



TECHNOLOGY AGREEMENT

After you have preformed your due diligence and are ready to proceed with the procurement process with a vendor, the vendor may require the University to sign a contract. The University has a Technology Agreement template that will incorporate the NYS standard language, vendor pricing and applicable vendor terms and conditions.

This “how to” guide will walk you through the steps to create a draft agreement to provide to the vendor for their initial review.

use this template for ...

- software applications
- software licenses
- databases
- subscriptions
- computers and technology hardware
- equipment with software components



steps to follow ...

1

Prepare a draft agreement for the vendor to review

2

Provide draft agreement to vendor for their review and obtain required documents

3

Submit the vendor response to the contract workflow for review and approvals

documents needed ...

- [Technology Agreement](#) template
- [NYS Exhibit A](#)
- [NYS Exhibit A-1](#) (\$25,000 and above)
- Pricing from vendor
- Vendor terms and conditions (as applicable)



1

PREPARE DRAFT AGREEMENT

The [Technology template](#) is to be used for any technology purchases such as databases, software, subscriptions, hardware etc.

Complete the template by entering in the information highlighted in yellow:

1. Enter in Contracting Party's name and address
2. Exhibit B will be the order form, quote, statement of work or proposal outlining the products and/or services that will be provided
3. Section 2: Enter in the total dollar amount for the term of the agreement (write the dollar amount and the numeric amount)
4. Section 3: Enter the term start and end dates.

Note: Contracts can not exceed 5 years.

STATE UNIVERSITY OF NEW YORK AT BINGHAMTON

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CLICK OR TAP HERE TO ENTER CONTRACTING PARTY'S NAME

This Agreement made by and between by and between the State University of New York, an educational corporation organized and existing under the laws of the State of New York, and having its principal place of business located at H. Carl McCall SUNY Building, Albany, New York 12246, for and on behalf of the State University of New York, Binghamton University, located at PO Box 6000, 4400 Vestal Parkway East, Binghamton, New York 13902-6000, hereinafter referred to as "University" or "SUNY", and [Click or tap here to enter Contracting Party's name](#) having its principal place of business located at [Click or tap here to enter Contracting Party's address](#), hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, the University requires Contractor to provide the products and/or services described in Exhibit **B** at the University; and

WHEREAS, Contractor is capable of providing such products and or services; and

WHEREAS, Contractor has demonstrated its qualifications and ability to provide such services in an acceptable manner and at a reasonable price, and has agreed to provide such services pursuant to the terms and conditions of this Agreement; and

WHEREAS, the University desires to enter into an agreement with the Contractor, therefore.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein set forth the Parties hereto agree as follows:

1. Contractor shall provide all of the services ("Services") described in the Order Form attached hereto as Exhibit **B**. Contractor understands and agrees that it is responsible for the performance of the services in accordance with the terms and conditions of this Agreement. Contractor warrants that the Services it provides under this Agreement will conform substantially to the specifications set out in this Agreement and will exercise due professional care and competence in performing the Services.
2. In consideration of the above the University shall pay Contractor a sum not to exceed [Click or tap here to enter text](#) dollars (~~\$XX,00~~) for the term of this Agreement upon receipt of detailed invoices. Any expenses in addition to the fee specified in this paragraph 2 shall be paid at the rates and the method approved by the New York State Office of the State Comptroller. Contractor agrees to follow University and State of New York policies when applying for these additional expenses. Contractor will submit detailed invoices outlining the services provided. Invoices must contain sufficient information including but not limited to the contract number and federal identification number of the contractor. Payment will be made in accordance with Article XI-A of the New York State Finance Law.
3. [Unless modified as provided herein, this Agreement shall commence on Click or tap to enter a date., and end on Click or tap to enter a date., not to exceed five \(5\) years from the start date.](#)
4. **Assignments.** In accordance with Section 138 of the State Finance Law, this Agreement or any of its provisions shall not be assigned, delegated, transferred, conveyed, sub-let, or otherwise disposed of without the prior written consents of SUNY, the New York State Attorney General and the New York State Office of the State Comptroller, and any attempts to assign, delegate, transfer, convey, sub-let, or otherwise dispose of this Agreement without said written consents shall be null and void.
5. **Binding Effect:** The Agreement shall be binding upon its execution by both Parties and, *if required*, upon the written approvals of the New York State Office of the Attorney General (OAG) and the Office of the State Comptroller (OSC). In the event that this Agreement is subject to the approval of the OAG and OSC, it shall not be



1

PREPARE DRAFT AGREEMENT

5. Section 6. Compliance with SUNY Policies – if the contractor will not be on University property you can delete this section in its entirety
6. Section 8. Contract Entirety/Order of Precedence
 - a. If the total amount of the contract is less than \$25,000 you can remove line b. otherwise it remains.

Contractor must provide MS Word versions of Exhibit B and Exhibit C

*Note: Exhibit B - This will incorporate the pricing information that the vendor provides

*Note: Exhibit C – This will incorporate the terms and conditions provided by the vendor and all the associated documents referred to within the terms and conditions.

valid and enforceable, and the State shall bear no liability, until such approval is given, or the pertinent pre-audit review period has lapsed.

6. **Compliance with SUNY Policies** (if Contractor or Subcontractors will be on SUNY premises): At all times when on SUNY premises, all Contractor and subcontractor personnel shall be required to comply with SUNY regulations, policies and procedures including, but not limited to:
 - a. The requirement to wear an identity tag clearly identifying them as being an employee or agent of the Contractor.
 - b. The prohibition against smoking within the buildings or on the grounds owned or leased by SUNY.
 - c. The parking regulations. Parking violations are subject to the fines and are the sole responsibility of the Contractor. All vehicles must be registered with SUNY.
 - d. The Contractor must communicate these policies to its employees, subcontractors, and any other individuals assigned to enter upon SUNY grounds and premises in connection with the services to be performed in connection with the contract awarded.
7. **Contract Amendments:** The Agreement may be amended at any time upon mutual consent of the Parties in writing. Such written amendment will not be effective until signed by both Parties, and *if required*, approved by the OAG and OSC.
8. **Contract Entirety/Order of Precedence:** The following documents will be annexed to, and incorporated into, and made part of, the Agreement:
 - a. Exhibit A, State University of New York Standard Contract Clauses
 - b. Exhibit A-1, State University of New York Affirmative Action Clauses (*for contracts valued at greater than \$25,000*)
 - c. This Agreement
 - d. Exhibit B, Contractor's proposal, quote, or Statement of Work
 - e. Exhibit C, The Contractor's Terms and Conditions

In the event of any inconsistency in or conflict among the document elements described above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the order set forth above.

9. **Data Management and Security:**
 - a. **Data Privacy**
 - i. Contractor will use any information it creates, receives, maintains or transmits on behalf of SUNY ("SUNY Data") only for the purpose of fulfilling its duties under this Agreement and will not share such data with or disclose it to any third party without the prior written consent of the SUNY, except as required by the Agreement or as otherwise required by law.
 - ii. SUNY Data will not be stored outside the United States without prior written consent from SUNY.
 - iii. Contractor will provide access to SUNY Data only to its employees and subcontractors who need to access the data to fulfill its obligations under the Agreement.
 - iv. Contractor will ensure that employees who perform work under the Agreement have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of the Agreement.
 - v. FERPA: If Contractor will have access to the SUNY's Education Records as defined under the Family Educational Rights and Privacy Act (FERPA), Contractor acknowledges that for the purposes of the Agreement it will be designated as a "school official" with "legitimate educational interests" in the SUNY Education records, as those terms have been defined under FERPA and its implementing regulations, and the Contractor agrees to abide by the limitations and requirements imposed on school officials. Contractor will use the Education Records only for the purpose of fulfilling its duties under the Agreement for SUNY's and its end users' benefit, and will not share such data with or disclose it to any third party except as provided for in the Agreement, required by law, or authorized in writing by SUNY.
 - vi. European Union ("EU") General Data Protection Regulation ("GDPR"): The Contractor, as well as any subcontractors the contractor employs to process data on behalf of SUNY, shall comply with the European Union General Data Protection Regulation ("GDPR") (EU) 2016/679).
 - vii. Pursuant to the Gramm-Leach-Bliley Act (P.L. 106-102) and the Federal Trade Commission's Safeguards Rule (16 CFR Part 314), and to the extent the Contractor is a covered entity or

7. Section 18. Notices – Enter in the department contact who will receive notices when applicable.

17. Liability and Indemnification:

- a. Neither Contractor, SUNY, nor the State of New York shall be deemed in default of this Agreement, nor shall it hold the other Party responsible for, any cessation, interruption or delay in the performance of its obligations (excluding payment obligations) due to earthquake, flood, fire, storm, natural disaster, act of God, an act of war whether declared or undeclared, acts or threats of terrorism, contamination by radioactivity, pressure waves from devices travelling at supersonic speeds or damage caused by any aircraft or similar device, armed conflict, labor strike, lockout, boycott, electrical, internet or telecommunications outage that is not caused by the obligated party; or government restrictions, or other force majeure or other unforeseeable circumstances beyond the control of the Parties against which it would have been unreasonable for the affected party to take precautions and which the affected party cannot avoid even by using its best efforts, provided that the Party relying upon this provision:
 - i. gives prompt written notice thereof to the other Party; and
 - ii. takes all steps reasonably necessary to mitigate the effects of the force majeure event. If a force majeure event extends for a period in excess of more than 90 days, either party may terminate all or any agreed upon portion of the Agreement immediately upon written notice. This Section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures, or SUNY's obligation to pay for Services provided by Contractor which have been approved by SUNY.
 - b. Contractor shall be liable for any act or omission of Contractor and its Staff (officers, employees, agents, subcontractors or licensees), and shall indemnify, defend, and hold harmless SUNY and the State, their officials, agents, and employees, without limitation, from suits, actions, damages, and costs of every name and description (including reasonable attorney's fees and expenses) arising from any act or omission of Contractor or its Staff, including bodily or personal injury (including wrongful death); damage to real or tangible personal property (including electronic systems, software and databases); damage to intellectual property; and infringement or violation of a third party's patent, copyright, license, or other proprietary or intellectual property; provided, however, that Contractor shall not be obligated to indemnify SUNY for that portion of any claim, loss, or damage arising hereunder due to the negligent act or failure to act of SUNY or SUNY's breach of this Agreement and/or the applicable Terms and Conditions of Use. For third party claims, SUNY shall give Contractor:
 - i. Prompt written notice of any action, claim, suit, proceeding, or threat of such action for which Contractor is liable relating to this Agreement;
 - ii. The opportunity to take over, settle, or defend any such action, claim, suit, or proceeding at the Contractor's sole expense; and
 - iii. Reasonable assistance in the defense of any such action, claim, suit, or proceeding at the expense of the Contractor. Notwithstanding the foregoing, the State of New York reserves the right to join such action, claim, suit or proceeding at its sole expense, if it determines there is an issue involving a significant public interest.
 - c. For all other claims, liabilities, and expenses arising under or related to this Agreement where liability is not otherwise set forth in this Agreement as being without limitation, and regardless of the basis on which the claim is made, the Contractor shall be liable for any act or omission of Contractor and its Staff, in an amount not to exceed, in aggregate, the greater of the dollar amount of this Agreement, or two times the charges paid to the Contractor. The Contractor shall not be responsible for loss of records or data unless the Contractor is required to back-up the records or data.
 - d. Notwithstanding the above, neither party shall be liable for any consequential, indirect, or special damages of any kind that may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by SUNY, the Contractor, or by others.
18. Notices. Any notice to either party hereunder must be in writing, signed by the party giving it, and shall be served either personally or by registered mail addressed as follows:

TO THE UNIVERSITY:

Name: [Click or tap to enter dept contact name and title](#)
Address: PO Box 6000
City, State, Zip Binghamton, NY 13902

TO CONTRACTOR

Name: [Click or tap here to enter text.](#)
Address: [Click or tap here to enter text.](#)
City, State, Zip [Click or tap here to enter text.](#)



1

PREPARE DRAFT AGREEMENT

8. For contracts \$75,000 and above, the vendor will need to have the signatory's signature notarized. If less than \$75,000 this page can be removed.



Once the draft agreement is completed:

- **Turn Track Changes on** the MS Word document. This option is available under the menu option "Review", "Track Changes", "Track Changes"
- Save the MS Word draft agreement and name it Binghamton University – "Vendor Name" draft v mm dd yy.docx

BINGHAMTON UNIVERSITY

STATE UNIVERSITY OF NEW YORK

NOTARY ACKNOWLEDGEMENT

FORM IX

(ACKNOWLEDGEMENT BY INDIVIDUAL)

STATE OF _____)
 COUNTY OF _____) SS.:

On this _____ day of _____, 20____, before me personally came _____ to me known and known to me to be the person described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same.

 Notary Public

(ACKNOWLEDGEMENT BY UNINCORPORATED ASSOCIATION)

STATE OF _____)
 COUNTY OF _____) SS.:

On this _____ day of _____, 20____, before me personally came _____ to me known and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for himself/herself depose and say that he/she is a member of the firm of _____ and that he/she executed the foregoing instrument in the firm name of _____, and that he/she had authority to sign same, and he/she did duly acknowledge to me that he/she executed the same as the act and deed of said firm of _____ for the uses and purposes mentioned therein.



2

Provide draft agreement to vendor for their review and obtain required documents

PROVIDE THE FOLLOWING TO THE VENDOR FOR THEIR REVIEW

1. Draft agreement
2. [NYS Exhibit A](#) (pdf) can't be modified
3. [NYS Exhibit A-1](#) (pdf) can't be modified, only applies if the total dollar amount of the agreement is \$75,000 or higher

OBTAIN THE FOLLOWING FROM THE VENDOR

1. Order Form, Quote, Statement of Work or Proposal that outlines the products and/or services, the terms and the pricing (MS Word format preferred) This will become Exhibit B.
2. MS Word version of their terms and conditions and any other documentation that is referenced in their terms that the University must agree to. This will become Exhibit C
3. Software documentation (as applicable)
 - a. [Higher Education Community Vendor Assessment Toolkit](#) For More information [click here](#)
 - b. [Voluntary Product Accessibility Template](#) For more information [click here](#)
 - c. SOC2 Report (if available)

3

Submit the vendor responses to the [contract workflow](#) for review, approvals and signatures.

SUBMIT THE FOLLOWING INFORMATION TO THE CONTRACT WORKFLOW

1. Draft agreement that has been reviewed / edited by the vendor
2. Email from vendor with open issues/questions relating to contract or documentation requested (pdf format)
3. Order Form, Quote, Statement of Work or Proposal that outlines the products and/or services, the terms and the pricing (MS Word format preferred)
4. MS Word version of their terms and conditions and any other documentation that is referenced in their terms that the University must agree to.

5. Software documentation (as applicable)
 - a. [Higher Education Community Vendor Assessment Toolkit](#) For More information [click here](#)
 - b. [Voluntary Product Accessibility Template](#) For more information [click here](#)
 - c. SOC2 Report (if available)