

## UNION COLLEGE CONTRACTOR SERVICE AGREEMENT

This Contractor Service Agreement (the “**Service Agreement**”) for the \_\_\_\_\_ work, as described below (the “**Services**”), is made effective this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ (the “**Effective Date**”) between The Trustees of Union College in the Town of Schenectady in the State of New York a/k/a Union College, located at 807 Union Street, Schenectady, NY 12308 (“**Union College**”) and \_\_\_\_\_, located at \_\_\_\_\_ herein referred to as the “**Contractor**”.

It is mutually agreed between Union College and Contractor as follows:

1. **SCOPE OF Services**. The Services to be performed shall be defined and specified in the following checked off documents:

*Check if applicable* ☐ Request For Quotation And Specifications For The Project, including Section 00 72 00 General Conditions and other RFP DOCUMENTS (**Schedule**)

*Check if applicable* ☐ Contractors Bid (**Schedule**)

*Check if applicable* ☐ All drawings regarding the Project (**Schedule**)

*Check if applicable* ☐ Project Specifications (**Schedule**)

Other documents:

*Check if applicable* ☐ **COVID-19, Criminal Background Check, and Force Majeure Addendum** (**Schedule**)

*Check if applicable* ☐ (**Schedule** \_\_\_\_\_)

*Check if applicable* ☐ (**Schedule** \_\_\_\_\_)

*Check if applicable* ☐ (**Schedule** \_\_\_\_\_)

*Check if applicable* ☐ (**Schedule** \_\_\_\_\_)

All documents listed above are to be incorporated into and made a part hereof upon the issuance of the **Purchase Order**, to be incorporated into and made a part hereof; all documents to be referred to herein as the “**Service Agreement Documents**”.

2. **TERM**. The Services referred to in the Service Agreement Documents, subject to the Termination Provision set forth below (Section 15), shall commence on **[insert date]** and be completed by **[insert date]**. The Term of this Service Agreement shall be set forth in the Service Agreement Documents and, if applicable, the Term shall be automatically renewed unless Union College provides notice of its intent not to renew. If Contractor continues to provide Services under any applicable Service Agreement Documents following the expiration of this Service Agreement, Contractor agrees that such Services will continue to be governed by the terms of this Service Agreement.

3. **CHANGES**. The Union College, without invalidating the Service Agreement, may order changes in the Services consisting of additions, deletions, or modifications, Cost, time and Term may be adjusted accordingly. Such changes in the Services shall be authorized by written change order signed by the Union College. The cost or credit to the Union College from a change in the Services shall be determined by mutual agreement.

4. **TIME**. Time limits stated in the Service Agreement Documents (the “**Time Limits**”) are of the essence of this Service Agreement. By executing this Service Agreement, the Contractor confirms that the Time Limits (if any) set forth in the Service Agreement Documents constitute a reasonable period in which to complete the Services.

5. **PAYMENT.** Payments of all undisputed amounts due shall be made as provided in the Service Agreement Documents.

a. Payments may be withheld on account of: (1) defective work or Services not remedied, (2) claims filed by third parties, (3) failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment, (4) reasonable evidence that the Services cannot be completed for the unpaid balance of the Service Agreement, (5) damage to the Union College or another contractor, (6) reasonable evidence that the Services will not be completed within the Time Limits and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay, and/or (7) persistent failure to carry out the Services in accordance with the Service Agreement Documents.

b. Final payment shall not become due until the Contractor has delivered to Union College a complete release of all liens arising out of this Service Agreement or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Union College to indemnify the Union College against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to Union College all money that the Union College may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. Final payment shall be made by Union College to the Contractor when the Services are completed and the Service Agreement fully performed.

6. **PROTECTION OF PERSONS AND PROPERTY.** The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Services under this Service Agreement, and compliance with all applicable laws, rules and regulations. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- a. employees performing the Services and other persons who may be affected thereby;
- b. the Services and materials and equipment to be incorporated therein; and
- c. other property at the site or adjacent thereto.

7. **ON-SITE SERVICES.** Any time Contractor, Contractor's employees, agents, or subcontractors are physically on a Union College site or accessing or interacting with Union College's systems, employees, or staff or students, Contractor will comply at all times with the use, security and access policies for the facilities and systems of Union College, as posted or made available to Contractor upon request, and as amended by Union College from time to time. Contractor is fully responsible for the actions and omissions of its employees, agents, or subcontractors while on Union College premises and/or accessing or interacting with Union College systems, employees, staff or students. Contractor shall require its employees, agents, and subcontractors to follow all Union College rules, guidelines, policies and instructs, as well as any applicable laws.

8. **SUB-CONTRACTORS.** If Contractor uses any subcontractor or material supplier, Contractor shall ensure that such subcontractors and/or material suppliers are expressly bound by all of the applicable terms, covenants and conditions under this Service Agreement and the Service Agreement Documents connected herewith. Union College shall have the right to review such subcontracts and to request modifications to the aforesaid agreement(s) as deemed necessary to fulfill the requirements of this Section. Failure of the Union College to review such agreement(s) shall not relieve the Contractor from such language and provisions. In any case, Contractor is solely responsible for the acts and omissions of its subcontractors and material suppliers and shall not be excused from its performance obligations hereunder by virtue of its use of any subcontractor or material supplier.

9. **CORRECTION OF THE SERVICES.** The Contractor shall promptly correct Services rejected by the Union College for failing to conform to the requirements of the Service Agreement Documents, whether observed before or after substantial completion and whether or not fabricated, installed or completed, and shall correct any Services found to be not in accordance with the requirements of the Service Agreement Documents within a period of one (1) year from the date of Substantial Completion of the Service Agreement or by terms of an applicable special warranty required by the Service Agreement Documents. The provisions of this Section 9 apply to Services done by subcontractors as well as to Services done by direct employees of the Contractor.

10. **TAXES.** Unless otherwise indicated, Union College is exempt from New York State sales tax. No charge shall be imposed by Contractor for federal excise taxes. Upon acceptance of the goods or materials to be supplied under this Service Agreement, Union College agrees to provide Contractor with an exemption certificate.

11. **CONTRACTOR'S OBLIGATIONS: INDEPENDENT CONTRACTOR.**

a. In the performance of any and all services, the Contractor, as an independent contractor, accepts responsibility for all persons employed in connection with those services rendered. Contractor agrees to indemnify, exonerate and hold harmless the Union College from any liability for the payment of federal, state and local unemployment and disability insurance, all social security, and/or other taxes and contributions payable in respect of the employment of such persons.

b. The Contractor shall promptly pay, in the event a mechanics' or materialman's lien is filed or notice of intention to file such a lien is received, the amount of such lien, or promptly file a petition in accordance with the State of New York law to have the property in question released from the lien and an appropriate bond of the Contractor substituted therefore. The Union College shall have the right to withhold from the Contractor's payment an amount equal to 125% of the lien or claim. In the event the Contractor fails to remove or bond off a mechanic's lien or a claim as provided herein, the Union College shall have the absolute right to settle the lien or claim without penalty or liability and to deduct the amount paid in settlement from the amount due the Contractor for payment for the Services. If the total costs to the Union College, including attorney's fees, to settle the lien or claim exceeds the amount withheld from the Contractor, the Contractor shall refund the difference to the Union College, including full reimbursement for all costs and attorney's fees incurred.

c. Contractor agrees to perform the Services under this Service Agreement in the capacity of an "independent contractor" and not as an employee or agent of Union College. Nothing in this Service Agreement is meant, or shall be construed in any way or manner, to create between the Contractor and Union College a relationship of employer and employee, principal and agent, partners, joint employers or any other relationship other than that of independent parties contracting with each other solely for the purposes of carrying out the provisions of this Service Agreement. Contractor expressly acknowledges and agrees that Contractor is obligated to pay all taxes arising from Contractor's receipt of payments for the provision of the Services hereunder and that Contractor will not be eligible for any employee benefits and expressly waives entitlement to such benefits. Further, Contractor agrees to assume all liabilities normally accruing in relation to its position as an independent contractor.

12. **REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants that:

a. neither the Services nor Contractor's obligations herein do or will conflict with or constitute a breach of any agreement to which Contractor is a party or any obligation by which Contractor is bound;

b. the Services will be performed diligently, in a good and workmanlike manner, in accordance with the standard of skill and care normally provided by a professional person in the applicable field;

c. that Contractor has good title to all materials and equipment supplied by Contractor in the Services, free from all liens, or encumbrances. No materials, equipment, or supplies for the Services shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sales contract or other security agreement by which an interest is maintained by the seller; and

d. Contractor has all licenses and permits and has paid all fees required for performance under this Service Agreement.

Contractor shall comply with OSHA (if the Contractor falls within the OSHA statutory definition of a covered entity) and with all other applicable Federal, State, and local laws, rules, and regulations in performance of contracted work, including applicable recordkeeping requirements, and shall ensure work performed on campus is done so in a safe manner. The Contractor shall also ensure that any equipment, chemicals, or procedures used by Contractor to perform contracted work will meet OSHA requirements with respect to proper disposal methods for any hazardous waste generated by the Contractor (or subcontractor). Contractor shall notify Union's Director of Facilities immediately of any OSHA recordable injury or illness to Contractor's employees, or subcontractor's employees, occurring on site.

13. **CONFIDENTIALITY; NONDISCLOSURE OF INFORMATION.** Contractor agrees that the terms and conditions of the Service Agreement, including the terms and conditions of any Service Agreement Document, and any information disclosed by Union College to Contractor under the Service Agreement and Service Agreement Documents, whether written or oral and whether or not such material is marked as "proprietary" or "confidential", shall be the Confidential Information of Union College and shall not be disclosed to any third party without prior written consent of Union College. "Confidential Information" includes, without limitation, any information concerning Union College, products, methods, procedures, services, customers, employees, plans, prices, equipment and facilities and location and design thereof, regardless of the form or method of communication. Contractor is prohibited from using or disclosing any data and personal information for any purpose other than for the specific purpose of performing the Services for Union College under the Service Agreement. Contractor shall immediately delete or return all such Confidential Information (including any and all copies) to Union College either upon request or upon termination of this Service Agreement.

14. **INSURANCE.** The Contractor and his/her subcontractors shall purchase and maintain such insurance as will protect him/her, including contractual coverage, from claims set forth below which may arise out of or result from the performance of Contractor or of any of his/her subcontractors, or of anyone directly employed by any one of them, or of anyone for whose acts any of them may be liable any other coverage required by law:

a. Contractor's protective liability insurance.

b. Contractual Liability Risk on Form ISO CG00010196, or its equivalent, covering the indemnification obligations set forth in this Services Agreement.

c. Contingent Liability: Broad Form Contractual Liability; Independent Contractor's Coverage; and Broad Form Property Damage.

d. Contractor's Protective Liability Insurance, Worker's Compensation, Comprehensive General Liability, and Comprehensive Automobile Liability Insurance shall be as set forth below:

i. Contractor's Protective Liability Insurance The Contractor shall purchase and maintain during the term of this Service Agreement, Protective Liability Insurance at limits of no less than one millions dollars (\$1 million).

ii. Workers' Compensation and Employers' Liability Insurance Except as otherwise provided by law, the Contractor shall, at all times, maintain and keep in force such insurance as will protect him from claims under the Workers' Compensation Act and maintain and keep in force coverage B--Employers' Liability Insurance--at a limit of not less than five hundred thousand dollars (\$500,000). The Contractor shall also require his subcontractors and their subcontractors to provide Workers' Compensation and Employers' Liability Insurance for all of the latter's employees unless such employees are covered by the protection afforded the Contractor. In case any class or employee engaged in dangerous work under the Agreement at the site of the Services is not protected under the Worker's Compensation Act, the Contractor shall provide, and shall cause each subcontractor to provide adequate insurance for the protection of employees not otherwise protected.

iii. General Liability Insurance The Contractor shall purchase and maintain during the term of this Service Agreement, Comprehensive General Liability Insurance at limits of not less than the limits set forth under this Section above, or required by law, whichever is greater.

iv. Comprehensive Automobile Liability Insurance The Contractor shall purchase and maintain during the term of this Service Agreement Comprehensive Automobile Liability Insurance at a limit of not less than the limit set forth under this Section above, or as required by law, whichever is greater.

e. A Certificate of Insurance issued to Union College and naming Union College and its employees as additional insureds, evidencing the following coverages and the provisions of this Section, must be forwarded to the Union College prior to commencement of services, **and thereafter the Contractor is required to forward an updated Certificate at the time of policy renewal, or earlier if there is a change in provider:**

Type of Coverage

Limits of Liability

General Liability	\$3,000,000 per occurrence/\$5,000,000 aggregate
Automobile Liability	\$1,000,000 per occurrence/\$3,000,000 aggregate
Workers Compensation	\$500,000 or Statutory, whichever is greater
Employer's Liability	\$1,000,000 per occurrence/\$3,000,000 aggregate

All Certificates of Insurance required hereunder shall include the following provision: (Show on Certificate):

"It is agreed that this policy is not subject to cancellation, non-renewal of, or reduction in coverage until thirty (30) days prior written notice has been given to:

\_\_\_\_\_  
 Union College  
 807 Union Street  
 Schenectady, New York 12308

f. Additionally, the Contractor shall provide the Union College with an endorsement to the General Liability policy evidencing that the Union College is an "Additional Insured" and an endorsement that the insurance provided is primary insurance and non-contributory with respect to other insurance available to the Union College and that the carrier shall be obligated to pay any judgment rendered against Union College regardless of whether or not the reasons for which Union College was liable is its own negligence or that of the Contractor. Contractor shall obtain and provide Union College, prior to the commencement of Services, a written certificate that the coverage provided is primary and non-contributing with an insurance carried by Union College. Such insurance coverage of Contractor shall not be deemed a discharge of the Contractor's indemnity but is independent of it, and such indemnity shall not be suspended or abated in consequence of such insurance but shall continue in full force and effect. Such policies also provide that any named insured may bring action against another named insured and the carrier shall defend and indemnify the insured that the action is filed against under the policy as if the party bringing the action were not a named insured under the policy.

#### 15. **INDEMNIFICATION.**

a. To the full extent allowed by law, Contractor shall indemnify, defend and hold harmless College from and against any actions or suits, any claims, demands, liability, damages, costs, loss or expense as a result of bodily injury or death and/or property damage for which Union College might become liable, arising from or in connection with Contractor's conduct or its agents' conduct hereunder.

b. "**Contractor's conduct**" shall mean any act failure to act, omission, professional error, fault mistake, negligence, gross negligence, or gross misconduct of any and every kind, of Contractor, its employees, agents, representatives, or subcontractors or the employees, agents, or representatives of such subcontractors, arising out of:

i. Any Workers' Compensation claims or claims under similar such laws or obligations related to this Service Agreement;

ii. Performance of this Service Agreement (or failure to perform);

iii. Breach of this Service Agreement; or

iv. Violation of any applicable laws.

c. Contractor shall indemnify defend and hold harmless Union College from and against any actions or suits, any claims, demands, liability, damage, loss, cost or expense as a result of bodily injury or death and/or property damage, including damage to or destruction of equipment or materials of Contractor

or any of its subcontractors caused by or arising from the acts or omissions of Contractor or its employees, agents or subcontractors, unless caused by the sole negligence of Union College.

d. Contractor shall indemnify, defend and hold harmless Union College from all actions, costs, claims, demands, expenses and liabilities whatsoever resulting from any alleged or actual infringement of intellectual property rights.

e. The Contractor agrees that, at the option of the Union College, the Contractor shall at his expense intervene in, defend or bear the cost of defending any proceeding which may be brought in connection with the Contractor's performance hereunder, upon reasonable notice by Union College. The Contractor further agrees, at the option of the Union College, to defend and bear the cost of defending any actions or proceedings brought against the Union College as a result of any acts or omissions of the Contractor. The Union College shall have the option to select counsel to conduct the defense of any such action or proceeding.

f. The foregoing indemnities shall not be affected by any partial negligence of the Union College. The foregoing indemnity is independent of the obligation of Contractor to include Union College as an additional insured under the liability policy, as set forth under Section 14.

## 16. **DISPUTE RESOLUTION.**

a. If a dispute arises out of or relates to this Service Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the parties shall endeavor to settle the dispute by mediation under the Construction Industry Mediation Rules of the American Arbitration Association before recourse the dispute resolution procedures set forth below in Section 16.e.

b. All subcontractors shall be bound by the dispute resolution procedures set forth in this Service Agreement and Contractor shall explicitly incorporate such clause in its subcontracts.

c. Completion of the dispute resolution procedures shall be a condition precedent to the right of the Contractor to commence or continue any legal action against the Union College.

d. The Contractor agrees to continue performance of the Services and shall proceed in accordance with the directives of the Union College, under protest, in the event of a dispute or controversy. Failure to so proceed shall constitute a material breach of the Agreement regardless of the ultimate decision on the dispute, it being understood and agreed that any controversy between the parties shall not be deemed a basis to delay or suspend the Services, unless directed otherwise by the Union College.

e. Dispute resolution procedures:

i. If the controversy, dispute or claim between Union College and Contractor cannot be resolved between the parties themselves, the Union College and Contractor shall first participate in good faith to resolve the controversy or claim through non-binding mediation under the Construction Industry Mediation Rules of the American Arbitration Association with mediation proceedings being conducted in Schenectady, New York prior to proceeding to arbitration, litigation or other relief. The parties retain the option to proceed to mediation without the administration of the American Arbitration Association and with the mutual selection of alternative mediators.

ii. The laws of the State of New York shall govern any dispute resolution proceeding. Contractor shall carry on the work and maintain the project schedule pending the resolution of any claims, disputes or litigation arising under the contract.

iii. If the controversy or claim between Contractor and Union College has not been resolved pursuant to the mediation procedure within sixty (60) days of the commencement of such procedure, the controversy, dispute, or claim shall be submitted to the Union College's representative for determination of the controversy, dispute, or claim. Such submission shall be an express condition precedent to any lawsuit, arbitration or other relief that may be sought hereunder. The parties reserve the right to submit any claim to non-binding mediation through final payment of the Agreement.

iv. For disputes up to and including Ten Thousand Dollars (\$10,000.00) in amount, the parties to this Service Agreement authorize the Union College's representative, acting personally, to

decide all questions of any nature whatsoever arising out of, under or in connection with or in any way related to or on account of this Service Agreement, and the representative's decision shall be conclusive, final and binding on the parties. The representative's decision may be based on such assistance as he/she may find desirable including advice of engineering or other experts. The effect of the representative's decision shall not be impaired or waived by any negotiation or settlement offers in connection with the question decided, whether or not he/she participated therein himself/herself, or by any other prior decisions of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of this Service Agreement. All such disputes shall be submitted in writing by the party requesting review to Union College's representative, acting personally, for his/her decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. The parties agree that Union College's representative shall be released from liability and held harmless from any damage, cost or expense, including attorneys' fees, arising directly, or indirectly, from any decision rendered in connection with a dispute submitted for his/her determination.

v. If Union College or Contractor protests the determination of Union College's representative, then such party shall submit such disputes to binding arbitration pursuant to the Construction Industry Rules or American Arbitration Association (AAA). The parties shall be bound to use the AAA to administer the dispute. Any award rendered in such arbitration shall be recognized in a court of competent jurisdiction and judgment rendered thereon.

vi. The prevailing party shall be entitled to recover all attorneys' fees, filing fees, costs, expenses, engineering fees, expert fees, testing analysis or other expenses incurred in the determination of any dispute with the other party regardless of whether incurred in arbitration, litigation, the dispute resolution process or otherwise.

#### 17. **TERMINATION.**

a. Union College may, without prejudice to any right or remedy it may have hereunder, terminate this Service Agreement upon thirty (30) days' prior written notice to Service Provider. In the event of such termination for Union College's convenience, Service Provider shall be entitled to payment, in accordance with the terms of this Service Agreement, for a pro-rata amount of fees for Services provided in accordance with this Service Agreement up to the effective date of termination.

b. In the event of a breach by Contractor of any provision of this Service Agreement, Union College may terminate this Service Agreement immediately upon seven (7) days' written notice, at no penalty to Union College. Contractor shall be liable for actual damages suffered by Union College as a result of such breach by Contractor, including incidental and consequential damages.

18. **DEFAULT.** In the event suit is instituted by Union College for any default on the part of Contractor, and the Contractor is adjudged to be in default by a court of competent jurisdiction, Contractor shall pay to Union College all costs and expenses disbursed or incurred by Union College in connection therewith, including reasonable attorneys' fees. The parties agree that any disputes or claims arising under this Service Agreement shall be governed by the laws of New York State. The venue for any such claims or disputes arising hereunder shall be within the County of Schenectady, State of New York.

19. **UNION COLLEGE TITLE IX AND ANTI-DISCRIMINATION POLICIES.** Union College is an equal opportunity institution.

a. Contractor agrees that it does not discriminate against any client, employee, or applicant for employment or services because of race, creed, color, national origin, sex, marital status, age, or the presence of any sensory, mental, or physical handicap with regard to, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; selection for training; rendition of services. It is further understood that any Contractor who is in violation of this clause or any applicable affirmative action program shall be barred forthwith from receiving awards of any purchase order unless a showing is made that discriminatory practices or noncompliance with applicable affirmative action programs have ceased and that a recurrence of such acts is unlikely.

b. Union College has in place a Title IX Policy and a Policy Prohibiting Bias Acts, and a Policy Prohibiting Discrimination, Harassment, and Retaliation (found at <https://www.union.edu/titleix/staff->

[policies-and-procedures](#)), based upon an individual's protected status, which prohibits discrimination and harassment directed against persons because of their race, religion, creed, ethnicity, color, national origin, gender, pregnancy, age, sexual orientation, genetic information, gender identity, marital status, veteran status, domestic violence victim status, disability or other basis identified in federal or state law. In providing goods or services under this Service Agreement, Contractor, any subcontractor(s), service providers, and their agents and employees agree to be bound by all applicable anti-discrimination federal, state, and local laws, rules, regulations, orders, instructions, other directives, New York State legal mandates requiring employers to adopt prevention of sexual harassment policies containing minimum standards to which all employees must acknowledge receipt and publication of flyers directing employees where to file complaints, and the Union College policies stated above. These Policies are intended to require, among other things, that contractors, subcontractor(s), service providers, and their agents and employees take affirmative steps to promptly respond to, and effectively address, an informal or formal complaint, or any reported information that may result in a complaint, by one of their employees of harassment and/or discrimination upon gaining knowledge of such complaint and to promptly notify Union College that the complaint has been appropriately addressed.

20. **NOTICES.** All notices or other communications hereunder shall be given in writing and shall be deemed given if served personally or mailed by registered or certified mail, return receipt requested, to the parties at their respective address indicated in the first paragraph of this Service Agreement, or at such other address or addresses as they may hereafter designate in writing.

	<b>The Trustees of Union College in the Town of Schenectady in the State of New York a/k/a Union College</b>		<b>Contractor</b>
<i>Union College</i>			
<i>Signature</i>	_____	<i>Signature</i>	_____
<i>Print Name</i>	_____	<i>Print Name</i>	_____
<i>Title</i>	_____	<i>Title</i>	_____
	807 Union Street		
<i>Address</i>	Schenectady, Ny 12308-3103	<i>Address</i>	_____
<i>Phone</i>	_____	<i>Phone</i>	_____
<i>Email</i>	_____	<i>Email</i>	_____
<i>Date</i>	_____	<i>Date</i>	_____