



## **General Terms and Conditions**

- 1) **PERFORMANCE OF WORK:** Contractor shall commence and carry on the Work under this Agreement and shall designate one representative, acceptable to College, who shall be authorized to act for Contractor in all matters. Contractor shall assign personnel with sufficient experience or qualifications to perform the Work competently. College may require Contractor to submit proof of the assigned personnel's experience and qualifications. Contractor shall use industry standard safety and security practices, at a minimum. Should College so require, Contractor shall comply with College's safety and security requirements. Contractor shall not subcontract any services or Work without prior written approval of College.
- 2) **COMPLIANCE WITH LAW:** In performing the Work, Contractor shall comply with all applicable local, state, and federal laws, rules, regulations, and orders.
- 3) **TIMELY PERFORMANCE:** Performance of this Agreement by each party shall be pursued with due diligence. Contractor shall notify College of any delay in the performance of the Work. Failure of Contractor to complete the Work in the time required shall constitute a breach of this Agreement.
- 4) **RECORDS AND AUDIT:** Contractor shall keep accurate records of all Work. College shall have the right to inspect and audit those records at reasonable times upon request. Contractor shall preserve the records for 36 months after termination, cancellation, or the end of the term of this Agreement.
- 5) **WARRANTIES:** Contractor warrants that all professional services will be performed in a reasonable, workmanlike manner and in accordance with sound and accepted practices and principles normally employed in the industry for the services provided. Contractor shall comply with all specifications set forth in the Agreement. Contractor further warrants that all program code and all specifications, including but not limited to design specifications and all other deliverables, and all work-in-process, works of authorship, inventions, techniques, concepts, know-how, ideas, and other intellectual property created, developed, conceived or reduced to practice by Contractor hereunder, either solely or jointly others does not and shall not infringe upon any patent, trademark, copyright, trade secret, or other proprietary right of any third party. If College determines that any warranty has not been met, College shall notify Contractor, and Contractor shall, at its expense, provide the professional services required to meet the Warranties.
- 6) **TITLE TO PROPERTY:** College shall have title to all Work, completed or in process, and to all machinery, equipment, materials and supplies, the cost of which has been paid by College to Contractor. All studies, designs, drawings, plans, specifications, test results, inventions, patent rights (including data produced by computer or other electronic means and stored on disc, tape, or any other form) and other data in any form and in whatever state of completion prepared by Contractor shall be the property of College upon completion or termination of this Agreement. College shall have the right to use same for any purpose whatsoever without additional compensation to Contractor.

7) **WORKS FOR HIRE:** The elements of the Work subject to copyright ownership and protection are and shall be deemed to be works made for hire within the meaning of the U.S. Copyright Act, and all rights, title, and interest in and to the Work, including, without limitation, copyright, are owned by College. In addition, Contractor hereby sells, assigns, and transfers to College all of its right, title, and interest, if any, in and to the Work, including, without limitation, copyright, free and clear of any claims, rights, liens or encumbrances. Contractor hereby covenants and agrees that it will execute any and all documents and papers reasonably requested by College to evidence the transfer of any rights in the Work to College, including, but not limited to, documents and papers relating the assignment of copyrights. Contractor acknowledges College's exclusive right, title, and interest, including, without limitation, copyrights, in and to the Work, and shall not in any way, directly or indirectly, contest or impair Gettysburg's College's right, title, and interest. Contractor shall not in any manner represent that it has any ownership interest in the Work. College may use the Work in any manner College sees fit. If Contractor's Work infringes on the intellectual property rights of a third party, College may require Contractor, at Contractor's sole expense, to procure for College the right to continue to use the infringing item, to provide College with equivalent products or services that do not infringe upon any third party's rights, or to take back the infringing item and refund to College the Compensation paid by College to Contractor for the Work.

8) **EVENTS OF DEFAULT:** An Event of Default shall occur if: (1) Contractor is adjudged bankrupt, becomes insolvent, files for voluntary bankruptcy, is subjected to involuntary bankruptcy proceedings, enters receivership proceedings, or makes an assignment for the benefit of creditors; (2) Contractor persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to assign sufficient personnel or supply proper materials to complete the Work or any part thereof with the diligence necessary to complete the Work during the term of this Agreement; (3) Contractor fails to perform the Work according to the terms of this Agreement or violates any other term of this Agreement; or (4) Contractor fails to make timely payment to Contractor's vendors or subcontractors. If an Event of Default occurs, College shall notify Contractor of the Event of Default in writing, and Contractor shall remedy the Default with within five (5) days, unless a longer time is agreed by College. Contractor's failure to remedy an Event of Default within the agreed time shall constitute a breach of this Agreement.

9) **REMEDIES FOR BREACH:** If Contractor breaches this Agreement, College shall provide written notice of the breach to Contractor. Without prejudice to any other rights or remedies provided herein or provided by law, College may terminate or suspend this Agreement, or any part of it, by written notice to Contractor, and College shall have the right thereafter to take possession of all materials and Work in progress. In the event of termination for breach, College shall be relieved of all further obligations, and Contractor shall be liable to College for damages resulting from the breach.

10) **CANCELLATION WITHOUT CAUSE:** Upon 15 days' written notice, College may cancel this Agreement without cause. In that event, and provided that Contractor is not in breach, College will pay Contractor an amount, which when added to any installments previously paid will compensate for the services provided and costs incurred by Contractor prior to the

date of cancellation, but in no event shall that amount be greater than the Compensation provided for in this Agreement.

11) **INDEPENDENT CONTRACTOR:** Contractor is an independent Contractor in the performance of any Work hereunder. Neither it nor its employees shall be considered employees of College. Contractor shall retain control and supervisory responsibility for the manner and method of performance of the Work under this Agreement. College shall not be responsible for the direct payment of any withholding taxes, social security payments, payments under workmen's compensation or other insurance premiums, or other charges of any kind or nature, except as specifically outlined in this Agreement. Contractor shall bear sole responsibility for its own taxes and any other assessments or contributions imposed on it by law.

12) **LIABILITY AND INDEMNITY:** Contractor agrees to indemnify, defend, and hold harmless College, as well as the employees, agents, officers, and trustees of College, against all loss, liability, damage, and expense, including reasonable attorneys' fees, which College may sustain or for which College may become liable on account of injury, death, or damage resulting from Contractor's performance under this Agreement or resulting from any act or omission of Contractor or its subcontractors. Contractor further agrees to indemnify, defend, and hold harmless College, as well as the employees, agents, officers, and trustees of College, against any loss, liability, damage, or expense reasonable attorneys' fees, that arise out of any claim that Work provided by Contractor infringes or violates the patent, trademark, copyright, trade secret, or other proprietary right of any third party.

13) **ACCEPTANCE:** When all Work is completed Contractor, Collee shall have the right to a final review of the Work including any and all records and reports maintained by Contractor in connection with the Work. College shall either notify Contractor of its acceptance of the Work or issue to Contractor a description of deficiencies requiring correction. When Contractor corrects any identified deficiencies, College shall be deemed to have accepted the Work. College's approval of the Work shall not relieve Contractor of any duty, responsibility, or obligation imposed by this Agreement.

14) **INSURANCE:** Contractor shall carry and maintain comprehensive liability insurance, including contractual liability, property damage, workers' compensation, and employer's liability insurance with coverage satisfactory to College. Prior to commencement of any services to be performed hereunder, if requested, Contractor shall deliver to College certificates of insurance naming College as an additional insured, and which stipulate that not less than 30 days' notice will be given College prior to termination or reduction of the limits of coverage.

15) **PERFORMANCE BOND:** If requested by College, Contractor shall furnish a performance and payment bond covering the faithful performance of this Agreement. The bond shall be in the form and amount and with a surety satisfactory to College. The cost of any bond requested by College shall be paid by College.

16) **USE OF COLLEGE'S PREMISES:** All Work shall be performed in such a manner as to cause a minimum of interference with College's operations and the operations of other

contractors on the premises. Contractor shall take all necessary and proper precautions to protect College's premises and all persons and property thereon from damage or injury.

17) **LIENS:** Upon completion of the Work, and as a condition precedent to final payment, Contractor shall deliver to College a full release of liens in the form as College may require. Contractor shall not permit any lien, including a tax lien, or charge to attach to the Work or the premises upon which the Work is being performed. If any lien does attach, Contractor shall promptly procure its release and hold College harmless from any losses, costs, damages, or expenses incidental thereto including court costs and reasonable attorneys' fees.

18) **FORCE MAJEURE:** If, because of an act of God or force majeure event, either party hereto is unable to carry out any of its obligations under this Agreement, other than the obligations to pay money due hereunder, and if that party promptly gives to the other party hereto written notice, then the obligations of the party giving notice shall be suspended to the extent made necessary by the event, provided that the party giving the notice shall use its best efforts to remedy the situation insofar as possible. An "act of God" or "force majeure" includes a flood, earthquake or other natural disaster, explosion, fire, pandemic, labor strike, lockout, sit-down, or other restriction of labor, embargoes, restrictions imposed by any governmental authority, acts of a public enemy, insurrection, or riot.

19) **CONFIDENTIAL INFORMATION:**

(a) Definition of Confidential Information. For purposes of this Agreement, "Confidential Information" means the information and documentation of College that has been marked "confidential", as well as all information pertaining to students, prospective students, or employees, financial records, donor lists, fundraising plans, and any other confidential information compiled or maintained internally by College concerning the operation of College.

(b) Obligations with Respect to Confidential Information. Contractor will hold all Confidential Information in strict confidence and not copy, reproduce, sell, transfer, give, or disclose Confidential Information to third parties other than its employees, agents, or subcontractors who have a need to know the information for purposes of the Work. Contractor will require its employees, agents, and subcontractors to keep such information confidential. Contractor shall use its best efforts to prevent any unauthorized use or disclosure of Confidential Information. Contractor shall advise College immediately in the event that it knows or has reason to believe that Confidential Information has been disclosed or accessed in violation of this Agreement. Contractor will cooperate with College in seeking injunctive or other equitable relief against any such person.

(c) Legal Disclosure. If Contractor is compelled by law to disclose Confidential Information, Contractor shall (i) notify College immediately in writing of the legal process so that College may seek, at its sole cost and expense, a protective order or other remedy; and (ii) give reasonable assistance, at College's cost and expense, in opposing such disclosure. If, after providing such notice and assistance as required herein, Contractor remains required by law to disclose any Confidential Information, it shall disclose no more than that portion of the Confidential Information it is legally required to disclose.

(d) Protected Health Information. Each party agrees to fully comply with the Health Insurance Portability and Accountability Act of 1996 and its associated regulations and, more specifically, in 45 C.F.R. §§ 160-164 (collectively referred to as (“HIPAA”)), any applicable state privacy and/or security laws, any applicable implementing regulations and the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the “HITECH Act”), and any regulations adopted or to be adopted pursuant to the HITECH Act that relate to the obligations of either party hereto. All Protected Health Information (as that term is defined in 45 C.F.R. § 160.103) received from, or received, maintained, transmitted, or created on behalf of, the parties in connection with the Services (collectively, “PHI”) shall be subject to the business associate agreement (“BAA”) between the parties attached to and incorporated into this Agreement as Exhibit A, which may be amended and/or restated from time to time by the parties. In the event of a conflict between this Agreement or any Service Order, on the one hand, and the BAA, on the other hand, relating to creation, receipt, maintenance or transmission of PHI, the terms and conditions of the BAA shall control.

(e) Protected Student Information. Contractor acknowledges that, personally-identifiable information about any of College’s is subject to the Family Educational Rights and Privacy Act of 1974, as amended, and all applicable implementing regulations at 34 C.F.R. Part 99 (collectively, “FERPA” ). In addition to its contractual obligations of confidentiality, Contractor agrees that it will not disclose any personally-identifiable information of students to anyone other than Contractor’s employees, except as required by law.

(f) Return of Information. Following the expiration, cancellation, or termination of this Agreement, Contractor shall return to College all Confidential Information, in whatever form (hard copy, electronic or other form) maintained, and will not retain any copies of that information.

20) PROTECTION OF PERSONAL DATA: Contractor shall comply with all applicable laws governing the protection of personal data, as amended and updated from time to time, including, when applicable, the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the General Data Protection Regulation (Regulation EU 2016/679), any laws substituting, re-enacting, or replacing those laws. Contractor shall ensure that it has in place appropriate technical and organization measures to protect Personal Data (as defined in applicable laws) against accidental, unauthorized, or unlawful destruction, loss, alteration, disclosure, access, or processing. Contractor will respond to, contain, and remediate any unauthorized access of Personal Data (a “Data Breach”) using best efforts and shall notify College of any known or suspected Data Breach within twenty-four hours of becoming aware of it. In the event that Contractor experiences a Data Breach, Contractor shall bear full responsibility for complying with any laws governing, and Contractor shall reimburse College for any costs incurred by College in responding to or mitigating damages resulting from any Data Breach that Contractor experiences, including all costs of notice and/or remediation.

21) WAIVERS: No waiver by either party of any breach of any terms of this Agreement shall be construed as a waiver of any other breach of the same or any other term.

22) ASSIGNMENT: Neither this Agreement nor any claim against College arising directly or indirectly out of or in connection with this Agreement shall be assignable by Contractor without College's consent in writing. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns.

23) NO AGENCY RELATIONSHIP: Contractor shall not have the authority to act as an agent of College or to enter into any agreement or agreement to bind College, and Contractor shall not represent to any party that Contractor has authority to bind College.

24) SEPARABILITY OF PROVISIONS: The invalidity, illegality, or unenforceability of any provision(s) of this Agreement shall not affect or impair the validity, legality, or enforceability of the remaining provisions hereof.

25) SURVIVAL: The provisions of sections 5, 6, 7, 19 and 20 of these Terms and Conditions shall survive the expiration or other termination of this Agreement.

26) GOVERNING LAW AND VENUE: This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without reference to any conflicts of law provisions. Any claims arising from this Agreement shall be brought in Adams County, Pennsylvania, or the United States District Court for the Middle District of Pennsylvania.

27) ENTIRE AGREEMENT: Articles 1 through 6, the General Terms and Conditions, and any attached descriptions of the Work referenced in Article 1, constitutes the entire Agreement between the parties, superseding all prior negotiations, preliminary agreements, correspondence, or understandings, written or oral. No amendment or other modification of this Agreement will be binding unless in writing and signed by each of the parties.

GETTYSBURG COLLEGE:

CONTRACTOR:

By \_\_\_\_\_ Date \_\_\_\_\_  
Authorized Signature

By \_\_\_\_\_ Date \_\_\_\_\_  
Authorized Signature