

SERVICE/SUPPLY AGREEMENT

This Service/Supply Agreement (“Agreement”) made between the parties identified below upon the terms and conditions set forth herein, for good and valuable consideration, the receipt of which is acknowledged.

ARTICLE I
Parties

COLLEGE

CONTRACTOR

Hudson Valley Community College

80 Vandenburg Avenue
Street Address

Street Address

Troy, New York 12180
City, State Zip

City, State Zip

Attn: VP for Admin and Finance

Attn: _____

(518) 629-4525
Telephone No.

Telephone No.

(518) 629-4526
Facsimile No.

Facsimile No.

ARTICLE II
Performance and Payment Schedule

As specified in RFP or Bid Number: _____.

ARTICLE III
Project or Scope of Work

as

more fully described in Article IV of this Agreement (the "Work"). This description is for convenience of reference only and is not intended to modify the more detailed description set forth in this Agreement. Unless otherwise specifically set forth herein, Contractor shall supply all facilities, equipment, and personnel necessary to perform the Work.

ARTICLE IV
Contract Documents and Performance Requirements of the Work

The terms and conditions of this Agreement are set forth herein and in the following documents, specifications, appendices and exhibits:

- 4.1 Bid Notice or RFP Solicitation _____.
- 4.2 Bidder's Response to Bid Notice or RFP Solicitation _____.
- 4.3 Statement of Work as specified in Bid or RFP _____.
- 4.4 Standard Clauses for Hudson Valley Community College Contracts attached in Exhibit A.
- 4.5 Insurance Requirements if applicable as specified in Bid or RFP _____.

ARTICLE V
Termination

5.1 Term and Termination.

5.1.1 Term. Unless otherwise terminated in accordance with this Agreement, the term of this agreement shall be in accordance with the term as specified in Bid Notice or RFP Solicitation, _____.

5.1.2 Termination. This Agreement may be terminated:

- a) by the non-breaching party, if a party commits a material breach of this Agreement and the breaching party fails to cure the material breach within thirty (30) days of receiving written demand to cure the breach from the other party;
- b) by the solvent party, if the other party is declared insolvent or bankrupt or makes an assignment or other arrangement for the benefit of creditors;
- c) by either party, without cause, with one year's prior written notice; or

- d) if any representation in Exhibit B shall contain an untrue statement of a material fact or omit to state a material fact necessary to make statements therein not misleading
- e) as otherwise provided in this Agreement.

ARTICLE VI

Confidential Information

6.1 In the course of performing their respective obligations pursuant to this Agreement, either the College or Contractor may come into contact with, or acquire knowledge about, technical or business information which the other regards and treats as confidential or is required by law to treat as confidential (“Confidential Information”). Confidential Information includes information about students except Directory Information as that term is defined by the College pursuant to the Family Education Rights and Protection Act (“FERPA”). The Confidential Information may be used by the other only if required to perform its obligations under this Agreement and may only be distributed in accordance with law and to those employees who have a need to know in order to perform pursuant to this Agreement.

6.2 The obligations contained in Section 6.1 of this Agreement shall not apply to any Confidential Information lawfully in the receiving party’s possession prior to its acquisition from the other party; received in good faith from a third party not subject to any confidential obligation to the party; or which now or later becomes publicly known through no breach of confidential obligation by a party.

6.3 If either party receives a request to disclose any Confidential Information (whether pursuant to the New York State Freedom of Information Law, a valid and effective subpoena, an order issued by a court or other governmental authority), on advice of counsel that disclosure is required under applicable law, the receiving party agrees that, prior to disclosing any Confidential Information, it shall (i) notify the other of the existence and terms of such request or advice, (ii) cooperate with the other in taking legally available steps to resist or narrow any request or otherwise eliminate the need for disclosure, and, (iii) if disclosure is required, and a party seeks to quash the subpoena or otherwise narrow, limit, or eliminate the request for the party’s Confidential Information, the other shall cooperate in such action at the expense of the requesting party.

6.4 If either party is given access, whether on-site or through remote facilities, to any data about the other or a student, the receiving party will limit access and use it solely to perform its obligations within the scope of this Agreement and shall not access or attempt to access any computer system, electronic file, software or other electronic services except those required to perform its obligations under this Agreement.

6.5 The obligation of confidentiality and use with respect to Confidential Information shall survive termination of this Agreement.

ARTICLE VII

Force Majeure

7.1 If performance of this Agreement is prevented, restricted or interfered with by reason of acts of God, wars, civil commotion, acts of public enemy, embargo, acts of government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, or any other circumstances beyond the reasonable control and not involving any fault or negligence of the party affected, the party affected, upon giving prompt notice to the other party, shall be excused from such performance on a day-to-day basis during the continuance of such prevention, restriction, or interference (and the other party shall likewise be excused from performance of its obligations on a day-to-day basis during the same period), provided, however, that the party so affected shall use its best reasonable efforts to avoid or remove such causes of nonperformance and both parties shall proceed immediately with the performance of their obligations under this Agreement whenever such causes are removed or cease.

ARTICLE VIII

Taxes

8.1 Each party shall be responsible for the withholding and/or payment, as required by law, of all federal, state, and local taxes imposed on it or its employees because of the performance of work hereunder. Each party shall comply with all federal and state benefit laws applicable to it or its employees, if any, including making deductions and contributions for social security and unemployment tax. Each party further agrees to make payments to federal and appropriate state authorities for withholding, FICA and unemployment taxes.

ARTICLE IX

Miscellaneous

9.1 Notice. Any written notice either party may give the other concerning the subject matter of this Agreement shall be in writing and given or made by means of facsimile transmission, U.S. mail, express mail or other overnight delivery service, or hand delivery, proper postage or other charges paid and addressed or directed to the respective parties to the addresses provided in Article I of this Agreement:

Such notice shall be deemed to have been given or made or five (5) days after mailing, the day faxed (with confirmation), and the day after delivery to the postal service or other overnight delivery service.

9.2 Waiver of Terms and Conditions. Failure to enforce any of the terms or conditions of this Agreement shall not constitute a waiver of any such terms or conditions, or of any other terms or conditions.

9.3 Severability. If any term or provision of this Agreement shall be declared invalid, illegal or unenforceable, the invalidity, illegality or unenforceability thereof shall not affect the remaining terms or provisions.

9.4 Survival of Obligations. The respective obligations of Contractor and College under this Agreement which by their nature would continue beyond the termination, cancellation or expiration of the Agreement, shall survive termination, cancellation or expiration.

9.5 Applicable Law. This Agreement, and the rights and obligations contained in it, shall be governed by and construed in accordance with the laws of the State of New York, without regard to any conflicts of law principles that would require the application of the laws of any other jurisdiction. Any action arising under this Agreement shall be brought in the Supreme Court for the County of Rensselaer or the Federal District Court for the Northern District of New York and the parties waive defense of *forum non conveniens*.

9.6 Entire Agreement. This Agreement represents the entire understanding between the parties with the respect to the provisions and cancels and supersedes all prior agreements or understandings, whether written or oral, with respect to the subject matter. This Agreement may only be modified or amended by an instrument in writing signed by duly authorized representatives of the parties.

9.7 Counterparts. This Agreement may be executed in counterparts, and when executed by both parties and delivered by each to the other, it shall be one and the same agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement through their authorized representatives.

COLLEGE

CONTRACTOR

Hudson Valley Community College

By: _____

By: _____

Title: VP for Admin and Finance

Title: _____

EXHIBIT A

STANDARD CLAUSES FOR ALL HUDSON VALLEY COMMUNITY COLLEGE CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the Contract" or "this Contract") agree to be bound by the following clauses which are hereby made a part of the Contract (the word "Organization" herein refers to any party other than the Hudson Valley Community College ("College"), whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. NON-ASSIGNMENT CLAUSE. This Contract may not be assigned by the Organization or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the College and any attempts to assign the Contract without the College's written consent are null and void.

2. PROVISIONS REQUIRED BY LAW INSERTED. Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted therein and the Contract shall be read and shall be enforced as though so included therein.

3. NO THIRD-PARTY RIGHTS. Nothing in the Contract shall create or shall give to third parties any claim or right of action against the College, the Organization, or any institution at which work is being carried out beyond such as may legally exist irrespective of the Contract.

4. PROTECTION OF LIVES AND HEALTH. The Organization shall comply with the provisions of all applicable federal, state and local laws, ordinances, regulations and codes (including procurement of required permits or certificates) in Organization's performance under this Contract including, but not limited to, the Fair Labor Standards Act; the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101 et seq.); safety and environmental laws and any rules and regulations promulgated thereunder; any laws, rules and regulations regarding hours and federal and state Occupational Safety and Health Act Laws.

5. PROHIBITED INTERESTS/ETHICAL CONDUCT. Officers and employees of the College are bound by Article 18 of the *New York State General Municipal Law* and the *Rensselaer County Ethics Law*. In addition, no officer, employee, architect, attorney, engineer, inspector or consultant of or for the College authorized on behalf of the College to exercise any legislative, executive, administrative, supervisory or other similar functions in connection with the Contract or the work, shall become personally interested, directly or indirectly, in the Contract, material supply contract, subcontract, insurance contract, or any other contract pertaining to the work. The College strongly discourages the Organization from offering or giving anything of value to employees of the College under circumstances which may constitute, or even suggest, impropriety. The *Rensselaer County's Ethics Law* explicitly prohibits any gift or financial benefit from any person considering, has, or within the previous twelve months has had, any business dealing with Rensselaer County that involves any discretionary act by the Rensselaer County officer or employee, including College employees. Any violation of these provisions shall justify termination of this Contract and may result in College rejection of the Contractor's bids or proposals for future contracts.

6. ORGANIZATION RELATIONSHIP. The relationship created by the Contract between the College and the Organization is one of an independent contractor and it is no way to be construed as creating an agency relationship between the College and the Organization nor is it to be

construed as, in any way or under any circumstances, creating or appointing the Organization as an agent of the College for any purpose whatsoever.

7. WORKERS' COMPENSATION BENEFITS. Contractor shall provide and maintain during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

8. NON-DISCRIMINATION REQUIREMENTS. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Organization will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status, military status, sexual orientation and predisposing genetic characteristics.

9. CONFLICTING TERMS. In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

10. GOVERNING LAW. This Contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

11. SERVICE OF PROCESS. In addition to the methods of service allowed by the New York State Civil Practice Law & Rules ("CPLR"), Organization hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the College's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Organization must promptly notify the College, in writing, of each and every change of address to which service of process can be made. Service by the College to the last known address shall be sufficient.

12. INDEMNIFICATION. The Organization shall, to the fullest extent authorized by law, protect, defend, indemnify, and hold harmless the College, County of Rensselaer and the State University of New York, their officers, directors, trustees and employees from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against the College, the County of Rensselaer or the State University of New York, their officers, directors, trustees, and employees resulting from, arising out of or relating to the performance of this Contract. The Organization agrees that such obligations shall survive the expiration or termination of this Contract and shall not be limited by any enumeration of required insurance coverage.

13. LICENSES AND PERMITS. Where applicable, Organization shall obtain all licenses and permits necessary for the proper performance of the Contract.

14. AMENDMENTS. This Contract may not be amended, modified or supplemented except by written agreement of the parties hereto.

15. SEVERABILITY. Any term or provision of this Contract which is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Contract or affecting the validity or enforceability of any of the terms or provisions of this Contract in any other jurisdiction. If any provision of this Contract is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

16. MODIFICATION. This writing contains the entire agreement of the parties with respect to the subject matter hereof. No representations were made or relied upon by either party, other than those expressly set forth. No agent, employee or other representative of either party is empowered to alter any term of this Contract unless done in writing and signed by an officer of the parties.

17. JURISDICTION AND VENUE. All actions or proceedings relating to this Contract, its existence, validity, performance or nonperformance, seeking the enforcement or interpretation of its terms or remedies for its breach shall be brought only in the Supreme Court of the State of New York for the County of Rensselaer, and all parties consent to the exclusive jurisdiction and venue of such court and waive the defense of forum non conveniens.

18. COUNTERPARTS. This Contract may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

19. COPIES AND FACSIMILES. Delivery of an executed copy of this Agreement by facsimile or other reliable means shall be deemed to be as effective for all purposes as delivery of a manually executed copy. Each party agrees that the other may maintain a copy of these documents in electronic form and agrees that a copy reproduced from such electronic form or by any other reliable means (for example, photocopy, image or facsimile) shall in all respects be considered equivalent to an original.

20. SET-OFF RIGHTS. College shall have all of its common law, equitable and statutory rights of set-off together with the rights provided by this Section. These rights include College's option to withhold for the purposes of set-off any amounts due to Organization under this Contract up to any amount due and owing to College with regard to this Contract, any other contract with College, including any contract for a term commencing prior to the term of this Contract, plus any amounts due and owing to College by Organization for any other reason.

21. WAIVER OF TERMS AND CONDITIONS. The failure to enforce any of the terms or conditions of this Contract, constitute a waiver of any such terms and conditions, or of any other terms and conditions.

22. SURVIVAL OF OBLIGATIONS. The respective obligations of Organization and College under this Contract, which, by their nature, must continue beyond the termination, cancellation, or expiration of the Contract shall survive such termination, cancellation, or expiration to the extent necessary for their enforcement.