

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is entered into by and between **ULSTER COUNTY ECONOMIC DEVELOPMENT ALLIANCE, INC.**, a local development corporation formed under the laws of the State of New York, with offices at 244 Fair Street, Kingston, New York 12401 (the “UCEDA”), and **Hudson Valley Center for Innovation, Inc., dba ACCEL7** New York not-for-profit corporation] with principal offices at 169 Mamaroneck Ave, Suite 12, White Plains, NY 10601 (the “Firm”), (each, a “Party;” together, the “Parties”).

RECITALS

WHEREAS, the UCEDA desires to enter into an agreement for professional services that will result in programs that assist in ~~helping the efforts for~~ the economic recovery of Ulster County businesses as a result of COVID-19 ; and

WHEREAS, the Firm ~~has demonstrated past performance~~ is ~~qualified~~ to deliver such services as a result of ~~pre~~vious work done through the ~~Firm and its network relationships~~ Hudson Valley ~~Innovation~~ Venture Hub, the Hudson Valley Start-Up Funding and experience and education of the partners in Accel7; and

WHEREAS, the UCEDA has agreed to engage the Firm, and the Firm has agreed to contract with the UCEDA, to ~~strengthen~~ assist Ulster County entrepreneurs and small business owners by providing strategy support coaching which includes (but is not limited to) advisory assistance, workshop development and one-on-one assistance in accordance with the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the promises and covenants set forth below, the Parties hereby agree as follows:

ARTICLE 1 - SCOPE OF SERVICES

The Firm agrees to perform the services identified in Schedule A, the Scope of Services (the “Services”), which is attached hereto and is hereby made a part of this Agreement. The Firm agrees to perform the Services in accordance with the terms and conditions of this Agreement. It is specifically agreed to by the Firm that the UCEDA will not compensate the Firm for any services not included in Schedule A without prior authorization, evidenced only by a written Change Order, Amendment, or Addendum to this Agreement, which is executed by the UCEDA.

ARTICLE 2 - TERM OF AGREEMENT

The Firm agrees to perform the Services **beginning June 1, 2020 and ending December 31, 2020.**

ARTICLE 3 - COMPENSATION

For ~~satisfactory delivery of performance~~ of the Services ~~under Schedule A~~, or as such Services may be modified mutually by a written Change Order, Amendment, or Addendum to this Agreement, the UCEDA agrees to compensate the Firm in accordance with “Schedule B, FEES, EXPENSES AND SUBMISSIONS FOR PAYMENT” which is attached hereto and is hereby made a part of this Agreement.

A **fixed fee** amount of **FORTY-NINE THOUSAND, SIX HUNDRED AND 00/100 (\$49,600.00) DOLLARS** has been established for the Services to be rendered by the Firm. Costs in excess of the above-noted amount may not be incurred without the prior written authorization of the UCEDA, evidenced only by a written Change Order, Amendment or Addendum to this Agreement. It is specifically agreed to by the Firm that the UCEDA shall not be responsible for any additional costs, or costs in excess of the above-noted cost, if authorization by the UCEDA is not given in writing prior to the performance of the services giving rise to such excess or additional costs.

ARTICLE 4 - INDEPENDENT CONTRACTOR

In performing the Services and incurring expenses under this Agreement, the Firm shall operate as and have the status of an independent contractor, and shall not act as or be an agent of the UCEDA. As an independent contractor, the Firm shall be solely responsible for determining the means and methods of performing the Services and shall have complete charge and responsibility for the Firm's personnel engaged in the performance of the same.

ARTICLE 5 - ASSIGNMENT

The Firm shall not assign any of its rights, interests, or obligations under this Agreement, or assign any of the Services to be performed by it under this Agreement.

ARTICLE 6 – SUBCONTRACTING

The Firm agrees to include the following provisions in any and all subcontract agreements for Services to be performed pursuant to this Agreement:

- A. That the work performed by the subcontractor must be in accordance with the terms and conditions of this Agreement between the UCEDA and the Firm, including but not limited to the insurance requirements set forth in Schedule C; and
- B. That nothing contained in the subcontractor agreement shall impair the rights of the UCEDA; and
- C. That nothing contained in the subcontractor agreement, or under this Agreement between the UCEDA and the Firm, shall create any contractual relation in law or equity, between the subcontractor and the UCEDA; and
- D. That the subcontractor specifically agrees to be bound by the Confidentiality provision as set forth in Article 8 of this Agreement between the UCEDA and the Firm.

Upon signing this Agreement, the Firm shall provide the UCEDA with the names and scopes of work of any and all subcontractors to be used in the performance of the Firm's obligations pursuant to this Agreement. Furthermore, upon request by the UCEDA, the Firm shall provide copies of any and all subcontract agreements for Services to be performed pursuant to this Agreement.

The Firm agrees that it is fully responsible to the UCEDA for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, to the same extent as it is for the acts and omissions of persons employed by the Firm. The Firm shall not in any way be relieved of any responsibility under this Agreement by any subcontract.

ARTICLE 7 - PERFORMANCE

In performing the Services, the Firm shall assign qualified personnel and perform such Services as delineated in Schedule A in accordance ~~with the professional standards with the Firm's Code of Conduct as outlined in the proposal~~ and with the skill, diligence and quality control/quality assurance measures expected of a reputable company performing Services of a similar nature. The Firm is hereby given notice that the UCEDA shall be relying upon the accuracy, competence, and completeness of the Firm's ~~performance~~ Services in Schedule A in using the results achieved by the Firm's performance of these Services. The Firm shall at all times comply with all applicable Federal, New York State and local laws, ordinances, statutes, rules and regulations.

ARTICLE 8 - CONFIDENTIALITY

For purposes of this Article:

- A. The term "Confidential Information" as used herein, means all material and information, whether written or oral, received by the Firm from or through the UCEDA or any other person connected with the UCEDA, or developed, produced, or obtained by the Firm in connection with its performance of Services under this Agreement. Confidential

Information shall include, but not be limited to: samples, substances and other materials, conversations, correspondence, records, notes, reports, plans, drawings, specifications and other documents in draft or final form, including any documentation or data relating to the results of any investigation, testing, sampling in laboratory or other analysis, and all conclusions, interpretations, recommendations, and/or comments relating thereto.

- B. The term "Firm" as used herein includes all officers, directors, employees, agents, subcontractors, assignees or representatives of the Firm.

The Firm shall keep all Confidential Information in a secure location ~~within the Firm's offices~~. The UCEDA shall have the right, but not the obligation, to enter the Firm's offices in order to inspect the arrangements of the Firm for keeping Confidential Information secure. The UCEDA's inspection, or its failure to inspect, shall not relieve the Firm of its responsibilities pursuant to this Article 8.

The Firm shall hold Confidential Information in trust and confidence, and shall not disclose Confidential Information, or any portion ~~or derivative~~ thereof, to anyone other than the UCEDA, without the prior written consent of the UCEDA Board of Directors, ~~not to be unreasonably withheld. The aforementioned notwithstanding, the Firm and shall be allowed to use Confidential Information in connection with its performance of the Services under this Agreement, not use Confidential Information, or any portion thereof, for any purpose whatsoever except in connection with its performance of the Services under this Agreement.~~

The Firm shall notify the UCEDA immediately upon its receipt of any request by anyone other than the UCEDA for, or any inquiry related to, Confidential Information. The Firm is not prohibited from disclosing portions of Confidential Information if, and to the extent that: (i) such portions have become generally available to the public other than by an act or omission of the Firm, or (ii) disclosure of such portions is required by subpoena, warrant or court order; provided, however, that in the event anyone other than the UCEDA requests all or a portion of Confidential Information, the Firm shall oppose such request and cooperate with the UCEDA in obtaining a protective order or other appropriate remedy, unless and until the Board of Directors, upon consultation with UCEDA's counsel, in writing, waives compliance with the provisions of this Article 8, or determines that disclosure is legally required. In the event that such protective order or other remedy is not obtained, or the UCEDA waives compliance with this Article 8 or determines that such disclosure is legally required, the Firm shall disclose only such portions of Confidential Information that, in the opinion of the UCEDA's counsel, the Firm is legally required to disclose, and the Firm shall use its best efforts to obtain from the party to whom Confidential Information is disclosed, written assurance that confidential treatment will be given to any such Confidential Information disclosed, to the extent permitted by law.

For clarity, nothing in this Agreement shall in any way limit the ability of the Firm to perform any other Services for its own account to parties introduced to it by UCEDA.

ARTICLE 9 – OWNERSHIP OF CONFIDENTIAL INFORMATION

Notwithstanding any other provision herein to the contrary:

- A. All Confidential Information, as defined in Article 8, including all copies thereof, is the exclusive property of the UCEDA regardless of whether or not it is delivered to the UCEDA. The Firm shall deliver ~~or destroy~~ Confidential Information and all copies thereof to the UCEDA upon request.
- B. To the extent that copies of Confidential Information are authorized by the UCEDA to be retained by the Firm, such information shall be retained in a secure location ~~in the Firm's office~~ for a period of six (6) years after completion of the Services, or termination of this Agreement, whichever later occurs, and thereafter disposed of at the UCEDA's direction.

ARTICLE 10 – INTELLECTUAL PROPERTY

All "Intellectual Property," meaning all graphics, fonts, computer code (with the exception of open source code), photographs, brochures, videos, web pages, trademarks, databases, reports, plans, drawings, names and logos, or the copyright in any portion of the works issued by the UCEDA or developed or produced for the UCEDA shall at all times be proprietary to the UCEDA, and shall be the exclusive property of the UCEDA provided, however, that any pre-existing intellectual property of

the Firm that the Firm combines with the intellectual property of UCEDA in order to provide the Services shall remain the intellectual property of the Firm. Upon termination of this Agreement, the Firm's right or license to use the intellectual property shall terminate.

The Firm warrants it has full authority to sell, assign and transfer the rights to all graphics, fonts, computer code (with the exception of open source code), photographs, brochures, videos, web pages, trademarks, databases, reports, plans, drawings, names and logos, or the copyright in any portion of the works, developed or produced for the UCEDA free and clear of any material encumbrances, liens or claims except that it does not do so to the extent same contains or includes proprietary intellectual property of the Firm of any nature.

The Firm agrees, at its own expense, to defend, indemnify and hold harmless the UCEDA from and against any losses, damages, expenses, liabilities and costs (including without limitation, legal fees) incurred by the UCEDA as a result of any claims brought against the UCEDA by third parties arising from any infringement or misappropriation of any Intellectual Property right arising out of or relating to the UCEDA's use of the Firm's Services.

ARTICLE 11 – PUBLICITY

The prior written approval of the UCEDA is required before the Firm, or any of its employees, representatives, servants, agents, assignees, or subcontractors may, at any time, either during or after completion or termination of this Agreement, make any statement to the media or issue any material for publication bearing on the Services performed or data collected in connection with this Agreement.

If the Firm, or any of its employees, representatives, servants, agents, assignees or subcontractors desires to publish a work dealing with any aspect of this Agreement, or of the results or accomplishments attained by its performance, they must first obtain the prior written permission of the UCEDA Board of Directors not to be unreasonably withheld, which, unless otherwise agreed to in said written permission, will entitle the UCEDA to a royalty fee, and a non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use such publication.

ARTICLE 12 - BOOKS AND RECORDS

The Firm agrees to maintain separate and accurate books, records, documents and other evidence, and to employ accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

ARTICLE 13 - RETENTION OF RECORDS

The Firm agrees to retain all books, records, and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever later occurs. The UCEDA, any New York State and/or Federal auditors, and any other persons duly authorized by the UCEDA, shall have full access and the right to examine any of said materials during said period upon at least 5 days advance written notice and during normal business hours.

ARTICLE 14 – AUDITING AND REPORTS

All forms or invoices presented for payment to be made hereunder, and the books, records, and accounts upon which said forms or invoices are based, are subject to audit by the UCEDA. The Firm shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the UCEDA, so that it may evaluate the reasonableness of the charges, and the Firm shall make its records available to the UCEDA upon request. All books, forms, records, reports, cancelled checks, and any and all similar material may be subject to periodic inspection, review, and audit by the UCEDA and/or other persons duly authorized by the UCEDA. Such audits may include examination and review of the source and application of all funds, whether from the UCEDA, private sources, or otherwise. The Firm shall not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

ARTICLE 15 – NO DISCRIMINATION

As required by Article 16 of the New York State Executive Law (also known as the Human Rights Law) and all other State

and Federal statutory and constitutional non-discrimination provisions, including the Civil Rights Act, the Firm will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition, carrier status, military status, domestic violence victim status, or marital status.

ARTICLE 16 - INSURANCE

For provision of the Services set forth herein and as may be hereinafter amended, the Firm shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, insurance with stated minimum coverage as set forth in "Schedule C", which is attached hereto and is hereby made a part of this Agreement. Such policies are to be in the broadest form available on usual commercial terms and shall be written by insurers who have been fully informed as to the nature of Services to be performed by the Firm pursuant to this Agreement. Such insurers shall be of recognized financial standing, satisfactory to the UCEDA. The UCEDA shall be named as an additional insured on all commercial general liability policies with the understanding that any obligations imposed upon the insured (including, without limitation, the obligation to pay premiums) shall be the sole obligation of the Firm and not those of the UCEDA. Notwithstanding anything to the contrary in this Agreement, the Firm irrevocably waives all claims against the UCEDA for all losses, damages, claims or expenses resulting from risks commercially insurable under the insurance described in Schedule C and this Article 16. The provision of insurance by the Firm shall not in any way limit the Firm's liability under this Agreement.

At the time the Firm submits two (2) original executed copies of this Agreement, the Firm shall include certificates of insurance evidencing its compliance with these requirements and those set forth in Schedule C.

Each policy of insurance shall contain clauses to the effect that (i) such insurance shall be primary, without right of contribution of any other insurance carried by or on behalf of the UCEDA, with respect to its interests, (ii) it shall not be cancelled or materially amended, without thirty (30) days prior written notice to the UCEDA (except in the case of cancellation for non-payment of premium, which requires fifteen (15) days prior written notice), directed to the UCEDA, and (iii) the UCEDA shall have the option to pay any necessary premiums to keep such insurance in effect, and charge the cost back to the Firm.

To the extent it is commercially available, each policy of insurance shall be provided on an "occurrence" basis. If any insurance is not so commercially available on an "occurrence" basis, it shall be provided on a "claims made" basis, and all such "claims made" policies shall provide that:

- A. Policy retroactive dates coincide with or precede the Firm's start of the performance of Services (including subsequent policies purchased as renewals or replacements); and
- B. The Firm shall maintain similar insurance for a minimum of three (3) years following final acceptance of the Services; and
- C. If the insurance is terminated for any reason, the Firm agrees to purchase for the UCEDA, an unlimited, extended reporting provision to report claims arising from the Services performed under this Agreement; and
- D. Immediate notice shall be given to the UCEDA of circumstances or incidents that might give rise to future claims with respect to the Services performed under this Agreement.

ARTICLE 17 - INDEMNIFICATION

The Firm agrees to defend, indemnify and hold harmless the UCEDA, including its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including without limitation, reasonable attorney fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of the Services performed by the Firm, its employees, representatives, subcontractors, assignees, or agents pursuant to this Agreement, which the UCEDA, or its officials, employees, or agents may suffer by reason of any negligence, fault, act, or omission of the Firm, its employees, representatives, subcontractors, assignees, or agents. The Firm agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demands, or suits at its sole expense, and agrees to bear all other costs and expenses related thereto, even if such claims, demands, or suits are groundless, false, or fraudulent.

UCEDA will defend at its expense, and indemnify the Firm with respect to any claims, actions, or proceedings arising out of

representations, information, or materials supplied by UCEDA to the Firm, and approved by UCEDA for inclusion relative to the Services provided by the Firm, pursuant to this Agreement

ARTICLE 18 - RESPONSIBILITY TO CORRECT DEFICIENCIES

It shall be the Firm's responsibility to correct, in a timely fashion and at the Firm's sole expense, any deficiencies in its Services resulting from the Firm's failure to act in accordance with the standards set forth in Article 7 (Performance) and Schedule A, provided such deficiencies are reported to the Firm within sixty ~~one hundred twenty (1620)~~ days after ~~completion and final acceptance~~ incident of the Services. If the Firm fails to correct such deficiencies ~~in a timely and proper manner~~ within thirty (30) days of the date of notice of deficiency is given, the UCEDA may elect to have others perform such corrections, and the UCEDA may charge any related cost of such corrections to the Firm and/or set-off such amount against any sums otherwise due to the Firm, ~~not to exceed \$7,085~~. ~~In the event that UCEDA deems it necessary to hire a replacement firm for any such corrections and charge the costs of such work to the Firm, UCEDA agrees to hire a replacement firm that is mutually agreeable to it and the Firm. These remedies, if effected, shall not constitute the sole or exclusive remedies afforded to the UCEDA for such deficiencies, nor shall they constitute a waiver of the UCEDA's right to claim damages or otherwise refuse payment, or to take any other action provided for by law, in equity, or pursuant to this Agreement.~~

Commented [JC1]: We can compromise and say 60 days after the incident, given the time it takes to hold a board meeting and make decisions like this, 30 days is too short

Commented [JC2]: REJECT this change

ARTICLE 19 – FORCE MAJEURE

Neither Party hereto shall be considered in default in the performance of its obligations hereunder, to the extent that performance of any such obligation is prevented and/or delayed by any cause, existing or future, beyond the control of such Party, and which by that Party's exercise of due diligence and foresight could not reasonably have been avoided.

Upon removal of such cause, the Party affected shall resume its performance as soon as reasonably possible. The Firm's financial inability to perform shall not be deemed to be an event of Force Majeure regardless of the source causing such financial inability. If the Firm is so delayed in the timely performance of the Services, the Firm's sole and exclusive remedy is to request that a Change Order, Amendment or Addendum to this Agreement be issued by the UCEDA and signed by the President of the UCEDA, permitting an extension of time to perform the Services in an amount equal to the time lost due to such delay. Such request shall be based upon written notice only, stating the specific nature of the claim, delivered to the President of the UCEDA promptly, but in no event later than thirty (30) days after the initial occurrence of the event giving rise to such claim. An extension of time to perform the Services may only be granted by a written Change Order, Amendment or Addendum to this Agreement, signed by the President of the UCEDA. In no event shall the UCEDA be liable to the Firm or to its subcontractors, agents, assignees, or any other person or entity for damages arising out of, or resulting from, any such delays.

ARTICLE 20 - TERMINATION

The Agreement may be terminated by either Party upon thirty (30) days written notice to the other Party. Upon termination, the Firm will turn over all files, lists, or other work product requested by the UCEDA, provided that all Services performed by the Firm have been invoiced and said invoices have been paid in full.

ARTICLE 21 - NO ARBITRATION

Any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to arbitration unless ~~specifically mutually~~ agreed to in writing by the Board of Directors after consultation with the UCEDA's counsel, ~~and the Firm's Board of Directors~~ but must instead only be heard in the Supreme Court of the State of New York, with venue in Ulster County, or if appropriate, in the Federal District Court, with venue in the Northern District of New York, Albany Division.

ARTICLE 22 - GOVERNING LAW

This Agreement shall be governed by the laws of the State of New York, except where the Federal Supremacy Clause requires otherwise. The Firm shall render all Services under this Agreement in accordance with applicable provisions of all Federal,

State, and local laws, rules and regulations as are in effect at the time such Services are rendered.

ARTICLE 23 - WAIVER AND SEVERABILITY

The failure of either Party to enforce at any time, any provision of this Agreement, does not constitute a waiver of such provision in any way or waive the right of either Party at any time to avail itself of such remedies as it may have for any breach or breaches of such provision. None of the conditions of this Agreement shall be considered waived by the UCEDA unless such waiver is explicitly given in writing by the President of the UCEDA. No such waiver shall be a waiver of any past or future default, breach, or modification of any of the terms or conditions of this Agreement, unless expressly stipulated in such waiver as executed by the President of the UCEDA.

The invalidity or invalid application of any provision of this Agreement shall not affect the validity of any other provision, or the application of any other provision of this Agreement.

ARTICLE ~~23-24~~ - GENERAL RELEASE

Acceptance by the Firm or its assignees, of the final payment under this Agreement, whether by voucher, judgment of any court of competent jurisdiction, administrative or other means, shall constitute and operate as a general release ~~to the both parties of~~ UCEDA from any and all claims of the Firm arising out of the performance of this Agreement ~~except for continuing indemnification obligations.~~ Acceptance by UCEDA or its assignees, of the Services, by whatever means, shall constitute and operate as a general release by UCEDA of the Firm from any and all claims of UCEDA arising out of the performance of this Agreement except for continuing indemnification obligations.

ARTICLE 25 – ~~INTENTIONALLY LEFT BLANK~~ LIMITATION OF LIABILITY

Notwithstanding anything else herein to the contrary, the Firm's total out of pocket liability arising in connection with its performance or contemplated performance under this Agreement will, except in the event of the Firm's gross negligence or willful misconduct, in no event exceed one and one half times (1.5) the aggregate amounts received by the Firm from UCEDA. Nothing in the preceding sentence shall in any way affect the insurance coverage available to either the Firm or UCEDA. The sentence is intended as a limit solely on Firm's out of pocket expenses including, without limitation, any co-insurance or any liability that is in excess of policy limits.

ARTICLE 26 - NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

No claim whatsoever shall be made by the Firm against any officer, agent, or employee of the UCEDA, for or on account of any act or omission in connection with this Agreement. No claim whatsoever shall be made by UCEDA against any officer, agent, or employee of the Firm, for or on account of any act or omission in connection with this Agreement.

ARTICLE 27 - ENTIRE AGREEMENT

The rights and obligations of the Parties and their respective agents, successors and assignees shall be subject to and governed by this Agreement, including Schedules A, B, and C, which supersedes any other understandings or writings between or among the Parties to this Agreement.

ARTICLE 28 - SURVIVING OBLIGATIONS

The Firm's obligations, and those of the Firm's employees, representatives, agents, subcontractors, successors and assignees, assumed pursuant to Article 7 (Performance), Article 8 (Confidentiality), Article 9 (Ownership of Confidential Information), Article 10 (Intellectual Property), Article 11 (Publicity), Article 13 (Retention of Records), Article 17 (Indemnification), and Article 18 (Responsibility to Correct Deficiencies), shall survive completion of the Services and/or the expiration or termination of this Agreement.

ARTICLE 29 - NOTICES

Except as expressly provided otherwise in this Agreement, all notices given to any of the Parties pursuant to or in connection with this Agreement shall be in writing, shall be delivered by hand, by certified or registered mail, return receipt requested, or by Federal Express, Express Mail, or other nationally recognized overnight carrier. Except where otherwise specifically defined within this Agreement, notices shall be effective when received. Notice addresses are as follows:

Firm:

Attn: Danny Potocki, Managing Director

Enter address 169 Mamaroneck Avenue

2nd Floor, Suite 12

White Plains, New York 10601

UCEDA:

ULSTER COUNTY ECONOMIC DEVELOPMENT ALLIANCE, INC.

Attn: Board Chair, Julie Lonstein

244 Fair Street

Kingston, New York 12401

Any communication or notice regarding indemnification, termination, litigation or proposed changes to the terms and conditions of this Agreement shall be deemed to have been duly made upon receipt by the Parties at the addresses set forth herein, or such other addresses as may have been specified in writing by one Party to the other Party.

Either Party may, by written notice to the other Party given in accordance with the foregoing, change its address for notices.

ARTICLE 30 - MODIFICATION

No changes, amendments, or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the Parties to this Agreement. Changes to Schedule A, the Scope of Services, in this Agreement shall not be binding, and no payment shall be due in connection therewith, unless prior to the performance of any such Services, ~~both Parties~~ ~~the President of the UCEDA~~, executes an Addendum, Amendment or Change Order to this Agreement. The aforesaid Addendum, Amendment or Change Order shall specifically set forth the scope of such extra or additional services, the amount of compensation, and the extension of time for performance, if any, for any such extra or additional services. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such Addendum, Amendment or Change Order.

ARTICLE 31 - HEADINGS AND DEFINED TERMS

The Article headings used in this Agreement are for reference and convenience only, and shall not in any way limit or amplify the terms, conditions, and provisions hereof. All capitalized terms, acronyms, and/or abbreviations shall have the meanings ascribed to them by this Agreement.

ARTICLE 32 – COUNTERPARTS

The Parties may execute this Agreement in counterparts, each of which shall be deemed an original, and all of which taken together constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile, email in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document has the same effect as delivery of an executed original of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to enter into this Agreement as of the dates set forth below, effective as of the beginning date set forth in Article 2 above.

**ULSTER COUNTY ECONOMIC DEVELOPMENT
ALLIANCE, INC.**

By: _____
NAME: Sarah Haley
TITLE: Board Chair
DATE: _____

**HUDSON VALLEY CENTER FOR INNOVATION, INC.
dba ACCEL7**

By: _____
NAME: Daniel Potocki
TITLE: CEO & Managing Director
DATE: _____

SCHEDULE A
SCOPE OF SERVICES

1. The Firm shall facilitate capacity building with Ulster County entrepreneurs and small business owners by providing strategy support coaching which includes (but is not limited to) guidance coaching and advisory assistance.
2. The Firm will work with staff from Ulster County Department of Economic Development to develop a business assessment survey. The Firm will work with the Ulster County Department of Economic Development to plan promotion, including announcements and/or newsletters.
3. The Firm shall assess survey data to plan and deliver community webinar sessions **and/or podcast(s)** that provide guidance on business recovery from subject matter experts and professional service providers.
4. The Firm shall assess survey data to deliver small group sector, targeted education to businesses on best practices for strategy and operations, and to encourage peer learning, networking and community development through leveraged partnerships that deliver education, training and business tools to participants.
5. The Firm shall collaborate with regional stakeholders (such as Rondout Valley Growers, Cornell Cooperative Extension, Hudson Valley Agribusiness Economic Development and others) to deliver group programming tailored to target sectors such as (but not limited to) Agriculture, small business, manufacturing, and construction.
6. Using data from the business assessment survey, the Firm shall invite businesses to attend a Company Diagnostic group Seminar which will be grouped by industry and sector facilitated by mentors and subject matter experts.
7. Using data from the business assessment survey, the Firm shall assess Ulster County businesses who qualify for Deep Dive Sessions where the businesses will meet with a mentor to review business status, functions and challenges, and receive guidance towards a recovery plan that best suits their circumstance. The Firm shall develop qualification standards in consultation with UCEDA.
8. The Firm shall host at least 24 Community Webinars to educate and connect up to 300 participants per webinar and collect data for analysis of business community conditions. The Firm will host sessions on Zoom Conference, and work with the staff from Ulster County Department of Economic Development to assess if another Zoom subscription and/or another platform is best for hosting the Community Webinars.
9. The Firm shall host at a minimum 20 industry diagnostic seminars with a **maximum of 15** sector businesses to contribute to the development of a Business Roadmap and collect data for analysis.
10. The Firm shall advise 60 companies through Deep Dives to focus on core needs related to strategy and operations in order to develop a business roadmap and collect data for analysis.
11. The Firm shall be responsible for the creation, updating and sharing of the Regional Entrepreneur Support Program & Operational Needs Database ("RESPOND") Resource Base with the Ulster County small business community. The Firm use a combination of Airtable and Google.
12. The Firm shall create an active digital community through Slack Channels and other online conversation media.
13. The Firm shall create a centralized database in Airtable to create a common operating picture for the respond program. The Firm will collaborate with Hudson Valley Pattern for Progress on reporting using this database.
14. The timetable for services shall serve ~~only~~ **as a Master Guide for monitoring progress of the project. The dates are for guidance, and for progress only.** ~~is:~~ The Master Guide is:

ULSTER COUNTY RESPOND TIME LINE & TASKS

TASK #	TASK ITEM	TASK DESCRIPTION	ANTICIPATED DATE OF COMPLETION
1	RESPOND Team Kickoff	Gather with team and review Master Plan	June 15, 2020
2	Mentor Lead(s) Onboarded	Project Manager trained and positioned as Lead Mentor	June 15, 2020
3	Integrate Technology Systems	Connect Google, Slack, Airtable (Forms), 15Five	FridayMonday, June 0508, 2020

4	Mentor Group Onboarded	Project Manager trains and positions Subject Matter Experts (SMEs) for mentoring sessions; coaches aligned with Community Webinar	Friday, June 12, 2020
5	Launch & Share RESPOND Resource Center	Provide open-source information and access to the Ulster County community and small business network(s)	Friday, June 12, 2020
6	Import and Analyze Surveys and Data	Project Manager work with RESPOND Research team to import, model, analyze, and assess data to inform planning for webinars, diagnostic sessions, and deep dive sessions	Friday, June 19; July 24; August 28; September 25; October 30; December 04; December 18
7	Schedule & Host RESPOND Webinars	Weekly with Subject Matter Expert(s) and/or coaches, on topics of need and/or interest	Weekly between Monday, June 15, 2020 to Friday, December 18, 2020
8	Plan & Host Industry Diagnostic Seminars	Scheduled in groups in coordination with Project Manager and Subject Matter Experts	Weekly between Monday, June 22, 2020 to Friday, December 18, 2020
9	Prepare & Execute Company Deep Dive Sessions	Scheduled with Project Manager / Lead Mentor and mentors, coaches, and subject matter experts, as needed	Weekly between Monday, July 06, 2020 to Friday, December 18, 2020
10	Author RESPOND Report(s)	Collaborate with Hudson Valley Pattern for Progress	July 2020; September 2020; December 2020
TOTAL TASKS: 10		PROJECT COMPLETION DATE:	Friday, December 18, 2020

15. The Firm's work will result in a database that provides a picture of the Ulster County's business community's diversity, economic health and ability to recover from stress.
16. The Firm's program delivery will result in startup founders, small business owners, nonprofit leaders, government association leaders, business executives, decision makers, thought leaders, consultants, service professionals (i.e. accounting, legal, insurance), subject matter experts, investors, students, faculty, and other professionals creating a digital community in Slack that shares information in real-time about their business, their challenges and their successful recovery.
17. The Firm shall establish a minimum of five benchmarks to evaluate business path to and/or business success for all participants in the deep dive including but not limited to showing improvement in its Profit and Loss Statement; the ability to rehire workers without grant or other underwriting support; the ability to pay wages at or above a living wage and if appropriate the ability to structurally and financial pivot the business to a more productive incarnation. The Firm shall include additional benchmarks related to sustainability, continuity, resiliency, and/or entrepreneurial mindset and best practices. None of the Firm's work product shall in any way be deemed as guaranteeing any specific economic outcomes for any participant or UCEDA itself.
18. The Firm shall author summary analysis and focused reports on the RESPOND Program's impact on Ulster County business sectors. These reports may include overall financial analysis, tax and wage revenue generation review; employment statistics and other indications of business health.

20. The Firm acknowledges that information it receives from the UCEDA or the Ulster County Office of Economic Development, or collects through surveys and interviews conducted for the purposes of this Agreement constitutes Confidential Information as that term is defined in Article 8 of the Agreement and, pursuant to Article 9 of the Agreement, such information is the property of UCEDA. The Firm shall obtain UCEDA's written consent before using such information for any purpose other than providing the Services herein. The information requested by the Firm, upon written consent by UCEDA, shall not be unreasonably withheld.
21. The Firm shall provide UCEDA's Executive Director with a weekly update and shall provide a written report to the UCEDA Board on a monthly basis. The report for the Board shall contain data on the number of each type of services provided under the Agreement, insights from their analysis of business data and business needs, and an assessment of how the program is progressing.
22. At the end of the Term of this Agreement, the Firm shall provide a report to the UCEDA Board detailing the number and types of services provided, analyzing the effectiveness of those services, explaining how and which services will continue after the end of the Agreement (specifically, any continuation of mentorships) and making recommendations for the future. The recommendations shall include any future services that the Firm proposes to provide in order to further assist in the recovery effort, why those services are necessary, and quotes for such services.

SCHEDULE B
FEES, EXPENSES, AND SUBMISSIONS FOR PAYMENT

1. The Firm's fee for Services shall not exceed the amount of **FORTY-NINE THOUSAND, SIX HUNDRED AND 00/100 (\$49,600.00) DOLLARS** for the Term of this Agreement.
2. The Firm shall invoice UCEDA on a monthly basis for the Services provided, at a rate of **SEVEN THOUSAND EIGHTY-FIVE AND 72/100 (\$7,085.72) DOLLARS** per month, which shall not exceed the amount of **SEVEN THOUSAND EIGHTY-FIVE AND 72/100 (\$7,085.72) DOLLARS** per month
3. The Firm shall submit to UCEDA original invoices for payment.
4. The Firm shall submit its invoices by the first (1st) day of each month, for the Services provided during the previous month.
5. The Firm shall receive one payment upfront, totaling **SEVEN THOUSAND EIGHTY-FIVE AND 72/100 (\$7,085.72) DOLLARS, to support protect start and initial services.**
6. The Firm shall submit its invoices to UCEDA according to the schedule below:

Dates of Services Provided:	Invoice submitted no later than:
June 1, 2020 – June 30, 2020	June 1, 2020
July 1, 2020 – July 31, 2020	August 1, 2020
August 1, 2020– September 30, 2020	September 1, 2020
September 1, 2020 – September 30, 2020	October 1, 2020
October 1, 2020-October 31, 2020	November 1, 2020
November 1, 2020-November 30, 2020	December 1, 2020
December 1, 2020-December 31, 2020	January 1, 2021

7. The Firm's invoices must contain, or have attached, sufficient supporting detail, as reasonably required by UCEDA, to verify the claim.
8. In no event shall claims be submitted in advance or accrued prior to expenditure.
9. The Firm's final invoice under this Agreement shall be submitted by the thirtieth (30th) day of the month following the ending date contained in Article 2 (Term of Agreement).
10. UCEDA will remit payment to the Firm within sixty (60) days of approval of the invoice by the UCEDA's Chief Financial Officer. However, UCEDA will remit payment for the first payment to the Firm within fifteen (15) days of approval of the invoice by the UCEDA's Chief Financial Officer.
11. Notwithstanding any other term or provision of this Agreement, including this Schedule B, the Firm's invoices, together with all documentation required, must be promptly and timely submitted. UCEDA reserves the right to reject payment of invoices that are submitted more than one hundred twenty (120) days after the required submission date set forth above, regardless of whether the service, work, or delivery was rendered.

12. The Firm agrees to meet any reasonable additional invoicing requirements that UCEBDA may from time to time require, with reasonable notice to the Firm. UCEDA shall make every effort to make such requests for additional information within 30 days of receipt of the invoice.

(Rev 6.01.19)

PLEASE BRING THESE INSURANCE REQUIREMENTS TO YOUR INSURANCE AGENT TO ENSURE PROPER COVERAGE AND LIMITS ARE IN PLACE. FAILURE TO PROVIDE CERTIFICATE(S) OF INSURANCE EVIDENCING REQUIREMENTS BELOW, SHALL DELAY CONTRACT EXECUTION.

SCHEDULE C
UCEDA CONTRACT INSURANCE REQUIREMENTS

CONDITIONS OF INSURANCE

Unless otherwise authorized by the UCEDA Board of Directors, strict adherence to this schedule is required. Any deviation without prior authorization from the UCEDA Board of Directors will result in a delay in the finalization of this Agreement.

The Firm shall submit copies of any or all required insurance policies as and when requested by the UCEDA.

CERTIFICATES OF INSURANCE

The Firm shall file with UCEDA, prior to commencing work under this Agreement, all proper Certificates of Insurance.

The Certificates of Insurance shall include:

- a. Name and address of Insured
- b. Issue date of certificate
- c. Insurance company name
- d. Type of coverage in effect
- e. Policy number
- f. Inception and expiration dates of policies included on the certificate
- g. Limits of liability for all policies included on the certificate
- h. "Certificate Holder" shall be the Ulster County Economic Development Alliance, Inc., P.O. Box 1800, Kingston, New York 12402-1800.

If the Firm's insurance policies should be non-renewed or canceled, or should expire during the life of this Agreement, the UCEDA shall be provided with a new certificate indicating the replacement policy information as requested above. The UCEDA requires thirty (30) days prior written notice of cancellation [fifteen (15) days for non-payment of premium] from the Insurer, its agents or representatives.

WORKERS 'COMPENSATION AND DISABILITY INSURANCE

The Firm shall take out and maintain during the life of this Agreement, Workers 'Compensation (WC) Insurance and Disability Benefits (DB) Insurance, for all of its employees employed at the site of the project, and shall provide Certificates of Insurance evidencing this coverage to the UCEDA.

If the Firm is not required to carry such insurance, the Firm must submit form CE-200 attesting to the fact that it is exempt from providing WC and/or DB Insurance coverage for all of its employees.

The manner of proof related to WC and DB Insurance is controlled by New York State Laws, Rules and Regulations. "ACORD" forms are not acceptable proof of WC and/or DB Insurance.

WORKERS' COMPENSATION REQUIREMENTS

To assist the State of New York and municipal entities in enforcing WCL Section 57, a business entity (the Firm) seeking to enter into a contract with a municipality (the UCEDA) must provide one of the following forms to the municipal entity it is entering into a contract with. The Firm should contact its insurance agent to obtain acceptable proof of WC coverage:

- Form C-105.2 " –Certificate of NYS Workers' Compensation Insurance" or
- Form U-26.3 " –Certificate of Workers' Compensation Insurance" issued by the New York State Insurance Fund or
- Form SI-12 " –Affidavit Certifying that Compensation has Been Secured" issued by the Self-Insurance Office of the Workers' Compensation Board if the Firm is self-insured or
- Form GSI-105.2 " –Certificate of Participation in Workers' Compensation Group Self-Insurance" issued by the Self-Insurance administrator of the group or
- Form GSI-12 " –Certificate of Group Workers' Compensation Group Self-Insurance" issued by the Self-Insurance Office of the Workers' Compensation Board if the Firm is self-insured.

If the Firm is not required to carry WC coverage, it must submit Form CE-200, "Certificate of Attestation of Exemption" from New York State Workers' Compensation and/or Disability Benefits Insurance Coverage. This form and the instructions for completing it are available at <http://www.wcb.ny.gov>

DISABILITY BENEFITS REQUIREMENTS

To assist the State of New York and municipal entities in enforcing WCL Section 220(8), a business entity (the Firm) seeking to enter into a contract with a municipality (the UCEDA) must provide one of the following forms to the municipal entity it is entering into a contract with. The Firm should contact its insurance agent to obtain acceptable proof of DB Insurance Coverage:

- Form DB-120.1 " –Certificate of Insurance Coverage Under the NYS Disability Benefits Law" or
- Form DB-155 " –Compliance with Disability Benefits Law" issued by the Self-Insurance Office of the Workers' Compensation Board if the Firm is self-insured.

If the Firm is not required to carry DB Insurance coverage, it must submit Form CE-200, "Certificate of Attestation of Exemption" from New York State Workers' Compensation and/or Disability Benefits Insurance Coverage. This form and the instructions for completing it are available at <http://www.wcb.ny.gov>

COMMERCIAL GENERAL LIABILITY INSURANCE

The Firm shall take out and maintain during the life of this Agreement, such bodily injury liability and property damage liability insurance as shall protect it and the UCEDA from claims for damages for bodily injury including accidental death, as well as from claims for property damage that may arise from operations under this Agreement, whether such operations be by the Firm, by any subcontractor, or by anyone directly or indirectly employed by either of them.

It shall be the responsibility of the Firm to maintain such insurance in amounts sufficient to fully protect itself and the UCEDA, but in no instance shall amounts be less than the minimum acceptable levels of coverage set forth below:

- Bodily Injury Liability and Property Damage Liability Insurance in an amount not less than **TWO MILLION AND 00/100 (\$2,000,000.00) DOLLARS** for each occurrence, and in an amount not less than **FOUR MILLION AND 00/100 (\$4,000,000.00) DOLLARS** general aggregate.

Other Conditions of Commercial General Liability Insurance:

- a. Coverage shall be written on Commercial General Liability form.
- b. Coverage shall include:
 1. Contractual Liability
 2. Independent Contractors
 3. Products and Completed Operations
- c. "Additional Insured" status shall be granted to "ULSTER County Economic Development Alliance, Inc., P.O. Box 1800, Kingston, New York, 12402-1800", shown on the Commercial General Liability policy, further stating that this insurance shall be primary and non-contributory with any other valid and collectable insurance.

AUTOMOBILE LIABILITY INSURANCE

Automobile Bodily Injury Liability and Property Damage Liability Insurance shall be provided by the Firm, with a minimum Combined Single Limit (CSL) of **ONE MILLION AND 00/100 (\$1,000,000.00) DOLLARS**.

Coverage shall include:

- a. All owned vehicles
- b. Hired car and non-ownership liability coverage
- c. Statutory No-Fault coverage