



## MASTER CONSULTANT'S AGREEMENT

Agreement made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between NYU, a New York education corporation having its principal office at 70 Washington Square South, New York, NY 10012 (the "University") and \_\_\_\_\_,<sup>a</sup> having its principal office at \_\_\_\_\_ ("Consultant").

### 1. The Work

- A. Consultant shall provide the services and deliverables (hereinafter "the Work") set forth in one or more Statements of Work signed by the parties and specifically referencing this Agreement (each a "Statement of Work" or "SOW"). The Work shall consist of advice and consultation (including preparation and provision of reports and other work product) and, except as set forth in the applicable SOW, include the provision of all personnel, equipment, facilities and supplies necessary to perform the Work.<sup>b</sup>

The terms and conditions of each SOW shall, with respect to such SOW, prevail over any conflicting terms and conditions of this Agreement. Each SOW shall be incorporated into this Agreement by this reference and be deemed to be a part of this Agreement.

- B. Unless otherwise specified by the University, from time to time, Consultant shall regularly consult with and comply with any instructions or directives regarding the scope and results of the Work given by \_\_\_\_\_,<sup>c</sup> who shall have general control over the project in relation to which the Work is to be performed (the "Project").
- C. Consultant represents and warrants that:
- i. it shall perform the Work in a professional manner and in accordance with the specifications contained in the applicable SOW;
  - ii. it is and will be, and shall provide personnel who are, appropriately trained, qualified and (if required by applicable law) licensed to perform the Work;
  - iii. it has all right, title and interest in and to the Work, and all components thereof, to perform and provide the Work, and that, upon completion of the Work the University shall have good title to the Work, free from any lien, claim, charge, or encumbrance;
  - iv. the Work does not violate or infringe any copyright, patent, trade secret, trademark, trade name, right of privacy, or any other proprietary or other right of any person;
  - v. it has full power and authority to enter into this Agreement, to perform and complete the Work, and to grant the rights granted hereunder; and

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<sup>a</sup> If the consultant is an individual, state the person's full name. If the consultant is a corporate or other entity, state the full corporate name, type of entity and state of organization, and address.

<sup>b</sup> Each SOW should include a full description of the work to be performed together with descriptions and timetables for deliverables, quality standards, names of responsible personnel, numbers of meetings or visits, technical or functional specifications, etc. Simply attaching the consultant's proposal is not sufficient.

<sup>c</sup> Insert name and title.



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- vi. if it is an entity, it is duly organized and validly existing in good standing under the laws of the state of its organization.

### 2. Fees and Payments

- A. For the satisfactory performance of the Work by the relevant dates set forth in the applicable SOW, the University shall pay Consultant in accordance with the schedule and rates set forth in the applicable SOW. Consultant shall deliver an invoice (together with required supporting documentation) to the University. Consultant shall not invoice the University more frequently than once per month unless otherwise agreed upon; all invoices shall specify in detail the Work performed and the identify of persons who performed the Work, the dates on which the Work was performed and, if payment is to be made on a daily, hourly or other basis, the number of invoiced days, hours or other basis during which the Work was performed.
- B. Consultant shall not charge the University sales or use taxes. The University is exempt from New York State and City sales and use taxes and will provide Consultant with a certificate to this effect if Consultant requests it to do so.
- C. Payment Terms
  - i. If Consultant is paid by check payment will be received 60 days from date of invoice.
  - ii. If Consultant is paid by ACH payment will be received 30 days from date of invoice.

### 3. Term and Termination

- A. Unless earlier terminated in accordance with section 3.B, this Agreement shall be effective as of the date set forth above and shall [terminate on \_\_\_\_\_] extend until the Work has been performed in full to the satisfaction of the University]. This Agreement may be renewed by written agreement of the Parties for an additional term as specified by the Parties or upon execution by both parties of a SOW that references this Agreement.
- B. This Agreement may be terminated by the Parties as follows:
  - i. The University may terminate this Agreement or any SOW, with or without cause, upon written notice of termination at least seven (7) days prior to the effective date of such termination.
  - ii. If the University materially breaches the terms of this Agreement, Consultant may, upon giving thirty (30) days' written notice to the University identifying specifically the basis for such notice, terminate this Agreement for breach unless the University cures such breach within the thirty (30) day period; provided that failure to pay amounts subject to a good faith dispute between the parties shall not constitute a material breach of the Agreement.
- C. Upon any termination of this Agreement, Consultant shall deliver to the University any and all Work and materials of any kind in Consultant's possession or control. Upon such delivery, the University shall pay Consultant for the Work Consultant has completed to and including the

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termination date which is not subject to a good faith dispute between the Parties. Termination of this Agreement shall automatically terminate all outstanding SOWs.

**4. Consultant Status**

The relationship of Consultant to the University is that of independent contractor solely and Consultant is directly responsible for the mode, method, and manner of its activities. Under no circumstances, as a result of this Agreement, shall Consultant or any employee, agent, or representative of Consultant be considered an employee, agent, or representative of the University. Nothing contained herein shall create any agency, partnership, association, or joint venture between Consultant and the University. Consultant shall have no right or authority to create any obligation or responsibility, express or implied, on behalf of or in the name of the University, or to bind the University contractually in any manner whatsoever, nor shall the University have any such right or authority in relation to Consultant. Consultant will not make any representation, express or implied, that it is an agent or representative of the University. Consultant shall be responsible for all employment matters relating to Consultant and Consultant's employees, including but not limited to, payment of all federal, state, and local employment taxes, workers' compensation and disability insurance coverage and other mandated employee benefits, as well as any non-obligatory fringe benefits. The University shall not be liable for such Consultant liabilities or for any other debts, obligations, or other liabilities of Consultant.

**5. Confidentiality**

- A. Consultant and its employees, agents, and representatives shall hold in confidence and shall not disclose, distribute, sell, copy, or otherwise disseminate or use (other than in the performance of the Work) the University's "Confidential Information," which includes (i) any information about or relating to the Work or the Project or any results of the Work including without limitation any software or (ii) any information obtained, learned, received, or developed by Consultant while performing the Work that relates to the employees, students, research, development, plans, business affairs, property, records, processes, techniques, or equipment of the University or of any third party that is performing work on or is otherwise involved in the Project. Upon termination of this Agreement, Consultant shall return to the University any and all Confidential Information and any copies thereof or shall certify in writing to the University that any and all Confidential Information and any copies thereof have been destroyed. This Section 5 shall survive termination of this Agreement.
- B. The term "Confidential Information" does not include information that (a) was in the public domain at the time it was disclosed or has entered the public domain through no fault of the receiving Party, (b) at the time of disclosure, was known to the receiving Party through lawful means or through acts of a third party who is free to make such disclosure without restriction, (c) was independently developed by the receiving Party without any use of the Confidential Information, or (d) is disclosed pursuant to a lawful order or requirement of a court,

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administrative agency, or other governmental body having jurisdiction over the receiving Party; provided, however, that the receiving Party shall provide prompt notice thereof to the disclosing Party to enable the disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure.

### **6. Intellectual Property**

The Work shall be deemed to be work made for hire and the University shall own all right, title, and interest in and to the Work and each part and component thereof, whether or not patentable or copyrightable (including, without being limited to, results, inventions, information, materials, products, trade secrets, know-how, technical and non-technical data, discoveries, methods, processes, studies, research, test results, techniques, formulae, compounds, designs, improvements, developments, , and any files, notebooks, drawings, software, computer programs, diagrams, specifications, and other documents containing or recording any of the foregoing), and any copyright therein and patent application or patent thereon. Consultant hereby transfers and assigns to the University all right, title and interest in and to the Work. At the University's request, Consultant shall promptly give, execute, deliver, file, and record any and all applications, assignments or other instruments, and shall do such other acts and things, as the University may deem necessary in order effectively to transfer, assign, convey, and vest in and to the University all right, title, and interest in and to the Work, each part and component thereof, all copyrights therein, and all patent applications and patents thereon; in order to assist the University in prosecuting or defending any litigation and proceedings relating to the Work, any part or component thereof, any copyright therein, or any patent application or patent thereon; or in order to evidence or preserve the University's ownership of the right, title, and interest in and to the Work, each part and component thereof, all copyrights therein, and all patent applications and patents thereon. This Section 6 shall survive termination of this Agreement.

### **7. Insurance**

- A. Consultant will procure and maintain at its expense while performing the Work Commercial General Liability Insurance with a combined bodily injury (including death), personal injury, and property damage limit of at least \$2,000,000 per occurrence (except as otherwise noted), including at least the following coverages: (A) Broad Form Blanket Contractual Liability for liability assumed by Consultant under this Agreement; (B) Broad Form Property Damage; (C) Personal Injury Liability A, B and C with employees' exclusion void; (D) Products Liability and Completed Operations; (E) Workers' Compensation Insurance as required by applicable law for all employees engaged in Work under this Agreement 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; (F) at least \$2,000,000 per occurrence limit Professional Liability (Errors and Omissions) Insurance; and (G) at least \$2,000,000 limit per occurrence of Auto Liability Insurance, for all vehicles used in this Agreement (if no vehicles are to be utilized, the contractor must submit a written statement to the University certifying

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that no vehicles are to be used). The Commercial General Liability policy shall include the University as an additional insured in connection with the Work.

- B. The Commercial General Liability policy shall be endorsed to: include the University as an additional insured; provide that any notice Consultant gives its insurer of a claim, suit, proceeding, or occurrence resulting from, arising out of or occurring in connection with the Work shall also be deemed by that insurer as a notice from the University as additional insured; state that any "other insurance" provisions in the policy shall not apply to the University and that Consultant's insurance shall be primary of any similar insurance carried by the University; state that the insurer will take no recourse against the University for payment of premium or for assessments of any kind; provide that any deductibles in the policy shall be assumed entirely by Consultant, at its sole risk; and state that the insurer has no right of recovery or subrogation against the University.
- C. Upon the execution of this Agreement, Consultant shall deliver to the University's Director of Insurance (105 East 17<sup>th</sup> St., 4<sup>th</sup> Floor, New York, NY 10003, [insurance.vendor.cert@nyu.edu](mailto:insurance.vendor.cert@nyu.edu)) a certificate or certificates evidencing the procurement of the foregoing insurance policies, and, if so requested by the Director of Insurance, certified copies of the foregoing insurance policies. Each certificate shall state (i) the type(s) of insurance and the amount(s) of coverage; (ii) the effective date and the date of expiration of the policy(s); (iii) that the policy(s) shall not be terminated, cancelled or materially altered for any reason without at least thirty (30) days prior written notice thereof to the University's Director of Insurance; and (iv) the interest of the University as an additional insured.
- D. If Consultant fulfills any of the insurance requirements set forth herein by the use of a claims made policy, Consultant will keep that policy in effect for at least three (3) years after the conclusion of this Agreement, and, if such claims made policy is cancelled during that three (3) year period, Consultant will purchase discovery period coverage for the remainder thereof.

### **8. Indemnity**

- A. Consultant shall defend, indemnify and hold harmless the University from and against any and all losses, claims, allegations, demands, suits, proceedings, investigations, prosecutions, actions, causes of action, liabilities, obligations, costs, expenses, assessments, settlements, judgments, interest, penalties (including legal expenses and reasonable attorneys' fees), damages or injuries of any kind or nature whatsoever (including, without limitation, damage, loss or destruction of real or personal property, personal or bodily injury or death) to the University and all other persons, caused by, resulting from, arising out of, or occurring in connection with: (i) Consultant's breach of this Agreement; (ii) Consultant's breach of applicable law; (iii) Consultant's performance or non-performance of the services provided pursuant to this Agreement; (iv) the infringement of any patent, copyright, trade secret,

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trademark, confidential information or other proprietary right of any third party; and (v) Consultant's negligent acts or omissions or intentional conduct.

- B. The University shall provide Consultant with notice of a claim for indemnification under this Agreement. In the event Consultant fails to prosecute and conduct the defense and/or compromise or settlement of a third-party claim actively, diligently and in good faith, the University may take any and all actions that it deems in its sole discretion to be necessary or desirable to preserve its rights in respect of such claim, including the right (but not the obligation) to engage counsel and defend, compromise or settle such claim, without waiving or otherwise limiting its rights under this Section. Consultant shall consult with the University and at all times will keep the University informed of all material matters relating to such defense, compromise or settlement. The University shall be entitled to participate in any litigation and/or in negotiations relating to any compromise or settlement with counsel of its own choice, provided that Consultant, subject to fulfilling its obligations under this Section, shall not be liable to the University for any legal costs and expenses relating to such participation by the University. Notwithstanding anything to the contrary contained in this Section, Consultant shall not agree to any compromise or settlement of any third-party claim, or permit a default or consent to entry of any judgment in respect of such claim, without the University's prior written consent.
- C. The term "Consultant" means each of Consultant, any subcontractor engaged by Consultant in connection with any portion of the services provided under this Agreement and their respective employees, officers, directors, agents, servants or representatives. The references to the University in this Section shall include, and the provisions of this Section shall inure to the benefit of, the University, its affiliated entities and their respective employees, trustees, officers, agents, representatives, servants, successors and assigns. The provisions of this Section 8 shall survive termination of this Agreement.

**9. Use of University's Name**

Consultant shall not use the name, trade name, trademark, or any other designation of the University, any school, college, division, department, or other unit of the University, or any employee of the University, or any contraction, abbreviation, adaptation, or simulation of any of the foregoing, for any purpose, including but not limited to, in any advertisement or for any commercial or promotional purpose (including without limitation in any portfolio or on any website or similar forum) without the University's prior written consent. This Section 9 shall survive termination of this Agreement.

**10. Notices**

All notices or communications pertaining to this Agreement shall be given in writing either by personal delivery, by overnight courier or by registered U.S. mail with return receipt. The



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effective date of any notice or communication referred to hereunder shall be: (i) if personally delivered, the date of such delivery, (ii) if delivered by courier, the next business day following the date on which such notice or communication is deposited with such courier, or (iii) delivered by U.S. mail, 7 days after the date on which such notice or communication is deposited with the U.S. Postal Service.

Notice shall be provided as follows:

If to Consultant:

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If to University:

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### 11. **Compliance with Laws**

- A. Consultant shall, at its own cost and expense, comply with all federal, state and local laws, rules and regulations applicable to University's facilities and the performance by Consultant of its obligations under this Agreement. Consultant shall, or shall cause its employees or agents to, at its own cost and expense, obtain any permits, licenses or similar authorizations necessary for the performance of its obligations under this Agreement.
- B. Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sexual orientation, gender and/or gender identity or expression, marital or parental status, national origin, ethnicity, citizenship status, veteran or military status, age, disability and any other legally protected basis.
- C. Consultant agrees to the terms set forth in this Consultant's Agreement, including without limitation, NYU's Purchase Order Terms and Conditions ([http://www.nyu.edu/content/dam/nyu/financialOperationsTreas/documents/Resources/pob\\_oiler.pdf](http://www.nyu.edu/content/dam/nyu/financialOperationsTreas/documents/Resources/pob_oiler.pdf)). To the extent that any provision of this Consultant's Agreement is inconsistent with or conflicts with the PO Terms, such provision of this Consultant's Agreement shall control.

**12. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of New York, without regard to principles relating to conflicts of law. The courts of the State of New York in New York County and the United States District Court for the Southern District of New York shall have exclusive jurisdiction over the parties with respect to any dispute or controversy between them arising under or in connection with this Agreement and, by execution and delivery of this Agreement, the parties to this Agreement submit to the exclusive jurisdiction of those courts, including, but not limited to, the in personam jurisdiction of those courts, waive any objection to such jurisdiction on the grounds of venue or forum non conveniens, or the absence of in personam jurisdiction.

**13. Assignment**

Neither party hereto may assign its rights or obligations under this Agreement without the prior written consent of the other.

**14. Amendment**

Neither this Agreement nor any term, provision, or condition hereof may be changed, supplemented, waived, or discharged orally, but only by an instrument in writing signed by both parties.

**15. Miscellaneous**

This Agreement constitutes the entire agreement of the parties regarding its subject matter, and it supercedes any and all prior and collateral negotiations, agreements and understandings, whether written or oral regarding the subject matter. This Agreement shall, be binding on the parties and their respective successors and permitted assigns. Any waiver of any term, provision or condition of this Agreement in any one or more instances shall not be deemed to be or construed as a further or continuing waiver of such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement. If any provision of this Agreement is determined to be invalid, void or unenforceable in any respect, the remaining provisions hereof shall continue in full force and effect. This Agreement is not for the benefit of any third party. This Agreement may be executed by the parties hereto in separate counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. The Appendices attached hereto are made a part hereof as if fully included in the text. The captions of the Sections are included herein only for the convenience of the parties and shall not be held to be part of this Agreement or be considered in the interpretation of this Agreement or any of its provisions.





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### 16. Non-Exclusivity

The University reserves the right to enter into or maintain contracts with other firms that provide similar services/products.

IN WITNESS WHEREOF, each party has executed this Agreement.	
NEW YORK UNIVERSITY	CONSULTANT
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:



## STATEMENT OF WORK

This Statement of Work ("SOW"), effective as of \_\_\_\_\_, 20\_\_, is entered into and governed by the Consultant's Agreement dated as of \_\_\_\_\_, 20\_\_ (the "Agreement") by and between New York University (herein referred to as the "University"), and \_\_\_\_\_ (herein referred to as "Consultant"). This SOW and the Agreement constitute the complete agreement regarding services and deliverables provided under this SOW. The terms and conditions of this SOW shall prevail over any conflicting terms or conditions of the Agreement.

### 1. Engagement Details

Project Name:	
SOW/Quote # and Date:	
Scheduled Start Date:	
Scheduled End Date:	
Business Manager(s):	
NYU Project Manager:	

### 2. Project Description & Scope of Work

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### 3. Timeline & Deliverables (add line item as needed)

Project Phase	Milestone or Deliverable	Estimated Completion Date

### 4. Fees (add additional Resources, if needed)

	Resource 1	Resource 2
Resource Name:		
Email and Phone No.:		
Role:		
Hourly Rate:		
Number of Hours:		
<b>Sub-Total (Rate X Hours):</b>		
Travel/Other Expenses:		
<b>Total Cost of Engagement*:</b> (SubTotal +Expenses)		

\*Consultant must receive written approval from NYU Project Manager to exceed Total Cost of Engagement.  
Invoices submitted without this approval will not be accepted.



## STATEMENT OF WORK

### 5. Invoicing and Payment

Consultant shall submit an invoice to NYU on a monthly basis. The invoice should include the number of hours worked in one month, the hourly rate, any approved travel expenses and the total monthly fee. Consultant shall provide supporting documentation in the form of timesheets for hours worked and itemized receipts for approved travel expenses.

### 6. Additional Provisions

#### A. Engagement Tenure

Consultant shall provide Resource(s) on a two-week trial basis, or 80 hours, after which the University will decide if Resource may continue working under the provisions referenced in this SOW. In the event NYU is not satisfied with the Resource after the trial period, NYU may request a new Resource. Consultant shall furnish new Resource within 5 business days. At such time the trial period shall commence on the new Resource.

Consultant shall not remove Resource from the engagement covered by this SOW before the Scheduled End Date without a minimum of 30 days' notice and the written agreement of the University. In such cases, Consultant will not have the right whatsoever to replace Resource(s) unless specifically requested to do so by New York University.

#### B. Engagement Exclusivity

Consultant agrees that it will not accept engagements with clients other than the University during the period covered by this SOW and involving the individual consultant(s) named herein without the prior written approval of the University.

#### C. Compliance

Failure to comply with any and all of the above will result in the termination of this SOW.

IN WITNESS WHEREOF, each party has executed this Agreement.	
NEW YORK UNIVERSITY	CONSULTANT
Signature:	Signature:
Name (print):	Name (print):
Title:	Title:
Date:	Date: