

VENDOR AGREEMENT

AGREEMENT made this ____ day of _____, 20__ , by and between PACE UNIVERSITY, One Pace Plaza, New York, New York 10038 (hereinafter referred to as “Pace”), and [**FULL LEGAL NAME OF VENDOR**], with offices at _____ (hereinafter referred to as “Vendor”).

1. Term. This Agreement shall commence on [**DATE**] and shall terminate, unless earlier terminated as authorized by Section 6, below, on [**DATE**] (the “Term”).

2. Duties. Pace hereby retains Vendor to perform the following services (the “Work”), which Work shall not include lobbying activities or services within the meaning of state or federal law:

[DESCRIBE IN APPROPRIATE DETAIL THE SERVICES TO BE PROVIDED BY VENDOR, i.e., INSTALL OR REPAIR A FIRE ALARM, ELEVATOR MAINTENANCE, PROVIDE A COPIER, etc.]:

3. Expertise. Vendor warrants to Pace that it has sufficient staff available to perform the Work and that all individuals providing Work have the background, training and experience to perform properly the Work to be delivered under this Agreement and/or, as appropriate, for adequately supervising such individuals at the worksite(s), and/or, as appropriate, that the good(s) it provides hereunder shall perform as the Vendor has advertised or represented to Pace.

4. Fees and Expenses. Fees shall be paid in accordance with the Scope of Work and Fee Schedule agreed to between the parties and attached hereto as Exhibit A. Except as specifically provided in this Agreement, all expenses shall be borne by Vendor. Final payment shall be subject to Vendor delivery to Pace of all deliverables in form and substance satisfactory to Pace.]

5. Termination. Either party may terminate this Agreement with thirty (30) days prior written notice to the other party. Vendor hereby acknowledges and agrees that, notwithstanding anything to the contrary contained in this Agreement, in the event of such termination, Pace shall only be liable for, and Vendor agrees only to retain, payment of the portion of the fee earned as a result of Work actually and satisfactorily performed through the effective date of termination.

6. No Employment Relationship Created. It is understood and agreed between the parties that the Agreement is not intended to nor does it create an employment

contract between Pace, on the one hand, and Vendor and any of its employees, on the other, nor does it create a joint relationship or partnership between the parties hereto. Neither Vendor nor its employees are entitled to benefits that Pace provides for Pace employees. Vendor's relationship to Pace is solely and exclusively that of an independent contractor. Pace is interested only in the results to be achieved and the conduct and control of the Work shall be solely with Vendor. Vendor shall be permitted to engage in any business and perform services for its own accounts, *provided* that the Work is not compromised. Except as specifically permitted in this Agreement, neither party shall use the name or trademarks of the other party or incur any obligation or expense for or on behalf of the other party without the other party's prior written consent in each instance.

7. No Withholding. Vendor is solely and exclusively responsible for the satisfaction of Vendor's own local, state, and federal income tax and Social Security withholding that may be applicable to the amounts payable by Pace under this Agreement.

8. Confidentiality. During the course of performance of the Agreement, Vendor may be given access to information that relates to Pace's past, present and future research, development, business activities, products, services, technical knowledge, and personally identifiable student and employee information, or protected health information ("PHI")/electronic protected health information ("ePHI"). All such information shall be deemed to be "Confidential Information" unless otherwise indicated by Pace in writing at or after the time of disclosure. Vendor may use the Confidential Information only in connection with the specific duties authorized pursuant to this Agreement. Access to the Confidential Information shall be restricted to those of Vendor's personnel, representatives and consultants on a need-to-know basis solely in connection with Vendor's internal business. Vendor further agrees that it shall (i) take all necessary steps to inform any of its personnel, representatives or consultants to whom Confidential Information may be disclosed of Vendor's obligations hereunder and (ii) cause said personnel, representatives and consultants to agree to be bound by the terms of this Agreement by executing a confidentiality agreement containing the same restrictions contained herein or some other method acceptable to Pace. Vendor agrees to protect the confidentiality of the Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event less than reasonable means. Vendor agrees to notify Pace of any unauthorized use or disclosure of Confidential Information and to take all actions reasonably necessary to prevent further unauthorized use or disclosure thereof. These requirements apply to any subcontractors or agents Vendor uses in the performance of the Work and it is Vendor's responsibility to assure that all such subcontractors and agents comply with all such requirements. The terms of this Section 8 shall survive the expiration or termination of this Agreement.

9. Assignment. Vendor shall not assign its duties hereunder without the prior written consent of Pace.

10. Binding Effect. This Agreement shall be binding upon the parties hereto and upon their respective successors and assigns.

11. Compliance With Laws. Vendor warrants that the Work shall be accomplished in compliance with all applicable Federal, State and local laws, ordinances, rules, regulations and codes, including, but not limited to, U.S. Occupational Safety and Health Administration (“OSHA”) requirements; applicable provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 relating to Equal Employment Opportunity; section 402 of the Vietnam Era Veterans Readjustment Act of 1974, as amended; and section 503 of the Rehabilitation Act of 1973. Vendor and its subcontractors, employees, and agents shall obtain and maintain in full force and effect, all necessary permits, licenses, and authorizations required by governmental and quasi-governmental agencies. Vendor shall advise Pace of all permits and licenses required to be obtained in Pace’s own name for the Work to be provided hereunder, and shall cooperate with Pace in obtaining the same. Vendor shall not solicit, possess, or use in any manner tools and equipment, including but not limited to ladders, hand tools, lifts or power tools, that are the property of Pace or its employees.

12. Compliance With Pace Policies. Vendor and its subcontractors, employees, and agents shall comply with all Pace policies and procedures with respect to Vendor’s activities under or in connection with this Agreement, including, but not limited to, Pace’s Guiding Principles of Conduct,; Pace’s Information Technology Appropriate Use Policy; Pace’s Ebola Response Policy (<http://www.pace.edu/sites/default/files/files/Message%20from%20the%20President%20on%20Ebola%20Preparedness.pdf>); and security policies.

[ADD THE FOLLOWING TWO PARAGRAPHS TO CONTRACTS WHERE THE VENDOR IS A RESTAURANT OR CATERER:

Alcoholic Beverages. In the event that alcoholic beverages are to be served, Vendor shall be solely responsible for checking identifications and assuring that no persons under age 21 years are served alcoholic beverages during the function, and further assuring that all state and local regulations and laws with respect to the dispensing of alcoholic beverages will be strictly adhered to.

Pace Approval. Any price increases or material substitution of goods, services, or facilities shall be subject to prior Pace written approval.]

13. Proprietary Rights. Vendor hereby acknowledges and agrees that Pace has specially commissioned the Work as a “work made for hire” under Section 101 of the United States Copyright Act of 1976, as amended (the “Copyright Act”). Accordingly, all intellectual property developed by Vendor for Pace in connection with this Agreement, including but not limited to all monitoring, testing and other data, reports, materials, schematic drawings, illustrations, trademarks, trade names,

format, shall be owned solely and exclusively by Pace. All copyrights and patents with respect to such intellectual property created for Pace in accordance with this Agreement shall be registered in the name of Pace University. If the Work is determined not to be a work made for hire under the Copyright Act, then, as of the date of this Agreement or the creation of any of the intellectual property, whichever is earlier, Vendor irrevocably transfers and assigns to Pace the entire right, title, and interest, including, but not limited to, copyright, in and to the intellectual property, in whole or in part, together with all extensions of such copyrights, that may be secured under the Copyright Act or under any other copyright law or similar law in effect in the United States or in any other countries or under any treaties, conventions, or proclamations. Vendor agrees to execute and deliver to Pace any documents that may be necessary to effectuate the transfer and assignment of the intellectual property rights in the Work contemplated by this Agreement and to do such other acts and things as may be reasonably requested by Pace to perfect or evidence such transfer. Vendor shall have no ownership or copyright in Pace materials, nor in the intellectual property contained therein, nor in the delivery formats, whether electronic, print or any other form. ***[USE THE FOLLOWING SENTENCE ONLY FOR CONTRACTS WITH PROVIDERS OF INTELLECTUAL PROPERTY WHO ARE BASED OUTSIDE THE U.S.:*** Vendor hereby waives any moral rights of any kind in the Work and the intellectual property.] Pace shall have no rights in any of Vendor's intellectual property that is not developed specially for Pace pursuant to this Agreement.

14. Indemnification. Vendor agrees to defend, indemnify, and hold harmless Pace University, its successors and assigns, and their respective trustees, officers, employees, and agents (the "Indemnified Parties") to the fullest extent permitted by law from and against any and all claims or demands whatsoever, including, but not limited to, associated costs, expenses, and reasonable attorneys' fees incurred on account thereof ("Claims") asserted against Pace as a result of Vendor's work or performance or non-performance of this Agreement, including, but not limited to, Claims that may be asserted by any person(s), including, but not limited to, Consultant's employees and employees of Vendor's subcontractors or agents ("Claimants"), for loss, damage, death, injury, sexual harassment, or molestation to or of persons or property; or, where applicable, infringement of any third-party intellectual property rights, including, but not limited to, those of copyright; or, where applicable, unauthorized release of or failure to protect confidential information of all types, including, but not limited to, personally identifiable information (PII) or electronic protected health information (ePHI) ("Losses") arising in any manner out of or incident to Vendor's performance or nonperformance hereunder.

15. Cooperation. The parties agree to cooperate with each other in connection with any internal investigations by Pace or Vendor of possible violation of their respective policies and procedures and any third party litigation, except that Pace shall not be

required to have any contact with any Union or Union representatives of Vendor's employees or subcontractors or participate in any Union grievance or other

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proceedings relative to Vendor's employees or subcontractors except as a fact witness.

16. Insurance. Vendor shall at all times during the term of this agreement carry, and require its subcontractors to carry, at least the following types and amounts of insurance:

- Workers Compensation insurance on all employees, whether paid or volunteer, as may be required by applicable state law. If Vendor is exempt under appropriate state law from the requirement to carry workers compensation insurance, Vendor must submit a written statement to that effect in a form satisfactory to Pace;
- Commercial General Liability with limits of not less than \$1,000,000 each occurrence, \$1 million products and completed operations aggregate, and \$2 million general aggregate. Such insurance shall include coverage for claims arising from all activities and work to be performed by Vendor;
- If vehicles will be used in the performance of the work, Commercial Automobile Liability insurance with limits of not less than \$1,000,000 combined single limit each accident covering all owned and non-owned vehicles;
- If professional services, or any other services, requiring a license are to be performed by Vendor, Professional Liability (Malpractice) insurance with limits of not less than \$1 million each accident or occurrence covering claims arising from the professional service being performed.
- Pace shall be named as additional insured on all of camp's liability insurance policies, and the camp's policies shall be primary coverage for Pace, regardless of whatever other insurance Pace may have available.

Such policies of insurance shall be maintained with insurance companies authorized to do business in the State of New York and provide that they may not be canceled or materially changed except upon 30 days prior written notice to Pace. Vendor shall, at the time of the execution of this Agreement, furnish Pace with a certificate of insurance evidencing such coverage, and naming Pace as an additional insured with respect to its liability coverages. It is the intent of the parties that Vendor's insurance be primary and non-contributory coverage for Pace for claims arising from Vendor's performance of this contract, regardless of whatever other insurance Pace may have available. The insurance required pursuant to this Section 16 shall not be deemed to limit Vendor's obligations to indemnify Pace under this Agreement.

[ADD THE FOLLOWING TEXT TO INSURANCE PARAGRAPH FOR RESTAURANT AND CATERING CONTRACTS WHERE ALCOHOL MAY BE SERVED: Vendor's liability insurance shall include coverage for Dram Shop liability or similar liability imposed by law. Vendor shall furnish a certificate from its insurance carrier showing that it has complied with the foregoing provisions, and

providing that the said insurance policies will not be changed or canceled during their term until after at least thirty (30) days prior written notice by registered mail to Pace. If the required certificate of insurance is not provided to Pace in advance of the event,

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Pace shall have the right to terminate and receive a full refund of any amounts paid in advance.]

17. Force Majeure. Notwithstanding anything to the contrary contained in the Agreement, Pace shall not be liable, nor shall any credit or other remedy be extended, for Pace's failure, in whole or in part, to fulfill its obligations under the Agreement where such failure arises from or in connection with causes beyond Pace's control, including, but not limited to, acts of God, flood, extreme weather, fire or other natural calamity, terrorist attack, any law, order, or regulation or action of any governmental entity or civil or military authority, power or utility failure, cable cuts, unavailability of rights-of-way, national emergencies, riots, wars, strikes, lock-outs, work stoppages, or other labor difficulties (each a "Force Majeure Event"). If a Force Majeure Event occurs during the term hereof, Pace shall be excused from performance hereunder.

18. Governing Law and Jurisdiction. Except as may be preempted by federal law, this Agreement shall be governed by the laws of the State of New York, without regard to its choice of law principles. Litigation of all disputes between the parties arising from or in connection with this Agreement shall be conducted in a court of appropriate jurisdiction in the State of New York, County of New York.

19. Notices. All notices to Pace University in connection with this Agreement shall be sent to:

[NAME, TITLE, AND ADDRESS OF PACE CONTACT]

with simultaneous copies to:

Pace University
One Pace Plaza
New York, NY 10038
Attn: Associate Vice President for Finance

and

Pace University
One Pace Plaza
New York, NY 10038
Attn.: University Counsel

All notices to Vendor in connection with this Agreement shall be sent to:

[NAME, TITLE, AND ADDRESS OF VENDOR CONTACT]

21. **Entire Agreement.** This Agreement, together with any exhibits or addenda annexed hereto, is the sole, complete, and exclusive expression of the parties' intent with respect to the subject matter hereof. Notwithstanding the foregoing, in the event

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of any conflict or discrepancy between the terms and conditions of this Agreement and those of any exhibit, rider, or addendum hereto, the terms of this Agreement shall control. This Agreement may be amended or modified only by a writing countersigned by authorized representatives of each party.

22. **No Waiver.** Failure of either party to enforce any of its rights hereunder shall not constitute a waiver of such right(s) or of any other rights and shall not be construed as a waiver or relinquishment of any such provisions, rights, or remedies; rather, the same shall remain in full force and effect.

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

PACE UNIVERSITY *FULL LEGAL NAME OF VENDOR*

By: _____ By: _____

Joseph A. Capparelli
Associate Vice President for Finance Name: _____
and Controller

Title: _____