

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) is between _____ with corporate offices located at _____ (“Company”) and the Board of Trustees of Community College District No. 508, County of Cook and State of Illinois, a body politic and corporate, d/b/a City Colleges of Chicago, with district offices located at 180 N. Wabash Ave., Suite 200, Chicago, Illinois 60601 (“Institution”).

RECITALS:

WHEREAS, the Institution desires to secure Company’s services as outlined herein; and

WHEREAS, Company has represented that it has the requisite expertise to perform such services;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which is acknowledged by Company and the Institution, the parties agree as follows:

1. **Incorporation.** The above recitals and all exhibits attached hereto are incorporated herein by reference. If applicable to this agreement, the entire RFP and Company’s response to the RFP are hereby incorporated by reference into this agreement.
2. **Services.**
 - a. **Scope of Services.** Company shall perform the professional services and all tasks incidental thereto and provide the deliverables specified herein and in Exhibit A attached hereto and incorporated herein by reference (“Services”). Company shall perform all Services in accordance and to the reasonable satisfaction of the Institution. Time is of the essence.
 - b. **Standard of Performance.** Company shall perform the Services in accordance with the degree of professional skill, care and diligence shown by a professional performing services of a comparable scope, purpose and magnitude customarily provided in the performance of such Services. Company shall at all times act in the best interests of the Institution. Company acknowledges that it is entrusted with and will have access to valuable and confidential information and records of the Institution and agrees to be held to the standard of care and diligence of a fiduciary. All Services that require the exercise of professional skill or judgment will be performed by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. Company remains responsible for the professional and technical accuracy of all Services and deliverables furnished, whether by Company, Company’s subcontractors or others on its behalf. All deliverables must be prepared in a form, content and schedule satisfactory to the Institution. Moreover, Company shall use its best efforts, furnish its best professional skill and judgment and cooperate with Institution officials, employees, contractors and agents in completing the Services. If Company fails to comply with these standards, the Company must re-perform, at its own expense, all Services

required to be re-performed as a direct or indirect result of such failure. Any review, approval, acceptance or payment for any and all of the Services by the Institution does not relieve the Company from this re-performance obligation or its responsibilities hereunder.

3. **Personnel.** Company shall provide and utilize all personnel required to satisfactorily and successfully perform the Services.
4. **Term.** Subject to Section 11 herein, this Agreement shall begin _____ and end _____ (“Term”) unless otherwise terminated or extended by the parties in writing.
5. **Fee.**
 - a. **Maximum Fee.** As payment for satisfactory performance of the Services, Company shall receive a maximum fee not to exceed _____ (\$_____) (“Fee”).
 - b. **Invoices.** Company shall submit monthly invoices for the Institution’s review and approval indicating the portion of the Services provided during the invoice period. Company shall comply with any form and time limitations in which invoices must be submitted and shall submit such evidence to the Institution as may be required to show the validity of the Fee and any claimed expenses. Invoices shall be paid based on agreed upon payment method and associated terms once all stipulations, provisions and/or conditions set forth in this agreement have been met. If the Institution objects to all or any portion of an invoice it shall promptly notify Company of its objection and both parties shall immediately make every effort to promptly settle the disputed portion of the invoice. If the dispute is not settled by the date that the payment is due, then the Institution shall pay the undisputed portion of the invoice. Neither the initial payment nor any subsequent payments hereunder constitute acceptance of the Services or any deliverables provided hereunder.
 - c. **Payment Method and Term.**
 - i. **Net 15** days or less- Institution utilizes an electronic payment method leveraging unique and secure cardless payment accounts which allows for placement of funds for approved payment transactions on a Visa Single Use Account (“SUA”) administered through U.S. Bank via the Payment Plus program.
 - ii. **Net 45** days - Institution utilizes Automatic Clearing House (“ACH”) as a method to pay suppliers. This requires completion of a form indicating Bank routing and account number information authorizing Institution to deposit funds into Company Bank account.
 - iii. **Net 60** days – Institution will issue traditional checks to suppliers unable to accept one of the preferred electronic methods.

- d. **Taxes.** Company is solely responsible for paying income, social security and other employment taxes due to the proper taxing authorities, and understands that the Institution shall not deduct such taxes from any payments to Company hereunder. Company shall also obtain and pay for all permits, licenses and fees required to perform the Services and comply with the terms of this Agreement.
- e. **Appropriation.** All payments hereunder, including the Fee shall be subject to the appropriation and availability of funds of Institution. If funds are not appropriated by the Institution for the Fee during any fiscal period, this Agreement shall terminate, without need for notice, on the earliest of the last day of the fiscal period for which sufficient appropriation was made or when the funds appropriated for payment under this Agreement are exhausted. The Institution shall not be obligated to make any payments in the event of non-appropriation.
- f. **Accounting.** In connection with the Services, Company shall keep and maintain separate, complete, accurate, and detailed books and records reflecting and fully disclosing: (i.) all costs and out-of-pocket expenses incurred and (ii.) all revenues billed and received. All such books and records shall be kept for a period of three (3) years after the expiration or termination of this Agreement and shall be available at a location in Chicago, Illinois, for inspection, copying, audit, and examination by the Institution or any representative of the Institution. Company shall incorporate this right to inspect, copy, audit, and examine all books and records into all subcontracts entered into by Company with respect to the Services. Moreover, upon the Institution's request, Company shall promptly furnish all such books and records to the Institution. This provision shall survive for three years after the expiration or termination of this Agreement.

6. **Ownership/Confidentiality.**

a. **Ownership of Documents.**

All materials, including but not limited to intellectual property, presentations, documents, data, studies and reports prepared, furnished or generated as a result of this Agreement shall at all times be and remain the property of the Institution ("Work Product"). At Institution's request or upon the expiration or termination of this Agreement, Company shall deliver to the Institution all finished or unfinished Work Product. Company hereby irrevocably assigns, transfers and delivers to the Institution, its successors and assigns, all right, title and interest in and to the U.S. and foreign copyright registrations, applications and renewals, if any, related to such Work Product, free and clear of any liens, claims or other encumbrances. Company will execute all documents and perform all acts that the Institution may reasonably request in order to assist the Institution in perfecting its rights in and to Work Product.

b. Confidentiality.

All materials, including, but not limited to, Work Product, documents, studies, reports, information, or data, prepared by or provided to Company under this Agreement (“Materials”) are confidential. Company shall not make the Materials available to a third party without the Institution’s prior written consent. Company shall not issue press releases or grant press interviews related to the Services, or disseminate any information regarding the Services without the Institution’s prior written consent. If Company is presented with a *subpoena duces tecum* or a request for documents by any administrative agency regarding any records, data or documents related to the Services, Company shall immediately give notice to the Institution and agrees that the Institution may contest the subpoena or request before the Materials are submitted to a court or other third party, provided, however, that Company shall not be obligated to withhold such delivery beyond that time as may be ordered by the court or administrative agency unless the subpoena or request is quashed or the time to produce is otherwise extended.

7. **MBE/WBE.** If applicable, unless waived by Institution in writing, Company must expend at least 25% of the Fee (including all modifications and amendments to it) with one or more certified minority business enterprises (“MBE”) and at least 7% of the Fee (including all modifications and amendment to it) with one or more certified women’s owned business enterprises (“WBE”). The Company will adhere to any and all reporting and other requirements as set forth in the Board’s **Minority and Women Business Enterprise Contract Participation Plan, including but not limited to the Company’s response to Schedule A of the plan on file with the Office of Procurement Services.** The Plan can be found at <http://www.ccc.edu/services/Pages/Become-a-Vendor.aspx> Failure to comply with this provision constitutes a material breach of this Agreement and may result in termination of the Agreement and other remedies.

8. **Representations and Warranties.**

- a. **Company Representations and Warranties.** In connection with this Agreement, Company represents and warrants that:

- i. It is ready, willing and able to perform, and will perform, the Services in accordance with this Agreement; and
- ii. No officer, agent or employee of the Institution is employed by Company or to the best of Company’s knowledge, after due diligence and inquiry, has a financial interest directly or indirectly in this Agreement or the Services except as may be permitted under the Institutions’ Ethics Policy. Further, Company agrees to comply with Institution’s Ethics Policy and with any amendments enacted thereafter. The policy can be found on Institution’s website: www.ccc.edu; and
- iii. Company shall not use any debarred or ineligible subcontractor to perform all or any portion of the Services; and

- iv. Company and its subcontractors, if any, are not currently in default and have not been in default within the past five (5) years of any contract awarded by the Institution; and
 - v. Company understands the nature of the Services and all other matters that may affect this Agreement or its performance and Company has carefully examined and analyzed this Agreement and determined that the Agreement is feasible of performance in accordance with its terms; and
 - vi. No representation, statement or promise, oral or written, by the Institution, its officials, agents or employees, has induced Company to enter into this Agreement or has been relied upon by Company; and
 - vii. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of Company. This Agreement constitutes the legal, valid and binding agreement of Company, enforceable against Company in accordance with its terms (except insofar as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally, or by principles governing the availability of equitable remedies); and
 - viii. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not: (i) conflict with or result in any violation of any provision of the charter or bylaws of Company, each as amended to date; or (ii) conflict with, result in any violation or breach of, constitute a default under, give rise to any right of termination or acceleration (with or without notice or the lapse of time or both) pursuant to, or result in being declared void or voidable, any term or provision of any note, bond, mortgage, indenture, lease, license, contract or other instrument to which Company is a party of or by which any of its properties or assets are or may be bound; or (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Company; and
 - ix. Professionals competent to perform the Services shall perform all Services that require the exercise of professional skill or judgment.
- b. **Institution Representations and Warranties.** In connection with this Agreement, the Institution represents and warrants that:
- i. The Institution is a body politic and corporate duly organized, validly existing and in good standing under the laws of the State of Illinois. The Institution has all requisite corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder; and
 - ii. The execution and delivery of this Agreement and the consummation of the transactions contemplated herein, have been duly authorized by all requisite corporate action on the part of the Institution. This Agreement constitutes

the legal, valid and binding agreement of the Institution, enforceable against the Institution in accordance with its terms (except insofar as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally, or by principles governing the availability of equitable remedies; and

- iii. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not: (i) conflict with or result in any violation of any provision of the charter or bylaws of the Institution, each as amended to date; or (ii) conflict with, result in any violation or breach of, constitute a default under, give rise to any right of termination or acceleration (with or without notice or the lapse of time or both) pursuant to, or result in being declared void or voidable, any term or provision of any note, bond, mortgage, indenture, lease, license, contract or other instrument to which the Institution is a party or by which any of its properties or assets are or may be bound; or (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to the Institution.

9. **Indemnity.** Notwithstanding any other terms and conditions in this Agreement, including any obligations regarding insurance coverage, Company agrees to defend, indemnify, save and hold harmless fully the Institution, its Board of Trustees, agents, officers, students, volunteers, contractors and employees against any and all claims, suits or judgments, costs or expenses, including attorney's reasonable fees, (collectively "Loss") in connection with this Agreement. This indemnification obligation does not extend to that portion of a Loss caused by Institution's negligence, as determined by a court of competent jurisdiction in a final, non-appealable judicial order.

10. **Insurance.** Throughout the Term, Company, at its own expense, shall provide and maintain the following insurance coverage:

- a. **Workers Compensation and Employers Liability.** Workers Compensation as prescribed by applicable law, covering all employees who are providing the Services and Employer's Liability coverage with limits of not less than \$1,000,000.00 each accident or illness; and
- b. **Commercial General Liability.** Commercial General Liability Insurance or equivalent with limits of not less than \$5,000,000.00 per occurrence, for bodily injury, personal injury, and property damage liability. Coverage shall include the following: All premises and operations, products/completed operations, separation of insured, defense, and contractual liability (with no limitation endorsement); and
- c. **Automobile Liability.** When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Company shall provide Comprehensive Automobile Liability Insurance with limits of not less than \$1,000,000.00 per occurrence, for bodily injury and property damage; and

- d. **Fidelity, EPLI and Professional Liability (E&O).** Professional liability insurance covering errors, omissions or negligent acts must be maintained with limits of not less than \$1,000,000.00. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on this Agreement. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of two (2) years.

Prior to the execution of this Agreement, Company shall furnish the Institution with original insurance certificates evidencing the required coverage. Except with respect to Worker's Compensation and Employers Liability, all insurance certificates shall name the Board of Trustees of Community College District No. 508, County of Cook and State of Illinois, and its officers, directors, agents, students, employees, contractors and volunteers as additional insured on a primary, non-contributory basis. Institution's failure to obtain certificates or other insurance evidence from Company shall not be deemed a waiver of this provision by the Institution. This Agreement, at Institution's sole discretion, may be terminated if Company fails to comply with this provision. All insurance policies required hereunder shall include a provision which requires the Institution to receive thirty (30) days prior written notice before coverage is substantially changed, cancelled or non-renewed. Any insurance or self-insurance programs maintained by Institution shall apply in excess of and not contribute with insurance provided by Company.

11. **Termination/Remedies.**

- a. **Termination for Convenience.** Notwithstanding Section 11(b) below, the Institution may terminate this Agreement, or any portion of the Services, at any time, upon thirty (30) days prior written notice to Company. If this Agreement is terminated by the Institution under this Section 11, Company shall immediately deliver to the Institution all finished or unfinished materials, documents, data, studies and reports prepared by it or under its direction in connection with the Services. The Institution will pay Company for the portion of the Services satisfactorily performed by Company in those amounts accrued but not yet paid prior to the effective date of termination. Such payment to the Company shall be in full settlement for all Services.
- b. **Termination for Default.** Subject to Section 11(a) herein, this Agreement may also be terminated for default. Each of the following shall constitute an event of default by Company ("Default").
- i. Any material misrepresentation, whether in the inducement or in the performance, made by the Company to the Institution; and
 - ii. A breach of a representation or warranty contained in this Agreement; and
 - iii. The insolvency, bankruptcy or committing of any act of bankruptcy or insolvency, or making an assignment for the benefit of creditors; and
 - iv. Failure to comply with or perform any material provision of this Agreement; and

- v. Failure or refusal to provide enough properly skilled personnel, adequate supervision, or adequate materials and equipment of the proper quality to perform the Services; and
- vi. Causing, by any action or omission, the stoppage, delay of, or interference with, the work of any other Company or sub-consultant.

If a court of competent jurisdiction rules that termination of this Agreement by the Institution for default of Company was wrongful, then the termination shall be deemed to have been a termination for convenience.

- c. **Curable and Incurable Defaults.** Time-sensitive defaults (e.g., failure to meet deadlines) are not curable unless the Institution, in its sole and absolute discretion, extends the deadline. Such extension, however, does not relieve Company of liability for any damages the Institution may suffer. Company shall cure any default that is not time-sensitive with ten (10) calendar days after Company is given notice of the default.
- d. **Remedies.** In addition to any other remedies contained herein, the Institution may invoke any or all of the following remedies for a Default:
 - i. Complete the Services at Company's expense, either directly or through the use of contractors and subcontractors; or
 - ii. Receive a refund or withhold all or any portion of the Fee; or
 - iii. Demand specific performance, an injunction or any other appropriate equitable remedy; or
 - iv. Terminate this Agreement.
- e. **Right to Offset.** All costs incurred by the Institution due to: (i) termination of this Agreement for default; or (ii) Company's performance of the Services; or (iii) Institution's exercise of any of the remedies available herein, may be offset by: (i) any credits due to or overpayments made by the Institution; or (ii) any payments due to Company for Services completed. If such amount offset is insufficient to cover those excess costs, Company shall be liable for and promptly remit to the Institution the balance upon written demand. This right to offset is in addition to and not a limitation on any other remedies available to the Institution.

No remedy hereunder is exclusive of any other remedy, but each remedy shall be cumulative and in addition to any other remedies at law, in equity or by statute existing now or hereafter. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power nor shall it be construed to be a waiver of any Default or acquiescence therein, and every such right and power may be exercised periodically and as often as may be deemed expedient. If the Institution considers it to be in the Institution's best interest, it may choose not to declare a default or terminate the Agreement. The parties acknowledge that this provision is solely for the benefit of the

Institution and that if the Institution permits Company to continue providing Services despite one or more events of default, the Company is in no way relieved of any of its duties and obligations under the Agreement and the Institution does not waive or relinquish any of its rights.

12. Additional Provisions. The parties further agree to the following provisions:

- a. **Cooperation with Successors.** If this Agreement expires or is terminated for any reason, Company shall use its best efforts to assure an orderly transition to Institution and to the successor consultant, if any. Company must make an orderly demobilization of its own operations, provide the Services uninterrupted until the effective day of such termination or expiration, and otherwise comply with the reasonable requests and requirements of the Institution in connection with the termination or expiration.
- b. **Notices.** All notices hereunder shall be in writing and either (i) delivered personally; or (ii) sent by nationally recognized express courier; or (iii) sent by certified mail (return receipt requested). Any such notice will be deemed given when actually received and addressed as follows:

If to Institution:

City Colleges of Chicago
Office of the Chancellor
Attn: Juan Salgado
180 N. Wabash Ave, Suite 200
Chicago, IL 60601

with a copy to:

City Colleges of Chicago
Office of the General Counsel
Attn: General Counsel
180 N. Wabash Ave, Suite 200
Chicago, IL 60601

If to Company:

Notices shall be sent to Company at the address listed above.

- c. **Severability.** The terms of this Agreement are severable and if a court of competent jurisdiction herein declares any term or provision illegal, void or unenforceable, the remainder of the provisions hereunder shall remain valid and enforceable.
- d. **No Damages for Delay.** During the Term, Company is not entitled to and must make no charges or claims for damages for any delays or hindrances from any cause in connection with the Services. If Company's performance of the Services is delayed by causes beyond Company's reasonable control, at the Institution's sole

option, the Institution may either terminate this Agreement or extend the time to complete the Services to reflect the extent of the delay (if extension is feasible given the project deadlines and the expectations of public performance), provided the Company has given the Institution written notice within ten days after delay begins. The notice by the Company must include a description of the reasons for the delay and the steps Company has taken or will take to mitigate the effects of the delay.

- e. **Names/Logos.** Institution owns all rights to the name City Colleges of Chicago and its individual colleges and to certain logos, servicemarks, trademarks and likenesses (“Marks”). Company must not use the Marks as part of Company’s business or trade name, and Company must not use the Marks or sell merchandise or services with the Marks without the Institution’s express written consent. Also, Company must not permit anyone else to do so.
- f. **Governing Law.** This Agreement shall be interpreted and governed by the laws of the State of Illinois and venue for any litigation related to this Agreement shall be in Cook County, Illinois.
- g. **Non-Discrimination.** Company shall not discriminate against any workers, employees or applicants, or any member of the public, because of race, color, religion, age, disability unrelated to ability to perform, gender, national origin or ancestry, sexual orientation, marital status, military discharge status or source of income. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. Company agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. Company further agrees that this clause will be incorporated in all contracts entered into with suppliers of materials or services, contractors, and subcontractors and all labor organizations, furnishing skilled, unskilled and craft union skill labor, or who may perform any labor or services in connection with this Agreement.
- h. **Compliance with Laws.** During the Term, Company, at its sole expense, shall observe and comply with all federal, state and local laws, rules, ordinances and regulations related to this Agreement, including, but not limited, to the Illinois Public Community College Act and the Rules for the Management & Government of the City Colleges of Chicago. Company shall also be responsible for compliance with the City Colleges of Chicago Debarment Policy. Company shall indemnify the Institution for all losses and expenses, including reasonable attorneys fees resulting from failure to comply with this provision, including, but not limited to, any fines, penalties, or corrective measures.
- i. **Amendments/Changes.** No modification or amendments to this Agreement shall be effective unless such amendment is in writing and signed by both parties hereto.

- j. **Ethics Policy.** Company agrees to comply with the Institution's Ethics Policy and with any amendments adopted thereafter. A copy of the Institution's Ethics Policy can be found at www.ccc.edu.
- k. **Inspector General.** It shall be the duty of each party to the agreement to cooperate with the Inspector General for City Colleges of Chicago in any investigation conducted pursuant to the Inspector General's authority under Article 2, Section 2.7.4(b) of the Board Bylaws.
- l. **Independent Contractor.** Company is an independent contractor and not the agent, partner or employee of the Institution. Company shall not have the authority to enter into any contract or agreement to bind Institution, and shall not represent to anyone that Company has such authority.
- m. **Assignment and Delegation.** Company shall not subcontract, assign, or otherwise transfer all or any portion of this Agreement, nor delegate its duties or obligations hereunder without the Institution's prior written consent.
- n. **Survival.** Upon the expiration or termination of this Agreement, those provisions that would by their nature survive this Agreement will so survive.
- o. **Third Party Beneficiaries.** Nothing contained in this Agreement is intended to confer upon any person (other than the parties hereto, the Institution Indemnified Parties and the Company Indemnified Parties) any rights, benefits or remedies of any kind or character whatsoever, and no person will be deemed a third-party beneficiary under or by reason of this Agreement.
- p. **Force Majeure.** Neither party will have any liability to the other for any failure or delay in performing any obligation under this Agreement due to acts of God or nature, fires, floods, strikes, civil disturbances, terrorism, or power, communications, satellite or network failures (individually and collectively "Force Majeure Event"). Either party upon prior written notice may terminate this Agreement if such Force Majeure Event continues for more than ten-(10) calendar days.
- q. **Severability.** The terms of this Agreement are severable and if a court of competent jurisdiction declares any term or provision illegal, void or unenforceable, the remainder of the provisions hereunder shall remain valid and enforceable to the maximum extent permissible.
- r. **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one binding agreement.
- s. **Conflicts.** In the event of a conflict between the provisions of this Agreement and the provisions of Exhibit A, the provisions of this Agreement shall control.

- t. **Entire Agreement.** This Agreement, and the exhibits attached hereto and incorporated hereby, shall constitute the entire agreement between the parties. Any prior written or oral agreements or representations related to this Agreement or the Services are of no force and effect.

IN WITNESS WHEREOF, the Institution and Company have executed this Agreement as of the date of the last signature set forth below.

**Board of Trustees of Community
College District No. 508, County of
Cook and State of Illinois:**

COMPANY

By: _____
CHANCELLOR

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO LEGAL FORM:

By: _____
Karla Mitchell Gowen
General Counsel

Date: _____

EXHIBIT A
SCOPE OF SERVICES

DRAFT