

FOR REDLINING PURPOSE ONLY  
ON-CALL AGREEMENT – IT FACILITIES INSTALLATION AND REPAIR WORK

ON-CALL AGREEMENT - IT FACILITIES INSTALLATION AND REPAIR WORK ("Agreement") dated as of [ ], 2012, by and between NYU Hospitals Center, a New York not-for-profit corporation with offices at 360 Park Avenue, New York, New York 10016 ("Owner"), and [ ], a [ ] with offices located at [ ] ("Contractor").

W I T N E S S E T H :

WHEREAS, Owner may select Contractor from time to time to perform installation and repair work in connection with Owner's information technology facilities and Contractor is willing to perform such work the terms and conditions set forth herein.

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

1. Project Work Orders. This Agreement establishes the terms and conditions for performance of work by Contractor pursuant to project-specific work orders that may be executed by the parties, in the form attached hereto as Exhibit A (each a "Work Order"), for individual projects (each a "Project"). The Work Order and Owner's Purchase Order issued in connection therewith are the only valid authorizations for Contractor to perform work relating to any Project, and Owner shall not be obligated to pay for any work of Contractor without a fully-executed Work Order and Purchase Order. In the event of a conflict or inconsistency between the provisions of a Work Order and the provisions of this Agreement, the provisions of the Work Order shall govern, but only to the extent of such conflict or inconsistency. Contractor acknowledges that this Agreement provides no assurance that any Work Orders will be executed by Owner with Contractor and that execution of Work Orders and the decision to engage other contractors remains within Owner's absolute discretion.

2. The Contract Documents.

A. The Contract Documents for each Project shall consist of this Agreement, the applicable Work Order, any drawings, specifications and other documents listed in the Work Order, all modifications to any such drawings and specifications and all Change Orders, as hereinafter defined, with respect to the Project. Together, these form the Contract for the Project. No change may be made to any of the Contract Documents except by a written order ("Change Order") signed by duly authorized representatives of Owner and Contractor or, at Owner's election, issuance of a new or revised Purchase Order reflecting the changed scope of Work and adjusted Contract Sum. Owner may direct minor changes in the Work not involving adjustment of the Contract Sum or the Time for Completion and not inconsistent with the intent of the Contract Documents pursuant to a written field order.

B. Notwithstanding any other term or provision of this Agreement, Owner remains responsible for ensuring that any health care service provided in connection with each Work Order complies with the applicable federal, state and local laws, statutes, ordinances, rules and regulations. Accordingly, Owner may at any time, and from time to time, in its sole and absolute discretion, modify any relevant provision of the Contract Documents to the extent necessary to comply with any current or future federal, state or local law, statute, ordinance, rule or regulation, which modification may be effected by written directive.

3. The Work. Contractor shall furnish and deliver the materials and equipment and perform all other work described in the Contract Documents for each Project (the "Work") in compliance with all terms and conditions of the Contract Documents. Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, for scheduling and coordinating all portions of the Work and for coordinating the Work with the activities and operations of Owner and others occupying or working in any area where the Work is to be performed. When directed to do so by Owner, Contractor shall promptly remove any worker engaged in the Work and such worker shall not again be assigned to the Work without Owner's prior written consent. No subcontractor shall be permitted to perform any of the Work without Owner's prior written consent.

4. Time for Completion. Contractor shall complete the Work within the Time for Completion stated in each Work Order ("Time for Completion"). Any phasing of the Work shall be determined and approved by Owner prior to commencement of the Work. Time is of the essence of each Work Order. If Contractor is delayed at any time in the progress of the Work by any act or neglect of Owner or any agent or other contractor of Owner, by changes ordered in the Work or by force majeure, as hereinafter defined, then the Time for Completion shall be extended for such reasonable time as Owner shall determine. An extension of the Time for Completion shall be authorized only by Change Order.

5. Contract Sum. Owner shall pay Contractor for the performance of the Work a total amount (the "Contract Sum") based on Time and Materials or Fixed Price, as set forth in the Work Order.

A. Time and Materials. If the Work Order provides for a Contract Sum determined on a time-and-materials basis, the Contract Sum shall consist of (i) compensation for the cost of Contractor's personnel actually engaged in performance of the Work in accordance with the hourly rate schedule specified in the Work Order, and, to the extent applicable, (ii) reimbursement for any costs actually and necessarily incurred by Contractor for materials, supplies and equipment incorporated in the Work, provided that costs in excess of \$2,500.00 for each such item are approved in advance in writing by Owner. All hourly rates set forth in a Work Order shall remain in effect for the duration of the Work covered by the Work Order.

A Level-of-Effort Cap set forth in the Work Order is a budgeted amount for the Work covered by the Work Order, established jointly by Owner and Contractor, and by executing the Work Order, Contractor agrees to use its best efforts to perform and complete the Work without exceeding the Level-of-Effort Cap and that this amount will not be exceeded without Owner's prior written authorization. Contractor shall notify Owner promptly in writing when the

compensation earned by Contractor for the Work has reached eighty percent (80%) of the Level-of-Effort Cap.

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

6. **Sales Tax.** Owner, a not-for-profit corporation, will not be responsible for the payment of, or reimbursement to Contractor of, any charges, assessments, licenses or taxes that may be imposed or levied with respect to this Agreement or the Work. Owner shall supply its tax exempt number to Contractor upon Contractor's request.

7. **Payments.**

A. Contractor shall invoice monthly or at such other intervals as specified in the Work Order. Invoices for payment of a Contract Sum based on time and materials shall be accompanied by completed timesheets in the form attached hereto as Exhibit B, signed by the Owner's representative designated on the Work Order, and, if the Work Order specifies reimbursable costs, supporting documentation for such costs.

B. Invoices by Contractor are subject to approval of the Owner, which may be withheld in whole or in part because of unsatisfactory progress, defective Work, liens or other third-party claims for which Contractor is responsible, failure of Contractor to make payments to subcontractors or suppliers, damage to property of Owner or any other person or to the work of another contractor for which Contractor is responsible or other failure to carry out the Work in accordance with the requirements of the Contract.

C. No payment by Owner shall be evidence of the performance of the Contract either in whole or in part, against any claim of Owner, and no payment shall be construed to be an acceptance of any defective work or as a waiver of any of the provisions of the Contract.

8. **Pre-Contract Investigation.** Before executing a Work Order, Contractor shall carefully examine the site of the Work and adjacent areas and conduct such investigations of existing conditions as a reasonably prudent contractor would make. Contractor shall be conclusively deemed to have full knowledge of any and all conditions on, about or above the site relating to or affecting the performance of the Work in any way, to the extent that such conditions were indicated by such investigations or should have been indicated to a reasonably prudent contractor. Under no circumstances shall any extra compensation be allowed Contractor because of its failure to inform itself fully and to include in the Level-of-Effort Cap or the Fixed Price all items of labor, materials and equipment required or necessary to be furnished under the Contract.

9. **Protection of Persons and Property.** Contractor shall take all necessary precautions for the safety at, and shall assume responsibility for and provide all necessary protection to prevent damage, injury or loss to: all workers performing the Work and all other persons who may be affected thereby; all the Work and all materials and equipment to be incorporated therein, whether on or off the site; and all other property at or adjacent to the site of the Work or other affected areas. Owner shall not be responsible for any damage to or loss of any property of Contractor that results from, arises out of or occurs in connection with the Work.

10. Warranties.

A. Contractor warrants all of the Work against defects and deficiencies in materials, equipment and workmanship for a period of one year from the date the Work is performed. This warranty shall be in addition to any other warranty required by the Contract Documents. This warranty (and any other warranty required by the Contract Documents) shall not limit or restrict any other right or remedy the Owner may have under the Contract Documents, and no warranty period shall be construed to establish a period of limitation with respect to any other obligation of Contractor under the Contract including without limitation Contractor's obligation to perform the Work in accordance with the Contract Documents.

B. Contractor warrants that all materials and equipment furnished as part of the Work will be new unless otherwise specified; that title to all such materials and equipment will pass to Owner either by incorporation in the construction or upon receipt of payment by Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances; and that no such materials or equipment will have been acquired by Contractor subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by Contractor or any other person.

11. Correction of Work. Contractor shall promptly correct Work rejected by Owner or failing to conform to the requirements of the Contract Documents at Contractor's sole expense. If, within the warranty period specified in Section 10A or any longer warranty period specified in the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, Contractor shall correct it promptly after receipt of written notice from Owner to do so, at Contractor's sole expense. If Contractor fails to correct any Work as required, Owner may correct it and Contractor shall promptly reimburse Owner for all resulting costs. Owner's rights under this Section 11 are in addition to all other rights and remedies of Owner for breach of the Contract Documents.

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

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

B. Comprehensive General Liability Insurance with a combined personal injury, bodily injury (including death) and property damage limit of at least \$3,000,000 per occurrence, including Broad Form Blanket Contractual Liability; Broad Form Property Damage; Personal

Injury Liability (with the employee's exclusion void); and Products Liability and Completed Operations; and

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

The coverages described in subparagraphs B and C above shall be endorsed to include Owner, New York University, New York University Medical Center Condominium, and such other persons as Owner may designate as additional insureds in connection with any Work. The procuring of the insurance shall not relieve Contractor of any obligation or liability assumed hereunder exclusively, including the following Hold Harmless Agreement.

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

14. Contractor's Obligation To Proceed. Contractor shall proceed promptly with all directions and orders of Owner concerning the Work, regardless of the existence of any claim or dispute. Contractor shall have no right to suspend all or any part of the Work or to refuse to comply with any order or direction of Owner pending resolution of any claim or dispute for any reason except failure to pay undisputed amounts. Any such suspension or refusal will be a material breach of the Contract.

15. Termination.

A. Owner may terminate the Contract for any Project on seven days' written notice to Contractor if Contractor (a) disregards any law, statute, ordinance, rule, regulation or order or permit of a public authority applicable to the Work, any applicable rule, regulation or work requirement of Owner or any direction or instruction given by Owner's authorized personnel or (b) otherwise is guilty of substantial breach of a provision of the Contract. If Owner terminates the Contract pursuant to this Section 15A, Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including, without limitation, compensation for consultant services and expenses made necessary thereby, and other damages incurred by Owner, such excess shall be paid to Contractor. If such costs and damages exceed the unpaid balance, Contractor shall pay the difference promptly to Owner.

B. Owner may terminate the Contract for any Project without cause at any time, for any reason, by giving seven days' written notice to Contractor. In the event of such termination, Owner shall assume and be liable for all obligations and commitments that Contractor has undertaken or incurred in good faith in connection with the Work, to the extent that they cannot be canceled by Contractor, and shall pay Contractor amounts owing under Sections 5 and 7 of this Agreement on account of Work performed through the effective date of the termination. Owner shall have no other liability to Contractor on account of such termination.

16. Rights and Remedies. The duties and obligations imposed by this Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by Owner or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing. Owner's choice of any remedy shall not operate to waive any other rights or remedies provided under the Contract Documents, or by law, against Contractor. Owner, at its option, may choose more than one remedy or choose one or more particular remedies at different times. Neither the observations of Owner, nor inspections, tests or approvals by persons other than Contractor, shall relieve Contractor from Contractor's obligations to perform the Work in accordance with the Contract Documents. Owner shall not be deemed to have waived or be estopped from asserting and enforcing, any of the provisions of the Contract by reason of any oral statement or any course of conduct by Owner or by any employee, officer, agent or other representative of Owner, and all claims by Contractor that may rely, in whole or in part, upon a theory of waiver or estoppel arising from any such statement or conduct are hereby waived and released by Contractor.

17. Confidentiality. Contractor and its employees, agents and subcontractors shall hold in confidence and shall not disclose, distribute, sell, copy, share or otherwise use any information obtained by Contractor during performance of any Work that relates to 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 Owner in writing. Upon completion of the Work, Contractor and its employees, agents and subcontractors shall return to Owner all information and all records or documents received from Owner, including, without limitation, any and all copies thereof which may have been made.

18. Force Majeure. If either party is rendered unable, wholly or in part, by a force outside the control of such party including without limitation an act of God, war, terrorism, fire, flood, explosion, act of governmental authority, strike, civil disturbance or failure of power, to carry out its obligations under the Contract or if Owner is notified by a state or federal regulatory body that any aspect of the Contract does not comply with applicable law, regulation, rule, policy or order applicable to Owner, the affected party shall give the other party prompt written notice to that effect. Thereafter, failure to perform the affected obligations shall not be deemed a breach or a default under the Contract so long as the affected party is unable to perform for such a reason. Notice by Contractor of a claim for extension of the Time for Completion pursuant to this Section 18 shall be given in accordance with the notice section of this Agreement.

19. Access to Books and Records. Contractor agrees that, in accordance with Section 952 of the Omnibus Reconciliation Act of 1980, and all amendments thereto, as applicable, the Secretary of the Department of Health and Human Services and the Comptroller General (or any of their duly authorized representatives) may review this Agreement and have access to the books, documents and records of Contractor and any subcontractor, that they may deem necessary to verify the nature and extent of the costs incurred by Owner under this Agreement. Access to such items will be made available by Contractor for at least four years after the Work has been completed. This provision will be contained in any agreement between Contractor and any subcontractor with respect to the Work.

20. Use of Names. Contractor shall not use the names of NYU Hospitals Center, NYU Langone Medical Center or New York University in advertising or other promotional materials without the prior written consent of Owner; provided, however, that Contractor may include Owner on its standard client list.

21. Survival. The provisions of the Contract relating to Warranties, Insurance, Hold Harmless Agreement, Proprietary Rights, Confidentiality, Use of Names and any other provisions requiring continuing performance by Contractor shall continue in full force and effect notwithstanding the fact that Owner has accepted and paid for the Work and notwithstanding any termination of the Contract.

22. Compliance With Laws and Owner's Rules and Regulations. Contractor, at its sole expense, shall comply, and cause its employees, agents and subcontractors to comply, (i) with all federal, state and local laws, statutes, ordinances, rules and regulations and orders and permits of any public authority applicable to the Work, including, without limitation, laws prohibiting discrimination against employees or applicants for employment because of race, religion, color, national origin, sex, age or sexual orientation; (ii) with all applicable rules, regulations and work requirements of Owner that are brought to Contractor's attention, including, without limitation, Owner's requirements for encryption and anti-virus and security patches for Contractor's mobile devices; and (iii) with the directions and instructions given by Owner's authorized personnel.

23. No Exclusion. Contractor represents and warrants that it has not been excluded from participation in a federal or state program, including Medicare or Medicaid ("Program"), and to the best of its knowledge, there are no pending or threatened debarments or exclusions of

Contractor from any Program. Contractor covenants to notify Owner as soon as practicable if Contractor is excluded, barred or suspended from participation in any Program and to refrain from employing or contracting for purposes of providing any services to Owner with any individual or entity known by Contractor to be sanctioned, suspended or excluded from participation in any Program.

24. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York (without regard to principles of conflicts of law or choice of law) and the parties hereto shall submit to the jurisdiction of the federal and state courts located in New York County, New York State, for the resolution of any dispute arising hereunder, regardless of the place of execution or performance of the Work.

25. Written Notice. 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 facsimile or electronic mail and confirming within forty-eight hours by registered or certified mail, return receipt requested or (d) delivery by overnight courier service. Notice to Contractor shall be sent to the address designated above and notices to Owner shall be addressed to NYU Langone Medical Center, 360 Park Avenue, New York, New York 10016, Attn: Contract Manager. Any change in address shall be provided by written notice to the other party.

26. Miscellaneous. This Agreement, and any Work Order, contain the entire agreement between the parties concerning the Work, and supersede all prior negotiations, representations, agreements, proposals, promises, understandings and practices, whether written or oral. This Agreement, and any Work Order, may not be amended, nor may this Agreement or any of its rights or duties hereunder, or any Work Order, be assigned or transferred by Contractor, unless Owner has consented to such amendment, assignment or transfer, in writing. Any purported amendment, assignment or transfer without Owner's consent shall be null and void. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement is not for the benefit of any third party. If any provision of this Agreement shall be found to be unenforceable or invalid, the remaining provisions shall continue in full force and effect. If there is any conflict between the terms and conditions of this Agreement and those of any invoice, bill, purchase order, letter or other document issued by Owner, the terms of this Agreement shall govern; provided, however, that the terms of the Work Order shall govern over inconsistent provisions of this Agreement to the extent provided in Section 1.

27. Term. This Agreement shall have a term of three years commencing on the date first above written. The Contract formed by each executed Work Order shall survive the expiration and term of this Agreement.

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



**EXHIBIT A**

**WORK ORDER FORM**

**ON-CALL AGREEMENT - IT FACILITIES INSTALLATION AND REPAIR**  
**WORK ORDER**

Project and Project Site:

Project Number:

On-Call Agreement Dated:

Name of Owner's Representative:

Name and Address of Contractor:

Name of Contractor's Representative:

Other Description of Work:

Names and addresses of approved Subcontractors:

Contract Sum: Check the basis of the Contract Sum:

\_\_\_ Time and Materials subject to a Level-of-Effort Cap. Contractor shall use its best efforts to perform and complete the Work described herein without exceeding the following Level-of-Effort Cap: \$ [            ]. This Cap shall not be exceeded without written authorization from Owner's Representative. Contractor shall notify Owner's Representative when the compensation earned by Contractor for this Work has reached 80% of the Level-of-Effort Cap.

Hourly Rate:

\_\_\_ Fixed Price. Contractor shall perform and complete the Work described herein for the following Fixed Price: \$ [            ].

Start Date:

Time for Completion:

Special Terms (e.g., Milestone payments; Reimbursable Costs):

This Work Order is governed by the terms and conditions of the On-Call Agreement between Owner and Contractor referenced above. Contractor shall perform the Work described above and complete the Work within the Time for Completion stated above. **TIME IS OF THE ESSENCE.** Owner shall pay Contractor as provided in the On-Call Agreement for the performance and completion of the Work in accordance with the Contract Documents.

**OWNER:**

**NYU HOSPITALS CENTER**

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

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

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

**CONTRACTOR:**

\_\_\_\_\_

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

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

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

**EXHIBIT B**

Monthly Time Sheet