

Contract No.

FIRM FIXED PRICE CONTRACT

Contract No. TMT.BUS.CON.19.____.REL01

Task ID:

Contract No.

This contract (“Contract”) is made effective as of [REDACTED] (“Effective Date”), by and between the TMT International Observatory LLC, a non-profit public benefit limited liability company organized and existing under the laws of the State of Delaware (“TIO”), and [REDACTED], a corporation organized and existing under the laws of the State of [REDACTED] (“Contractor”). Each party to this Contract may be referred to individually as “Party” and collectively as the “Parties.” The Parties agree as follows:

Article I. STATEMENT OF WORK.

- A. The Services. Contractor shall provide the following services in accordance with the statement of work that is incorporated and attached to this Contract as Exhibit A.
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2. The Contractor shall perform the Services using personnel of required skill, experience and qualifications and in a professional, diligent and workmanlike manner in accordance with commercially reasonable industry standards for similar services and shall devote adequate resources to meet its obligations under this Contract.
 3. The Contractor shall use the best quality goods, materials, standards, and techniques, and ensure that the Deliverables and all goods, materials, and equipment supplied in connection with the Work or transferred to TIO will be free from defects in workmanship, installation, and design.
 4. The Contractor shall cooperate with TIO in all matters relating to the Work and shall comply with all instructions from TIO.
 5. The Contractor shall furnish all equipment and materials required to perform the Work, except to the extent that TIO expressly agrees to furnish the same.
 6. The Contractor shall hold all of TIO's equipment and materials, as applicable, in safe custody at its own risk, maintain TIO's equipment and materials in good condition until returned to TIO, and not dispose of or use TIO's equipment and materials other than in accordance with TIO's written instructions and for the purposes of the Contract.
 7. The Contractor acknowledges that time is of the essence with respect to Contractor's obligations hereunder and that prompt and timely performance of all such obligations, including all performance dates, timetables, project milestones, and other requirements in this Contract is strictly required.
- F. Acceptance. Subject to any specific response times stated herein, TIO shall accept or reject the Work within a reasonable period of time after delivery to TIO by Contractor. Acceptance by TIO, or failure to inspect and accept or reject the Work, shall not relieve the Contractor from responsibility, nor impose liability on TIO, for nonconforming Work. Work is nonconforming when it is not in conformity with all applicable Contract requirements. TIO has the right to reject nonconforming Work and may thereupon terminate the Contract for default as provided herein. If the Contractor fails or is unable to correct or to replace nonconforming Work within the delivery schedule (or such later time as TIO may authorize), TIO may accept the Work and make an equitable price reduction.

Article II. TERM

- A. Term. The term of this Contract (the “Term”) begins as of the Effective Date and shall end on [REDACTED] (“Contract Completion Date”). This Contract may be extended only by mutual written agreement of the Parties.

Article III. PRICE AND PAYMENT

- A. Firm, Fixed Price. The firm, fixed price for this Contract is \$ [REDACTED] U.S. Dollars (“FFP” or “Firm Fixed Price”). The total compensation that TIO shall pay for all the Work, including all applicable taxes, fees, shipping costs, insurance, and duties shall not exceed the FFP.
- B. No Pre-Contract Compensation. There will be no allowance for compensation of Work incurred prior to the Effective Date of this Contract.
- C. Travel All travel under this Contract must be authorized by TIO in writing and in advance of the requested travel date. Authorized travel costs will be reimbursed at actual and reasonable cost in accordance with TIO policies and procedures and as evidenced by appropriate documentation. No other direct or indirect travel costs will be reimbursed unless specifically agreed to by TIO prior to work commencing.
 - 1. Travel Rate: If Contractor receives advance, written authorization from TIO, Contractor may charge TIO for actual travel time required to perform the Work. In the event that TIO authorizes Contractor to charge for travel time, travel time shall be calculated at one-half the Hourly Rate (“Travel Rate”). Contractor may not charge for more than six (6) hours of travel time within twenty-four (24) hours for trips within the U.S. and Canada.

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2. Contractor shall complete, execute and submit to TIO all required state forms to determine the applicability of California withholding tax. If Contractor is exempt from state withholding tax, Contractor will complete, execute and submit to TIO all required state forms certifying its tax exemption. Contractor must clearly indicate all work that is performed in California under this Contract as a separate line item on the invoice. With respect to transactions for which Contractor may be exempt from any tax or duty, Contractor will indicate its exemption claim within its invoice.

E. Payment. Subject to the review and approval of the Contractor's invoices, TIO shall pay within thirty (30) days after receipt of invoice. TIO has the right to withhold any and all taxes and duties required by law or regulation. The Parties understand and agree that all terms and conditions regarding payment by TIO are contingent upon Contractor's full and timely compliance with all administrative and documentation requirements. Failure by Contractor to comply with all administrative and documentation requirements in a timely manner may result in a delay of payment. TIO is not liable for any delay of payment due to Contractor's non-compliance with this Article III.

1. Payment shall be in US Dollars. The remittance address, if payment is made by check, shall be:

[Supplier Address for A/R]

Article IV. REPRESENTATIONS, WARRANTIES, AND COVENANTS

- A. Contractor is responsible for the direct management and supervision of its personnel. Contractor will inform all such personnel prior to their start of work that there is no implied employment of Contractor personnel by TIO.
- B. Contractor represents and warrants that the Deliverables and TIO's use of the Deliverables will not infringe, misappropriate or otherwise violate any confidential or proprietary information, any trade secret or any intellectual property right belonging to any third party.
- C. Contractor represents and warrants that it has not engaged in collusion with any other potential contractor to procure this Contract. Contractor further represents and warrants that no benefit of tangible value has been given, nor will be given to any of TIO's agents or employees as a result of being awarded this Contract.
- D. Contractor represents and warrants that it will take necessary safety and other precautions to protect property and persons from damage, injury or illness arising out of the performance of the Work, and be responsible for the compliance by all of its agents, employees and Subcontractors with all applicable laws governing occupational health and safety.

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- E. Contractor understands and agrees that this is a firm fixed price contract and that there shall be no allowances or reimbursement for any cost whatsoever except as otherwise explicitly provided in this Contract. Contractor agrees that the Firm Fixed Price includes, but is not limited to, all applicable taxes, fees, shipping costs, insurance and duties. Contractor agrees to fulfill its obligations under this Contract, regardless of cost, for the sole and sufficient compensation of the FFP

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- C. Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS OR PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS CONTRACT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Notwithstanding anything to the contrary in this Contract, this paragraph shall not apply to damages arising out of or relating to the following: (i) damage claims payable to third parties, irrespective of the basis for such claims; (ii) violations of law; (iii) fraud or fraudulent misrepresentation; (iv) any breach of this Contract that results from the willful act or omission of either party, their employees, agents or subcontractors; (v) personal injury or death caused by the Contractor's grossly negligent act or omission; and (vi) damage claims covered by insurance required to be maintained under this Contract, to the extent so covered. This section shall survive expiration or termination of this Contract.
- D. Insurance. At all times during the term of this Contract, the Contractor shall procure and maintain, at its own expense, the following insurance coverage: (A) workers' compensation at statutory limits, (B) employer's liability insurance with limits of at least \$1,000,000 per occurrence, and (C) comprehensive general liability (including bodily injury, property damage and contractual liability) insurance with limits of at least \$1,000,000 per occurrence. Contractor shall give TIO at least thirty (30) days prior written notice of any cancellation of insurance coverage or any proposed reduction of insurance coverage below the limits set forth in this Section. Contractor shall include TIO, its officers, directors and employees as additional insureds under its liability insurance policy and provide TIO with a certificate of insurance for the required coverage promptly upon request.
- E. Governing Law. This Contract shall be governed by and construed in all respects in accordance with the laws of the State of California, without giving effect to its choice of law rules. This section shall survive expiration or termination of this Contract.
- F. Compliance with Laws. The Contractor will ensure that at all times it is in compliance will all applicable laws and maintains all the licenses, permissions, authorizations, consents, and permits that are necessary to carry out its obligations arising out of or in connection with the Contract.
- G. Changes to Contract. This Contract may be modified, amended or waived only by a written instrument executed by both TIO and the Contractor. If the terms of this Contract are modified, amended or waived such that the change causes an increase or decrease in the cost of, or the time required for, the Work, the Parties may agree in writing to an equitable adjustment in pricing, delivery schedule, or both. Contractor must request an adjustment under this clause within fifteen (15) days

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4. This Article VI.H shall survive expiration or termination of this Contract.

J. Primary Contacts. The Contractor agrees that the TIO Contracts Manager is the only person authorized to make changes to the Contract.

The primary contacts under this Contract are as follows:

1. *TIO Contract Technical Manager:*

Ben Gallagher
TMT International Observatory LLC
100 West Walnut Street
Suite 300
Pasadena, CA 91124

Phone: 626.395.1667
Fax: 626.296.1887
E-mail: bbgallagher@tmt.org

2. *TIO Contracts Manager:*

Pratheep Eamranond
TMT International Observatory LLC
100 West Walnut Street
Suite 300
Pasadena, CA 91124

Phone: 626.395.1607
Fax: 626.296.1887
E-mail: pratheep@tmt.org

K. Notices. Notices from one Party to the other shall be given in writing by one of the following methods: (a) United States registered mail, return receipt requested, and said notice shall be deemed to have been given three (3) days after said notice is deposited into the United States mail; (b) personal delivery, and said notice shall be deemed given upon such delivery; or (c) recognized overnight courier service, (d) telefax; or (e) e-mail, and said notice shall be deemed given upon delivery by such service at the following addresses or at such other address of which either Party shall advise the other in writing:

To TIO: TMT International Observatory LLC
 100 West Walnut Street
 Suite 300
 Pasadena, CA 91124
 ATTN: Pratheep Eamranond

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shall not be affected by the transfer of the information to the Contractor for purposes of carrying out the terms of this Contract. Ownership and right to use or modify the work product shall survive the term of this Contract.

All property used in this effort that is owned by Contractor before the Effective Date will remain the property of the Contractor ("Pre-Existing Property"). Contractor shall grant TIO a non-exclusive, irrevocable, worldwide, royalty-free license to use all technology, hardware, or software developed or used as part of the Work for the purpose of advancing, developing or operating the TIO Project and its telescope. The License includes, but is not limited to Pre-Existing Property. Contractor shall provide TIO with a duly executed instrument confirmatory of such License at TIO's request. Contractor's Pre-Existing Property includes, but is not limited to:

1.

S. No Third-Party Beneficiary. Nothing in this Contract, express or implied, is intended to confer on any person other than the Parties hereto and their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Contract.

T. Personnel. The Contractor is responsible for providing the staff necessary or appropriate to perform its obligations under this Contract. TIO may by notice in writing to the Contractor object (but not unreasonably) to any personnel, representative, or member of staff employed by the Contractor for the Work and the Contractor shall remove such a person from the Work and appoint a suitable replacement subject to the prior written approval of TIO (such approval not to be unreasonably withheld).

Prior to removing, replacing, or diverting key personnel designated below, if any, the Contractor shall notify TIO, in writing, reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the Contract. No diversion shall be made by the Contractor without written consent of TIO. Designated Key Personnel are:

1.

U. Termination for Default.

1. TIO reserves the right to terminate all or

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event of such a termination TIO shall pay to the Contractor as its sole remedy the amount defined in Article V.2 in accordance with Article V.3.

V. Termination for Convenience. TIO reserves the right to terminate this Contract, or any part hereof, for its sole convenience. In the event TIO gives Contractor notice of such termination, Contractor shall immediately stop all Work hereunder and shall cause any and all of its suppliers and subcontractors to promptly cease work.

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AA. Counterparts. This Contract, and any amendments hereto, may be executed in counterparts, each such counterpart to be considered an original and all of which shall be construed together as one and the same document.

BB. Authorization. The undersigned individuals represent that they are fully authorized to execute this Contract on behalf of the named Parties.

IN WITNESS WHEREOF, intending to be bound, Contractor and TIO have caused this Contract to be signed by their duly authorized representatives.

TMT International Observatory LLC

[Contractor]

By _____

By _____

Name

Name

Title

Title

Date

Date