

CONSULTANT'S AGREEMENT FOR PLANNING SERVICES

OWNER: NEW YORK UNIVERSITY

CONSULTANT:

PROJECT:

DATE:

The Owner and the Consultant agree as follows:

1. General Requirements.

A. The Project is described in Exhibit A hereto.

B. The Consultant's services shall consist generally of review of drawings and other documents provided by NYU; investigation of existing space conditions and usage; collection and compilation of data regarding conditions and usage; meetings with the Owner's representatives and user groups to determine future space and usage needs; recommendations regarding optimal usage of current space and possible development of additional space; development of a program for implementing such recommendations; preparation and submission of reports, spreadsheets and other documents describing and supporting the Consultant's recommendations and detailing the program; oral presentation of such recommendations and program; and other services relating to the Project as the Owner may request. The Consultant's services and deliverables may be described further in Exhibit A.

C. A list of the Consultant's key personnel ("Key Personnel") and any approved sub-consultants ("Sub-consultants") for the Project is attached hereto as Exhibit B. No other Key Personnel or Sub-consultants shall participate in the Project without the Owner's prior written consent to their identity and the nature of their participation.

D. The Consultant shall be responsible to the Owner for the correct and timely performance and completion of all services by the Sub-consultants. The fees and other compensation of the Sub-consultants shall be the sole obligation of the Consultant and shall be timely paid by the Consultant.

E. The Consultant shall provide written minutes of all meetings with the Owner concerning the Project.

F. The Consultant shall review, verify and coordinate all information furnished by the Owner for the Project.

G. All services rendered by the Consultant and the Sub-consultants with respect to the Project shall reflect appropriate standards of professional skill and care, the complexity of the Project and the specialized demands inherent in the Project.

H. The Consultant's services shall include consideration all lease requirements and other legal requirements relating to the Project. The Consultant's recommendations and program shall include a list of any third-party approvals that may be required in order to carry out the Consultant's recommendations.

I. The relationship created by this Agreement between the Owner and the Consultant is one of independent contractor and is in no way to be construed as creating or appointing the Consultant as an agent of the Owner for any purpose whatsoever.

2. Time. The Consultant shall perform its services as expeditiously as is consistent with professional skill and care and shall complete its services no later than the completion date stated in Exhibit A. Upon request of the Owner, the Consultant shall submit for the Owner's approval a schedule for the performance of the Consultant's services.

3. Ownership and Use of Materials. All materials developed by the Consultant pursuant to this Agreement are and shall remain the property of the Owner, and the Consultant hereby assigns all rights therein to the Owner. The Consultant shall, if requested to do so by the Owner, promptly deliver possession of all such materials to the Owner.

4. Termination and Suspension.

A. This Agreement may be terminated by either party upon seven days' written notice should the other party fail substantially to perform in accordance with the terms through no fault of the party initiating the termination. In the event of termination by the Owner pursuant to this section, the Consultant shall be entitled to payment hereunder for services properly performed to the date of termination less damages for which the Consultant may be liable as a result of its failure of performance, and if such damages exceed any amount otherwise payable to the Consultant then the Consultant shall pay the difference to the Owner promptly upon demand.

B. This Agreement may be terminated by the Owner at any time and without cause by giving fourteen days' written notice to the Consultant. In the event of such termination without cause, the Consultant shall be entitled to payment hereunder for services properly performed to the date of termination and the Owner shall not be liable to the Consultant for lost revenue or other compensation or damages of any kind.

C. Upon receipt of written notice of termination from the Owner, the Consultant shall stop work on the date and to the extent specified in such notice; immediately take such action pursuant to any of its duties under this Agreement as may be necessary for the protection and preservation of the Project and in the interest of safety; and to the extent possible cancel all obligations entered into prior to being informed that this Agreement was to be terminated.

D. Upon termination of this Agreement, the Consultant shall deliver to the Owner copies of all materials prepared by the Consultant in connection with the Project in their current state of completion.

E. The Owner shall have the right to suspend or alter the Project or any part thereof at any time and to require the Consultant to suspend all or part of its services. In no event shall such suspension be deemed a breach of contract on the part of the Owner. In the event that the Consultant's services are suspended, the Consultant shall be entitled to payment hereunder for services properly performed through the date of such suspension.

5. Payments.

A. All payments under this Agreement shall be made within forty-five days of receipt of invoice by the Owner. The Owner shall notify the Consultant of any disputed amounts within ten days of receipt of invoice and the Consultant shall, within ten days thereafter, justify any such disputed amounts to the Owner's satisfaction or reinvoice without such disputed amounts.

B. All invoices and related correspondence shall be addressed to the attention of the Owner's project manager for the Project at:

New York University
Office of Strategic Assessment, Planning, and Design
196 Mercer Street, 8th Floor
New York, NY 10012

The Owner may change this address at any time on written notice to the Consultant.

C. Invoices shall include written statements by the Consultant detailing the Reimbursable Expenses incurred and paid receipts, invoices or other written proof of the Reimbursable Expenses.

6. Indemnification and Insurance.

A. To the extent permitted by law, and to the extent not caused in whole or in part by an indemnitee, the Consultant and the Sub-consultants and agents shall indemnify and hold harmless the Owner and the Owner's agents, consultants, trustees, directors, officers and employees from and against all damages, claims, losses and expenses (including attorneys' fees), arising out of or resulting from the performance of their professional services or arising out of or resulting from any negligent act, error or omission of the Consultant, the Sub-consultants, their agents, directors, officers or employees, or anyone for whose acts any of them may be responsible.

B. The Consultant and each of the Sub-consultants shall procure and maintain the following insurance during the life of this Agreement and for a reasonable time thereafter:

(i) Professional Liability (Errors and Omissions) Insurance in an amount of not less than \$2,000,000 for each wrongful act and \$5,000,000 in the annual aggregate.

(ii) Commercial General Liability Insurance, with a combined personal injury, bodily injury (including death) and property damage limit of at least \$3,000,000 for each occurrence, and in the annual aggregate, such damage limit to be provided either under a general liability policy alone or in combination with an umbrella policy including at least the following coverages:

- Broad Form Blanket Contractual Liability; and

- Broad Form Property Damage and Personal Injury Liability (with the employees' exclusion void) or its equivalent.

Such damage limits shall be provided either under a general liability policy alone or in combination with an umbrella policy. The Consultant and each of the Sub-consultants and agents shall have all of the above Commercial General Liability Insurance policies endorsed as follows:

- To include the Owner as an additional insured in connection with any services to be performed pursuant to this Agreement. It is understood that the Owner as additional insured is not to be responsible for the payment of the premium for the additional insured status.
- This insurance shall be primary of any similar insurance carried by the Owner in accordance with the additional insured endorsement. (It is understood that any notice given by the Consultant or any of the Sub-consultants and their agents to its insurers of a claim, suit, proceeding or occurrence, resulting from, arising out of or occurring in connection with the services performed under this Agreement shall also be deemed by that insurer as notice by the Owner as additional insured.)
- Any ISO G307 (19463) exclusion (Engineers, Architects or Surveyors Professional Liability) shall be amended as follows: "This exclusion shall not apply to New York University and its employees, provided that New York University and its employees are not acting in the capacity of or are in the business of architecture or engineering."

(iii) Workers' Compensation Insurance as required by the New York State Workers' Compensation Law, and any other applicable law, for all employees to be engaged in work and/or services under this Agreement. Employer's Liability Insurance shall also be provided with a limit of at least \$1,000,000 for each occurrence for all such employees covering work-related liability not otherwise protected by Workers' Compensation Insurance or statute.

(iv) Comprehensive Automobile Liability Insurance in an amount not less than \$1,000,000 for bodily injuries or death resulting therefrom to each person and for each occurrence and property damage in an amount of not less than \$1,000,000 for each occurrence. This insurance shall apply to all owned, non-owned, leased or hired vehicles to be used in furtherance of the services under this Agreement.

(v) Valuable Papers Insurance on all risk basis in an amount not less than \$100,000.

C. By carrying the required insurance, the Consultant and each of the Sub-consultants and agents shall not be relieved of any responsibility whatever, and each may, at its own expense, carry such additional insurance as it deems necessary.

D. Certificates of insurance evidencing all the required insurance shall be delivered to the Owner's project manager for the Project before commencement of the Consultant's services. Such certificates of insurance shall show the type, amount and class of operations covered, as well as the effective dates of the various insurance policies. Such insurance shall also contain in substance the following language:

The insurance indicated in this certificate will not be terminated or cancelled for any reason (within the control of the respective insurance companies) without at least thirty (30) days prior written notice to the Owner's Director of Insurance and Risk Management.

E. All insurance policies required under this Agreement shall be issued by insurers with a minimum A.M. Best's rating of A - and a financial rating of vii.

F. Upon the demand of the Owner, certified copies of the insurance policies herein shall be forwarded to the Owner's Director of Insurance and Risk Management.

G. All correspondence regarding the compliance with these requirements must be sent to the attention of Owner's Director of Insurance and Risk Management.

H. Exceptions to the insurance requirements of this Agreement may be granted only by the Owner's Director of Insurance and Risk Management in writing.

7. Miscellaneous Provisions.

A. This Agreement shall be governed by the laws of the State of New York.

B. All notices required or desired to be given hereunder shall be in writing and shall be sent by hand, by reputable overnight carrier or by certified mail, return receipt requested. Notice to the Owner shall be addressed as provided in Section 5B. Notice shall be effective on the date delivered by hand or by overnight courier or, if sent by certified mail, two business days after deposit with the U.S. Mail.

C. The Consultant shall be liable and responsible to the Owner for the acts or omissions of any person employed or engaged by the Consultant in connection with the Project (including, without limitation, the Sub-consultants). Each contract entered into by the Consultant with any such person shall expressly provide that such person is retained by the Consultant and not by the Owner. The Owner shall be a third-party beneficiary of such contracts.

D. The Consultant shall pay all royalties and license fees and defend all suits or claims for infringement of any patent rights arising out of construction of the Project pursuant to the

Consultant's drawings and specifications, and shall hold the Owner harmless from loss on account thereof.

E. The obligations of the Consultant and the Sub-consultants to indemnify, defend and hold the Owner harmless under this Agreement and to provide access to books and records shall survive the termination and completion of this Agreement.

F. The failure of the Owner or the Consultant to insist, in any one instance or more, upon the performance of any of the provisions or conditions of this Agreement, or to exercise any right or privilege conferred in this Agreement, shall not be construed as thereafter waiving any such provisions, conditions, rights or privileges but the same shall continue and remain in full force and effect. No provision of this Agreement shall be deemed to have been waived unless such waiver shall be in writing signed by the party to be charged.

G. The Consultant represents and warrants that (a) it is experienced in the space and usage planning, (b) it is and will remain properly licensed to perform all services required of it under this Agreement and (c) it is financially solvent and able to pay its debts as they mature.

H. The Consultant represents that it is knowledgeable of all laws, codes, rules and regulations applicable to the performance of its services hereunder and that the recommendations and program prepared by the Consultant hereunder shall comply with all local, State and Federal laws, statutes, codes, ordinances and rules and regulations pertaining thereto.

I. The Consultant shall perform its duties in conjunction and harmony with the representatives, employees and agents of the Owner and all others involved with the Project.

J. The Consultant and its Sub-consultants shall treat as confidential all documents, data, policies, procedures, plans and other information relating to the Owner's business that becomes known to the Consultant through its services hereunder and which is not otherwise in the public domain or rightfully obtained from another source ("Confidential Information"). The Consultant and its Sub-consultants shall not disclose any Confidential Information to any third party, except as required by law, and before such disclosure the Consultant shall promptly advise the Owner so that the Owner may take any appropriate steps.

K. The Consultant shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, national origin, age, disability or marital status.

L. If governmental aid or a governmental grant or loan is obtained for any part of the Project, then the Consultant shall comply in its performance of this Agreement with all regulations imposed by the participating governmental agency and shall furnish any information and provide any assistance that the Owner deems necessary for the preparation of any certificates, reports or materials required as a result of obtaining such grant or loan.

M. The Consultant shall provide access to its books and records relating to the Project to any governmental agency having jurisdiction and also shall require the Sub-consultants to provide such access.

N. This Agreement is binding upon each of the parties hereto and its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in this Agreement. The Consultant shall not assign this Agreement nor sublet it as a whole without the prior written consent of the Owner, and any attempted assignment by the Consultant without such consent shall be void.

O. This Agreement represents the entire and integrated agreement between the Owner and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Consultant.

8. Compensation.

A. The Consultant's compensation shall be based on the hourly rates for the Consultant's personnel listed in Exhibit C hereto, subject to the not-to-exceed amount stated in Exhibit C (the "NTE Amount"). Under no circumstances will compensation exceed the NTE Amount without the Owner's prior written approval. The Consultant shall give written notice to the Owner within ten (10) days of: (a) any request by the Owner for services that the Consultant believes are not covered by the NTE Amount; or (b) any other act or occurrence that could cause the NTE Amount to be exceeded. Such notice shall include an itemized request and justification for increase in the NTE Amount. Failure by the Consultant to give notice as required hereunder shall constitute a waiver and release of any claim for increase in the NTE Amount and the Consultant shall be obligated to complete all services hereunder without any such increase.

B. Reimbursable Expenses are in addition to the compensation under paragraph A and include actual expenditures made by the Consultant, the Consultant's employees and the Sub-consultants in the interest of the Project for the following expenses:

- (i) Travel expenses for travel more than fifty (50) miles from the Consultant's office when authorized by the Owner in advance, in writing.
- (ii) Expenses of long-distance communications.
- (iii) Filing fees paid to authorities having jurisdiction over the Project.
- (iv) Expenses of reproductions, postage and handling of drawings, specifications and other documents, excluding reproductions for the office use of the Consultant and the Sub-consultants.
- (v) Fees paid or payable to Sub-consultants when authorized by the Owner in advance, in writing. The Consultant shall

have no right to reimbursement for Sub-consultant fees that were not so authorized.

- (vi) NYU shall pay Reimbursable Expenses at cost and without markup.

The Owner shall compensate the Consultant for Reimbursable Expenses at reasonable actual cost without mark-up of any kind. In no event shall the Consultant or any of the Consultant's Sub-consultant expend or incur any single Reimbursable Expense in excess of \$200.00 unless authorized by the Owner in advance, in writing, nor shall the total of Reimbursable Expenses exceed the amount therefor stated in Exhibit C without the Owner's advance written authorization. The Consultant shall notify the Owner in writing when the total of Reimbursable Expenses incurred by the Consultant exceeds eighty percent (80%) of such amount.

C. The Owner shall provide a copy of its tax-exempt certificate to the Consultant upon the Consultant's request and will not be responsible for reimbursement to the Consultant of any charges, assessments, licenses or taxes that may be imposed or levied with respect to the Consultant's services under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

OWNER:

NEW YORK UNIVERSITY

By: _____

Name: _____

Title: _____

CONSULTANT:

By: _____

Name: _____

Title: _____

EXHIBITS

- A - Description of Project and Services
- B - List of Consultant's Key Personnel and Sub-consultants
- C - Terms of Compensation

EXHIBIT A

DESCRIPTION OF PROJECT AND SERVICES

Project: _____

Date of Agreement: _____

Further Description of Consultant's Services and Deliverables:

Completion Date: _____

EXHIBIT B

LIST OF CONSULTANT'S KEY
PERSONNEL AND SUB-CONSULTANTS

Key Personnel:

Name

Position

Sub-consultants:

Name

Discipline

EXHIBIT C

TERMS OF COMPENSATION

Consultant's Hourly Rates:

Not-to-Exceed Amount for Consultant's Compensation (excluding Subconsultant fees and other Reimbursable Expenses): \$_____.

Cap on Reimbursable Expenses (including Subconsultant fees): \$_____.