

## MSA Terms

### 1. Engagement.

- (a) NYUHC hereby engages Consultant to perform the services described in the Statement of Work ("SOW") attached hereto, 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.
- (c) Consultant will furnish NYUHC with the names and qualifications of its employees and agents who will provide the services ("Consultant Staffers") and replace any Consultant Staffer whose conduct or performance NYUHC deems unsatisfactory.

### 2. NYUHC Responsibilities. NYUHC shall designate a liaison to monitor on-going 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 supply, at Consultant's sole cost and expense, all materials and supplies necessary for completing the Services. Any materials and supplies furnished by NYUHC shall remain at all times the property of NYUHC, and Consultant shall return such materials and supplies to NYUHC 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 Master Services Agreement shall terminate upon the completion of the services described in the SOW, provided, that either party may terminate this Master Services 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) To the extent the SOW specifies tangible items or work product to be delivered by Consultant ("Deliverables"), Consultant shall provide NYUHC with all Deliverables compiled up to the date of termination and NYUHC shall pay Consultant, within thirty (30) days of receipt of the Deliverables, a pro-rata amount of the fee allocable to the completed Deliverables. Consultant expressly waives any right to additional or other amounts based on *quantum meruit*.

### 5. Work for Hire; Indemnification for Infringement.

- (a) All documents and software, and all copyrights therein, which constitute a Deliverable shall be deemed a work made for hire under federal copyright law and shall be owned solely by NYUHC. To the extent that any Deliverable may not, by operation of law, be a work made for hire, Consultant hereby grants, transfers, assigns and conveys to NYUHC ownership of the copyright, patent or other intellectual property right in such Deliverable and NYUHC shall have the right to obtain and hold in its own name any such right or similar protection which may be available in such Deliverable. At

NYUHC's request, Consultant shall promptly deliver, execute, file and record all documentation evidencing such assignment.

- (b) If the services performed by Consultant result in an invention, Consultant shall promptly disclose the invention to NYUHC in writing. Such invention and any resulting patent rights shall become the exclusive property of NYUHC, and NYUHC shall be the sole party entitled to the rights, title and interest in and to the invention.
- (c) To the extent that any Consultant Property is contained in any of the Deliverables, Consultant hereby grants NYUHC a royalty-free, paid-up, non-exclusive, perpetual license to use such Consultant Property in connection with NYUHC's use of the Deliverables. NYUHC acknowledges that the license provided for herein shall not grant NYUHC any right, title or ownership interest in the Consultant Property. (Consultant Property shall mean concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and software owned by Consultant, provided, that Consultant Property shall not include any of NYUHC's confidential information or tangible or intangible property, in which Consultant shall have no ownership rights.)
- (d) To the extent a Deliverable contains intellectual property rights, Consultant will defend, indemnify and hold harmless NYUHC from any action or other proceeding brought against NYUHC (including, without limitation, actions by Consultant Staffers) which alleges use of a Deliverable infringes any federal patent or copyright or unauthorized use of a trade secret. If the Deliverables or any portion thereof become or, in Consultant's reasonable judgment, are likely to become the subject of an infringement claim or are found by final, non-appealable order of a court of competent jurisdiction to be an infringement or unauthorized use of a trade secret, Consultant may, at its option and expense, (i) secure for NYUHC 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, in its reasonable discretion, is unable to perform either option, NYUHC shall return the Deliverable to Consultant and Consultant's sole liability shall be to refund to NYUHC the amount paid 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 and the Medical Center's policies and procedures. Furthermore, to the extent the services require issuance of a unique user ID (e.g., Kerberos ID) to any Consultant Staffer (and Consultant if Consultant is an individual) to access the Medical Center's information technology systems, Consultant shall comply with, and cause the Consultant Staffers to comply with, the Medical Center's IT security policies governing mobile devices and portable media and the directions of the Medical Center's Information Technology (MCIT) Department, and shall cause each Consultant Staffer to execute the Privacy, Information Security and Confidentiality Agreement attached hereto.
- (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 NYUHC's specifications and intended use. In the event of non-conformance with NYUHC's specification, Consultant shall promptly correct, repair or modify the identified defect

or deviation within thirty days of NYUHC's written demand. If Consultant fails to correct, repair or modify the defect or deviation to NYUHC's reasonable satisfaction, Consultant shall promptly refund to NYUHC 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 federal or state program, including Medicare or Medicaid (collectively, "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 NYUHC 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 NYUHC 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 NYUHC harmless from any loss, cost, fine, penalty or expense incurred by NYUHC 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) and (iii) 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 Medical Center, 215 Lexington Avenue, 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 NYUHC and New York University as additional insureds with respect to the commercial general liability coverage. Consultant will endeavor to give NYUHC at least 30 days' notice of cancellation or any material amendment to such insurance.
9. Indemnification. Consultant shall defend, indemnify and hold harmless NYUHC and New York University and their respective officers, trustees, employees and agents (each an "Indemnitee") from and against any and all claim, action, loss, damage, cost and expense (a "Claim") arising out of bodily injury, death or physical damage to real or tangible personal property to the extent caused by or resulting from the negligence or willful misconduct of Consultant while engaged in the performance of its obligations hereunder. NYUHC shall promptly notify Consultant of any Claim and cooperate with Consultant in the defense or settlement thereof, provided, that NYUHC 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 NYUHC'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 NYUHC, 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 NYUHC'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 proprietary information of NYUHC 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; (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 NYUHC of any such legal demand.
- (c) Upon termination of this Agreement Consultant shall, at NYUHC's option, return to NYUHC 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. It is understood and agreed that the parties are independent contractors and that neither party is or shall be considered an agent or representative of the other. Under no circumstances shall any Consultant Staffer (or Consultant, if Consultant is an individual) be deemed to be an employee, agent or representative of NYUHC or entitled to any disability benefit, workers' compensation or participation in any of NYUHC's pension, health or other benefit plans. Consultant shall be solely responsible for the payment of all federal, state and local payroll taxes, including, without limitation, income taxes, Social Security taxes, federal unemployment compensation taxes and any other fees, charges or payments required by law, and hereby agrees to indemnify and hold harmless NYUHC against any fines, damages, assessments or attorneys' fees incurred by NYUHC in the event a court or administrative agency finds that a Consultant Staffer is an employee of NYUHC.

12. Use of Name. Consultant shall not use the name or logo of NYUHC, New York University, NYU School of Medicine, NYU or NYU Langone Medical Center in any advertising or for any commercial or promotional purpose without NYUHC's written consent, provided that Consultant may include NYUHC on its client list.
13. Compliance with Law. Notwithstanding any other provision in this Agreement, NYUHC 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.
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 NYUHC shall be sent to: NYU Langone Medical Center, 360 Park Avenue, 13<sup>th</sup> floor, New York, NY 10016, Attn: Joseph McDermott.
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 NYUHC. 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 NYUHC 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, 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 to 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.