PURCHASE AND INSTALLATION CONTRACT

BY AND BETWEEN

**NYU LANGONE HOSPITAL**

**-(NYULH) -**

AND

**- CONTRACTOR -**

**PROJECT**

180 MADISON AVENUE

NEW YORK, NEW YORK

**DATED AS OF**

**September \_\_\_, 2017**

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**PURCHASE AND INSTALLATION CONTRACT**

## PURCHASE AND INSTALLATION CONTRACT dated as of February 17, 2017, by and between **NYU Langone Hospital,** a New York not-for-profit corporation with offices located at 550 First Avenue, New York, New York 10016 ("NYULH"), and Audio Fidelity Communications Corp. (d/b/a Whitlock), a Virginia corporation with offices located at 12820 West Creek Parkway, Suite M, Richmond, VA 23238-1111 (the "Contractor").

WHEREAS, NYULH is constructing a new 830,000 square foot hospital building to be named the Kimmel Pavilion containing 34 surgical/procedure rooms (including 30 Class C operating rooms) (the “Project”) on the campus of NYU Langone Medical Center located at 34th Street between First Avenue and the FDR Service Drive, New York, New York (the “Medical Center”);

WHEREAS, NYULH requires certain audiovisual equipment and related services at the Project as set forth in the to provide certain functionality for its business operations;

WHEREAS, Contractor has superior knowledge and expertise in providing suitable for NYULH’s business operations and has submitted a proposal to NYULH to provide such ;

WHEREAS, NYULH has selected Contractor to provide based on such proposal;

and

NOW, THEREFORE, in consideration of the mutual covenants and representations set forth in this , NYULH and the Contractor agree as follows:

# (The Contract Documents)

## The “Contract Documents” consist of (a) this Purchase and Installation Contract; (b) the Order, Pricing Terms and Project Schedule annexed hereto as Exhibit A, (c) Scope of Work Requirements annexed hereto as Exhibit B; (d) Drawings and Specifications annexed hereto as Exhibit C; (e) Maintenance and Support Services and Fee annexed hereto as Exhibit D, (f) NYULH and MCIT Policies annexed hereto as Exhibit E, (g) Business Associate Agreement annexed hereto as Exhibit F, and (k) all Change Orders for all Modifications after this Purchase and Installation Contract. These Contract Documents form the "Contract." The Contract Documents do not include bidding documents or other documents not expressly incorporated as part of the Contract Documents.

## A "Modification" is (a) a written Statement of Work to the Contract signed by both parties; or (b) a Change Order (as defined in Article 8.1). A Modification is the sole means by which a change or alteration may be made to any of the Contract Documents.

## The Contract may not be modified or terminated orally, and no modification or any claimed waiver of any provisions hereof will be binding unless in writing and signed by the party against which such modification, termination or waiver is sought to be enforced.

## The Contract Documents are intended to be complementary and to be read and interpreted together, such that meaning is given to all provisions except as otherwise expressly provided. In the event of a conflict or inconsistency between provisions that cannot be resolved, the more stringent provision as to performance, quality or quantities shall be applied.

# (General Requirements for the Work)

## The Contractor shall, in accordance with the Contract Documents, (a) provide system design and specification ; (b) arrange for the manufacture, delivery and installation of all equipment and related software required for the required functionality; (c) provide inspections, testing and technical supervision as needed, through qualified field personnel, during manufacture, installation and start-up of the ; (d) provide on-site training to NYULH's personnel in the operation of the System; (e) provide manufacturers' guarantees and warranties of the System and guaranty and warranty the Contractor's services; (f) provide preventive maintenance services and trouble-shooting services for the and (g) perform all other obligations of the Contractor under the Contract Documents. All of the foregoing is referred to herein as the "Work."

##  The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations that have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

## The Contractor acknowledges that it has reviewed all Contract Documents for the construction of the Project. The Contractor has reviewed all the requirements and assessed the infrastructure that necessary in order to fully understand and price the Work required of it hereunder, including all current base building construction contract documents and schedules prepared by NYULH's engineer, architect, construction manager and other NYULH's consultants.

## By executing the Contract, the Contractor represents that it has visited the Project site, assessed Customer’s technical infrastructure, and reviewed Customer-specific requirements familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents. Furthermore, the Contractor has satisfied itself with respect to all requirements to complete the Work including (a) the nature and scope of all professional services; (b) the nature and scope of all labor; (c) the nature and scope of all materials; (d) all requirements concerning equipment and hardware; (e) all requirements concerning licensing and intellectual property rights; (f) the accommodation of the work that may be performed by or for NYULH under other contracts, all required connections of any sort to such work under other contracts, and scheduling of Work as required in coordination with such work under other contracts; and (g) any other consideration which may affect the Work in any manner.

## During the Contract Term, Contractor will provide Application Services to NYULH, and related deployment, configuration, support and other services necessary for productive use of the Applications Services, in accordance with this Contract and each applicable Statement of Work entered into hereunder. This Agreement will govern and supersede all Contractor services descriptions, Contractor service level agreements, and other terms attached to, or conspicuously referenced by (and incorporated by reference), into this Agreement.

## The Contractor shall at all times during the performance of the Work assign an adequate number of adequately qualified, experienced and capable persons to perform the Work of this Contract. If NYULH requests that any part of the Work or obligations under this Contract be performed by certain employees of Contractor identified by NYULH as “Key People,” the Contractor shall ensure that those Key People are assigned to such Work.

## The Contractor shall comply, and cause it employees, agents and subcontractors to comply, with all pertinent reasonable work rules and regulations of NYULH with respect to conduct on the Medical Center property, including without limitation, the MCIT Work Force Policy annexed hereto as Exhibit E.

## When directed to do so by NYULH, the Contractor and each of its subcontractors or suppliers shall promptly remove from the Work or Medical Center any of their respective employees engaged in the Work and such employee shall not again be assigned to the Medical Center site or the Work without the prior written consent of NYULH. Neither the Contractor nor any of its subcontractors or suppliers, shall be entitled to any extra compensation on account of any such removal.

## The Contractor shall not subcontract any portion of the Work without NYULH's prior written approval, which may be given or denied in NYULH's sole and absolute discretion; provided, however, that purchases of equipment for the and component parts and materials by the Contractor from authorized manufacturers pursuant to this Purchase and Installation Contract shall not constitute subcontracting. The Contractor shall be responsible to NYULH for the acts and omissions of the Contractor’s employees, subcontractors and their agents and employees, or other persons or entities performing portions of the Work for or on behalf of any subcontractor.

## Cooperation with construction entities and other third parties the Contractor will be expected to interface with many different Medical Center personnel, including, but not limited to, the construction manager for the Project, NYULH's engineer and architect, and other consultants and third parties. The Contractor is required to fully coordinate its Work with that of the engineer, the architect, the construction manager, NYULH and NYULH’s consultants. The services of any of the aforesaid NYULH's consultants and any approval of the Contractor’s deliverables shall not diminish or modify in any way the Contractor's own obligations under this Agreement.

## The Contractor shall participate in a working group to be created by NYULH for the express purposes of collaboratively developing the Interface Control Document (“ICD”) for approval by NYULH in its sole discretion, which will be used to confirm the interoperability of the with NYULH’s systems and infrastructure during bench testing and at other times throughout the Project.

## The Contractor shall participate in a working group to be created by NYULH for the express purposes of collaboratively developing the customized Performance Verifications Checklist (“ Performance Checklist”) for approval by NYULH in its sole discretion, to be used during individual room and overall system acceptance (and at other times throughout the Project as may be indicated).

## Prior to beginning the Work for a Project, the Contractor will review and familiarize itself (including its personnel) with all NYULH working environment, worksite and infrastructure security policies as per the attached Exhibits E (Ex. E1 - WORKFORCE (IT SECURITY), Ex. E2 - CODE OF CONDUCT, and Ex. E3 - ENVIRONMENTAL SAFETY)

## Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work that are customarily secured after execution of the Contract and which are legally required as of the date of this Contract.

## Unless otherwise provided in the Contract Documents, the Contractor shall comply with and provide notices required by applicable laws, statues, ordinances, codes, rules and regulations and lawful orders of all regulatory authorities having jurisdiction over the Work to any extent applicable to the Work.

## The Contractor shall not perform any Work not in accordance with applicable laws, statutes, ordinances, codes, rules and regulations and shall assume full responsibility therefor and shall bear all costs attributable thereto.

## Compliance with Law. Notwithstanding any other provision in this Agreement, NYULH remains responsible for ensuring that any health care service provided pursuant to this Agreement complies with all pertinent provisions of federal, state and local statutes, rules and regulations.

## The Contractor shall be responsible for avoiding jurisdictional and other site-specific labor disputes involving the labor employed at the site by the Contractor, Subcontractors and sub-contractors of any tier. The Contractor shall not be responsible for industry-wide labor disputes.

**SCOPE OF WORK**

###  With respect to Contractor performances and obligations under this agreement "Scope of Work" includes: means the Documentation and all project-specific, and customer-specific specifications, functional descriptions, use-cases, Contractor’s written proposals and representations made to NYULH, and NYULH’s reasonable business requirements, as reasonably known or ascertainable by Contractor in its exercise of due diligence.

### The parties will develop a final Scope of Work and project schedule, which will remain in alignment with the RFP proposal and Contractor’s response thereto (and Scope of Work, as defined herein), and which will be further mutually developed, based on discussions additional design specifications defined by the parties throughout the project phases.

# (Equipment Procurement)

## The Contractor shall furnish all equipment and components required for the as approved by NYULH in writing. The Contractor shall not place any firm orders for equipment without NYULH’s written notice to proceed.

## Prior to ordering major equipment or components of the such as monitors and video recording equipment, the Contractor shall perform due diligence to determine the availability and release dates for the latest revisions of such equipment (“Latest Models”). The Contractor shall consult with NYULH regarding the availability and cost of the Latest Models, as NYULH intends to incorporate the Latest Models into the Contract Documents whenever feasible in NYULH’s sole discretion.

## The Contractor shall diligently keep track of equipment availability and obtain commitments from manufacturers and suppliers to ensure delivery within thirty (30) days of Contractor placing its order. To ensure the use of Latest Models as directed by NYULH, equipment will not be ordered more than sixty (60) days prior to the actual installation date.

## The equipment shall be delivered directly to the Project site or to a warehouse acceptable to NYULH for staging or storage prior to delivery to the Project site. If delivered to a warehouse, the Contractor will be responsible for the coordination of the delivery to the warehouse and the subsequent coordination and delivery of equipment from the warehouse to the Project site. The Contractor shall be responsible for the cost of all warehousing, risk of loss, and delivery of the equipment from the warehouse to the Project site.

## Fabricated and assembled equipment shall be wrapped and sealed in polyethylene and appropriately boxed for shipment. Standard components shall be shipped in manufacturer's original packing. Boxes shall clearly indicate the equipment contained, "front", "top", "fragile", nature of components and Project location.

## The Contractor shall identify and mark all equipment, materials and component parts as being dedicated to this Contract and the property of NYULH and shall cause all manufacturers of the equipment to do the same. All equipment and component parts shall not constitute inventory of the Contractor or any manufacturer of the equipment, and no creditor of the Contractor or manufacturer shall have any rights therein. The Contractor shall maintain, and cause all manufacturers of the equipment to maintain all equipment and component parts free of liens, claims or encumbrances of any nature and shall not use such equipment or component parts as security for any financing or other transaction.

## Any payment to the Contractor for manufactured and suitably stored equipment not yet delivered to the Project site as may be agreed to by NYULH in its sole discretion shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to NYULH to establish NYULH’s title to such materials or equipment or otherwise protect NYULH’s interest.

## The Contractor warrants that it has the ability to assign and shall assign all manufacturers’ warranties on the equipment to NYULH. The Contractor warrants that it will promptly complete and file all necessary forms with the applicable manufacturers to ensure recognition of all warranties NYULH may be entitled to.

## NYULH shall be entitled to invoke all rights and remedies contained in any manufacturer documents or materials and will be considered a third-party beneficiary with respect to Contractor’s agreements with any of its equipment manufacturers or other contractors. Notwithstanding anything to the contrary contained in any other documents, including any correspondence, shrink-wrap, end-user licenses or click-wrap agreements, this Contract shall supersede any terms and conditions purporting to govern the use of the .

# (Installation, Configuration and Acceptance)

## Installation and Configuration. When applicable, Contractor will install and/or configure the Work in accordance with the Scope of Work.

## Acceptance. For each milestone or deliverable, NYULH will be permitted a period of ninety (90) days of acceptance testing (which may include production use) to ensure that the Work materially conform to the Scope of Work and NYULH’s reasonable business requirements. NYULH will acknowledge acceptance in writing for conforming Work. If NYULH determines the Work are materially non-conforming, NYULH will provide Contractor notice and reasonable opportunity to correct any such non-conformity during the acceptance testing period and may, at its option allow additional time for correction and acceptance. If NYULH determines the Work is materially non-conforming even after such reasonable opportunity to correct the Work, NYULH may terminate the applicable order and received a refund of all fees.

## In the event NYULH determines that the exist evidences of a Material Defect, NYULH may, at its option and in addition to any other contractual remedies, either (a) permit the Contractor additional time as NYULH determines to correct the deliverable as evidenced by further testing, (b) pursue further remediation itself or with another third-party at the Contractor’s expense, or (c) receive a credit against the Contract Price reflecting the reduced value of the deliverable to NYULH, as determined by NYULH in its sole discretion.

## In the event NYULH determines that the exist evidences a Fatal Defect, NYULH may exercise any other contractual rights, including termination of the Contract.

# (Time Requirements)

## The Contractor shall complete and deliver all Work to NYULH in accordance with the durations set forth in the Project schedule annexed hereto as Exhibit A. The time requirements set forth herein are referred to collectively as the "Contract Time." Time is of the essence of the Contract with respect to the performance of all Work. Any phasing of the Work shall be determined and approved by NYULH prior to commencement of the Work.

## The parties agree that in the event of untimely or nonconforming performance by Contractor, Owner will be entitled to recover all expenses, cost, loses, and liabilities (including attorney fees) resulting from such delay or nonconforming performance. Such damages will include (but will not be limited to) all direct costs, expenses, losses and liabilities (including attorney fees) which may include (but which are not limited to): (1) additional or substitute services and labor; (2) non-cancelable services and labor costs already expended by NYULH or third parties which were dependent upon the timely Contractor performance; (3) required re-performance of Contractor-performed services and labor due to Contractor’s untimely performance; and (4) wasted or improperly utilized materials or products due to Contractor’s untimely performance. Such claim will not be subject to any limitation of damages.

## The parties agree that the damages set forth in the Article above are a fair and reasonable estimation of the damages to be incurred by NYULH as a result of any such delay. NYULH may deduct such liquidated damages from amounts otherwise due and owing to the Contractor; or, in the alternative, NYULH may demand that the Contractor pay such liquidated damages to NYULH, and upon receipt of any such demand the Contractor shall promptly pay such liquidated damages to NYULH.

## If the Contractor is unavoidably delayed at any time in the progress of the Work by any act or neglect of NYULH or consultant engaged by NYULH, or by any employee or agent of either, or by any separate contractor hired directly or indirectly by NYULH, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties or any other causes beyond the reasonable control of the Contractor or a supplier to the Contractor, or by delay authorized by NYULH, then the Contract Time shall be extended by Change Order for such time as Work is necessarily delayed by such cause as the Contractor’s sole remedy.

## Any claim for extension of the Contract Time shall be made in writing to NYULH not more than seven (7) days after it becomes evident that a delay is occurring and as further set forth in Article 17; otherwise the claim shall be waived. In the case of a continuing delay only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work. Regardless of any claims for extension of the Contract Time, the Contractor shall promptly inform NYULH of any circumstances which may cause any delay, specifying the reasons of any delay and expected duration as well as proposed measures to reduce the delay as much as practicable.

# (Training)

## Training. Within 10 working days of NYULH’s written acceptance of the System Completion or at such other time requested by NYULH, the Contractor shall commence a series of training sessions on the use of the for persons designated by NYULH. A maximum of twenty-four (24) hours of training shall be provided by the Contractor during a four week period at mutually acceptable times. The Contractor shall maintain and submit the names and period of attendance of all persons attending the training sessions.

## Upon request and as necessary, Contractor shall participate in weekly live or telephonic conferences to discuss the Project.

# (Payment Terms and Invoicing)

## The Contractor shall issue an invoice to NYULH, upon reaching each payment milestone covering the corresponding payment. All milestone payments for the deliverables covered under subsections b through f above shall reflect retainage of thirty (30) percent of the allocated value for such item as agreed upon by NYULH. Invoices shall be submitted together with affidavits of payment and waivers of lien in such forms as reasonably required by NYULH.

## Payment of the service fees set forth herein on account of the scheduled preventive maintenance and corrective work for the second through fifth years after NYULH’s acceptance of System Completion shall be made in installments in accordance with the fee schedule set forth in Exhibit A annexed hereto.

## Invoices and related correspondence shall be sent electronically to redf.ps@nyumc.org and shall reference NYULH’s project information management (“PIM”) name and number to be provided by NYULH. Invoices shall include signed timesheets documenting the time actually expended by all hourly personnel, if any.

## If NYULH declines to approve an invoice, in whole or in part, NYULH shall notify the Contractor in writing of the reasons therefore. Invoices approved for payment in whole or in part will be paid within forty-five (45) days after receipt.

## NYULH may withhold payment of an invoice, in whole or in part, if the requirements for payment under the Contract Documents have not been met or, to the extent necessary, to protect NYULH from loss because of failure of the Contractor to make payments to others for materials or labor used in performing the Work. In the event there shall be any lien or other claim for moneys due or to become due by any of the foregoing, the Contractor shall immediately satisfy such claim and bond such lien.

## If NYULH does not pay an approved amount within the time provided therefor, then the Contractor may, upon thirty (30) days' written notice to NYULH, stop performance of the Work until payment of the amount owing has been made. The Contract Price shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be effected by appropriate Change Order.

## The Contractor's acceptance of final payment of the Contract Price shall constitute a waiver of all claims by the Contractor for additional compensation or damages, except for those made in writing duly executed by the Contractor and submitted with the final invoice and claims arising thereafter in connection with bodily injury or property damage. Such writing shall specify that it contains a claim by the Contractor, shall set forth all alleged claims by the Contractor against NYULH in any way connected with or arising out of the Contract, either in contract or in tort, and with respect to each item of claim, the amount the alleged basis and amount thereof.

## No payment made by NYULH, including the final payment, shall be evidence of the performance of the Contract either in whole or in part, against any claim by NYULH, and no payment shall be construed to be an acceptance of any defective Work or as a waiver of any of the provisions of the Contract.

# (Changes in the Work)

## A “Change Order” is a written order to the Contractor signed by NYULH, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Price or the Contract Time. The Contract Price and Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including the adjustment in the Contract Price or Contract Time. No Change Order shall be binding until accompanied by an NYULH-issues purchase order.

## NYULH, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Price and Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents.

## In the event of a request by NYULH for a change in the Work, the Contractor shall submit a detailed proposal for any adjustment of the Contract Price and Contract Time as a result of the change and negotiate with NYULH in good faith concerning a Change Order for the change. No change shall be implemented without a Change Order.

## The adjustment in the Contract Price resulting from a change in the Work shall be determined in accordance with the equipment prices and hourly rates set forth in the schedule of Pricing for Additional Equipment and Services annexed hereto as Exhibit A. The parties agree that no Change Order shall contain penalties, alleged damages or cancellation charges.

## For a period of sixty (60) months following NYULH’s acceptance of the System Completion, NYULH shall be entitled to purchase additional equipment, professional services, installation services, and software applications, at the same pricing, rates and terms as set forth in the Contract, including the Pricing for Additional Equipment and Services annexed hereto as Exhibit A. Thereafter, for a period of thirty-six (36) months, the Contractor may increase the pricing at the lesser rate of 2% or CPI for each annual period.

# (Warranties and Guarantees)

## Professional Services Warranties. The Contractor represents and warrants that all services shall be performed in a professional and workmanlike manner, consistent with the highest industry standards, and in accordance with all applicable laws, rules and regulations and the Medical Center’s policies and procedures.

## Design. The Contractor represents and warrants that its design of the for the Project, including shop drawings and any other specifications developed or reviewed by Contractor, (a) strictly conform to the Contract Documents, (b) are free from defects in design, (c) do not infringe any intellectual property right of any third party; and (d) are of good quality and satisfy the customary standards common in the industry with respect to soundness, safety, suitability, design and workmanship for state-of-the-art .

## Deliverables. The Contractor represents and warrants for a period of one year following NYULH’s acceptance of System Completion (the “Service Warranty Period”) that each deliverable and the as a whole (a) conforms to the Contract Documents, (b) are free of defects in workmanship, (c) are of good quality and satisfy the customary standards with respect to soundness, safety, suitability and workmanship for state-of-the-art , (d) perform in accordance with the Contract Documents, (e) all hardware, software, and other deliverables provided by the Contractor, which pursuant to the Contract Documents are intended to interact with NYULH’s systems or otherwise work together with NYULH’s infrastructure as part of a functioning system, are compatible and will properly inter-operate and work together with NYULH’s systems in accordance with the Contract Documents, (f) all documentation and other materials provided accurately reflect the deliverables, the and the services provided to NYULH hereunder, (g) updates provided to NYULH will not degrade, impair or otherwise adversely affect the performance or operation of any deliverable or the , and (h) all materials and equipment furnished pursuant to the contract will be new and in accordance with the highest industry standards.

## Warranties of Rights and Title. The Contractor represents and warrants that (a) the Contractor has the necessary rights, licenses and approvals required to sell, license and/or sublicense the deliverables and to perform all services and perform the Work under the Contract, (b) no deliverables, updates, the , documentation, and/or materials provided by the Contractor or services performed by the Contractor (whether directly or indirectly through its agents and/or subcontractors), nor the use thereof by NYULH, will constitute an infringement, misappropriation or unlawful use or disclosure of any intellectual property right of any third party, (c) no software (including any installed product) provided to NYULH (or any updates thereto), will include any "open source" software or any code derived therefrom (in any format or medium whatsoever) without NYULH's prior written consent, and (d) the Contractor will comply with NYULH's legal compliance policy requirements as they are provided to the Contractor and to the extent they are applicable to the Contractor's performance under or in relation to performance of the services under the Contract.

## License Warranty. Any and all licenses, product warranties or service contracts provided by third parties in connection with any software, hardware or other software or services provided in the system shall be delivered to NYULH for the sole benefit of NYULH. The software, as delivered as part of the system, is free of all viruses, time bombs, Trojan horses, malware, disabling code, or other malicious code or device capable of impairing operations or erasing or altering data, programs, equipment or systems, collectively “Malicious Code”. In the event that the Software fails to satisfy this performance warranty (and in addition to any other remedies specified), Company at its own expense, will promptly repair or replace the Software with new conforming Software or services; provided however, that NYULH may elect to receive a refund of all fees and expenses paid in lieu of such repair or replacement. The Software warranty will included as party of the Maintenance and Support Services for the first year subsequent to the initial system certification, source code changes and/or additional programming, whether requested by Owner or performed by Contractor. Thereafter, the Software will remain warranted for so long as covered under the Maintenance and Support agreement.

## Warranty Service. In the event of non-compliance with the warranties set forth in this Article 11 during the Service Warranty Period, the Contractor shall repair or replace any defective equipment and related components, parts or software; if not repairable or replaceable NYULH will be entitled to pursue all remedies contained in this agreement, including refund of applicable fees and/or termination. The Contractor shall be responsible for any transportation charges on equipment and parts returned to the Contractor's facilities or shipped to the Project site in connection with any such repair or replacement.

# (Insurance)

## The Contractor shall not commence the Work until it has obtained, at its own expense, all the insurance required under this Contract and furnished to NYULH’s Director of Insurance certificates evidencing such coverage. The Contractor warrants that all required insurance shall be maintained until the Work is complete and has been accepted by NYULH, provided that for any claims-made policies, the Contractor warrants that it shall keep these policies in effect for at least three years following completion of the Work, and, if its claims-made policies are canceled during that three-year period, Contractor will purchase tail coverage for the remainder thereof. Contractor insurance shall include the following:

### Workers’ Compensation Insurance in compliance with New York State Law and Employers’ Liability Insurance with a limit of at least $1,000,000 for each occurrence for all such employees not otherwise protected by Workers’ Compensation Insurance (unless Contractor is a sole proprietorship, in which case no such insurance is required);

### Comprehensive General Liability Insurance with a combined personal injury, bodily injury (including death) and property damage limit of at least $3,000,000 per occurrence, with an annual aggregate of $5,000,000 including Broad Form Blanket Contractual Liability; Broad Form Property Damage; Personal Injury Liability (with the employee’s exclusion void); and Products Liability and Completed Operations;

### Comprehensive Automobile Liability Insurance for not less than $2,000,000 for bodily injuries or death resulting therefrom to each person and for each occurrence and property damage in an amount of not less than $2,000,000 for each occurrence, covering all owned, non-owned, leased or hired vehicles to be used by Contractor or any subcontractor in furtherance of the Work.

## The Contractor shall furnish certificates of insurance evidencing such coverages to NYU Langone Medical Center, Insurance Department, One Park Avenue, 4th Floor, New York, NY 10016, Attn: Director of Insurance, prior to commencing any services. The certificates shall reflect the insurance coverages and the effective dates and expiration dates of the policies, and shall name NYULH, New York University, New York University Medical Center Condominium, and NYU Langone Health System, as additional insureds with respect to the commercial general liability coverage. The procuring of the insurance shall not relieve the Contractor of any obligation or liability assumed hereunder exclusively, including the following Hold Harmless Contract.

## If during any of the insurance required of the Contractor as required herein shall expire or be altered in any material respect, the Contractor shall advise NYULH, in writing, within thirty (30) days of such expiration or alteration, such policy shall be immediately renewed or an equivalent policy obtained, with the previous limits and conditions, and such renewed or equivalent policy shall be maintained in effect for the duration of such period.

# (Indemnification)

## The Contractor shall assume entire responsibility and liability for any and all losses, damages or injuries of any kind or nature whatever (including death resulting therefrom) to all persons, whether employees of the Contractor or NYULH or otherwise, and to all property, including, without limitation, property of NYULH, or loss of use thereof, caused by, resulting from, arising out of or occurring in connection with the Work, or a breach of an agreement between Contractor and a third party. If any person shall make a claim for any loss, damage, or injury (including death resulting therefrom) whether such claim is based upon the Contractor’s alleged sole active or passive negligence or willful misconduct, or upon a wrong in which NYULH is alleged to have participated, or otherwise (unless the claim is based exclusively upon NYULH’s alleged sole negligence or willful misconduct), the Contractor agrees to the fullest extent of the law to indemnify NYULH and hold it safe and harmless from and against any and all loss, expense, liability, damage or injury, including attorneys’ fees, that NYULH may incur or sustain as the result of any such claim. The Contractor also agrees to assume, on behalf of NYULH, the defense of any action or proceeding at law or equity that may be brought against NYULH upon such claim, and to pay all costs and expenses of whatever nature, including attorneys’ fees, resulting therefrom or in connection therewith, and to pay on behalf of NYULH, upon demand, the amount of any judgment that may be entered against NYULH in any such action or proceeding. All references to NYULH in this Hold Harmless Contract shall include, and all provisions of this Hold Harmless Contract shall inure to the benefit of, NYU Langone Hospital, New York University, New York University Medical Center Condominium, NYU Langone Health System and their respective officers, employees, agents, representatives, patients and students.

## The Contractor shall defend, indemnify and hold NYULH harmless from any claim that the or any of its equipment, components or software infringe upon a third party's rights in a registered United States patent, trademark or otherwise, provided that (i) NYULH promptly notifies the Contractor in writing of any such claim, (ii) NYULH gives the Contractor the sole right to defend, settle and control the defense of the suit or proceeding, (iii) NYULH provides all necessary information and assistance for such defense or settlement and (iv) NYULH takes no position that is material and adverse to the Contractor's defense of such claim. In the event that the Contractor is obligated to defend such suit or proceeding, the Contractor shall pay all costs and damages finally awarded or agreed upon by the Contractor that are directly related thereto, such that NYULH will have no liability therefor. The Contractor may, at the Contractor's own discretion and expense: (i) procure for NYULH the right to continue using the goods, (ii) replace the goods with non-infringing goods, or (iii) modify the goods to make them non-infringing. The Contractor will have no liability or obligation to defend if the claim, suit or proceeding is based on or arises out of a configuration, modification or change to the goods that is made, specified or requested by NYULH. The foregoing indemnity constitutes Contractor's sole responsibility for infringement claims.

## In any and all claims against any party or other indemnitee under Article 13.1 or any of their respective agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Article 13 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers’ or workmen’s compensation acts, disability benefit acts or other employee benefit acts.

## The Contractor's obligations under this Article 13 shall survive completion of the Work and termination of the Contract.

# (Ownership and Licensing of Software and Deliverables)

## Title to all plans, drawings, sketches, specifications, programs, reports, and other materials and work product prepared or provided by the Contractor under the Contract shall vest in NYULH upon payment by NYULH of its undisputed monetary obligations under the Contract.

## All documents and software created under this Contract, and all copyrights therein, which constitute a deliverable shall be deemed a work made for hire under federal copyright law and shall be owned solely by NYULH. To the extent that any deliverable may not, by operation of law, be a work made for hire, the Contractor hereby grants, transfers, assigns and conveys to NYULH ownership of the copyright, patent or other intellectual property right in such deliverable and NYULH shall have the right to obtain and hold in its own name any such right or similar protection which may be available in such deliverable. At NYULH’s request, the Contractor shall promptly deliver, execute, file and record all documentation evidencing such assignment.

## If the services performed by the Contractor result in an invention, the Contractor shall promptly disclose the invention to NYULH in writing. Such invention and any resulting patent rights shall become the exclusive property of NYULH, and NYULH shall be the sole party entitled to the rights, title and interest in and to the invention.

## To the extent that any Contractor Property (as hereinafter defined) is contained in any of the Contractor’s deliverables, the Contractor hereby grants NYULH a royalty-free, paid-up, non-exclusive, perpetual license to use such the Contractor Property in connection with NYULH’s use of the deliverables. NYULH acknowledges that the license provided for herein shall not grant NYULH any right, title or ownership interest in the Contractor Property. “Contractor Property” as used herein shall mean concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and software owned by the Contractor or third party.

## To the extent of any software provided by Contractor (whether standalone or embedded in any of products or Work), Contractor grants to NYULH a worldwide, perpetual, irrevocable license, transferrable to NYULH affiliates, to use the software for all reasonable NYULH business purposes. NYULH’s use of the Software includes the right to (a) copy, execute, display, enhance, modify, update, maintain and/or adapt any of the software; (b) create and use new versions or derivative works of the software; and (c) combine the Software with other programs and materials.

## Scope and Users. All employees, agents, contractors, and outsourcers are permitted to use the Software within the scope of their duties to NYULH. NYULH may produce a reasonably number of copies of the Software for archival purposes and may install additional instances for testing, development, back-up and pre-production purposes provided, however, that such additional installations do not run concurrent with production instances. Upon reasonable notice to Contractor, NYULH may relocate the software or install the software on equipment different than that specified in an order.

# (Confidentiality)

## The Contractor covenants on behalf of itself and its employees, agents and subcontractors, to hold in confidence and not disclose, distribute, sell, copy, share or otherwise use any information obtained by the Contractor during performance of this Contract which relates to NYULH's patients, students, employees, research, development, business affairs, records, processes, techniques or types of equipment, whether past, present or future (“Confidential Information”), except as may be authorized by NYULH in writing.

## As used herein, “Confidential Information” shall also mean all confidential and proprietary information of NYULH disclosed to the Contractor, whether orally or in writing, that is designated as “confidential” or the like, or, that reasonably should be understood to be confidential given the nature of the information and the circumstances of the disclosure. The term Confidential Information shall not include, and the Contractor shall have no obligation to preserve the confidential and proprietary nature of, any information, that: (i) is or becomes a matter of public knowledge through no act or omission of the Contractor; (ii) was previously known by the Contractor prior to the disclosure without restriction on disclosure; (iii) is lawfully disclosed to the Contractor by a third party that lawfully and rightfully possesses such information without restriction on disclosure; or the Contractor is compelled to disclose by lawful process (whether by interrogatories, requests for information or documents, subpoena, civil investigative demands or other processes), provided, that the Contractor shall promptly advise NYULH of any such legal demand.

## If the Contractor comes into possession of any Confidential Information of NYULH, the Contractor shall not disclose such Confidential Information to any third party, except as otherwise expressly permitted herein, or use any Confidential Information for any purpose outside the scope of this Contract or in any manner that would constitute a violation of any laws or regulations. The Contractor shall not make Confidential Information available to any of its employees and /or agents except those that have agreed to be bound by confidentiality obligations similar to those set forth herein and have a “need to know” such Confidential Information. The Contractor agrees to hold NYULH’s Confidential Information in confidence and to take all precautions to protect such Confidential Information.

## Upon termination of this Contract, the Contractor shall return to NYULH all documentary Confidential Information or destroy such information at NYULH’s direction without retaining any copies thereof. Notwithstanding the return or destruction of the Confidential Information, the Contractor shall continue to be bound by the obligations of confidentiality and other obligations hereunder after completion of the Work and termination of the Contract.

## If and to the extent the Contractor has access to protected health information (as defined in the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder), the parties shall execute a Business Associate Agreement (“BAA”) in the form annexed hereto as Exhibit F. As per NYULH’s direction, the Contractor may be required to enter into a BAA with another vendor.

## To the extent the services require issuance of a unique user ID (e.g., Kerberos ID) to any Contractor Staffer (and Contractor if Contractor is an individual) to access the Medical Center’s information technology systems, Contractor shall comply with, and cause the Contractor Staffers to comply with, the Medical Center’s IT security policies governing mobile devices and portable media and the directions of the Medical Center’s Information Technology (MCIT) Department, and shall cause each Contractor Staffer to execute the Privacy, Information Security and Confidentiality Contract annexed hereto as Exhibit E.

# (Access to Records)

##  To the extent required by law, until the expiration of four years after the furnishing of all Work which is the subject matter of this Contract, the Contractor shall, upon request, make available to the United States Department of Health and Human Services, the United States Comptroller General and their representatives (collectively, "HHS") this Contract and all other books, documents and records as are necessary to certify the nature and extent of the costs incurred by NYULH. If the Contractor provides such services through a subcontract or consulting agreement worth $10,000 or more over a twelve-month period, the subcontract or consulting agreement shall also contain a clause permitting access by the HHS to the books and records of the subcontractor. The Contractor shall give NYULH notice of any request made directly by HHS upon Contractor.

# (Notice of Claims and Disputes)

## The Contractor must give written notice to NYULH of any claim by the Contractor for extension of time, extra compensation, increase to the Contract Price or damages of any sort within seven (7) days after the Contractor first learns of the act, omission, occurrence or circumstance on which the claim is based. The purpose of this notice is to give NYULH prompt opportunity: (a) to cancel or revise orders or directions, change plans, mitigate or remedy circumstances giving rise to the claim or to take other action that may be desirable; (b) to monitor and verify the facts and circumstances as they occur; and (c) to verify any costs and expenses claimed by the Contractor contemporaneously as they are incurred. Written notice is required whether or not NYULH, engineer or architect is aware of the facts or circumstances that constitute the basis for the Contractor's claim, and no action or conduct of NYULH, engineer, architect or any other person will be regarded as a waiver of such notice requirement except only a written statement to such effect signed by NYULH. Failure of the Contractor to give written notice as required shall be deemed conclusively to be a waiver and release of any claim, and such notice shall be a condition precedent to the Contractor's right to make any claim arising out of, under or in connection with this Contract or its performance of the Work.

## Notice pursuant to this Article 15 shall be addressed and sent to NYULH as provided elsewhere in the Contract. Notice of claim given to the engineer, architect, DSG or any other person engaged by NYULH shall not constitute notice to NYULH.

## The Contractor shall proceed with the Work promptly as instructed, directed or ordered by NYULH regardless of any claim or dispute. The Contractor shall have no right to suspend all or any part of the Work or to refuse to comply with any written instruction, direction or order of NYULH pending resolution of any dispute or for any other reason, provided that NYULH continues to make payments of undisputed amounts as provided in this Contract. Any such suspension or refusal will be a material breach of this Contract. The Contractor may preserve whatever right, if any, the Contractor may have to make claim with respect to any written instruction, direction, order, action or inaction of NYULH, engineer or others by giving notice as required by this Article 17 and by advising NYULH in writing, prior to proceeding with the Work in question, that the Contractor is proceeding under protest.

#  (Default and Termination)

## The Contractor's failure or refusal to comply, in whole or in part, with any material term, condition or provision of the Contract Documents shall constitute a default by the Contractor. In the event of any default, NYULH may take any of the following steps in addition to those provided elsewhere in the Contract: (a) arrange to have any of the Contractor's obligations under the Contract Documents performed by others; (b) terminate the Contract (provided that the Contractor has been given at least ten (10) days from the date of NYULH's initial notice of default to present its cure plan and diligently perform under such plan); and (c) any other steps permitted by law.

## In the event that the Contractor is in default, the Contractor shall pay to NYULH all reasonable costs, losses, damages and expenses including, without limitation, all administrative, management, overhead and other expenses, and reasonable attorneys' fees (collectively, the "Costs") incurred by NYULH in connection with the Contractor's default.

## The liability of the Contractor under this Article 16 shall extend to include the full amount of Costs incurred and obligations assumed in good faith under the reasonable belief that such Costs or obligations were necessary or required. In the event of termination by NYULH for default, NYULH shall have no obligation to pay the Contractor any amount otherwise owing to the Contractor pending determination of all Costs, and such Costs shall offset any such amounts otherwise owing to the Contractor. If such termination takes place prior to acceptance of the equipment, the Contractor shall repay to NYULH, immediately upon demand, the portion of the Contract Price previously paid to the Contractor therefor; provided, however, that NYULH shall not be entitled to accept delivery of the equipment and require return of the Contract Price. This Article 16.3 shall not prevent the Contractor from disputing whether the Contractor has defaulted.

## The Contract also may be terminated by NYULH for convenience, without default by the Contractor, upon written notice to the Contractor, and the Contractor shall be entitled to payment as provided in Article 16.5.

## In the event of a termination of the Contract not based on default by the Contractor, the Contractor shall be entitled to payment of that portion of the Contract Price for work and services satisfactorily performed as of the effective date of termination. All undelivered equipment shall be delivered to NYULH (at NYULH's expense) upon payment. The Contractor releases all other claims it may have against NYULH arising from such termination.

# (Additional Provisions)

## All notices hereunder shall be given by (a) mailing the same by Registered or Certified Mail, Return Receipt Requested, or (b) delivery by hand or (c) sending the same via email or facsimile which must be confirmed within forty-eight (48) hours by Registered or Certified Mail, Return Receipt Requested, or as otherwise provided hereunder or (d) delivery by Federal Express, Express Mail or similar courier service, addressed as follows: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, NYU Langone Medical Center, 339 East 28th Street - 1st Floor, New York, New York 10016 and Annette B. Johnson, Esq., NYU Langone Medical Center, 550 First Avenue, HCC-15, New York, New York 10016 (for NYULH); and Audio Fidelity Communications Corp. (d/b/a Whitlock), 12820 West Creek Parkway, Suite M, Richmond, VA 23238-1111, Attn: Mark C. Baker (for the Contractor); or at such other address(es) as either party shall, from time to time, designate by notice given to the other as herein above provide.

## Whenever used, the singular shall include the plural, the plural the singular and the use of any gender shall be applicable to all genders.

## Whenever in the Contract any words of obligation or duty regarding either party are used, they shall have the same force and effect as those in the form of an express covenant.

## This Contract shall be executed in multiple original copies by NYULH and the Contractor.

## No personal liability arising out of or relating to the Contract Documents shall accrue against any individual, officer, director, member, partner, shareholder, representative, trustee or fiduciary of NYULH or Contractor.

## No delay in enforcing any right, remedy, privilege or recourse accorded to either party or to which either party may be or become entitled to have or exercise under this Contract shall diminish, suspend or exhaust any such right, remedy, privilege or recourse.

## The sole beneficiaries of this Contract are the parties hereto and the permitted assignees hereof. Except as so provided, this Contract is not intended to confer any benefit or right upon persons other than the parties hereto and the permitted assignees hereof.

## This Contract may not be assigned by the Contractor, nor may the Contractor subcontract for any goods, materials, services or work required under this Contract, without NYULH's express prior written consent. Any such attempted assignment or subcontracting without NYULH's prior written consent shall be void and ineffective for all purposes. In the event that NYULH consents to such assignment or subcontracting, the Contractor shall remain primarily responsible for any and all performance of the Contractor's obligations hereunder.

## NYULH may not assign this Contract without the Contractor's express prior written consent, and any such assignment without the Contractor's prior written consent shall be void and ineffective; provided, however, that NYULH may assign this Contract without the Contractor's consent to New York University and any of its administrative units or to any other entity after delivery.

## This Contract shall be governed by and construed according to the laws of the State of New York without regard to principles of conflicts of law or choice of law. Any and all actions and proceedings relating to the subject matter of this Contract shall be maintained in the courts of the State of New York, in the County of New York, or in the federal district court sitting in the County of New York, which courts shall have exclusive jurisdiction for such purposes. The Contractor and NYULH waive the right to a trial by jury in any action or proceeding relating to this Contract.

## If any one or more provisions of this Contract are held to be invalid for any reason, the remaining provisions shall remain in full force and effect.

## This Contract constitutes the entire agreement between the Contractor and NYULH regarding the subject matter of this Contract and supersedes all prior representations, agreements, proposals, promises, trade customs and practices and understandings, oral or in writing, between the Contractor and NYULH with respect to the matters contained herein, as well as any prior or subsequent price quotation, invoice, confirmation or other document furnished by the Contractor.

## Each of the provisions of this Contract have been extensively negotiated between the parties and for purposes of construing this agreement, each of the parties shall be deemed the drafter.

## The Contractor shall not use the name, abbreviation, logo or mark of NYU Langone Medical Center or any unit, division, or part thereof, in any form of publicity without the prior approval by NYU Langone Medical Center’s Department of Real Estate Development and Facilities and the Office of Communications & Marketing; provided, however, that the Contractor may include NYU Langone Medical Center on its client list without prior approval.

## The Contractor and each person signing on behalf of the Contractor represents and warrants that the Contractor and each parent and/or affiliate of the Contractor has not been suspended, disqualified, debarred or otherwise excluded from or declared ineligible to bid or perform work for any governmental agency or otherwise prohibited from participation in any federal or state program, including Medicare or Medicaid (collectively, “Program”), and to the best of its knowledge, there are no pending civil anti-trust or criminal investigations or pending or threatened debarments or exclusions of Contractor from any Program. The Contractor covenants to notify NYULH in writing as soon as practicable if the Contractor is the subject of any civil anti-trust or criminal investigation, or is excluded, barred or suspended from participation in any Program, and to refrain from employing or contracting for purposes of providing any work or services to NYULH with any individual or entity known by Contractor to be sanctioned, suspended or excluded from participation in any Program. The Contractor shall include the provisions of this "No Exclusion" section in each subcontract, if permitted by NYULH, that the Contractor enters into under this Contract and shall cause such subcontractors and their sub-subcontractors of any tier to so include such provisions. Each of the representations and warranties made in this "No Exclusion" section is a material representation of fact by the Contractor upon which NYULH has relied as an essential inducement to enter into this Contract. In addition to any other remedies available to NYULH, NYULH may terminate the Contract for default in the event that any representation or warranty made in this Article 13.16 is untrue at the time of entering into this Contract or becomes untrue at any time during the term of this Contract.

## The provisions of Articles 11, 12, 13, 15, 16, and any other provisions requiring continuing performance by the parties shall survive completion or termination of the Contract.

 IN WITNESS WHEREOF, the parties hereto have executed this Purchase and Installation Contract as of the date first written above.

NYULH: **NYU LANGONE HOSPITAL**

 By:   \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CONTRACTOR: **Audio Fidelity Communications Corp. (d/b/a Whitlock)**

 By:   \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name: Mark C. Baker

 Title: Chief Financial Officer

**EXHIBIT A**

**ORDER / PRICING TERMS / PROJECT SCHEDULE**

**Ex. A-1: ORDER**

For all Work under the Contract (including the first year of preventive maintenance and trouble-shooting services described in Article 6), NYULH shall pay the Contractor in current funds, subject to additions and deductions by Change Order, the firm fixed price of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ($\_\_\_\_\_\_\_\_\_\_\_\_) (the “Contract Price”).

*FIXED PRICE*

If the Work Order provides for a Contract Price consisting of a fixed price ("Fixed Price"), such Fixed Price shall constitute full compensation for all labor, materials, equipment, subcontracts and other costs and expenses of performing the Work.

For all Work under the Contract for preventive maintenance and trouble-shooting services under Article 6 for the second through fifth years after NYULH’s acceptance of System Completion. NYULH shall pay the Contractor in current funds, subject to additions and deductions by Change Order, the service fees as set forth in Exhibit D annexed hereto.

The Contract Price includes all engineering and professional services, labor, material, equipment, software and intellectual property licensing, component parts, manufacturing costs, shipping costs, taxes on component parts, warranties, guarantees, services and performance required under the Contract Documents.

*EXPENSES*

There shall be no reimbursable expenses payable by NYULH to the Contractor.

NYULH, a not-for-profit institution, will not be responsible for the payment of or reimbursement to the Contractor or any manufacturer for any charges, assessments, licenses or taxes which may hereafter be imposed or levied with respect to this Contract or the Equipment delivered or other Work performed under this Contract. NYULH shall supply its tax exempt certificate to the Contractor upon request from the Contractor.

**Ex. A-2: PRICING TERMS**

Pricing, Future Purchases. Unless the Service Order states otherwise, for a period of twenty-four (24) months from the initial Service Order date, NYULH will be entitled to order additional Application Services at the same price, and at the same discount level as indicated in the initial Service Order. Thereafter, for a minimum of three (3) additional annual periods, additional Service Orders are subject to pricing increase of not greater than 2% or CPI, whichever is less, for each annual period.

Third-party Equipment Pricing. With respect to pricing for third-party equipment for which NYULH already has established pre-negotiated pricing (i.e., pricing with a manufacturer or distributor), Contractor will honor such pre-negotiated pricing and (if required) NYULH will facilitate the ordering process to ensure that Contractor is able to place orders pursuant to such negotiated pricing (on behalf of NYULH) with such manufacturer or distributor.

**Ex. A-3: PROJECT SCHEDULE AND PAYMENT TIMING**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Project Phase** | **Milestone / Deliverable** | **Date** | **Percentage Payment**  | **Amount** |
| Design | Project plans and drawings, schematics | 2/17/2017 | 10% |  |
|  |  |  |  |  |
|  |  |  |  |  |

The Contractor shall issue an invoice to NYULH, upon reaching each payment milestone covering the corresponding payment. All milestone payments for the deliverables covered under subsections b through f above shall reflect retainage of thirty (30) percent of the allocated value for such item. Invoices shall be submitted together with affidavits of payment and waivers of lien in such forms as reasonably required by NYULH.

**EXHIBIT B**

**SCOPE OF WORK REQUIREMENTS**

**EXHIBIT C**

**DRAWINGS AND SPECIFICATIONS**

**EXHIBIT D**

**MAINTENANCE AND SUPPORT SERVICES**

1. **Term, Pricing, Scope, Availability**

In General. Phase 4 consists of Maintenance and Trouble-shooting Services. As indicated in the Contact, Contractor shall provide the maintenance and support services described herein (“Maintenance”) at no additional charge throughout the initial warranty period {following NYULH’s acceptance of the system} as part of the Contract Price.

Initial Term. The initial term of Maintenance (for which NYULH shall pay begin payment of Maintenance fees) (“Initial Term”) begins upon the expiration of the warranty period and continues through the following August 31st. The annual Maintenance fee (as indicated in \_\_\_\_\_\_\_\_\_) for this term will be pro-rated to the August 31st date and will be invoiced between ninety (90) and sixty (60) days prior to the commencement of the term (i.e., prior to the expiration of the initial warranty period).

Renewal Terms. Maintenance will renew on an annual basis thereafter, each a renewal term “Renewal Term”. Between ninety (90) and sixty (60) days prior to the commencement of each Renewal Term, Contractor will notice the Renewal Term and NYULH may elect to renew (by payment or acknowledgement) or may elect to terminate by affirmatively noticing non-renewal or by failing to pay invoicing within sixty (60) days following commencement of the Renewal Term. NYULH may also terminate Maintenance during any term upon ninety (90) days’ notice to Contractor, in which case NYULH will be entitled to a pro-rated return of fees for unused Maintenance.

Pricing. Contractor’s annual maintenance pricing for the Initial Term shall be \_\_\_ percent (\_\_\_%) of the licensing fee (not to exceed Contractor’s published maintenance fee). Thereafter, for each Renewal Term, Contractor may increase the maintenance fee by up to two percent 2% over the prior year (not to exceed Contractor’s then-current published maintenance fee).

Scope. Fees are inclusive of all Maintenance services required to ensure that all {System} and equipment remains in good operating condition in accordance with the Scope of Work and all applicable equipment and software specifications, documentation and warranties. This includes all Contractor-branded products and software and all third-party provided products and software. Fees paid are inclusive of all services described herein, including but not limited to, cost of labor, onsite presence and service, development, parts, and Contractor’s other expenses, such as travel. To the extent of any third-party extended warranties, support contracts or other agreements, which may be required to establish the NYULH support entitlements described herein, Contractor will manage such agreements and ensure that such contracts remain current at no additional charge to NYULH.

Additional Software or Products. For any additional software or products procured by NYULH, the term will be co-terminus with the term for the initially licensed Software and fees will be prorated accordingly.

Availability. Contractor will provide the Maintenance services, as per the pricing and terms described herein for the Initial Term and a minimum of five (5) additional Renewal Terms. If NYULH elects to discontinue Maintenance during such period, NYULH shall thereafter be entitled to reinstate such services for any or all of the {System} at any time within such period without being required to pay retroactive or reinstatement fees, or any penalty of any other kind, all at the same pricing contained in the Contract prorated as appropriate.

1. **Preventive Maintenance**

Scheduled Preventive Maintenance Services. Contractor shall provide regularly scheduled preventive maintenance services to ensure that all {System} and equipment remains in good operating condition in accordance with the Scope of Work and all applicable equipment and software specifications, documentation and warranties. The preventive maintenance shall include the testing, cleaning, updating, calibrating or adjusting of the {System} equipment, replacement of unserviceable parts, and communicating necessary instruction to NYULH. All preventive maintenance shall be performed by Contractor at the service intervals as reasonably developed by the parties.

Maintenance Logs and Reports. Contractor shall maintain maintenance reports setting forth in such detail as agreed upon with NYULH all maintenance and technical services (scheduled and unscheduled services) performed on the {System} equipment. As requested, Contractor shall provide NYULH such maintenance reports and summaries to NYULH.

Notifications of Defects. Contractor shall notify NYULH of all known or suspected defects in the {System} equipment as such defects become known or are reported to Contractor. As part of the Maintenance services, Contractor will promptly correct any covered defects, or develop a work-around, patch or other fix, and furnish NYULH with such correction, work-around, patch or other fix as soon as practicable.

1. **Replacement Inventory**

Replacement Inventory. Contractor shall maintain sufficient inventory of spare {System} equipment and replacement parts at Contractor warehouse to enable Contractor to perform all maintenance services and restoration of any {System} equipment within the required time frames for Problem Response and Resolution. A limited inventory will be kept at the Project Site. Upon delivery of such inventory to NYULH, NYULH shall have care, custody and control of such inventory, shall provide adequate and secure storage, and shall be liable for any damaged or missing inventory.

Software Updates and Enhancements

Software revisions. Contractor will provide NYULH with Updates and Enhancements to each Software application and to the documentation (collectively “Updates”) no later than the date that such Updates are produced and generally made available by Contractor. Contractor will simultaneously provide revised and/or updated documentation for such Updates and Enhancements.

Safety and Compatibility Revisions. Updates will include all safety critical firmware and software updates for the {System} equipment, along with materials describing the purpose and function of the any updates as required. Additionally, Updates will include all modifications and revisions required to enable the {System} equipment to operate in compliance with all applicable laws, and in the case of equipment, in conjunction with any new releases of the computer equipment, operating systems or middleware used by NYULH.

Installed Updates. If NYULH is responsible for installing the update, Contractor shall provide written instructions and such other assistance as needed. NYULH may either accept or reject any update, at NYULH’s option. However, after an Update has been incorporated and accepted NYULH, the update shall be considered part of the equipment for all other purposes.

Comparable Software Product. If Contractor discontinues Maintenance of the software in favor of comparable software products offered by Contractor (“Comparable Products”), then Contractor will license the Comparable Products at the same level and at no charge to NYULH provided NYULH is current on Maintenance obligations. In such case, NYULH’s Maintenance fees will remain that same as that for the originally licensed software.

Definitions. "Enhancement" means an improvement to Software that alters its basic functionality or performance, or adds new functionality, designated as X.x.x and x.X.x. "Update" means a Software release, designated as x.x.X, that either remedy deficiencies in the software or improve software operating performance without altering or adding to the basic software functionality.

1. **Support Access and Contacts**

Support Contacts. Contractor shall provide NYULH the technical support contacts on or before the installation date of the {System}. All technical support contacts assigned by Contractor shall be well-qualified engineers with a thorough understanding of the {System} design and specifications. Contractor shall ensure that it will have access to escalated support from all equipment manufacturers.

On-Site Personnel. A minimum of two Contractor Clinical Specialists will be assigned to NYULH for purposes of Maintenance services.

Telephone Support. Telephone assistance that is accessible 24 hours a day/7 days a week for end user support of the {System}. End-user and operator support contacts will be provided with the documentation and specifications of the {System} upon installation. All end user support contacts assigned by Contractor shall be well-qualified to address all end-user issues.

1. **Problem Response and Resolution, Process**

Performance Standards. Contractor is responsible to ensure that the {System} and equipment remains in good operating condition in accordance with the Scope of Work and all applicable equipment and software specifications, documentation and warranties. Contractor’s problem response and resolution performance will be in accordance with the table contained herein, and NYULH will be entitled to service credits if Contractor does not perform as indicated.

Coordination of Service. Contractor maintains primary responsibility for problem response and resolution and upon notice of a problem, Contractor will coordinate resources as required from third-parties to assist in problem resolution.

Third-party Equipment. Notwithstanding Contractor’s primary responsibility for problem response and resolution, NYULH will be enabled to directly contact manufacturers of third-party equipment to efficiently resolve hardware only issues which would not require Contractor assistance. To affect this, Contractor will ensure that NYULH is authorized on all Contractor service contracts and Contractor will provide NYULH with appropriate contact information as reasonably required for NYULH to obtain service directly with such support third-party equipment.

Problem Priority Levels. Each request for unscheduled service by NYULH shall be classified by NYULH in its sole discretion as a “Priority One”, “Priority Two” or “Priority Three” problem, as follows:

Priority 1. The {System} (or a subsystem / component) is not working, or a critical function of the {System} (or a subsystem / component) is not properly working, or a significant number of NYULH users (or any mission-critical users) are unable to access or use some functionality. There is critical impact upon the NYULH’s business (or there is likely to be critical impact if the problem is not promptly remedied)

Priority 2. The performance or functionality of the {System} (or Subsystem / Component) is significantly impaired or a significant number of NYULH users (or any mission-critical users) are unable to access or use some functionality. There is significant impact to NYULH's business (or there is likely to be significant impact if the problem is not promptly remedied).

Priority 3. The performance or functionality of the {System} (or Subsystem / Component) is materially impaired or some NYULH users (or any mission-critical users) are unable to access or use some functionality. There is material impact to NYULH's business (or there is likely to be material impact if the problem is not promptly remedied)

Problem Response and Resolution Table

|  |  |  |  |
| --- | --- | --- | --- |
| **Problem Priority**  | **Response Time Service Priority** | **Resolution Time Service Priority** | **Service Credits for Not Meeting Response Times / Resolution Times** |
| **Priority 1** | Supplier will respond and commence efforts to fix Priority 1problems within 30 minutes afterNYULH reports such problem or Supplier's detection of such problem, whichever is earlier. | Supplier will use best and continuous efforts, twenty-four (24) hours per day, seven (7) days per week to resolve or provide an acceptablework-around for the Priority 1 problem within 60 minutes, and will provide a permanent fix nolater than four hours (after such problem is first reported or detected) | 25% of the monthly support fee for untimely response, resolution or fix, and 25% for each additional hour past the time indicated for a Priority 1 problem without a timely response work-around or fix. |
| **Priority 2** | Supplier will respond and commence efforts to fix Priority 2problems within 60 minutes afterNYULH reports such problem or Supplier's detection of such problem, whichever is earlier. | Supplier will use all commercially reasonable continuous efforts, twenty-four (24) hours per day, seven (7) days per week to resolve or provide an acceptablework-around for the Priority 2 problem within two hours, and will provide a permanent fix nolater than 8 hours (after such problem is first reported or detected) | 15% of the monthly support fee for untimely response, resolution or fix and 15% for each additional two hours past the time indicated for a Priority 2 problem without a timely response work-around or fix. |
| **Priority 3** | Supplier will respond to Priority 3 problems no laterThan 60 minutes after NYULH reports such problem or Supplier's detection of such problem, whichever is earlier. | Supplier will fix or provide NYULH with an acceptable workaround resolution for the problem within six hours (after such problem is first reported or detected) | 10% of the monthly support fee for an untimely response, resolution or fix, and 10% of monthly fees for each additional six hours past the time indicated that the Priority 2 problem remains without response, resolution or fix. |

Management Escalation. If a Priority 1 Problem remains without an acceptable resolution after two hours; or if a Priority 2 Problem remains without an acceptable resolution after four hours; Contractor will escalate the Problem to its next tier of support. For any such problems which remains unresolved following such initial escalation, further escalation within Contractor support organization will be indicated as follows: (1) For Priority 1 problems, additional escalation (to the next tier of support) is indicated for each two hours that the problem remains unresolved; (2) For Priority 2 problems, additional escalation is indicated for each four hours that the problem remains unresolved. Management escalations as described will be In addition to the credit entitlements indicated (and not in lieu of such credit).

Software and Versions. With respect to software issues, Contractor must correct the defect for the version of software being used by NYULH. Contractor shall not be deemed to have satisfied its obligation to resolve defects by requiring NYULH to move to a new version of the software, unless such can be done within the remediation time frames provided without material disruption to NYULH’s business operations.

Continuing Repairs. {System} equipment shall not be considered to have been repaired or restored to satisfactory operating condition, if within eight (8) hours from the time such equipment is turned over to NYULH as being in fully operable condition, the equipment requires additional remedial maintenance.

Monitoring and Reporting. Contractor will monitor its Problem Response and Resolution performance. On a monthly basis, or as otherwise reasonably requested by NYULH, Contractor shall provide hard- and soft-copy reports to verify Contractor's performance and compliance with the Problem Response and Resolution requirements.

New Use Cases. Following installation of the {System}, Contractor shall work with NYULH to provide upgraded equipment, configuration changes and the implementation of new use cases as developed and specified by NYULH. Contractor’s services under this section shall be compensated as additional work pursuant to the hourly rates set forth in Exhibit D annexed hereto.

**EXHIBIT E**

**NYULH POLICIES**

**Exhibit E-1 MCIT WORKFORCE POLICY**

**Exhibit E-2 CODE OF CONDUCT -**

**Exhibit E-3 ENVIRONMENTAL SAFETY**

**EXHIBIT F**

**BUSINESS ASSOCIATE AGREEMENT**