



COMMODITY OR SERVICE 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 an agreement template for services or commodities 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 ...

- Procurement of commodities that require a signed agreement (such as lab equipment, furniture etc.)
- Procurement of services (such as maintenance of fire extinguishers, copier repairs etc.)



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 ...

- [Commodity or Service 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 [template](#) is to be used for any commodity or services purchases such as maintenance agreements, furniture, or servicing of equipment.

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 services and/or commodities 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 Contractor to provide the services and/or commodities described in Exhibit **B** at the University; and

WHEREAS, Contractor is capable of providing such services and/or commodities; 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 (~~\$XXX,000~~) 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 C - 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 ConditionsIn 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. **Dispute Resolution**: At the option of SUNY, the parties shall use good faith efforts to amicably resolve any dispute arising under this Agreement. If the parties are unable to amicably resolve the dispute within thirty (30) days, then either party may seek legal or equitable redress.
10. **Electronic Payment Authorization**: The Contractor shall provide complete and accurate billing invoices to SUNY in order to receive payment for its services. Billing invoices submitted to the SUNY must contain all information and supporting documentation required by SUNY and OSC. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Vice Chancellor for Business and Finance of the State University of New York or designee, in her/his sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary New York State procedures and practices. The Contractor shall comply with the OSC procedures to authorize payments. Authorization forms are available at the OSC website at www.osc.state.ny.us/epay, by email at ePayments@osc.state.ny.us. The Contractor acknowledges that it will not receive payment on any invoices submitted under this Agreement if it does not comply with the OSC's electronic payment procedures.
11. **FOIL**: Contractor acknowledges that this Agreement is subject to the New York State Freedom of Information Law ("FOIL") as set forth in Article 6 of the New York State Public Officers Law, and that only Contractor's proprietary information that satisfies the requirements of §87(2)(d) of the Public Officers Law shall be exempted from disclosure thereunder.
12. **Governing Laws**: The laws of New York State will govern this Agreement without regard for New York State's choice of law statute. The parties agree to bring any action to construe, interpret or enforce this Agreement in a court of competent jurisdiction in New York State. The Contractor agrees to submit itself to such court's jurisdiction.



1

PREPARE DRAFT AGREEMENT

7. Section 16. Notices – Enter in the department contact who will receive notices when applicable.

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.

16. **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.](#)

or to such addresses as may be hereafter designated by notice. All notices become effective only when received by the addressee.

17. **NY Executive Order No. 177:** In accordance with Executive Order No. 177, Contractor hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

18. **Rights in Deliverables:** The Contractor hereby assigns to SUNY ownership of all materials created by the Contractor specifically for SUNY hereunder and required to be delivered to SUNY by virtue of their description or specification as a deliverable in the Statement of Work, upon SUNY’s payment in full of applicable invoices. Deliverables exclude the Contractor’s proprietary tools, methodologies, and any enhancements made to such tools and methodologies, which shall remain the sole property of the Contractor, and exclude any third-party components whether or not included or embedded therein. Deliverables shall be deemed to be “works made for hire” under federal copyright laws. Notwithstanding anything to the contrary, the Contractor retains all rights to its knowledge, experience and know-how (including processes, ideas, concepts and techniques) acquired in the course of performing the Services.

19. **Severability and Enforceability:** If any provision of this Agreement is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of the Agreement, unless it prevents accomplishment of the objectives and purposes of the Agreement, which determination shall be submitted as a dispute herein. In the event of any holding that the illegality or invalidity prevents accomplishment of the objectives and purposes of the Agreement, the Parties will immediately commence negotiations to remedy such illegality or invalidity.



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 the draft agreement and applicable exhibits to vendor for their review and obtain required documents from the vendor.

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)
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.



3

Submit the following 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.