as defined in the GDPR), regardless of whether such personal data constitutes Cornell Data, then Cornell and Consultant shall execute a Personal Data Processing Agreement (PDPA) to the extent to which the GDPR applies to such processing (in addition to the provisions of this Agreement).

**37. Alterations.** The terms of this Agreement may not be altered without authorization from Cornell's Office of General Counsel, Risk Management and Insurance, or Procurement and Payment Services. Unauthorized changes will not be binding.

*[Schedules and Signature Page Follow]*





Cornell University

## Schedule A

### STATEMENT OF WORK

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See attached (check if document attached)

**Project Description, Work Scope and Deliverables:**

*Initials Cornell Representative:* \_\_\_\_\_ *Date:* \_\_\_\_\_

*Initials Consultant Representative:* \_\_\_\_\_ *Date:* \_\_\_\_\_



## Schedule B

### PROJECT TIMETABLE AND TASK DESCRIPTION

Completion Date:

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See attached (check if document attached)

Initials Cornell Representative: \_\_\_\_\_ Date: \_\_\_\_\_

Initials Consultant Representative: \_\_\_\_\_ Date: \_\_\_\_\_



## Schedule C

### PAYMENT AMOUNT AND SCHEDULE

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See attached (check if document attached)

Payment Amount and Schedule: (Specify assigned consultant(s), hourly rate(s), and/or per project amount(s), estimated total hours, term of assignment (if applicable))

Initials Cornell Representative: \_\_\_\_\_ Date: \_\_\_\_\_  
Initials Consultant Representative: \_\_\_\_\_ Date: \_\_\_\_\_



## Schedule D

### CONSULTANT'S PERSONNEL

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See attached (check if document attached)

List of Consultant's Personnel:

List of Cornell's Representative(s):

Initials Cornell Representative: \_\_\_\_\_ Date: \_\_\_\_\_

Initials Consultant Representative: \_\_\_\_\_ Date: \_\_\_\_\_



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

For Consultant:

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Address: \_\_\_\_\_  
Date: \_\_\_\_\_

For Cornell Procurement and Payment Services:

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: Procurement Agent  
Email: \_\_\_\_\_@cornell.edu  
Address: 377 Pine Tree Rd, Ithaca, NY 14850  
  
Cornell PO #: \_\_\_\_\_

For Cornell College/Unit Representative:

Name: \_\_\_\_\_  
Initials: \_\_\_\_\_  
NetID: \_\_\_\_\_  
Date: \_\_\_\_\_