

## MASTER SERVICES AGREEMENT (TERMS TO REDLINE IF REQUIRED)

**NYULH:** NYU Langone Hospitals (“NYULH”), a New York not-for-profit corporation  
**Consultant:**  
**Address:**  
**Date:**

1. Engagement.
  - (a) NYULH hereby engages Consultant to perform the services described in the Statement of Work (“SOW”) attached hereto as Appendix I, in accordance with the timeframes and milestones and in consideration of the fee(s) stated in the SOW, and Consultant accepts the engagement.
  - (b) Any additional project agreed to by the parties from time to time shall be set forth in a SOW which specifies the agreed-upon services, timeframes, milestones and fees and which shall become an integral part of this Master Services Agreement (“Agreement”).
  - (c) Consultant will furnish NYULH with the names and qualifications of its employees and subcontracted agents who will provide the services (“Consultant Staffers”) and replace any Consultant Staffer whose conduct or performance NYULH deems unsatisfactory.
  - (d) Consultant shall not engage any subcontractors to serve as a Consultant Staffer without first entering into a written agreement whereby the Consultant Staffer (i) assigns to Consultant his/her entire right, title and interest to all Deliverables and associated intellectual property rights (for subsequent assignment to NYULH pursuant to Section 5(b)) and (ii) agrees to comply with Consultant’s obligations hereunder, including, without limitation, the confidentiality obligations set forth in Section 10 of this Agreement. The engagement of any Consultant Staffer will not relieve Consultant of any of its obligations under this Agreement or any SOW. Any breach by a Consultant Staffer of any terms or conditions of this Agreement or any SOW shall be deemed a breach by Consultant of such terms and conditions.
2. NYULH Responsibilities. NYULH shall designate a liaison to monitor on-ongoing activities and provide Consultant with timely access to data, information and personnel necessary for Consultant to perform the services. Except as otherwise set forth in any SOW, Consultant will furnish, at Consultant’s sole cost and expense, all materials and supplies necessary for completing the Services. Any materials and supplies furnished by NYULH shall remain at all times the property of NYULH, which Consultant shall return to NYULH upon completion of the Services in good condition, reasonable wear and tear excepted.
3. Payment of Invoices. The SOW shall specify the fee for the services and milestones for payment. Unless otherwise specified in the SOW, invoices shall be paid within forty-five (45) days of invoice date.
4. Termination.
  - (a) This Agreement shall terminate upon the completion of the services described in the SOW, provided, that either party may terminate this Agreement (or any SOW subsequently entered into) by giving written notice to the other party not less than thirty (30) days prior to the intended date of termination.
  - (b) NYULH may terminate this Agreement (and/or any SOW) immediately upon written notice to Consultant (a) if Consultant has 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”); (b) Consultant becomes insolvent or is subject to a bankruptcy, liquidation, receivership or similar proceeding for the benefit of creditors; or (c) any license required for Consultant to render the services is revoked or suspended.
  - (c) To the extent a SOW requires Deliverables (as defined below), Consultant shall provide NYULH with all Deliverables compiled, whether in whole or in part, up to the date of termination and NYULH shall pay Consultant, within thirty (30) days of receipt of the same, a pro-rata amount of the fee (if any, as set forth under the applicable SOW) allocable to the completed and partially completed Deliverables. Consultant expressly waives any right to additional or other amounts based on *quantum meruit*.
5. Deliverables; Assignment; Indemnification for Infringement.
  - (a) All tangible items and work product generated by Consultant pursuant to this Agreement or any SOW, including, without limitation, computer software, firmware, layouts, designs, drawings, patterns, models,

compositions, architectures, protocols, formulae, algorithms, processes, programs, methods, technology, devices, works of authorship, data, databases and data collections (collectively, "Deliverables"), shall be the sole and exclusive property of NYULH.

- (b) All intellectual property rights (including, without limitation, patents, copyrights, trade secrets, inventions, ideas, discoveries, developments, innovations, concepts and improvements) made or conceived by Consultant, solely or jointly, or in whole or in part, relating to the Deliverables or otherwise in connection with Consultant's performance under this Agreement or any SOW (collectively, "Assigned Works") shall be considered a "work made for hire" within the meaning of the Copyright Act of 1976, as amended, by Consultant for NYULH, and Consultant hereby transfers and assigns, and agrees to transfer and assign, to NYULH all of Consultant's right, title and interest therein without further consideration. At NYULH's request, Consultant shall promptly deliver, execute, file and record all documentation evidencing such assignments and deliver to NYULH physical and electronic embodiments of each element of the Assigned Works, including the Deliverables.
- (c) As between NYULH and Consultant, Consultant retains ownership of any inventions, ideas, discoveries, developments, innovations, concepts, software and devices that Consultant owned and developed prior to the effective date of this Agreement, to the extent the same was not developed or created by Consultant for NYULH or any of its affiliates (collectively "Consultant Property"). If any Consultant Property is embodied in or used in connection with any Deliverable or Assigned Work, Consultant hereby grants, and agrees to grant, to NYULH a royalty-free, paid-up, non-exclusive, perpetual, irrevocable license to use such Consultant Property for all purposes in connection with NYULH's use of such Deliverable or Assigned Work.
- (d) Consultant will defend, indemnify and hold harmless NYULH from any action or other proceeding brought against NYULH (including, without limitation, actions by Consultant Staffers) which alleges use of a Deliverable infringes any patent or copyright or constitutes unauthorized use of a trade secret. If the Deliverables or any portion thereof become or are likely to become the subject of an infringement claim or are found by a final, non-appealable order of a court of competent jurisdiction to be an infringement or unauthorized use of a trade secret, then Consultant may, at its option and expense, (i) secure for NYULH the right to continue the use of such infringing item, or (ii) replace or modify such Deliverable so it becomes non-infringing, provided that such replacement or modification is capable of performing substantially the same function. If Consultant is unable to perform either option, then NYULH shall return the Deliverable to Consultant and Consultant shall refund to NYULH the amount paid by NYULH to Consultant for such item, provided that the foregoing shall not be construed to limit Consultant's indemnification obligation set forth herein.

6. Warranties

- (a) *Services Warranty.* Consultant warrants that it shall perform the services in good faith and in a competent and efficient manner, and in compliance with all applicable laws, rules and regulations.
- (b) *Software Warranty.* To the extent a SOW requires the delivery and/or implementation of software applications, Consultant warrants that the software (i) will be accompanied by the source code and, at the time of delivery, will be free of all viruses, time bombs, Trojan horses or other malicious code and (ii) will conform with NYULH's specifications and intended use. In the event of non-conformance with NYULH's specification, Consultant shall promptly correct, repair or modify the identified defect or deviation within thirty days of NYULH's written demand. If Consultant fails to correct, repair or modify the defect or deviation to NYULH's reasonable satisfaction, Consultant shall promptly refund to NYULH the amount paid to Consultant for the Deliverable and this Agreement shall be deemed terminated.

7. No Exclusion. Consultant represents and warrants that neither Consultant nor any parent or affiliate of Consultant nor any Consultant Staffer assigned to perform the services has 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 Program, and to the best of its knowledge, there are no pending or threatened civil anti-trust or criminal investigations or pending or threatened debarments, suspensions or exclusions of any of the foregoing from any Program. Consultant covenants to notify NYULH as soon as practicable if Consultant is excluded, barred or suspended from participation in a Program and to refrain from employing or contracting for purposes of providing services to NYULH with any individual or entity known by Consultant to be sanctioned, suspended or excluded from participation in any Program. Consultant shall defend, indemnify and hold NYULH harmless from any loss, cost, fine, penalty or expense incurred by NYULH as a result of or arising from a breach of the foregoing representation and warranty.

8. Insurance. Consultant shall maintain the following insurance coverage: (i) commercial general liability insurance, written on an occurrence basis, for \$2 million per occurrence/\$4 million annual aggregate, including broad form property damage and contractual liability endorsements, (ii) statutory workers' compensation/employment liability insurance (unless Consultant is a sole proprietorship, in which event such insurance shall not be required), (iii) if Consultant provides computer services in which Consultant accesses the infrastructure and/or databases of NYU Langone Health networks and/or databases, cyber insurance for a minimum of \$1 million and (iv) if Consultant provides professional services, errors and omissions (professional liability) insurance for \$2 million. Consultant shall furnish certificates of insurance evidencing such coverages to NYU Langone Health, One Park Avenue, 4<sup>th</sup> fl, New York, NY 10016, Attn: Director of Insurance, prior to commencing any services. The certificates shall reflect the insurance coverages and the effective dates and expiration dates of the policies, and shall name NYULH and New York University as additional insureds with respect to the commercial general liability coverage. Consultant will endeavor to give NYULH at least 30 days' notice of cancellation or any material change to such insurance.
9. Indemnification. Consultant covenants and agrees to indemnify and hold harmless NYULH, NYU Langone Health System and New York University and their respective officers, trustees, employees and agents (each an "Indemnitee") harmless from and against (i) any and all damages, losses or expenses incurred by an Indemnitee as a result of any material breach of this Agreement by Consultant; and (ii) any claims arising during the term of this Agreement as a result of the acts or omissions of Consultant (including Consultant Staffers, agents, employees, and licensees), except to the extent such claims result from the negligence or willful misconduct of an Indemnitee. NYULH shall promptly notify Consultant of any Claim and cooperate with Consultant in the defense or settlement thereof, provided that NYULH shall have the right to participate in such defense at its own expense. Consultant shall not enter into settlement of any Claim that imposes upon any Indemnitee any liability or obligation without NYULH's prior written consent.
10. Confidentiality; Protected Health Information.
  - (a) If in connection with the performance of the services Consultant comes into possession of any Confidential Information of NYULH, Consultant will not disclose such Confidential Information to any third party, except as otherwise expressly permitted herein, or use any Confidential Information for any purpose outside the scope of this Agreement or in any manner that would constitute a violation of any laws or regulations. Consultant shall not make Confidential Information available to any of its employees and /or agents except those that have agreed to be bound by confidentiality obligations similar to those set forth herein and have a "need to know" such Confidential Information. Consultant agrees to hold NYULH's Confidential Information in confidence and to take all precautions to protect such Confidential Information as Consultant employs with respect to its own Confidential Information.
  - (b) As used herein, "Confidential Information" means all confidential and/or proprietary information of NYULH disclosed to Consultant, whether orally or in writing, that is designated as "confidential" or the like, or, that reasonably should be understood to be confidential given the nature of the information and the circumstances of the disclosure. The term Confidential Information shall not include, and Consultant shall have no obligation to preserve the confidential and proprietary nature of, any information, that: (i) is or becomes a matter of public knowledge through no act or omission of Consultant or any Consultant Staffer; (ii) was previously known by Consultant prior to the disclosure without restriction on disclosure; (iii) is lawfully disclosed to Consultant by a third party that lawfully and rightfully possesses such information without restriction on disclosure; or Consultant is compelled to disclose by lawful process (whether by interrogatories, requests for information or documents, subpoena, civil investigative demands or other processes), provided, that Consultant shall promptly advise NYULH of any such legal demand.
  - (c) Upon termination of this Agreement Consultant shall, at NYULH's option, return to NYULH all documentary Confidential Information or destroy such information without retaining any copies thereof. Notwithstanding the return or destruction of the Confidential Information, Consultant shall continue to be bound by the obligations of confidentiality and other obligations hereunder.
  - (d) If and to the extent Consultant has access to protected health information (as defined in the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder), the parties shall execute a Business Associate Agreement in the form annexed hereto.
11. Independent Contractor.
  - (a) It is understood and agreed that Consultant is an independent contractor and is not, nor shall it be considered, an agent or representative of NYULH. Under no circumstances shall any Consultant Staffer (or

Consultant, if Consultant is an individual) be deemed to be an employee, agent or representative of NYULH or entitled to any disability benefit, workers' compensation or participation in any of NYULH's pension, health or other benefit plans. Consultant shall be solely responsible for the payment of all federal, state and local payroll taxes, income taxes, Social Security and any other fees, charges or payments required by law.

- (b) Consultant covenants that all Consultant Staffers (or Consultant, if Consultant is an individual) performing services have United States immigration status and work authorization that permits them to carry out their assigned tasks, and that Consultant is responsible for complying with all immigration and employment-related requirements, including United States Citizenship and Immigration Services Form I-9.
  - (c) Consultant hereby agrees to indemnify and hold harmless NYULH against any fines, damages, assessments or attorneys' fees incurred by NYULH in the event a court or administrative agency finds that Consultant and/or any Consultant Staffer is an employee of NYULH or a violation of Form I-9 and/or any other immigration related requirements.
12. Use of Name. Consultant shall not use the name, logo, insignia, symbol or trademark of NYULH, NYU Langone Health, New York University (or NYU), NYU School of Medicine or NYU Langone Medical Center, its faculties or departments or any variations or combinations thereof or the name of any NYU personnel in any advertising or for any commercial or promotional purpose without NYULH's prior written consent, provided that Consultant may include NYULH on its client list.
13. Compliance with Law and Policies.
- (a) Notwithstanding any other provision in this Agreement, NYULH remains responsible for ensuring that any health care service provided pursuant to this Agreement complies with all pertinent provisions of federal, state and local statutes, rules and regulations, provided that the foregoing shall not relieve Consultants of its obligations hereunder.
  - (b) Consultant shall comply, and cause Consultant Staffers to comply, with all of NYU Langone Health's policies and procedures, including, without limitation, those governing NYU Langone Health's information technology systems and health screening requirements. The policies are available at: <http://nyulangone.org/vendor-supplier-information/information-for-prospective-existing-suppliers>.
  - (c) If the services require the presence of Consultant or any Consultant Staffer on NYU Langone Health's premises, Consultant shall register with Vendormate, which can be found at <http://hs1060.vendormate.com>.
  - (d) If Consultant or any Consultant Staffer is provided with a user ID to access NYU Langone Health's network, databases and IT systems, Consultant will, at NYULH's request, execute, and cause Consultant Staffers to execute, agreements confirming the obligation to comply with all NYU Langone Health policies relating to IT security and the directions of the MCIT Department.
14. Notices. All notices, demands and other communications hereunder shall be in writing and shall be effective if hand delivered against receipt, delivered by overnight mail or sent by registered or certified mail, return receipt requested, postage prepaid. Notices to Consultant shall be sent to the address set forth above, and notices to NYULH shall be sent to NYU Langone Health, 360 Park Avenue, New York, NY 10016, Attn: \_\_\_\_\_, or to such other person(s) or address(es) as any party may request by giving written notice of such change in the manner provided in this Section.
15. Access to Records. To the extent required by law, until the expiration of four years after the furnishing of the services which are the subject matter of this Agreement, Consultant shall, upon request, make available to the United States Department of Health and Human Services, the United States Comptroller General and their representatives (collectively, "HHS") this Agreement and all other books, documents and records as are necessary to certify the nature and extent of the costs incurred by NYULH. If Consultant provides such services through a subcontract or consulting agreement worth \$10,000 or more over a twelve-month period, the subcontract or consulting agreement shall also contain a clause permitting access by the HHS to the books and records of the subcontractor. Consultant shall give NYULH notice of any request made directly by HHS upon Consultant.
16. Assignment. Neither party may assign or delegate its rights or obligations without the other party's prior written consent, provided that either party may, upon notice to the other, assign this Agreement to any U.S. entity that is now or in the future controlled by or under common control with the assigning party or to any other entity as the result of a transfer of all or substantially all of the assigning party's assets or capital stock or membership interest.

17. Survival. All paragraphs herein relating to deliverables, confidentiality, indemnification, access to records, survival, assignment and governing law shall survive the expiration or early termination of this Agreement.
18. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of New York without regard to any applicable conflicts of law.
19. Miscellaneous. This Agreement and the appendices hereto constitute the entire agreement between the parties and supersede any and all prior and collateral negotiations and agreements between the parties. This Agreement may be amended only in writing signed by the parties hereto. No waiver of any provision of this Agreement shall be binding on any party unless consented in writing by such party. No waiver of any provision hereof shall constitute a waiver of any other provisions, nor limit or affect such party's rights with respect to any future breach of any of the provisions of this Agreement. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof, and each provision is hereby declared to be separate, severable and distinct. This Agreement may be executed in counterparts (including by facsimile or PDF), each of which shall be deemed an original and all of which together shall continue one and the same instrument.

N:NYULHMaster Services 10-10-2017

