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Section I: RFP Overview and Proposal Procedures

A. Purpose/Scope

New York University (NYU) School of Medicine (SOM), on behalf of itself and its affiliates NYU Hospitals Center, NYU Lutheran Medical Center, and the New York University Medical Center Condominium (collectively NYULMC) seeks to retain qualified consultants to perform construction safety consulting services in connection with construction projects that the NYU SOM or NYU Hospitals Center is undertaking. The consultant must provide all services in accordance with consensus standards for construction safety (e.g., NFPA 241, ANSI A10 series), NYULMC Safety Policies, and all applicable legal requirements.

NYULMC intends to enter into Master Agreements with multiple consultants it deems qualified and subsequently award contracts for construction safety consulting services for specific projects/tasks by Task Order.

B. Governing Law

This RFP, all proposals submitted, and any contracts entered into in connection therewith shall be constructed under the laws of the State of New York applicable to contracts made and to be performed in the State of New York.

C. Solicitation Schedule

Solicitation release date:	February 9, 2016
Mandatory pre-proposal conference:	March 2, 2016, 12 PM 339 East 28th Street Conference Room A New York, NY 10016
All inquiries should be submitted by:	March 9, 2016
All proposals are due at 3 PM on (the Closing Date):	March 16, 2016
NYULMC contemplates contract awards by:	May 1, 2016

D. General Instructions

1. Any information that NYULMC may have released either orally or in writing before the issuance of this RFP is considered preliminary and NYULMC will not be bound by such information.
2. To be eligible for award of a contract, a proposer must be deemed qualified by NYULMC.
3. If someone other than the president, vice president, or general partner of a proposer signs a proposal, the proposal is to include evidence of the agent's authority.

E. Point of Contact for this RFP

1. Prospective proposers are advised that this RFP is being managed by NYULMC Environmental Health and Safety (EH&S). The RFP Managers for all matters concerning this RFP are Stephen Haney (stephen.haney@nyumc.org) and Lynda Lu (lynda.lu@nyumc.org).
2. Requests for Clarification and Addenda
 - Any inquiry regarding this RFP shall be made by e-mail, except that NYULMC will entertain oral inquiries at the pre-proposal conference. To be considered, inquiries are to be addressed to the RFP Managers by the date specified for receipt of inquiries.
 - Questions pertaining to insurance requirements may be submitted by e-mail to Cecil Brown (clb15@nyu.edu), with the RFP Managers copied on the e-mail.
 - NYULMC will issue responses to inquiries and any other corrections, amendments, and the like which it deems necessary, in written addenda issued prior to the Closing Date. NYULMC will e-mail addenda to each person recorded as having been furnished a copy of this RFP.
 - Proposers must acknowledge receipt of addenda on the Addendum Acknowledgement Form and submit the form with their proposals.
 - Proposers should not rely on any representations, statements or clarifications not made in either this RFP or a formal addendum. If NYULMC issues an addendum with a digest of the inquiries made and answers given at the pre-proposal conference, proposers are to rely on the information contained in such addendum rather than that given orally at any pre-proposal conference.
 - NYULMC reserves the right to waive minor informalities in proposal submissions.

F. Mandatory Pre-Proposal Conference

The RFP Managers have scheduled a mandatory pre-proposal conference as indicated in Section I, C.

G. Restrictions on Contacts During the Solicitation Process

Prospective proposers are advised that from the date that this RFP is issued until the award of any resultant contract, they are not to contact any NYULMC employees or consultants about any matter related to this solicitation unless the RFP Managers have given permission to do

so. Contact with other NYULMC personnel, except pursuant to express authority from the RFP Managers, is in violation of this restriction and may result in the disqualification of a proposer.

H. Proposal Submission Requirements

1. Include all information required by this RFP.
2. In an effort to reduce environmental impact, do not submit proposals that are spiral bound (metal or plastic) as it impacts the ability to recycle materials.
3. By 3 PM on the Closing Date, submit three (3) hard copies of proposals in a sealed, opaque envelope or package with the words “Proposal for Construction Safety Consulting Services ” clearly visible. Include the names of the RFP Managers on the label.
4. Ensure that the sealed package is date and time stamped by NYULMC upon delivery to the address below and is placed in the lockbox for proposals.

RED+F, EH&S
339 East 28th Street
New York, NY 10016

5. If the NYULMC custodian of the lockbox determines that the proposal package is too large to fit into the lockbox, confirm notification of the RFP Managers, who will arrange for safekeeping until proposals are scheduled to be opened.
6. Within 24 hours of submitting hard copies, submit an additional electronic copy via email to the RFP Managers listed in Section I, E.1.
7. If you choose not to submit a proposal, submit a declination letter.
8. Fully fill in all spaces in the Pricing Proposal (Appendix 2). Type amounts into the proposal. Ensure that proposals are signed by principals or officers duly authorized to execute such documents on behalf of their firms.
9. Proposals shall contain the following completed documents, in the order listed:
 - Addendum Acknowledgement Form, if applicable (Appendix 1)
 - Pricing Proposal (Appendix 2)
 - RED+F Qualification Questionnaire (Appendix 3)
 - A copy of the proposer’s Equal Employment Opportunity Statement
 - Contact information for three (3) references, preferably representing university or hospital sectors, where the proposer provided services similar to those described in this RFP. Include a brief written description and specific years that services were provided, annual award value (\$), and contact person’s name, phone number and email address.
10. Late submissions will not be considered.

I. Proposal Evaluation

The evaluation criteria, listed in order of importance, are:

1. Overall qualifications of proposer to provide construction safety consulting services.
 - Proposer's resources including personnel.
 - Ability to complete all work according to the highest professional standards while meeting required deadlines.
2. Understanding of NYULMC
 - A demonstrated understanding of the requirements, regulations, and challenges specific to NYULMC and the healthcare environment.
 - Ability to provide timely and appropriate response to all NYULMC requests.
3. Demonstrated regulatory compliance.
4. Relevant prior experience of proposer and proposed personnel.
5. References.
6. Pricing.
7. Ability to provide emergency responses within 2 hours of request.
8. Acceptance of NYULMC's contract terms and conditions or willingness to negotiate terms and conditions acceptable to NYULMC within a timeframe consistent with NYULMC's needs.
9. Completeness of the proposal.

J. Eligibility for Award

In order to be eligible for award of a Master Agreement, and notwithstanding its relative qualifications for purposes of the evaluation criteria and in other respects, a proposer must demonstrate to the satisfaction of NYULMC that it is in all respects a responsible party (e.g., that it has the integrity, skill, and experience) and has the necessary personnel and financial resources to perform and complete the Services (see Section II) in accordance with the Contract Documents, and be otherwise qualified and eligible to receive an award under applicable laws and regulations.

K. Withdrawal of Proposals

Proposer may withdraw its proposal from consideration at any time prior to award of a Master Agreement, to avoid unnecessary review by NYULMC, by notifying the RFP Managers promptly in writing. NYULMC will have the right to discard or retain for its records copies of proposals withdrawn from consideration.

L. Acceptance of Proposal

Proposer agrees that the proposal shall remain in force and effect for a period of not less than 100 calendar days following the Closing Date.

If written notice of the acceptance of a proposal is mailed, emailed, faxed or delivered to the proposer within 100 days after the Closing Date, the proposer will, within 10 calendar days after the date of such notice, execute a Master Agreement between proposer and NYULMC, in accordance with the proposal as accepted, amended and/or supplemented if required

M. Conditions, Terms, and Limitations

1. NYULMC reserves the right to:
 - reject all proposals submitted;
 - accept any proposal as submitted without negotiations;
 - require revisions to, corrections or other changes to any proposal submitted as a condition to its being given any further consideration;
 - negotiate with one or more proposers in any manner it determines;
 - following the conclusion of any such negotiations, issue a revised RFP or portion thereof soliciting further offers;
 - after receipt of further offers, reopen negotiations;
 - accept improvements to, enhancements of, or other revisions to any proposal at any time if it deems such to be in its best interest.
2. Since further negotiations or discussions may not take place, proposers should submit their best proposals initially.
3. No proposer shall have any rights against NYULMC arising at any stage of the solicitation from any negotiations that take place or from the fact that NYULMC does not select a proposer for negotiations.
4. NYULMC is not liable for any pre-contract activity or costs incurred by proposers in preparing proposals or for costs for negotiations on proposals or contracts.
5. NYULMC may contact anyone, whether listed as a reference or not, to obtain information about a proposer, any team member, or other information relevant to a proposal.
6. All RFP submission materials become the property of NYULMC, who may retain all copies of proposals submitted.

Section II: Services

A. Definitions

1. **Complex task:** Any potentially hazardous task that requires specific competencies, such as structural engineering expertise, complex crane hoist/lift expertise or industrial hygiene expertise, for safe and successful completion. Examples include, but are not limited to:
 - confined space entry
 - crane and rigging operations
 - demolition
 - excavation
 - hazardous substance abatement
2. **Occupant impact task:** Any task which due to its nature requires appropriate advance planning to eliminate or lessen its potential negative impact on building occupants. This includes, but is not limited to, tasks that could:
 - create noise or vibration above ambient levels
 - impact occupant life safety, e.g., by modifying egress or impairing fire protection systems
 - impact occupant utilities, e.g., through shutdowns
 - release air contaminants, e.g., dust, mold, gases or vapors, outside of the construction site
3. **Potentially hazardous task:** Any task that presents a substantial probability of death, serious physical harm or significant impairment to health without appropriate safety or health protective measures. Examples include, but are not limited to, tasks that could result in:
 - being caught in an excavation cave-in
 - being exposed to energized electrical parts
 - being overexposed to health hazards
 - being struck by an object
 - falling 6 feet or more to a lower level
 - working on routine tasks that have become non-routine due to unexpected occurrences such as equipment breakdowns, weather conditions or changes in the project-specific safety plan

B. Personnel, Responsibilities, and Qualifications

Consultant shall provide NYULMC with competent safety personnel and professional safety services to minimize hazards associated with construction. All personnel must be pre-qualified by NYULMC prior to assignment to any project. Consultant's personnel and services shall include, without limitation, the following:

1. Senior Construction Safety Professional

- i) *Primary function:* to advise the Owner on Project Health and Safety during the planning and execution of a construction project. This includes, without limitation, the following:
 - (1) Advise on how best to address safety and health for patients, medical center staff, the public, and construction personnel, with a focus on preventing incidents and reducing risks associated with construction.
 - (2) Propose specifications to enhance safety and health on the project and prevent or minimize adverse events.
 - (3) Review and, where necessary, recommend safety improvements to:
 - Contractor's project-specific health and safety plan.
 - Contractor's Method of Procedure (MOP), Job Hazard Analysis (JHA) and Pre-Task Plan (PTP) documents.
 - Demolition and construction methods.
 - Means for materials handling.
 - (4) The Senior Construction Safety Professional shall actively participate in meetings and review and comment on meeting minutes.
- ii) *Minimum qualifications*
 - (1) Bachelor's degree in a relevant field. Master's preferred
 - (2) Certified Safety Professional (CSP) preferred
 - (3) 10 years' experience in construction safety or experience satisfactory to NYULMC
 - (4) Experience in healthcare construction, life/fire safety, and infection prevention and control
 - (5) Knowledge of:
 - NYC Building Code, Fire Code and local laws
 - OSHA standards impacting construction and occupied facilities (including 29 CFR 1910 and 29 CFR 1926)
 - NFPA 101 Life Safety Code and NFPA 241
 - ANSI A10 Standards
 - (6) Documented training in infection control methods for construction
 - (7) Knowledge of healthcare construction technologies and techniques
 - (8) Familiarity with, and ability to recommend safe healthcare construction methods and materials

2. Construction Safety Professional

- i) *Primary function:* to advise the Owner on how best to address health and safety during complex tasks, occupant impact tasks, and potentially hazardous tasks. This includes, without limitation, the following:
 - (1) Contributing to the development of plans for safely executing specific tasks.
 - (2) Reviewing contractor's MOP, JHA and/or PTP documents and, where necessary, recommending improvements.
 - (3) Monitoring the execution of specific tasks.
 - (4) Participating in meetings. Reviewing and commenting on meeting minutes.

- (5) Provide emergency response (e.g., for accident investigation) on short notice (e.g., within 2 hours) to any location within the Metro NYC area.
- (6) Conduct technical accident investigation and analysis work at any NYULMC project site on short notice.
- ii) *Minimum qualifications*
 - (1) Bachelor's degree in a relevant field. Master's preferred.
 - (2) CSP preferred
 - (3) 5 years' experience in construction safety or experience satisfactory to NYULMC
 - (4) Experience in healthcare construction, life/fire safety, and infection prevention and control
 - (5) Knowledge of:
 - NYC Building Code, Fire Code and local laws
 - OSHA standards impacting construction and occupied facilities (including 29 CFR 1910 and 29 CFR 1926)
 - NFPA 101 Life Safety Code and NFPA 241
 - ANSI A10 Standards
 - (6) Documented training in infection control methods for construction
 - (7) Knowledge of healthcare construction technologies and techniques
 - (8) Familiarity with, and ability to recommend, safe healthcare construction methods and materials

3. Construction Safety Inspector

- i) *Primary function:* to conduct routine safety and health inspections of exterior construction sites, where the inspections DO NOT involve complex tasks, occupant impact tasks, or potentially hazardous tasks. The inspector shall submit reports of findings electronically to NYULMC.
- ii) *Minimum qualifications*
 - (1) Knowledge of hazards that can negatively impact adjacent occupied healthcare facilities
 - (2) OSHA 30-hour construction safety card
 - (3) 3 years' experience in construction safety
 - (4) Construction Health and Safety Technician (CHST) preferred

Section III: Proposed Contract Terms

The proposed contract is included as Appendix 4.

NYULMC intends to enter into Master Agreements with all proposers it deems responsible and qualified based on the above stated evaluation criteria and eligibility considerations. This will facilitate the award process for individual projects. Each Master Agreement will set forth the basic terms and conditions between the Consultant and NYULMC. Consultants with a fully executed Master Agreement may be invited to submit proposals for construction safety consulting services for specific projects/tasks.

NYULMC will award construction safety consulting services through issuance of a Task Order. The Task Order will reference the applicable Master Agreement and set forth the project-specific terms and conditions (e.g., project name, scope of services, not-to-exceed amount). The Task Order will be the only valid authorization for a Consultant to perform work relating to any project. The Master Agreement provides no assurance that NYULMC will issue any Task Order.

Appendix 1

Addendum Acknowledgement Form

The proposer acknowledges the receipt of the following addenda:

Addendum No. _____, dated _____

Addendum No. _____, dated _____

Addendum No. _____, dated _____

Addendum No. _____, dated _____

Addendum No. _____, dated _____

Addendum No. _____, dated _____

Addendum No. _____, dated _____

Appendix 2

Pricing Proposal

Consultant's Schedule of Personnel and Hourly Rates

Role/Responsibility	Names	Hourly Rates					
		Base Rate Daytime, Monday - Friday	Overtime Differential* Monday - Friday	Saturday Differential*	Sunday Differential*	Holiday Differential*	Evening Differential*
Sr. Construction Safety Professional							
Construction Safety Professional							
Construction Safety Inspector							
Time during which evening differential applies:							
Name of Company:							
Submitted By (print name):							
Submitted By (signature):							
Title:							
Date:							

*If the hourly rate differs from the base rate, provide either the \$ increase (e.g., \$10), or the % increase (e.g., 10%) over the base rate.

Appendix 3

RED+F Qualification Questionnaire

RED+F QUALIFICATION QUESTIONNAIRE

INFORMATION TO BE FURNISHED BY A CONTRACTOR

(Note: The term Contractor also refers to Consultants.) All questions on this questionnaire must be answered; do not leave blanks – where appropriate, state “None” or “Not Applicable” (N/A). If additional space is required to fully respond to any questions, please add sheets to this questionnaire and reference the questions/answers appropriately.) NYULMC reserves the right to inquire further with respect to any matter in this questionnaire or otherwise to determine the suitability of Contractor to receive an award of a contract.

PART I. IDENTITY OF CONTRACTOR:

- A. Contractor’s full legal name: _____
- B. Tax ID Number (“TIN”), Employer Identification Number (“EIN”) and Social Security Number (“SSN”), as applicable: _____
- Dun & Bradstreet DUNS (DUNS) # (unique nine digit number) _____
- C. Contractor’s form of legal entity (corporation, joint venture, sole proprietorship, etc.): _____
- If the Contractor is a Joint Venture, or Partnership, please list all partner firms and/or parties to the Joint Venture below. All partners and/or parties listed are also required to individually complete a separate RED+F Qualification Questionnaire.
- (1) Partner/Party Name _____
- TIN, EIN, or SSN _____
- DUNS # _____
- Percentage of Ownership: _____
- (2) Partner/Party Name: _____
- TIN, EIN or SSN: _____
- DUNS # _____
- Percentage of ownership: _____
- D. State or country under whose laws Contractor is organized and year organized: _____
- E. Number of employees - Company wide _____ Local office _____
- F. Does the Contractor now use or, in the past ten (10) years has it used, TIN, EIN, doing business as or “DBA”, name, trade name or abbreviation other than the Contractor’s name or TIN, or EIN number listed in Part I.B. above? _____

G. Contractor's mailing address: _____

H. Contractor's street address (complete only if different than "F"): _____

I. Has contractor changed its address in the past five (5) years and, if so, what was the firm's prior address(es)? _____

J. Contractor's telephone number: _____ Fax number: _____
Email address: _____

K. Does the Contractor own or rent office space? Please provide the details:

PART II. IDENTITY OF PERSON COMPLETING THIS QUESTIONNAIRE:

A. Name: _____

B. Employer/Title: _____

C. Telephone number: _____ Fax number _____

D. Email address: _____ Mobile number _____

PART III. CONTRACTOR REPRESENTATIONS: If for any reason a representation on this questionnaire is not accurate and complete as of the time Contractor signs this form, Contractor must identify the provision and explain the reason in detail on a separate sheet. Absent such an explanation, Contractor represents that the following statements are complete and accurate.

The following questions apply to: i) Contractor, Contractor's parent, subsidiaries and affiliates of Contractor (if any); ii) any joint venture (including its individual members) and any other form of partnership (including its individual members) which includes Contractor or Contractor's parent, subsidiaries, or affiliates of Contractor, iii) Contractor's directors, officers, principals, managerial employees, and any person or entity with a 10% or more interest in Contractor, iv) any legal entity, controlled, or 10% or more of which is owned, by Contractor, or by any director, officer, principal, managerial employee of Contractor, or by any person or entity with a 10% or more interest in Contractor. (If the answer to any question is "YES," Contractor must provide all relevant information on a separate sheet annexed hereto).

Please check this box if a separate sheet is attached: ☐

(1) Within the past five (5) years, has Contractor been declared not responsible to receive a public or private contract?	<input type="checkbox"/> NO YES <input type="checkbox"/>
(2) Has Contractor been debarred, suspended, or otherwise disqualified from bidding, proposing, or contracting?	<input type="checkbox"/> NO YES <input type="checkbox"/>
(3) Is there a proceeding pending relating to Contractor's responsibility, debarment, suspension, or qualification to receive a public or private contract?	<input type="checkbox"/> NO YES <input type="checkbox"/>
(4) Within the past five (5) years, has Contractor defaulted on a contract or been terminated for cause on a public or private contract?	<input type="checkbox"/> NO YES <input type="checkbox"/>
(5) Has a public or private entity requested or required enforcement of any of its rights under a surety agreement on the basis of Contractor's default or in lieu of declaring Contractor in default?	<input type="checkbox"/> NO YES <input type="checkbox"/>
(6) Within the past five (5) years, has the Contractor been required to engage the services of an Integrity Monitor in connection with the award of or in order to complete, any public or private contract?	<input type="checkbox"/> NO YES <input type="checkbox"/>
(7) Within the past five (5) years, have Contractor's safety practices/procedures been evaluated and ruled as less than satisfactory by a public or private entity?	<input type="checkbox"/> NO YES <input type="checkbox"/>
(8) Has Contractor's Workers Compensation Experience Rating (also known as the Experience Modification Rate or EMR) been 1.2 or greater at any time in the last five (5) years? If "yes", please explain.	<input type="checkbox"/> NO YES <input type="checkbox"/>

PART IV. QUESTIONS WHICH MUST BE ANSWERED BY “YES” or “NO”: (In the event of a “YES,” Contractor must provide all relevant information on a separate sheet annexed hereto.)

To the best of your knowledge after diligent inquiry, in connection with the business of Contractor or any other firm which is related to Contractor by any degree of common ownership, control, or otherwise, do any of the following statements apply to: i) Contractor, Contractor’s parent, subsidiaries and affiliates of Contractor (if any); ii) any joint venture (including its individual members) and any other form of partnership (including its individual members) which includes Contractor or Contractor’s parent, subsidiaries, or affiliates of Contractor; iii) Contractor’s directors, officers, principals, managerial employees, and any person or entity with a 10% or more interest in Contractor; iv) any legal entity controlled, or 10% or more of which is owned, by Contractor, or by any director, officer, principal, managerial employee of Contractor, or by any person or entity with a 10% or more interest in Contractor:

A. Within the past ten (10) years, has been convicted of or pleaded nolo contendere to (1) any felony or (2) a misdemeanor related to truthfulness in connection with business conduct.	<input type="checkbox"/> NO YES <input type="checkbox"/>
B. Is currently disqualified from selling or submitting bids/proposals to or receiving awards from or entering into any contract with any federal, state or local government agency, any public authority or any other public entity.	<input type="checkbox"/> NO YES <input type="checkbox"/>
C. Has within a ten (10) year period preceding the date of this Questionnaire been convicted of or had a civil judgment rendered against it for or in relation to: (i) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; (ii) collusion with another person or entity in connection with the submission of bid/proposals; (iii) violation of federal or state antitrust statutes or False Claims Acts; or (iv) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements) or receiving stolen property.	<input type="checkbox"/> NO YES <input type="checkbox"/>

PART V. ADDITIONAL QUESTIONS: In the event of a "Yes", Contractor must provide all relevant information on a separate sheet annexed hereto.

A. List the name, title, and home and business address of each person or legal entity which has a 10% or more ownership or control interest in Contractor:

Name: _____

Title: _____

Home address: _____

Business address: _____

B. List the name, title, and home and business address of each director and principal officer of Contractor:

Name: _____

Title: _____

Home address: _____

Business address: _____

C. In the past ten (10) years, has Contractor entered into a consent decree, deferred prosecution agreement or a non-prosecution agreement?

☐ NO YES ☐

D. In the past seven (7) years, have any bankruptcy proceedings been initiated by or against the Contractor (whether or not closed) or is any bankruptcy proceeding pending by or against the Contractor regardless of the date of filing?

☐ NO YES ☐

E. In the past five (5) years, have there been any judgments or tax liens of \$100,000 or more, including but not limited to judgments based on taxes owed, fines and penalties assessed by a government agency against Contractor at any time?

☐ NO YES ☐

F. During the past five (5) years, has the Contractor failed to file any applicable federal, state or local tax return?

☐ NO YES ☐

G. Does any principal owner or officer of the Contractor, or any member of his/her immediate family, have an ownership interest in any entity that holds the title or lease to any real property used by the Contractor?

☐ NO YES ☐

H. Does Contractor share office space, staff, equipment, or expenses with any other entities? If "YES", please provide details.

☐ NO YES ☐

I. Contractor is required to provide a list of contracts as requested in (1) and (2) below. For each of the contracts listed in (1) and (2) below, Contractor shall provide a brief description of the work performed, the contract number, the dollar amount at award and at completion, date completed, and the name and telephone number of the owner's representative:

(1) List all contracts completed during the last three (3) years that are relevant to the type of work you expect to perform at NYULMC. If more than three (3) contracts have been completed in the past three (3) years, list the last three (3) contracts completed here and attach additional pages for the remainder.

a. Brief description of work performed: _____

Contract number: _____

Dollar amount of award: _____

Date completed: _____

Name/Telephone number and email address of company and Owner's Representative

Dollar Amount at completion: _____

b. Brief description of work performed: _____

Contract number: _____

Dollar amount of award: _____

Date completed: _____

Name/Telephone number and email address of company and Owner's Representative:

Dollar Amount at completion: _____

c. Brief description of work performed: _____

Contract number: _____

Dollar amount of award: _____

Date completed: _____

Name/Telephone number and email address of company and Owner's Representative:

Dollar Amount at completion: _____

(2) List each contract completed by Contractor during the last three (3) years for which liquidated damages or penalty provisions were assessed against Contractor for failure to complete the work on time or for any other reason. Contractor is required to provide an explanation of the circumstances for each contract.

a. Brief description of work performed: _____

Contract number: _____

Dollar amount of award: _____

Date completed: _____

Name/Telephone number and email address of company and Owner's Representative: _____

Dollar Amount at completion: _____

b. Brief description of work performed: _____

Contract number: _____

Dollar amount of award: _____

Date completed: _____

Name/Telephone number and email address of company and Owner's Representative: _____

Dollar Amount at completion: _____

c. Brief description of work performed: _____

Contract number: _____

Dollar amount of award: _____

Date completed: _____

Name/Telephone number and email address of company and Owner's Representative: _____

Dollar Amount at completion: _____

If none of the above situations occurred during the last three (3) years, state "NONE" here: _____

J. Furnish the following information for each contract for which, during the last three (3) years, the Contractor was:

- (1) Terminated for default; or
- (2) Sued to compel performance; or
- (3) Sued to recover damages, including, without limitation, upon an alleged breach of contract, misfeasance, error or omission or other alleged failure on Contractor's part to perform as required by the contract; or
- (4) Called upon a surety to perform the work; or
- (5) Required to engage the services of an Integrity Monitor in connection with the award of or in order to complete, any public or private contract; or
- (6) Required to draw on a letter of credit in lieu of a performance bond.

a. Brief description of work performed: _____

Contract number: _____

Dollar amount of award: _____

Date completed: _____

Name/Telephone number and email address of company and Owner's Representative: _____

If none of the above situations occurred during the last three (3) years, state "NONE" here: _____

A. Annual average revenues of firm for last 3 years: _____

- B. New awards list the value and billing amount of new contracts awarded to your firm for the last 5 years

	Contract Awards \$	Billings
Current Year 20____	\$ _____	\$ _____
Previous Year 20____	\$ _____	\$ _____
Two Years Prior 20____	\$ _____	\$ _____
Three Years Prior 20____	\$ _____	\$ _____
Four Years Prior 20____	\$ _____	\$ _____

A. Indicate if your business qualifies as one of the following?

- | B. | Governmental Certification | Expiration Dates |
|----|----------------------------|------------------|
|----|----------------------------|------------------|

Dormitory Authority _____

Port Authority of NY/NJ _____

School Construction Authority _____

Health & Hospitals _____

Other _____

Attach a copy of your current certification).

-

-

PART VIII. SAFETY:

A. Worker's Compensation Carrier: _____
Policy Expiration Date: _____

B. Experience Modification Rate (EMR). OSHA Recordable and Lost Time information

List your firm's EMR for the three most recent years:

Current _____

Previous _____

Two years prior _____

C. Please use your OSHA 200 logs (or insurance loss runs) to complete this section

Number of injuries and illnesses	One Year Prior	Two Years Prior	Three Years Prior
1. Number of lost workday cases incl. restricted days (columns 2 & 9)	_____	_____	_____
2. Number of OSHA recordable (columns 2, 6, 9, & 13)	_____	_____	_____
3. Number of fatalities	_____	_____	_____

D. Total employee hours worked

One Year Prior	Two Years Prior	Three Years Prior
----------------	-----------------	-------------------

_____	_____	_____
-------	-------	-------

E. Name of insurance company: _____

Address: _____

Telephone: _____ Contact name: _____

**NYU LANGONE MEDICAL CENTER
RED+F QUALIFICATION QUESTIONNAIRE**

PART VI - AFFIDAVIT AND ACKNOWLEDGEMENT

STATE OF _____)
) SS: _____
COUNTY OF _____)

On the _____ day of _____ 201____, before me personally came and appeared
_____ by me known to be said person, who swore under oath as follows:

1. I am _____ of _____.
(Print name and title) (Print name of firm)
2. I am duly authorized to sign this RED+F Qualification Questionnaire on behalf of said firm and duly signed this document pursuant to said authorization.
3. The answers to the questions set forth in the RED+F Qualification Questionnaire and, except as set forth in the stated exceptions in Part III, the representations set forth in this questionnaire, are true, accurate and complete. I authorize NYU Langone Medical Center to verify any such information and to conduct any background checks it deems appropriate.
4. I acknowledge and understand that the RED+F Qualification Questionnaire includes provisions which are deemed included in the contract if awarded to the firm.

Signature

Sworn to and subscribed to before me
this _____ day of _____, 20____.

Notary Public _____ County
My commission expires: _____

RED+F QUALIFICATION QUESTIONNAIRE

PART VII –AFFIDAVIT OF NO CHANGE

(If applicable, complete and submit **two** original, signed, notarized affidavits of no change.)

STATE OF _____)
) ss.:
COUNTY OF _____)

On the _____ day of _____, 20____, before me personally came and appeared _____,
by me known to be said person, who swore under oath as follows:

1. I am _____ of _____.
(Print name and title) (Print name of firm)
2. The firm is the Bidder/Proposer/Contractor for Contract _____. I am duly authorized to sign this Affidavit of No Change on behalf of said firm and duly signed this document pursuant to said authorization.
3. The Bidder/Proposer/Subcontractor previously submitted a RED+F Qualification Questionnaire within one (1) year prior to the date hereof, to NYU Langone Medical Center (NYULMC).
4. Attached is an accurate and true copy of such previously submitted RED+F Qualification Questionnaire.
5. I hereby certify that there has been no material change in the information specified on such attached RED+F Qualification Questionnaire, except as follows (attach additional sheet as required):

6. I acknowledge and understand that the previously submitted RED+F Qualification Questionnaire includes provisions which are deemed included in the Contract if awarded to the firm.

Bidder/Proposer/Contractor must sign here: _____

Dated: _____

Sworn to and subscribed to before me this _____ day of _____, 20__

(Notary Public)

Notary Public _____ County

My commission expires: _____

Appendix 4

Proposed Contract

ON-CALL AGREEMENT – CONSTRUCTION SAFETY CONSULTING SERVICES

OWNER: NEW YORK UNIVERSITY SCHOOL OF MEDICINE,
an administrative unit of
NEW YORK UNIVERSITY
550 First Avenue
New York, New York 10016

CONSULTANT: []

DATE: []

ON-CALL AGREEMENT – CONSTRUCTION SAFETY CONSULTING SERVICES

ON-CALL AGREEMENT – CONSTRUCTION SAFETY CONSULTING SERVICES
(the "Agreement") dated as of [], by and between **New York University School of Medicine, an administrative unit of New York University**, a New York education institution with offices located at 550 First Avenue, New York, New York 10016 (the "Owner"), and [] a [] with offices located at [] (the "Consultant").

W I T N E S S E T H :

WHEREAS, the Owner, on behalf of itself and its affiliates (NYU Hospitals Center, NYU Lutheran Medical Center and the New York University Medical Center Condominium) may select the Consultant from time to time to perform construction safety consulting services in connection with construction projects that the Owner or NYU Hospitals Center is undertaking; and

WHEREAS, the Consultant is willing to perform such services; and

WHEREAS, the Owner and the Consultant desire to set forth the terms and conditions for performance of such services.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein, the Owner and the Consultant agree as follows:

1. Project Task Orders.

A. This Agreement establishes the terms and conditions for performance of services by the Consultant pursuant to project-specific Task Orders that may be executed by the parties in the form attached hereto as Exhibit A (each a "Task Order"), for individual projects (each a "Project"). The Task Order is the only valid authorization for the Consultant to perform services relating to any Project, and the Owner shall not be obligated to pay for any services of the Consultant without a fully-executed Task Order. In the event of a conflict or inconsistency between the provisions of the Task Order and those of the Agreement, the provisions of the Task Order shall govern, but only to the extent of the inconsistency. This Agreement provides no assurance that any Task Orders will be executed by the Owner with the Consultant, and execution of Task Orders remains within the Owner's absolute discretion. The Owner may seek proposals and conduct negotiations for construction safety consulting services, and may execute Task Orders or agreements with other consultants for any or all portions of a project.

B. The Owner will issue a Purchase Order for each Task Order under this Agreement. The Owner and the Consultant agree that the Owner's issuance of a Purchase Order referencing a Task Order executed by the Consultant will be the equivalent to execution of the Task Order by the Owner. A copy of the Task Order showing execution by the Consultant, together with the Purchase Order issued by the Owner, will be deemed for all purposes to be a fully executed Task Order under this Agreement.

C. Each Task Order shall identify the Owner's representative with authority to act on the Owner's behalf in dealing with the Consultant for the Project (the "Owner's Representative").

2. The Contract Documents. The Contract Documents for each Project shall consist of this Agreement, the applicable Task Order, any fully executed change orders and any other documents listed in the Task Order. Together, these form the Contract for each Project. Reference herein to the Contract and the Contract Documents refers to the Contract and Contract Documents for each Project. No change may be made to any of the Contract Documents except by a written change order signed by a duly authorized representative of the Owner.

3. The Services and Deliverables. The Consultant shall provide competent safety personnel to perform the tasks identified in a Task Order and the Consultant shall provide such services in accordance with the staff requirements and qualifications set forth below (the "Services"). If the Owner attaches or references a copy of the Consultant's proposal in the Task Order, then in the event of an inconsistency between the terms of the Consultant's proposal and those contained in this Agreement, the terms of this Agreement shall govern, but only to the extent of such conflict or inconsistency.

A. Senior Construction Safety Professional. A Senior Construction Safety Professional's primary function is to advise the Owner on health and safety concerns during the planning and execution of the Project and only a Senior Construction Safety Professional shall perform this function. A Senior Construction Safety Professional may provide the following services:

a. advise the Owner on health and safety issues during the planning and execution of the Project (such as providing advice on how best to address safety and health issues for patients, medical center staff, the public and construction personnel), with a focus on preventing incidents and reducing risks associated with construction of the Project;

b. propose specifications to enhance Project safety and health and prevent or minimize adverse events;

c. review and, when necessary, propose improvements to the Project's construction means, methods and work processes (such as the Contractor's Project's health and safety plan, method of procedure, job hazard analysis, pre-task plan documents, demolition and construction methods, and materials handling means) that enhance Project safety; and

d. actively participate in meetings and review and comment on meeting minutes from a construction safety standpoint.

ii. A Senior Construction Safety Professional is defined as an employee of the Consultant who, unless otherwise indicated, has the following minimum qualifications:

a. a bachelor's degree in a relevant field (although a master's degree is preferred);

b. certification as a safety professional (preferable, but not required);

c. a minimum of ten (10) years' experience in construction safety or other professional experience satisfactory to the Owner;

d. experience in healthcare construction, life/fire safety and infection prevention and control, and knowledge of the New York City Building Code, the New York City Fire Code, local laws, OSHA standards impacting construction and occupied facilities (including 29 CFR 1910 and 29 CFR 1926), NFPA 101 Life Safety Code, NFPA 241 and ANSI A10 Standards; and

e. documented training in infection control methods for construction, knowledge of healthcare construction technologies and techniques, and a familiarity of, and ability and sufficient competency to recommend, safe healthcare construction methods and materials.

B. Construction Safety Professional. A Construction Safety Professional's primary function is to advise the Owner on how best to address Project health and safety issues during Complex Tasks, Occupant Impact Tasks and Potentially Hazardous Tasks and only a Construction Safety Professional shall perform this function.

i. Complex, Occupant Impact and Potentially Hazardous Tasks are defined as follows:

a. A Complex Task is any potentially hazardous task that requires specific competencies (such as structural engineering expertise, complex crane hoist/lift expertise or industrial hygiene expertise) for safe and successful completion. Examples include, but are not limited to, confined space entry, crane and rigging operations, demolition, excavation and hazardous substance avoidance or control.

b. An Occupant Impact Task is any task that, due to its nature, requires appropriate levels of advanced planning in order to eliminate or lessen its potential negative impact to individuals outside the Project Site. Such tasks include, but are not limited to, those tasks that could create noise or vibration above ambient levels, impact occupant life safety by obstructing or modifying egress or impairing fire protection systems, impact occupant utilities (through shutdowns, for example) or release air contaminants (such as dust, mold, gases or vapors) outside of the Project Site.

c. A Potentially Hazardous Task is any task that presents a substantial probability of death, serious physical harm or significant impairment to health without appropriate safety or health protective measures. Examples include, but are not limited to, tasks that could result in someone being caught in an excavation cave-in, being exposed to energized electrical parts, being overexposed to health hazards, being struck by an object, falling six (6) feet or more to a lower level, or working on routine tasks that have become non-routine due to unexpected occurrences such as equipment breakdowns, weather conditions or changes in the Project's safety plan.

ii. A Construction Safety Professional may provide the following services:

- a. contribute to the development of the Project's plans for the execution of specific tasks;
- b. review the Contractor's method of procedure, job hazard analysis and pre-task plan documents and, where necessary, recommend improvements;
- c. monitor the execution of specific tasks;
- d. provide Project Site emergency response services (such as for accident investigation) on short notice to any location within the New York City Metropolitan area; and
- e. conduct technical accident investigation and analysis work at the Project Site on short notice.

iii. A Construction Safety Professional is defined as an employee of the Consultant who has the following minimum qualifications, unless otherwise indicated below:

- a. bachelor's degree in a relevant field (although a master's degree is preferred);
- b. certification as a safety professional (preferable, but not required);
- c. a minimum of five (5) years' experience in construction safety or other professional experience satisfactory to the Owner;
- d. experience in healthcare construction, life/fire safety and infection prevention and control; knowledge of the New York City Building Code, the New York City Fire Code, local laws, OSHA standards impacting construction and occupied facilities (including 29 CFR 1910 and 29 CFR 1926), NFPA 101 Life Safety Code, NFPA 241 and ANSI A10 Standards; and
- e. documented training in infection control methods for construction; knowledge of healthcare construction technologies and techniques; and a familiarity of, and ability and sufficient competency to recommend, safe healthcare construction methods and materials.

C. Construction Safety Inspector. A Construction Safety Inspector's primary function is to conduct routine safety and health inspections of the Project Site exterior where the inspections do not involve Complex Tasks, Occupant Impact Tasks or Potentially Hazardous Tasks. The Construction Safety Inspector shall submit reports of its findings electronically to the Owner. A Construction Safety Inspection is defined as an employee of the Consultant who has the following minimum qualifications:

- i. knowledge of hazards that can negatively impact adjacent occupied healthcare facilities;
- ii. OSHA 30-hour construction safety card;
- iii. three (3) years' experience in construction safety; and
- iv. preferably a certified Construction Health and Safety Technician.

D. Staffing. The Task Order shall identify the Consultant's staffing for the Project, whom shall be pre-qualified by the Owner, and identify the name and role of each employee of the Consultant that will be engaged in the Project. The Consultant shall not engage the services of any subconsultants (except as employees of the Consultant) to assist it in connection with the performance of the Consultant's Services without the prior written approval of the Owner. The Consultant shall be liable and responsible to the Owner for the acts or omissions of the Consultant's subconsultants.

E. Owner's Consultants. The Owner may engage other consultants (the "Owner's Consultants") to furnish services for a Project and the Consultant shall at all times cooperate with the Owner's Consultants and coordinate its Services with the services of the Owner's Consultants.

F. Meeting Minutes. The Consultant shall provide written minutes of all Project meetings (except for meetings attended by any Contractor or Owner Consultant required to provide minutes) and reports of all reviews and comments from others.

G. Knowledge of and Compliance with the Laws, Codes, Rules and Regulations. The Consultant represents that it is knowledgeable of all laws, codes, rules and regulations applicable to the performance of its Services hereunder. The Consultant represents and agrees that all documents delivered by the Consultant under this Agreement shall comply with all applicable laws. The Consultant shall make itself aware of and comply with the Owner's safety policies for vendors by visiting <http://nyulangone.org/vendor-information/environmental-health-safety-policies-for-vendors>. If the Project Site is not owned by NYU Hospitals Center, NYU Lutheran Medical Center or the New York University Medical Center Condominium, then the Consultant shall also make itself aware of any rules and regulations set forth by the owner of the Project Site and shall comply with such rules and regulations during the performance of its services, all of which are incorporated herein by reference.

4. The Contractor. If the Owner has retained a general contractor for a Project, then the general contractor shall be identified in the Task Order for the Project (the "Contractor").

5. Time for Performance. The Consultant shall perform and complete the Services within the timeframes, if any, that are set forth in applicable Task Orders.

6. Compensation. The Owner shall compensate the Consultant for the Services under this Agreement and any Task Order, subject to the Not-to-Exceed Amount set forth in the Task Order, by payment of amounts determined as follows and as may be further set forth in the Task Order:

A. Compensation for time actually expended in performance of the Services by the personnel of the Consultant listed (by name or role) in the Consultant's Schedule of Personnel and Hourly Rates attached hereto as Exhibit B at the rates set forth therein. The rates set forth in Exhibit B shall remain firm for a period of one (1) year. Thereafter, such rates are subject to annual upward adjustment with the Owner's prior approval, upon demonstration of increased costs by the Consultant.

B. Reimbursement for Reimbursable Expenses, at reasonable actual cost and without mark-up by the Consultant. Reimbursable Expenses shall include the following actual expenses: expenses of reproduction, messenger and overnight express services and travel (excluding commutation). In no event shall the Consultant expend or incur any Reimbursable Expense in excess of \$500.00 unless authorized by the Owner in advance, in writing.

7. Payments. The Consultant shall invoice monthly by emailing invoices to redf.ps@nyumc.org, which shall reference the Owner's project information management ("PIM") name and number and the Owner's Purchase Order number, as indicated in the Task Order. Invoices shall include, without limitation, timesheets for the time actually expended by the Consultant's personnel in performance of the Services, and written statements by the Consultant detailing Reimbursable Expenses together with paid receipts, invoices or other written proof of the Reimbursable Expenses. Payment to the Consultant shall be made within forty-five (45) days of the Owner's approval of the Consultant's invoice, and the Owner shall have fourteen (14) days to approve each invoice. If the Owner objects to all or part of an invoice, the Owner nevertheless shall pay any undisputed amounts to the Consultant within the time set forth in this Section 7. The Owner shall have the right to retain, deduct and offset from any amount payable to the Consultant hereunder any and all amounts for which the Owner is or may become liable by reason of the failure of the Consultant to comply with the terms of the Agreement or any Task Order or by reason of any negligence by the Consultant in the performance of Services under the Agreement and any Task Order.

8. Ownership of Documents. Title to all deliverables and materials prepared by the Consultant under this Agreement and any Task Order shall vest in the Owner upon payment by the Owner of the Owner's undisputed monetary obligations under this Agreement and the applicable Task Order.

9. Insurance and Indemnification. Unless otherwise indicated by a Task Order, the Consultant shall carry insurance as follows:

- (i) Statutory Workers' Compensation insurance, including Employer's Liability Insurance of not less than \$500,000.00 per occurrence and New York State Disability Benefits Insurance covering all persons employed or retained by the Consultant in connection with Services under this Agreement and any Task Order.

- (ii) Commercial General Liability Insurance written on an “occurrence basis,” with a combined personal injury, bodily injury (including death) and property damage limit of at least \$2,000,000.00 for each occurrence, and in the annual aggregate, such damage limit, including at least the following coverages: broad form contractual liability, broad form property damage and personal injury liability (with the employees' exclusion void) or its equivalent.
- (iii) Commercial Automobile Liability Insurance covering all owned or leased automobiles used by the Consultant in connection with the Services under this Agreement and any Task Order in an amount not less than \$1,000,000.00
- (iv) Professional liability insurance in an amount not less than \$2,000,000.00 for each wrongful act and \$2,000,000.00 in the aggregate, or as otherwise set forth in the applicable Task Order.
- (v) Minimum coverages may be provided under one policy or through primary and umbrella policies.
- (vi) All coverages except for Professional Liability and Workers' Compensation shall have the following endorsements attached: 20-37, 20-10 and 20-26, or equivalent.

A. All required insurance shall be maintained with responsible insurance carriers (each, an “Insurer”) licensed and admitted to do business in the State of New York, and having a “Best’s” rating of not less than A-. Prior to execution of this Agreement and before commencing the performance of any of the Services hereunder, the Consultant shall deposit with the Owner's Director of Insurance the original policies of insurance, or certificates therefor, bearing notations or accompanied by other evidence satisfactory to the Owner of the payment of all premiums thereunder. Upon the renewal, replacement or cancellation of any required Insurance, replacement Certificates of Insurance shall be delivered to the Owner's Director of Insurance.

B. With respect to the Commercial General Liability and Automobile Liability Insurance, the Owner, NYU Hospitals Center, New York University Medical Center Condominium, NYU Health System and NYU Lutheran Medical Center shall be shown as additional insureds. Certificates shall show the type, amount and class of operations covered. This insurance shall be primary of any similar insurance carried by the Owner. The Consultant's insurer shall, upon demand of the Owner, deliver to the Owner a certified copy of the insurance policies herein described. Should any of the above-described policies be canceled before the expiration date thereof, notice shall be delivered in accordance with the policy provisions. The Consultant shall provide written notice to the Owner's Director of Insurance immediately after the carrier notifies the Consultant of such cancellation.

C. The Consultant represents and warrants that (a) its policies of insurance as required hereunder will not be invalidated by the presence of the Owner's representatives, contractors, other consultants or any other authorized persons on the Project Site; and (b) violation of any of

the terms of the policy or any other policy issued by the insurer will not by itself invalidate any such policy except to the extent provided in a copy of any such policy delivered by the Consultant to the Owner at the outset of applicable coverage.

D. The insurance policies required by this Section 9 shall be maintained in full force and effect for the following periods:

- (i) Commercial General Liability Insurance shall be kept in full force and effect until final payment to the Consultant.
- (ii) Workers' Compensation Insurance and New York State Disability Benefits Insurance shall be kept in force until receipt of final payment by the Consultant.
- (iii) Professional Liability Insurance shall be kept in full force and effect until three years after final payment to the Consultant.

E. To the fullest extent permitted by law, the Consultant shall defend, indemnify and hold harmless the Owner, NYU Hospitals Center, New York University Medical Center Condominium, NYU Health System and NYU Lutheran Medical Center and their respective officers, trustees, employees, affiliates, agents, successors, and assigns from and against any and all claims, losses, damages, expenses, penalties, costs and other liabilities in connection with the Consultant's Services under this Agreement and any Task Order, including, without limitation, reasonable attorneys' fees and disbursements, due to personal injury, death or damage to property arising out of or resulting from negligence on the part of the Consultant in the performance of Services under this Agreement and any Task Order.

F. The Owner shall not be obligated to pay any costs or expense caused by default or negligent act or omission of the Consultant or any of the Consultant's subconsultants, employees, agents, engineers or other persons engaged by the Consultant in connection with a Project, and the Consultant shall indemnify and hold harmless the Owner from any and all liability, cost and expense so caused.

10. Termination.

A. This Agreement or any Task Order may be terminated by either party in the event of a default by the other party upon seven (7) days' prior written notice, provided the defaulting party fails to cure its default within such time through no fault of the party initiating the termination.

B. Default by the Consultant shall include, without limitation, the following:

- (i) any failure by the Consultant to perform any of its respective obligations (as specified in this Agreement or any Task Order) diligently, timely and expeditiously; or
- (ii) a general assignment by the Consultant for the benefits of its creditors, a receiver or trustee is appointed on account of the Consultant's insolvency, the Consultant otherwise is or becomes insolvent, or an order for relief is

entered against the Consultant under chapter 7 or chapter 11 of Title 11 of the United States Code, without assurances reasonably satisfactory to the Owner to the effect that the Consultant or any party acting on behalf of the Consultant will be able to prosecute the Services required by the Agreement or any Task Order in a timely and professional manner.

C. The Owner may, at any time and for any reason, terminate this Agreement or any Task Order for convenience upon not less than seven (7) days' written notice to the Consultant.

D. In the event that the Consultant terminates this Agreement or any Task Order for default by the Owner or the Owner terminates this Agreement or any Task Order for convenience before completion of the Consultant's Services, the Consultant shall be entitled to payment of that portion of the hourly compensation and Reimbursable Expenses which theretofore has not been paid to the Consultant for all services actually and satisfactorily performed in accordance with this Agreement and any applicable Task Order by the Consultant up to the date of such termination, plus an amount equal to reasonable and actual out-of-pocket costs and expenses incurred by the Consultant and directly attributable to the termination of this Agreement or any Task Order.

E. Anything contained herein to the contrary notwithstanding, upon the termination of this Agreement or any Task Order by the Owner for default, the Consultant shall not be entitled to any further payment until after completion of the Services contemplated by this Agreement or any Task Order and shall be liable to the Owner for all additional costs and expenses which the Owner may incur above and beyond the costs and expenses which the Owner would have incurred in connection with the Services contemplated by this Agreement or any Task Order if the Owner had not terminated this Agreement or any Task Order for default, including, without limitation, the expense of engaging another consultant. In the event that the Owner does not incur any such additional costs and expenses, then after completion of the Services contemplated by this Agreement or any Task Order, the Consultant shall be entitled to payment of that portion of the hourly compensation and Reimbursable Expenses which theretofore has not been paid to the Consultant for all services actually and satisfactorily performed in accordance with this Agreement and any Task Order by the Consultant up to the date of such termination.

F. Upon any termination of this Agreement or any Task Order in accordance with the provisions of this Section 8, the Consultant shall:

- (i) discontinue all of its services, from and after the date of the notice of termination, except as may be required to complete any item or portion of such services to a point where discontinuance will not cause unnecessary waste or duplicative work or cost, for which services, the Consultant, if there has been a termination for convenience, shall be compensated in the manner and to the extent that the Consultant otherwise would have been compensated under the terms of this Agreement or any Task Order;
- (ii) cancel, or, if so directed by the Owner, transfer to the Owner all or any of the commitments and agreements made by the Consultant relating to this

Agreement or any Task Order, to the extent same may be cancelled or transferred by the Consultant;

- (iii) transfer to the Owner in the manner, to the extent, and at the time directed by the Owner, all Documents, supplies, materials and other property produced as a part of, or acquired in the performance of the Consultant's Services in connection with this Agreement or any Task Order; and
- (iv) take such other actions as the Owner may reasonably direct.

G. The Owner may, at any time and for any reason, direct the Consultant to delay or suspend Services under this Agreement or any Task Order for a period of time. Such direction shall be in writing and shall specify the period during which Services are to be stopped. If the Owner directs the Consultant to delay or suspend Services under this Agreement or any Task Order for a reason other than arising from an act or omission of the Consultant, the Consultant shall be entitled only to payment of that portion of the hourly compensation and Reimbursable Expenses that theretofore has not been paid to the Consultant to the date of such written direction on account of the Services actually and satisfactorily performed in accordance with this Agreement or any Task Order by it prior to such delay or suspension. The Consultant shall resume Services upon the date specified in such direction, or upon such other date as the Owner may thereafter specify in writing upon reasonable notice to the Consultant; provided, however, that if the Owner shall have directed a suspension of Services lasting more than eight (8) months, the Consultant may elect to terminate this Agreement or any Task Order by giving the Owner written notice thereof, and in such event the Consultant shall be entitled only to payment of that portion of the hourly compensation and Reimbursable Expenses which theretofore has not been paid to the Consultant for the Services actually and satisfactorily performed in accordance with this Agreement and any applicable Task Order by it prior to the termination date, plus an amount equal to reasonable and actual Reimbursable Expenses incurred by the Consultant and directly attributable to the termination of this Agreement or any Task Order.

H. No right of termination shall be asserted or exercised by the Consultant under circumstances where the Consultant's right to receive payments claimed to be due and owing is disputed by the Owner and proceedings regarding the resolution thereof have been commenced by the Owner or the Consultant. Rather, under such circumstances, the Consultant shall continue to perform its Services hereunder during the pendency of any such dispute as if such dispute had not occurred.

11. Assignment.

A. The Consultant may not assign, transfer, convey, pledge or otherwise dispose of its interest, or any part thereof, in this Agreement or any Task Order, and any transaction in violation of this provision shall be void. A transfer (by one or more transfers) of a majority of the stock of the Consultant or of a controlling interest of the Consultant (directly or indirectly, by operation of law or otherwise) shall be deemed a transfer of the Consultant's interest in this Agreement or any Task Order, in violation of this provision.

B. The Owner may, at any time, assign, transfer, convey, pledge or otherwise dispose of its interest, or any part thereof, under this Agreement or any Task Order. Upon such assignment and provided that the prospective assignee shall assume the Owner's obligations hereunder, the Owner shall be released from any and all of its obligations hereunder arising from and after the date of such assignment and assumption. Accordingly, the Consultant agrees that from and after the effective date of such assignment, the Consultant shall recognize such assignee as being in the stead and place of the Owner and, in such event, all of the obligations of the Consultant to the Owner hereunder shall be performed for, and shall run in favor of, such assignee.

12. Records.

A. The Consultant shall, until six (6) years after (a) completion of the Consultant's Services, or (b) the earlier termination of this Agreement, maintain, complete and correct books and records relating to the hourly compensation and Reimbursable Expenses. The Consultant shall make such books and records available to the Owner and its representatives for review and audit at all such reasonable times as the Owner may, from time to time, direct.

B. In the event that the Consultant shall fail to comply with the provisions of this Section 12, and as a result thereof, shall be unable to provide such books and records or reasonable evidence of such data, the Owner shall not be required to pay the portion of such hourly compensation and Reimbursable Expenses then due or next becoming due and payable, as the case may be, not reasonably substantiated as aforesaid, and if such payment has already been made, the Owner may require the Consultant to refund such payment. Any excessive audit costs incurred by the Owner due to the Consultant's failure to maintain such adequate records shall be borne solely by the Consultant.

13. General Provisions.

A. The relationship created by this Agreement and any Task Order between the Owner and the Consultant is one of independent contractor and is in no way to be construed as creating or appointing the Consultant as an agent of the Owner for any purpose whatsoever.

B. The failure of the Owner or the Consultant to insist, in any one instance or more, upon the performance of any of the provisions of this Agreement or any Task Order, or to exercise any right or privilege conferred in this Agreement or any Task Order, shall not be construed as thereafter waiving any such provisions, conditions, rights or privileges, but the same shall continue and remain in full force and effect. No provision of this Agreement or any Task Order shall be deemed to have been waived unless such waiver shall be in writing signed by the party to be charged.

C. The Consultant shall not discriminate on the basis of race, color, religion, age, handicap, sex or national origin with respect to hiring, assignment, promotion or other conditions affecting staff personnel assigned to work in relation to this Agreement and any Task Order.

D. The Consultant shall not use the name, trade name, service marks, trademarks or logos of the Owner (or any of its affiliates) in publicity releases, advertising or any similar activity without the Owner's prior written consent.

E. The Consultant may not photograph the Medical Center's premises at any time without the Owner's prior written consent.

F. This Agreement and the Task Orders constitute the entire agreement between the parties and incorporates all prior understandings in connection with the subject matter hereof. This Agreement and the Task Orders may not be changed, waived, discharged or terminated except by an instrument in writing signed by the party against whom such change, waiver, discharge or termination is sought to be enforced.

G. The captions or head notes of the various provisions contained in this Agreement and any Task Order are intended for convenience and for reference purposes only and in no way define, limit or describe the scope or intent of this Agreement or any Task Order or in any way affect this Agreement or any Task Order.

H. If this Agreement or any Task Order contains any unlawful provisions not an essential part of the Agreement or Task Order and that appear not to have been a controlling or material inducement to the making hereof, the same shall be deemed to be of no effect, and shall, upon the application of either party, be stricken from this Agreement or Task Order without affecting the binding force of the Agreement and Task Order as it shall remain after omitting such provisions.

I. This Agreement and all Task Orders shall be construed and enforced in accordance with the laws of the State of New York.

J. It is expressly understood by the parties hereto that (a) every dispute hereunder between the Consultant and the Owner, unless settled by the parties, shall be resolved by legal action brought in a court of competent jurisdiction in New York County, New York or the appropriate Federal District Court of New York, and (b) unless the parties shall otherwise agree in writing, the Consultant shall continue to perform its obligations under this Agreement and any Task Order during the pendency of any action instituted hereunder as if said action had not been instituted.

K. All notices hereunder shall be given by (a) mailing by registered or certified mail, return receipt requested, or (b) delivery by hand, or (c) sending by email and confirming within forty-eight (48) hours by registered or certified mail, return receipt requested or (d) delivery by Federal Express, Express Mail or a similar overnight courier service. Notice to the Owner shall be addressed to:

Isabel Goldberg
Sr. Director, Environmental Health and Safety
Real Estate Development & Facilities
NYU Langone Medical Center
550 First Avenue, Room GBH-C-117
New York, New York 10016
isabel.goldberg@nyumc.org

Paul Schwabacher, PE
Senior Vice President, Facilities Management
NYU Langone Medical Center
339 East 28th Street
New York, New York 10016
paul.schwabacher@nyumc.org

with a copy to:

Annette B. Johnson, Esq.
NYU Langone Medical Center
Office of Legal Counsel
530 First Avenue HCC-15
New York, New York 10016

The Owner may change such address at any time by written notice to the Consultant. Notice to the Consultant shall be addressed to the Consultant at the Consultant's address as stated in this Agreement or at such other address as provided by the Consultant in a written notice to the Owner.

L. The Consultant's obligations in Sections 8, 9 and 10 and any other provisions requiring continuing performance shall continue in full force and effect notwithstanding the fact that the Owner has accepted and paid for the Services and notwithstanding any termination of the Agreement.

M. The Consultant and its employees and agents shall hold in confidence and shall not disclose, distribute, sell, copy, share or otherwise use any information obtained by the Consultant during its performance of any Services that relates to the Owner's doctors, patients, students, employees, research, development, business affairs, records, processes, techniques or types of equipment, whether past, present or future, except as may be authorized by the Owner or as revised by law or court order in writing. Upon completion of Services, the Consultant and its employees and agents shall return to the Owner all information and all records or documents received from the Owner, including, without limitation, any and all copies thereof which may have been made.

14. No Exclusion. The Consultant and each person signing on behalf of the Consultant represents and warrants that the Consultant and each parent and/or affiliate of the Consultant 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 the Consultant from any Program. The Consultant covenants to notify Owner in writing as soon as practicable if the Consultant 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 Owner with any individual or entity known by the Consultant to be sanctioned, suspended or excluded from participation in any Program. The

Consultant shall include the provisions of this "No Exclusion" Section in each subconsultant agreement (of any tier) that the Consultant enters into under any Task Order, and shall cause such subconsultants and their subconsultants 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 Consultant upon which Owner has relied as an essential inducement to enter into this Agreement. In addition to any other remedies available to the Owner, the Owner may terminate this Agreement for cause in the event that any representation or warranty made in this Section is untrue at the time of entering into this Agreement or becomes untrue at any time during the term of this Agreement.

15. Confidential Information. The Consultant shall treat all information supplied to the Consultant by the Owner or the Owner's Consultants regarding the Project as confidential and proprietary information and shall not permit its release to others, or make any public announcement or publicity releases regarding the Project, without the Owner's prior written authorization.

16. Term. This Agreement shall have a term of three (3) years commencing on the date first above written. Upon the expiration of the three (3) year term, the Owner may elect to extend the term of the Agreement in increments of six (6) months at a time. The Owner shall communicate each decision to extend the term of the Agreement to the Consultant in writing and in advance of the expiration of the then current term. The Contract formed by each executed Task Order shall survive the expiration and term of this Agreement and any extension of it.

17. Federal Emergency Management Agency Provisions. If specified in a Task Order, certain funding for a Project may be provided by or through the Federal Emergency Management Agency ("FEMA"). In such event, the Consultant further agrees as follows:

A. The Consultant agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations 41 CFR chapter 60.

B. The Consultant agrees that any federal agency providing funding for the Consultant's Work, including FEMA funding, and the Comptroller General of the United States shall have access to the Consultant's books and records.

C. The Consultant agrees that the federal, state and local laws with which it must comply include the Contract Work Hours and Safety Standards Act Sections 103 and 107 (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5); Section 306 of the Clean Air Act (42 U.S.C. 1857(h)); Section 508 of the Clean Water Act (33 U.S.C. 1368); Executive Order 11738; and Environmental Protection Agency regulations (40 CFR part 15).

D. The Consultant agrees to comply with all applicable provisions of the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3).

E. The Consultant accepts the relationship of trust and confidence established between it and the Owner by this Agreement and shall furnish all services in the best interests of the Owner. The Consultant represents and warrants to the Owner that the performance of the Services under this Agreement are not in conflict with the interests of any other client of the Consultant, and further that the Consultant will not undertake the performance of any services for any future client that are in conflict with the Services for the Owner under this Agreement unless agreed upon by the Owner in advance in writing.

F. The Consultant agrees to prepare and deliver to the Owner certifications of ongoing compliance by the Consultant with the foregoing provisions as may reasonably be requested by the Owner in writing during the term of the Agreement.

18. Unifier.

A. The Owner is implementing on-line construction management systems for its construction projects, referred to herein as the “Unifier Systems” (or “Unifier”) and based on and utilizing proprietary programs and other services of the Unifier Systems developer. When the Owner is ready to do so, the Owner will provide a license to the Consultant to access and use the Unifier Systems and such license will be subject to the terms and conditions set forth in Exhibit C (the “Unifier Terms and Conditions”). The Consultant accepts and agrees to comply with and be bound by the Unifier Terms and Conditions applicable to "You" as set forth in Exhibit C and to be responsible for compliance with such Terms and Conditions by employees and other representatives of the Consultant using the Unifier Systems.

B. The Consultant shall use the Unifier Systems for purposes of furnishing and receiving information and documentation under the Agreement, as and to the extent authorized and directed by the Owner. Such purposes may include, without limitation, the transmission of bids, proposals, Task Orders, change orders, invoices, contractual notices and other information and documentation required under the Agreement. The Consultant agrees that its use of the Unifier Systems will be limited to such purposes. The Consultant shall not use the Unifier Systems to access information or documentation regarding any other matters or for any other unauthorized purpose. The Owner may terminate or limit the Consultant’s use of the Unifier Systems at any time on written notice to the Consultant.

C. Through its use of the Unifier Systems, the Consultant may have access to information or documentation of the Owner or the provider of the Unifier Systems that is confidential. In addition to any other obligation of confidentiality or non-disclosure, the Consultant agrees not to disclose such confidential information to any third party except as authorized by the Owner.

D. The Consultant shall defend and indemnify the Owner and hold the Owner harmless from and against any and all claims, damages, costs and expenses (including attorneys’ fees) arising out of any breach of the Unifier Terms and Conditions by the Consultant or any of the Consultant’s employees, agents or other representatives.

E. Any amendment, Task Order, change order or other document requiring signature by either party under the Agreement may be signed by scanned signature of the party.

F. The Owner, in its sole and absolute discretion and after providing the Consultant with a license to use the Unifier Systems, may elect to execute amendments, Task Orders, change orders and other documents requiring the Owner's signature under this Agreement by means of approval of the document in Unifier, which approval shall be accessible to the Consultant through authorized use of the Unifier Systems. If and to the extent of the Owner's election, such approval by the Owner shall be deemed the equivalent of the Owner's signature, a Unifier report of such approval by the Owner will constitute evidence of signature by the Owner on the document and the Consultant is authorized to download and copy such reports. The Owner shall notify the Consultant of such election in writing and may terminate such election at any time by written notice to the Consultant.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

OWNER:

**NEW YORK UNIVERSITY SCHOOL OF
MEDICINE, an administrative unit of
NEW YORK UNIVERSITY**

By: _____

Name: _____

Title: _____

CONSULTANT:

[_____]

By: _____

Name: _____

Title: _____

EXHIBIT A

**NEW YORK UNIVERSITY SCHOOL OF MEDICINE,
an administrative unit of
NEW YORK UNIVERSITY**

TASK ORDER FORM

PIM Name:

PIM Number:

Purchase Order Number:

Project:

Project Site Address:

Task Order Dated:

On-Call Agreement for Construction Safety Consulting Services Dated:

Consultant's Name and Address:

Contractor's Name and Address:

Project Description:

Scope of Services:

Date of Consultant's Proposal:

Project Staffing:

Not-to-Exceed Amount:

Project is FEMA Funded (Check One): ☐ Yes
 ☐ No

Time Requirements:

Owner's Representative:

Special Terms:

1. Insurance and Indemnification: If the Project Site is not owned by NYU Hospitals Center, NYU Lutheran Medical Center or the New York University Medical Center

Condominium, then, in addition to the aforementioned parties, the Consultant shall also name the following parties as additional insureds and as indemnitees pursuant to Section 9B and Section 9E of the above-referenced On-Call Agreement for Construction Safety Consulting Services:

This Task Order is governed by the terms and conditions of the On-Call Agreement – Construction Consulting Safety Services between the Owner and the Consultant referenced above. The Consultant shall provide the Services described above in accordance with such terms and conditions. The Owner shall pay the Consultant the compensation set forth in the Agreement and above for such Services.

OWNER:

**NEW YORK UNIVERSITY SCHOOL OF
MEDICINE, an administrative unit of
NEW YORK UNIVERSITY**

By: _____

Name: _____

Title: _____

CONSULTANT:

[_____]

By: _____

Name: _____

Title: _____

EXHIBIT B

**CONSULTANT'S SCHEDULE OF
PERSONNEL AND HOURLY RATES**

EXHIBIT C

ORACLE CLOUD SERVICES TERMS AND CONDITIONS APPLICABLE TO NYULMC USERS

THE FOLLOWING TERMS AND CONDITIONS APPLY TO THE PROVISION OF CLOUD SERVICES AND PROFESSIONAL SERVICES BY ORACLE AMERICA, INC. ("ORACLE") FOR USE ON NYU LANGONE MEDICAL CENTER ("NYULMC") PROJECTS PURSUANT TO AN ORDER AND AGREEMENT BETWEEN ORACLE AND NYU HOSPITALS CENTER ("NYUHC"). THESE CLOUD SERVICES AND PROFESSIONAL SERVICES SUPPORT A CONSTRUCTION MANAGEMENT SYSTEM FOR NYULMC KNOWN AS "UNIFIER". SUBJECT TO YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS, YOU WILL BE LICENSED TO ACCESS AND USE THESE SERVICES IN CONNECTION WITH NYULMC PROJECTS AS DIRECTED BY NYUHC OR NEW YORK UNIVERSITY SCHOOL OF MEDICINE ("NYUSOM").

BY ACCEPTING THESE TERMS AND CONDITIONS, YOU AGREE TO FOLLOW AND BE BOUND BY THESE TERMS AND CONDITIONS. IF YOU ACCEPT THESE TERMS AND CONDITIONS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS AND, IN SUCH EVENT, "YOU" AND "YOUR" AS USED IN THESE TERMS AND CONDITIONS SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, YOU MAY NOT USE THE SERVICES REFERENCED IN THESE TERMS AND CONDITIONS.

THESE TERMS AND CONDITIONS DO NOT CREATE ANY CONTRACTUAL OBLIGATION RUNNING FROM ORACLE TO YOU.

1. DEFINITIONS

1.1 **"Ancillary Program"** means any software agent or tool owned or licensed by Oracle that Oracle makes available to You for download as part of the Cloud Services for purposes of facilitating Your access to, operation of and/or use with, the Services Environment. The term "Ancillary Program" does not include Separately Licensed Third Party Technology.

1.2 **"Cloud Services"** means, collectively, the Oracle cloud services (e.g., Oracle software as a service offerings and related Oracle Programs) You are authorized by Owner to use.

1.3 **"Oracle Programs"** refers to the software products owned or licensed by Oracle to which Owner grants You access as part of the Cloud Services, including Program Documentation, and any program updates provided as part of the Cloud Services. The term "Oracle Programs" does not include Separately Licensed Third Party Technology.

1.4 **"Owner"** means individually and collectively NYU Hospitals Center and New York University School of Medicine, an administrative unit of New York University.

1.5 **"Professional Services"** means, collectively, the consulting and other professional Services which Owner has ordered from Oracle. The term "Professional Services" does not include Cloud Services.

1.6 **"Program Documentation"** refers to the program user manuals for the Oracle Programs referenced within the Service Specifications for Cloud Services, as well as any help windows and readme files for such Oracle Programs that are accessible from within the Services. The Program Documentation describes technical and functional aspects of the Oracle Programs.

1.7 **"Separate Terms"** refers to separate license terms that are specified in the Program Documentation, Service Specifications, readme or notice files and that apply to Separately Licensed Third Party Technology.

1.8 **"Separately Licensed Third Party Technology"** refers to third party technology that is licensed under separate terms and not under these Terms and Conditions.

1.10 **"Service Specifications"** means the descriptions on www.oracle.com/contracts, or such other address specified by Oracle, that are applicable to the Services under Owner's order, including any Program Documentation, Oracle Cloud Hosting and Delivery Policies (e.g., support and security policies), and other descriptions referenced or incorporated in such descriptions.

1.9 **"Services"** means, collectively, both the Cloud Services and Professional Services that Owner has ordered from Oracle.

1.11 **"Services Environment"** refers to the combination of hardware and software components owned, licensed or managed by Oracle to which You are granted access by Owner.

1.12 **"Services Period"** refers to the period of time for which Owner has ordered Cloud Services.

1.13 **"Third Party Content"** means all text, files, images, graphics, illustrations, information, data, audio, video, photographs and other content and material, in any format, that are obtained from third party sources outside of Oracle and made available to You through, within or in conjunction with Your use of, the Cloud Services. Examples of Third Party Contract include data feeds from social network services, rss feeds from blog posts and data libraries and dictionaries. Third Party Content does not include Separately Licensed Third Party Technology.

1.14 **"Users"** means Your employees and other representatives authorized by Owner to use the Cloud Services in accordance with these Terms and Conditions.

1.15 **"You"** and **"Your"** refers to the individual or entity that has accepted these terms and conditions.

1.16 **"Your Applications"** means all software programs, including any source code for such programs, that You or Your Users provide and load onto, or create using, any Oracle "platform-as-a-service" or "infrastructure-as-a-service" Cloud Services. Services under these Terms and Conditions, including Oracle Programs and Services Environments, Oracle intellectual property, and all derivative works thereof, do not fall within the meaning of the term "Your Applications".

1.17 **"Your Content"** means all text, files, images, graphics, illustrations, information, data, audio, video, photographs, personal data and other content and material (other than Your Applications, in any format, provided by You or Your Users that reside in, or run on or through, the Services Environment.

2. TERM

These Terms and Conditions are valid for the Services Period including any extension thereof.

3. RIGHTS GRANTED

3.1 For the period specified by Owner, and except as otherwise set forth in these Terms and Conditions or in any writing issued to You by Owner, You have the non-exclusive, non-assignable, royalty free limited right to access and use the Services for the purposes identified by Owner.

3.2 You do not acquire under these Terms and Conditions any right or license to use the Services, including the Oracle Programs and Services Environment, in excess of the scope and/or duration of the Services identified by Owner in writing to You. Upon the end of such duration, Your right to access and use the Services will terminate.

3.3 To enable Oracle to provide You with the Services, You grant Oracle the right to use, process and transmit, in accordance with these Terms and Conditions, Your Content for the duration of the Services Period plus any post-termination period during which Oracle provides Owner with access to retrieve and export files of Your Content and Your Applications. If Your Applications include third party programs, You acknowledge that Oracle may allow providers of those third party programs to access the Services Environment, including Your Content and Your Applications, as required for the interoperation of such third party programs with the Services. Oracle will not be responsible for any use, disclosure, modification or deletion of Your Content or Your Applications resulting from any such access by third party program providers or for the interoperability of such third party programs with the Services.

3.4 The Services may contain or require the use of Separately Licensed Third Party Technology. You are responsible for complying with the Separate Terms specified by Oracle that govern Owner's use of Separately Licensed Third Party Technology. Oracle may provide certain notices to You in the Service Specifications, Program Documentation, readme or notice files in connection with such Separately Licensed Third Party Technology. The third party owner, author or provider of such Separately Licensed Third Party Technology retains all ownership and intellectual property rights in and to such Separately Licensed Third Party Technology.

3.5 As part of certain Cloud Services offerings, Oracle may provide You with access to Third Party Content within the Services Environment. The type and scope of any Third Party Content is defined in the Service Specifications applicable to Owner's order with Oracle. The third party owner, author or provider of such Third Party Content retains all ownership and intellectual property rights in and to that content, and Your rights to use such Third Party Content are subject to, and governed by, the terms applicable to such content as specified by such third party owner, author or provider.

4. OWNERSHIP AND RESTRICTIONS

4.1 You retain ownership and intellectual property rights in and to Your Content and Your Applications, except to the extent that You have granted such rights to Owner. Oracle or its licensors retain all ownership and intellectual property rights to the Services, including Oracle Programs and Ancillary Programs, and derivative works thereof, and to anything developed or delivered by or on behalf of Oracle.

4.2 You may not, or cause or permit others to:

(a) remove or modify any program markings or any notice of Oracle's or its licensors' proprietary rights;

(b) make the programs or materials resulting from the Services (excluding Your Content and Your Applications) available in any manner to any third party for use

in the third party's business operations (unless such access is expressly permitted for the specific Service Owner acquired);

(c) modify, make derivative works of, disassemble, decompile or reverse engineer any part of the Services (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs), or access or use the Services in order to build or support, and/or assist a third party in building or supporting, products or Services competitive to Oracle;

(d) perform or disclose any benchmark or performance tests of the Services, including the Oracle Programs, without Oracle's prior written consent;

(e) perform or disclose any of the following security testing of the Services Environment or associated infrastructure without Oracle's prior written consent: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing or penetration testing; and

(f) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use or otherwise commercially exploit or make the Services, Oracle Programs, Ancillary Programs, Services, Environments or materials available, to any third party, other than as expressly permitted under the terms provided by Owner.

4.3 The rights granted to You under these Terms and Conditions are also conditioned on the following:

(a) except as expressly provided herein or otherwise in writing by Owner to You, no part of the Services may be copied, reproduced, distributed, republished, downloaded, posted or transmitted in any form or by any means, including, but not limited to electronic, mechanical, photocopying, recording or other means; and

(b) You make every reasonable effort to prevent unauthorized third parties from accessing the Services.

5. USE OF THE SERVICES

5.1 You are responsible for identifying and authenticating all Users having access to the Services on Your behalf, for approving such access, for controlling against unauthorized access by such Users and for maintaining the confidentiality of usernames, passwords and account information. By federating or otherwise associating Your and Your Users' usernames, passwords and accounts with Oracle, You accept responsibility for the timely and proper termination of User records in Your local (intranet) identity infrastructure or on Your local computers. Oracle and Owner are not responsible for any harm caused by Your Users, including individuals who were not authorized to have

access to the Services but who were able to gain access because usernames, passwords or accounts were not terminated on a timely basis in Your local identity management infrastructure or Your local computers. You are responsible for all activities that occur under Your and Your Users' usernames, passwords or accounts or as a result of Your or Your Users' access to the Services, and agree to notify Oracle and Owner immediately of any unauthorized use.

5.2 You agree not to use or permit use of the Services, including by uploading, emailing, posting, publishing or otherwise transmitting any material, including Your Content, Your Applications and Third Party Content, for any purpose that may (a) menace or harass any person or cause damage or injury to any person or property, (b) involve the publication of any material that is false, defamatory, harassing or obscene, (c) violate privacy rights or promote bigotry, racism, hatred or harm, (d) constitute unsolicited bulk email, "junk mail", "spam" or chain letters, (e) constitute an infringement of intellectual property or other proprietary rights or (f) otherwise violate applicable laws, ordinances or regulations. In addition to any other rights afforded to Oracle under these Terms and Conditions, Oracle reserves the right, but has no obligation, to take remedial action if any material violates the foregoing restrictions, including the removal or disablement of access to such material. Oracle shall have no liability to You in the event that Oracle takes such action. You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all of Your Content and Your Applications. You agree to defend and indemnify Oracle and Owner against any claim arising out of a violation of Your obligations under this Section or any other provision of these Terms and Conditions.

5.3 You are required to accept all patches, bug fixes, updates, maintenance and service packs (collectively "Patches") necessary for the proper function and security of the Services, including for the Oracle Programs, as such Patches are generally released by Oracle as described in the Service Specifications. Except for emergency or security related maintenance activities, Oracle will coordinate with You the scheduling of application of Patches, where possible, based on Oracle's next available standard maintenance window.

6. SERVICES PERIOD; END OF SERVICES

6.1 Upon the end of the period identified by Owner, You no longer have rights to access or use the Services, including the associated Oracle Programs and Services Environments.

6.2 Oracle may temporarily suspend Your password, account and access to or use of the Services if You or Your Users violate any provision within the "Rights Granted", "Ownership and Restrictions", "Use of the Services or "Export" sections of these Terms and Conditions, or if in Oracle's or Owner's reasonable judgment, the Services or any component thereof are about to suffer a significant threat to security or

functionality. Oracle will provide advance notice to Owner of any such suspension in Oracle's reasonable discretion based on the nature of the circumstances giving rise to the suspension, and Owner will endeavor to transmit such notice to You. Oracle will use reasonable efforts to re-establish the affected Services promptly after Oracle determines, in its reasonable discretion, that the situation giving rise to the suspension has been cured; however, during any suspension period, Oracle will make available to You Your Content and Your Applications as existing in the Services Environment on the date of suspension. Oracle may terminate the Services if any of the foregoing causes of suspension is not cured within 30 days after Oracle's initial notice thereof.

7. NONDISCLOSURE

7.1 By virtue of these Terms and Conditions, Oracle, Owner and You (collectively, the "parties") may have access to information that is confidential to one another ("Confidential Information"). You and Owner agree to disclose only information that is required for the performance of obligations under these Terms and Conditions. Confidential Information shall be limited to these Terms and Conditions, Your Content and Your Applications residing in the Services Environment and all information clearly identified as confidential at the time of disclosure.

7.2 A party's Confidential Information shall not include information that (a) is or becomes a part of the public domain through no act or omission of another party; (b) was in another party's lawful possession prior to the disclosure and has not been obtained by such other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

7.3 You and Owner agree not to disclose another party's Confidential Information to any third party other than as set forth in the following sentence for a period of three years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party; however, Oracle will hold Your Confidential Information that resides within the Services Environment in confidence for as long as such information resides in the Services Environment. Each party may disclose Confidential Information only to those employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under these Terms and Conditions. Oracle will protect the confidentiality of Your Content or Your Applications residing in the Services Environment in accordance with the Oracle applicable security practices. In addition, Your Personal Data will be treated in accordance with the terms of Section 8 below. Nothing shall prevent a party from disclosing any of these Terms and Conditions in any legal proceeding arising from or in connection with these Terms and Conditions or from disclosing the Confidential Information to a governmental entity as required by law.

7.4 Oracle has agreed to similar provisions in its Agreement with Owner, but these Terms and Conditions do not create a contractual obligation running from Oracle to You.

8. DATA PROTECTION

8.1 In performing the Services, Oracle will comply with the *Oracle Services Policy*, which is available at <http://oracle.com/html/Services-privacy-policy.html> and incorporated herein by reference. The *Oracle Services Policy* is subject to change at Oracle's discretion; however, Oracle policy changes will not result in a material reduction in the level of protection provided for Your Personal Data provided as part of Your Content during the Services Period.

8.2 Oracle's *Data Processing Agreement for Oracle Cloud Services* (the "Data Processing Agreement"), which is available at <http://www.oracle.com/dataprocessingagreement> and incorporated herein by reference, describes the parties' respective roles for the processing and control of Personal Data that You provide to Oracle as part of the Cloud Services. Oracle will act as a data processor, and will act on Your instruction concerning the treatment of Your Personal Data residing in the Services Environment, as specified in these Terms and Conditions, the Data Processing Agreement and Owner's order with Oracle. You agree to provide any notices and obtain any consents related to Your use of the Services and Oracle's provision of the Services, including those related to the collection, use, processing, transfer and disclosure of Personal Data.

8.3 The Services Specifications applicable to Owner's order with Oracle define the administrative, physical, technical and other safeguards applied to Your Content residing in the Services Environment, and describe other aspects of system management applicable to the Services. You are responsible for any security vulnerabilities, arising from Your Content and Your Applications, including any viruses, Trojan horses, worms or other programming routines contained in Your Content or Your Applications that could limit or harm the functionality of a computer or that could damage, intercept or expropriate data.

9. LIMITATION OF LIABILITY

NEITHER YOU NOR OWNER SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS, DATA OR DATA USE ARISING OUT OF USE OF THE CLOUD SERVICES. THIS LIMITATION ON LIABILITY DOES NOT APPLY BEYOND SUCH USE.

10. THIRD PARTY WEB SITES, CONTENT, PRODUCTS AND SERVICES

10.1 The Services may enable You to link to, transmit Your Content to, or otherwise access, other Web sites, content, products, services and information of third parties. Oracle does not control and is not responsible for such Web sites or any such content, products, services and information accessible from or provided through the Services, and You bear all risks associated with access to and use of such Web sites and third party content, products, services and information.

10.2 Any Third Party Content made accessible by Oracle in or through the Services Environment is provided on an "as-is" and "as available" basis without any warranty of any kind. Third Party Content may be indecent, offensive, inaccurate, infringing or otherwise objectionable or unlawful, and You acknowledge that Oracle is not responsible for and under no obligation to control, monitor or correct Third Party Content; provided, however, Oracle reserves the right to take remedial action if any such content violates applicable restrictions under Section 5.2 of these Terms and Conditions, including the removal of, or disablement of access to, such content.

10.3 You acknowledge that: (i) the nature, type, quality and availability of Third Party Content may change at any time during the Services Period, and (ii) features of the Services that interoperate with third parties such as Facebook™, YouTube™ and Twitter™, etc. (each, a "Third Party Service") depend on the continuing availability of such third parties' respective application programming interfaces (APIs) for use with the Services. Oracle may update, change or modify the Services as a result of a change in, or unavailability of, such Third Party Content, Third Party Services or APIs. If any third party ceases to make its Third Party Content or APIs available on reasonable terms for the Services, as determined by Oracle in its sole discretion, Oracle may cease providing access to the affected Third Party Content or Third Party Services without any liability to You. Any changes to Third Party Content, Third Party Services or APIs, including their availability or unavailability, during the Services Period does not affect Your obligations under these Terms and Conditions, and You will not be entitled to any compensation due to any such changes.

11. SERVICES TOOLS AND ANCILLARY PROGRAMS

11.1 Oracle may use tools, scripts, software and utilities (collectively, the "Tools") to monitor and administer the Services and to help resolve service requests. The Tools will not collect or store any of Your Content or Your Applications residing in the Services Environment, except as necessary to provide the Services or troubleshoot service requests or other problems in the Services. Information collected by the Tools (excluding Your Content and Your Applications) may also be used to assist in managing Oracle's product and service portfolio, to help address deficiencies in its product and service offerings and for license and Service management.

11.2 As part of the Cloud Services, Oracle may provide You with on-line access to download certain Ancillary Programs for use with the Services. If Oracle does not specify Separate Terms for any such Ancillary Programs, You shall have a non-transferable, non-exclusive, non-assignable, limited right to use such Ancillary Programs solely to facilitate Your access to, operation of and/or use of the Services Environment, subject to the terms of these Terms and Conditions and Owner's order with Oracle. Your right to use such Ancillary Programs will terminate upon the earlier of Oracle's notice (which may be through posting on <https://support.oracle.com> or such other URL designated by Oracle) of the end of the Cloud Services associated with the Ancillary Programs, or the date on which the license to use the Ancillary Programs ends under the Separate Terms specified for such programs.

12. SERVICE ANALYSES

Oracle may (i) compile statistical and other information related to the performance, operation and use of the Services, and (ii) use data from the Services Environment in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses i and ii are collectively referred to as "Service Analyses"). Oracle may make Service Analyses publicly available; however, Service Analyses will not incorporate Your Content or Confidential Information in a form that could serve to identify You or any individual, and Service Analyses do not constitute Personal Data. Oracle retains all intellectual property rights in Service Analyses.

13. EXPORT

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Services. You agree that such export laws govern Your use of the Services (including technical data) and any Services deliverables provided, and You agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). You agree that no data, information, software programs and/or materials resulting from Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical or biological weapons proliferation, or development of missile technology.