

Guidelines for Founders and/or Equity Owners Requesting Personal Consulting Agreements with Start-up Companies

Purpose:

The Icahn School of Medicine at Mount Sinai (“Mount Sinai”) supports successful academia-industry collaborations and encourages innovation. Mount Sinai has adopted policies and guidelines to support entrepreneurship and manage potential conflicts of interest and/or conflicts of commitment. Faculty requests for a personal consulting agreement with an early start-up company in which they have a personal financial interest (e.g. - licensed intellectual property, founder/co-founder, or equity ownership greater than *de minimus*) require a greater level of scrutiny. Proposed agreements must be submitted to the Office of Industry Engagements and Conflict of Interest (“COI Office”). These consulting agreements must be reviewed and approved by the medical school’s Business Conflicts of Interest Work Group (BCOIWG) prior to faculty members engaging in such activities.

Criteria for Requests:

- The request must include a defined scope of services that is clear and distinct from the faculty member’s role/responsibility at Mount Sinai.
- The services with the company cannot include research activities. Any research with the company must be conducted under a separate co-development agreement negotiated through MSIP.
- The services with the company cannot include marketing activities on behalf of the company. Any exceptions must be clearly defined and explicitly approved by the BCOIWG.
- The payment for services must be fair market value and structured on an hourly basis.
- The agreement should be limited to one year and will be reviewed annually by the BCOIWG.

Given the need to effectively manage potential conflicts of interest and conflicts of commitment related to the transformation of an early stage start-up into a commercially viable entity, it is strongly recommended that consulting agreement between the faculty member and the company utilize the template in **Appendix A**. All personal consulting agreements must also include the medical school’s *Uniform Provisions for Consulting Addendum (Appendix B)* signed by the company.

[For faculty members requesting to serve on the Board of Directors or hold an executive leadership \(C-suite\) position for an outside entity, please refer to the related guidelines here.](#)

Appendix A: Consulting Agreement Template

This Consulting Agreement (this “**Agreement**”) is entered into as of [DATE], by and between [], a [] company with a principal address at [] (“**Company**”), and [] (“**Consultant**”), an employee and faculty member of Icahn School of Medicine at Mount Sinai, a New York not-for-profit education corporation (“**Institution**”).

WHEREAS, Consultant, as an employee and member of the faculty of Institution, is permitted to perform limited consulting services for companies, subject to the terms of Consultant’s employment relationship with Institution and the applicable policies and procedures of Institution;

WHEREAS, Company desires that Consultant provide advice and assistance to Company in his/her area of expertise; and

WHEREAS, Consultant desires to provide such advice and assistance to Company as a founder of independent contractor to Company under the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the services to be provided to Company by Consultant, the consideration to be made to Consultant by Company, and the other promises set forth below, the parties agree as follows:

1. Relationship of Parties. Consultant shall perform under this Agreement as an independent contractor to the Company.
2. Description of Services.
 - (a) The Company hereby retains the Consultant and the Consultant hereby agrees to perform such consulting and advisory services relating to the Field of Interest as the Company may reasonably request as set forth in **Exhibit A** (the “Consulting Services”). Consultant represents to Company that Consultant has the knowledge and skills required to undertake the Consulting Services.
 - (b) The Consultant agrees to make himself available to render the Consulting Services, at such times and locations as may be mutually agreed, from time to time as requested by the Company. Except as provided in **Exhibit A**, the Consultant may deliver the Consulting Services via telephone, in person or by written correspondence.
 - (c) The Consultant agrees to devote reasonable efforts to perform the Consulting Services. The Consultant shall comply with all applicable federal, state, and local laws in performing the Consulting Services. The Consultant shall also comply with Company’s policies with regard to the Consultant’s access to and use of the Company’s property, information, equipment and facilities.
 - (d) Consultant represents, to the best of its knowledge, that at the time of execution of this Agreement, the terms of this Agreement are not inconsistent with any other contractual or legal obligations Consultant may have or with the policies of Institution or any company with which consultant is affiliated.
 - (e) Consultant represents, to the best of its knowledge, that Consultant has disclosed to Institution all aspects of Consultant’s relationship with the Company which are required to be disclosed under Institution’s policies, and that Consultant has obtained any required consent or approval of Institution concerning such relationship and this Agreement.

3. Term and Termination.

- (a) The term of this Agreement begins on the date hereof and shall continue for one (1) year, unless sooner terminated as hereinafter provided, or unless extended by written agreement of the parties and the assent of Institution.
- (b) This Agreement may be terminated by either party, with or without cause, upon thirty (30) days prior written notice to the other; provided that if Consultant terminates this Agreement, Consultant shall, in accordance with the terms and conditions hereof, nevertheless wind up in an orderly fashion assignments for the Company which Consultant began prior to the date of notice of termination hereunder.
- (c) Upon termination of this Agreement for any reason, Consultant shall be entitled to receive such compensation and reimbursement, if any, accrued under the terms of this Agreement, but unpaid, as of the date Consultant ceases work under this Agreement. In addition, Consultant shall be reimbursed for any non-cancellable obligations, any cancellation penalties, and, unless Consultant terminates the agreement without cause, any expenditures reasonably made in order to perform the Services that were to occur had cancellation not occurred.
- (d) Any provision of this Agreement which by its terms imposes continuing obligations on the parties shall survive the expiration or termination of this Agreement.

4. Institutional Compliance. None of the Consulting Services shall require Consultant to engage in marketing or promotional activities for Company or endorse Company's products and/or services. In performing the Consulting Services, Consultant shall not engage in the practice of medicine, function, directly or indirectly, as the director or investigator of any research efforts. no photograph, videotape, reproduction, likeness or image of Consultant shall be used by Company, its affiliates, subsidiaries or successors for recruiting, publicity, marketing, company/product endorsement or promotional purposes. All press materials which include Consultant's affiliation with Institution shall be shared with Mount Sinai Innovation Partners for review and approval before release. The Consulting Services shall not take precedence over or conflict with any obligations the Consultant has to Institution. With the exception of the use of the library facilities of Institution and the de minimis use of Consultant's own office and personal computer, no facilities or personnel of Institution may be used in performance of the Consulting Services.

5. Private Contract. The parties acknowledge that the Institution is not a party to this Agreement and that this Agreement is a private contract between Consultant and Company. Institution will exercise no authority or control over Consultant in his/her performance of his/her Consulting Services hereunder. As such, Consultant and Company agree that Institution and its affiliated entities have no liability or responsibility to either party under this Agreement.

6. Confidential Information. Consultant may disclose to Company any information that Consultant is permitted by Institution's policies to freely disclose to other members of the scientific community at large; however, Consultant shall not disclose to Company any information that is proprietary to Institution and not generally available to the public without the express prior written consent of Institution.

7. Publication. Notwithstanding any other provision of this Agreement, Company understands that Consultant has primary professional, academic and ethical obligations arising in connection with Consultant's position at Institution and that Consultant is subject to policies of Institution which protect

academic freedom and preserve ownership of intellectual property rights. Company agrees that Consultant shall be free to publish within the scope of his or her professional and academic duties with respect to Consultant's participation as a Consultant, provided that Consultant does not reveal any Company confidential information. Company therefore agrees that in the course of her or his professional and academic duties, Consultant may discuss such participation at conferences, with colleagues, and with students, residents and fellows as Consultant deems appropriate, without revealing such confidential information. In either context, as well as in the scope of his or her duties under this Agreement, Consultant shall be free to conduct himself or herself without restraint or improper influence, in accordance with the School's academic, ethical and publication standards.

8. Compensation and Reimbursement. In consideration of the Consulting Services to be provided by Consultant to the Company hereunder, the Company shall pay to Consultant a consulting fee as provided in **Exhibit A**. In addition, the Company will reimburse the Consultant for reasonable business expenses incurred by the Consultant in the performance of Consulting Services for the Company as provided in **Exhibit A**.
9. Waiver. No waiver of any right or remedy with respect to any occurrence or event shall be deemed a waiver of such right or remedy with respect to such occurrence or event in the future. No waiver of any of Consultant's or Company's obligations under this Agreement shall be effective unless in writing and signed by the parties.
10. Reformation/Severability of Agreement. If any provision of this Agreement shall for any reason be held to be invalid or unenforceable, such decision shall not affect, impair or invalidate the remainder of this Agreement but shall be confined in its operation to the provision of this Agreement directly involved in the controversy in which the decision was rendered. If the invalid or unenforceable provision cannot be reformed, the other provisions or applications of this Agreement shall be given full effect, and the invalid or unenforceable provision shall be deemed omitted.

Intellectual Property. The parties acknowledge that Consultant will assign and hereby does assign all his or her rights, if any, to any and all intellectual property conceived, created, or authored, in whole or in part, by Consultant in performance of the Consulting Services to the Institution.

11. Assignment. This Agreement shall inure to the benefit of and be binding upon Company, its successors and assigns, including without limitation any entity which may acquire all or substantially all of Company's assets and business or into which Company may be consolidated or merged, and to Consultant, Consultant's heirs, executors, administrators and legal representatives and its successors and assigns. Consultant may not assign or otherwise in any manner transfer any of Consultant's obligations under this Agreement.
12. Limitation of Liability. Except for claims based on gross negligence or willful misconduct: (a) neither party shall be liable to the other for any special, indirect, or consequential damages, even if advised of the possibility of such damages; and (b) Consultant's aggregate liability for any claims arising out of this agreement shall not exceed the total amount of fees paid by Company hereunder during the 12-month period immediately preceding the first event giving rise to such claim.
13. Dispute Resolution. The parties agree that this Agreement shall be governed and construed by the laws of the state of New York (without giving effect to conflict of laws principles). The parties agree that all claims or disputes arising between the parties bound by this Agreement which relate to this Agreement or the breach thereof shall be submitted to one arbitrator for binding arbitration in New York, New York, which arbitration shall be conducted by the Judicial Arbitration and Mediation Services ("JAMS") in

accordance with JAMS Streamlined and Expedited Arbitration Rules. Notwithstanding the foregoing, either Party may bring an injunction proceeding before a court of equity in the event that damages for a breach are not likely to be an adequate remedy, such proceeding to be brought in a judicial district that includes New York, New York, and the Parties hereby consent to the jurisdiction of such court. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The provisions of this Agreement to arbitrate and any other written agreement to arbitrate referred to herein shall be specifically enforceable under the prevailing arbitration law of New York.

14. Notices. All notices and other communications hereunder will be delivered by hand or sent by registered or certified mail, or by reputable package delivery service, return receipt requested, addressed to the party at the address herein set forth, or to such other address as such party may designate in writing to the other.
15. Entire Agreement; Amendment. This Agreement embodies the entire agreement between Company and Consultant relating to the subject matter hereof. No changes, modifications or amendments of any term hereof shall be valid unless agreed upon by the parties in a signed writing.
16. Taxes. Consultant will be responsible for the payment of taxes on Consultant's entire compensation under this Agreement, including income taxes, employment and unemployment, Medicare and social security taxes, and other or similar taxes required by applicable of law. Company shall not withhold any taxes in connection with the compensation paid to Consultant hereunder. Such payments shall be the sole responsibility of Consultant, and Consultant agrees to file all required forms and make all required payments appropriate to Consultant's tax status when and as they become due. Consultant agrees to fully indemnify Company, and each of its managers, members and employees from and against all payments, losses, costs, liability, expenses, damages, fines, penalties and judgments (including, without limitation, actual attorneys' fees and expenses) incurred by Company or any of its managers, members or employees as a result of a failure by Consultant: (a) to pay all the taxes due in connection with the compensation paid to Consultant under this Agreement, (b) to respond to any administrative inquiry concerning Consultant's payment of such taxes, or (c) to defend against any administrative or judicial proceeding with respect to Consultant's payment of such taxes.
17. Conflicts. Notwithstanding the foregoing or anything else in this Agreement, Company acknowledges that Consultant is a full-time employee of School and agrees that, in the event the terms and conditions of the Agreement are in conflict with the terms and conditions of Consultant's employment by Institution, including the terms of any grants or contracts administered by Institution for which Consultant performs services, the latter shall prevail. Consultant represents that, as of the date of execution of the Agreement, no such conflicts exist with any Institution terms and conditions that reasonably would be expected to interfere in Consultant's performance of Consulting Services as required hereunder, and that, if any arise during the Term of the Agreement, Consultant will promptly inform Company in writing. The addendum, "Icahn School of Medicine at Mount Sinai Uniform Provisions for Consulting", supersedes any conflicting language in the body of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Consulting Agreement under seal as of the date first set forth above.

COMPANY:

By: _____
Name & Title:
Date

CONSULTANT:

Name & Title:
Date:

Exhibit A: Consulting Services

1. Field of interest

The Field of interest is defined as []..

2. Description of services

Consultant agrees to provide consulting services to Company as duly elected Chair/Member of the Scientific Advisory Board including but not limited to the following areas:

- a) Chairing and/or serving on the Company's scientific advisory board
- b) Attending scientific advisory board meetings
- c) Participating in a monthly advisory phone call
- d) Providing contacts within the scientific and medical community
- e) Help identifying and advising on the hiring of new technical/scientific personnel and advisors as needed
- f) Help identify and advise on the hiring of a management team as needed
- g) Providing general advice based on expertise in the Field
- h) Advising on fundraising activities of the company, including outreach to potential strategic partners

3. Compensation and Reimbursement

3.1 The Company shall pay Consultant a periodic consulting fee reflecting fair market value for services actually performed, which shall be \$____ per hour.

3.2 Consultant shall be reimbursed for all reasonable, appropriate or necessary travel and other out-of-pocket expenses incurred in the performance of his duties hereunder upon submission and approval of written statements and bills in accordance with the then regular reimbursement procedures of the Company. Company shall provide any documentation requirements and any travel policy restrictions to consultant in writing in advance, or be foreclosed from relying upon such requirements and restrictions to deny reimbursement.



Appendix B: Uniform Provisions for Consulting (Addendum)

1. Company acknowledges that Consultant is a full-time employee of MOUNT SINAI and agrees that, in the event the terms and conditions of the Agreement are in conflict with the terms and conditions of Consultant's employment by MOUNT SINAI, including the terms of any grants or contracts administered by MOUNT SINAI for which Consultant performs services, the latter shall prevail. Consultant represents that, as of the date of execution of the Agreement, no such conflicts exist with any MOUNT SINAI terms and conditions and that, if any arise during the Term of the Agreement, Consultant will promptly inform Company in writing and Company will have the right immediately to terminate the Agreement in such event. Except for accurately describing Consultant's affiliation with MOUNT SINAI, neither party shall use MOUNT SINAI's name in a manner that would identify MOUNT SINAI with any product or any commercial or other activity that would imply endorsement or support thereof by MOUNT SINAI. Any restrictive covenant that Consultant issued to Company, including but not limited to any non-compete provision, shall not apply to Consultant's activities related to MOUNT SINAI, its affiliates, or entities in which MOUNT SINAI has an interest.
2. Faculty and staff of Icahn School of Medicine at Mount Sinai ("MOUNT SINAI") are subject to MOUNT SINAI's [Policy on Interactions with Vendors and Other Commercial Entities](#). The parties to the Agreement agree that the Consultant must adhere to MOUNT SINAI policies, as outlined in the Faculty Handbook and the Policy on Business Conflicts of Interest, and that such compliance supersedes any obligations the Consultant may have to the Company under this Agreement.
3. It is required by MOUNT SINAI that these Uniform Provisions for Consulting ("Uniform Provisions") be attached to any written agreement ("Agreement") that will cover consulting services provided by MOUNT SINAI faculty or staff ("Consultant") for an outside entity ("Company"), and must be signed by both parties to the Agreement. By signing these Uniform Provisions, the parties to the Agreement agree to abide by these Uniform Provisions, and further agree that if anything in the Agreement is inconsistent with these Uniform Provisions, these Uniform Provisions shall govern.
4. The Agreement is limited to a one-year, renewable Term, which may be terminated by either party at any time upon thirty (30) days prior written notice to the other party. The Agreement shall not automatically renew. Annual renewal of the Agreement must be through written amendment, reviewed and approved by MOUNT SINAI, and signed by both parties.
5. The Consultant may disclose to the Company any information that the Consultant would normally freely disclose to other members of the scientific community at large, whether by publication, by presentation at seminars, or in informal scientific discussions, but the Consultant shall not disclose to the Company information that is proprietary and/or confidential to MOUNT SINAI and is not generally available to the public ("MOUNT SINAI Confidential Information"). In the event that the Consultant inadvertently discloses MOUNT SINAI Confidential Information, the parties recognize and agree that such disclosure shall not be construed as granting to Company any property rights, by license or otherwise, to any MOUNT SINAI Confidential Information, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or that may issue, based on MOUNT SINAI Confidential Information.
6. Services:
 - (a) The Consultant shall perform consulting services ("Services") the subject matter of which shall be limited to the Consultant's non-proprietary, general medical or scientific expertise ("Field"). Additional services cannot be added to the Agreement via Work Order, Statement of Work, Annex, or the like (collectively, "Additional Work Order") unless such Additional Work Order: (i) specifically incorporates by reference

the original Agreement, (ii) specifies, at a minimum, the Services to be performed by Consultant and the compensation or billing rates for the Services, (iii) is binding only when signed by both parties. Consultant shall ensure that each Additional Work Order is reviewed and approved by MOUNT SINAI, in its capacity as Consultant's employer, prior to execution by the parties.

- (b) In performing the Services, Consultant shall not engage in the practice of medicine, conduct research, use Mount Sinai's facilities or personnel, or provide access to any Mount Sinai patient data, even if de-identified, unless covered by a separate sponsored research agreement with Mount Sinai.
- (c) Consultant may not engage in marketing activities for the Company or endorse the Company's products and/or services. Consultant is prohibited from participation in a Company event where the overall event serves a marketing purpose, even if the Consultant's role is educational or otherwise non-promotional. Speaker presentations must be fair and balanced, scientific, disease-state material, and may not include exclusive discussion of Company products and or services. For the avoidance of doubt, Consultant's role shall be limited to speaking in unbranded, disease-state related programs.
- (d) For any presentation Consultant provides in Consultant's performance of the Services, (i) Consultant shall have final control over the content of the presentation as well as any materials used in connection therewith; (ii) Company may review and shall have the right to approve the presentation solely for purposes of compliance with FDA regulations or the regulations of the applicable oversight regulatory body.
If requested, Consultant shall submit all presentations and materials for review in advance of the program date. If and when changes are made with Consultant's approval, and the presentation and materials are accepted by the Company, Consultant shall adhere to such presentation and materials and shall not reorganize, modify, edit, or supplement the materials except through the process as described above. If the Company rejects any changes proposed by Consultant, Consultant shall retain the right to terminate the Agreement and/or withdraw from the presentation.
- (e) No photograph, videotape, reproduction, likeness or image of Consultant shall be used by Company, its affiliates, subsidiaries or successors for recruiting, publicity, marketing, or company/product endorsement purposes. All press materials which include Consultant's affiliation with MOUNT SINAI shall be shared with The Mount Sinai Health System Marketing and Communications Department for review and written approval before release and shall disclose that Consultant receives financial compensation from the Company.
- (f) For clarity and notwithstanding anything to the contrary in the Agreement, Company shall only have ownership of results of Consultant's work and/or materials to the extent such results are produced in performance of the Services and are in the Field. Company agrees that Company shall not have or claim any ownership of or exclusive rights in the expression of the Consultant's general or specific knowledge, including knowledge in the field of the Consultant's expertise, including any expression of such knowledge in written or other form, that is not limited to the Company's proprietary products and proprietary services within the Consultant's medical or scientific expertise.

7. Confidential Information:

- (a) "Confidential Information" shall mean any and all information that is provided by or on behalf of Company to Consultant in Consultant's performance of the Services under and during the Term of the Agreement, whether orally or in written, electronic or other tangible form. The confidentiality obligations and use restrictions of the Agreement regarding Confidential Information shall survive termination or expiration of the Agreement and will be binding upon Consultant, its heirs, successors, and assigns for a period of five (5) years from the Effective Date.
- (b) The confidentiality obligations and use restrictions regarding Confidential Information shall not apply to information that: (i) becomes part of the public domain through no fault of Consultant; (ii) is rightfully obtained by Consultant from a third party with the right to transfer such information without imposing an

obligation of confidentiality; (iii) is independently developed by Consultant without use of Company's Confidential Information; or (iv) was lawfully in Consultant's possession at the time of disclosure to Consultant by Company, without restriction on disclosure. Additionally, Consultant may disclose Confidential Information as required by law, court order, or other governmental authority with jurisdiction, provided that Consultant promptly notifies Company in writing of such requirement and complies, at Company's written request and expense, with Company's lawful efforts to prevent or limit the scope of such required disclosure.

(c) The Consultant shall retain the right to provide the terms and conditions of the Agreement and any fees payable to Consultant's employer MOUNT SINAI.

8. Except as otherwise provided herein, only such written materials and other works that may be subject to copyright and those inventions conceived and reduced to practice by Consultant solely in Consultant's performance of the specific Services under and during the Term of the Agreement ("Works") shall be Company's property.
9. The Company shall have no rights by reason of the Agreement in any publication, invention, discovery, improvement, or other intellectual property whatsoever, whether or not publishable, patentable, or copyrightable, that is developed as a result of a program of research financed, in whole or in part, by funds provided by or under the control of MOUNT SINAI.
10. The parties agree that the services provided to Company by the Consultant may not involve more than incidental use of MOUNT SINAI resources, including but not limited to, facilities, supplies, and equipment. The Consultant's obligations to Company may not involve any MOUNT SINAI students, employees, post-doctoral trainees, or any MOUNT SINAI personnel other than the Consultant.
11. Each party to the Agreement acknowledges that the Consultant is entering into the Agreement, and providing services to the Company, as an Independent Contractor. Consultant retains the right to contract with other companies or entities with respect to the provision of consulting services without restriction, provided that the terms of those other arrangements do not impair Consultant's ability to comply with Consultant's obligations to Company under this Agreement.

Signatures:

Company: _____

Printed Name of Authorized Company Officer: _____

Authorized Company Officer Signature: _____

Date: _____

Consultant (Faculty Name): _____

Signature: _____

Date: _____